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Contribution Model of *al-Mas'ūliyyah al-Jinā'iyyah* in the Formulation of Criminal Liability in Indonesia's New Criminal Code

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Abstract

The evolution of criminal law in Indonesia reflects a complex interplay between indigenous legal traditions and external influences, including Islamic law. This article examines the contribution model of *al-mas'ūliyyah al-jinā'iyyah* (criminal liability in Islamic law) to formulating criminal liability in Indonesia's New Criminal Code (KUHP Baru). The study adopts a qualitative research method, utilizing a comparative legal analysis framework to explore the dialectic between Islamic criminal law and the New Criminal Code. Data sources include classical legal texts, the book of Qur'anic exegesis and Hadith interpretations, legislative documents related to the New Criminal Code, academic literature, legal commentaries, and jurisprudential analyses. Through this method, the study identifies an elegant interplay between the principles of *ḍarar* (harm) and the fundamental criminal liability provisions in both systems. This study's findings reveal significant similarities and key differences, such as the role of intent, the typology of legal subjects, and the broader scope of liability for corporate crimes under the New Criminal Code (KUHP Baru). This article concludes that the contribution of *al-mas'ūliyyah al-jinā'iyyah* to the New Criminal Code lies primarily at the level of values while highlighting the potential for further alignment in specific areas.

Keywords: criminal liability; contribution; dialectic; New Criminal Code

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Evolusi hukum pidana di Indonesia mencerminkan interaksi yang kompleks antara tradisi hukum lokal dan pengaruh eksternal, termasuk hukum Islam. Artikel ini mengkaji model kontribusi *al-mas'ūliyyah al-jinā'iyyah* (pertanggungjawaban pidana dalam hukum Islam) terhadap perumusan pertanggungjawaban pidana dalam Kitab Undang-Undang Hukum Pidana (KUHP) Baru Indonesia. Penelitian ini menggunakan metode kualitatif dengan kerangka analisis hukum komparatif untuk mengeksplorasi dialektika antara hukum pidana Islam dan KUHP Baru. Sumber data meliputi teks-teks hukum klasik, kitab tafsir al-Qur'an dan syarah Hadits, serta dokumen legislasi yang terkait dengan KUHP Baru, literatur akademik, komentar hukum, dan kajian yurisprudensi. Dengan metode ini, penelitian ini mengidentifikasi interaksi yang elegan antara prinsip *ḍarar* (bahaya) dan ketentuan dasar pertanggungjawaban pidana dalam kedua sistem tersebut. Temuan dalam penelitian ini menunjukkan adanya kesamaan yang signifikan, tetapi juga perbedaan penting, seperti peran niat, tipologi subjek hukum, dan cakupan pertanggungjawaban yang lebih luas untuk kejahatan korporasi dalam KUHP Baru. Penelitian ini menyimpulkan bahwa kontribusi *al-mas'ūliyyah al-jinā'iyyah* terhadap KUHP Baru terutama terletak pada tingkat nilai, sambil menyoroti potensi untuk penyelarasan lebih lanjut di area tertentu.

Kata Kunci: pertanggungjawaban pidana; kontribusi; dialektika; KUHP Baru

Introduction

Islamic law is officially recognized as part of Indonesia's national legal framework; however, its integration into criminal law is challenging and problematic. It is because criminal law primarily represents public law, which necessitates universal application. In contrast, civil law can be applied exclusively to Muslims, as seen in the *Kompilasi Hukum Islam* (KHI) and *Kompilasi Hukum Ekonomi Syariah* (KHES), which are binding only for Muslims. Criminal law poses a dilemma due to its inherently public nature, requiring national applicability and closely tied to the nation's pluralistic context, including its religious, cultural, and ethnic diversity. Imposing Islamic criminal law through a purely textual approach would be difficult to implement. Consequently, a value-based approach becomes essential for integrating into the New Criminal Code (KUHP Baru). This value-oriented approach adopts the *maqāṣid al-sharī'ah* framework to assess the extent to which *al-mas'ūliyyah al-jinā'iyyah* contributes to the New Criminal Code.[1]

Despite the various pros and cons surrounding the New Criminal Code, its introduction marks a new era in the national legal system. This move represents a renewal of the old criminal law system, known as the Old Criminal Code, a legacy of Dutch colonialism. The reform brings significant changes and shifts in the national legal system.[2] Methodologically, the reform of the Penal Code aims to achieve five fundamental objectives: decolonization, democratization, consolidation, harmonization, and modernization.[3] These five missions aim to shape a criminal law that reflects national character, integrates stakeholder input, and aligns with contemporary needs. This effort is evidenced by recognizing and applying societal laws (living law).

The recent studies that are relevant to the contribution of *al-mas'ūliyyah al-jinā'iyyah* to Indonesia's New Criminal Code (KUHP Baru) include analyses of

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[1] Tim Ahli Pembahasan UU KUHP, "Kebaruan Hukum Pidana," in *Sosialisasi KUHP Baru - Via Zoom Meeting* (Denpasar: BPHN, 2023), 1–17.

[2] Supardin and Abdul Syatar, "Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia's Positive Legal System Reform," *Samarah* 5, no. 2 (2021): 913–27, https://doi.org/10.22373/sjhk.v5i2.9353.

[3] I Wayan Sudhirta, "Menyambut KUHP Baru," in *Sosialisasi KUHP Baru - Via Zoom Meeting* (Denpasar: BPHN, 2023), 2–5.

victim protection in Islamic law,[4] the criminalization of unregistered marriages through *maṣlaḥah mursalah,*[5] and the adaptability of Islamic jurisprudence in modern contexts.[6] Additionally, research has highlighted the integration of Islamic law into regional policies[7] and the sociological factors influencing its application in multicultural societies.[8] Together, these studies provide a strong theoretical and empirical basis for examining the integration of Islamic law into Indonesia's national legal system.

From a juridical-normative perspective in the development of national law, the government, through the National Legal Development Agency (*Badan Pembinaan Hukum Nasional* - BPHN), has integrated three types of law—customary law, Western law, and Islamic law—into the national legal sub-system[9] This means that these three legal systems can be used as the basis for formulating national legal materials.[10] It is certainly in line with the previously mentioned missions of democratization and harmonization. These two missions highlight the interaction between national law and the three legal sub-systems.

