

Policy on Sanctions for Homosexual Acts in Article 414 KUHP: The Perspective of Islamic Criminal Law

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Abstract

Increasingly dynamic social changes require criminal law reform that ensures legal certainty while addressing evolving forms of moral violations. This study analyzes the regulation and legal foundations of Article 414 of Law Number 1 of 2023 concerning the Criminal Code (KUHP), particularly regarding indecent acts involving same-sex perpetrators. It examines the provision from the perspective of Islamic criminal law. The research employs a normative juridical method, using legislative, conceptual, and comparative approaches, and is supported by a literature review. The findings show that Article 414 KUHP is based on philosophical, juridical, and sociological considerations as part of national criminal law reform to protect morality, ensure legal certainty, and maintain social order. The provision is gender-neutral and focuses on acts fulfilling criminal elements, including indecent acts committed in public, involving coercion, or accompanied by the dissemination of pornographic content. The prescribed sanctions include imprisonment and/or fines. In Islamic criminal law, same-sex indecent acts are considered *fāḥisyah* and contrary to sharia based on the Qur'an, hadith, and the majority view of *fuqahā'*. Such acts are generally classified as *jarimah ta'zīr*, with sanctions determined by authorities in accordance with the public interest. Both legal systems ultimately aim to protect morality and preserve social order.

Keywords

Lewd Acts; Article 414 KUHP 2023; Islamic Criminal Law; *Jarimah Ta'zīr*; Criminal Sanctions

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1. INTRODUCTION

Social change in modern society occurs rapidly and directly impacts the development of criminal law. The patterns of social interaction in society shift alongside technological advancements and changes in how humans relate to one another (Sinambela et al., 2025). These conditions give rise to new forms of behavior that demand more responsive legal regulations aligned with society's prevailing values. Essentially, law serves as a guideline for social behavior, so the social dynamics that develop become a crucial factor in the formation and renewal of criminal law. (Al Kautsar & Muhammad, 2022; Nugraha et al., 2020)



One of the social dynamics that sparks debate is the regulation concerning lewd acts, particularly those committed by same-sex perpetrators. This issue is not only related to legal aspects but also touches on moral, religious, and public decency concerns. In Indonesia, the criminal law in force to date still refers to the Criminal Code (KUHP; Kitab Undang-Undang Hukum Pidana). (KUHP) The Dutch colonial legacy (Criminal Code) has been in effect for a long time. As society develops, social values evolve, and there is a demand for legal reform that better aligns with the character of the Indonesian nation. The KUHP has been deemed no longer fully capable of addressing contemporary issues in criminal law (Setiawan & Afita, 2025). Therefore, the renewal of national criminal law was subsequently marked by the enactment of the Criminal Code (KUHP) Number 1 of 2023. One of its important provisions is Article 414, which regulates acts of indecency. This provision demonstrates the state's efforts to respond to social dynamics and the demands for the protection of morality and public order. (Muksin, 2023)

In line with the efforts to reform the national criminal law, from an Islamic perspective, immoral acts (*al-fāḥisyah*) are regarded as heinous and reprehensible deeds that contradict human nature and the values of moral purity (Mufarrikhan, 2025). The Qur'an explicitly forbids immoral acts and actions that approach fornication, as emphasized in the words of Allah SWT:

لَا تَقْرُبُوا الزِّنَا إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: "And do not approach unlawful sexual intercourse. Indeed, it is an abomination and an evil way." (Qur'an, Surah Al-Isrā: 32). (Kementerian Agama Republik Indonesia, n.d.)

In Arabic, the term *fāḥisyah* is generally understood as an act that is wicked or reprehensible. Several sources provide explanations regarding this meaning. In the Kamus Besar Bahasa Indonesia, the term *keji* is defined as something very low, dirty, impolite, and disgraceful. Meanwhile, in Tafsir Jalalain, *fāḥisyah* is defined as actions deemed bad under Islamic law (Al-Mahalli & As-Suyuthi, n.d.). In Tafsir At-Tabari and contemporary studies, this term is also understood to include homosexual behavior as part of serious sinfulness (Mufarrikhan, 2025). Additionally, the Qur'an also recounts the behavior of the people of Prophet Lūṭ, who engaged in deviant sexual acts with the same sex as a serious violation of Allah SWT's commandments. This is emphasized in His words.

وَلُوطًا إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ الْعَالَمِينَ

Meaning: "And (We also sent) Lūṭ (to his people). (Remember) when he said to his people: 'Why do you commit such indecency — which no one before you in the worlds has ever committed?'" (QS. Al-A'rāf: 80). (Kementerian Agama Republik Indonesia, n.d.)

The verses indicate that the prohibition against immoral acts, including those committed by same-sex perpetrators, has a strong normative basis in the Qur'an. The prohibition is not solely aimed at punishment but also at safeguarding human welfare, protecting public morality, and preventing broader social harm. Therefore, the Qur'anic prohibition of immoral acts forms an important foundation for the development of concepts of accountability and sanctions in Islamic criminal law.

