



FORMULATION OF ISLAMIC CRIMINAL LAW POLICY AS A JURIDICAL INSTRUMENT FOR MAINTAINING THE BALANCE OF POWER AMONG STATE INSTITUTIONS

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Abstract: This study conceptually explores the possibility of integrating Islamic criminal law, particularly the doctrine of *ta'zīr*, into Indonesia's constitutional framework of checks and balances. Rather than proposing an institutional mechanism, the paper normatively analyzes how Islamic ethical values such as *ʿadl* (justice), *maslahah* (public welfare), and *hisbah* (moral accountability) can enrich the moral foundation of state governance. The analysis is conducted through a qualitative normative approach based on secondary legal materials, including constitutional theory, Islamic jurisprudence, and contemporary scholarly discourse. The paper argues that *ta'zīr*, while traditionally applied to individual moral violations lacking explicit textual sanctions, may serve as a philosophical reference for enhancing ethical responsibility among state officials. However, this requires a clear epistemological distinction between *ta'zīr* as a moral-legal doctrine and checks and balances as a political-institutional system. The integration, therefore, should not be understood as a merger of institutional powers but as a normative dialogue between divine ethics and constitutional governance. The study concludes that Islamic criminal law contributes by offering an ethical corrective dimension to Indonesia's democratic system, emphasizing moral accountability and justice without undermining legal pluralism or constitutional principles.

Keyword: Ta'zīr; Islamic Criminal Law; Checks and Balances; Constitutional Integration; Moral Accountability

A. Introduction

In modern constitutional systems, the principle of the separation of powers serves as a foundational mechanism for regulating relationships among state institutions and



preventing the concentration of authority in a single branch of government. This principle is operationalized through a system of checks and balances that helps prevent the centralization of power and mitigate the risk of abuse that could undermine democracy and the rule of law. (Sahib 2024). Countries such as the United States, France, India, and Germany exemplify the effective implementation of this system, in which reciprocal oversight mechanisms maintain equilibrium among the executive, legislative, and judicial branches (Shapiro, 2019; Ackerman, 2020). These examples provide empirical and conceptual benchmarks for analyzing Indonesia's constitutional framework.

As a democratic state with a presidential system, Indonesia formally adopts this principle by dividing state authority into three main branches: the legislative, executive, and judicial branches (Tiopan, Setiawan, and Rabbani 2023). In practice, however, this separation often functions only as a procedural division of powers rather than as a substantive mechanism for mutual control. Evidence includes frequent inter-institutional conflicts, weak legislative oversight, and challenges in enforcing Constitutional Court rulings (Lawrence 2021; Huda and Mujib 2025). These gaps underscore the urgent need for a more effective system of checks and balances to ensure accountability, institutional harmony, and legal compliance.

Bridging Western constitutional principles with Islamic jurisprudence requires a coherent analytical framework, not merely normative juxtaposition. (Putra 2024).. While Western theories such as separation of powers and checks and balances provide structural mechanisms to prevent power concentration, Islamic criminal law (*fiqh jināyah*) offers ethical and teleological foundations through principles such as *al-'adl* (justice), *al-maslahah* (public interest), and *amanah* (moral responsibility) (Huda and Mujib, 2025). Integrating these perspectives allows criminal law to function not only as a punitive tool but also as a preventive and regulatory instrument that guides state actors toward collective welfare.

In Indonesia, the Constitutional Court plays a strategic role in resolving inter-institutional disputes, providing a practical foundation to assess how judicial oversight contributes to balancing state power. (Irawan et al. 2024). Islamic criminal law can serve as a juridical instrument within this framework by categorizing certain abuses of power as *ta'zīr* offenses and prescribing enforceable consequences. It establishes a clear connection between normative Islamic principles and practical governance: addressing the weaknesses of conventional checks and balances through legally and ethically grounded mechanisms. (Adyan and Anditya 2025).

Despite this potential, practical challenges persist, including limited legislative oversight of the executive, overlapping institutional authority among the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Supreme Court, political interference, and underprosecution of corruption cases. (Steuer, Kneip, and Clayton 2025; Adyan and Anditya 2025). Such challenges justify investigating how *ta'zīr*-based policies could strengthen accountability, prevent institutional dominance, and reinforce the checks-and-balances system.