The main thesis is that the New Criminal Code, as noted by legal experts, demonstrates a dialectical interaction with various legal systems, particularly Islamic law. Provisions on forgiveness, compensatory penalties, adultery, cohabitation, abortion, and supernatural crimes reflect the principles of Islamic

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[4] Vivi Ariyanti, "Konsep Perlindungan Korban dalam Sistem Peradilan Pidana Nasional dan Sistem Hukum Pidana Islam," *al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 33–48, https://doi.org/10.24090/mnh.v0i1.2224.

[5] Nahar Surur, "Pemidanaan Nikah Sirri dalam RUU HMPA (Pasal 143) Perspektif Maṣlāḥah Mursalaḥ," *el-Usrah* 5, no. 2 (2022): 398–408, https://doi.org/10.22373/ujhk.v5i2.14970.

[6] Meirison Meirison, Desmadi Saharuddin, and Husnul Fatarib, "The Dynamics of Islamic Jurisprudence in The Eyes of Contemporary Muslims," *el-Mashlahah* 12, no. 1 (2022): 70–83, https://doi.org/10.23971/elma.v12i1.3939.

[7] Irma Suryani et al., "Integration of Islamic Law in Regional Development in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023): 1–11, https://doi.org/10.31958/juris.v22i1.8770.

[8] Muhammad Taufan Djafri, Kurniati Kurniati, and Misbahuddin Misbahuddin, "Pertimbangan Sosiologis Penegakan dan Pengamalan Hukum Islam di Indonesia," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 3, no. 3 (2022): 339–49, https://doi.org/10.36701/bustanul.v3i3.666.

[9] Amrullah Ahmad et al., *Dimensi Hukum Islam dalam Sistem Hukum Nasional: Mengenang 65 Th. Prof. Dr. Busthanul Arifin, SH.* (Jakarta: Gema Insani Press, 1996), 251–52.

[10] Busthanul Arifin, *Pelembagaan Hukum Islam di Indonesia: Akar Sejarah, Hambatan dan Prospeknya* (Jakarta: Gema Insani Press, 2006), 39–40.

Criminal Law (*Hukum Pidana Islam* - HPI). The reforms in Books 1 and 2 of the Penal Code are acknowledged for incorporating religious values.[11]

However, as a national criminal law that embodies unification, the New Criminal Code requires a process of desymbolization of religious laws. The goal is to avoid the formal recognition of any particular religion and to uphold Pancasila as the primary source of the entire legal system.[12] Constitutionally, Indonesia occupies a middle ground between religion and state (politics). Therefore, the application of religious law must first undergo a process of desymbolization, objectification, and normative regulation.[13] Through such processes, the resulting national law is both dialectical and transformative.

The dialectical and transformative processes in legal performance warrant deeper investigation. It is because these processes involve various entities, particularly in the realm of scholarship.[14] These various entities are crucial factors that need to be examined more deeply to realize a national criminal law that is both elegant and effective. Of course, this does not intend to disregard other entities, such as political, sociological, and juridical aspects. Based on the above elaboration, the following questions are posed: How does the model of *al-mas'ūliyyah al-jinā'iyyah* contribute to the New Criminal Code? What are the strengths and weaknesses of the conceptions of Islamic law compared to the New Criminal Code regarding criminal liability?

This study employs a qualitative research methodology with a comparative legal analysis framework to examine the interaction between Islamic criminal law and the New Criminal Code. Data sources include classical legal texts, the book of Qur'ani exegesis and Hadith interpretations, legislative documents related to the New Criminal Code, academic literature, legal commentaries, and jurisprudential analyses. Using this approach, the research reveals a nuanced relationship between the principle of *ḍarar* (harm) and the foundational elements of criminal liability within both legal systems.

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[11] Topo Santoso, "Aspek Pidana dan Pemidanaan dalam KUHP Baru," in *Sosialisasi KUHP Baru - Via Zoom Meeting* (Denpasar: BPHN, 2023), 1–2.

[12] Said Agil Husin al-Munawar, *Hukum Islam dan Pluralitas Sosial* (Jakarta: Penamadani, 2014), 8.

[13] Imam Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia* (Jakarta: RajaGrafindo Persada, 2006), 331–33.

[14] Lawrence M. Friedman, *American Law* (New York: WW. Norton & Company, 1984), 5-6.

The Application of Islamic Law and Its Transformation

In reforming the national criminal law system, the Indonesian government has adopted customary, Islamic, and Western law as the foundation for shaping national law. These three systems, formally recognized as integral to Indonesian society, are expected to contribute significantly to its legal development.[15]

Islamic law in Indonesia has effectively become a sub-system within the national legal system.[16] Among the three sub-systems, Islamic law holds the greatest potential to shape national law, given Indonesia's Muslim majority and the emotional connection to it. In contrast, the Western legal system has seen little development since independence and customary law has made limited contributions. Thus, Islamic law, as an official sub-system of the national legal framework, is expected to lead in shaping future national law.[17]

It is acknowledged that Islamic law holds a more strategic position due to its emphasis on religious morality and accountability before God. Empirically, this has been a commitment for judges in deciding cases, always based on divine principles. From a historical perspective, Islamic law as a source of law is highly likely to be incorporated into legislation.[18]

N. D. Anderson, in *Islamic Law in the Modern World*, identifies three models of Islamic law application: 1) Textual application, strictly adhering to the Qur'an and Hadith, as seen in Saudi Arabia, Yemen, and Afghanistan; 2) Compromise theory, balancing Islamic and Western law through reforms in countries like Egypt, Sudan, and Morocco; and 3) Rejection in Modern Contexts, deeming Islamic law unsuitable for modern use, exemplified by Turkey.[19]

Bahtiar Effendy, in his dissertation, analyzes the ideal model of applying Islamic law in a nation-state, highlighting two opposing views. The first argues

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[15] Jimly Ash-Shiddiqie, *Pembaharuan Hukum Pidana Indonesia: Studi tentang Bentuk-bentuk Pidana dalam Tradisi Hukum Fiqh dan Relevansinya bagi Usaha Pembaharuan KUHP Nasional* (Bandung: Angkasa, 2016), 5.

[16] M. Mudzakir, "Integrasi Hukum Islam dalam Hukum Nasional: Upaya Restrukturisasi Perundang-Undangan Nasional," *Mazhabuna* 2, no. 2 (2003): 23–41.

[17] Muchsin, *Masa Depan Hukum Islam di Indonesia* (Jakarta: BP. Islam, 2014).,17-18.

[18] Abdul Manan, *Reformasi Hukum Islam di Indonesia* (Jakarta: Rajawali Press, 2016)., 59.

