

MURDER BY TREACHERY IN ISLAMIC AND INDONESIAN CRIMINAL LAW

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Abstract: This study examines the concept of *qatl al-ghīlah* (murder by treachery) in Islamic criminal law and its relevance to the reform of Indonesia's national criminal law. The phenomenon of *qatl al-ghīlah* is an essential issue in the study of Islamic criminal law because it has characteristics that differ from other types of murder. From the perspective of Islamic jurisprudence (*fiqh jināyah*), this crime is classified as murder whose punishment can only be enforced through *qīṣāṣ* and cannot be removed even if the victim's family forgives. The relevance of this issue becomes increasingly evident when linked to several cases in Indonesia, such as the murder of Affan Kurniawan by a police officer, the Ferdy Sambo case, the KM 50 incident, and various other cases that demonstrate the weak protection of public security. However, previous studies rarely connect the normative concept of *qatl al-ghīlah* with practical issues in Indonesian positive criminal law, resulting in a gap in understanding how treachery-based murder should be legally qualified. Using a qualitative, normative approach through a literature review and case analysis, this study finds that *qatl al-ghīlah* warrants urgent attention in inspiring national criminal law reform. Its primary contribution is to provide a conceptual foundation for discussing the special category of murder based on exceptions, thereby integrating Islamic values of justice into the Indonesian criminal law system.

Keywords: Indonesian criminal law, Islamic criminal law, *qatl al-ghīlah*, *qīṣāṣ*

Abstrak: Penelitian ini mengkaji konsep *qatl al-ghīlah* (pembunuhan dengan tipu daya) dalam hukum pidana Islam dan relevansinya dengan pembaharuan hukum pidana nasional di Indonesia. Fenomena *qatl al-ghīlah* menjadi isu penting dalam kajian hukum pidana Islam karena memiliki karakteristik yang berbeda dengan jenis

pembunuhan lainnya. Dari perspektif yurisprudensi Islam (*fiqh jināyah*), kejahatan ini tergolong pembunuhan yang hukumannya hanya dapat ditegakkan melalui *qisāṣ* dan tidak dapat dihapus meskipun keluarga korban memaafkan. Relevansi isu ini semakin nyata ketika dikaitkan dengan beberapa kasus di Indonesia, seperti pembunuhan Affan Kurniawan oleh anggota polisi, kasus Ferdy Sambo, peristiwa KM 50, dan berbagai kasus lain yang menunjukkan lemahnya perlindungan keamanan publik. Studi-studi sebelumnya jarang menghubungkan konsep normatif *qatl al-ghīlah* dengan isu-isu praktis dalam hukum pidana positif Indonesia. Hal itu menimbulkan kesenjangan kajian dalam memahami bagaimana pembunuhan yang didasari pengkhianatan seharusnya dikualifikasi secara hukum. Dengan menggunakan pendekatan normatif kualitatif melalui studi literatur dan analisis kasus, penelitian ini menemukan bahwa *qatl al-ghīlah* memiliki urgensi besar dalam menginspirasi reformasi hukum pidana nasional. Kontribusi utama tulisan ini yaitu menyediakan landasan konseptual untuk membahas kategori khusus pembunuhan berbasis pengkhianatan yang mengintegrasikan nilai-nilai keadilan Islam ke dalam sistem hukum pidana Indonesia.

Kata kunci: hukum pidana Indonesia, hukum pidana Islam, *qatl al-ghīlah*, *qisāṣ*

Introduction

Murder is one of the most serious crimes in various legal systems, both modern positive law and Islamic criminal law.¹ This crime not only takes life but also causes collective trauma and undermines social stability.² Islamic law recognizes *qatl al-ghīlah*, which is murder through deception, entrapment, or betrayal that leaves the victim unable to defend themselves. Unlike *qatl al-'amd*, *qatl al-ghīlah* requires the application of *qisāṣ* without relying on the victim's family for forgiveness.

