Journal of Islamic Constitutional & Political Law
E−ISSN: 3110−5602
Vol. 2 No. 1 Edition June 2026

ORIGINAL ARTICLE OPEN ACCES

# REFORMULATION OF CRIMINAL JUSTICE PARADIGM IN 2023 CRIMINAL CODE: A COMPARATIVE ANALYSIS OF HUMAN RIGHTS AND ISLAMIC LEGAL PRINCIPLES

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**Article History :**
Submission : December 21, 2025
Revised : February 11, 2025
Accepted : March 11, 2025
Published : May 16, 2025

**Keywords :** Criminal Law, Criminal Code, Human Right, and Reform

Abstract

The enactment of the 2023 Criminal Code marks a paradigm shift toward a more humane approach to punishment, one that is normatively grounded and aligned with human rights principles. This study stems from the tension between the classical retributive orientation of punishment and the global trend emphasizing corrective, rehabilitative, and restorative approaches, as well as respect for human rights. This study employs a descriptive−analytical normative qualitative method. Primary data sources include the Criminal Code and human rights instruments, while secondary data is drawn from books and journals on modern criminal justice. Modern Criminal Law is transforming into a human rights−based legal system rooted in the concept of human dignity and grounded in international human rights instruments, encompassing civil and political rights, economic, social, and cultural rights, as well as the rights of children, women, persons with disabilities, migrant workers, and the prohibition of torture. This requires continuous coordination among legal enforcers and practitioners. A human rights−based approach requires clear and empirically tested evaluative indicators to ensure the stable implementation of the law without discrimination. Reform must be accompanied by measurable and empirically verifiable evaluative parameters to ensure stable law enforcement. Ibn al−Qayyim stated that law enforcement is not only intended to punish but also to realize justice and the public good and to prevent harm. This indicates a normative alignment between modern human rights−based criminal law and the principles of Islamic law in positioning the human being as a subject whose dignity must be protected to ensure that law enforcement proceeds fairly, stably, and without discrimination.

Abstrak

Lahirnya KUHP 2023 menandai pergeseran paradigma pemidanaan lebih humanis secara normatif dan selaras dengan prinsip hak asasi manusia. Penelitian ini berangkat dari adanya ketegangan antara orientasi klasik pemidanaan yang bercorak retributif dengan kecenderungan global yang menekankan pendekatan korektif, rehabilitatif, dan restoratif serta penghormatan kepada hak asasi manusia. Penelitian ini menggunakan metode kualitatif normatif yang bersifat deskriptif−analitis, Sumber data primer berasal dari KUHP, dan instrumen HAM, Sumber data sekunder melalui literatur Buku dan jurnal tentang pemidanaan modern. Hukum Pidana Modern bertransformasi kepada hukum berprinsip hak asasi manusia yang berakar pada Konsep human dignity serta fondasi instrumen HAM internasional meliputi hak sipil−politik, ekonomi−sosial−budaya, hak anak, perempuan, penyandang disabilitas, pekerja migran, dan anti−penyiksaan. Hal ini memerlukan sikronisasi antar penegak dan pelaku hukum secara berkelanjutan. Pendekatan berbasis HAM memerlukan indikator evaluatif yang jelas dan teruji secara empiris dalam melaksanaan hukum dengan stabil tanpa diskriminasi, Reformasi harus disertai dengan parameter evaluatif yang terukur dan dapat diverifikasi secara empiris guna penegakan hukum yang stabil. Ibn al−Qayyim mengatakan, penegakan hukum tidak hanya bertujuan menghukum, tetapi juga mewujudkan keadilan dan kemaslahatan serta mencegah kerusakan. Hal ini menunjukkan adanya keselarasan normatif antara hukum pidana modern berbasis HAM dan prinsip−prinsip hukum Islam dalam menempatkan manusia sebagai subjek yang harus dilindungi

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martabatnya guna memastikan bahwa penegakan hukum berlangsung secara adil, stabil, dan tanpa diskriminasi.

## INTRODUCTION

Developments in modern criminal law indicate a significant shift away from retributive punishment towards a more humanistic and human rights—oriented approach (Ismawati & Hertini, 2025; Ramadhan & Yusuf, 2025; Situmeang & Meilan, 2025). Historically, the classical penal system was based on the idea of retribution as a response to legal violations (Syaid et al., 2026). This paradigm positions punishment as a means of proportional retribution for the offender's wrongdoing. However, developments in contemporary criminal law theory have introduced rehabilitative, restorative, and corrective approaches that place human dignity at the centre of penal policy.