[19] Syafruddin Syam, "Studi Siyasah dalam Islam: Metode Pemikirandan Penerapannya," *al-Kaffah: Jurnal Kajian Nilai-nilai Keislaman* 10, no. 2 (2022): 275–98, https://jurnalalkaffah.or.id/index.php/alkaffah/article/view/54.

that Islam should be the foundation of the state, with sharia as the constitution. It sees political sovereignty as belonging to God and views the nation-state as conflicting with the concept of the *ummah*, which transcends political and territorial boundaries. *Shūrā* is also distinct from modern democracy, which is considered incompatible with Islamic law. [20]

The second theory asserts that Islam does not mandate a specific model of governance for the *ummah*. It argues that the term "state" does not appear in the Qur'an, and while the Qur'an contains references to political power and authority, these are incidental and lack significant impact on political theory. Instead, the Qur'an is viewed as a source of values and ethical teachings guiding social and political activities.[21]

In discussing the transformation of Islamic law into national law, it is essential to examine the theories of its application in Indonesia, where Muslims aspire to implement Islamic law personally and within national affairs. One such theory is the formalistic-legalistic theory, which argues that *sharī'ah* (Islamic Law) must be implemented through state institutions. This view, championed by Habib Rizieq Shihab of *Front Pembela Islam* (the Islamic Defenders Front), advocates for embedding *sharī'ah* into the constitution or laws to preserve its substance and ensure proper application, rejecting any separation between its substance and formality.[22]

The above theory posits that arguments should be based on historical facts and the belief that God's rules are the best. According to this view, only Islamic law can address the various issues faced by Muslims in Indonesia, whether in the fields of economy, politics, society, culture, or education[23] In this context, those who advocate for the full implementation of Islamic criminal law argue

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[20] Bahtiar Effendy, *Islam dan Negara: Transformasi Gagasan dan Praktik Politik Islam di Indonesia* (Jakarta: Paramadina, 2009).,12.

[21] Rachmat Panca Putera, "Pemikiran Politik Islam di Indonesia: Dari Formalistik menuju ke Substantif," *Ri'ayah: Jurnal Sosial dan Keagamaan* 3, no. 1 (2018): 57–68, https://e-journal.metrouniv.ac.id/riayah/article/view/1179.

[22] A. Rahmat Rosyadi and Rais Ahmad, *Formalisasi Syariat Islam dalam Perspektif Tata Hukum Indonesia* (Bogor: Ghalia Indonesia, 2006).,20-21.

[23] Mohammad Iqbal Ahnaf, "Tiga Jalan Islam Politik di Indonesia: Reformasi, Refolusi dan Revolusi," *Wawasan: Jurnal Ilmiah Agama dan Sosial Budaya* 1, no. 2 (2016): 127–40, https://doi.org/10.15575/jw.v1i2.728.

that it should be applied in its entirety, without being combined with existing laws.[24]

The structuralistic theory emphasizes transforming social and political systems to reflect Islamic principles while synergizing with cultural approaches that align social behavior with Islamic values. Structural changes aim to shape behavior, and vice versa, with strategies like lobbying and disseminating Islamic ideas to influence public policy. This theory advocates for comprehensive dakwah across all aspects of life—politics, economics, culture, and science—supporting the integration of Islamic law into Indonesia's national legal system based on Pancasila and the 1945 Constitution.[25]

The culturalistic theory focuses on internalizing Islamic law within the Muslim community without relying on state or political institutions. It views Islam as a source of ethics and inspiration in national life rather than a state-mandated system. Abdurrahman Wahid (Gus Dur), a key proponent, argues that Islamic ideology has historically struggled in politics and should complement, not replace, existing systems to avoid national fragmentation. He emphasizes that Muslims can embrace the state's philosophy while practicing Islam personally and locally.[26]

The substantive-applicative theory, widely supported by academics, emphasizes a balanced approach to Islamic teachings, blending dogmatic and practical aspects. It avoids alignment with specific opinions or parties, leaving implementation to Muslims individually or collectively, whether through state authority, structural, cultural, or personal means.

Regarding this theory, Juhaya S. Praja argues that to position Islamic law as a supporter of development within the framework of the Pancasila legal system, even though it may no longer play a full and comprehensive role in practice, Islamic law still holds significant meaning for its adherents. Three main factors contribute to the continued significant role of Islamic law in the life of the nation: Islamic law provides guidance on what is considered good and bad, as well as

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[24] Topo Santoso, *Membumikan Hukum Pidana Islam: Penegakan Syaiat dalam Wacana dan Agenda* (Jakarta: Gema Insani Press, 2017).,146.

[25] Rosyadi and Ahmad, *Formalisasi Syariat Islam dalam Perspektif Tata Hukum Indonesia*, 27.

[26] Djafri, Kurniati, and Misbahuddin, "Pertimbangan Sosiologis Penegakan dan Pengamalan Hukum Islam di Indonesia."

religious commands, recommendations, and prohibitions in the lives of Muslims; Many legal decisions and jurisprudence from Islamic law have been integrated into the prevailing positive law, and there exists a faction within the Muslim community across various nations that still harbors theocratic aspirations. As a result, the full implementation of Islamic law continues to be a slogan of their struggle, carrying significant appeal.[27]

Muhammad Daud Ali divides Islamic law in Indonesia into two types: normative and formal-juridical. Normative Islamic law, such as prayer, fasting, zakat, and hajj, carries social sanctions based on community awareness and governs the relationship between individuals and God. Adherence depends on faith. In contrast, formal-juridical Islamic law, which governs relationships between individuals and objects, becomes positive law when recognized by regulations, such as marriage, inheritance, waqf, and zakat laws.[28]

The Concept of *al-Mas'ūliyyah al-Jinā'iyyah* in Islamic Law

According to Abdul Qadir' Audah, the concept of *al-mas'ūliyyah al-jinā'iyyah* refers to holding an individual accountable for the legal consequences of a prohibited act (criminal offense) that they have committed with full awareness and without any coercion.[29] The Prophet Muhammad (peace be upon him) stated in a hadith that "The pen is lifted from three people," meaning their deeds are not recorded and they are not legally accountable: the one who is asleep until they wake up, the child until reach maturity, and the insane person until they regain sanity. These categories represent individuals lacking sound minds. In Islamic law, legal responsibility (*taklīf*) requires the presence of reason, enabling individuals to distinguish between right and wrong and good and evil.[30]

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[27] Hendra Gunawan, "Karakteristik Hukum Islam," *Jurnal al-Maqasid: Jurnal Ilmu Kesyariahan dan Keperdataan* 4, no. 2 (2018): 105–25, https://jurnal.uinsyahada.ac.id/index.php/almaqasid/article/view/1429.