This specificity indicates that murder based on betrayal is viewed as more serious and has broad social implications. Various previous studies have discussed *qatl al-ghīlah*, but with varying focuses. Ahmad (2022) emphasized that *ghīlah* is a serious crime because it poses a threat to public security.³ Husni *et al.* (2021) linked it to the *maqāṣid al-shari'ah* (the objectives of Islamic law), specifically the protection of life.⁴ Taliep (2019) and Moazzam & Attirmidhi (2025) emphasize treason as an aggravating factor.⁵ Meanwhile,

¹ Mohaddeseh Sadeghian Lemraski, Kalantari Kalantari, and Iraj Golloozi, "Murder License for Murder in the March; Reiterated in 2013 Approved Islamic Penal Code Regarding Mahdur Al-Damm (Deserving Death)," *AHKAM: Jurnal Ilmu Syariah* 19, no. 2 (December 2019): 349–72, <https://doi.org/10.15408/ajis.v19i2.10810>.

² Miika Vuori *et al.*, "Collective Crime as a Source of Social Solidarity: A Tentative Test of a Functional Model for Responses to Mass Violence," *Western Criminology Review* 14, no. 3 (2013): 1–15.

³ Gunaldi Ahmad *et al.*, "The Death Penalty in Extraordinary Crimes: A Study on Killing Deception (Qatl Al-Ghīlah)," *Hikmatuna: Journal for Integrative Islamic Studies* 9, no. 1 (June 2023): 14–29, <https://doi.org/10.28918/hikmatuna.v9i1.945>.

⁴ Ahmad Bin Muhammad Husni *et al.*, "Relationship of Maqasid Al-Shariah with Qisas and Diyah: Analytical View," *The Social Sciences* 7, no. 5 (May 2012): 725–30, <https://doi.org/10.3923/sscience.2012.725.730>.

⁵ M Ighsaan Taliep, "A Comparative Study of Intentional Homicide (Al-Qatl Al-'Amd) in Shari'ah and the Modern Human Rights Concept of Right to Life for Murderers," *AL-WASATYYAH: IPSA Journal of Islamic Studies* 1, no. 1 (November 2022): 81–100, <https://doi.org/10.58409/ipsajis.vi1.8>; Dayyan Moazzam and Gafi Ahmad Attirmidzi, "Analysis of the Application of Qisas in Murder Cases: A Normative Study of the Views of the Four Schools of Thought," *SYARIAT: Akhwal Syakhiyah, Jinayah, Siyasah and Muamalah* 2, no. 1

Nur (2021), Bencin & Suparmin (2024), and Akande (2024) discuss *qisās*, intent, modus operandi, and the influence of colonialism on Islamic law.⁶ However, all of these studies remain within the normative realm of *fiqh*. Almost no research connects the concept of *qatl al-ghīlah* to Indonesian criminal law practice, despite cases such as those involving Affan Kurniawan and Ferdy Sambo demonstrating patterns of crime relevant to the idea. It is where this research gap emerges. Based on this gap, this study poses two main questions. First, how is the concept of *qatl al-ghīlah* explained in Islamic criminal law, particularly regarding its characteristics, legal basis, and implications for sanctions? Second, to what extent can this concept be integrated or used as a reference in reforming Indonesian criminal law to address murders involving elements of deceit and treason? This study aims to comprehensively elaborate on the concept of *qatl al-ghīlah* and analyze its relevance to the Indonesian criminal law system. Through a comparative approach, this study offers a new understanding of the categorization of treason-based murder. The academic contribution of this study is to present a conceptual basis that allows the integration of the values of *maqāṣid al-shari‘ah*, particularly *hifz al-nafs* and *hifz al-amn al-iijtimā‘i*, into national criminal policy. In practice, this study offers a perspective that can enhance public security protection within the criminal law reform agenda.

Method

This research employs a qualitative, normative-doctrinal research method. The entire analysis focuses on examining legal