Human rights principles serve as normative parameters that cannot be ignored in criminal law reform (Saragih & Markoni, 2025). Respect for human dignity, the principle of proportionality in criminal law, the prohibition of torture and degrading treatment, and guarantees of the rights of suspects and convicted persons such as the right to legal aid, a fair trial, and protection from excessive criminalisation constitute evaluative standards in designing modern penal policies. In other words, the legitimacy of criminal law is no longer determined solely by its conformity with the principle of legality, but also by its compatibility with universally recognised human rights values.

Indonesia, as a unitary state with a presidential system of government, is undergoing a transformation of its criminal law towards a modern criminal law system (Nugraha et al., 2025). This is marked by the enactment of Law No. 1 of 2023 on the Criminal Code, more commonly known to the public as the new Criminal Code. This marks a new chapter in national criminal law reform. The Criminal Code introduces a number of reforms, including the strengthening of alternative penalties, probation, community service, and explicit recognition that the purpose of punishment is not merely retributive. This reformulation demonstrates a systematic effort to harmonise national sentencing policies with the development of human rights principles at the global level, whilst retaining Indonesia's distinct character and social needs.

Thus, the shift from a retributive paradigm towards a more humanistic approach reflects not only technical changes in the types and forms of punishment, but also a philosophical transformation regarding how the state views offenders not merely as objects of retribution, but as legal subjects who retain their dignity and rights, which must be respected in a democratic state governed by the rule of law.

Islamic law provides an additional normative framework in understanding the objectives of punishment, particularly through the concept of *maqāṣid al-sharī'ah*, which emphasises the protection of fundamental human interests such as life, intellect, religion, lineage, and property. This perspective offers an alternative yet complementary paradigm to modern human rights discourse, especially in evaluating the ethical and philosophical foundations of criminal justice reform.

Although the 2023 Criminal Code introduces a more humanistic approach to sentencing than its predecessor, further research is needed to determine whether these changes have, in normative terms, reflected universally recognised human rights principles. To date, discussions regarding the reform of the Criminal Code have largely focused on legal policy aspects and changes to the substance of articles, whilst analysis specifically examining the transformation of the sentencing paradigm from a human rights

perspective remains relatively limited. This situation gives rise to an academic need to examine the degree of harmonisation between the objectives of sentencing in the 2023 Criminal Code and human rights standards as the basis for the legitimacy of modern criminal law.

This paper aims to identify normative conceptual changes to the sentencing paradigm in the 2023 Criminal Code by comparing it with the previous, more retributive Criminal Code. The focus of this research is to analyse the extent to which the objectives of sentencing based on humanistic values reflect human rights, as well as to examine universally recognised human rights standards in relation to the 2023 Criminal Code. This paper is written as an effort to articulate the representative views of society in a doctrinal manner and to provide theoretical implications for the future of criminal law in Indonesia based on academic research.

A number of previous studies have examined the normative changes on a clause—by—clause basis or the legal—political aspects of its formulation. Systematic studies analysing the paradigm shift in the 2023 Criminal Code within a comparative framework based on human rights principles remain relatively limited. Although they make an important contribution, these studies still leave a number of research gaps, particularly when addressing the harmonisation of criminal law with human rights principles which is not merely a normative issue but also concerns the legitimacy of the criminal justice system and the effectiveness of policies in a democratic society.

A study by Parningotan Malau (2023). This research adopts a socio—legal approach. The study's findings highlight the enactment of the 2023 Criminal Code as a significant milestone in the reform of the national criminal justice system, representing an effort to enhance the effectiveness of law enforcement, strengthen justice, and expand the protection of human rights. However, the success of the new Criminal Code is highly dependent on consistent implementation, continuous monitoring, and the readiness of all stakeholders to face future challenges (Malau, 2023).

Meanwhile, a study by Nafi Mubarok (2024). This research draws upon the ideas of Friedrich Carl von Savigny regarding the importance of historical continuity in the development of law. The study positions the 2023 Criminal Code as part of a series of evolutions in Indonesian criminal law, divided into six periods, ranging from the era of the Nusantara kingdoms to the phase of formulating the new Criminal Code, which seeks to realise the ideals of national law, the recodification process following decodification, and the recognition of customary law as a form of local wisdom within the national criminal law system (Mubarok, 2024).

A study conducted by Bagus Satrio Utomo Prawiraharjo (2023). This research examines the shift in the paradigm of Indonesian criminal law from the colonial system, which was based on the Wetboek van Strafrecht voor Nederlandsch—Indie, towards a new regime through Law No. 1 of 2023. The study asserts that the 2023 Criminal Code represents a philosophical transformation from the colonial individualism—liberalism model towards substantive justice grounded in the values of Pancasila. This study highlights the integration of Indonesian legal culture into the new Criminal Code, particularly the recognition of customary law, a corrective justice approach, and the application of the monodualistic balance principle which accommodates the interests of the perpetrator, the victim, and society proportionally (Prawiraharjo, 2023).