Islamic criminal law has its own concept in viewing immoral acts (*fāḥisyah*), including those committed by same-sex perpetrators (Marcellena, 2024). In *fiqh jināyah* literature, such acts are associated with *jarimah ta'zīr*, which are sanctions not specifically defined in the texts, so their form and level of punishment are entrusted to the authorities based on considerations of welfare, the degree of the offender's fault, and the aims of prevention and moral correction. This approach emphasizes aspects of deterrence (*zajr*), moral improvement (*iṣlāḥ*), and community protection (*ḥifz al-mujtama'*). (Siregar, 2020)

The difference in paradigms between national criminal law and Islamic criminal law raises fundamental questions regarding the relevance, proportionality, and purpose of punishment for acts of indecency committed by same-sex perpetrators. On the one hand, KUHP Number 1 of 2023 is based on a pluralistic legal framework (Kurdi & Mazjah, 2024), while on the other hand, Islamic criminal law is rooted in normative-religious values that are alive and embraced by the majority of Indonesian society. Therefore, a study that integrates both perspectives is important for providing a comprehensive understanding of the sanctions policy regulated by Article 414 KUHP.

To the author's knowledge, no research has been found that specifically and comprehensively discusses the Islamic criminal law perspective on the policy of sanctions for obscene acts committed by same-sex perpetrators based on Article 414 KUHP Number 1 of 2023. Ananta and Hapsari (2025) discuss the lack of firmness in the regulation of LGBT in the KUHP 2023, which still relies on the norm of abstract morality, thereby potentially causing legal uncertainty, and examine it from the perspective of *maqāṣid al-sharī'ah*. Gunawan et al. (2025) studied the legal enforcement practices against acts of indecency between same-sex individuals based on court rulings. Meanwhile, Rohmaniyah and Suciyani (2026) highlight the protection of victims of molestation within positive law and Islamic criminal law. Additionally, Febriani and Isnawati (2023) place greater emphasis on the criminal liability of perpetrators of same-sex molestation KUHP, including the implementation of Article 414 KUHP 2023.

Previous research generally still separates the study between positive law and Islamic criminal law and has not specifically examined sanctions policies and the basis for the formation of Article 414 of the Criminal Code (KUHP) Number 1 of 2023 from the perspective of Islamic criminal law. Furthermore, most studies have not examined the alignment between the objectives of punishment in

national criminal law and the *maqāṣid al-sharī'ah* in Islamic criminal law. This condition results in the absence of a comprehensive picture of the extent to which sanctions policies towards acts of indecency committed by same-sex perpetrators in the new Criminal Code can be seen as harmonious, overlapping, or even conflicting with the principles of Islamic criminal law.

Based on the identified research gap, this study offers novelty by focusing its analysis on Article 414 of the Indonesian Criminal Code (KUHP) Number 1 of 2023, the latest criminal legal product, and examining it from the perspective of Islamic criminal law. This approach not only investigates the normative aspects but also considers the objectives of punishment and the values of *maslahat* (public interest) to be achieved, thereby fostering a conceptual dialogue between national and Islamic criminal law. Consequently, this research is expected to provide academic recommendations regarding the formulation of sanction policies that are more proportional, just, and oriented towards moral protection and social order.

2. METHODS

The research method should be included in the Introduction. The method includes an explanation of the research approach, study subjects, the research procedure, the use of materials and instruments, data collection, and analysis techniques.

This research is a normative legal study (juridical normative), which places law as a norm or rule that applies within legislation and other legal sources. According to Rifa'i (2023), normative legal research is conducted by examining library materials and secondary data as primary sources to understand the applicable legal norms within society. In line with this, Suyanto (2023) states that normative legal research aims to discover legal rules, legal principles, and legal doctrines to address legal issues faced. The study analyzes provisions on same-sex immoral acts as regulated in Article 414 of the Criminal Code Number 1 of 2023, as well as the regulation of sanctions and their foundational basis, from the perspective of Islamic criminal law.

The approaches used in this research include the statutory, conceptual, philosophical, and comparative approaches. The statutory approach involves examining the provisions of positive law related to immoral acts in the Criminal Code, particularly Article 414. The conceptual approach is used to understand lewd acts, criminal sanctions, the basis for the formation of criminal norms, the purpose of punishment, and *jarimah* in Islamic criminal law. The philosophical approach is employed to study the values, principles, and objectives underlying the regulation of sanctions against lewd acts committed by same-sex perpetrators in national criminal law and Islamic criminal law. Meanwhile, a comparative approach is used to examine the regulation of sanctions and their foundational principles in Indonesian positive law, alongside the concept of sanctions in Islamic criminal law, to gain a more

comprehensive understanding. (Yanti & Fitri, 2022)

The sources of data or legal materials in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are the main sources of law that are binding and serve as the basis for the research. Secondary legal materials are materials that provide explanations or interpretations of the primary legal materials. Meanwhile, tertiary legal materials offer guidance and help clarify the legal terms or concepts used in the research. (Benuf, 2020)

Table 1. Classification of Legal Material Sources for the Research

Type of Legal Material	Legal Source Material
Primary Legal Material	Indonesian Criminal Code Number 1 of 2023, particularly Article 414; the Qur'an related to the prohibition of homosexual acts; the Hadith of Prophet Muhammad SAW; and fiqh books discussing <i>jarimah liwāṭ</i> and lewd acts.
Secondary Legal Material	Legal textbooks, Islamic criminal law books, scientific journals, as well as previous research results in the form of undergraduate theses, master's theses, and dissertations relevant to the research topic.
Tertiary Legal Material	The Legal Dictionary, the Legal Encyclopedia, and the Great Dictionary of the Indonesian Language are used to assist in understanding legal terms for research.

