

## CRIMINOLOGY AND FIQH JINAYAH PERSPECTIVES ON DETERRENCE MORALITY GAP IN CRIME PREVENTION

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**Citation:** Gumelar, Dian Rachmat, Adzanah Mariska Salsabila, Islam Qerimi, Deden Najmudin, and Fahmi Hasan Nugroho. 2026. "Criminology and Fiqh Jinayah Perspectives on Deterrence Morality Gap in Crime Prevention". *Walisongo Law Review (Walrev)* 8 (1):82-95.  
<https://doi.org/10.21580/walrev.2026.8.1.31203>.

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**Abstract:** Deterrence theory has long dominated modern criminal policy by assuming that severe punishment rationally suppresses crime; however, contemporary realities marked by impulsivity, structural inequality, and weakened law enforcement legitimacy challenge this premise. This study critically examines the limits of deterrence through an epistemological dialogue between modern criminology and *fiqh jināyah*, aiming to reformulate its policy implications. Using normative juridical research with conceptual, philosophical, and comparative approaches, this study analyzes legal materials and recent criminological literature through qualitative synthesis. The findings identify the *Deterrence Morality Gap*, defined as the disjunction between punishment severity and individuals' moral, psychological, and social capacity to respond to it as an effective deterrent. In response, *fiqh jināyah* offers an alternative preventive paradigm through *al-zajr wa al-ra'd* and *tahdzīb al-nafs*, positioning punishment as *ultimum remedium* oriented toward *maqāṣid al-syarī'ah*. The novelty of this research lies in integrating criminological critiques with *fiqh jināyah* into a unified analytical framework, contributing to the reconstruction of punishment theory and the development of more legitimate, humanistic, and sustainable criminal policies.

*Teori deterrence selama ini menjadi fondasi utama kebijakan pidana modern dengan asumsi bahwa ancaman pidana berat mampu menekan kejahatan melalui kalkulasi rasional pelaku. Namun, realitas kejahatan kontemporer yang dipengaruhi impulsivitas, ketimpangan struktural, dan lemahnya legitimasi penegakan hukum menunjukkan rapuhnya asumsi tersebut. Penelitian ini bertujuan mengkaji secara kritis keterbatasan teori deterrence melalui dialog epistemologis antara kriminologi modern dan fiqh jināyah untuk mereformulasi arah kebijakan peradilan pidana. Metode yang digunakan adalah yuridis normatif dengan pendekatan konseptual, filosofis, dan komparatif, berbasis bahan hukum primer, sekunder, serta literatur kriminologi mutakhir yang dianalisis secara kualitatif. Hasil penelitian menunjukkan adanya Deterrence Morality Gap,*

yakni jurang antara logika pemidanaan dan kebutuhan pencegahan berbasis keadilan substantif, kemaslahatan publik, dan rekonstruksi moral. Fiqh jināyah menawarkan kerangka pencegahan yang lebih komprehensif melalui prinsip *al-zajr wa al-rad'* dan *tahdzīb al-nafs*, dengan pidana sebagai *ultimum remedium* berorientasi pada *maqāṣid al-syarī'ah*. Kebaruan penelitian ini terletak pada perumusan konseptual *Deterrence Morality Gap* sebagai kritik integratif terhadap pemidanaan berbasis ancaman. Penelitian ini berkontribusi pada pengembangan teori pemidanaan dan reformulasi kebijakan pidana yang lebih legitim, humanis, dan berkelanjutan.

