

Islamic Criminal Law and Global Constitutionalism: Compatibility or Contestation?

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Abstract

Islamic criminal law and global constitutionalism are often understood dichotomously as conflicting concepts, yet the relationship between the two is far more complex and multifaceted. Normatively, Islamic criminal law is grounded in the *maqāṣid al-sharīʿah*, which emphasizes justice, the protection of rights, and human dignity, while in practice, it exhibits variations in implementation across different legal systems. This study aims to analyze the normative foundations, identify points of convergence, and formulate a multi-layered compatibility test model between Islamic criminal law and global constitutionalism. This study employs a qualitative method with a normative legal approach enriched by comparative and conceptual perspectives, through a literature review

of secondary data analyzed using descriptive-analytical and interpretive methods. The research findings indicate that at the level of principles and procedures, there is a strong degree of compatibility, particularly through the *maqāṣid*, strict standards of proof, and the principle of prudence in the application of sanctions. However, at the substantive level, tensions arise primarily regarding *hudūd*, which cannot be understood in isolation from *ta'zīr* and *qisāṣ* as a unified system. The novelty of this research lies not merely in the reconstruction of a layered compatibility test, but in the effort to formulate a holistic interpretation that rejects the fragmentation of analysis, while presenting an integrative framework that is better able to bridge the conceptual tension between Islamic criminal law and the principles of global constitutionalism.

Keywords *Islamic criminal law, global constitutionalism, compatibility*

A. Introduction

“The objective of the Sharia is to promote the welfare of people and prevent harm.”

The dominance of the modern legal paradigm, rooted in Western liberal traditions, has shaped global standards for understanding justice, human rights, and criminal law. Current developments in global law indicate a growing effort to establish a normative framework through the concept of global constitutionalism, grounded in the principles of human rights and the rule of law. Law within the framework of global constitutionalism is often claimed to be universal, yet in practice it continues to reflect the dominance of Western liberal legal epistemology.¹ The narrative of neutrality in global constitutionalism, in practice, is not entirely value-free but rather reflects the dominance of Western liberal values, which are then projected as global standards. Efforts to harmonize global law have the potential to create normative homogenization that disregards the plurality of local and religious legal systems.² Nevertheless, such claims of universalism are not without

¹ Swaril Dania, “Demystifying the Liberal-Post Liberal Divide: The ‘North-South’ Debate on Constitutionalism,” *Jindal Global Law Review* 14, no. 1 (2023): 9–28, <https://link.springer.com/article/10.1007/s41020-023-00192-1>.

² King On Putra Jaya Muhammad Azam, Anis Mashdurohatun, Angga Nugraha Firmansyah, Muhammad Dias Saktiawan, “Harmonizing Contemporary International Commercial Law with Sharia-Based National Legal Systems: A Comparative Study of Pakistan, Turkey, Indonesia, Malaysia, and Saudi Arabia,” *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1074–96, <https://doi.org/10.32332/milrev.v4i2.11334>.

academic debate when confronted with legal systems that have different epistemological and teleological foundations, one of which is *fiqh jināyah*.

Global constitutionalism, despite championing the universality of human rights, often exhibits Eurocentric epistemological tendencies, thereby potentially overlooking the plurality of legal systems rooted in the religious values of *fiqh jināyah*.³ The standardization of human rights in global discourse risks disregarding the diversity of legal value systems that have developed within the Islamic tradition. The universal human rights approach within the discourse of global constitutionalism often imposes uniform normative standards without considering that the concept of justice in *fiqh jināyah* is grounded in the teleological and contextual *maqāṣid al-sharīʿah*.⁴ The debate between Islamic criminal law and global constitutionalism is fundamentally rooted in epistemological differences between revelation as a source of law and secular rationality as the basis of modern normativity. The rejection of *fiqh jināyah* by some strands of global constitutionalism discourse indicates a normative bias that views religion-based legal systems as incompatible with modernity, without first conducting a comprehensive analysis of the internal structure of Islamic criminal law itself.