texts, both from classical Islamic jurisprudence literature and positive Indonesian regulations. Primary sources comprise works by scholars from four schools of thought. In contrast, secondary sources encompass contemporary literature, journal articles, and academic studies on *qatl al-ghīlah*, *qisās*, and murder in Indonesian law. The analytical technique was developed to answer two main research questions. For the first question, concerning the normative characteristics of *qatl al-ghīlah* in Islamic criminal law, this study employed inductive analysis. This technique involved identifying arguments, legal grounds, conceptual differentiations, and sanction constructions proposed by scholars, and then organizing these into a systematic conceptual framework. This approach is strengthened by *fiqh*-based reasoning (*istinbāt al-ahkām*), through the application of *fiqh* principles and the principles of *maqāṣid al-shari‘ah*, particularly *hifz al-nafs* and *hifz al-amn al-iijtimā‘i*, to evaluate the purpose and rationality of the law of *ghīlah*. For the second research question, namely the relevance of *qatl al-ghīlah* to Indonesian criminal law, this study employs deductive and comparative analysis. The inferential analysis is conducted by applying concepts derived from *fiqh* studies to the context of deceitful murder in Indonesian legal practice. Meanwhile, the comparative analysis assesses the compatibility, inconsistencies, and potential integration between the principles of *fiqh* *jināyah* and the provisions of the Indonesian Criminal Code, particularly regarding the elements of planning, treason, and public security. Through a combination of these

(April 2025): 34–41, <https://doi.org/10.35335/emtjxt07>.

⁶ Muhammad Tahmid Nur, "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in The Law of *Qisās*," *Asy-Syir‘ah: Jurnal Ilmu Syari‘ah Dan Hukum* 55, no. 2 (October 2021): 335–65, <https://doi.org/10.14421/ajish.v55i2.1011>; Muhammad Al Amin Bencin and Sudirman Suparmin, "An Examination of Attempted Murder

in Islamic Criminal Law," *Jurnal Daulat Hukum* 7, no. 3 (November 2024): 319–26, <https://doi.org/10.30659/jdh.v7i3.40635>; Rabiat Akande, "Debating Diya: Indirect Rule and the Transformation of Islamic Law in British Colonial Northern Nigeria," *Die Welt Des Islams* 65, no. 2–3 (July 2024): 161–90, <https://doi.org/10.1163/15700607-20240013>.

techniques, this research produces a comprehensive normative assessment of the possible contribution of the concept of *qatl al-ghīlah* to the reform of national criminal law.

Results and Discussion

Historical Review and the Concept of *Qatl al-ghīlah* in Islamic Jurisprudence

In Islamic criminal law, murder (*qatl*) is classified into several categories, such as deliberate (*qatl al-'amd*), semi-intentional (*shibh al-'amd*), and unintentional (*al-khaṭā'*).⁷ In addition to these categories, Islamic jurisprudence recognizes *qatl al-ghīlah*, namely homicide committed through deception or treachery that places the victim in a defenseless position. The normative basis for crimes equivalent to *ghīlah* can be traced to Surah al-Mā'idah, verse 33. Jurists commonly interpret this verse as a normative foundation for punishing crimes involving treachery and deception, which threaten public order and social security. Linguistically, *ghīlah* means trickery or treachery. In legal usage, *ghīlah* refers to acts in which the perpetrator creates a false sense of safety to carry out the killing. This element of betrayal is what gives *ghīlah* a cruel aspect that undermines social trust. Therefore, Islamic scholars view *ghīlah* as a crime that destroys the foundations of societal security. This historical view was later elaborated upon more systematically by jurists within the framework of Islamic jurisprudence (*fiqh jināyah*), resulting in various legal constructions regarding *qatl al-ghīlah*, which differed according to the reasoning methods of each school of thought. The Mālikī School asserts that treason is a form of murder that

the victim's family cannot forgive.⁸ This position reflects the Mālikī emphasis on treachery as an aggravating factor, elevating the crime beyond ordinary homicide. The Shāfi'i view, as explained by al-Shirbīnī, states that killing someone who has been guaranteed security is treason. If someone pretends to provide protection and then kills, they have committed a form of high treason.⁹ This crime is considered more than just ordinary murder because it violates the fundamental principle of *āmān*. Some al-Shāfi'i and Ḥanafī scholars employ the *qiyās* approach, categorizing *ghīlah* as a form of *ḥirābah* because both cause terror, fear, and social instability.¹⁰ This reasoning positions *ghīlah* as a public crime with broader social consequences, in which private forgiveness alone cannot nullify criminal liability.