**Keywords:** deterrence morality gap; severe punishment; criminology; fiqh jinayah.

## INTRODUCTION

Modern legal systems face a moral dilemma when severe punishments are enforced more as political performativity than as evidence-based responses to crime. For more than a century, state efforts to combat crime have been dominated by the paradigm of deterrence, an approach that asserts that the threat of severe punishment can reduce crime rates by instilling fear in defendants. When the state imposes severe punishments without substantive arguments for justice, the result is not prevention, but collective moral resistance. Instead of attempting to change the behavior of perpetrators, severe punishments widen the gap between the law and public trust. This system of punishment, which has become a symbol of severity, suggests that deterrence tends to function as a rhetorical justification rather than an empirically robust framework for effectively curbing crime (Muhammad Idris Nasution, Muhammad Ali, 2024). The theory of deterrence is based on the assumption (Rizka Sahbana, Edzky Satria Zulkarnain, Sandy Maulana Putra, Reni Anjelena, 2025) of perpetrator rationality, which has never been empirically proven to be consistent in criminological reality, so that its existence collapses when the moral legitimacy of the legal system is questioned by the society that is its subject. Daniel Nagin, a criminologist, reveals that criminals do not always calculate risk, but are often driven by impulsivity, situational pressure, socio-economic conditions, and psychological deficits that are incompatible with the assumptions of the rational choice model (Zey, 1992).

Cesare Beccaria's classical thinking has based his deterrence theory on the argument that humans are rational agents who will avoid actions that carry the risk of severe punishment (Bandyopadhyay & Cowen, 2023). Unfortunately, however, the pace of development in modern criminology shows a non-linear relevance between the severity of punishment and the decline in crime, and is often contradictory, as in many cases, thus widening the gap between the normative objectives of the law and empirical reality. This phenomenon reveals what can be called the deterrence morality gap, the gap between the state's normative ambition to 'intimidate' perpetrators through severe punishment and the reality that the public does not always respond rationally to legal threats. The concept of the

deterrence morality gap refers to the gap between the severity of punishment imposed by the legal system and the moral, psychological, and social capacity of perpetrators to respond to it as an effective threat (Kahan, 1997). The issue that arises is no longer whether severe punishment can have a deterrent effect, but rather whether the theory of deterrence itself has a realistic basis for working in a complex, pluralistic society that is rife with criminogenic determinants. Recent criticism emphasizes the need to incorporate social norms, moral credibility, and social influence so that deterrence does not fall into the trap of ultra-repressive and unjust policies (Wang Hong-wei, Geng Cheng, 2025).

In contrast to this rationalist paradigm, Islamic criminal law offers a fundamentally different epistemological foundation. Deterrence is built on fear of the state, while *fiqh jinayah* is constructed on obedience to Allah and internalization of moral values. *Fiqh jinayah* clearly rejects this reductionism, because Islamic law does not judge human behavior solely on the basis of rational calculation, but rather on the basis of more comprehensive spiritual, moral, and social conditions. (Fahmi, 2025) The criticism of Islamic criminal law against modern deterrence stands firm on a strong conceptual foundation, because in essence, Islamic criminal law has the concepts of prevention (*zajr*) and moral education (*ta'dib*) that are never based solely on the severity of the punishment. The values of education and character improvement have a deterrent effect while also changing behavior in a positive way (Tekin, 2020). The fuqaha (jurists) have always emphasized the effectiveness of punishment depending on justice, moral legitimacy, and procedural certainty as a form of embodying the principle of *dar' al-hudūd bi al-syubuhāt*, which requires caution and thoroughness before imposing severe punishment. The Sharia paradigm firmly rejects the logic of modern deterrence, which uses threats as the main instrument in controlling crime without considering the quality of substantive justice that accompanies each process.

The ethical framework regarding the legitimacy and purpose of punishment in Islam finds its main foundation in Allah Swt's words in surah al-Maidah, “*That is why We ordained for the Children of Israel that whoever takes a life unless as a punishment for murder or mischief in the land it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity. Although Our messengers already came to them with clear proofs, many of them still transgressed afterwards through the land.*” (QS. al-Maidah [5]: 32)

This verse is not merely a moral declaration, but a philosophical foundation that affirms that the fundamental purpose of criminal law in Islam is to protect life (*hifz al-nafs*), not to pile up threats of punishment to create fear. The moral structure of the verse suggests that the legitimacy of punishment does not arise from the intensification of punitivism as assumed by modern deterrence theory, but from its success in protecting human life and overall social stability (Muhammad, 2020). Thus, this verse not only confirms the *maslahat* orientation of Islamic law, but also reveals the fundamental weakness of modern deterrence theory, which relies too much on the threat of punishment without always resulting in a real decrease in crime.