In contrast to the three previous studies, Anita Zulfiani et al. (2023) directly address corruption as a form of criminal offence involving the private sector both before and after the enactment of Law No. 1 of 2023. This research demonstrates normative shifts, including the abolition of the death penalty in the 2023 Criminal Code. The establishment

of the Corruption Eradication Commission (KPK) as an independent state institution authorised to combat corruption. Corruption is classified as a special and extraordinary offence, whilst the Criminal Code serves as the general framework for addressing corruption (Zulfiani et al., 2023).

The following is a table of the literature review:

Table 1. Literature Review

| No | Title | Researcher | Research Findings | Critism |
|---|---|---|---|---|
| 1 | An Overview of the New Criminal Code (KUHP) 2023 | Parningotan Malau | This study reveals that the Criminal Code is not merely a normative text, but also a living social reality within the practice of law enforcement. | Strong in terms of legal principles, but does not yet address the issue of human rights. |
| 2 | The History of the Development of Criminal Law in Indonesia: Preparing for the Introduction of the 2023 Criminal Code through an Historical Perspective | Nafi Mubarok | Emphasising the importance of historical continuity in understanding the development of law | The scope of the research is limited to the doctrinalisation of history as a legacy of the past and has not yet provided answers regarding the implementation of humanistic values in the modern era. |
| 3 | The Implementation of the Monodualistic Balance Concept in Law No. 1 of 2023 on the Criminal Code | Bagus Satrio Utomo Prawiraharjo | This study integrates customary law with the new Criminal Code | The scope of the research is limited to legal culture, including customary law, and does not yet address human rights. |
| 4 | Regulations on Corruption Offences Before and After the Entry into Force of Law No. 1 of 2023 on the Criminal Code, in an Effort to Reduce Corruption Rates in the Private Sector | Anita Zulfiani, Agung Nur Probohudono, Khresna Bayu Sangka | Corruption is classified as a special and exceptional criminal offence, and the Criminal Code serves as the general framework for dealing with corruption | Strong in terms of its approach to tackling corruption, but has yet to deliver policy reforms for ordinary people. |

Based on the literature review presented, it is evident that previous research has addressed the new Criminal Code from a normative perspective and has not yet explicitly examined the concept of modern sentencing grounded in human rights. This gap opens up a research opportunity to present an academic study addressing public concerns by

examining the shift in the orientation of sentencing within the 2023 Criminal Code, identifying the principles embedded within it, and comparing them with sentencing policy trends in other legal systems that have already integrated a human rights—based sentencing approach.

This research is expected to contribute to the development of modern criminal law discourse, particularly in understanding the paradigm shift from a punitive to a humanistic approach. In practical terms, this research is expected to serve as a reference in evaluating the implementation of the 2023 Criminal Code and strengthening sentencing policies that align with human rights principles.

## METHODS

This study employs a normative qualitative method (Huda, 2021) using a conceptual legal approach that focuses on written legal norms as its object, in order to analyse the provisions of the 2023 Criminal Code relating to the objectives of criminal punishment, types of punishment, and alternative punishments, through an examination of modern human rights concepts as well as the paradigm and objectives of criminal punishment. This research is descriptive—analytical in nature, systematically describing the reformulation of criminal policy in the 2023 Criminal Code and critically examining the compatibility of this paradigm with human rights principles from a comparative law perspective. The primary data sources used are: the Criminal Code, penal legislation, Islamic legal sources, particularly classical and contemporary literature on *fiqh al-jināyah* and *maqāṣid al-sharī'ah*, as a comparative normative framework, and relevant international human rights instruments. Secondary data sources were drawn from books and journals on modern criminal justice. The data collection technique employed the Miles and Huberman (1994) model, involving the reduction, presentation, and drawing of conclusions from the data obtained (Miles & Huberman, 1994).

## RESULT AND DISCUSSION

### Towards a Humane and Human Rights-Oriented Punishment Model

Lawrence Meir Friedman states that the legal system consists of three components: namely, structure (legal structure), substance (legal substance), and culture (legal culture) (Friedman, 1975). Friedman argues that law is separate from social life and is an independent entity. Legal structure exists within a theoretical framework, whilst legal behaviour exists within the framework of real life. This statement can serve as a theoretical framework for studying law, whether as Civil Law or Common Law, Civil Law or Criminal Law.

The history of criminal law addresses how humans understand wrongdoing and respond to it, built upon retributive theory as retribution for wrongdoing (Reumi et al., 2026). Epistemologically, an individual or group committing a crime causes suffering, and thus that suffering is repaid with suffering. In early societies, the response to harmful acts whether personal or communal had to be repaid with equivalent harm, a principle known as Lex Talionis or the law of retaliation: 'an eye for an eye, a tooth for a tooth' (Illu, 2024). The mechanism of this principle aimed to limit revenge, with the stipulation that punishment must not exceed the harm suffered, whilst also serving to maintain social balance. At this stage, there was no clear distinction between moral, religious, and legal offences.