The data collection technique is based on library research. This method involves collecting, reading, and studying various literature, legislation, books, scientific journals, and other documents related to the research topic (Sumarna & Kadriah, 2023; Syamsudin, 2023). The data obtained is then classified and systematically arranged according to the research problem. Data analysis in this study employs qualitative methods that involve explaining and interpreting systematically collected legal materials. The analysis process is conducted through several stages, namely:

To analyze the regulation of sanctions against lewd acts committed by same-sex perpetrators in Article 414 of the Indonesian Criminal Code (KUHP) Number 1 of 2023, along with its legal basis. To analyze the concept of sanctions against lewd acts committed by same-sex perpetrators according to Islamic criminal law. To compare the regulation of sanctions and their legal basis in Article 414 of the KUHP Number 1 of 2023 with the concept of sanctions in Islamic criminal law. 4. To conclude the Islamic criminal law's assessment of the regulation of sanctions and the legal basis for the formation of Article 414 of the KUHP Number 1 of 2023 concerning lewd acts committed by same-sex perpetrators.

The conclusion in this research was drawn using a deductive method, which involves deriving conclusions from general legal principles towards more specific cases. According to Suyanto (2023), the deductive method involves applying general legal norms or theories to specific legal issues. Therefore, this study examines the principles of Islamic criminal law related to lewd acts, and then relates them to the provisions contained in Article 414 of the Indonesian Criminal Code (KUHP) Number 1 of 2023 to

gain a comprehensive understanding of the policy regarding sanctions for same-sex lewd acts.

3. FINDINGS AND DISCUSSION

3.1. Regulation of Sanctions for Obscene Acts by Same-Sex Perpetrators in Article 414 of the Indonesian Criminal Code (KUHP) Number 1 of 2023 and Its Legal Basis.

The regulation of criminal acts of lewd conduct in the new Indonesian National Criminal Code (KUHP), namely Law Number 1 of 2023, has been expanded compared to the old KUHP. This is reflected in Article 414 paragraph (1), which states that anyone who commits lewd acts against another person, whether of the same or different gender, can be punished if:

- a) committed in public, with a maximum imprisonment of 1 (one) year and 6 (six) months or a maximum fine in Category III (Rp50,000,000);
- b) committed forcibly with violence or threat of violence, with a maximum imprisonment of 9 (nine) years; or
- c) published as pornographic content, with a maximum imprisonment of 9 (nine) years.

This article does not explicitly distinguish between the genders of the perpetrator or the victim, thus covering both heterosexual and homosexual (same-sex) relationships. Accordingly, the new KUHP adopts a gender-neutral approach, focusing on acts that violate decency, rather than on the sexual orientation of the perpetrator.

Sexual orientation itself is not criminalized; rather, the regulation targets actions that meet the elements of a criminal offense, such as those carried out in public spaces, involving coercion, or the dissemination of lewd content.

Table 2. Unsus clause 414 KUHP No. 1 Tahun 2023

Element of the Crime	Form of Action	Criminal Threat
Indecent behavior in public	Acts of moral misconduct in public spaces	Prison $\leq$ 1 year, 6 months, or a fine $\leq$ Rp50 million
Indecent assault by coercion	Violence or threats of violence	Prison $\leq$ 9 years
Distribution of obscene/pornographic content	Publication of sexually explicit content	Prison $\leq$ 9 years

Source: KUHP No.1 of 2023 Article 414

According to Barda Nawawi Arief, the formulation of criminal provisions is essentially part of criminal law policy (penal policy). It cannot be separated from the country's social policy (social policy). Criminal law policy is directed towards realizing social protection (social defense) and achieving social welfare. Therefore, the formulation of a criminal act, along with its sanctions, not only ensures legal

certainty but also takes into account social values, morals, and the evolving needs of society. From the above provisions, it can be understood that Indonesian positive law regards lewd acts as a morality offence aimed at protecting public order and social morality. Criminal responsibility is based on the principle of culpa (fault), meaning that a person can be criminally liable only if they commit a prohibited act and are at fault. This fault can be in the form of an objective reproach (an unlawful act) or subjective (the presence of responsibility, intent, or negligence). The reform of the KUHP also reflects the state's efforts to respond to social developments, while maintaining a balance between legal certainty and the values that live within society.