Crime prevention within the framework of *maqāṣid al-syarī'ah* places the protection of life, intellect, property, and honor as priorities that demand more than just criminal threats, namely deeper social engineering and public morality than the accumulation of penalties on paper in legislation (Zuhdi, 2024). Policies to increase prison sentences, mandatory minimum sentences, and even the death penalty are often justified through unverified and unscrutinized deterrence theories. As a result, the modern criminal justice system is trapped in a state of over-criminalization, where the state responds to social problems with increasingly harsh penalties, even though there is insufficient evidence that such measures are effective (Husak, 2023). This raises a crucial question: why does modern criminal law rely so heavily on the threat of severe punishment, while Islamic legal tradition limits its use? Does legal modernity actually give rise to repressive mechanisms that are more political than rational? Meanwhile, in Islamic legal epistemology, severe punishment is not the primary instrument, but rather the last resort that can only be implemented when there is no doubt about the perpetrator's guilt and when all social, moral, and preventive mechanisms have failed.

The urgency of this research is to fill an important gap in the literature, namely the absence of a systematic analysis that brings together modern criminological criticism of deterrence with the principles and methods of *fiqh jinayah*. Most studies only make normative or textual comparisons, while this study brings together the epistemological paradigms of both to reveal the extent to which deterrence theory has failed in the modern context and the extent to which *fiqh jinayah* is able to present a more realistic and humane alternative framework. The results of this study are expected to not only contribute to the development of criminal law theory, but also open up space for a more in-depth reinterpretation of how society understands the purpose of punishment or criminalization. Examining the points of convergence and divergence between the two legal traditions reveals that this study seeks to reaffirm that effective law is not the harshest law, but the law that best understands human beings.

This study addresses the following research questions: to what extent does deterrence theory fail to explain contemporary criminal behavior, how does *fiqh jinayah* offer an alternative framework for crime prevention and how can the concept of the Deterrence Morality Gap contribute to the reformulation of criminal policy.

## RESEARCH METHOD

This study employs a qualitative approach using a normative juridical method with conceptual, philosophical, and comparative orientations to examine the Deterrence Morality Gap. It applies a three-stage analytical framework: (1) critical examination of deterrence theory in modern criminology, (2) normative reconstruction based on *fiqh jināyah*, and (3) conceptual synthesis to formulate the Deterrence Morality Gap. The data consist of primary sources, including the Qur'an, hadith, authoritative *fiqh jināyah* texts, and

criminal law regulations, as well as secondary sources such as peer-reviewed Scopus-indexed journal articles (2021–2025) and relevant criminology literature. Sources were selected based on relevance to deterrence theory and punishment, while non-peer-reviewed and methodologically unclear works were excluded. Data were collected through systematic library research and analyzed using thematic content analysis to identify recurring critiques of deterrence, followed by comparative legal reasoning to examine divergences between criminological and *fiqh jinayah* paradigms. Analytical rigor was ensured through systematic coding, cross-referencing of sources, and consistent interpretation, resulting in a theoretically grounded conceptual mapping of the limitations of severe punishment in preventing crime.

## RESULT AND DISCUSSION

### Epistemological the Deterrence Model of Rationality and the Reality of Modern Crime

Modern deterrence theory is rooted in Enlightenment rationality, which assumes that individuals act as calculative agents who weigh the costs and benefits of crime prior to acting, as articulated by Cesare Beccaria (Beccaria, 1995). Within this framework, punishment severity is expected to reduce crime by increasing perceived costs (Bandyopadhyay & Cowen, 2023). However, this assumption has been widely debated for its tendency to oversimplify the psychological and social dynamics underlying criminal behavior.