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A significant development occurred within the Roman tradition. In the Classical Roman system, there was a shift in the legal status of private matters, which, whilst considered personal affairs, were regarded as crimes against the state (crimen) requiring the involvement of state officials in their handling (Wibowo, 2026). For instance, the Quaestiones Perpetuae, or permanent courts, were established to handle specific crimes such as corruption (repetundae), treason (maiestas), murder (sicarii et venefici), and forgery (Bauman, 1968). This institutionalisation served as the precursor to the emergence of the public function of criminal law as the Corpus Juris Civilis in the future, and as the foundation for the continental Civil Law system.

From the 5th to the 15th century in Europe, the penal system was repressive and intertwined with practices of torture (Eskelner et al., 2021). During this period, there was a lack of legal certainty and the principle of legality had not yet developed strictly, influenced by the dominance of local customs, ecclesiastical law, and feudal law. This era marked a decline in science, culture, and society following the collapse of the Western Roman Empire and became known as the European Dark Ages.

A major transformation took place in the 18th century through the thinking of the classical school. Cesare Beccaria criticised arbitrary criminal practices and asserted that only the law should define criminal offences and their penalties the principle of legality (Nurohim et al., 2025). *Nullum Delictum, Nulla Poena Sine Praevia Lege Poenali.* Punishment must be proportionate and aimed at prevention rather than brutal retribution, both to prevent the offender from repeating their actions and to deter others from committing similar crimes (deterrence). Brutal and inhumane punishments such as torture must be abolished as they are ineffective. This line of thought aligns with the rationalism, humanism and social contract theory of the Renaissance era, which served to legitimise the state as the result of a free agreement between individuals to achieve a safer and more orderly life.

In the 19th century, the positivist school emerged, pioneered by Cesare Lombroso, an Italian criminologist, as a critique of the classical school. This approach views crime as a phenomenon influenced by biological, psychological, and social factors. The focus of analysis shifted from the 'act' alone to the 'offender'. According to Lombroso, "the criminal represents an evolutionary regression, making him a more primitive human being who lacks the ability to adapt to the norms of modern society" (Riziq, 2025). From this developed the concept of the individualisation of criminal justice and the need to consider personal circumstances in sentencing, forming the basis for modern criminology which takes into account biological, psychological, and social factors.

The 20th century was marked by the strengthening of principles limiting the state's power to punish. The experience of totalitarian regimes such as Nazi Germany, fascism, and Stalinism which used criminal law to oppress the people, fostered a global awareness that the state's power to punish must not be absolute. Modern criminal law must protect individuals from state arbitrariness. However, following the Second World War, the Universal Declaration of Human Rights emerged as the foundation of international law, driving the development of international human rights standards (Asy'ari, 2021). The principles of non−retroactivity, the prohibition of torture, and respect for human dignity have become key parameters in modern criminal law. Punishment is no longer understood merely as retribution, but also as a means of prevention and rehabilitation.

Indonesia is a constitutional state that adopts a mixed legal system. Criminal law is based on the *Wetboek van Strafrecht voor Nederlandsch-Indie*, a legacy of Dutch colonial rule adopted as the national Criminal Code (KUHP) on 1 January 1918 (Butt, 2023). This

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system reflects the traditions of continental European law with a legalistic and retributive orientation. Subsequent reforms to the national criminal law led to the enactment of the Criminal Code on 2 January 2023, which came into force three years later; it normatively formulates the objectives of criminal punishment and expands the range of alternative penalties. This reformulation indicates a shift towards a more integrative approach, incorporating elements of prevention, rehabilitation, and social restoration.

This indicates that such developments do not mean the old paradigm has been entirely abandoned. The elements of retribution, prevention, and rehabilitation have always interacted across various historical periods. Therefore, the history of criminal law is more accurately understood as a gradual evolution in limiting and rationalising the state's punitive power, rather than as a revolutionary change that entirely replaces the previous paradigm.

However, in the Criminal Code, a reformulation of the objectives of punishment is evident (Fatmawati et al., 2023). The 2023 Criminal Code no longer views punishment solely as retribution, but also as a means for: the prevention of criminal acts, the rehabilitation of offenders, conflict resolution, and the restoration of balance within society (Hadi et al., 2025). This represents a conceptual shift from 'punishment as retaliation' towards 'punishment as social restoration'. Theoretically, this approaches a synthesis between preventive and integrative theories, which prioritise the protection of society and respect for human dignity as primary objectives.