Furthermore, when compared to the old KUHP (Article 292), the previous regulation was limited to acts of same-sex indecency involving adults with minors. Meanwhile, in the new Criminal Code, the scope of regulation broadens because it is not limited to specific relationships but rather to the nature of the act. In line with this view, Febriani & Isnawati (2023) emphasize that the new KUHP is a form of criminal law reform that aims to create a balance between legal certainty and the social values of Indonesia's diverse society. (Lola Febriani & Muridah Isnawati 2023)

The Foundation for the Establishment of Sanction Regulations in Article 414 of the Indonesian KUHP Number 1 of 2023

a. Philosophical Foundation

Philosophically, the regulation of sanctions in Article 414 of the Indonesian Criminal Code (KUHP) Number 1 of 2023 is established as part of the state's efforts to protect moral values, maintain public order, and realize the objectives of punishment that are not solely oriented towards retribution against offenders, but also include prevention and societal protection. The formation of this norm aligns with the character of national criminal law, which is based on the values of Pancasila, the state's foundational philosophy, thereby guiding sanctions to strike a balance between protecting individual rights and societal interests. (Ferdiansyah, 2026)

b. Legal Basis

From a legal perspective, the regulation of Article 414 is part of the reformulation of national criminal law through KUHP Number 1 of 2023, which replaces the colonial-era KUHP. This reformulation was undertaken to adapt criminal law provisions to societal developments and to address limitations of the previous regulations (Pratama et al., 2025). Furthermore, the Constitutional Court Decision Number 46/PUU-XIV/2016 affirms that the expansion of criminalization is within the authority of the lawmaker (open legal policy). Thus, the formation of Article 414 is a realization of that authority. (Ramadhan, 2023)

c. Sociological Basis

From a sociological perspective, the formulation of Article 414 of Law Number 1 of 2023 concerning the Criminal Code is motivated by societal developments indicating increasingly complex forms of moral violations, both directly and through the use of information technology and digital media. Changes in social interaction patterns, ease of access to sexually explicit content, and the rise of sexual deviations necessitate an update to criminal law that is more adaptable to social dynamics. (Saleh et al., 2020)

On the other hand, Indonesian society remains predominantly influenced by religious, moral, and cultural values that regard morality as an essential part of social order. These values form one of the foundations for the formulation of national criminal policy, including regulations concerning lewd acts. However, the increasingly pluralistic, open, and globalized society also presents diverse views on individual freedom and the protection of human rights. This creates tension between efforts to uphold societal moral values and the demands to accommodate social change. In this context, criminal law functions as a tool for social engineering and social control, and the enactment of Article 414 is expected to balance the protection of societal moral values, legal certainty, and a sense of justice. (Satjipto Rahardjo, 2009)

In practice, regulations concerning same-sex lewd acts have previously sparked legal and social debates in Indonesia. One notable case that garnered public attention was the gay party in North Jakarta in 2017 involving several adult men at an entertainment venue. In that case, law enforcement faced difficulties applying criminal provisions because the old KUHP did not explicitly regulate consensual same-sex relations between adults in private spaces. Law enforcement at the time relied more on the Pornography Law and public order regulations. This case revealed a legal gap in the old KUHP regarding offenses of same-sex morality.

Another example is the Constitutional Court Decision Number 46/PUU-XIV/2016, where the petitioner requested an expansion of the meaning of zina (adultery) and lewd acts to include same-sex relations. The Constitutional Court rejected this petition, stating that the expansion of criminalization is within the authority of the lawmaker (open legal policy), not the Court. This decision served as a significant basis for the reformulation of offenses against morality in the 2023 national Criminal Code.

According to Barda Nawawi Arief, criminal law must fundamentally protect social and moral values that are alive within society (social defense) (Barda Nawawi Arief 2005). Therefore, the formation of morality offences in the new KUHP cannot be separated from Indonesia's cultural, religious, and moral values. Meanwhile, Adami Chazawi explains that the element of "lewd acts" in criminal law encompasses all actions that violate morality and are related to sexual desire, whether physical or non-

physical (Adami Chazawi, 2005). This view reinforces the view that the core of regulation in Article 414 is not the identity of the perpetrator but the nature of the act that violates moral norms.

Thus, Article 414 of KUHP Number 1 of 2023 can be understood as a more comprehensive reformulation of offenses against morality than the old KUHP. The regulation affirms that Indonesian criminal law does not criminalize a person's sexual orientation as a basis for punishment but focuses on the presence of unlawful acts that conflict with morality, public order, and societal protection.

3.2. The Perspective of Islamic Criminal Law on Homosexual Acts

In Islamic criminal law, lewd acts (*fāḥisyah*) are regarded as actions that contradict the values of purity and morality prescribed by Sharia. The Qur'an explicitly forbids acts that approach fornication, as stated in Surah Al-Isrā' Al-Isrā' verse 32. Additionally, the story of the people of Lūṭ in Surah Al-A'rāf verses 80–81 serves as a normative basis for the prohibition of same-sex sexual activities. Firstly, the Qur'an explicitly forbids acts that approach fornication, as mentioned in Surah Al-Isrā' Al-Isrā' verse 32.

وَلَا تَقْرَبُوا الزَّانَا إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا ٣٢

And do not approach unlawful sexual intercourse; indeed

﴿وَلَوْ طَآ إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ الْعَالَمِينَ
إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ شَهْوَةً مِّنْ دُونِ النِّسَاءِ ۚ إِنَّكُمْ قَوْمٌ مُّسْرِفُونَ﴾ (٨١)

Meaning: "And (We also sent) Lūṭ (to his people). Remember when he said to them: 'Why do you commit such a heinous act (*fāḥisyah*) that has never been committed by anyone before you in this world?' 'Indeed, you approach men to satisfy your desires, not women. Indeed, you are a transgressing people.' Scholars interpret this verse as a strict prohibition against the practice of same-sex sexual relations, because it explicitly describes the behavior of the people of Prophet Lūṭ as *fāḥisyah* (a heinous act) that deviates from human nature. The use of the term *fāḥisyah* in this verse carries a strong meaning within Islamic legal terminology: an act that exceeds the bounds of moral norms and contradicts the purpose of human creation.