[28] Muhammad Fahmi al Amruzi, "Membumikan Hukum Islam di Indonesia," *al-Banjari: Jurnal Ilmiah Ilmu-ilmu Keislaman* 14, no. 2 (2016): 172–84, https://doi.org/10.18592/al-banjari.v14i2.656.

[29] Ahmad Fadhly Roza, "Analisis Unsur Perbuatan Suap (Risywah) Berdasarkan UU No. 20 Tahun 2001 tentang Perubahan UU No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi dalam Perspektif Hukum Islam di Pengadilan Negeri Medan." [Doctoral Thesis] (UIN Sumatera Utara, 2020).

[30] Muḥammad bin Ismā'īl al-Ṣan'anī, *Subul al-Salām* (Cairo: Muṣṭafā al-Bābi al-Halabi, 1960), 181.

The first group incapable of bearing legal responsibility are those who are asleep. If a person commits a crime while asleep or unaware, they cannot be held accountable due to the lack of functioning reason, which is necessary for criminal liability.[31] However, it must be proven that the act occurred during unconsciousness or sleep. The second group is children, or "*al-ṣabiy*," who have not yet reached maturity. Maturity, linked to the functioning of reason, is required for *taklīf* (legal responsibility). In Islam, maturity, or "*bāligh*," occurs around age 12, though the specific age varies by gender. For girls, maturity is marked by menstruation or the appearance of coarse hair around the navel, while for boys, it is marked by reaching age 15 or experiencing *iḥtilām* (sexual dreams).[32]

The concept of maturity indicators mentioned above is primarily based on physiological-biological factors. However, in the era of unrestricted access to technology, including for children, children are growing up quickly, which can potentially lead to earlier maturity.[33] Yet, due to the lack of psychological maturity in receiving and processing these external influences, the adult behaviors imitated by children who experience premature maturity are more likely to be negative or deviant.

The third group of individuals who lack the capacity for responsibility is those who are insane. In the context of Islamic jurisprudence, insanity is defined as a mental disorder that causes a person's actions and speech to deviate from logical reasoning. Abdul Qadir' Audah offers a simpler definition of insanity as the loss, impairment, or weakening of a person's intellect.[34]

The condition of insanity described above should not be equated with that of a person who is intoxicated, as an intoxicated individual is someone who does

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[31] Ariyanti, "Konsep Perlindungan Korban dalam Sistem Peradilan Pidana Nasional dan Sistem Hukum Pidana Islam."

[32] Ariefulloh Ariefulloh et al., "Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 1 (2023): 19–36, https://doi.org/10.18326/ijtihad.v23i1.19-36.

[33] Ulang Mangun Sosiawan, "Perspektif Restorative Justice sebagai Wujud Perlindungan Anak yang Berhadapan dengan Hukum (Perspective of Restorative Justice as a Children Protection against the Law)," *Jurnal Penelitian Hukum De Jure* 16, no. 4 (2017): 425–38, https://doi.org/10.30641/dejure.2016.V16.425-438.

[34] Fathuri Fathuri, "Majnûn dalam al-Qur'an (Perspektif Michel Foucault)." [Master Thesis] (PTIQ Jakarta, 2022), 112.

not comprehend their speech or actions due to loss of consciousness from consuming alcohol. Based on this, an intoxicated person is considered not *mukallaf* (i.e., not legally accountable) because of the loss of mental awareness. This is because the primary condition for *taklīf* (legal responsibility) is the presence of conscious reasoning.[35]

Contribution Model

Criminal liability is closely tied to the criminal act, yet they remain distinct, like two sides of the same coin. A criminal act leads to criminal liability, with the act relating to the offense's material consequences and liability to the perpetrator. While the new Criminal Code lacks a clear definition of criminal liability, traditionally, it refers to the psychological and mature state that allows an individual to control their behavior. Roeslan Salah defines it as a reprehensible act for which the perpetrator must be held accountable. However, not all offenders are liable; liability depends on the perpetrator's culpability.[36] In simpler terms, criminal liability refers to a framework used to determine whether an offender should be subject to sanctions for their actions or be absolved of responsibility.

Regarding the conditions required for criminal liability, the New Criminal Code (KUHP Baru) has formulated provisions that differ from the Old Criminal Code (KUHP Lama), particularly concerning criminal acts that implicate liability. It means that the New Criminal Code no longer includes the clause of "intentionally" in criminal offenses. Consequently, the New Criminal Code assumes that every criminal act is committed intentionally. As a result, the rule is that every criminal act must be subject to accountability.[37] Nevertheless, the New Criminal Code still acknowledges negligence but must be specified in the statutory regulations. In other words, for someone to be held accountable for an

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[35] Junaidi Abdillah, "Diskursus Hudûd dalam Studi Hukum Islam (Melacak Evolusi Rumusan Hudûd)," *al-Ihkam: Jurnal Hukum & Pranata Sosial* 13, no. 2 (2018): 334–63, https://doi.org/10.19105/al-ihkam.v13i2.1881.

[36] Septa Candra, "Pembaharuan Hukum Pidana; Konsep Pertanggungjawaban Pidana dalam Hukum Pidana Nasional yang akan Datang," *Jurnal Cita Hukum* 1, no. 1 (2013): 39–58, https://doi.org/10.15408/jch.v1i1.2979., 5-24.

[37] Abu Hapsin and Nazar Nurdin, "Diat and Peace Money in the Crime of Culpable Homicide," *al-Ahkam* 32, no. 2 (2022): 189–210, https://doi.org/10.21580/ahkam.2022.32.2.12413.

act due to negligence, negligence must be explicitly defined as a special condition in the provisions of the criminal offense. This is explicitly stated in Article 36 of the New Criminal Code as follows:

> "Every person can only be held accountable for a criminal act committed intentionally or due to negligence. (1) A punishable act is a criminal act committed intentionally, whereas a criminal act committed due to negligence can be punished if explicitly provided for in legislation. (2)"

Based on the provisions of this article, it can be concluded that criminal liability, which implies the punishment of the perpetrator, must meet three fundamental indicators. *First*, the act must have been committed either intentionally or due to negligence (Article 36 of the New Criminal Code). *Second*, the perpetrator must be capable of being held responsible for their actions (Articles 38-39 of the New Criminal Code), and *third,* there must be no justifications or excuses for the criminal act or the perpetrator (Articles 40-44 of the New Criminal Code).

