



## Criminal Sanctions for Perpetrators of Defamation: An Islamic Criminal Law Perspective

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### ABSTRACT

*This study explores criminal sanctions for defamation offenders from the Islamic criminal law perspective, focusing on applying *maqāṣid al-sharī'ah* as a normative foundation. The objective is to compare the restorative justice-oriented approach of Islamic criminal law with Indonesia's positive law, particularly the Electronic Information and Transactions Law (UU ITE), which regulates defamation in the digital era. Using a normative juridical method, the research analyzes primary and secondary legal sources to extract relevant principles. The findings reveal that Islamic criminal law employs *ta'zir* sanctions, which are flexible and oriented toward restoring social harmony, contrasting with the retributive approach of Indonesia's positive law that often leads to legal uncertainty and risks to freedom of expression. Moreover, Islamic criminal law offers mediation and reconciliation-based solutions to mitigate the social impact of defamation. This study suggests integrating the principles of *maqāṣid al-sharī'ah* into Indonesia's positive legal framework to create more just and balanced regulations. These findings are relevant for policymakers in addressing legal challenges in the digital era and encourage the development of more inclusive approaches to defamation cases.*

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## 1. Introduction

Defamation is a legal violation that has extensive impacts on individuals and society. It generally targets a person's honor and reputation and is committed either verbally, in writing, or through digital media such as the Internet and social platforms.<sup>1</sup> In a social context, defamation harms individuals personally and disrupts societal harmony, particularly concerning principles of justice and freedom of expression.<sup>2</sup> The issue has become increasingly complex with the advancement of information technology, expanding the scope of the problem and challenging legal systems to respond appropriately.<sup>3</sup>

This study aims to address the primary question of criminal sanctions for defamation offenders from the perspective of Islamic criminal law. The research focuses on how Islamic criminal law, guided by the principles of *maqāṣid al-sharī'ah*, can offer holistic solutions to this issue, particularly regarding freedom of expression in the digital era. Furthermore, it seeks to compare Islamic criminal law's approach with Indonesia's positive legal framework, specifically the Electronic Information and Transactions Law (UU ITE).

Previous studies have extensively examined defamation from the perspective of positive law, particularly in the context of the amended UU ITE. For instance, research by Alicia Lumenta (2020)<sup>4</sup>, Fidelis P. Simamora et al. (2020)<sup>5</sup>, and Erwin Asmadi<sup>6</sup> highlights the dilemma between protecting individual reputations and ensuring freedom of expression, as seen in high-profile Indonesian cases such as Prita Mulyasari and Baiq Nuril.<sup>7</sup> On the other hand, several studies have also explored the Islamic legal perspective,

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<sup>1</sup> Fidelis P Simamora, Lewister D Simarmata, dan Muhammad Ansori Lubis, "Kajian Hukum Pidana Terhadap Perbuatan Pencemaran Nama Baik Melalui Media Sosial," *Jurnal Retentum* 2, no. 1 (2020): 34–43, <https://doi.org/10.46930/retentum.v2i1.432>.

<sup>2</sup> Aditya Yuli Sulistyawan, "Berhukum Secara Objektif Pada Kasus Baiq Nuril: Suatu Telaah Filsafat Hukum Melalui Kajian Paradigmatik," *Hukum dan Masyarakat Madani* 8, no. 2 (2018): 187, <https://doi.org/10.26623/humani.v8i2.1382>. This study demonstrates that the application of unjust laws can undermine public trust in the legal system

<sup>3</sup> Fifink Praiseda Alviolita dan Barda Nawawi Arief, "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 15, no. 1 (2019): 130–48, <https://doi.org/10.14710/lr.v15i1.23359>.

<sup>4</sup> Alicia Lumenta, "Tinjauan Yuridis Terhadap Tindak Pidana Pencemaran Nama Baik Menurut KUHP dan Undang-Undang Nomor 19 Tahun 2016 Tentang ITE," *Lex Crimen* 9, no. 1 (2020): 24–31.

<sup>5</sup> Simamora, Simarmata, dan Lubis, "Kajian Hukum Pidana Terhadap Perbuatan Pencemaran Nama Baik Melalui Media Sosial."

<sup>6</sup> Erwin Asmadi, "Rumusan Delik Dan Pemidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial," *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2020): 16–33, <https://kumparan.com/kumparannews/polri-kasus-uu0ite-terbanyak-terkait-pencemaran-nama-baik-ada-1-794-laporan-1vKQXF6cNx>.