Nevertheless, practical challenges remain. Weak legislative oversight of the executive, inter-institutional conflicts, and difficulties in enforcing Constitutional Court rulings illustrate the fragility of supervisory mechanisms. (Steuer, Kneip, and Clayton 2025). Political interference, inadequate prosecution of corruption cases, and overlapping

authorities among institutions such as the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Supreme Court further complicate the implementation of adequate checks and balances. (Huda and Mujib 2025).

A critical issue not fully addressed in previous literature is how abuse of power among state institutions can be categorized as a criminal act within the framework of *ta'zīr*. By analyzing Constitutional Court decisions, statutory regulations, and relevant scholarly literature, this study aims to fill a gap: integrating empirical observations of institutional dysfunction with normative principles of Islamic criminal law. Unlike prior studies that treat *fiqh jināyah* or constitutional law in isolation, this research positions Islamic criminal law as both a preventive and corrective tool for maintaining inter-institutional balance.

Accordingly, the study formulates two central research questions: 1) to what extent do the normative foundations of Islamic criminal law contribute to institutional equilibrium, and 2) how can *ta'zīr* principles be operationalized to enhance accountability and prevent abuse of power within Indonesia's constitutional framework. This conceptual and empirical focus ensures a logical transition from identifying problems in checks and balances to exploring a practical, jurisprudential solution, thus bridging *fiqh jināyah* and modern constitutional law through a coherent epistemic framework.

B. Method

This study is library research focused on formulating Islamic criminal law policy as a juridical instrument to maintain the balance of power among state institutions. The research data were obtained from two main sources: primary data, consisting of statutory regulations and Constitutional Court decisions related to inter-institutional authority disputes, and secondary data, including legal books, academic journals, and official publications relevant to Islamic criminal law and the checks-and-balances mechanism. Data collection involved reading, identifying, and selecting relevant documents, which were then coded into analytical categories: written legal norms, legal doctrines, and principles of Islamic criminal law applicable to the checks-and-balances mechanism. Subsequently, the data was reduced by filtering out irrelevant or redundant information, then edited and organized for analysis. Data analysis was conducted through empirical juridical analysis, comparing legal norms, Constitutional Court decisions, and legal literature to assess the implementation of Islamic criminal law in maintaining the balance of power; normative analysis, to evaluate the alignment of Islamic criminal law principles (*al-'adl*, *al-maslahah*, *amanah*) with the checks and balances mechanism; and, if necessary, comparative analysis, to examine Indonesia's legislative oversight practices relative to bicameral systems in other countries.

C. Results and Discussion

The Concept of Balance of Power in Islamic Law and Modern Constitutional Systems

The principle of balance of power, commonly referred to as checks and balances, is central to modern democratic constitutional systems. Rooted in Montesquieu's theory of the separation of powers, it seeks to prevent the concentration of authority within a single institution (Abd Rahman et al., 2023). In practice, checks and balances operate through structural mechanisms of oversight among the legislative, executive, and judicial branches. In Indonesia, the constitutional framework formally allocates power among

these branches; however, inter-institutional accountability often remains weak, highlighting the need for effective juridical instruments (Senoaji & Hapsari, 2025; Lawrence, 2021). Factors such as political patronage, institutional overlaps, and inconsistent enforcement of regulations often exacerbate this weakness, reducing the practical effectiveness of the constitutional separation of powers.

Classical Islamic legal thought, particularly *fiqh siyasah*, emphasizes moral and ethical constraints on rulers rather than structural divisions of power. Principles such as *'adl* (justice) and *maslahah* (public welfare) provide normative guidelines for governance, ensuring that rulers act within ethical limits to protect public interests (Syafuri, 2025). The concept of *mizan* in the Qur'an represents a cosmic metaphor for universal balance, emphasizing equilibrium in moral and social dimensions, and cannot be directly interpreted as a political or institutional framework (Al-Qur'an, 2019). Similarly, *hisbah* functions as a societal mechanism for moral supervision, promoting ethical conduct among individuals and public officials without constituting a formal instrument of institutional checks and balances (Ezzerouali, 2025; Ramadhan et al., 2023). These Islamic principles highlight that ethical governance is a prerequisite for societal stability, suggesting that legal instruments alone cannot fully achieve accountability without grounding in moral norms.