Contemporary discourse positions Islamic criminal law particularly as it relates to *hudūd* and *qisās* as the antithesis of international human rights standards, which reject forms of punishment deemed inhumane or degrading to human dignity.⁵ On the other hand, within a normative framework, Islamic criminal law is in fact ordained by Allah to safeguard the welfare and dignity of humanity through the fundamental objectives of sharia (*maqāṣid al-sharīʿah*), such as the protection of life, reason, property, and honor. This tension creates a fundamental academic dilemma: is this contradiction inherent, or is it

³ Kriszta Kovacs Antje Wiener, Jeffrey L. Dunoff, Jonathan Havercroft, Mattias Kumm, "Global Constitutionalism as Agora: Interdisciplinary Encounters, Cultural Recognition and Global Diversity," *Global Constitutionalism* 8, no. 1 (2019): 1–11, <https://doi.org/10.1017/S2045381719000030>.

⁴ Faizal Riza Arifinsyah, Maulana Andinata Dalimunthe, "Islamic Theological Perspectives on Human Rights: Bridging the Gap Between Faith and Universal Principles," *Pharos Journal of Theology* 106, no. 2 (2025): 1–19, https://www.pharosjot.com/uploads/7/1/6/3/7163688/art_7_special_issue_106_2_2025.pdf.

⁵ Zulkham Sadat Zuwanda Loso Judijanto, "Bibliometric Analysis of Islamic Criminal Law Research in the Modern Legal System," *West Science Islamic Studies* 3, no. 1 (2025): 45–52, <https://doi.org/10.58812/wsiss.v3i01.1616>.

merely the result of differing interpretations and implementation contexts?

The application of Islamic criminal law in practice across various Muslim countries reveals complex dynamics. Conceptually, Islamic criminal law is understood as a normative system oriented toward substantive justice and the protection of fundamental human values. However, in practice, its application is often influenced by political factors, a tendency toward rigid textual interpretation, and varying institutional capacities. In Iran, the codification of Islamic criminal law following the 1979 Revolution reflects an effort to formalize Sharia within a modern state system, yet it continues to face criticism regarding international human rights standards, particularly in the application of *hudūd* and *qiṣāṣ*.⁶ In Pakistan, the implementation of the Hudood Ordinances since 1979 serves as an example of how the Islamization of criminal law has sparked prolonged debates regarding the protection of women's rights and evidentiary procedures.⁷ Meanwhile, Sudan once widely applied Islamic criminal law starting in the 1970s, but its practices faced strong pressure from the international community, leading to reforms including the abolition of certain provisions deemed contrary to human rights in subsequent periods.⁸

This empirical evidence demonstrates that the application of Islamic criminal law does not occur in a sterile normative space, but rather exists within a tug-of-war between religious demands, political realities, and global constitutional standards. Therefore, the complex dynamics and debates surrounding the implementation of Islamic criminal law in various Muslim countries cannot be immediately used by global constitutionalism as a basis to reject its validity; rather, they must be understood as part of a process of negotiation between local values, religion, and modern constitutional principles.

A number of previous studies have shown a significant trend in examining the relationship between Islamic criminal law, human rights,

⁶ David S. Law Mirjam Künkler, *Islamic Constitutionalism: Iran*, ed. Consti (Cambridge: Cambridge University Press, 2022), <https://www.cambridge.org/core/books/abs/constitutionalism-in-context/islamic-constitutionalism-iran/>.

⁷ Tabinda Mahfooz Khan, "Public Debates on Shari'a and the 'Savages-Victims-Saviors' Metaphor of Human Rights," *Journal of Islamic Law* 6, no. 1 (2025): 117–99, <https://journalofislamiclaw.com/current/article/view/348>.

⁸ Francis D. Boateng Hajed A. Alotaibi, "The Challenges of Execution of Islamic Criminal Law in Developing Muslim Countries: An Analysis Based on Islamic Principles and Existing Legal System," *Cogent Social Sciences* 7, no. 1 (2021): 1–13, <https://doi.org/10.1080/23311886.2021.1925413>.

and global constitutionalism through three main approaches: normative reconstruction, compatibility arguments, and integration into modern legal systems. Fanesti reconstructs the methodology for interpreting the texts of *hudud* and *qisas* by asserting that Islamic criminal law is dynamic and can be reinterpreted through the paradigms of international human rights and modern national law.⁹ In the realm of the relationship between Islam and human rights, Nasoha and fellow researchers assert that criminal law in Muslim-majority countries reflects efforts to balance Sharia principles, human rights, and global standards, although in practice it remains marked by various implementation tensions.¹⁰ Meanwhile, Kawakib's research indicates efforts to integrate Islamic criminal law values into the national legal system, particularly through the RKHUP, which reflects a process of negotiation between religious norms, state law, and global standards.¹¹ However, although these various studies have addressed reform, compatibility, and integration, there remain limitations in comprehensively examining the relationship between Islamic criminal law and global constitutionalism as a systemic framework, particularly in analyzing the dynamics between normative constructs and practical implementation, thereby opening the door to further analysis regarding whether the relationship between the two is compatible or, conversely, harbors fundamental contradictions.