<sup>7</sup> Rakhmat Nur Hakim, "UU ITE yang Memakan Korban, dari Prita Mulyasari hingga Baiq Nuril," *Kompas.com*, 2021, <https://nasional.kompas.com/read/2021/02/16/17092471/uu-ite-yang-memakan-korban-dari-prita-mulyasari-hingga-baiq-nuril?page=all>.

including works by Retanisa Rizqi (2024)<sup>8</sup>, Anjani (2023)<sup>9</sup>, and Utami (2023)<sup>10</sup>. However, these studies are often limited to normative analyses and do not comprehensively integrate the *maqāṣid al-sharī'ah* approach.

Although defamation has been extensively discussed in legal literature, a significant gap exists concerning integrating Islamic criminal law principles with Indonesia's positive legal framework. This research offers a novel contribution by integrating the concept of *maqāṣid al-sharī'ah* into criminal law analysis, providing a deeper understanding of how to balance the protection of individual honor with freedom of expression in the digital era. *Maqāṣid al-sharī'ah*, which means "the objectives of the law," refers to the core principles that are the main goals of Islamic law (*sharī'ah*) to achieve the public welfare (*maslahah*) of humanity.<sup>11</sup> Therefore, *maqāṣid al-sharī'ah* serves as an important normative foundation in understanding and applying Islamic law, which emphasizes not only literal texts but also the essence and purpose of the law itself.

The significance of this study lies in its effort to bridge two legal systems often perceived as distinct: Islamic criminal law and Indonesia's positive law. The study contributes theoretically by enriching the academic discourse in Islamic criminal law and information law and offering practical implications for policymakers. The findings of this research can serve as a reference in formulating regulations that are more responsive to technological advancements and social dynamics.

Theoretically, this study expands Islamic criminal law scholarship by incorporating *maqāṣid al-sharī'ah* as a conceptual framework for addressing defamation. This provides a new, holistic, and modern perspective. Practically, the study guides policymakers in formulating regulations that balance freedom of expression, individual reputation protection, and respect for social norms.

Thus, this research is relevant for addressing challenges in the digital era and makes a significant contribution to legal scholarship. Through an integrative and innovative approach, this study aims to create legal solutions that are just, humane, and aligned with justice values in modern society. Additionally, the findings of this study are expected to

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<sup>8</sup> Retanisa Rizqi dan Sela Saras Wati, "Pencemaran Nama Baik dalam Tinjauan Hukum Islam," *Siyasah Jurnal Hukum Tatanegara* 4, no. 1 (2024): 80–90, <https://doi.org/10.32332/siyasah.v4i1.8932>.

<sup>9</sup> Dian Aprilia Anjani, "Studi Komparatif Tindak Pidana Pencemaran Nama Baik Di Media Sosial Dalam Hukum Islam Dan Uu No 19 Tahun 2016 Tentang Inform" (Universitas Islam Negeri Raden Mas Said, 2023).

<sup>10</sup> Wahdaniyah Utami, "Sanksi Pidana Terhadap Pencemaran Nama Baik Melalui Media Sosial Dalam Perspektif Uu Ite Dan Hukum Pidana Islam" (Institut Agama Islam Negeri Palopo, 2023).

<sup>11</sup> Ahmad Bin Muhammad Husni et al., "Relationship of Maqasid Al-Shariah with Qisas and Diyah: Analytical View," *The Social Sciences* 7, no. 5 (1 Mei 2012): 725–30, <https://doi.org/10.3923/sscience.2012.725.730>.

become an important reference for academics, legal practitioners, and policymakers in addressing defamation issues more effectively and inclusively.

## 2. Legal Material and Methods

This study employs a qualitative approach with a comparative method to analyze the differences between Islamic criminal law and Indonesia's positive law concerning defamation in the digital era. A juridical-normative approach is utilized to examine applicable legal regulations, including Law Number 11 of 2008 as amended by Law Number 19 of 2016 on Electronic Information and Transactions (ITE), as well as the principles of *maqāṣid al-sharī'ah* in Islamic criminal law. Data is collected through literature review by analyzing legal literature, legal documents, and relevant case studies. The analysis is conducted descriptively, comparatively, and normatively to compare the application of sanctions for defamation in both legal systems, focusing on balancing individual reputation protection and freedom of expression.