#### 1. Behavioral Critique

Behavioral research by Daniel Kahneman and Amos Tversky demonstrates that human decision-making is often shaped by heuristics, cognitive biases, and contextual pressures rather than stable rational calculation (Kahneman & Tversky, 1979). While deterrence theory assumes a *homo economicus* model (Ruiz-Villaverde, 2019), empirical studies suggest that a significant proportion of criminal acts occur spontaneously under emotional stress and situational constraints, without deliberate consideration of legal consequences (Turanovic et al., 2022). These findings indicate that deterrence may operate unevenly across contexts remaining relevant in situations involving deliberate reasoning, but less effective under conditions of impulsivity and uncertainty.

#### 2. Neurocriminology Critique

Neurocriminological studies further challenge the rational actor assumption. Research by Adrian Raine shows that impairments in executive brain function can reduce impulse control and the ability to evaluate risk (Raine, 2013). Additional findings indicate that neurological factors, acute stress, and environmental stimuli contribute significantly to non-calculative forms of criminal behavior (Schug et al., 2021). This evidence suggests that some offenders may lack the cognitive capacity required for the cost-benefit reasoning assumed by deterrence theory, thereby limiting its explanatory scope.

#### 3. Sociological Critique

From a sociological perspective, deterrence theory has been criticized for emphasizing individual rationality while underestimating structural factors such as inequality, exclusion, and social disorganization. Ronald V. Clarke highlights that crime is often shaped by situational opportunities and environmental conditions rather than purely rational choice (Clarke, 1997). In addition, deterrence has been criticized for shifting attention away from structural conditions that produce crime, including poverty, inequality, and systemic bias (MacLeod, 2023). Critical scholarship further argues that deterrence may reinforce punitive state logic and structural inequality (Malene H. Jacobsen, 2025). In such contexts, severity-based punishment can become counterproductive, particularly when not accompanied by broader social interventions.

#### 4. *Fiqh Jināyah* Perspective

Within *fiqh jināyah*, the limitations of rationalist deterrence become more evident. Islamic criminal law does not rely solely on fear-based calculations but incorporates moral, social, and spiritual dimensions within the framework of *maqāṣid al-syarī'ah* (Syariful Alam, Nu'man Aunuh, 2024). Crime is understood as a multidimensional phenomenon shaped by ethical, social, and structural conditions. This perspective emphasizes moral internalization, social justice, and preventive ethics, offering a more holistic framework (Olagunju-Ibrahim et al., 2025). It suggests that punishment functions not only as a deterrent but also as part of a broader moral and social order, thereby revealing the epistemological limitations of purely rationalist models.

#### **Limitations on the Effectiveness of Severe Punishment**

Empirical evidence indicates that the relationship between punishment severity and crime reduction is neither linear nor consistent. Research by Daniel Nagin shows that the certainty of punishment generally has a stronger deterrent effect than its severity (Barnum et al., 2021). Other studies suggest that many offenders have limited awareness of legal sanctions or perceive risks inconsistently, reducing the real-time effectiveness of deterrence (Thomas A. Loughran, Ray Paternoster, Alex R Piquero, 2011).

Certain types of crime particularly those driven by emotional, interpersonal, or economic pressures are less responsive to severity-based deterrence. However, deterrence may still retain partial effectiveness in contexts where enforcement is consistent and individuals are capable of rational evaluation, indicating that its limitations are conditional rather than absolute. Empirical findings also show that exposure to evidence about deterrence can influence public attitudes toward punishment, often reducing support for excessively harsh sanctions (Brendan Rose, Malouke Esra Kuiper, Chris Reinders Folmer, 2024).

Structural issues in law enforcement further constrain deterrence effectiveness. Uneven enforcement practices, including over-policing of marginalized groups and under-enforcement of systemic crimes, can undermine legal legitimacy and reduce compliance (Lanni, 2022). In such contexts, offenders may adapt their behavior to avoid detection

rather than refrain from crime, a phenomenon often referred to as restrictive deterrence (Kim Moeller, Heith Copes, 2016).

