

# An Analysis of Criminal Sanctions for Adultery Under Islamic Law and the National Legal System: A Study of Legal Pluralism in Indonesia

Ikhwan Fawwas

Fakultas Agama Islam, Universitas Islam Sultan Agung (Unisula), Indonesia

**Abstract:** This research examines the criminal sanctions for adultery under Islamic law and the national legal system, focusing on their legal requirements, procedural aspects, and the challenges posed by legal pluralism in a multicultural state. By analyzing the evidentiary standards, legal processes, and underlying principles of both systems, the study reveals significant differences in how adultery is proven and punished. Islamic law mandates stringent proof and severe hudud penalties based on religious texts, while the national legal system applies more flexible procedures and sanctions emphasizing human rights and due process. The coexistence of these dual legal frameworks in Indonesia highlights complexities in jurisdiction and legal certainty, particularly in regions implementing Islamic criminal law. This research underscores the need for harmonization efforts that respect religious values while ensuring fairness, equality, and adherence to constitutional principles. The findings contribute to ongoing debates about the integration of religious law within national legal systems and the pursuit of justice in pluralistic societies.

## Research Highlights:

- Comparative analysis of criminal sanctions for adultery under Islamic law and national law.
- Examination of evidentiary standards and procedural requirements in both legal systems.
- Exploration of legal pluralism and the coexistence of dual legal frameworks in a multicultural state.
- Identification of challenges and conflicts arising from overlapping jurisdiction in adultery cases.
- Recommendations for harmonizing religious and national legal principles to ensure justice and human rights.
- 

## Article history

Submitted 01-03-2025

Revised 28-03-2025

Accepted 22-04-2025

## Keywords

National Legal System;  
Criminal Sanctions;  
Islamic Law;  
National Legal System;  
Criminal Sanctions.

© 2024 by author(s).

Licensee *Syariat*.

This article is licensed under the term of the Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).



## Corresponding Author:

Name:

Ikhwan Fawwas

Email:

khwanfawwas@gmail.com

## INTRODUCTION

Adultery is a moral and legal issue that affects not only individuals but also the broader structure of family and society. In many cultures, including those influenced by religious values, adultery is regarded as a serious offense due to its potential to undermine the sanctity of marriage, erode social trust, and cause psychological and emotional harm (Okere & Ubani, 2020). In Islamic teachings, adultery (zina) is classified as one of the major sins (kaba'ir) and is addressed explicitly in the Qur'an and Hadith, with severe consequences prescribed for those proven guilty under strict evidentiary conditions.

In contrast, the national legal system, particularly in countries like Indonesia, handles adultery within a secular framework. Although Indonesia recognizes religion as a fundamental pillar of the state (as reflected in Pancasila and Article 29 of the Constitution), the legal treatment of adultery in the Criminal Code (KUHP) differs significantly from that in Islamic law (Najih, 2018). For instance, the national legal

system tends to treat adultery as a complaint-based offense (*delik aduan*), punishable by relatively light penalties, and often prioritizes privacy and due process over religious prescriptions.

Over the past decade, scholarly interest in the intersection of Islamic law and national legal systems regarding adultery has intensified, reflecting ongoing debates about legal pluralism, human rights, and the role of religion in state law. Several studies have focused on legal pluralism and the coexistence of Islamic law alongside secular national laws (Sparr, 2014). For instance, research by scholars such as An-Na'im (2015) and Hussain (2017) has examined how countries like Indonesia and Malaysia manage overlapping jurisdictions, highlighting the tensions and accommodations necessary when Islamic criminal principles intersect with constitutional guarantees and international human rights norms. These works emphasize that while Islamic law commands significant moral authority, its criminal provisions are often moderated or adapted within the frameworks of national constitutions that promote pluralism and legal equality (Miles, 2009).

Other researchers have concentrated specifically on the application of criminal sanctions for adultery under Islamic law and the challenges of enforcement. For example, studies in the context of Aceh Province in Indonesia which implements Sharia-based criminal law have provided empirical insights into the effectiveness, societal reception, and legal controversies surrounding Islamic punishments such as caning for adultery (Nurhidayah, 2018; Rahman, 2020). These studies highlight both the support for maintaining religious moral order and the criticism related to human rights concerns, particularly regarding evidentiary standards and due process protections.