Regarding the discourse on intent, attempts, and malicious conspiracy, both the New Criminal Code and the HPI recognize that intent or predisposition that exists in a person's mind, as long as it has not resulted in a crime or criminal act, does not lead to criminal liability. This is because intent, regardless of its nature, remains merely intent. Intent that is highly abstract and does not lead to the commission of a criminal act results in no liability. This is clearly reflected in Article 17(1) of the New Criminal Code, which states:

> "An attempt to commit a criminal act occurs if the perpetrator's intent is evident from the commencement of the execution of the intended criminal act, but the execution is incomplete, does not achieve the result, or does not produce the prohibited consequence, not solely due to the perpetrator's own will."

The formulation of the article above demonstrates the proposition that intent, as long as it does not result in an attempt, cannot lead to a blame on the perpetrator. Intent can be followed by demands for liability (blame) if the intent has already manifested in a criminal act, even if it is only an attempt. Therefore, intent that has implications for a criminal act, even if it is merely an attempt or an incomplete offense, may warrant blame. Conversely, intent that has not led to an attempt or more does not warrant blame or criminal liability.

Moreover, for a potential criminal, not only is such an intention overlooked by God, meaning it is not recorded as a sin, but there is also a distinct appreciation for those who abandon or revoke their criminal intentions. This

appreciation is demonstrated by awarding a good deed to the would-be perpetrator who withdraws their intent. This highlights the unique aspect of Islamic Criminal Law (HPI) in that it encompasses not only material considerations but also transcendent values.

The above propositions reaffirm that there is, in fact, no fundamental difference between the conceptions of Islamic Criminal Law (HPI) and the New Criminal Code (KUHP Baru) regarding intentions and the requirement of tangible evidence of a crime leading to accountability. The difference lies primarily in the discourse surrounding criminal conspiracy and preparation. These two aspects are addressed in Articles 13 and 15 of the New Criminal Code, where both conspiracy and preparation are grounds for criminal liability.

The New Criminal Code (KUHP Baru) views criminal conspiracy as punishable because the conspiracy itself, even if the principal or material crime has not yet been realized, constitutes an offense. This is articulated in Article 13 of the New Criminal Code, which states:

> "Criminal conspiracy occurs when two (2) or more people agree to commit a criminal offense. Criminal conspiracy to commit an offense is punishable if explicitly stipulated in the law".

This provision affirms that criminal conspiracy leads to criminal liability for the participants. Upon closer examination, a criminal conspiracy is understood as the act of agreeing on a shared intention with the aim of committing a crime. This provision is also found in the Old Criminal Code, the Narcotics Law, and the Law on the Eradication of Terrorism Crimes.

Criminal conspiracy is generally applied in situations where two or more individuals reach a consensus to commit a criminal act. This means that while intent may originate from a single criminal subject, conspiracy necessitates the involvement of at least two or more subjects. In criminal law, this offense is established as a special rule that diverges from the general principle of "no punishment for mere intent." Thus, the justification for action in the responsibility for this offense lies in the tangible act of agreeing to carry out an intent to commit a crime.

In essence, criminal conspiracy differs from the offense of participation. In participation, the principal criminal act has already been carried out with specific collaboration. However, in a criminal conspiracy, the principal criminal act has not occurred at all. This conceptual difference contributes to the

"uncertainty" within the New Criminal Code (KUHP Baru) regarding the concepts of intent and criminal conspiracy. Although the philosophy behind this provision leans more towards preventing agreements to commit crimes, it still results in criminal liability. Even though the penalties for criminal conspiracy are consistently lighter than those for participation, it remains classified as a criminal offense. This is explicitly stated in Article 144, Chapter V, Definitions, of the New Criminal Code, which reads:

> "A Criminal Act also includes criminal conspiracy, preparation, attempt, and aiding in committing a Criminal Act, unless otherwise provided by law".

The above provision clearly categorizes criminal conspiracy as a criminal offense. Although criminal conspiracy applies only to specific, serious criminal acts, as noted in the explanation of Article 13 of the New Criminal Code, it is still regarded as a criminal offense that entails criminal responsibility. As a result, the New Criminal Code has, in a way, created a counterproductive situation regarding the very essence of a criminal act, which requires the presence of an actual act.

When the formulation above is correlated with the concept of *criminal conspiracy* in HPI, a significant divergence becomes apparent. The divergence lies in the fundamental differences between the two systems. While the New Criminal Code (KUHP Baru) considers *criminal conspiracy* as a criminal offense, HPI does not recognize *criminal conspiracy* as a basis for criminal liability unless it results in actual criminal acts. In HPI, intentions, motives, and desires, whether arising from one person or more, are still considered merely intentions. Therefore, liability cannot be imposed based solely on intentions. The criterion used by HPI to establish criminal liability is the actual commission of a criminal offense. In other words, the measure is the tangible act that impacts individual and social life.

Furthermore, HPI views intentions as just that—intentions—that do not have any legal implications. Islam teaches that intentions, when not acted upon, do not entail any consequences, including sin. In fact, a person who forms an intention but does not act on it is judged as "*lā junāḥa*," meaning there is no fault. Moreover, if the person abandons the intention, they are granted divine reward or goodness.

This concept of criminal responsibility emphasizes the material aspects and consequences of a criminal act rather than intentions. Its approach to criminal

conspiracy is broader, encompassing universal subjects, and more refined, limiting conspiracy to intention without involving criminal acts. This analysis underscores the need for consistency in the New Criminal Code, where criminal responsibility in attempts arises only when an act occurs, not from mere thoughts. Intentions or conspiracies have no legal impact unless actualized into criminal acts.

It is acknowledged that the imposition of criminal liability or responsibility arises due to the actual impact of the act itself. In other words, the criterion for holding a legal subject accountable is the fact that a criminal act has occurred and, at the same time, has caused harm (destruction) to the social order. Therefore, if intentions and conspiracies have arisen in the minds of the perpetrators but have not yet culminated in a crime, no criminal liability should be imposed.

Despite several differences as outlined above, there are also points of convergence between Islamic Criminal Law (HPI) and the New Criminal Code (KUHP Baru). This is evident from the fundamental requirement for criminal responsibility: the capability to be held accountable. This capability is the initial basis for determining whether a criminal act warrants criminal liability or not. Capability refers to the inherent qualities of the legal subject. It means that a perpetrator must have the mental capacity and competency to be held responsible for their actions. At this point, it can be said that HPI has been absorbed into the New Criminal Code.