Ibn Rushd explains that if murder is committed through deceit and theft, the perpetrator deserves punishment because the act resembles a crime of *hirābah*. This approach demonstrates the Hanbalī School's tendency to associate *ghīlah* with crimes that combine elements of aggression against life and property. Thus, *ghīlah* is considered a more severe crime than ordinary *qatl al-'amd*. Differences among schools regarding *qatl al-ghīlah* stem primarily from divergent methods of legal reasoning. The Mālikī School and some Hanbalī scholars emphasize *ta'lil al-hukm* by identifying deception and treachery as the operative legal causes that aggravate the crime. In contrast, al-Shāfi'i and Ḥanafī scholars rely on *qiyās* by analogizing *ghīlah* to *ḥirābah* on account of its disruptive social impact. Despite methodological

⁷ J. N. D. Anderson, "Homicide in Islamic Law," *Bulletin of the School of Oriental and African Studies* 13, no. 4 (February 24, 1951): 811–28, <https://doi.org/10.1017/S0041977X00124061>; Brian Wright, "Homicide and Islamic Criminal Law in 19th Century Muslim Jurisdictions" (McGill University, 2019), <https://escholarship.mcgill.ca/downloads/8336h399g.pdf>.

⁸ Muḥammad Abū Zahrāh, *Zahrāh Al-Tafāsir* (Beirut: Dār al-Fikr al-'Arabī, n.d.), vols. IV; 2149.

⁹ Muḥammad al-Khaṭīb Al-Shirbīnī, *Mughnī Al-Muhtāj* (Beirut: Dār Al-Kutub Al-'Ilmiyyah, 2000), vols. VI; 55.

¹⁰ Muḥammad Ibn Idrīs Al-Shāfi'i, *Al-Umm*, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2009), vol. VI:153–155; Al-Shirbīnī, *Mughnī Al-Muhtāj*.

differences, both approaches prioritize public security (*hifz al-amn al-ijtimā'i*) as the central rationale for imposing severe sanctions.

Although the argumentative lines used differ, some emphasize 'illat and others emphasize analogy, all schools converge on one crucial point of agreement: that *qatl al-ghīlah* is an extraordinary crime that undermines social order and therefore requires strict punishment. This agreement is reinforced by a valid hadith in the Muslim, which explains that the Prophet ordered the execution of *qisāṣ* against perpetrators of *ghīlah* without considering forgiveness from the victim's family.¹¹ Thus, despite variations in methodological approaches, the legal orientation emerging from the schools of thought's overall views emphasizes public protection as the primary objective of sanctioning. Therefore, *qatl al-ghīlah* in Islamic jurisprudence (*fiqh jināyah*) is a category of murder with unique characteristics, namely elements of deceit, betrayal, and the victim's inability to defend themselves. The Sharia policy mandating *qisāṣ* without the option of forgiveness reflects Islam's orientation toward social protection. Scholars view this crime not only as a violation of individual rights but also as a threat to collective security. This approach demonstrates that Islamic law comprehensively combines individual justice with public protection.

Traces of *Qatl al-ghīlah* in Contemporary Reality

The phenomenon of *qatl al-ghīlah* (deception) is not only present in classical Islamic jurisprudential texts but also relevant to modern criminal practices. This subsection aims to emphasize that the concept of *ghīlah*,

namely, murder involving elements of deception, treachery, and ambush against a helpless victim, remains prevalent in contemporary Indonesian legal and social contexts. Through an analysis of several real-life cases, it is clear that the values underlying the prohibition of *ghīlah* in Islamic law – such as protecting public safety (*hifz al-amn al-ijtimā'i*) and upholding social justice – remain relevant in interpreting modern crimes rife with elements of manipulation and abuse of power. The first case to spark widespread public discussion was the Affan Kurniawan incident in Jakarta.¹² The young man died after being hit by a police car, allegedly intentionally. The elements of *ghīlah* were clearly evident in the ambush and the victim's position, which left him no opportunity to evade or resist. From an Islamic legal perspective, this act fulfills the elements of *ghīlah* (treason) because it involves *khiyānah* (treason) and abuse of authority that should protect society. In the context of positive law, this act fulfills the elements of Article 338 of the Criminal Code concerning murder. It can be aggravated under Article 340 of the Criminal Code regarding premeditated murder because it was committed with intent and manipulation of the situation. Therefore, Islamic and national laws consider such acts to create social damage and undermine the public's sense of security. The second case that garnered the most public attention was the murder of Brigadier Nofriansyah Yosua Hutabarat by Ferdy Sambo and his staff. This crime was rife with elements of fabrication, ranging from the manipulation of the scene to the creation of a false narrative and the use of hierarchical relationships between superiors and subordinates to ensnare the victim.¹³