## 3. Results and Discussion

### 3.1. A Comparative Analysis of Islamic Criminal Law and Indonesia's Positive Law on Defamation Sanctions

Defamation is an act that attacks an individual's honor and reputation, which can be carried out verbally, in writing, or through digital media.<sup>12</sup> In legal contexts, this act is considered a violation that disrupts social order and infringes upon an individual's right to dignity. In the digital era, the challenge of addressing defamation becomes more complex, considering the rapid dissemination of information through the internet and social media.<sup>13</sup> Therefore, a comprehensive study of how Islamic criminal law and Indonesian positive law regulate sanctions against defamation offenders is needed.

The provisions regarding defamation in Indonesia's positive legal system are explicitly regulated under Article 27 paragraph (3) of Law No. 11 of 2008 on Electronic Information and Transactions (Electronic Information and Transactions Law - UU ITE). However, the implementation of this article faces several challenges, prompting revisions

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<sup>12</sup> Fairuz Rhamdhatul Muthia dan Ridwan Arifin, "Kajian Hukum Pidana Pada Kasus Kejahatan Mayantara(Cybercrime) Dalam Perkara Pencemaran Nama Baik Di Indonesia," *Hukum* 5, no. April (2019): 21–39, file:///C:/Users/User/OneDrive/Dokumen/Referensi makalah cyber crime dan cryber law/Fairuz Rhamdhatul Muthia.pdf.

<sup>13</sup> Robert Brian Smith, Mark Perry, dan Nucharee Nuchkoom Smith, "'Fake News' in Asean: Legislative Responses," *Journal of ASEAN Studies* 9, no. 2 (2021): 117–37, <https://doi.org/10.21512/JAS.V9I2.7506>.

through Law No. 19 of 2016.<sup>14</sup> One of the fundamental changes in this revision is the reformulation of Article 27 paragraph (3) to better align with the principles of substantive criminal law in Indonesia. The explanation of this article explicitly reaffirms that defamation provisions continue to refer to the Indonesian Penal Code (KUHP), thereby creating continuity with the broader national legal framework. Within the context of the Penal Code, various forms of defamation are detailed, including verbal insults (Article 310, paragraph 1), written insults (Article 310, paragraph 2), slander (Article 311), and false accusations (Article 317).<sup>15</sup>

Historically, the reformulation of Article 27 paragraph (3) was based on the Constitutional Court Decisions No. 50/PUU-VII/2008 and No. 2/PUU-VII/2009. These rulings emphasize that criminal acts of insult and defamation, particularly within the context of Electronic Information and Transactions, are categorized as complaint-based offenses.<sup>16</sup> This regulation has significant implications, as investigations and law enforcement can only proceed based on an official complaint from the victim, which is subject to a six-month limitation period from the occurrence of the incident. If this time limit expires, the legal process cannot continue. The establishment of this complaint-based offense aims to maintain consistency with principles of legal certainty and societal justice. Moreover, this mechanism provides autonomy to the victim in determining whether their case will be pursued legally, in line with the restorative justice approach that emphasizes the restoration of the victim's harm over retributive punishment.<sup>17</sup>

Article 27, paragraph (3) of the Electronic Information and Transactions Law explicitly prohibits any individual from distributing, transmitting, or making accessible electronic information and/or documents containing insults and/or defamation.<sup>18</sup> This prohibition covers various forms of information, such as written statements, images, or memes, that have the potential to damage an individual's reputation through electronic media.

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<sup>14</sup> Dhea Hafifa Nanda dan Faishal Amirudin Hariyanta, "Problematika Operasionalisasi Delik Pasal 27 Ayat (3) Uu Ite Dan Formulasi Hukum Perlindungan Freedom of Speech Dalam Ham," *Jurnal Hukum dan Pembangunan Ekonomi* 9, no. 2 (2022): 214, <https://doi.org/10.20961/hpe.v9i2.52779>.

<sup>15</sup> Almira Lutfi Mega Ecti, Eko Suponyono, dan Umi Rozah, "Kebijakan Reformulasi Pengaturan Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial," *Diponegoro Law Journal* 10, no. 1 (2021): 1–20.

<sup>16</sup> Anton Hendrik Samudra, "Pencemaran Nama Baik Dan Penghinaan Melalui Media Teknologi Informasi Komunikasi Di Indonesia Pasca Amandemen Uu Ite," *Jurnal Hukum & Pembangunan* 50, no. 1 (13 Juli 2020): 104, <https://doi.org/10.21143/jhp.vol50.no1.2484>.

