

THE EXISTENCE OF ISLAMIC LAW IN INDONESIA AND ITS IMPLEMENTATION IN ADULTERY CRIMES

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Abstract

As an essential element in Indonesian law development is Islamic law that empirically a living law in society. National law is based on Pancasila values and upholds religious and human values that are just and civilized. However, many legal products are contrary to Pancasila's echoed values, including the adultery offense, which is colored by individualistic values and liberalism. This research focuses on the existence of Islamic law in Indonesia and how it is implemented in the reformulation of adultery in Indonesia. This research is normative legal research. The philosophical, statutory, and conceptual approaches are used to find answers to the issues studied. This study states that Islamic law has existed in Indonesia. Implementing Islamic law in developing national law must be carried out through two interrelated processes, purification and integration. In this case, the performance is in the form of criminal reformulation of adultery in the National Criminal Code.

Keywords: Existence, Islamic Law, Adultery Crime, National Criminal Code

1. INTRODUCTION

The State of Indonesia, a country that believes in the One and Only God, and has a just and civilized humanity, is a unitary state in the form of a republic with sovereignty in the hands of the people and fully exercised by the People's Consultative Assembly (MPR).^[5] Pancasila is the ideal basis of the state, and the 1945 Constitution is the structural basis of the state, illustrating that the Indonesian state values and respects religious life.^[5]

Many national legal products still cannot contain moral content, manners, morals, local cultural values, and religion. There are still many legal products that are not for the law itself. Ironically, too many policymakers and legislators are immoral and do not reflect the values of Pancasila, which are always echoed.

The issue of adultery offenses is a clear example of a conflict between the meaning and meaning of adultery in the Criminal Code and society's social interests/values. Clashes in the community often give rise to new crimes such as murder, persecution, and vigilanteism. The weak practice of law enforcement exacerbates this.

Provisions for adultery in the laws and regulations in Indonesia have not been effective in dealing with adultery problems that occur in communities in the territory of Indonesia. This can be seen from the increasingly widespread cases of adultery. There has also been a shift in the values of decency in certain societies, which can be seen from the behavior of some adulterers who are becoming bolder and do not feel guilty.

This attitude is an indication or a sign of the success of the colonial legacy of adultery teachings contained in Article 284 of the Old Criminal Code, which has been in effect in Indonesia for nearly 104 (one hundred and four) years, from January 1918 to December 6, 2022, when the New Criminal Code was passed. According to Article 284 of the Old Criminal Code, adultery committed by people who are both adults, both willing and willing to do it intentionally and consciously, is not considered adultery. In the New Criminal Code, even though there is an expansion of the perpetrators of adultery, the sentence is increased from a maximum of 9 months to a maximum of 1 year; as a total complaint offense, it still does not view adultery as an offense that requires a harsh sentence even though it is a crime.

Study this is normative legal research or also known as doctrinal legal research and also called library law research. In finding answers to the issues studied, the author uses a philosophical, statutory, and conceptual approach. This research utilizes primary legal material or data sources that cannot be replaced with other materials like the Al-Qur'an and al-Hadith, the 1945 Constitution, the Old Criminal Code, and the 2022 Criminal Code, as well as utilizing secondary sources or data collected from the book articles, and journals related to Islamic Law and National Law.

2. DISCUSSION

2.1 The Existence of Islamic Law in Indonesia

Islamic law in Indonesian society, the majority of which embraces Islam, has a significant and strategic position. Islamic law is one of the raw materials in developing national law. Therefore, it can become federal law by competing with other sources of federal law in a democratic manner. The Indonesian nation can sort out the origins of raw materials for national law and take the most applicable law that provides benefits and is most in line with the values of justice for all components of the Indonesian nation.

Islamic law is rooted in the fact that Islam is the religion of the majority of the population in this country. Even though there has been an increase in the percentage of people from census to census, the facts show that the majority are Muslims. Islamic law is supported by various Islamic legal education, both private and public, from the elementary level to tertiary institutions, which are spread throughout Indonesia from the past until now. Some Islamic laws have been translated into various compilations, statutes, local regulations, qanuns, and fatwa of the clergy.