Furthermore, the phrase 'never before done by anyone in this world' is understood as emphasizing that such behavior is a deviation that does not conform to the moral order intended by the sharia. Therefore, this verse is not only descriptive (telling the story) but also normative (containing a legal prohibition). Classical commentators reinforce this interpretation. For example, Ibn Kathir, in his tafsir, explains that the behavior of the people of Lūṭ is a clear sexual deviation that is forbidden and considered a major sin. Similarly, Al-Qurtubi states that this verse forms the legal basis for the prohibition of same-sex relations, as it contradicts the objectives of sharia in safeguarding lineage (*hiḍḍ al-nasl*) and honor (*hiḍḍ al-'ird*). Furthermore, Surah Ash-Shu'arā' (26:165–166) is one of the verses most frequently used by fiqh scholars as a basis for legal rulings in fiqh.

أَتَأْتُونَ الذَّكَرَانَ مِنَ الْعَالَمِينَ ﴿١٦٥﴾ وَتَذَرُونَ مَا خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجَكُمْ ۚ إِنَّكُمْ أَنْتُمْ قَوْمٌ عَادُونَ ﴿١٦٦﴾

"Why do you approach men among mankind, and leave behind the women whom your Lord has created for you as your partners? Indeed, you are a transgressing people." (QS. Asy-Syu'arā':165–166)

This verse emphasizes that the deviation of sexual behavior among the people of Prophet Lot is not only regarded as a violation of moral norms but also as an act that contradicts the natural disposition of human creation. According to Wahbah az-Zuhaili, the phrase "wa tadharūna mā khalaqa lakum rabbukum min azwājikum" indicates that Allah has established male and female pairs as a provision in accordance with the purpose of creation (sunnatullah), thus sexual relations between the same sexes are seen as deviating from that purpose.

Therefore, this verse serves as one of the normative foundations of Islamic criminal law for assessing whether homosexual practices conflict with the maqāṣid al-sharī'ah, particularly in safeguarding lineage (ḥifẓ al-nasl) and honor (ḥifẓ al-'ird). Besides being based on the Qur'an, the prohibition against immoral acts of same-sex relations in Islamic criminal law is also reinforced by the sayings of the Prophet Muhammad (SAW). These hadiths serve as the basis for fuqaha in establishing that homosexual behavior is among the acts forbidden in Sharia because it contradicts human nature and the purpose of preserving lineage (ḥifẓ al-nasl).

One of the hadiths that is often used as a basis is the hadith narrated by Abu Dawud no 4462: "Whoever you find committing the acts of the people of Lot, then kill the perpetrator and his partner."

The above hadith is understood by the majority of scholars as a strict prohibition against same-sex sexual relations. This interpretation is based on the meaning of the phrase "‘amala qaumi Lūṭ," which in the commentary on the hadith is interpreted as homosexual acts similar to those committed by the people of Prophet Lūṭ. Ibn Hajar al-‘Asqalani explained that this hadith indicates a clear prohibition of liwāṭ because such behavior is regarded as a form of sexual deviation that contradicts human nature and the objectives of Sharia. Furthermore, Imam al-Nawawi in Sharh Sahih Muslim elaborates that the majority of scholars agree on the prohibition of same-sex relations.

However, they differ on the type of punishment prescribed. According to him, the difference lies in the sanctions, not in the status of the prohibition. This opinion then forms the basis of fiqh jināyah that homosexuality is considered a reprehensible act (fāḥisyah) which can be subject to ta‘zīr sanctions or even equated with zina by some schools of thought. In addition to that hadith, there is also a hadith narrated by Ahmad bin Hanbal.:

"The Messenger of Allah, peace and blessings be upon him, said: 'Allah curses those who practice the actions of the people of Lot, Allah curses those who practice the actions of the people of Lot, Allah curses those who practice the actions of the people of Lot.'"

The word “laknat” in the hadith indicates a very strong moral and religious condemnation of homosexual behavior. From an Islamic criminal law perspective, the use of the term laknat signifies that such acts are classified as major sins (kabīrah) because Allah SWT and His Messenger directly threaten them. The interpretation of this hadith is also reinforced by Wahbah az-Zuhaili, who states that the prohibition against liwāt aims to preserve the maqāṣid al-sharī’ah, particularly the protection of lineage (ḥifẓ al-nasl) and honor (ḥifẓ al-‘ird).

Therefore, the hadiths concerning the people of Prophet Lūṭ are not only understood as moral condemnation but also as a normative basis in Islamic criminal law against same-sex sexual acts. It can be seen that these verses and hadiths do not stand alone but reinforce each other as the normative foundation for the prohibition of homosexuality in Islamic law. In fiqh jināyah, immoral acts are not always categorized as ḥudūd because the elements of zina are not fully fulfilled. Therefore, the majority of scholars classify such acts as jarīmah ta’zīr, which are criminal acts for which the specific punishment is not explicitly determined in the text, leaving the determination of punishment to the authorities or judge based on the public interest.