¹¹ Ahmad Ibn Ghānim Ibn Sālim Ibn Mihnā Shihāb al-Dīn Al-Nafrāwī, *Al-Fawā'ih Al-Diwānī 'alā Risālah Ibn Abī Zayd Al-Qayrawānī* (Dār al-Fikr, 1995), vols. V; 182.

¹² ICJR, "[RILIS KOALISI] Penyampaian Temuan Awal Kasus Kematian Driver Ojek Online Affan Kurniawan Akibat Dilindas Oleh Rantis Rimueng

Personil Brimob Polri," icjr.or.id, 2025; Viriya Singgih, "Pembunuhan Affan Kurniawan: Sebuah Kegilaan Di Jalan Penjernihan," projectmultatuli.org, 2025.

¹³ Ninik Zakiyah et al., "Paradigmatic Study of the Supreme Court's Downgrade Decision in the Case of Premeditated Murder of Nofriansyah Yosua

From a legal perspective, this incident clearly falls into the category of *qatl al-ghīlah* (premeditated murder), as the perpetrators used deception and power to trap the victim in a helpless situation. From a positive legal perspective, Sambo was charged under Article 340 of the Criminal Code concerning premeditated murder, where the elements of deliberate premeditation and betrayal of official mandate are aggravating factors. This comparison demonstrates the principle of equivalence between Islamic and national law in imposing harsher sanctions for crimes that violate public trust. These patterns indicate that treachery-based homicide remains a recurring phenomenon in contemporary society. The elements of deception (*makr*), betrayal (*khiyānah*), and the victim's inability to resist are key characteristics that underscore the relevance of this classical concept. From an Islamic legal perspective, the prohibition against *ghīlah* is oriented not only toward individual protection, but also toward maintaining social security (*hifz al-amn al-ijtimā'i*) and public justice ('*adālah ijtimā'iyyah*). Therefore, strict law enforcement against modern forms of *ghīlah* is an urgent normative necessity to maintain a sense of security, public trust, and social stability in the life of the nation and state.

Comparison with Indonesian Positive Law Between *Qatl al-ghīlah* and the Criminal Code

Within the framework of Indonesian positive law, murder is regulated by Articles 338–340 of the Criminal Code (KUHP). Article 338

states, "Anyone who intentionally takes the life of another person shall, being guilty of murder, be punished by a maximum imprisonment of fifteen years." Meanwhile, Article 340 regulates premeditated murder: "Anyone who intentionally and with premeditation takes the life of another person shall, being guilty of premeditated murder, be punished by the death penalty or life imprisonment or a fixed term of imprisonment of a maximum of twenty years."

Compared to the *qatl al-ghīlah* in Islamic law, Article 340 of the KUHP shares similar characteristics, emphasizing the elements of intent, planning, and deceit in the commission of the crime. However, normatively, the KUHP does not provide a separate category for murder committed through betrayal (*khiyānah*) or abuse of trust. In an ethical context, *ghīlah* can be understood as a moral analogy for types of murder that violate public security and trust. However, it is not explicitly regulated in positive law. The fundamental difference between Islamic law and Indonesian positive law lies in the philosophical basis for imposing sanctions and the position of forgiveness.¹⁴ In the Criminal Code, forgiveness by the victim's family cannot absolve the perpetrator of criminal responsibility because the crime violates the state and public order.¹⁵ Conversely, in Islamic law, intentional homicide (*qatl al-'amd*) allows for forgiveness ('*afw*) and payment of *diyat* (redemption),¹⁶ but not for *qatl al-ghīlah*. According to the jurists, the prohibition on forgiveness in cases of *ghīlah* is based on the principle of protecting social security (*hifz al-amn al-ijtimā'i*). In contrast, in the Criminal Code, the

Hutabarat," *Al-Bayyinah* 8, no. 2 (December 2024): 276–93, <https://doi.org/10.30863/al-bayyinah.v8i2.7452>.