Moreover, when the probability of apprehension is low, the symbolic severity of punishment loses its deterrent value. Severe punishment may then function more as an expression of state authority than as an effective preventive mechanism. This aligns with classical findings that deterrence is more strongly influenced by certainty and celerity than by severity (Paternoster, 1987). These dynamics demonstrate that deterrence must be understood within broader institutional and social contexts rather than solely in terms of punishment severity.

These findings collectively indicate that severity-based punishment lacks consistent empirical support as an effective deterrent mechanism and highlight the emergence of a Deterrence Morality Gap between punitive logic and the social realities of crime.

### **The Concept of *al-Zajr wa al-Rad'* and Criticism of the Logic of Severe Punishment**

Islamic criminal law establishes crime prevention through the concepts of *al-zajr* (prevention before wrongdoing) and *al-rad'* (prevention after wrongdoing). These are not merely fear-based psychological mechanisms, but normative instruments operating within the framework of *maqāṣid al-syarī'ah* (Muhammad Mawardi Djalaluddin, Bulqia Mas'ud, Dedy Sumardi, 2023). In this perspective, deterrence emerges as an ethical consequence of fair, proportional, and legitimate law enforcement, rather than as the result of escalating punitive threats. Furthermore, the Qur'an reinforces that the main objective of Islamic criminal law is not to spread fear, but to protect life and social order, as Allah Swt. says, "There is security of life for you in the law of retaliation, people of reason, so that you may become mindful of Allah." (QS. al-Baqarah [2]: 179).

This principle is reflected in the Qur'anic formulation of punishment, particularly in QS. al-Baqarah [2]: 179, which emphasizes that *qiṣāṣ* ensures the preservation of life. This verse indicates that the legitimacy of punishment is rooted in the protection of life (*ḥifz al-nafs*), thereby positioning deterrence as a derivative outcome of justice rather than an end in itself (Olagunju-Ibrahim et al., 2025). Accordingly, prevention in Islamic criminal law is inseparable from the protection of fundamental interests, including life, property, intellect, and social order.

*Fiqh jināyah* criticizes the logic of severe punishment through arguments from the Qur'an that reject the reduction of punishment, which has become a discourse of intimidation. "That is why We ordained for the Children of Israel that whoever takes a life unless as a punishment for murder or mischief in the land it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity. Although Our messengers already came to them with clear proofs, many of them still transgressed afterwards through the land." (QS. al-Maidah [5]: 32)

A similar ethical orientation is reinforced by QS. al-Maidah [5]: 32, which underscores the sanctity of human life and implies that punishment must be applied with extreme

caution and a humanitarian orientation. This is further supported by the principle of *dar' al-ḥudūd bi al-shubuhāt*, which mandates the avoidance of severe punishment in cases of doubt (Hallaq, 2009), and by Prophetic traditions encouraging restraint in the application of *ḥudūd* (Muslihan, 2016). These principles collectively reflect an epistemological caution that contrasts with models of deterrence based primarily on fear and coercion.

Within the broader structure of Islamic criminal law, sanctions such as *ḥudūd*, *qisās*, and *ta'zīr* serve not only punitive but also preventive and reformatory functions (Mohamed, 2025). While external deterrence operates through the visibility of punishment, internal deterrence is cultivated through faith, moral awareness, and social responsibility (Sanuri, 2021). The flexibility of *ta'zīr* further enables educational and rehabilitative responses, demonstrating that prevention is achieved through a combination of justice, moral formation, and social balance rather than punitive severity alone (Sumiadi, Zul Akli, 2025) (Asif Safdar, Rashida Zahoor, Khurram Baig, 2021) (Fauzan, 2022).