Since the beginning of the presence of Islam in the archipelago in the 7th century AD or the first century of the decline of Islam in Arab lands^[9,19], the Islamic legal system has been practiced and developed within the Islamic community and judiciary. Hamka presents facts from various works by Indonesian Islamic law experts. For example, *Shirot al-Thullab*, *Shirot al-Mustaqim*, *Sabil al-Muhtadin*, *Kartagama*, *Syainat al-Hukm*, and others^[10]. However, all of these writings are still in the style of *fiqh* discussion. It is still like legal doctrine and the Indonesian *fiqh* system, aimed at the Imam School's teachings.

Religious courts were formally present in the era of Islamic empires and empires. There is

something called the penghulu judiciary, like in Java. Syar'iyah Court in the Islamic Sultanate in Sumatra. Qadi courts in the Sultanate of Banjar and Pontianak. However, even though the religious court had been formally formed during the Sultanate and the status of the clergy as advisers and judges, systematic positive law could not yet be drawn up. The applied law is still an abstraction taken from the content of the fiqh doctrine.

When the Dutch arrived in the archipelago around the 16th and 17th centuries AD, they found several large or small kingdoms scattered in various corners, especially the Islamic kingdoms in the coastal areas. No matter how small, a country must be governed by specific laws, including Indonesia, at that time because most of Indonesia's population is Muslim. Based on these facts, departing from the reception of complex theory concocted by Lodewijk Willem Christian van den Berg (1854-1927), the Dutch colonial government stated that Islamic law applies to Muslims regardless of whether they are devout Muslims or not ^[15].

Lodewijk was in Indonesia around 1870-1887. According to him, Islamic law fully applies to Muslims because they have embraced Islam despite deviations in its implementation. Van den Berg is a legal expert who discovered and demonstrated the application of Islamic law in Indonesia. He arranged for Islamic marriage and inheritance laws to be carried out by Dutch judges with the help of the princes, godly ^[19]. Van den Berg said, "For indigenous people, what applies to them is the law of their religion,"^[19]

The colonial government still enforced the policy of applying Islamic law to Muslims until Christian Snouck Hurgronje introduced Customary Law in 1893. He criticized Van den Berg's view, which stated that the law that applies in the life of indigenous peoples is Islamic law. Hurgronje then proposed a new idea saying that what applies to indigenous peoples is customary law. However, if an Islamic legal norm has been accepted by customary law, it is no longer considered Islamic law but remains customary.^[6]

The reception theory received a severe response from Hazairin, who stated that Snouck's approach was tendentious to ignore Islamic law that had been in force among the population so far. As an Islamologist, Snouck knows the position of Adat law in the context of Islamic law. Still, he deliberately developed an entirely new concept to divert attention from Islamic law, which is believed by most of the population. Because of that, Hazairin often refers to the reception theory as the devil's theory, namely a demonic spirit who misuses people with his tricks.^[11] Hazairin had a good reason because Snouck was an atheist who had been a Dutch intelligence officer and disguised himself as a Muslim in Mecca under the name 'Abdul Ghafar.^[21]

The term adat recht was first used by Snouck in 1893 in his book *De Atjehers* to denote the laws that controlled Aceh's people, namely customs that have legal consequences. Van Vollenhoven and other Dutch scholars later adopted this term to denote legal relations in Indonesian society.^[8] According to Bustanil Arifin, it is evident that this customary law is a Dutch invention. Until now, customary law is still seen as one of the elements of Indonesian national law. In various countries in the Islamic world, such as India, Malaysia, and the Philippines, there are indeed different local customs. Still, there is no customary law like that

introduced by the Dutch in Indonesia.¹⁸¹

After all, religion is something that determines the history of Indonesia. Because of that, Belief in One Almighty God was included by the founders of the Republic of Indonesia as the first precept of the state philosophy; this, in addition to customs, was also influenced by the outlook on life and religion of the Indonesian nation, which plays a role in shaping the understanding and image of Indonesian law throughout history.

Therefore, the law in Indonesia can be seen from several things. The first is a law that originates from the customs and norms of society passed down from generation to generation, which have been going on for a long time and are embedded in people's consciousness.

The second is a law, which originates from religious teachings. In Indonesian religious society, one's belief in religion is an absolute element in nation-building and national character. Therefore spiritual life is a fundamental element of the life of Indonesian culture based on Pancasila as the basis of the state. Pancasila is used as the state doctrine and is practiced to create form and social life in an orderly, safe, and prosperous manner.