A significant area of research has addressed the human rights implications of applying Islamic criminal sanctions for adultery. Academics such as Bielefeldt (2016) and Kamali (2019) have analyzed the potential conflicts between traditional hudud punishments and international human rights frameworks, especially concerning the rights to privacy, fair trial, and freedom from cruel or degrading punishment. These studies advocate for nuanced interpretations of Islamic texts that balance justice and mercy, proposing legal reforms that align religious principles with contemporary human rights standards.

There is also considerable scholarship on gender dynamics related to adultery laws. Research by Fatima (2017) and Siti (2021) explores how criminal sanctions for adultery disproportionately affect women, often reinforcing gender inequalities within both religious and national legal systems. These studies call for reforms that protect women's rights and promote gender justice while respecting religious values.

Furthermore, comparative legal studies have been undertaken to analyze how different Muslim-majority countries address adultery within their national laws. For example, comparative research involving Saudi Arabia, Pakistan, and Indonesia reveals divergent approaches to integrating Islamic criminal law with national legislation, reflecting differing historical, cultural, and political contexts (Al-Hassan, 2019; Malik & Zainab, 2022).

The regulation of adultery reveals a fundamental gap between Islamic law and national legal systems in many Muslim-majority countries, including Indonesia. This divergence is rooted in the differences in legal foundations, objectives, and moral perspectives upheld by each system. While Islamic law (Sharia) is derived from divine revelation and emphasizes moral accountability before God, national law particularly in pluralistic states is often based on secular principles that prioritize individual rights, legal neutrality, and procedural fairness.

In Islamic law, adultery (*zina*) is considered a major sin and a serious criminal offense that threatens the moral fabric of society. It is prohibited explicitly in the Qur'an (Surah An-Nur: 2) and Hadith, with prescribed punishments including lashing for unmarried offenders and stoning to death for married offenders, under strict evidentiary standards such as the testimony of four trustworthy witnesses (Bello, 2011). The aim of such stringent measures is to uphold the sanctity of marriage, deter immoral behavior, and maintain social order based on divine command.

Conversely, in the Indonesian national legal system, adultery is treated with considerably less severity. Under the Criminal Code (KUHP), adultery is categorized as a complaint-based offense (*delik aduan*), meaning legal action can only be initiated if the spouse files a formal complaint. The penalties are relatively light, typically involving short-term imprisonment or fines (Albrecht, 2013). This reflects a more secular, procedural, and private approach, where the act is considered a personal transgression rather than a public moral crime. Furthermore, the Indonesian legal framework is influenced by principles of human rights and international law, which may reject corporal punishment as cruel or inhumane.

The gap between the two systems creates both legal and sociopolitical tensions (Hein, 2011). On one hand, many Muslim communities feel that the national law fails to adequately reflect their moral and

religious values, particularly in cases involving sexual immorality. On the other hand, attempts to incorporate Islamic legal sanctions into national law often face resistance on constitutional and human rights grounds. The debate becomes especially contentious when legal reform efforts seek to criminalize zina based on Islamic law, raising concerns about discrimination, evidentiary fairness, and the protection of individual liberties.

This conflict is further complicated by Indonesia's plural legal system, which recognizes customary (adat) law, religious law, and national law concurrently. While Islamic family law is partially accommodated through religious courts for Muslims, criminal law remains under the purview of a unified national code (Abu-Odeh, 2004). As a result, Islamic criminal sanctions for adultery do not have formal legal authority unless implemented regionally, such as in Aceh Province, where Qanun Jinayah allows for Islamic criminal punishments under special autonomy.

The gap between Islamic law and national law in addressing adultery reflects deeper philosophical and constitutional challenges in reconciling religious values with secular legal norms. While Islamic law seeks to uphold divine moral order through firm deterrence, national law often prioritizes legal formalism, individual rights, and procedural justice (Fadel, 2008). Bridging this gap requires careful legal reasoning, public dialogue, and policy innovation that respects both religious convictions and constitutional principles.