Alternative sentences such as community service and probation demonstrate efforts to reduce the dominance of imprisonment. In modern criminology, prison is no longer viewed as a universal solution, but rather as a last resort (ultimum remedium). This paradigm reflects a change in the way the state views offenders: not merely as objects of punishment, but as subjects of law who retain their fundamental rights.

## Human Rights Principles in Criminal Justice Policy

The principle of human rights in criminal law is rooted in the concept of human dignity, which forms the foundation of various international human rights instruments. There are nine core instruments covering civil and political rights, economic, social and cultural rights, the rights of the child, women, persons with disabilities, migrant workers, and the prohibition of torture (Sholihah et al., 2024). Even though a person has committed a crime, human dignity remains inherent. Within the framework of the modern rule of law, criminal punishment is not merely an expression of sovereign authority to punish, but a legal act that must be subject to human rights protection standards. Normatively, a human rights—based criminal justice policy encompasses several key principles.

First, the principle of proportionality. This principle requires that the punishment imposed must be commensurate with the degree of fault and the impact of the act (Ali, 2018). Proportionality serves as a control mechanism to prevent the state from imposing excessive sanctions. In modern criminal law theory, proportionality is also linked to the principle of distributive justice and the limitation of the state's repressive power.

Second, the prohibition against degrading treatment (non—degrading punishment) (Hamzah & Salsabila, 2024). This principle affirms that the form and execution of punishment must not cause suffering that is cruel, inhuman, or degrading. This prohibition concerns not only the type of punishment but also societal conditions, the conduct of law enforcement officials, and access to the fundamental rights of the convicted person.

Thirdly, the principle of individualisation of punishment. A human rights—based sentencing policy recognises that the perpetrator of a criminal offence is not an abstract

entity, but an individual with specific social, psychological, and economic backgrounds (Hardinanto et al., 2024; Siregar & Purba, 2025). Therefore, judges are obliged to consider personal circumstances, motives, and the possibility of rehabilitation. Individualisation serves as a corrective to a mechanistic approach that focuses solely on normative threats without considering personal context.

Fourth, the principle of social restoration. Within the human rights paradigm, sentencing must not result in permanent exclusion from social life (Bunga, 2024). The ultimate aim is the reintegration of the offender into society as a subject who once again functions socially. This approach aligns with the development of the concept of restorative justice, which emphasises the restoration of relationships and social responsibility.

Thus, the principle of human rights in penal policy functions as a normative framework that both limits and guides the exercise of state power. It demands a balance between the protection of society and respect for individual dignity. Punishment in a modern rule—of—law state is not merely an instrument of retribution, but a tool that must be administered rationally, proportionally, and with a human—centred orientation.

Table 2. Comparison of Classical and Modern Criminal Law

| Aspect | Traditional Criminal Law | Modern Criminal Law |
|---|---|---|
| **Objectives** | Retribution | Protection and Rehabilitation |
| **Focus** | Criminal Acts | Perpetrators (Subjects) |
| **Nature** | Rigid, Legal Certainty | Flexible, Utility |
| **Punishment** | Imprisonment/Retribution | Restorative Justice |

The 2023 Criminal Code demonstrates the internalisation of these principles through provisions on the objectives of criminal punishment and the expansion of alternative penalties. The individualisation of punishment is further strengthened by an emphasis on consideration of the offender's personal circumstances.

However, a conceptual problem arises when these progressive norms coexist with severe criminal penalties for certain specific offences. Here, a dualism of paradigms is evident between humanisation and the remnants of classical punitive approaches. In essence, criminal law reform is rarely revolutionary; rather, it is more often evolutionary and compromising.

Below, the author presents a comparison between the Old Criminal Code (Wetboek van Strafrecht) and the new Criminal Code in several aspects:

**Table 3. Comparison of the Old Criminal Code and the New Criminal Code**

| Section | Old Criminal Code *Wetboek van Strafrecht* | Criminal Code 2023 |
|---|---|---|
| **Types of Penalties (Principal Penalties)** | Section 10: death penalty, imprisonment, detention, fine | Sections 64–67: imprisonment, confinement, supervision, fine, community service |
| **Death Penalty** | Section 10: includes ordinary principal offences | Sections 98–101: specific offences, alternative penalties, 10-year probation period |
| **Imprisonment** | Section 12: life imprisonment or a fixed term (maximum 20 years) | Sections 71–78: life imprisonment or a fixed term (maximum 15 years, which may be increased to 20 years or more under certain conditions) |