This study employs a qualitative method with a normative legal approach, enriched by comparative and conceptual perspectives, to examine the relationship between Islamic criminal law and global constitutionalism. The comparative approach is used to compare the practices and legal constructs of Islamic criminal law across several Muslim countries, while the conceptual approach is employed to develop a theoretical framework regarding the compatibility and conflicts between Sharia and global constitutionalism. The data used consists of secondary data obtained through systematic literature reviews. This data is organized into primary legal materials, such as

⁹ Shabrian Hammam Fanesti, "Kritik Hukum Pidana Islam Klasik: Metodologi Pembacaan Klasik Dengan Paradigma Konstitusional," *Jurnal Restorasi Hukum* 6, no. 2 (2023): 146–67, <https://doi.org/10.14421/jrh.v6i2.3210>.

¹⁰ Viror Ghufon Assaifi Ahmad Muhamad Mustain Nasoha, Ashfiya Nur Atqiya, Imam Abdullah, Muhammad Nur Ukasyah, "Criminal Law in Muslim-Majority Countries: Balancing Sharia, Human Rights, and Global Standards," *Shabih: Journal of Islamicate Multidisciplinary* 10, no. 1 (2025): 1–18, <https://doi.org/10.22515/shahih.v10i1.10038>.

¹¹ Ahmad Naufal Kawakib, "Quo Vadis Hukum Pidana Islam Dalam Sistem Hukum Pidana Indonesia," *Hukum Keluarga Islam Di Indonesia* 2, no. 2 (2022): 131–40, <https://ejournal.unibo.ac.id/index.php/aladillah/article/view/468>.

constitutions, legislation, and international human rights instruments; secondary legal materials, such as academic works, journals, and previous research relevant to the study; and tertiary legal materials that provide conceptual explanations. Data collection was conducted through a literature review by searching for, cataloging, and classifying various sources relevant to the study. Subsequently, data analysis was performed qualitatively using a descriptive-analytical and interpretive approach through the interpretation of legal norms, comparisons between legal systems, and the construction of legal arguments to produce comprehensive and systematic conclusions.

The relationship between Islamic criminal law and global constitutionalism is still often framed in terms of two opposing poles: compatibility and conflict. In reality, however, there is a more complex interplay, in which Sharia values, constitutional principles, and global human rights standards negotiate with one another in the practice of governance across various Muslim countries. This study seeks to elaborate on this relationship more comprehensively by not only examining normative aspects but also considering the dynamics of its implementation, which are influenced by social, political, and institutional factors. Thus, this research is expected to enrich interdisciplinary perspectives through the integration of Islamic law, constitutional law, and the theory of global constitutionalism, while also making a conceptual contribution to understanding a more balanced relationship among the three. In line with this, this study aims to analyze the nature of Islamic criminal law in a modern context, examine the main principles of global constitutionalism, and evaluate the extent to which the two can be reconciled or, conversely, create tensions in constitutional practice in Muslim countries.

B. The Normative Foundations of Islamic Criminal Law and Global Constitutionalism

The discourse on Islamic criminal law and global constitutionalism essentially revolves around the most fundamental questions in legal theory: where do legal obligations derive their legitimacy, what values are held as the highest normative truths, and how does the law limit or, conversely, legitimize the exercise of power. At this point, these two legal systems can be understood not merely as two distinct regimes of rules, but as two normative paradigms, each possessing epistemologies, teleologies, and structures of authority that are not always easily reconciled.

The normative foundation of Islamic criminal law rests on a revelatory epistemology that designates the Qur'an and Sunnah as the primary sources of authority. This authority is then operationalized through the *fiqh* tradition, particularly *fiqh jināyah*, which articulates forms of punishment such as *budūd*, *qisās*, and *ta'zīr*.¹² However, reducing Islamic criminal law merely to a system of sanctions obscures a deeper philosophical structure, namely that law and Islam function as moral-theological instruments to maintain the order of human life within the framework of *maqāṣid al-shari'ah*.¹³ The protection of religion, life, intellect, lineage, and property is not merely a list of legal objectives, but a representation of a normative logic that places the public interest as the ultimate horizon of every criminal provision.¹⁴ Thus, the legitimacy of law in this system does not stem from human will or social consensus, but from a claim to transcendental truth understood as absolutely binding, even though it is operationalized through the interpretive space of the ulama.