Contemporary criminological critiques reinforce this perspective by highlighting the limitations of severity-based deterrence and its tendency to produce overcriminalization without proportional preventive benefits (Daniel P. Mears & Stafford, 2024) (Rose et al., 2024). In this context, the concept of *al-zajr wa al-rad'* offers a more integrative framework, linking punishment to justice, social welfare, and moral accountability, rather than treating it solely as an instrument of coercion.

However, the application of *fiqh jināyah* in modern nation-states faces practical challenges, including institutional limitations, plural legal systems, and differing interpretations among jurists. These conditions require contextual adaptation and critical engagement to ensure that its normative principles can be implemented effectively within contemporary legal frameworks.

Overall, *fiqh jināyah* does not reject deterrence, but repositions it within a broader ethical and institutional framework. It challenges the assumption that fear is the primary mechanism of crime control and instead emphasizes that effective prevention must be grounded in justice, legitimacy, and the protection of human dignity.

### **The Integration of Kosovo Criminal Law and Albanian Customary Law as Concrete Evidence of Research in the Perspective of *Fiqh Jinayah***

The integration between the positive criminal law of the Republic of Kosovo and Albanian customary law provides a significant empirical illustration of the limitations of severe punishment as the primary instrument of crime prevention. This case serves as an empirical illustration of the Deterrence Morality Gap in practice. The Criminal Code of the Republic of Kosovo (CCRK) normatively positions long-term imprisonment as a deterrent against serious crimes, based on the assumption of rational calculation by offenders (Flutura Tahiraj, 2024). However, empirical findings indicate that escalating penalties do not consistently correlate with reductions in crime, particularly when structural factors such as inequality, marginalization, and community disorganization remain unaddressed. This

condition reflects a gap between formal punitive threats and their limited capacity to generate meaningful and sustainable compliance.

Conversely, in traditional Albanian communities, customary law such as the *Kanun of Lekë Dukagjini* demonstrates a distinct preventive logic that emphasizes social reconciliation, community legitimacy, and conflict limitation (Jakub Drápal, 2023). Mechanisms such as mediation and the regulation of blood feuds illustrate that crime prevention is closely tied to moral internalization and social cohesion rather than the severity of sanctions alone (Islam Qerimi, Ahmet Maloku, 2022). This suggests that deterrence is more effective when embedded within socially legitimate norms rather than imposed solely through formal punishment.

From the perspective of *fiqh jinayah*, this empirical contrast reinforces the principle that prevention must operate through both structural and moral dimensions. Concepts such as *al-zajr wa al-rad'* frame deterrence as an outcome of just and proportionate law enforcement, while *maqāṣid al-sharī'ah* emphasizes the protection of life, dignity, and social order as the primary objectives of punishment. This alignment highlights that punishment functions effectively only when it maintains a balance between legal certainty and substantive justice.

Furthermore, this case underscores the importance of an integrative approach to criminal policy. Principles such as *sad al-dzarī'ah* and *tahdzīb al-nafs* suggest that prevention should prioritize closing structural opportunities for crime and fostering moral awareness before relying on punitive measures. The incorporation of communal and restorative mechanisms such as dialogue, mediation, and rehabilitation demonstrates the potential to reduce the Deterrence Morality Gap by aligning legal enforcement with social legitimacy (Qerimi, 2023). Therefore, the Kosovo case confirms that effective crime prevention requires positioning punishment as *ultimum remedium*, rather than as the central instrument of criminal policy.

### **Formulation of the Deterrence Morality Gap and Implications for Criminal Policy**

Kohlberg's model of moral development shows that at the post-conventional stage, obedience to law is grounded in principles of justice and universal ethics rather than mere avoidance of punishment (Kristen Bell DeTienne, Carol Frogley Ellertson, Marc-Charles Ingerson, 2021). Contemporary perspectives on moral maturity further emphasize human agency and sensitivity to the suffering of others, aligning with the objectives of punishment in Islam, which are rooted in *maqāṣid al-syarī'ah* and the values of justice and mercy (Sumardi et al., 2022). Within this framework, crime is understood as the product of interaction between individual moral vulnerability, social disorganization, and structural inequality. Accordingly, effective prevention requires a multidimensional approach that combines moral education, equitable social structures, and sanctions that are not only deterrent, but also reformatory and rehabilitative (Mezghiche, 2025).