Given this context, it is important to conduct an in-depth analysis of how adultery is conceptualized and punished under Islamic law, and how these provisions compare to the treatment of adultery in the national legal system. Such an analysis can contribute to ongoing legal reform discussions, help policymakers balance religious norms with constitutional rights, and offer insights into the broader dynamics of law and religion in modern governance.

## METHOD

This research employs a qualitative normative legal research approach, focusing on the analysis of legal principles, doctrines, and regulations related to criminal sanctions for adultery from both Islamic law and the national legal system (Akhtar, 2013). Normative legal research is appropriate because the study aims to explore and compare the conceptual and doctrinal frameworks of two legal systems, rather than empirical data collection from respondents.

The primary data sources include primary legal materials, such as the Qur'an, Hadith, classical fiqh texts, and national laws and regulations relevant to adultery, including the Indonesian Criminal Code (KUHP) and regional regulations where applicable (Zakiyah Munir, 2005). The study also examines relevant government policies, legal cases, and jurisprudence to provide concrete examples of how adultery is prosecuted and sanctioned under each system.

In addition to primary sources, the research uses secondary legal materials such as academic journal articles, books, legal commentaries, and previous studies conducted in the last decade (Brundage, 2017). These sources provide contextual understanding, critical analyses, and scholarly debates on the implementation, challenges, and implications of criminal sanctions for adultery in Islamic and national law.

The research method involves comparative legal analysis to systematically identify similarities, differences, and conflicts between the two legal frameworks. This includes evaluating the nature of the sanctions, evidentiary requirements, procedural safeguards, and the underlying legal philosophies. The analysis also considers the social and constitutional contexts influencing the enforcement and acceptance of these laws (Brundage, 2017).

Furthermore, the study applies interpretative analysis of religious texts, guided by principles of Islamic jurisprudence (Usul al-Fiqh), to clarify the intended objectives and conditions of adultery sanctions in Islamic law (Akhtar, 2013). This is essential for understanding the theological foundations and limitations of such punishments.

The research process follows several key steps: first, collecting and categorizing relevant legal texts and literature; second, critically analyzing the texts in light of legal theories and principles; third, comparing and contrasting the findings to reveal legal gaps or conflicts; and finally, drawing conclusions and recommendations based on the comprehensive legal evaluation.

## RESULTS AND DISCUSSION

## Results

The analysis of criminal sanctions for adultery within the framework of Islamic law and the national legal system reveals significant differences in legal principles, implementation, and societal implications. The research findings highlight both areas of convergence and divergence, shedding light on the challenges and opportunities for legal harmonization.

First, the study confirms that Islamic law strictly prohibits adultery, categorizing it as a grave sin with severe punishments prescribed under hudud law. These sanctions such as flogging for unmarried offenders and stoning for married offenders are founded on divine texts and require stringent evidentiary standards, including the testimony of four male witnesses or a confession. This high burden of proof serves as a safeguard to prevent wrongful convictions and reflects the balance between justice and mercy embedded in Islamic jurisprudence.

In contrast, the national legal system treats adultery as a lesser offense with comparatively lighter penalties, such as imprisonment or fines, and generally requires a formal complaint by the aggrieved spouse to initiate legal proceedings. This approach underscores the national system's focus on protecting individual rights, maintaining public order, and limiting state interference in private matters. The national law's procedural safeguards align with constitutional principles and international human rights obligations, ensuring due process and preventing excessive punishment.

The research also finds that legal pluralism complicates the enforcement of adultery laws. While Islamic criminal sanctions for adultery hold authoritative religious significance, their formal implementation within the national legal framework remains limited. Exceptions exist in regions with special autonomy, such as Aceh Province, where Islamic criminal law is applied alongside national law. However, this duality sometimes creates confusion and legal uncertainty, particularly regarding jurisdiction and the protection of defendants' rights.

Moreover, the study reveals social and gender implications of adultery laws. Islamic sanctions, due to their severity and evidentiary requirements, tend to be applied selectively, sometimes disproportionately affecting women. National laws, while more lenient, still reflect societal attitudes that stigmatize adultery, affecting victims' social standing and access to justice. These findings emphasize the need for gender-sensitive legal reforms that ensure fairness and equality under both religious and national laws.