Third is the law as a fundamental rule of life together, which originates from official legislators accompanied by certain sanctions in the event of violations and implemented by the state. It is a concrete legal norm in the form of articles containing the Indonesian people's desire to build a democratic state and enforce social justice and humanity.¹⁷¹

The three legal rules above are contained in the legal culture of the Republic of Indonesia, which was proclaimed on August 17, 1945. Talking about Indonesian legal culture, one cannot escape from the three forms of legal rules discussed above. With the conditions of legal regulations discussed above, and with the proclamation of independence on August 17, 1945, the constitutional construction of Indonesian law was above the basic norms of the 1945 Constitution, including at the transitional level as specified in the Transitional Regulations of the 1945 Constitution. Considering this, Indonesian law, born after August 18, 1945, has four forms the base. The first is a product of colonial legislation; the second is customary law; the third is Islamic law; and the fourth is national legislation.¹²¹

Sudikno Mertokusumo said that Indonesian legal experts still have differences of opinion regarding the National Law. National Law must originate from the community's legal understanding and awareness of what they view as Law (Sein) and what they aspire to become Law (Sollen).¹¹⁷¹ Because the current Law is a continuation or revision of the colonial rule, some jurists see that we do not yet have a national law. While others see even though we inherited colonial Law, we still have a state philosophy; we only apply colonial rules that align with that philosophy and leave or try to replace governments with a purely colonial character. With this view, the Republic of Indonesia has a National Law. Indonesia, for example, gave birth to the Law on Marriage, the Law on the Religious Courts, and the Law on the Environment.

Islamic Law is one aspect of Islamic teachings that occupies an important position in the view of Islam because it is the most concrete manifestation of Islam as a religion. Such is the

importance of Islamic Law in the doctrinal scheme of Islam. Thus, an orientalist named Yoseph judged that understanding Islam without understanding Islamic Law is impossible.^[22]

Understanding related to Islamic Law also cannot be fragmented or separated from the experience of Islam itself as a whole.^[14] In order not to misunderstand Islamic Law because you understand Islamic Law from a perspective that is not Islamic. Viewing Islamic Law must be from an Islamic point of view of an Islamic worldview.

Islamic Law must be done with faith or accompanied by aqidah. Without aqidah, Islamic Law has no meaning. Aqidah must also be understood as well as possible, so there is no gap for slipping into misleading misunderstandings. Aqidah or faith must also be proven in deeds and behavior. Without the behavior of one's faith is not perfect because one's actions are based on the belief in him. Trust contains the meaning of belief in the heart, verbal vows, and, most importantly, practice with the limbs alias deed.^[9] So an understanding of Islamic Law must also be accompanied by an agreement related to aqidah or faith and proven by deeds. Knowledge (shari'ah/Islamic Law), religion (aqidah), and actions (akhlaq) in Islam culminate in the proper perspective or a general sense; it is called the Islamic worldview.^[9]

In simple terms, this perspective can be described by a believer who sees goat meat from two sides: the meat object and the halalness of the beef, which is invisible to the eye. So for a believer to know the meat is not only how the meat is cooked and served, but also see what is behind the heart. Likewise, when looking at a person's property or profession in search of wealth, what is seen is the legal status of whether the object was obtained or the work was carried out. Suppose it is associated with Islamic teachings about life in a broader sense. In that case, this perspective covers a variety of very complex matters, including those related to laws and legal products.

Mahmud Shaltut in his book *Al-Islam, Aqidah wa Shari'ah*, defines shari'ah (Islamic law) as a rule that Allah has revealed to humans so that they are guided by it in dealing with their God, with each other, with their environment and with life.^[13] Therefore, in Islamic countries or countries where the majority of the population is Muslim, laws have emerged to regulate legal issues in their respective countries. This also happened in Indonesia. Islamic law legislation in Indonesia attempts to make Islamic law the state law. That is, Islamic law is adopted and strengthened to become state law.