In the discourse of Islamic legal theory (usul fiqh), the concept of *ahliyyah taklīf* (legal capacity) is recognized. This legal capacity is further divided into two categories: a) *ahliyyah al-wujūb* and b) *ahliyyah al-adā'*. The first, *ahliyyah al-wujūb*, refers to a person's inherent capacity related to their rights and duties. This is a divine right assigned to humans concerning fundamental traits such as being knowledgeable or ignorant, mature or immature, sane or insane, and so on. The fundamental principle is that as long as a person is human, they retain the capacity for *wujūb*. Examples include the right to inherit and the duty to pay zakat. In brief, *ahliyyah al-wujūb* reflects the inherent nature of humanity itself.

The second category, *ahliyyah al-adā'* (capacity to act), has legal consequences. At this point, HPI views that when this capacity is present, an individual can be held legally accountable for their actions. This is because *ahliyyah al-adā'*represents the capacity of a *mukallaf* (a legally accountable

person) to be judged as valid in all their statements and actions according to religious law. In other words, if a *mukallaf* performs an action, that action is considered legally valid according to religious principles and carries legal consequences.[38] For example, if someone engages in a business transaction, it is considered valid and has legal consequences. Similarly, if a *mukallaf* commits a crime against another person, they will be held accountable and face criminal penalties, whether related to property or personal harm. In summary, *ahliyyah al-adā'* pertains to the requirement for legal responsibility, which necessitates the offender's capacity to be held accountable for their actions.

The formulation in Islamic criminal law (HPI) aligns with the New Criminal Code in that both require the offender's capability as a fundamental condition for criminal liability. Specifically, the New Criminal Code states in Book 1, Article 36, paragraph 1: "A person can only be held criminally responsible for an offense committed with intent or negligence." This implicitly necessitates the offender's capacity for criminal responsibility.

The propositions above demonstrate that, fundamentally, both HPI and the New Criminal Code share similarities regarding the basic requirements for criminal liability. This indicates a significant convergence in their conceptual frameworks. Despite these similarities, there are notable differences in how each legal system categorizes and qualifies the "incapacity" of an offender.

In the New Criminal Code, the typology of individuals who are not liable for criminal prosecution is divided into four categories: 1) Individuals with severe mental disabilities or acute psychotic episodes at the time of the offense, 2) Individuals with moderate to severe intellectual disabilities, 3) Children under the age of twelve at the time of the offense and 4) Individuals coerced by forces beyond their control or subjected to threats, pressure, or unavoidable compulsion

These categories are explicitly outlined in Book 1, Articles 38-43 of the New Criminal Code. On closer examination, these can be further streamlined into three primary categories: individuals with mental disorders (combining points 1 and 2), minors (point 3), and those under duress (point 4).

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[38] Sakhowi Sakhowi, "Taqnīn Method of Qānūn Jināyah and Problems of Its Implementation in Aceh, Indonesia," *JIL: Journal of Islamic Law* 3, no. 2 (2022): 193–211, https://doi.org/10.24260/jil.v3i2.817.

The three categories mentioned, when faced with the dynamics of changing times and circumstances, particularly concerning offenders who do not fall into these categories—such as those who act out of forgetfulness or while asleep—are not explicitly addressed in the New Criminal Code. These scenarios are noteworthy because crimes can indeed arise from such conditions. For example, individuals who commit offenses while asleep present a unique challenge, as they do not fit neatly into existing legal categories. Similarly, offenses arising from forgetfulness or inadvertent actions often resemble or are classified as semi-intentional.

The New Criminal Code's explicit formulation regarding those exempt from criminal responsibility appears simpler compared to the HPI framework. This simplification could be a limitation of the New Criminal Code in adapting to rapidly evolving crime patterns. As criminal methods and social contexts evolve, a rigid categorization might reduce the code's responsiveness to emerging criminal behaviors.

In contrast, Islamic law offers a broader categorization. This is evident from two hadiths that serve as normative bases for determining criminal responsibility for *mukallaf* (legal subjects). The first hadith is a hasan narration from Ibn Abbas reported by al-Baihaqi and Tirmidhi, which states: "Indeed, Allah overlooks (does not record as a sin) for my *ummah* (of Muhammad) mistakes, forgetfulness, and what they are forced to do.[39] The second hadith states*: rufi'a al-qalamu 'an thalāthin: 'an al-nā'imi ḥattā yastayqiẓa, wa 'an al-ṣabiyyi ḥattā yaḥtālima, wa 'an al-majnūni ḥattā yashfiyahu* (the pen— law—is lifted from three categories: the one who is asleep until he wakes up, the child until he reaches puberty, and the insane until he regains his sanity.

These hadiths provide an explicit view from HPI regarding individuals who cannot be held criminally responsible. The categories include Unintentional acts (*al-khaṭa'*), Actions performed under duress, Individuals who commit offenses while asleep, and children who commit crimes.

These categories illustrate that while there is overlap with the New Criminal Code, Islamic law offers a more comprehensive approach to criminal responsibility, acknowledging various states of the human condition that may affect culpability.

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[39] Suryani et al., "Integration of Islamic Law in Regional Development in Indonesia."

Based on the comparative analysis between the New Criminal Code (KUHP Baru) and the HPI conceptual framework, there appears to be an aspect not yet accommodated by the New Criminal Code, specifically concerning the categories of individuals who act while asleep and the age limit for children. These two points highlight a key distinction between the two systems.

The New Criminal Code does not explicitly mention individuals who commit offenses while asleep as a category exempt from responsibility. Instead, some studies categorize people who commit crimes while asleep as individuals with mental disorders. This represents a form of simplification, as, in reality, individuals who are asleep do not necessarily have a mental disorder. Such analogies and simplifications can lead to legal uncertainty. Numerous criminal cases in everyday life arise from actions taken by individuals while asleep. Therefore, it would be ideal for the New Criminal Code to explicitly include a provision addressing actions taken by individuals while asleep to avoid ambiguity and legal uncertainty.

Thus, Islamic jurisprudence explicitly distinguishes sleep from other states of incapacity. This distinction is important to avoid legal ambiguities and ensure clarity in the law. By not including sleep in the categories of incapacity recognized in the New Criminal Code (KUHP Baru), there may be a risk of legal uncertainty and ambiguity regarding cases involving individuals who commit offenses while asleep. Addressing this issue explicitly could help avoid potential legal complications and provide a clearer framework for determining criminal responsibility.