To reconcile Islamic normative principles with juridical mechanisms, this study examines the operationalization of *ta'zīr*-based Islamic criminal law. Employing a normative-juridical methodology, it traces the transformation from Islamic normative texts → derived legal principles → codified criminal law → implementation within Indonesia's constitutional system. By analyzing statutory regulations, Constitutional Court decisions, and doctrinal sources from classical Islamic scholars, including Maududi, Rashid Rida, and Muhammad Asad, the study elucidates how discretionary punishments can mitigate the abuse of authority by public officials while respecting constitutional pluralism. *Ta'zīr* penalties, characterized by their discretionary nature, provide flexibility in addressing contemporary governance challenges that were not explicitly foreseen in classical texts, enabling integration with Indonesia's modern legal and institutional framework.

The findings indicate that Islamic criminal law can serve as an effective juridical instrument, not because moral values directly translate into institutional structures, but because they are codified into enforceable legal norms that limit abuse, deter misconduct, and enhance inter-institutional accountability. This approach provides a dual framework: it reinforces the ethical foundation of governance while establishing precise legal mechanisms for enforcement. The codification of *ta'zīr* rules into national legislation ensures that moral imperatives such as *'adl* and *maslahah* operate not merely as aspirational norms but as actionable legal principles capable of addressing misconduct within public office. Moreover, this integration demonstrates that Islamic legal ethics can complement conventional constitutional checks and balances, offering culturally and religiously grounded tools to enhance governance effectiveness in a pluralistic society.

Furthermore, the study underscores that the operational success of *ta'zīr*-based mechanisms depends on procedural clarity, judicial competence, and institutional independence. Practical application requires transparent criteria for discretionary punishment, oversight to prevent arbitrariness, and alignment with human rights standards to maintain legitimacy. By establishing these safeguards, Indonesia can

leverage Islamic criminal law not as a replacement for structural oversight, but as a supportive instrument that strengthens ethical accountability, deters corruption, and promotes public trust in state institutions. This integration thus exemplifies a theoretically grounded, historically informed, and contextually relevant model for harmonizing normative Islamic principles with modern constitutional governance.

The Formulation of Islamic Criminal Law Policy as an Instrument to Limit the Power of State Institutions

Uncontrolled power, when not restrained by law and ethics, poses a significant threat to state integrity, often resulting in corruption, abuse of authority, and institutional dysfunction within constitutional systems. Criminal law plays a strategic role in regulating state conduct, particularly in democratic frameworks such as Indonesia, where checks and balances mechanisms may be weakened due to limited institutional oversight (Hariri & Arifin, 2025).

Islamic criminal law, particularly the concept of *ta'zīr*, offers a framework grounded in moral and ethical principles, which can inform the development of legal norms that promote accountability. *Ta'zīr* represents discretionary punishment, traditionally determined by a legitimate authority (*ulil amri*) or a judge (*qadi*) in accordance with principles such as *ʿadl* (justice), *maslahah* (public welfare), and *hisbah* (moral oversight). These principles provide normative guidance rather than constituting a formal constitutional mechanism, emphasizing an ethical foundation that complements existing institutional checks (Ismail & Nabila, 2024).

Operationalizing *ta'zīr* within Indonesia's legal system requires careful institutionalization. The authority to interpret and implement *ta'zīr* should not rely solely on religious edicts (*fatwas*), but must be mediated through statutory legislation, judicial decisions, and constitutional jurisprudence (Fathoni et al., 2025). Institutions such as the Constitutional Court and the Supreme Court could contextualize *ta'zīr*-based principles within the democratic legal order, while religious scholars provide ethical interpretations to support normative legitimacy.

Within Indonesia's current legal framework, statutory provisions addressing abuse of authority often remain technocratic and normative, lacking ethical and moral depth (Muhammad & Shafy, 2020). Integrating Islamic criminal law can complement this framework by embedding ethical and spiritual considerations, particularly regarding conduct that undermines public trust. For example, the principle of *hisbah* may be operationalized through institutions such as the Corruption Eradication Commission (KPK), the Ombudsman, and the Constitutional Court, reflecting the moral oversight central to Islamic legal thought (Bukhari et al., 2022).

Formulating *ta'zīr*-informed legal measures should begin by identifying structural gaps in state accountability, including legislative collusion, bureaucratic misuse of discretion, and executive mismanagement of public resources. When internal ethical mechanisms fail, discretionary sanctions, including fines, administrative penalties, and social or moral sanctions, can serve corrective, restorative, and deterrent functions (Bukhari et al., 2022). Unlike rigid punitive models, *ta'zīr* allows proportionality, aligning the severity of sanctions with intent, social impact, and public interest (Khosyi'ah, 2021).