The synthesis of criminological critiques and *fiqh jinayah* analysis leads to the formulation of the Deterrence Morality Gap, defined as the misalignment between punitive

severity and the moral-psychological conditions required for effective compliance. Modern deterrence theory assumes that compliance emerges from rational cost-benefit calculations influenced by punishment severity. However, empirical evidence indicates that criminal behavior often arises under conditions of impulsivity, structural inequality, weak social control, and limited legal awareness.

This gap explains why severity-based punishment frequently fails to produce consistent deterrent effects. When punishment is detached from justice, enforcement certainty, and moral legitimacy, it risks functioning as a coercive instrument with limited normative resonance. Nevertheless, deterrence may retain partial effectiveness in contexts where enforcement is consistent and individuals are capable of rational evaluation, indicating that its limitations are conditional rather than absolute.

From the perspective of *fiqh jināyah*, deterrence is not the sole objective of punishment but operates alongside reformative and rehabilitative aims (Ramizah Wan Muhammad, 2018). The concepts of *al-zajr wa al-rad'* position prevention within a broader framework of public interest, moral formation, and social justice. Punishment is therefore viewed as an instrument that must be preceded by moral guidance (*tahdzīb al-nafs*) and supported by a just social order (Rizky Fauzi, Watni Marpaung, 2015).

This approach resonates with sociological theories such as social control theory, which emphasize the importance of social bonds and moral commitment in preventing crime. Islamic legal concepts such as *ta'dīb*, *tarbiyah*, *sulh*, and *'afw* further illustrate that prevention is achieved not only through coercion, but also through education, reconciliation, and social reintegration (Rizky Fauzi, Watni Marpaung, 2015). The implications of the Deterrence Morality Gap for criminal policy are significant. First, crime prevention strategies should not rely solely on increasing punishment severity, but must prioritize the certainty and legitimacy of law enforcement. Second, legal frameworks need to account for the moral, psychological, and structural dimensions of criminal behavior.

Ultimately, bridging this gap requires an integrative approach that combines the rational structure of modern law with the ethical and social depth of *fiqh jināyah*. Such an approach enables the development of a criminal justice system that is not only effective in reducing crime, but also just, legitimate, and socially sustainable.

## CONCLUSION

This study suggests that the limited effectiveness of deterrence theory in reducing crime is not solely attributable to weaknesses in policy implementation, but also reflects the epistemological constraints of its underlying assumption of calculative rationality. While deterrence may retain partial effectiveness under conditions of consistent enforcement and rational decision-making, its impact appears uneven in contexts shaped by impulsivity, structural inequality, and varying levels of institutional legitimacy. Through a critical dialogue between modern criminology and *fiqh jināyah*, this study formulates the concept of

the Deterrence Morality Gap, defined as the misalignment between punitive severity and the moral-psychological conditions required for effective compliance, highlighting the need to reposition punishment within a broader framework of justice, legitimacy, and social order.

From a policy perspective, this study implies that criminal justice reform should prioritize the certainty of law enforcement, institutional legitimacy, and preventive social interventions over the mere escalation of punishment severity. This includes strengthening enforcement consistency, enhancing public trust in legal institutions, and integrating rehabilitative and community-based approaches into sentencing. Within *fiqh jināyah*, punishment is most effective when supported by moral formation (*tahdzīb al-nafs*), proportionality, and social justice, with severe punishment functioning as a conditional *ultimum remedium*. Future research should empirically test the Deterrence Morality Gap across different legal systems and socio-cultural contexts to develop more context-sensitive models of criminal policy. [W]

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