Global constitutionalism stems from a modern legal tradition rooted in secular rationality and the historical experience of limiting state power. Within this framework, the source of legal authority is no longer transcendental, but rather is established through international consensus, national constitutions, and the human rights legal regime.¹⁵ Principles such as the rule of law, the supremacy of the constitution, and the protection of human rights are understood not only as legal norms, but also as universal moral standards claimed to transcend national borders. Instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) represent the most concrete expressions of efforts to universalize these values. However, behind this claim to universality, global constitutionalism retains a political character, as it is

¹² Ahsin Sakho Muhammad, *Ensiklopedi Hukum Pidana Islam* (Jakarta: PT Kharisma Ilmu, 2007), h. 175.

¹³ Huseyin Okur Zumiyati Sanu Ibrahim, Suud Sarim Karimullah, Andi Istiqlal Assaad, Rina Septiani, "Integration of Maqāṣid Al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity," *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44, <https://doi.org/10.28918/jhi.v23i1.04>.

¹⁴ Abū Ishāq Al-Shāṭibī, *Al-Muwafaqāt Fi Uṣūl Al-Shari'ah* Juz 2 (al-Qohiroh: Dar al-Hadith, 1388).

¹⁵ Poyarkov Sergei Yurievich, "Global Constitutionalism in the Context of the Crisis of Globalization: Normative, Institutional and Functional Aspects of Transformation," *Law and Politics* 6, no. 6 (2025): 121–39, https://nbpublish.com/library_read_article.php?id=74717.

shaped by Western epistemic dominance in the construction of modern international law, which is often not neutral toward non-Western normative systems.

At a certain point, global constitutionalism reveals a fundamental problem: its reliance on human consensus, which is logically contingent, changeable, and lacks an absolute normative foundation. When examined through the framework of normative legal logic, its central premise that human rights are universal because they are internationally agreed upon contains circular reasoning, since that very universality is built upon a process of agreement that is never truly epistemically universal.¹⁶ Consequently, the claim to moral objectivity within global constitutionalism becomes fragile because it depends on the configuration of political power and the dominance of specific legal discourses within the international system.

Conversely, Islamic criminal law (*fiqh jinayah*) possesses a more internally coherent normative logical structure because its foundational premises are axiomatic in nature namely, revelation as the source of legal truth that does not depend on validation by a majority or temporal consensus. From this premise, all legal derivations such as *hudud*, *qisas*, and *ta'zir* follow a relatively stable deductive pattern and do not undergo epistemic dislocation when global political configurations change.¹⁷ Thus, while global constitutionalism is vulnerable to normative relativism due to its reliance on an ever-changing consensus, *fiqh jinayah* offers stronger normative certainty because it is rooted in a source of authority unconditioned by human historical dynamics. Within this framework, the fundamental weakness of global constitutionalism lies in the inconsistency between its claims of universalism and its particular epistemological basis; consequently, it is logically more accurately

¹⁶ Ji Han Dongmyung Park, Fadzli Irwan Bahrudin, "Circular Reasoning for the Evolution of Research through a Strategic Construction of Research Methodologies," *International Journal of Quantitative and Qualitative Research Methods* 8, no. 3 (2020): 1–23, <https://ejournals.org/ijqqr/vol-8-issue-3-september-2020/circular-reasoning-for-the-evolution-of-research-through-a-strategic-construction-of-research-methodologies/>.