¹⁴ Supardin and Abdul Syatar, "Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia's Positive Legal System Reform," *Samarah* 5, no. 2 (2021), <https://doi.org/10.22373/sjhk.v5i2.9353>.

¹⁵ Mahrus Ali *et al.*, "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory

Flaws, Judicial Response, and Proposed Solution," *Cogent Social Sciences* 8, no. 1 (December 2022), <https://doi.org/10.1080/23311886.2022.2069910>.

¹⁶ Abu Hapsin and Nazar Nurdin, "Diat and Peace Money in the Crime of Culpable Homicide," *Al-Ahkam* 32, no. 2 (October 2022): 189–210, <https://doi.org/10.21580/AHKAM.2022.32.2.12413>.

prohibition is rooted in the doctrine of state sovereignty in the enforcement of the law. Thus, both legal systems reject compromise regarding treason, but proceed from different epistemological foundations: Islamic law is morally communal in orientation, while positive law is legal-procedural. In practical terms, cases such as the murder of Brigadier Nofriansyah Yosua Hutabarat by Ferdy Sambo demonstrate both these common points and differences. The perpetrator was charged under Article 340 of the Indonesian Criminal Code because his actions were premeditated and carried out through abuse of power.¹⁷ In this case, the elements of engineering and treason are identical to *ghīlāh* according to Islamic jurisprudence. However, the Indonesian Criminal Code normatively does not yet recognize the moral aspect of treason as a separate aggravating factor. In Islamic law, *ghīlāh* is not simply a crime against an individual, but a violation of social security guarantees. It demonstrates that Islamic jurisprudence operates within a retributive and preventive justice framework, punishing the perpetrator appropriately while preventing recurrence by protecting public safety. Indonesian positive law tends to place premeditated murder within the paradigm of retributive justice, namely, punishment as retribution for violations of the law.¹⁸ In contrast, Islamic law combines this with a preventive justice orientation, namely, the enforcement of sanctions that serve a social deterrent function. In this

context, *ghīlāh* is viewed not only as a legal wrong but also as a moral and social violation. This difference also illustrates two legal orientations: moral legality in Islam, which emphasizes the harmony of law with ethical values and the *maqāṣid al-shari‘ah*, versus procedural legality in the Criminal Code, which emphasizes legal certainty and state authority.

However, the positive Indonesian law does not entirely ignore social aspects.¹⁹ In the Sambo case ruling, for example, the panel of judges emphasized that the act undermined public trust in law enforcement institutions. This consideration demonstrates an awareness of the social dimension of crime. However, it has not yet been normatively institutionalized in the Criminal Code. Meanwhile, the new Criminal Code (Law No. 1 of 2023) demonstrates progress by emphasizing community protection and crime prevention through a more humanistic approach.²⁰ However, it does not yet specifically address the categories of treason or deceit. Thus, this comparison reveals two main conclusions. First, there is substantive common ground between *qatl al-ghīlāh* and Article 340 of the Criminal Code regarding planning and malicious intent. Second, the difference lies in its philosophical orientation: Islamic law is rooted in morality and social protection, while positive law emphasizes proceduralism and state legitimacy. In the context of national criminal law reform, integrating the ethical values of Islamic law,

¹⁷ Nessa Sarah Riskiqa Sekarsari and Jufryanto Puluhulawa, "Legal Review of Ferdy Sambo Decision From the Perspective of Justice of the Offender," *Estudiante Law Journal* 6, no. 1 (2024), <https://doi.org/10.33756/eslaj.v1i1.23642>.

¹⁸ Syafah Diyana Jauhari et al., "Criminal Liability for Murder of Individuals with Schizophrenia," *Ijtima‘iyya: Jurnal Pengembangan Masyarakat Islam* 18, no. 1 (2025), <https://doi.org/10.24042/ijpmi.v18i1.27400>.