Table 3: Classification of Sanctions in Islamic Criminal Law

Crime Category	Legal Basis	Karakteristik	example	Form of Sanction
Ḥudūd	The Qur’an and Hadith	The sanctions have been definitively determined (certain) and cannot be altered or reduced by the judge; the evidentiary standard is very strict.	Zina, theft, hirabah	The punishments remain stoning, whipping, and amputation (depending on the type of offense).
Qisās / Diyat	The Qur’an and Hadith	Emphasizing just and proportional punishment (balanced retribution), there are rights for the victim's family to forgive.	Murder, assault	A fitting punishment (qisas) or payment of diyat (compensation)
Ta’zīr	The ijtihad of scholars and the policies of the authorities	Not specified in detail in the text; flexible in nature; adjusted according to the level of error and benefit	Lewd acts, sexual harassment, and other violations of decency	Varied punishments: warning, fine, imprisonment, flogging, or other forms according to the judge's discretion

Discretionary sanctions possess a high degree of flexibility and aim not only to punish but also to prevent (*zajr*), improve morality (*iṣlāḥ*), and protect society (*ḥifẓ al-mujtama'*). In this context, acts of same-sex indecency are regarded as serious moral violations that require corrective measures in accordance with public interest.

As explained by Paryadi (2025), the *maqāṣid al-sharī'ah* approach places the protection of religion and lineage as the main objectives, so all forms of deviant sexual behavior are considered to be contrary to the aims of the sharia.

3.3. Islamic criminal law analysis of the regulation of sanctions and the basis for the formation of Article 414 of the Indonesian KUHP Number 1 of 2023 concerning lewd acts by same-sex perpetrators

A comparison between Indonesian positive law and Islamic criminal law reveals fundamental differences in their structure and objectives of punishment. The Indonesian KUHP No. 1 of 2023 is oriented towards legal certainty and the protection of public order. In contrast, Islamic criminal law is oriented towards moral and religious values and the public interest (*maqāṣid al-sharī'ah*).

From the table, it can be seen that Article 414 of the Criminal Code (KUHP) provides sanctions that are general and measurable in the form of imprisonment and fines, with maximum limits clearly specified by law. This provision reflects the principles of legality and legal certainty, under which established norms bind judges. In the context of same-sex immoral acts, this approach focuses on elements such as coercion, acts committed in public spaces, or the dissemination of pornographic content, rather than on the sexual orientation of the perpetrator.

Unlike positive law, Islamic criminal law views same-sex immoral acts as actions that contradict the values of Sharia and threaten the preservation of lineage (*ḥifẓ al-nasl*) as well as societal morality. However, if an act does not meet the elements of *ḥudūd* crimes as explicitly stipulated in the Qur'an and Sunnah, its resolution can be pursued through the *ta'zīr* mechanism, a form of punishment whose form and extent are determined by the government or a judge based on the public interest. This flexibility allows judges to consider the offender's level of fault, the social impact, the circumstances of the victim, and the objectives of rehabilitation, so that sanctions are not only repressive but also educational and preventive.

According to Ardiansyah & Edrisy (2025), the purpose of punishment in modern law has also shifted towards a rehabilitative approach that not only punishes but also seeks to improve the offender's behavior. This approach resembles the concept of *ta'zīr* in Islamic criminal law, which includes elements of prevention (*zajr*) and reform (*iṣlāḥ*). Nevertheless, the fundamental difference lies in the source of its

legitimacy: KUHP is based on state authority, whereas Islamic criminal law derives from the Qur'an and Sharia principles.

From the perspective of Islamic criminal law, the regulation of sanctions in Article 414 of the KUHP aligns with the concept of *ta'zīr*, as both grant the state authority to determine the form and severity of punishment based on the public interest. However, there is a fundamental difference in their normative foundations. In the KUHP, the legitimacy of punishment derives from the state's legislative authority. In contrast, in Islamic criminal law, this authority is grounded in Sharia values that aim to safeguard the five essential human needs (*al-ḍarūriyyāt al-khams*). Therefore, Islamic criminal law considers not only legal certainty but also moral, spiritual, and social benefits as the basis for imposing punishment.

In line with the development of modern penal theory, the purpose of punishment is no longer solely retributive (retributive justice) but also emphasizes rehabilitation, prevention, and the social reintegration of offenders. This concept aligns with the objectives of *ta'zīr* in Islamic criminal law, which includes elements of *zajr* (deterrence), *ta'dīb* (education), and *iṣlāḥ* (reformation). Thus, although there are differences in legal sources and bases of legitimacy, Article 414 of the Criminal Code shows a point of convergence with the principles of Islamic criminal law regarding community protection and offender development. However, from the perspective of Islamic law, such regulations still do not fully reflect an orientation that protects moral and religious values as the primary aim of punishment.

4. CONCLUSION

Based on the research findings, it can be concluded that Article 414 of Law Number 1 of 2023 is part of the renewal of national criminal law, aimed at protecting morality, legal certainty, and public order. The formation of this article is based on philosophical grounds in the form of Pancasila values, juridical foundations aimed at improving regulations in the previous Criminal Code, as well as sociological foundations in response to the development of forms of moral violations amid societal dynamics.