¹⁷ Zaid Alfauza Marpaung Sabna Anggraini, Sofia Zuhro Zein Pulungan, Ainur Rahma, Asti Nurul Puspita, Rina Solin, "Penerapan Asas Hukum Pidana Islam Dalam Mengatasi Kejahatan Kontemporer," *Mediation: Journal of Law* 3, no. 3 (2024): 1–16, <https://doi.org/10.51178/mjol.v3i2.2316>.

understood as a hegemonic normative system rather than as a truly neutral universal system.¹⁸

A comparison of the normative foundations between Islamic criminal law (*fiqh jināyah*) and global constitutionalism reveals that the differences between the two lie not only in technical normative aspects, but also at the epistemological level and in the logic of legal legitimacy itself. *Fiqh jināyah* offers a normative structure that tends to be coherent, stable, and axiomatic because it is grounded in revelation as a source of truth independent of human consensus, thereby yielding certainty in the derivation of norms through relatively consistent deductive logic. Conversely, global constitutionalism exhibits a more fluctuating character because it relies on international consensus and the construction of human rights, which are inherently dynamic, thereby creating conceptual instability between claims of universalism and the particular realities of its formation.¹⁹ Thus, the encounter between the two cannot be reduced to a mere relationship of compatibility or conflict, but rather reveals a difference in the structure of legal rationality: one is rooted in an absolute transcendental authority, while the other depends on an intersubjective rationality that is always open to historical change.

C. The Convergence of Islamic Criminal Law and Global Constitutionalism

Islamic criminal law is often accused of being more repressive because it retains forms of punishment such as *hudud*, strict standards of proof, and is considered less aligned with the principles of human rights, proportionality, and the prohibition of punishments that degrade human dignity. In this critique, the Islamic criminal justice system is perceived as having a higher degree of rigidity compared to modern criminal law, which allows for broader judicial discretion. However, this view can be corrected through a methodological analysis showing that Islamic criminal law is grounded in the *maqāṣid al-sharī'ah*, which emphasizes the protection of life, intellect, property, religion, and

¹⁸ Ali Ashar Moh. Yasir, Joko Widodo, "Islamic Law and National Law (Comparative Study of Islamic Criminal Law and Indonesian Criminal Law)," *Al-Hurriyah: Jurnal Hukum Islam* 6, no. 2 (2022): 167–81, <https://doi.org/10.30983/alhurriyah.v6i2.4952>.

¹⁹ Miftah Faried Hadinatha Bambang Iswanto, "Sharia Constitutionalism: Negotiating State Interests and Islamic Aspirations in Legislating Sharia Economic Law," *Abkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 235–58, <https://doi.org/10.15408/ajis.v23i1.32899>.

human dignity; thus, its orientation is protective, not repressive.²⁰ The strict standards of proof, the concept of *syubhat* that nullifies *hudud*, as well as the existence of room for *ijtihad* and the prioritization of forgiveness, demonstrate internal mechanisms that actually limit the application of punishment to extreme measures.²¹ Thus, what is perceived as rigidity in Islamic criminal law is essentially a system of prudence that functionally intersects with the principles of due process, proportionality, and the protection of rights within global constitutionalism.

The convergence between Islamic criminal law and global constitutionalism can be understood as a process of normative convergence that is gaining momentum in contemporary legal discourse. This convergence does not imply the unification of two entirely distinct legal systems, but rather the creation of a space for dialogue that allows the fundamental values of each tradition to intersect. In this context, Islamic criminal law is no longer positioned exclusively as a closed and textual normative system, but rather as a legal tradition that possesses adaptive power through its moral principles and legal objectives. Meanwhile, global constitutionalism has emerged as a framework that emphasizes the protection of human dignity, human rights, the rule of law, and the limitation of state power as universal principles open to a plurality of values.²²

To provide a clearer and more systematic overview of these similarities, the following is a brief overview of the forms of convergence between the two legal systems.

Dimension	Islamic Criminal Law	Global Constitutionalism	Convergence Point
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²⁰ Moh Hatta, “Prospek Pemberlakuan RKUHP Pasca Disahkan Menjadi Undang-Undang Dalam Perspektif Maqasid Syariah,” *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 25, no. 2 (2022): 248–62, <https://doi.org/10.15642/alqanun.2022.25.2.248-262>.

²¹ Mohamad Syahreza Pahlevi Adzanah Mariska Salsabila, Enceng Arif Faizal, Deden Najmudin, “Islamic Criminal Law Criticism of Article 5 of the Universal Declaration of Human Rights on the Application of Qishash Punishment,” *Jurnal Hukum Islam* 25, no. 2 (2025): 79–100, <https://ejournal.uin-suska.ac.id/index.php/hukumislam/article/view/38792>.