<sup>17</sup> MASna Nuros Safitri dan Eko Wahyudi, "Pendekatan Restorative Justice Dalam Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial Sebagai Implementasi Asas Ultimum Remedium," *Esensi Hukum* 4, no. 1 (2022): 12–23, <https://journal.upnvj.ac.id/index.php/esensihukum/article/view/106>.

<sup>18</sup> "Undang-Undang No. 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang No. 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik," Republik Indonesia § (2016).

Sanctions for violations of this provision are further regulated in Article 45 paragraph (3) of the Electronic Information and Transactions Law, which, after the 2016 revision, establishes a maximum criminal penalty of four years in prison and/or a fine of IDR 750,000,000. This provision replaces Article 45 paragraph (1) of the 2008 UU ITE, which previously stipulated a maximum penalty of six years in prison and/or a fine of IDR 1,000,000,000.

The reduction in the maximum criminal penalty has significant implications for the legal process. The lower maximum penalty means that suspects or defendants in defamation cases do not meet the criteria for detention by investigators, public prosecutors, or judges according to Article 21 paragraph (4) of the Criminal Procedure Code (KUHAP).<sup>19</sup> This is because the detention requirement only applies to criminal offenses carrying a sentence of five years or more.

Despite the reduction in penalties under the Electronic Information and Transactions Law revision, the regulation still faces criticism.<sup>20</sup> Some argue that the provisions excessively criminalize freedom of expression in the digital space. Thus, the ongoing debate about balancing the protection of individual reputation and freedom of expression continues to be a key issue in evaluating the law's policy.

Critics contend that although the primary goal of the UU ITE is to protect individuals from defamation, its implementation risks disproportionately restricting freedom of speech. This risk could lead to legal uncertainty and potential abuse of authority.<sup>21</sup> This concern is reflected in the cases of Haris Azhar and Fatia Maulidiyanti, two activists charged with defamation after criticizing a government official, Luhut Binsar Pandjaitan, the Coordinating Minister for Maritime Affairs and Investment.<sup>22</sup> Such cases highlight the ongoing tension between protecting individual reputations and enforcing freedom of expression rights within Indonesia's legal system.

Islamic criminal law regulates defamation in the context of *maqāṣid al-sharī'ah*, which places the protection of an individual's dignity (*ḥifz al-'ird*) as one of the primary objectives of Islamic law. This protection also falls under the broader aspect of

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<sup>19</sup> Riki Perdana, "Aspek Hukum Pencemaran Nama Baik Melalui Facebook," *Mahkamah Agung Direktorat Jenderal Badan Peradilan Umum 2* (2018): 9.

<sup>20</sup> M Nanda Setiawan, "Mengkritisi Undang-Undang ITE Pasal 27 Ayat (3) dilihat dari Sosio-Politik Hukum Pidana Indonesia," *Datin Law Jurnal 2*, no. 1 (2021): 1–21, <http://dx.doi.org/10.36355/dlj.v1i1OpenAccessat:https://ojs.umb-bungo.ac.id/index.php/DATIN/index>.

<sup>21</sup> Amri; Dunan dan Bambang; Mudjiyanto, "Pasal Karet Undang-Undang Informasi dan Transaksi Elektronik Bermasalah," *Jurnal Kominfo 3* (2022): 26–37, <https://jurnal.kominfo.go.id/index.php/mkm/article/view/5021>.

<sup>22</sup> Ni'am Syakirun dan Ihsanuddin, "Kasus Pencemaran Nama Baik Luhut , MA Tolak Kasasi Jaksa , Fatia-Haris Tetap Bebas," *Kompas.com*, 2024.

safeguarding lineage (*ḥifz an-nasl*), one of the five fundamental values preserved by *maqāsid al-sharī'ah*. These five fundamental values—religion (*ḥifz al-dīn*), life (*ḥifz al-nafs*), intellect (*ḥifz al-'aql*), lineage (*ḥifz an-nasl*), and wealth (*ḥifz al-māl*)—collectively aim to promote the well-being of individuals and society.<sup>23</sup> Therefore, Islamic criminal law's approach to defamation not only focuses on imposing sanctions on offenders but also on restoring social relationships and rehabilitating societal morals, which forms the core of restorative justice in Islamic law.