¹⁹ Maulana Hasanudin, "The Role of Judges in Dealing with Community Development," *Walisongo Law Review (Walrev)* 2, no. 2 (November 2020): 195,

<https://doi.org/10.21580/walrev.2020.2.2.6597>; Nuraida Fitri Habi et al., "Prioritizing Restorative Justice in the Settlement of the Sumbang Besak Adultery Case in Babeko Village, Jambi," *El-Mashlahah* 14, no. 2 (2024): 343–60, <https://doi.org/10.23971/el-mashlahah.v14i2.8030>.

²⁰ Antory Royan Adyan and Ariesta Wibisono Anditya, "Legal Reforms on Femicide in Indonesia: The New Criminal Code, Victim Protection, and the Role of Islamic Law," *Journal of Law and Legal Reform* 6, no. 2 (April 2025): 617–58, <https://doi.org/10.15294/jllr.v6i2.18939>.

such as the prohibition of treason and respect for social security, can enrich the national legal system and achieve a better balance between legal and moral justice.

The *Maqāṣid al-shari‘ah* Dimension in *Qatl al-ghīlah*

The concept of *maqāṣid al-shari‘ah* emphasizes that all provisions of Islamic law aim to safeguard five basic human needs: religion (*hifz al-dīn*), soul (*hifz al-nafs*), reason (*hifz al-aql*), descendants (*hifz al-nasl*), and property (*hifz al-māl*).²¹ In the context of *qatl al-ghīlah*, the most prominent dimension is *hifz al-nafs*, because murder through deception eliminates the victim's ability to defend themselves, making the threat to life far greater than ordinary murder.²² Furthermore, *ghīlah* also directly contradicts the principle of *hifz al-dīn*. Acts of betrayal undermine the values of honesty and trust that are the foundation of religious teachings. If such crimes are allowed to continue, the moral integrity of society will be weakened.²³ Therefore, the implementation of irrevocable

qīṣāṣ is viewed as a mechanism for safeguarding religious values in social life.

The principle of *hifz al-aql* is also relevant. Reason, which should be used as a means of good, is instead misused to deceive and trap victims.²⁴ Therefore, strict law enforcement against *ghīlah* is a safeguard of the honor of reason, ensuring it does not become a tool of evil. Similarly, the dimension of *hifz al-nasl* is also involved, as the traumatic impact of betrayal can harm the victim's family and disrupt the resilience of subsequent generations.²⁵ Meanwhile, from the perspective of *hifz al-māl*, many acts of *ghīlah* are committed to obtain the victim's property. The imposition of severe sanctions serves to protect property rights. Thus, *ghīlah* is in a position to touch almost all aspects of the *maqāṣid* (the legal system): protecting the life, morals, descendants, and property of society from systemic harm. Based on the framework of *al-maṣlaḥah al-‘āmmah* (the rights of others), *qatl al-ghīlah* is understood as a crime that threatens the public good, because the loss of a sense of security will paralyze social life.²⁶

²¹ Saim Kayadibi, "The State as an Essential Value (Darūriyyāt) of the Maqāṣid Al-Shari‘ah," *AHKAM: Jurnal Ilmu Syariah* 19, no. 1 (July 2019), <https://doi.org/10.15408/ajis.v19i1.6256>; Salman Abdul Muthalib et al., "Changes in Congregational Prayer Practices During the Covid-19 Pandemic in Aceh from Maqashid Al-Sharia Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 2 (December 2021): 421–49, <https://doi.org/10.19105/al-ihkam.v16i2.5250>; Asyraf Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqasid Al-Shari‘ah, Maslahah, and Corporate Social Responsibility," *American Journal of Islam and Society* 24, no. 1 (January 2007): 25–45, <https://doi.org/10.35632/AJIS.V24I1.415>; Krismiyarsi Krismiyarsi and Rayno Dwi Adityo, "The Urgency of Community Service Imposed as Punishment on Juvenile Delinquents: A Study of Al-Shatibi's Maqhasid Al-Syariah Concept," *De Jure: Jurnal Hukum Dan Syar‘iah* 17, no. 1 (April 2025): 132–48, <https://doi.org/10.18860/j-fsh.v17i1.31246>.

²² Bancin and Suparmin, "An Examination of Attempted Murder in Islamic Criminal Law."