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| | | |
|---|---|---|
| **Maximum Sentence** | Section 12(2): Generally 20 years, unless otherwise specified | Section 71: A more flexible maximum system; general maximum of 15 years, may be increased cumulatively in accordance with provisions |
| **Minimum Sentence** | No minimum sentence (except where specific offences provide for a specific minimum) | No minimum sentences; some offences include specific minimum sentences; a more structured system of fine categories |
| **Fine** | Section 30: fixed amount in rupiah (often economically irrelevant) | Sections 79–85: Categories I–VIII system, adjusted to economic value |
| **Additional Penalty** | Article 10: deprivation of certain rights, confiscation of property, publication of the judge's decision | Articles 65–66: more varied, including payment of compensation, fulfilment of customary or living law obligations |
| **Probation** | Not regulated as a principal penalty | Section 75: probation as the principal sentence |
| **Community Service** | Not recognised | Section 76–77: regulated as alternative principal sentences |
| **Purpose of Sentencing** | Not explicitly formulated | Section 51: clearly formulated (prevention, rehabilitation, restoration, not degrading to dignity) |
| **Sentencing Guidelines / Individualisation** | Not systematically formulated in general provisions | Section 53–56: judges must consider fault, motive, mental state, impact, and personal circumstances |
| **Elements of an Offence (Structure of a Criminal Offence)** | Not explicitly formulated in Book I; derived from doctrine (act, unlawfulness, fault, liability) | Section 36–50: Book I sets out the elements of fault, criminal liability, justifications and excuses more systematically. |
| **Nature of the Offence (Complaint-Based Offence)** | Section 72–75: absolute and relative offences regulated to a limited extent | Regulated more systematically in Book I, Paragraph 7; the classification of offences subject to complaint and the procedure for withdrawing a complaint are clarified |
| **Attempt (Poging)** | Section 53 of the Criminal Code | Reorganised in Book I of the 2023 Criminal Code with a more systematic formulation |
| **Complicity (Deelneming)** | Section 55–60 | Section 5: More structured in Book I of the 2023 Criminal Code |

## Islamic Legal Perspective on Criminal Justice and Punishment

In Islamic legal, the criminal justice system focuses not only on the imposition of punishment, but also on efforts to establish justice, maintain public order, and protect individual rights. Islamic law, or Sharia, is derived from the Quran, Hadith, ijma', and

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qiyas, which serve as the basis for determining the nature of offenses and their corresponding penalties. One of the main principles in Islamic criminal justice is justice *(al-'adl)* and balance *(tawazun)* (Nasoha et al., 2025). This is emphasized in the Qur'an, Surah An—Nisa verse 58 and Surah An—Nahl verse 90.

۞ اِنَّ اللّٰهَ يَأۡمُرُكُمۡ اَنۡ تُؤَدُّوا الۡاَمٰنٰتِ اِلٰٓى اَهۡلِهَا ۙ وَاِذَا حَكَمۡتُمۡ بَيۡنَ النَّاسِ اَنۡ تَحۡكُمُوۡا بِالۡعَدۡلِ ؕ اِنَّ اللّٰهَ نِعِمَّا يَعِظُكُمۡ بِهٖ ؕ اِنَّ اللّٰهَ كَانَ سَمِيۡعًاۢ بَصِيۡرًا ﴿۵۸﴾

Indeed, Allah commands you to return trusts to their rightful owners. When you judge between people, judge with justice. Indeed, Allah gives you the best guidance. Indeed, Allah is All—Hearing and All—Seeing. (Q.S. An—Nisa: 58)

۞ اِنَّ اللّٰهَ يَأۡمُرُ بِالۡعَدۡلِ وَالۡاِحۡسَانِ وَاِيۡتَآىِٕ ذِى الۡقُرۡبٰى وَيَنۡهٰى عَنِ الۡفَحۡشَآءِ وَالۡمُنۡكَرِ وَالۡبَغۡىِ ۚ يَعِظُكُمۡ لَعَلَّكُمۡ تَذَكَّرُوۡنَ ﴿۹۰﴾

*Indeed, Allah commands justice, doing good, and showing kindness to relatives. He forbids indecency, wrongdoing, and hostility. He instructs you so that you may take heed. (Q.S. An-Nahl: 90)*

The classification of punishments in criminal jurisprudence *(fiqh al-jinayah)* according to the view agreed upon by the majority of classical scholars across schools of thought, as explained in works such as Al—Ahkam al—Sultaniyyah by Al—Mawardi, Al—Mughni by Ibn Qudamah, and Bada'i al—Sana'i by Al—Kasani (Iman & Joni, 2024). The Islamic criminal justice system classifies forms of punishment into several categories based on the type of offense and the nature of the right violated. Generally, these categories include hudud, which are punishments explicitly prescribed by Islamic law with specific provisions and related to the public interest; qisas and diyat, which pertain to offenses against life or bodily integrity and grant the victim or their family the right to demand commensurate retribution or to grant forgiveness in exchange for compensation; and ta'zir, which refers to a type of punishment not specified in detail in the textual sources, the implementation of which is left to the discretion of the judge or the competent authority in accordance with the public interest. This classification demonstrates that Islamic criminal law does not merely emphasize the enforcement of sanctions but also considers the dimensions of justice, prevention, and the rehabilitation of offenders, thereby reflecting a balance between the rigor of the law and humanitarian values in maintaining social order.