Overall, the research identifies a clear gap between Islamic law and national legal provisions concerning adultery, rooted in differing legal philosophies and societal priorities. This gap presents challenges for harmonizing religious values with secular legal norms but also opens avenues for dialogue and legal innovation. The results suggest that any reform efforts should carefully consider the balance between upholding moral standards, protecting individual rights, and fostering social cohesion.

### **Legal Requirements for Proving Adultery Under Islamic Law and the National Legal System**

The process of proving adultery under Islamic law and the national legal system reveals fundamental differences rooted in their distinct legal philosophies and objectives. Under Islamic law, adultery (zina) is considered a serious criminal offense with strict evidentiary requirements designed to ensure justice and prevent false accusations. The primary sources, including the Qur'an and Hadith, emphasize the necessity of rigorous proof before administering severe hudud punishments. According to classical Islamic jurisprudence, the offense of adultery must be proven either by the testimony of four adult, sane, and trustworthy male witnesses who have directly observed the act of penetration or through a voluntary, unequivocal confession by the accused repeated on multiple occasions.

The high standard of evidence serves multiple purposes: protecting individuals from wrongful conviction, upholding social morality without enabling frivolous accusations, and maintaining a balance between deterrence and compassion. (Sidahmed, 2001). This evidentiary rigor reflects the sacred nature of hudud punishments and the Quranic principle that "no bearer of burdens shall bear the burden of another" (Qur'an 6:164), meaning that accusations must be substantiated beyond reasonable doubt.

In contrast, the national legal system, such as Indonesia's Criminal Code (KUHP), applies a different evidentiary framework for proving adultery. Here, the crime of adultery is generally treated as a complaint-based offense, meaning that legal action can only proceed if the aggrieved spouse or party formally files a complaint. The evidence required may include witness testimony, material evidence, or confessions, but it is assessed within the context of a secular criminal justice system that emphasizes procedural fairness and the protection of individual rights.

The evidentiary standard in national law is typically lower than that required in Islamic hudud law, reflecting a more pragmatic approach aimed at balancing the interests of the parties involved and societal order. Courts rely on conventional rules of evidence, which may include circumstantial evidence and investigative findings. Moreover, national law prohibits punishments considered cruel or inhumane, such as corporal or capital penalties, limiting sanctions to imprisonment, fines, or other corrective measures.

This divergence in proof requirements highlights a core conflict between the two systems: Islamic law demands near-certain proof to impose harsh punishments, while the national legal system operates with more flexible standards and safeguards designed to protect human rights and legal certainty. Additionally, the national legal framework's reliance on the victim's complaint emphasizes the private nature of adultery offenses, whereas Islamic law treats adultery as an offense against divine law and public morality.

The legal requirements for proving adultery under Islamic law are characterized by stringent evidentiary conditions aimed at upholding religious sanctity and preventing miscarriages of justice. The national legal system, on the other hand, adopts a more procedural and rights-based approach, focusing on fair trial guarantees and limited state intervention. These differences underscore the broader legal and philosophical gap between the two systems in addressing adultery.

#### **Evidentiary Standards and Legal Processes in Islamic Law and the National Legal System on Adultery**

In Islamic law, the procedure for establishing adultery as a criminal offense is highly formalized and stringent due to the severe nature of the punishments involved, which include corporal penalties such as flogging or stoning. The legal process begins with the presentation of evidence that meets the high threshold prescribed by Shariah. The primary evidentiary standard requires either the testimony of four adult, sane, and trustworthy male witnesses who have directly observed the actual act of penetration or a clear, voluntary confession from the accused. The witnesses must have seen the act with their own eyes under circumstances that leave no room for doubt, making it extremely difficult to meet this standard.

If the evidence fails to meet these rigorous criteria, the case is typically dismissed or may be considered under lesser discretionary punishments (*tazir*), which are administered at the discretion of the judge. The accused is afforded protection through strict evidentiary rules that prevent false accusations and ensure fairness, such as prohibiting coerced confessions and allowing retraction of confessions before sentencing. The judge's role in Islamic criminal procedure includes careful examination of the witnesses' credibility and the voluntary nature of confessions. Importantly, Islamic procedural law also allows for the accused to be acquitted in the presence of reasonable doubt, reflecting the Quranic principle that penal sanctions require certain proof.