From an Islamic criminal law perspective, acts of same-sex immorality are regarded as *fāḥisyah* that contradict *fitrah* (natural disposition) and the objectives of *sharia*. The prohibition has a normative basis in the Qur'an, particularly QS. Al-Isrā' verse 32, QS. Al-A'rāf verses 80–81, QS. Asy-Syu'arā' verses 165–166, and QS. An-Naml verses 54–55, and is reinforced by the sayings of Prophet Muhammad SAW. The majority of scholars classify it as *jarimah ta'zīr*; thus, the determination of sanctions is entrusted to authorities or judges, taking into account the public interest, prevention, education, and rehabilitation of the perpetrator in accordance with the *maqāṣid al-sharī'ah* objectives.

A comparison of the two legal systems shows that although they differ in sources of law, orientation, and penal mechanisms, both share the same goal of protecting society from acts that damage morality. The regulation in Article 414 aligns with the concept of ta'zīr because both grant the state authority to determine sanctions based on the public interest. However, from an Islamic criminal law perspective, the penal orientation in Article 414 still emphasizes legal certainty. In contrast, Islamic criminal law also places the protection of moral and religious values, as well as the objectives of sharia, as the primary basis for law enforcement.

REFERENCES

- Adinda, N. R., Rosadi, A., & Naisabur, N. (2025). Tindak Pidana Kekerasan Seksual dalam Perspektif Hukum Positif dan Hukum Islam. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(4), 3519–3540.
- Al Kautsar, I., & Muhammad, D. W. (2022). Sistem hukum modern Lawrance M. Friedman: Budaya hukum dan perubahan sosial masyarakat dari industrial ke digital. *Sapientia Et Virtus*, 7(2), 84–99.
- Ananta, P. K., & Hapsari, N. T. (2025). Analisis yuridis normatif terhadap ketidaktegasan regulasi LGBT dalam UU Nomor 1 Tahun 2023 dan implikasinya dalam perspektif prinsip hukum Islam. *CAUSA: Jurnal Hukum dan Kewarganegaraan*, 16(2), 1-10.
- Ardiansyah, M. R., & Edrisy, I. F. (2025). Tinjauan Pembaruan Sistem Pemida Tinjauan Pembaruan Sistem Pemidanaan di Indonesia dalam KUHP Baru. *Journal Evidence Of Law*, 4(3), 1641-1653.
- Arief, B. N. (2010). Bunga rampai kebijakan hukum pidana. Citra Aditya Bakti.
- Auli, M. (2024). "Pengaturan Pidana terhadap Perbuatan Asusila Sesama Jenis dalam Hukum Positif Indonesia." *Al-Sulthaniyah: Jurnal Ilmu Syari'ah dan Hukum*
- Ibnu Hajar al-'Asqalani - Fath al-Bari bi Syarh Shahih al-Bukhari
- Al-'Asqalani, I. H. (t.t.). *Fath al-bari bi syarh shahih al-bukhari* (Juz XII). Dar al-Ma'rifah.
- Al-Nawawi, Y. S. (1392 H). *Al-minhaj syarh shahih muslim bin al-hajjaj* (Juz XI). Dar Ihya' al-Turath al-'Arabi.
- Al Kautsar, I., & Muhammad, D. W. (2022). Sistem hukum modern Lawrance M. Friedman: Budaya hukum dan perubahan sosial masyarakat dari industrial ke digital. *Sapientia Et Virtus*, 7(2), 84–99.
- Az-Zuhaili, W. (1989). *Al-fiqh al-islami wa adillatuhu* (Juz VI). Dar al-Fikr
- Benuf, K. (2020). Metodologi Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*.
https://www.academia.edu/download/63229644/Tulisan_Tentang_Metodologi_Hukum202005