The explicit prohibition of defamation can be found in the Qur'an, which emphasizes the importance of safeguarding individual dignity and forbids behaviors such as *ghibah* (slander), *fitnah* (false accusation), and mockery. For instance, in Surah Al-Hujurat verses 11-12, Allah SWT asserts that actions that harm an individual's honor should be avoided. Additionally, in Surah An-Nur verse 4, the Qur'an categorically forbids defamation through accusations unsupported by valid evidence.

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ ﴿٤﴾

*The Meaning* : " And those who accuse chaste women (of adultery) but fail to produce four witnesses, lash them with eighty lashes and never accept their testimony ever again. Indeed, they are the defiantly disobedient." ( QS.An-Nur (24:4).

This verse establishes that individuals who accuse women of adultery without presenting four valid witnesses should be punished with eighty lashes and their testimony should never be accepted. This underscores that unsubstantiated accusations are reprehensible, damaging not only an individual's reputation but also social balance.

Scholars from various schools of thought emphasize different defamation perspectives, particularly the sanctions imposed. For example, the Hanafi school classifies defamation as *ghibah* or *fitnah*, which involves spreading accusations without valid evidence. In this school, the offender may face *ta'zir* punishment, which includes sanctions tailored to the damage caused, such as flogging or imprisonment.<sup>24</sup>

In contrast, the Maliki school views defamation as a more serious offense, where *ta'zir* punishment may be combined with *qishas* in cases of assault or other severe violations. This school emphasizes that the primary goal of punishment is to preserve social stability and uphold peace in society. Offenders who intentionally harm an

<sup>23</sup> Lukman Arake, "Agama dan Negara Perspektif Fiqh Siyasaḥ," *Al-Adalah: Jurnal Hukum dan Politik Islam* 3, no. 2 (2018): 79–116, <https://doi.org/10.35673/ajmpi.v3i2.200>.

<sup>24</sup> P A Zalsabila dan A W Haddade, "Pencemaran Nama Baik dalam Tinjauan Mazhab Fikih," *SH A U T U N A: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 03, no. 1 (2022): 53, <https://journal3.uin-alauddin.ac.id/index.php/shautuna/article/view/30062>.

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individual's reputation through defamation must be punished commensurate with the harm caused.<sup>25</sup>

The Shafi'i school classifies defamation as *qadhf*, or the accusation of adultery without valid evidence. According to this school, the offender should be flogged eighty times and prohibited from giving testimony in the future, in line with the provision in Surah An-Nur (24:4). This school stresses that defamation in the form of fitnah or spreading false accusations must be punished with corresponding sanctions to deter the offender.<sup>26</sup>

The Hanbali school defines defamation as *iftira* (false accusation) involving the fabrication of allegations against someone. In this school, the punishment is ta'zir, which may include flogging or imprisonment.<sup>27</sup> This punishment aims to deter the offender and prevent future occurrences of similar acts. This school emphasizes that defamation is a serious violation that must be punished according to the level of harm caused.

The differences in views among the schools of thought highlight that defamation is considered a reprehensible act that damages an individual's honor and social order in Islamic law. Although there are variations in the form of sanctions, the basic principle in Islamic law emphasizes the importance of protecting the dignity and reputation of every individual in society. Therefore, defamation should be treated as a serious violation that warrants appropriate punishment for the damage caused.

The fundamental difference between the two legal systems lies in their philosophical approach. Indonesian positive law emphasizes retribution (retributive justice) and deterrence, while Islamic criminal law prioritizes restorative justice, which aims to repair the relationship between the victim and the offender. The approach in Islamic criminal law allows for conflict resolution through mediation and reconciliation, which is considered more effective in maintaining social harmony.

While Islamic criminal law has advantages in its holistic approach, Indonesian positive law offers clarity in legal procedures and the application of measurable sanctions. Regulations such as the UU ITE provide specific guidelines for handling defamation cases in the digital era. However, the presence of articles in the UU ITE is often seen as ambiguous, leading to controversies in its implementation. Cases such as Prita Mulyasari and Baiq Nuril serve as real examples of how positive law faces challenges in balancing the protection of individual reputation and freedom of expression.

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<sup>25</sup> Zalsabila dan Haddade, 54.

<sup>26</sup> Zalsabila dan Haddade, 54.

<sup>27</sup> Zalsabila dan Haddade, 56.