Imposing a punishment without adhering to applicable legal provisions constitutes an action inconsistent with legal principles and thus requires a rigorous and fair evidentiary process. Islam prioritizes prevention and the rehabilitation of offenders as crucial aspects of law enforcement, rather than focusing solely on the imposition of punishment. This principle aligns with the teachings of the Qur'an, which encourage forgiveness and virtue, as stated in Surah Al—Imran, verse 134, that Allah loves those who are able to restrain their anger and forgive the mistakes of others.

... وَالۡعَافِيۡنَ عَنِ النَّاسِ ؕ وَاللّٰهُ يُحِبُّ الۡمُحۡسِنِيۡنَ ۚ ﴿۱۳۴﴾

*... and those who forgive others. Allah loves those who do good. (Q.S. Al-Imran: 134)*

The primary purpose of the penal system in Islam is not merely retribution, but also includes preventing the recurrence of crime, the rehabilitation of offenders, the protection of society, as well as the upholding of justice and morality. Thus, the Islamic legal perspective on criminal justice demonstrates a balance between the strictness of the law

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and humanitarian values, placing justice as the primary goal in every process of law enforcement.

## *DISCUSSION*

### Comparative Analysis: Global Trends in Criminal Justice Policy

Developments in penal policy across various legal systems indicate a trend towards a more humanistic approach as the ultimate remedy, as seen in Japan, the Netherlands, the Scandinavian countries, Germany and Switzerland. Humanisation does not eliminate the repressive function of criminal law, but rather reconstructs the criminal justice paradigm and framework in a manner consistent with proportionality, the protection of human rights and national effectiveness.

In Western European countries such as the Netherlands, Germany, and Switzerland, the general orientation of criminal law application places resocialisation as a key principle (Tarmizi, 2025). The penal system is designed not merely to isolate offenders from society, but to prepare for their social reintegration. Prisons function as instruments of rehabilitation, with structured educational programmes, vocational training, and psychosocial support. With this approach, the success of sentencing is measured not by the length of the sentence, but by low recidivism rates and the successful reintegration of offenders.

Scandinavian countries such as Norway and Sweden are known for their minimalist penal policy approach (Bakhri et al., 2024). This policy emphasises the use of imprisonment as a last resort, expanding the use of personal sanctions such as supervision, proportional fines based on income, and community service. The relatively low incarceration rates in these regions are often linked to the philosophy that the restriction of liberty is suffering enough in itself, so there is no need to add repressive conditions.

Within the common law tradition, particularly in the United Kingdom, the development of sentencing guidelines demonstrates a systematic effort to ensure consistency, proportionality, and fairness in the imposition of sentences (Situmeang & Meilan, 2025). Sentencing guidelines are formulated to reduce sentencing disparities and provide a rational framework for judges in assessing the degree of culpability, the impact of the offence, and mitigating or aggravating factors. Consequently, the principles of fairness and proportionality become central parameters in this process.

Furthermore, many jurisdictions are beginning to integrate restorative justice into the criminal justice system to restore victims' losses, hold offenders accountable, and facilitate social reconciliation. Restorative justice is not intended to replace the entire sentencing system, but to complement formal mechanisms through family mediation or informal resolution.

In this context, the reformulation of sentencing policy in the 2023 Criminal Code forms part of a process of harmonisation with international standards and developments in modern criminal law. The formulation of the objectives of sentencing, the strengthening of the principle of individualisation, and the introduction of alternative penalties demonstrate a normative convergence with global trends that emphasise reintegration and respect for human dignity.

However, normative convergence is not always synonymous with practical convergence. The implementation of criminal justice policies is heavily influenced by legal culture, institutional capacity, and the orientation of law enforcement officials. Consequently, the effectiveness of reform depends not only on changes to the text of the

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law, but also on the consistency of criminal justice policy as a whole and a paradigm shift in practice on the ground.

In this regard, the revision of the Indonesian Criminal Code cannot be understood as an isolated phenomenon. It forms part of the dynamics of the globalisation of criminal law, in which states influence one another through the exchange of ideas, international standards, and experiences of criminal policy. Consequently, the development of national criminal policy reflects the interplay between domestic needs and the broader currents of global criminal law development.

## An Evaluation of the Reformulation of Sentencing

The reformulation of the criminal justice paradigm in Indonesia's 2023 Criminal Code reflects a shift from a purely repressive approach toward a more comprehensive one, emphasizing a balance between legal certainty, justice, and humanity. This paradigm indicates that the modern criminal justice system is no longer solely focused on punishment but also integrates values of human rights protection as well as corrective and rehabilitative approaches toward offenders.