07-31648-1ihv8bi.pdf

- Febriani, L., & Isnawati, M. (2023). Pertanggungjawaban pidana pelaku tindak pidana pencabulan sesama jenis dalam KUHP nasional. *Pagaruyuang Law Journal*, 7(1), 245-258.
- Gunawan, D. S., Pujiyono, & Sutanti, R. D. (2025). Tinjauan yuridis terhadap perbuatan cabul yang dilakukan oleh sesama jenis dalam hukum pidana di Indonesia (Studi Putusan Nomor 166/Pid.B/2018/PN/DPK). *Diponegoro Law Journal*, 14(3), 1-15.
- Hidiyah Ayu, R., & Suciyani. (2026). Perlindungan hukum terhadap korban pencabulan: Analisis normatif dalam sistem hukum Indonesia dan hukum pidana Islam. *Jurnal Keilmuan dan Keislaman*, 5(1), 213-227.
- Ferdiansyah, F. (2026a). Pengaturan Pidana terhadap Perbuatan Asusila Sesama Jenis dalam Delik Perzinaan di Indonesia. *Al-Sulthaniyah*, 15(1), 132-143.
- Ferdiansyah, F. (2026b). Pengaturan Pidana terhadap Perbuatan Asusila Sesama Jenis dalam Delik Perzinaan di Indonesia. *Al-Sulthaniyah*, 15(1), 132-143.
- Imam al-Nawawi - Al-Minhaj Syarh Shahih Muslim
- Lestari, W. (2024). Ta'zīr Crimes in Islamic Criminal Law: Definition, Legal Basis, Types, and Punishments. *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam*, 5(1), 12-14.
- Komparatif Negara Jepang. *Mulawarman Law Review*, 7(1), 31-48.
- Kurniawan, D. W., Widodo, E., Subekti, & Astutik, S. (2024). Tindak Pidana Pencabulan dalam Perspektif Hukum Pidana Islam. *Journal of Innovation Research and Knowledge*, 45-47.
- Kurdi, K., & Mazjah, I. (2024). Kesesuaian Sistem Hukum Asli Dengan Reformasi Pidana: Studi Kasus Penerapan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP. *UNES Law Review*, 7(2), 721-731.
- Mahkamah Konstitusi Republik Indonesia. *Putusan Nomor 46/PUU-XIV/2016 tentang Pengujian Pasal 284, Pasal 285, dan Pasal 292 KUHP terhadap UUD 1945*.
- Marcellena, E. F. (2024). *Kebijakan Hukum Pidana Terhadap Pelaku Tindak Pidana Cabul Sesama Jenis dalam Pembaharuan Hukum Pidana* [Phd Thesis]. Universitas Batanghari Jambi.
- Mufarrikhan, A. L. (2025). Reinterpretation of the Qur'an Surah Al-A'raf Verses 80-81 from the Perspective of Maqashidi Interpretation: Reinterpretasi Al-Qur'an Surah Al-A'raf Ayat 80-81 Perspektif Tafsir Maqashidi. *Ar-Rosyad: Journal of Quran Studies and Tafsir*, 1(2), 123-145.
- Muksin, M. R. S. (2023). Tujuan pemidanaan dalam pembaharuan hukum pidana Indonesia. *Sapientia Et Virtus*, 8(1), 225-247.
- Nugraha, M. F. C., Wardoyo, C., & Wahyono, H. (2020). Financial Inclusion in Home Industry of Bamboo Handicrafts in The Trenggalek District. *Dinamika Pendidikan*, 15(1), 13-25.
- Paryadi, P. (2021). Maqashid Syariah: Definisi dan pendapat para ulama. *Cross-border*, 4(2), 201-216.

- Pratama, A. B., Imaduddin, A., Yamin, T. A., Rofi'i, H. Y., & Saputra, A. L. (2025). Legal Analysis Of The Appointment Of Acting Officials To Fill Vacancies In Democratic Regional Leadership Positions. *Journal Tapis: Journal Teropong Aspirasi Politik Islam*, 21(1), 117–161.
- Rahardjo, S. (2009). *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoretis serta Pengalaman-Pengalaman di Indonesia*. Yogyakarta: Genta Publishing.
- Rifa'i, I. J. (2023). Ruang Lingkup Metode Penelitian Hukum. *Metodologi Penelitian Hukum*, 6.
- Ramadhan, M. D. (2023). *Pengaturan Tindak Pidana Pelecehan Seksual Sesama Jenis Dalam Perspektif Perundang-Undangan Di Indonesia* [PhD Thesis, Universitas Jambi]. <https://repository.unja.ac.id/54312/>
- Saleh, K., Agusta, M., & Weni, W. (2020). Hukum dan masyarakat dalam perspektif sosiologi hukum. *Datin Law Jurnal*, 1(2). <https://www.ojs.umb-bungo.ac.id/index.php/Datin/article/view/454>
- Setiawan, M. N., & Afita, C. O. Y. (2025). Reformasi Sistem Hukum Pidana Melalui Kuhp Baru: Tantangan Dan Peluang Menuju Keadilan Sosial. *Jurnal Hukum Das Sollen*, 11(1), 79–94.
- Sinambela, S. M., Saragih, M. D., Lumbantobing, J. N. Y., Lase, M., & Iqbal, M. (2025). Dinamika kebudayaan dan perubahan sosial dalam masyarakat modern. *Katalis Pendidikan: Jurnal Ilmu Pendidikan Dan Matematika*, 2(2), 65–75.
- Siregar, R. (2020). *Pendekatan Partisipatif dalam Pembelajaran Menulis Ilmiah*. Academic Press.
- Soekanto, Soerjono. (2012). *Pokok-Pokok Sosiologi Hukum*. Jakarta: Rajagrafindo Persada.
- Suyanto, S. H. (2023). *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris dan Gabungan*. Unigres Press.
- Sumarna, D., & Kadriah, A. (2023). Penelitian kualitatif terhadap hukum empiris. *Jurnal Penelitian Serambi Hukum*, 16(02), 101–113.
- Syamsudin, J. (2023). Pengalihan kewenangan perizinan usaha pertambangan dalam Undang-Undang mineral dan batubara perspektif desentralisasi. *Jurnal Tana Mana*, 4(1), 45–51.
- Tempo.co. "Diduga Pesta Gay di Kelapa Gading, 141 Orang Ditangkap." Tempo.co. Diakses 17 Mei 2026.
- Wahbah az-Zuhaili - Al-Fiqh al-Islami wa Adillatuhu
- Yanti, A., & Fitri, W. (2022). Sanksi Pencemaran Lingkungan Hidup dalam Undang-Undang Cipta Kerja: Studi Komparatif Negara Jepang. *Mulawarman Law Review*, 7(1), 31–48.