On the other hand, Islamic criminal law offers flexibility in applying punishment tailored to society's context and conditions. For example, the *ta'zīr* punishment in Islamic criminal law gives judges the authority to determine the type and level of sanctions most appropriate for the violation committed.<sup>28</sup> This reflects the adaptive and responsive nature of Islamic law to social dynamics.<sup>29</sup>

However, it must be acknowledged that integrating Islamic criminal law and Indonesia's positive law is not without challenges. One of the main obstacles lies in the philosophical and normative differences between the two legal systems. On the one hand, Islamic criminal law is rooted in the transcendental principles of Sharia. In contrast, Indonesia's positive law is based on the principles of secularism and the universality of modern legal norms. Thus, harmonization efforts are required to formulate regulations that accommodate the values of both legal systems.

Harmonization between Islamic criminal law and Indonesia's positive law can be realized through the approach of *maqāṣid al-sharī'ah*, which emphasizes protecting five fundamental aspects: religion, life, intellect, property, and honor. This approach can serve as the foundation for formulating policies that not only safeguard individual dignity but also respect freedom of expression within a just and humane framework.<sup>30</sup> In this way, Islamic criminal law can complement Indonesia's positive law in addressing the challenges of the digital era.

### 3.2. The Contribution of Maqāṣid al-Sharī'ah Principles in Addressing the Challenges of the Digital Era

The principle of *maqāṣid al-sharī'ah*, which embodies the fundamental objectives of Islamic law, provides a relevant philosophical framework to address complex legal challenges in the digital era. In the context of defamation, *maqāṣid al-sharī'ah* emphasizes the protection of individual dignity (*hifz al-ird*), one of the five essential elements safeguarded by Islamic law. This principle protects personal honor and reputation while respecting freedom of expression as a fundamental human right.<sup>31</sup> However, the balance between these values becomes increasingly intricate in a digital landscape characterized by rapid information dissemination and anonymity.

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<sup>28</sup> Azhari Akmal Tarigan, "Ta'zīr dan Kewenangan Pemerintah dalam Penerapannya," *Ahkam: Jurnal Ilmu Syariah* 17, no. 1 (2017): 153–70, <https://doi.org/10.15408/AJIS.V17I1.6223>.

<sup>29</sup> Vichi Novalia et al., "Ta'zir Dalam Pidana Islam: Aspek Non Material," *Terang : Jurnal Kajian Ilmu Sosial, Politik dan Hukum* 1, no. 2 (2024): 225–34, <https://doi.org/10.62383/terang.v1i2.222>.

<sup>30</sup> Ulul Umami dan Abdul Ghofur, "Human Rights in Maqāṣid al-Sharī'ah al-Āmmah: A Perspective of Ibn 'Āshūr," *Al-Ahkam* 32, no. 1 (2022): 87–108, <https://doi.org/10.21580/ahkam.2022.32.1.9306>.

<sup>31</sup> Agus Purnomo et al., "Characteristics of Hate Speech and Freedom of Expression in the Perspective of Maqāṣid Al-Sharī'ah," *Juris: Jurnal Ilmiah Syariah* 22, no. 1 (2023): 171–83, <https://doi.org/10.31958/juris.v22i1.9446>.

The expansion of digital platforms has strengthened freedom of expression, providing unprecedented communication and public discourse opportunities. However, this freedom is often misused, spreading defamatory content that harms individual reputations.<sup>32</sup> Within the framework of *maqāṣid al-sharī'ah*, freedom of expression is not absolute; it is conditioned by moral responsibility and the obligation to respect others' fundamental rights, as stated in Article 28J Paragraph 2 of the 1945 Constitution of Indonesia.<sup>33</sup> This balance serves as a corrective measure, promoting ethical communication and reducing the potential harm caused by digital defamation.

Islamic criminal law, as interpreted through *maqāṣid al-sharī'ah*, views defamation not merely as a legal violation but as a disruption of societal harmony. Unlike positive law, which often treats defamation as a purely legal matter, Islamic law incorporates moral and ethical dimensions, aiming to restore social cohesion. This dual focus ensures that justice addresses both the immediate harm to the individual and the broader implications for community relationships.<sup>34</sup> Such an approach contrasts with the retributive nature of many contemporary legal systems.

Indonesia's legal framework, particularly the Information and Electronic Transactions (ITE) Law, acknowledges the need to regulate defamation in digital spaces. However, this law often faces criticism for its inability to balance the protection of individual reputation with freedom of expression. Here, *maqāṣid al-sharī'ah* can complement the existing legal structure by introducing justice and moral accountability principles. Integrating these principles into Indonesian law could address inherent limitations and create a more equitable regulatory environment.