²² Israa Natiq Jabbar Hammad Farhan Hammadi, Ahmed Mohamed Ahmed, Fajar Amansyah, Ahmad Rajafi, Omer Mohamed Taha Alkanan, “Contemporary Challenges and the Future of Islamic Law: Toward Ethical and Institutional Renewal,” *Al-Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 14, no. 1 (2025): 43–61, <https://doi.org/10.24252/al-daulah.v14i1.58186>.

Legal purpose	<i>Maqāṣid al-Shari'ah</i> (Public Interest)	Protection of human rights and human dignity	Human protection as the primary objective
Principles of criminal punishment	Justice and the prevention of harm	Proporsionalitas dan due process	The balance between perpetrators, victims, and the state
Power structure	The principles of justice and <i>syūrā</i>	The rule of law and the separation of powers	Accountability and limits on state authority
Legal orientation	Humanistic-religious	Human rights-based constitutionalism	Universal humanism based on distinct normative values
Judicial practice	<i>Ijtihad</i> and <i>maslahah</i>	Judicial review and constitutional interpretation	A progressive interpretation grounded in substantive justice

Source: Data compiled by the researchers

Furthermore, this convergence requires synchronization at the structural, substantive, and cultural levels. At the structural level, the criminal justice system must operate within a framework of the rule of law that guarantees transparency and accountability; at the substantive level, legal norms must reflect both constitutional justice and universal Islamic ethics; while at the cultural level, legal practice must place human dignity at the center of legal protection. In the Indonesian context, criminal law reform demonstrates efforts to harmonize international human rights principles, constitutional principles, and the values of *maqāṣid al-shari'ah*.²³ At the theoretical level, Islamic constitutionalism reinforces this framework by asserting that sharia can operate within a modern constitutional system through the principles

²³ Hee Cheol Park Yayan Muhammad Royani, "Striking a Balance: Exploring Harmony in Indonesian Criminal Law and Islamic Jurisprudence," *Walisongo Law Review* (Walrev) 5, no. 2 (2023): 155–82, <https://doi.org/10.21580/walrev.2023.5.2.18196>.

of justice, equality, shura, and the protection of fundamental rights, which are also reflected in judicial practice when judges substantively prioritize human values and *maqāṣid* in their rulings.

D. A Test of the Compatibility of Islamic Criminal Law with Global Constitutionalism

The examination of the compatibility of Islamic criminal law with global constitutionalism is essentially an effort to assess whether a revelation-based legal system can operate harmoniously within a global legal order that emphasizes the supremacy of the constitution, the rule of law, and the protection of universal human rights.²⁴ This assessment does not stop at the normative level but also touches on structural and practical dimensions, resulting in a comprehensive and multi-layered evaluation.

1. *Testing Framework: Values, Structure, and Practices*

At the most fundamental level, compatibility is assessed through the dimension of substantive values. In this regard, Islamic criminal law demonstrates significant points of convergence with global constitutionalism. Through the framework of *maqāṣid al-shari'ah*, Islamic law prioritizes the protection of life, reason, property, honor, and religion as its primary objectives.²⁵ Conceptually, these principles intersect with the values of justice and human dignity, which form the foundation of modern human rights. Philosophically, Islamic criminal law is not in an antagonistic position toward global constitutionalism; rather, it shares an ethical foundation that aligns with the research by Suryadi and his colleagues, who assert that *ta'zir* can be positioned as a reflective ethical framework that reinforces the moral dimension.²⁶ However, this normative alignment faces challenges at the structural level. In fact, the relationship between Islamic criminal law and national

²⁴ Yannis Mahil, "Contemporary Mechanisms to Reform Islamic Criminal Law," *Journal of Islamic Law* 6, no. 1 (2025): 1–11, <https://doi.org/10.53484/jil.v6.mahil>.

²⁵ Tutik Hamidah Mohammad Fauzan Ni'ami, "Reformulasi Maqasid Al-Syari'ah Kontemporer: Sistem Nilai Sebagai Tawaran Jasser Auda Menuju Hukum Islam Humanis," *Bidayah* 14, no. 1 (2023): 1–18, <https://doi.org/10.47498/bidayah.v14i1.1557>.

²⁶ Anggar Putra Suryadin, Bachder Syarif Arkiang, Diky Yumansyah, Burhanuddin Mohammad, Syamsuddin, Musmulyadin, "Formulation of Islamic Criminal Law Policy as A Juridical Instrument for Maintaining the Balance of Power Among State Institutions," *Istinbath* 24, no. 2 (2025): 237–49, <https://doi.org/10.20414/ijhi.v24i2.1043>.

constitutions and international human rights instruments is often ambivalent.