Human Rights as a formulation consistent with the principles enshrined in the Universal Declaration of Human Rights, particularly regarding the protection of human dignity, the prohibition of inhuman treatment, and the guarantee of a fair legal process (Saraswati, 2025). This approach emphasizes that punishment must not be arbitrary and must take into account proportionality and the goal of rehabilitation. Thus, modern criminal justice moves toward a model that not only punishes but also seeks to reintegrate offenders as productive members of society.

When compared to the principles of Islamic law in the study of fiqh al—jinayah, there are significant points of convergence (Abdillah et al., 2024). Classical scholars such as Al—Mawardi and Ibn Qudamah have classified the Islamic penal system into hudud, qisas/diyat, and ta'zir (Mubriani & Yasin, 2025) substantially highlights the distinction between the public interest and individual rights. In this regard, the concepts of qisas and diyat allow victims the opportunity to grant forgiveness (Sodiqin, 2015), Meanwhile, ta'zir grants authorities the flexibility to determine the punishment most appropriate to social conditions and the goal of the public good (Aningsih et al., 2026). Ibn al—Qayyim's thought emphasizes that Islamic law is founded on the principles of the public good, justice, and wisdom (Dainori, 2020). This indicates that the primary objectives of law enforcement are not merely retribution, but rather crime prevention, the rehabilitation of offenders, and the protection of society. This principle aligns with modern approaches in criminal law that emphasize restorative justice and rehabilitation as integral components of the penal system. Thus, the reformulation of the criminal justice paradigm in the 2023 Criminal Code can be understood as an effort to integrate universal human rights values with legal principles that are also consistent with Islamic legal traditions. Both view justice not merely as the formal enforcement of norms, but also as an effort to maintain a balance between the interests of individuals, society, and humanitarian values (Mahendra & Emovwodo, 2023). Consequently, this comparative approach demonstrates that there is a normative convergence between modern legal systems and Islamic law in establishing a criminal justice system that is more just, humane, and oriented toward the public good.

Although, in theory, the 2023 Criminal Code embodies values oriented towards human rights—based sentencing, the author offers the following observations: Firstly, the success of reformulating the sentencing paradigm depends not only on written norms, but on judicial practice. Without a shift in legal culture towards a more humanistic approach,

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alternative sentencing will continue to be viewed as a "secondary option" compared to imprisonment. Secondly, harmonisation with human rights principles demands consistency across the entire criminal policy framework. If, on the one hand, the state prioritises rehabilitation, yet on the other hand expands criminalisation, this creates structural tension within the criminal justice system. Thirdly, a human rights–based approach requires clear evaluative indicators; reform must be accompanied by measurable and empirically verifiable parameters. Without concrete indicators such as a reduction in prison overcrowding, an improvement in the effectiveness of prisoners' social reintegration, and a reduction in recidivism rates, the legal reform agenda risks being confined to purely symbolic and declarative dimensions.

Therefore, the success of reform should be measured not only by its normative alignment with human rights principles, but also by empirical achievements demonstrating tangible transformation in law enforcement practices and the management of the prison system. This is where the greatest challenge of reformulating the paradigm lies: namely, bridging the gap between normative ideals and institutional realities.

## CONCLUSION

Modern criminal law and Islamic legal principles reveal a shared normative foundation: punishment is not an end in itself, but a means to achieve justice, prevent harm, and restore social balance. This convergence highlights that a just legal system is one that is capable of upholding order while preserving human dignity, embodying firmness tempered with compassion and justice grounded in humanity.

The reformulation of sentencing in the Indonesian Criminal Code 2023 reflects a significant normative shift from a predominantly retributive model toward a framework that incorporates rehabilitative, corrective, and restorative objectives. This change is evident in the recognition of alternative sanctions, community service, probation, and the explicit formulation of sentencing purposes that extend beyond punishment as mere retaliation.

The study finds that the 2023 Criminal Code has partially addressed the tension between traditional punitive approaches and contemporary human rights standards. At the normative level, the Code demonstrates a stronger commitment to the principles of human dignity, proportionality, and offender reintegration than the previous Criminal Code. Nevertheless, retributive elements remain present in several provisions, indicating that the transformation is not a complete departure from the previous paradigm but rather a gradual process of legal transition.

Furthermore, the claim that the 2023 Criminal Code represents a human rights–based criminal law system should be understood with caution. While the objectives and structure of sentencing show greater alignment with internationally recognized human rights principles, the effectiveness of such alignment ultimately depends on implementation within the criminal justice system. Judicial practice, correctional institutions, and mechanisms for protecting the rights of suspects and convicted persons remain critical factors in determining whether the normative aspirations of the Code can be translated into substantive legal protection.

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