2.2 Implementation of Islamic Law in the Crime of Adultery

The State of Indonesia, a country that believes in the One and Only God, and has a just and civilized humanity, is a unitary state in the form of a republic with sovereignty in the hands of the people and fully exercised by the People's Consultative Assembly (MPR).^[5] Pancasila is the ideal basis of the state, and the 1945 Constitution is the structural basis of the state, illustrating that the Indonesian state values and respects religious life.^[5]

National law, which is based on the values of Pancasila, which upholds religious and human values in a just and civilized way, it is not excessive if the Muslim community interprets it from the point of view (Islamic worldview) as a guide in the development and drafting of laws by

Islamic values, which reflected in Pancasila itself.

Many national legal products still cannot contain moral content, manners, morals, local cultural values, and religion. There are still many legal products that are not for the law itself. Ironically, too many immoral policymakers and legislators do not reflect the values of Pancasila, which are always echoed.

The issue of adultery offenses is a clear example of a conflict between the meaning and meaning of adultery in the Criminal Code and society's social interests/values. Clashes in the community often give rise to new crimes such as murder, persecution, and vigilanteism. The weak practice of law enforcement exacerbates this.

Provisions for adultery in the laws and regulations in Indonesia have not been effective in overcoming the problem of cheating that occurs in communities in the territory of Indonesia. This can be seen from the increasingly widespread cases of adultery. There has also been a shift in the values of decency in certain societies, which can be seen from the behavior of some adulterers who are becoming bolder and do not feel guilty.

Criminal law experts in Indonesia started their steps in 1963 to compile a new Criminal Code to suit the Indonesian nation's culture, based on Pancasila, with customs and religious values. The author sees that step by step, the deals of masjid al-Syari'ah are starting to be felt because they contain real benefits and are by the living laws that exist in society. A suitable formulation of the article on the prohibition of adultery is a formulation that adopts the rules that live in a community as far as possible.

Article 411 of the 2022 Criminal Code has made changes and improvements in determining the perpetrators of adultery and the level of punishment. The perpetrators of affairs, as specified in Article 411 of the 2022 Criminal Code, as already stated, are not limited to the perpetrators of adultery where the two perpetrators or one of the perpetrators is a person/people who are in legal marriage ties. The punishment is also more severe: a maximum of 1 (one) year, not 9 (nine) months. For the author, the provisions in the 2022 Criminal Code, although slightly different from the current Criminal Code, are other in terms of the perpetrators and the level of punishment; they still do not fully apply the principles of masjid al-Syari'ah which considers adultery to be a grave sin, giving significant damage to the benefit of society, so that it requires a maximum punishment because of the considerable harm it causes.

Sayyid Sabiq stated that besides being able to guarantee public welfare and peace, punishments in Islam are also very fair. Because adultery is the most heinous sin and violates human morals, honor, and glory. Adultery also destroys family and household peace, causes various crimes, and damages the joints of individual and community life. Adultery also harms and eliminates the excellent name or existence of a community.^[16] He continued adultery is one of the dominant causes that causes damage and destruction of civilization, transmits hazardous diseases, and encourages people to continue to live single and practice living together without marriage. Thus adultery is the leading cause of poverty, extravagance, obscenity, and prostitution.^[16] Because of the reasons mentioned above and other reasons, Islam prescribes harsh/severe punishments for adulterers. The penalty may seem extreme, but it is still lighter

compared to the crime that the adulterer himself inflicted on society. For this, Islam chooses which is lighter between giving stringent punishment to the perpetrators of adultery and considering the interests of the general public.

In other words, Islam stipulates the law based on and after considering that punishing the perpetrators of adultery with harsh punishments is more just than allowing the destruction of society to be caused by rampant adultery, immorality, and prostitution.

The punishment meted out to the adulteress is indeed self-injurious, but carrying out the penalty implies preserving religion, preserving the soul, preserving the mind, protecting offspring and wealth, maintaining honor, and protecting the integrity of the family, which is precisely the main element of society. Isn't the good and bad of a society determined by the good or bad of the families in it? The existence of an ummah depends on good morals, the height of civilization, purity from moral dirt and stains, and cleanliness from humiliation.