In practice, compatibility is assessed through three key indicators: the protection of the defendant's rights, the nature of the sanctions, and the objectives of criminal punishment. In reality, Islamic criminal law has long recognized the principles of legality, the presumption of innocence, and strict standards of proof, all of which align with the principle of due process of law. However, tensions arise when certain types of sanctions, particularly those in the *hudūd* category, are deemed to conflict with the prohibition against torture and inhuman treatment under international law. Criticism of *hudūd* sanctions often assumes that their application is automatic and rigid, yet this assumption is not entirely accurate.²⁷ Islamic criminal law requires the strict fulfillment of the elements of the offense before *hudūd* can be imposed. The *actus reus*, *mens rea*, and specific conditions must be proven beyond a reasonable doubt.²⁸ In fact, the *fiqh jināyah* tradition recognizes the principle of *dar' al-hudūd bi al-syubhat*, which mandates the suspension or dismissal of *hudūd* penalties whenever there is any element of doubt, no matter how slight. Meanwhile, the objectives of punishment in Islam which include justice, deterrence, and rehabilitation (*islah*) actually demonstrate a close alignment with the rehabilitative paradigm in modern constitutionalism.

2. Points of Compatibility: Maqāṣid, Ta'zīr, and Restorative Justice

The strongest areas of compatibility lie in the *maqāṣid* approach, the flexibility of the *ta'zīr* instrument, and the shift toward restorative justice. *Ta'zīr* grants authorities discretion to formulate context-specific sanctions, including imprisonment, fines, rehabilitation, and victim protection mechanisms. This flexible nature allows Islamic criminal law to adapt to human rights standards without losing its normative legitimacy. Furthermore, the principle of protecting human honor and dignity in Islam can be operationalized to strengthen protections for victims of modern crimes such as human trafficking and sexual exploitation. This demonstrates that compatibility is not merely

²⁷ Dalilatul Zahratussalamah Basyira Syadza Chayra, "Analysis of the Relevance of Hudud Punishment in the Context of Law Enforcement in Indonesia," *SYARLAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 2, no. 1 (2025): 16–24, <https://doi.org/10.35335/ym5ehj17>.

²⁸ Imran Anwar Kuba Kiki Reski Amalia DT, Nur Aidah Fauziah, "The Principle of Al-Hudūd Tasquṭ Bisyy-Syubuhāt: An Analysis of the Concept, Arguments, and Implications in Contemporary Islamic Criminal Law," *Al-Rasṭkh: Jurnal Hukum Islam* 14, no. 2 (2025): 299–314, <https://doi.org/10.38073/rasikh.3193>.

theoretical but also holds practical relevance in strengthening contemporary legal regimes.

The argument emphasizing the flexibility of *ta'zīr* as the primary basis for the compatibility of *fiqh jināyah* with global constitutionalism is fundamentally problematic because it relies on an incomplete perspective that tends to separate *ta'zīr* from the overall framework of *fiqh jināyah*.²⁹ In their normative construction, *hudūd*, *qisās*, and *ta'zīr* constitute a single interconnected systemic unit, not entities that can be selectively dissected for the sake of specific justifications. The flexibility of *ta'zīr* operates in direct relation to *hudūd*, particularly when the application of *hudūd* is precluded due to the absence of the elements of the offense or the presence of *syubhat*, thereby shifting the sanction to the realm of *ta'zīr* without eliminating criminal liability.³⁰ Therefore, treating *ta'zīr* as the sole representation of 'flexibility' while disregarding *hudūd* not only oversimplifies but also distorts the functioning of *fiqh jināyah*. This interconnection is also reflected in *qisās*, where mechanisms of pardon (*afw*), *diyat*, and reconciliation are often understood as indications of a shift toward restorative justice; nevertheless, these dimensions remain within the same normative framework and do not stand apart from the broader legal structure. Therefore, the compatibility of criminal *fiqh* with global constitutionalism cannot be established through a partial approach that highlights only certain aspects; rather, it must be understood holistically by recognizing the intrinsic integration of *hudūd*, *qisās*, and *ta'zīr* as a single, coherent system.