Similarly, the category of children also shows slight differences between Islamic Criminal Law (HPI) and the New Criminal Code (KUHP Baru). The definition of a child in the provisions of the New Criminal Code is a human or legal subject under 12 years of age. This categorical limitation is highly likely to result in the reduction and simplification of the concept. In reality, many children under the age of 12 have already achieved mental and intellectual maturity. This development is influenced by factors such as nutritional and food sufficiency, access to information, and other variables that contribute to a child reaching maturity before the age of 12. At the same time, it is also possible that children who have reached the age of 12 still experience intellectual and mental delays. Therefore, generalizing 12 years of age as a parameter for determining a child's maturity or immaturity creates a false paradigm. The boundaries and criteria for defining a child may vary significantly from one individual to another.

In contrast, the conceptual framework of Islamic Criminal Law (HPI) defines a child using the term "*iḥtilām*" or nocturnal emission for boys and menstruation for girls. These two physiological phases occur naturally and at different times for each child. Both *iḥtilām* and menstruation serve as indicators that a child has transitioned into a phase of mental and intellectual maturity. This transition marks the shift from childhood to adulthood, which inherently brings with it the imposition of legal obligations (*taklīf*) and criminal responsibility.[40]

Once again, in the context of determining whether a child has reached maturity, Islamic Criminal Law (HPI) does not rely on a fixed age, but rather on qualitative indicators, rather than quantitative measures. Through this parameter, it is recognized that the maturity of an individual, and whether they are deemed fit to bear criminal responsibility, is not uniform and can vary significantly from one person to another. This means that not all children at the age of 12 can be generalized as being mature. In contrast, the New Criminal Code (KUHP Baru) stipulates that children who have reached the age of 12 are considered legal subjects capable of bearing responsibility.The analytical narrative above seeks to affirm that the conception of children and those who are asleep as legal subjects who should not be held criminally liable has not been adequately addressed in the transformation within the national criminal law reform through the New Criminal Code. This is a concern among many legal scholars and observers who argue that the New Criminal Code has not yet incorporated responsive values in relation to the evolving nature of crime, which continues to develop with increasingly diverse methods. Instead of creating a responsive and forward-thinking legal framework, in this context, the typology and explicit qualifications of individuals incapable of bearing criminal responsibility are more effectively addressed by the responsive approach found in Islamic Criminal Law (HPI).

Table 1 highlights some differences between the New Criminal Code (KUHP Baru) and Islamic Law (HPI). Specifically, there are at least two visibly distinct legal subjects: the sleeping person and the age limit for children. The sleeping person is explicitly mentioned in HPI because this category does not fall under

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[40] M. Hasbi Umar and Bahrul Ma'ani, "Urgensi Hak dan Perlindungan Anak dalam Perspektif Maqashid al-Syariah," *al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 17, no. 2 (2018): 19–35, https://doi.org/10.30631/alrisalah.v17i02.64.

mental or intellectual disabilities. Thus, it must be clearly stated in HPI. Similarly, the age limit for children in HPI, which uses the term "*bāligh*" (puberty), appears more futuristic and responsive. In contrast, the author's analysis suggests that mental and intellectual disabilities can effectively be categorized under one type, namely "insane persons".

Beyond the differences outlined above, there are also similarities between the New Criminal Code and HPI. One notable point of convergence lies in their legal concepts regarding justifications and excuses. Justifications refer to circumstances that are legally accepted as allowing a legal subject to be absolved from criminal liability due to objective conditions surrounding the criminal act. Likewise, excuses pertain to conditions under which a legal subject's actions are deemed excusable, thus preventing criminal charges from being pursued.

The New Criminal Code (KUHP Baru) has outlined several grounds for excuses, which include Children under the age of 12, Forced by irresistible force or by threats, coercion, or unavoidable power, Necessity defense (self-defense in situations where the act was committed under compulsion) and Official orders leading to criminal acts (acts committed under official orders that result in criminal liability).

In addition, the New Criminal Code also specifies grounds for justification, including compliance with legal regulations (actions taken to fulfill legal obligations), emergency situations (actions performed in response to an emergency), and self-defense of morality and property (defense against threats to morality or property).

Table 1
The Legal Subject cannot be Held Criminally Liable

No.	New Criminal Code (KUHP Baru)	Islamic Criminal Law (HPI)
1	Mental Disability	Person with Severe Mental Disorder
2	Intellectual Disability	Sleeping Person
3	Child under 12 years old	Child who has not reached puberty/baligh

The grounds for justification and excuses are primarily influenced by external factors like circumstances and conditions during the crime, impacting criminal charges and sanctions. While the New Criminal Code (KUHP Baru) and Islamic Law (HPI) share similarities in recognizing excuses, such as necessity, the latter provides clearer normative bases. The Quran explicitly addresses necessity in Surah al-Baqarah (2:173), al-An'ām (6:145), and al-Naḥl (16:115), permitting prohibited acts under duress without sin. A hadith reported by Ibn Majah expands this principle, excusing errors, forgetfulness, and acts under duress. This forms the legal maxim: *"al-ḍarūrāt tubīḥu al-maḥẓūrāt"* (necessity permits the forbidden), emphasizing that necessity can justify otherwise prohibited actions. The analysis then focuses on the discourse regarding principles that deviate from universal legal principles. The New Criminal Code (KUHP Baru) introduces three novel concepts: strict liability, vicarious liability, and corporate liability.

These concepts represent significant updates in the national criminal law system, as they were not present in the previous Criminal Code. These changes respond to evolving legal needs, as crime and criminal acts continue to emerge in various forms and with new modus operandi, often leaving the law struggling to keep up. Examples include malpractice by hospitals, war crimes, and environmental damage caused by corporations. These contemporary crimes are real issues, yet the law frequently struggles to address them effectively.

The New Criminal Code incorporates two principles of criminal responsibility: strict liability and vicarious liability. Both principles represent exceptions to the traditional fault-based liability principle. According to the New Criminal Code, strict liability holds that a person can be penalized solely based on meeting the elements of the crime, regardless of intent or fault. On the other hand, vicarious liability determines that individuals can be held responsible for the actions of others who perform work or acts on their behalf or within the scope of their orders, such as a company executive being accountable for the actions of their subordinates.

Corporate liability, as outlined in Article 46 of the New Criminal Code (KUHP Baru), addresses crimes committed by individuals in functional roles within a corporation, acting on its behalf or for its benefit. However, Islamic Law (HPI) lacks a specific formulation for corporate or vicarious liability, reflecting its development within a historical context shaped by the paradigms of its era. Originating in the 8th century CE/2nd century AH, during the classical phase of

Islamic history, HPI relied heavily on *bayānī* (textual knowledge), rooted in the socio-historical framework of its time.