Even so, Islam is still cautious in establishing the law of this sin (adultery), with conditions that are almost impossible to fulfill.^[16] The law of adultery thus emphasizes preventive efforts and scares rather than the realization of a punishment. Accusations of adultery directed at men or women who are still in marriage are crimes that can result in the breaking of family relations or can separate the accused husband and wife. Accusations of adultery can undermine the integrity of a household, even though this household is the primary cell (joint) of a society. Good homes will lead to a good community; conversely, low-income families will lead to evil organizations. Thus, the religious stipulation in the form of a penalty of eighty strokes against the accuser, after he is unable to present four eyewitnesses as evidence for his accusation, is very wise and pays close attention to the aspect of benefit, namely so that people's honor is not disturbed and their reputation is not harmed.^[16] Another proof of the humiliation of adultery is the prohibition against adultery, which is not limited to the ban on it but also against everything that leads to it. The Word of Allah SWT, "And, do not approach adultery; in fact, adultery is an abomination. And, a bad way."^[1]

Qodhi Abu Su'ud explains the meaning of the word "approaching" here, "...doing things that might lead to adultery, whether the possibility is small or big, especially by direct contact."^[3] The commentator Ruhul Bayan said, "...doing things that lead to adultery. For example, by kissing, groping, and looking with lust."^[12] According to Sheikh Abdurrahman as-Sa'di, "The prohibition to approach adultery is stricter than the prohibition to do so because the ban on approach includes all the initial actions towards an affair. It's like people struggling on the side of the ban are likely to fall into it."^[4] This is where our role as academics, as well as legal practitioners, is to provide input to the government and policymakers who have constitutional authority in regulating and formulating legislation in the framework of developing a just and civilized national law by eastern values, local cultural values, religious values, human and divine values that have been reflected in the formulation of Pancasila.

From the explanation above, the authors compile a reformulation of the Criminal Code on Adultery offenses, a development of the 2022 Criminal Code which is still not entirely appropriate and even contrary to local religious and cultural values:

2.3 Reformulation of the Criminal Code on Adultery Offenses Article 411 (Prohibition of Adultery)

- (1) Everyone who has intercourse with a person who is not a legal husband or wife, based on the consent of both parties, without a doubt, shall be punished for adultery with a sentence of a) a maximum of 6 (six) years or a maximum fine of category IV for people who are bound by marriage, b) 3 years or a maximum fine of category III for people who are not bound by marriage.
- (2) Prosecution is not carried out against the Crime as referred to in paragraph (1) except on complaints of a. husband, wife, parents, or children; or b—third parties from polluted or disturbed society.
- (3) The provisions in Article 25, Article 26, and Article 30 do not apply to complaints as referred to in paragraph (2).
- (4) Complaints can be withdrawn as long as the examination before the trial court has not started.
- (5) Anyone proven to have intentionally accused or reported adultery but cannot prove it, contrary to what has been alleged, is subject to imprisonment for a maximum of 4 (four) years or a category III fine.

2.4 Article 412 (Prohibition of Group Gatherings)

- (1) Any person who lives together as husband and wife outside of marriage shall be subject to a sentence of a) a maximum of 8 (eight) years or a maximum fine of category IV for people who are married, b) 5 years or a maximum fine of category III for people who are not bound by marriage.
- (2) Prosecution is not carried out against the Crime as referred to in paragraph (1) except on complaints of a. husband, wife, parents, or children; or b—third parties from society who are polluted or concerned. The report must include valid evidence which can be counterclaimed according to the article on the accusation of adultery if the charge is proven untrue.
- (3) The provisions in Article 25, Article 26, and Article 30 do not apply to complaints as referred to in paragraph (2).
- (4) Complaints can be withdrawn as long as the examination before the trial court has not started.
- (5) Anyone proven to have intentionally accused or reported adultery but cannot prove it, contrary to what has been alleged, is subject to imprisonment for a maximum of 4 (four) years or a category III fine.

2.5 Article 413 (Prohibition of Incest)

- (1) Any person who has intercourse with someone who he knows that the person is a blood family member in a straight line or sideways to the third degree shall be punished with imprisonment for a maximum of 12 (twelve) years.

- (2) If the Crime referred to in paragraph (1) is committed by a man against a woman under the age of 18 (eighteen) years and is not yet married, then the perpetrator of the Crime is threatened with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years.

Comparison of the 2022 Criminal Code Adultery Regulations and the Criminal Code Reformulation

Compared with the criminal offense rules in Article 411 of the 2022 Criminal Code, there are differences, as shown in the table below.