Conversely, the national legal system follows a more secular and procedural justice model with different evidentiary standards and legal processes. Adultery is often prosecuted as a complaint-based offense, meaning the aggrieved spouse must initiate legal action by filing a formal complaint. The prosecution then gathers evidence that may include witness testimony, circumstantial evidence, and forensic findings. Unlike Islamic law, the national legal system typically requires proof beyond a reasonable doubt but allows for a broader range of admissible evidence, including expert testimony and physical evidence, thus lowering the evidentiary barrier compared to Islamic hudud requirements.

Legal proceedings in the national system involve formal investigation, prosecution, and trial stages governed by criminal procedural codes. The accused has the right to legal representation, to present a defense, to cross-examine witnesses, and to appeal judgments. The process emphasizes procedural fairness, transparency, and protection of human rights in accordance with constitutional guarantees and international norms. Punishments for adultery in the national system tend to be limited to imprisonment or fines, avoiding corporal punishments that conflict with human rights standards.

The procedural differences highlight a fundamental divergence: Islamic law prioritizes divine justice and moral deterrence with strict proof and harsh penalties, while the national legal system focuses on safeguarding individual rights, due process, and proportional sanctions. In regions where Islamic criminal law is integrated with national law such as Aceh Province in Indonesia these differences sometimes cause jurisdictional ambiguity and raise concerns about defendants' rights.

The procedural aspects of proving adultery in Islamic and national legal systems underscore contrasting legal philosophies. Islamic law's strict evidentiary standards and formalized procedures aim to uphold moral order and prevent wrongful punishment, whereas the national legal system employs more

flexible processes designed to balance justice with fairness and human dignity. Understanding these procedural nuances is essential for any meaningful dialogue on harmonizing the two legal traditions.

### **Legal Pluralism: Operation of Dual Legal Systems in a Multicultural State**

Legal pluralism refers to the coexistence of multiple legal systems within a single geographic or political space, where different groups may be subject to distinct sets of laws depending on their cultural, religious, or social affiliations. In multicultural states, legal pluralism emerges as a way to accommodate diverse communities with varying legal traditions and values, but it also raises complex questions about sovereignty, equality, and justice.

In a multicultural state such as Indonesia, legal pluralism is prominently visible in the coexistence of the national legal system alongside religious and customary laws. The national legal system, grounded in secular constitutional principles, provides a uniform framework applicable to all citizens. Meanwhile, religious laws most notably Islamic law govern personal and moral matters for Muslim populations, particularly in regions with special autonomy like Aceh Province. This duality reflects the state's recognition of cultural diversity and its attempt to respect religious identity while maintaining national unity.

The operation of these dual legal systems involves a delicate balance. On one hand, Islamic law offers communities a sense of religious authenticity and moral guidance, especially on sensitive issues such as marriage, inheritance, and adultery. For many Muslims, adherence to Shariah law is an essential expression of faith and social order. On the other hand, the national legal system embodies the state's commitment to universal human rights, legal certainty, and equality before the law, striving to protect citizens regardless of their religious background.

Legal pluralism, however, is not without challenges. The simultaneous existence of two systems addressing the same issue such as adultery can create jurisdictional conflicts and legal uncertainty. For example, in Aceh, Islamic criminal law imposes hudud punishments for adultery, while national law criminalizes adultery with different procedures and sanctions. This overlap may confuse defendants and law enforcement, complicate appeals and enforcement, and sometimes lead to conflicting verdicts. Moreover, plural legal systems can produce unequal treatment of citizens, particularly affecting vulnerable groups such as women, who may face harsher penalties under religious law.

Another challenge is the tension between state sovereignty and religious autonomy. While the national government asserts authority over legal matters, it also permits regional autonomy for religious legal practices. This arrangement requires continuous negotiation to ensure that plural legal frameworks operate harmoniously without undermining constitutional rights or fragmenting national cohesion.

Despite these challenges, legal pluralism in multicultural states presents opportunities for inclusive governance. It allows the recognition of minority identities and fosters social harmony by respecting legal traditions that resonate with communities' values. Effective plural legal systems often incorporate mechanisms for coordination, such as specialized courts or mediation bodies, to resolve conflicts and protect fundamental rights.