Constitutional integration of ta'zīr requires statutory reforms, such as revisions to laws governing state officials' ethics or anti-corruption legislation, supported by jurisprudence from the Constitutional Court and Supreme Court to ensure substantive justice and institutional accountability (Shaleh et al., 2025). This integration allows law enforcement to assess both legal and ethical dimensions of misconduct, addressing limitations of strictly formal legal categories (Ismail & Nabila, 2024).

Islamic legal principles 'adl, maslahah, and hisbah serve as normative foundations for developing these measures. Sanctions under ta'zīr may include imprisonment, fines, social penalties, or administrative measures, depending on the gravity of the offense and its impact on the public (Fathoni et al., 2025). Applying ta'zīr to public officials can fill normative gaps in positive law, particularly concerning unethical conduct that does not constitute conventional criminal offenses but undermines public trust and institutional integrity. For instance, breaches of parliamentary or judicial codes of ethics, while not causing direct material loss, may warrant ta'zīr-based sanctions as corrective and symbolic acts of justice (Nasrianti et al., 2025).

A significant challenge lies in reconciling Islamic ethical norms with Indonesia's secular and pluralist constitutional framework (Karimullah, 2023). However, the country's recognition of religious and customary law provides an opportunity for normative synthesis (Alfitri, 2021). Institutionalizing ta'zīr should therefore involve a dialogical process with religious scholars, legal academics, and policymakers to ensure its constitutional grounding, social acceptance, and normative legitimacy (Shaleh et al., 2025).

At the institutional level, integrating ta'zīr can strengthen existing oversight bodies, including the KPK, Judicial Commission, Bawaslu, and Ombudsman. By framing ethical violations as public offenses, enforcement is less dependent on external complaints, addressing gaps caused by weak internal reporting mechanisms or political interference (Nasrullah, Novendra, & Reyhan, 2024).

Finally, ta'zir-oriented measures can help enhance Indonesia's legal culture by internalizing values such as honesty, responsibility, and moral integrity among public officials (Taufiqurrohman et al., 2024). Proportional social sanctions, including public reprimands or reputational penalties, may act as effective deterrents where shame-based accountability has eroded (Ismail & Nabila, 2024). In this way, ta'zīr enriches Indonesia's legal system ethically and normatively, offering a complementary mechanism to strengthen public trust and ethical governance (Djalaluddin et al., 2023).

Strategy for Integrating Islamic Criminal Law into Indonesia's Checks and Balances System

The integration of Islamic criminal law into Indonesia's national legal system, particularly within the framework of checks and balances, is a multidimensional process requiring juridical clarity, institutional precision, and cultural acceptance (Prayoga, Wasman, & Setyawan, 2025). Ta'zīr, as a discretionary and context-sensitive legal concept, offers normative guidance derived from Islamic ethics; however, its practical implementation must be anchored in precise legal mechanisms and constitutional legitimacy to move beyond symbolic or purely moral discourse (Asmoro & Saptomo, 2024).

From a juridical-operational perspective, ta'zīr can be institutionalized through statutory legislation, judicial interpretation, and constitutional jurisprudence rather than through independent religious decrees (Senoaji & Hapsari, 2025). The authority to enforce ta'zīr in the state context should rest with established judicial and oversight institutions, such as the Constitutional Court, the Supreme Court, and the Corruption Eradication Commission (KPK), which already possess constitutional mandates to impose sanctions in accordance with legal and ethical standards (Syafieh & Anzaikhan, 2022). This model mitigates potential conflicts with the principle of *nullum crimen sine lege* (no crime without law) by ensuring that every sanction rests upon a clear legal foundation while reflecting normative moral accountability (Fathoni et al., 2025).

Legal harmonization constitutes a preliminary strategic step. Islamic legal principles 'adl (justice), maṣlaḥah (public welfare), and ḥisbah (moral accountability) should inform the philosophical and sociological bases of legislative drafting, particularly in statutes concerning state officials' ethics, corruption prevention, and judicial conduct (Gul, Ahmad, & Rahman, 2025). The second strategy involves strengthening fiqh siyāsah as a theoretical framework linking Islamic jurisprudence to democratic governance, providing the epistemic foundation for operationalizing ta'zīr to regulate the misuse of public authority (Loso Judijanto et al., 2024; Ja'far, 2024).