3. Implications: Layered Compatibility Testing

The concept of a multi-layered compatibility test for Islamic criminal law needs to be reconstructed by avoiding the partial approach that has tended to assess compatibility selectively. Criticism of the separation of *ta'zīr* from *hudūd*, as well as erroneous assumptions regarding the rigidity of *hudūd*'s application, indicate that compatibility cannot be measured solely at a specific level while ignoring its systemic interconnections. At the level of principles, there is indeed a high degree of compatibility between *maqāṣid al-shari'ah* and the values of global

²⁹ Loso Judijanto Mohammad Adnan, Badra Uyuni, Muhammad Saleh, Nilasari Siagian, "The Concept of Ta'zir in Fiqh Jinayat and Its Relevance to Traffic Ticket Sanctions in Indonesian Traffic Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 853–72, <https://doi.org/10.29240/jhi.v10i2.12626>.

³⁰ Wilda Lestari, "Ta'zir Crimes in Islamic Criminal Law: Definition Legal Basis Types and Punishments," *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam* 5, no. 1 (2024): 22–32, <http://dx.doi.org/10.58836/al-qanun.v5i1.21486>.

constitutionalism, particularly regarding justice, the protection of human dignity, and the non-exclusively retributive purpose of punishment. However, even at this level, it must be emphasized that these principles are not standalone constructs but are bound to the entire normative structure of Islamic criminal law based on revelation.

At the procedural level, compatibility is evident in the strict standards of proof, the presumption of innocence, and the principle of caution, such as “*dar’ al-hudūd bi al-syubhat*.”³¹ Criticism of *hudūd* as a repressive system becomes less accurate when it ignores the fact that its application is highly dependent on the fulfillment of strict elements, thereby inherently limiting the possibility of arbitrary execution. In this context, Islamic criminal law actually demonstrates a closeness to the principle of due process of law, even though it operates within a different epistemological framework. Meanwhile, at the substantive level, the issue of compatibility cannot be simplified by contrasting *hudūd* as “incompatible” and *ta’zīr* or *qisās* as “compatible.” Criticism of this perspective emphasizes that all three constitute an integrated system: when *hudūd* are not met, *ta’zīr* serves as a corrective mechanism; whereas *qisās* provides space for restorative justice through *‘afw* and *diyat* without departing from the same normative framework. Thus, what is often perceived as flexibility is actually part of the system’s internal design, not an external adaptation to the pressures of global constitutionalism.

Therefore, the multi-layered compatibility test should be understood not as a tool for sorting out which parts of Islamic criminal law are “acceptable” and which “must be discarded,” but rather as an analytical framework for understanding how the entire system functions coherently. Its relevance to global constitutionalism lies in its ability to demonstrate that Islamic criminal law possesses internal mechanisms whether through the strict limitations of *hudūd*, the flexibility of *ta’zīr*, or the restorative orientation of *qisās* that have the potential to engage in dialogue with global constitutional principles, without having to be reduced to separate fragments.

E. Conclusion

The relationship between Islamic criminal law and global constitutionalism cannot be reduced to a dichotomy of compatibility or

³¹ Enceng Arif Faizal Jaih Mubarak, *Kaidah Fiqh Jinayah* (Bandung: Pustaka Bani Quraisy, 2004), h. 61.

conflict; rather, it exhibits a layered and integrative pattern: at the level of normative foundations and values, there is strong convergence through the *maqāṣid al-sharīʿah*, which align with the principles of justice, human dignity, and the protection of rights. At the implementation level, compatibility is largely determined by how the Islamic criminal law system is understood in its entirety namely, the interconnection between *hudūd*, *qisās*, and *taʿzīr* so that critiques of the rigidity of *hudūd* or the glorification of the flexibility of *taʿzīr*, when considered in isolation, prove insufficient in explaining its normative reality. Meanwhile, a multi-layered compatibility test indicates that the potential for harmonization remains open, particularly through the mechanism of strict limitations on *hudūd*, the flexibility of *taʿzīr* as a corrective when elements are not met, and the restorative orientation within *qisās*. The implication of these findings is the need to reposition Islamic criminal law as a system capable of engaging in dialogue with global constitutionalism without losing its epistemological integrity. However, this study has limitations in its normative-doctrinal approach and has not yet fully explored cross-jurisdictional empirical data in depth. Therefore, further research is recommended that integrates empirical-comparative studies with the development of contemporary *ijtihād* based on *maqāṣid* in order to formulate a more operational model of harmonization between Islamic criminal law and the principles of global constitutionalism.

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