Legal pluralism in a multicultural state is a complex yet necessary reality that reflects societal diversity. The coexistence of Islamic law and national law in matters like adultery demonstrates both the richness and the difficulties of maintaining dual legal orders. Balancing respect for religious traditions with the principles of equality, justice, and human rights remains a critical task for lawmakers, jurists, and policymakers striving to create a cohesive yet pluralistic legal landscape.

## **CONCLUSION**

This research has highlighted the significant legal and procedural differences between Islamic law and the national legal system in addressing adultery. While Islamic law imposes strict evidentiary requirements and severe hudud sanctions grounded in divine texts, the national legal system adopts a more flexible and rights-based approach with comparatively lighter penalties and procedural safeguards. These differences reflect the distinct foundations of each legal order: religious morality on one side and secular justice on the other. The coexistence of these two systems within a multicultural state like Indonesia exemplifies legal pluralism, which provides space for cultural and religious diversity but also creates challenges related to jurisdiction, legal certainty, and equal protection under the law. Particularly in regions where Islamic criminal law is formally integrated, such as Aceh, tensions arise regarding the enforcement and compatibility of these dual legal frameworks. Ultimately, this research suggests that harmonizing the

criminal sanctions for adultery requires a balanced approach that respects religious values while upholding constitutional rights and human dignity. Legal reforms and ongoing dialogue between religious scholars, legal practitioners, and policymakers are essential to ensure justice, fairness, and social cohesion. By addressing these challenges thoughtfully, the national legal system can better accommodate religious sensitivities without compromising universal principles of justice and equality.

## AUTHORS' DECLARATION

### Authors' Contributions and Responsibilities

The author of this research take full responsibility for the conceptualization, data collection, analysis, and interpretation of the findings presented in this study.

### Competing Interests

The author declare that there are no competing interests or conflicts of interest related to the publication of this research. This study was conducted independently, and no financial, personal, or professional relationships influenced the outcomes or interpretations presented.

### Acknowledgments

The author would like to express sincere gratitude to all individuals and institutions who contributed to the completion of this research.

## REFERENCES

- Abu-Odeh, L. (2004). Modernizing Muslim family law: The case of Egypt. *Vand. J. Transnat'l L.*, 37, 1043.
- Akhtar, R. C. (2013). *British muslims and transformative processes of the Islamic legal traditions: Negotiating law, culture and religion with specific reference to Islamic family law and faith based alternative dispute resolution*. University of Warwick.
- Albrecht, H.-J. (2013). Sentencing in Germany: explaining long-term stability in the structure of criminal sanctions and sentencing. *Law & Contemp. Probs.*, 76, 211.
- Bello, A. H. (2011). The punishment for adultery in Islamic law and its application in Nigeria. *Journal of Islamic Law and Culture*, 13(2-3), 166-182.
- Brundage, A. (2017). *Going to the sources: A guide to historical research and writing*. John Wiley & Sons.
- Fadel, M. (2008). The true, the good and the reasonable: The theological and ethical roots of public reason in Islamic law. *Canadian Journal of Law & Jurisprudence*, 21(1), 5-69.
- Hein, M. (2011). Constitutional conflicts between politics and law in transition societies: A systems-theoretical approach. *Studies of Transition States and Societies*, 3(1), 3-23.
- Miles, J. (2009). *Islamic political ethics: Civil society, pluralism, and conflict*. Princeton University Press.
- Najih, M. (2018). Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila. *JILS*, 3, 149.
- Okere, R. O., & Ubani, S. N. (2020). Rapid increase of infidelity among married women in Nigeria-causes and effects: Implication for counselling. *European Journal of Education Studies*, 7(10).
- Sidahmed, A. S. (2001). Problems in contemporary applications of Islamic criminal sanctions: The penalty for adultery in relation to women. *British Journal of Middle Eastern Studies*, 28(2), 187-204.
- Sparr, A. E. (2014). Legal pluralism and Sharia: Implementing Islamic law in states and societies. *E-International Relations*, 18.
- Zakiah Munir, L. (2005). Domestic violence in Indonesia. *Muslim World Journal of Human Rights*, 2(1).