A distinctive contribution of *maqāṣid al-sharī'ah* lies in its emphasis on restorative justice. This perspective prioritizes repairing social relationships and addressing the harm caused by defamation through reconciliation, public apologies, or compensation. Such mechanisms provide legal redress and foster societal healing, which is particularly significant in cases where digital defamation disrupts communal trust. Restorative justice

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<sup>32</sup> Yagie Sagita Putra et al., "EIT Law at the Crossroads: Exploring Legal Dilemmas, Freedom of Expression, and Human Rights," *Pakistan Journal of Criminology* 16, no. 3 (5 Juni 2024): 1315–32, <https://doi.org/10.62271/pjc.16.3.1315.1332>.

<sup>33</sup> Edmon Makarim, Muhammad Ibrahim Brata, dan Nabilla Arsyafira, "Limitation of Rights As a Manifestation of Duties and Responsibilities Pertaining To the Freedom Expression in Digital Communications," *Indonesia Law Review* 9, no. 3 (2019): 278–95, <https://doi.org/10.15742/ilrev.v9n3.586>.

<sup>34</sup> Abdul Manas Shayuthy dan Mohamed Siddeek Mohamed Ibrahim, "Peaceful Co-existence in The Light of Objectives of Sharia'h," *Global Journal Al Thaqa'ah* 6, no. 1 (12 Juli 2016): 113–26, <https://doi.org/10.7187/GJAT10820160601>.

offers a holistic alternative to punitive measures, aligning with the broader objectives of *maqāṣid al-sharī'ah* to uphold social harmony.<sup>35</sup>

The challenges of anonymity and the velocity of digital communication further complicate the application of legal and moral accountability. Within the *maqāṣid al-sharī'ah* framework, accountability (*mas'ūlyah*) remains central. Anonymity in digital interactions does not absolve individuals of their ethical and legal responsibilities. This principle highlights the need for robust mechanisms to identify and hold accountable those who perpetrate defamation while ensuring due process and fairness in enforcement.

Finally, the adaptability of *maqāṣid al-sharī'ah* offers significant potential for shaping modern legal regulations. By aligning with the values of Pancasila, which emphasize social justice and human rights, *maqāṣid al-sharī'ah* can enrich Indonesia's legal framework, creating a more responsive and inclusive system.<sup>36</sup> On a global scale, this approach can facilitate cross-cultural dialogue and cooperation in addressing defamation and other legal challenges in the digital era. By providing a balanced and justice-oriented perspective, *maqāṣid al-sharī'ah* underscores the potential for Islamic legal principles to contribute meaningfully to contemporary legal discourse.

#### 4. Conclusion

This study highlights the differing approaches of Islamic criminal law and Indonesian positive law in determining sanctions for defamation offenses. In the context of Islamic criminal law, sanctions are oriented toward restoring social harm through implementing *ta'zir* punishments, which are flexible and adjusted to the degree of harm caused. This approach is grounded in *maqāṣid al-sharī'ah* principles, which focus on protecting individual dignity (*hifz al-ird*) and restorative justice. Conversely, Indonesian positive law, regulated under the Electronic Information and Transactions Law (UU ITE), emphasizes clear and stringent criminal sanctions. However, this sometimes leads to legal uncertainty and risks imposing undue restrictions on freedom of expression.

This comparative analysis underscores the importance of harmonizing these two legal systems. The principles of *maqāṣid al-sharī'ah* offer an alternative perspective for addressing defamation cases, emphasizing social restoration and restorative resolution. Therefore, applying *maqāṣid al-sharī'ah* principles to determine proportional sanctions can provide a more equitable and balanced solution, aligning with protecting individual reputations while safeguarding freedom of expression.

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<sup>35</sup> Hartanto Hartanto, Cahyono Cahyono, dan Yosua Richard Y, "Penerapan Restorative Justice Dalam Kasus Pencemaran Nama Baik Di Media Sosial (Nilai Kearifan Lokal)," *Tanjungpura Law Journal* 7, no. 2 (2023): 211, <https://doi.org/10.26418/tlj.v7i2.62085>.

<sup>36</sup> Wawan Andriawan, "Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 5, no. 1 (2022): 1–11, <https://doi.org/10.24090/VOLKSGEIST.V5I1.6361>.

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