Table 1: Comparison of Adultery Arrangements in the 2022 Criminal Code And the Criminal Code Reformulation

Criminal Code 2022	Reformulation
<p>Article 411</p> <p>(1) Everyone who has intercourse with someone, not his husband or wife, shall be punished for adultery with a maximum imprisonment of 1 (one) year or a maximum fine of category II.</p> <p>(2) Prosecution is not carried out against the Crime as referred to in paragraph (1) except for complaints of a. husband or wife for people bound by marriage; or b. Parents or children for people who are not bound by marriage.</p> <p>(3) The provisions in Article 25, Article 26, and Article 30 do not apply to complaints as referred to in paragraph (2).</p> <p>(4) Complaints can be withdrawn as long as the examination before the trial court has not started.</p>	<p>Article 411</p> <p>(1) Everyone who has intercourse with a person who is not his legal husband or wife, based on the consent of both parties, without a doubt, shall be punished for adultery with a crime: a) a maximum of 6 (six) years or a fine of up to many categories IV for people who are bound by marriage, b) 3 years or a maximum fine of category III for people who are not bound by marriage.</p> <p>(2) Prosecution is not carried out against the Crime as referred to in paragraph (1) except for complaints of a. husband, wife, parents, or children; or b—third parties from polluted or disturbed society.</p> <p>(3)(same)</p> <p>(4)(same)</p> <p>(5) Any person proven to have intentionally accused or reported adultery but unable to verify it, and contrary to what has been alleged, is subject to imprisonment for a maximum of 4 (four) years or a category III fine.</p>
<p>Article 412</p> <p>(1) Everyone who lives together as husband and wife outside of marriage shall be imprisoned for 6 (six) months or a maximum fine of category II.</p> <p>(2) Prosecution is not carried out against the Crime as referred to in paragraph (1) except for complaints of a. husband or wife for people bound by marriage; or b. Parents or children for people who are not bound by marriage.</p> <p>(3) The provisions in Article 25, Article 26, and Article 30 do not apply to complaints as referred to in paragraph (2).</p> <p>(4) (4) Complaints can be withdrawn as long as the examination before the trial court has not started.</p>	<p>Article 412</p> <p>(1) Everyone who lives together as husband and wife outside of marriage shall be subject to a sentence of a) a maximum of 8 (eight) years or a maximum fine of category IV for people who are bound by marriage, b) 5 years or a maximum fine of category III for people who are not bound by marriage.</p> <p>(2) Prosecution is not carried out against the Crime as referred to in paragraph (1) except for complaints of a. husband, wife, parents, or children; or b. Third parties from polluted, or disturbed society</p> <p>(3)(same)</p> <p>(4)(same)</p> <p>(5) Any person proven to have intentionally accused or reported adultery but unable to verify it, and contrary to what has been alleged, is subject to imprisonment for a maximum of 4 (four) years or a category III fine.</p>

Based on the table above, there are several differences between the model in the 2022 Criminal Code and the model aligned with Islamic law. First, the 2022 Criminal Code does not distinguish between the punishments for adultery perpetrators who are already married and those who are not. In this model, the status of a married offender is determined as an element of aggravating criminal conditions. Second, the Criminal Code 2022 the punishment given is very light compared to the amount of damage caused. In this model, the maximum sentence is given. Third, in the 2022 Criminal Code, the absolute nature of the offense of complaint, with husband/wife, parents, or children as complainants, is considered a private matter, not a public matter. In this model, it is still a total complaint offense, but there is an extension for the complainant, namely a third party from a polluted society or worried. This is because adultery has an impact on society at large. Fourth, the criminal sanctions for people who live together as husband and wife outside of marriage in the 2022 Criminal Code are very light; in this model, it is exacerbated because it is an act of continuing adultery. Fifth, in the 2022 Criminal Code, there are no specific provisions regarding the crime of false accusation of cheating; in this model, a particular article is added relating to the crime of false accusation of adultery.