In the 2nd century AH, socio-economic conditions were traditional, with person-to-person interactions dominating and limited hierarchical relationships, such as between employers and workers. Crime patterns were also primarily individual and small-scale. Consequently, HPI, shaped by these social conditions, focused on personal responsibility and did not address corporate or vicarious liability, as the societal variables of the time did not necessitate such frameworks.

Nevertheless, from a philosophical and scholarly perspective, HPI has developed principles that accommodate metaphorical or analogous forms of liability. This can be observed through the universal principle of *maqāṣid al-sharī'ah*, which posits that all laws ultimately aim towards a singular goal. This goal is none other than *dar'u al-mafāsid wa jalb al-maṣāliḥ* (preventing harm and promoting benefit). Through this principle, HPI is fundamentally equipped to address legal needs arising from the demands of modernity and dynamic changes, akin to the three forms of liability. Upon closer examination, the essence of *maqāṣid al-sharī'ah* is to provide social defense or protection for society from all forms of destructive and harmful crimes. This approach reflects an underlying commitment to safeguarding community welfare and ensuring justice, which aligns with contemporary legal principles even if it does not explicitly address corporate or vicarious liability.

Through the development of *maqāṣid al-sharī'ah*, it is possible to find a basis for addressing any form of crime, whether committed by individuals or entities, that poses a risk and public harm. This principle allows for the imposition of *mas'ūliyyah* (liability) as a legal means to address and mitigate actions leading to widespread damage. Operationally, this approach can serve as a "legal closure" to address and prevent actions that lead to extensive harm. It acknowledges that many crimes causing significant damage, such as monopolies on goods, hoarding of essential food items, and consumer fraud, are often perpetrated by legal entities, corporations, states, or collective legal subjects. Thus, the principle of *maqāṣid al-sharī'ah* provides a framework for extending liability beyond individual actors to encompass a broader range of legal entities responsible for significant public harm.

Legal entities such as corporations, companies, and other similar entities cannot formally be held criminally responsible. This is because these entities are

considered to lack the capacity for *ahlīyyah* (legal competence) or the ability to act with awareness and intention, which are fundamental requirements for criminal liability.

In HPI literature, legal entities are often referred to as *shakhṣun ma'nawiyyūn* (symbolic legal subjects). Although they do not possess *mudrik* (awareness) in the traditional sense, the principle of *maqāṣid al-sharī'ah* allows for legal innovations to address legal issues involving these entities. The overarching doctrine of Islamic law aims to protect five fundamental entities: religion, life, intellect, property, and lineage or honor.[41] Therefore, any act that directly threatens or harms these fundamental values can be classified as a crime and warrants liability, whether the subject is an individual or a legal entity.

The essence of the *maqāṣid al-sharī'ah* doctrine emphasizes the protection, preservation, and realization of the collective well-being of society as the core of religious teachings.[42] Consequently, a comparative analysis reveals that the concepts of HPI and the New Criminal Code (KUHP Baru) regarding exceptions to criminal liability are not fundamentally dissimilar. Both frameworks seek to address and mitigate harm to society through direct or symbolic legal mechanisms.

Furthermore, this leads to the concept of *ijtihād*, which involves exerting all available efforts and resources to formulate principles aimed at achieving a singular objective: the promotion of collective good and well-being (*maṣlaḥah 'āmmah*).[43] Thus, the interplay among these three aspects— *maqāṣid al-sharī'ah*, *ijtihād*, and the principles of the New Criminal Code (KUHP Baru)— ultimately strives to realize and establish mercy for the entire universe. Through this approach, it can be understood that the substantive theory of *maqāṣid al-sharī'ah* has indeed been integrated into the formulations of the New Criminal Code, particularly in terms of the principles of exceptions to criminal liability. This alignment illustrates how traditional Islamic legal principles can be

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[41] Meirison, Saharuddin, and Fatarib, "The Dynamics of Islamic Jurisprudence in The Eyes of Contemporary Muslims."

[42] Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, "Maqāṣid al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020): 331–60, https://doi.org/10.15408/ajis.v20i2.18333.

[43] Surur, "Pemidanaan Nikah Sirri dalam RUU HMPA (Pasal 143) Perspektif Maṣlāḥah Mursalah."

adapted to contemporary legal frameworks, ensuring that the pursuit of justice and societal welfare remains central in modern legal systems.

Conclusion

This paper concludes with two fundamental points. First, the model *of al-mas'ūliyyah al-jinā'iyyah* in HPI (Islamic Criminal Law) contributes to the New Criminal Code (KUHP Baru) through a refined dialectic relationship between the two systems. This contribution is particularly evident in the adoption of the general principle of *ḍarar* (harm) and the provisions related to the conditions and foundations of criminal liability. The conceptual formulations in both frameworks are nearly identical, highlighting a strong influence of Islamic Criminal Law on the New Criminal Code. Therefore, it can be concluded that the contribution of Islamic Criminal Law to the New Criminal Code in the area of criminal liability is primarily value-based, shaping the moral and ethical foundations of criminal responsibility. Second, The conceptions of Islamic Criminal Law (HPI) and the New Criminal Code (KUHP Baru) each have strengths and weaknesses regarding criminal liability. Islamic Criminal Law has a broader typology of legal subjects, such as individuals who are asleep, and more nuanced criteria for determining the age of a child. However, it lacks flexibility compared to the New Criminal Code, which allows liability based on intent in certain offenses—a provision not adopted in Islamic law. The New Criminal Code also introduces corporate criminal liability, which is absent in Islamic Criminal Law. While this is a strength, it deviates from Islamic law's general principles. Overall, Islamic Criminal Law provides a strong ethical foundation, whereas the New Criminal Code offers a more expansive, modern approach. A limitation of this research is the lack of a comprehensive analysis of practical implementation and societal impact. Future research should explore integrating the ethical foundations of Islamic Criminal Law with the modern adaptability of the New Criminal Code to create a more balanced framework that addresses contemporary legal challenges and diverse societal contexts.(a)

Author Contribution Statement

Junaidi Abdillah: Conceptualization; Data Curation; Formal Analysis; Investigation; Methodology; Resources; Validation; Writing Original Draft.
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Najichah Najichah: Formal Analysis; Investigation; Project Administration; Resources; Validation; Writing, Review & Editing.

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