At the institutional level, ta'zīr-based principles can be translated into ethical and disciplinary codes endowed with legal enforceability, rather than remaining declarative moral statements (Silvia & Lutfi, 2022). Oversight bodies such as the Judicial Commission, the State Civil Apparatus Commission (KASN), and institutional Ethics Councils should be empowered to recommend moral or administrative sanctions consistent with ta'zīr principles (Hikmah, Bachtiar, & Kurniawan, 2022). Religious authorities and fatwa institutions, such as the Indonesian Ulema Council (MUI), may provide ethical guidance, but enforcement must remain within statutory and judicial domains to ensure constitutional coherence (Abdulnabi, 2024).

To prevent arbitrariness, technical guidelines should be established for judges and law enforcement officials that outline procedures for assessing niyyah (intent), public harm, and ethical deviations (Purkon, 2021). These guidelines should integrate constitutional principles, human rights standards, and proportionality, ensuring that ta'zīr sanctions are applied in accordance with due process (Hikmah, Bachtiar, & Kurniawan, 2022). Sanctions such as public reprimands, ethical rehabilitation, or temporary suspension from office could be formalized as legally enforceable moral penalties that complement existing disciplinary mechanisms (Arifin, 2020).

Education and legal culture are also critical. Law faculties, both secular and Sharia-based, should cultivate critical literacy regarding Islamic legal philosophy and its compatibility with national law (Sari, Haiti, & Nurunnisa, 2025; Nasihuddin & Nursetiawan, 2023). This would promote contextual rather than dogmatic interpretation, preparing future jurists to implement Islamic criminal norms within a pluralistic constitutional order (Abd Rahman R. et al., 2023).

While juridical and institutional reforms are essential, social legitimacy determines their sustainability. Public communication strategies should frame Islamic criminal law not as a rigid punitive system but as an ethical, inclusive, and human-centered framework (Sari et al., 2025; Gul, Ahmad, & Rahman, 2025). The objective is not to Islamize national

law but to enrich Indonesia's legal system with universal Islamic values such as justice, honesty, and accountability (Kurniati & Rahmiati, 2021).

Integrating Islamic criminal law into Indonesia's checks-and-balances architecture requires constitutional grounding, procedural safeguards, and participatory legitimacy (Fuad, Darma, & Muhibbuthabry, 2022). When operationalized as a proportional and preventive legal mechanism, ta'zīr can support judicial independence, mitigate abuse of power, and promote ethical governance (Tejedo-Romero et al., 2022). If implemented inclusively and constitutionally, ta'zīr can transition from a symbolic moral concept into a functional legal instrument that strengthens democratic integrity and reinforces public trust in Indonesia's institutions (Taufiqurrohman et al., 2024).

D. Conclusion

Integrating Islamic criminal law into Indonesia's system of checks and balances, particularly through the ta'zīr approach, constitutes a constructive initiative to strengthen the ethical, legal, and institutional mechanisms that regulate state power. Rather than replacing Indonesia's pluralistic legal order, this integration seeks to enrich the national legal framework by embedding Islamic values such as *'adl* (justice), *maṣlaḥah* (public welfare), and *ḥisbah* (moral accountability) within constitutional governance. Its success depends on a comprehensive and participatory strategy encompassing legal harmonization through statutory and jurisprudential reform, the empowerment of oversight institutions such as the Constitutional Court, the Supreme Court, and the Corruption Eradication Commission (KPK), and the operationalization of *ta'zīr* as a proportional and constitutionally grounded sanction consistent with the principle of *nullum crimen sine lege*. Strengthening *fiqh siyāsah* as an epistemological bridge between Islamic jurisprudence and democratic governance, together with inclusive and interdisciplinary legal education, will ensure doctrinal coherence and institutional sustainability. Addressing juridical inconsistencies, political resistance, and social misperceptions through gradual, transparent implementation is essential to prevent symbolic formalism. Ultimately, this integration positions *ta'zīr* not as a mere moral abstraction but as a functional legal instrument that reinforces judicial integrity, curbs the abuse of power, and restores public trust, thereby serving as both an ethical and constitutional complement to Indonesia's democratic legal development.

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