3. CONCLUSION

The description of the research on the principles of Islamic law in the criminal act of adultery in the National Criminal Code presented in the previous chapters can be summed up in the following points. First, Islamic law is a law that already exists in Indonesia and has influenced the development of national law, especially on its principles, principles, and values. Many legislative products have been produced, but it is undeniable that many are still inconsistent and contradictory to Pancasila, including adultery (overselling) crimes in the Old Criminal Code and the 2022 Criminal Code. Second, the Overspel offense, Article 284 of the Old Criminal Code, is contrary to Pancasila values which uphold religious and cultural values. As for the 2022 Criminal Code, article 411 of the offense of adultery, although it includes an expansion of the meaning and an increase in punishment from the previous Criminal Code, it is not entirely by the principles of Islamic law, so it is necessary to reformulate it. The light penalties in both the Old Criminal Code and the 2022 Criminal Code reflect the views of Western civilization, which still influence the National Criminal Code in their belief that adultery is an act that does not require a heavy penalty, even though it is a crime (*misdrijven*). Therefore, even though "adultery" is included in the category of criminal offenses, it will not be able to control, let alone eradicate, "adultery" in its true sense.

References

1. Al-Qur'an Al-Karim.
2. Abdul Gani Abdullah, Introduction to Compilation of Islamic Law in Indonesian Legal System, (Jakarta: Gema Insani Press, 1994), p. 15-16
3. Abu Sa'ud al-'Amadi, Tafsir Abis Sa'ud, (Bairut: Daru Ihyai At-Turost Al'Arabi), Volume V, p. 169.
4. Abdurrahman As-sa'di, Taisir Al-Karim Ar-Rahman fi Tafsir Kalam Al-Mannan, (Muassis Al-treatise), Cet-I, p. 457.

5. Articles 1 and 2 of the 1945 Constitution concern freedom of religion based on belief in one and only God.
6. Basiq Djalil, *Religious Courts in Indonesia*, Jakarta: Kencana, 2006.
7. Bustanul Arifin, "Existence, Consolidation and Actualization of Religious Courts." Speech for the Awarding of an Honorary Doctorate Degree (Doctor Honoris Causa) in Islamic Studies, IAIN Syarif Hidayatullah Jakarta, 22 December 1993.
8. Bustanil Arifin, *Institutionalization of Islamic Law in Indonesia*, (Jakarta: Gema Insani Press, 1996), p. 35.
9. Hamid Fahmy Zarkasyi, *MINHAJ, Muslim, from Ritual to Intellectual*, Jakarta: Insists, 2020.
10. Hamka, *Islamic Revolution and Ideology*, Depok: Human Echoes, 2018.
11. Hazairin, *Pancasila Democracy*, Jakarta: Rineka Cipta Publisher, 1990.
12. Isma'il Haqi, *Tafsir Ruhul Bayan*, (Bairut: Darul Fikr), Volume V, p. 154.
13. Mahmud Shaltut, *Al-Islam, 'Aqidah wa Shari'ah*, Egypt: Dar al-Qalam, 1966.
14. Mohammad Daud Ali, *Islamic Law, Introduction to Islamic Law and Legal Studies in Indonesia*, Jakarta: PT. Raja Grafindo Persada, 2000.
15. Rifyal Ka'bah, *Islamic Law in Indonesia*, Jakarta: Yarsi University, 1999.
16. Sayyid Sabiq, 2008, *Fikih Sunnah 3*, Jakarta: Cakrawala Publising.
17. Sutikno Mertokusumo, *Knowing the Law*, (Yogyakarta: Liberty Publisher, fourth edition, 1996), p. 30.
18. *The 1945 Constitution of the Republic of Indonesia*.
19. Tjun Sumardjan (ed), *Islamic Law in Indonesia: Development and Formation*, (Bandung: Rosdakarya, 1991), p. 117-118.
20. Van den. Berg, *Dari Panggung Peristiwa Sejarah Dunia*, terj. H. Koeskam I.P. Simandjoentak, (Jakarta: J.B. Walters, 1951), jilid I, hlm. 382; Aboebakar Aceh, *Sejarah*, hlm 279
21. Van Koningsveld, *Snouck Hurgronje dan Islam, Acht artikelen over leven en werk van een orientalist uit het koloniale tijdperk*, Jakarta: PT Girimukti Pusaka, 1989.
22. Yoseph Schachat, *An Introduction to Islamic Law*, London: The Clarendon Press, 1971.