²³ Imam Yahya, "Eksekusi Hukuman Mati Tinjauan Maqāṣid Al-Shari‘ah Dan Keadilan," *Al-Ahkam* 23, no. 1 (April 2013): 81, <https://doi.org/10.21580/AHKAM.2013.23.1.74>.

²⁴ Arif Al Wasim, "Maqashid Syari‘ah Menjawab Tantangan Post-Truth Era: Urgensi Hifz Al-Aql Sebagai Penyaring Informasi," *International Journal Ihya' Ullum Al-Din* 21, no. 2 (February 2020): 143–57, <https://doi.org/10.21580/ihya.21.2.4831>.

²⁵ Elfia Elfia et al., "Institutionalizing Maqāṣid Hifz Al-Nasl within the Minangkabau Inheritance Framework," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (December 2024): 193–222, <https://doi.org/10.18326/ijtihad.v24i2.193-222>; Iffaty Nasyi‘ah et al., "Penal Sanctions for Psychological Domestic Violence under Utilitarianism Theory: A New Sentencing Paradigm in the 2023 Indonesian Criminal Code," *El-Usrah* 8, no. 1 (2025), <https://doi.org/10.22373/3km2wr98>.

²⁶ Mahsun Mahsun, "Rekonstruksi Pemikiran Hukum Islam Melalui Integrasi Metode Klasik Dengan Metode Saintifik Modern," *Al-Ahkam* 25, no. 1 (April 2015): 1–18, <https://doi.org/10.21580/AHKAM.2015.1.25.191>;

The classical perspectives of al-Ghazzālī and al-Shātibī emphasize that protecting these five basic needs is the foundation of societal well-being.²⁷ Therefore, crimes that directly erode this protection deserve maximum sanctions.

Meanwhile, in contemporary discourse on the *maqāṣid* (Islamic principles), thinkers such as Ibn' Āshūr and Jasser Auda expand the substance of *maqāṣid* into a dynamic ethical framework that encompasses the values of justice, human dignity, and public security.²⁸ Through this approach, *qatl al-ghīlāh* is no longer understood simply as a violation of Islamic criminal law (*fiqh jināyah*), but as a betrayal of the system of humanitarian values protected by sharia. Crimes committed through deception undermine mutual trust in society, foster collective fear, and cause lasting social trauma for the victim's family. Therefore, imposing strict sanctions on *ghīlāh* has a strong preventive function: not only to provide justice for the victim, but also to restore public security and maintain social order. Thus, the analysis of *maqāṣid* shows that sharia's firm view of *qatl al-ghīlāh* is supported by a strong philosophical foundation. Harsh laws are not merely a form of individual retribution but rather an instrument for societal protection, ensuring

the preservation of justice, security, and human dignity. In the context of modern law, this principle can enrich the paradigm of punishment with a dual orientation: retributive towards the perpetrator and repressive-preventive for the protection of society.

Ethical and Socio-Political Perspectives on *Qatl al-ghīlāh*

The discussion of *qatl al-ghīlāh* is relevant not only in a legal context but also in ethics. From the perspective of virtue ethics, as developed by Aristotle and adopted in Islamic moral philosophy by al-Ghazzālī and Ibn Miskawaih, moral actions are measured by the character and virtue (*fadīlah*) of the perpetrator.²⁹ *Ghīlāh* is the most fundamental form of ethical violation because it denies the values of honesty, trustworthiness, and respect for human dignity. This act not only violates the law but also destroys the moral foundations that underpin social life.³⁰ From a socio-political perspective, *ghīlāh* has far broader implications than ordinary murder. It undermines social trust, the foundation of societal cohesion, as Émile Durkheim explains. The social order is shaken when public trust in one another and in state institutions declines.³¹ Data from the

Maskur Rosyid and M. Nurul Irfan, "Reading Fatwas of MUI a Perspective of Maslahah Concept," *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (June 2019): 91–117, <https://doi.org/10.18592/sjhp.v19i1.2726>.

²⁷ Abū Ḥāmid Muḥammad Ibn Muḥammad Al-Ghazzālī, *Al-Muṣṭaṣfā Min 'Ilm Al-Uṣūl* (Beirut: Dār al-Fikr, n.d.); Abū Iṣhāq Ibrāhīm bin Mūsā Bin Muḥammad Al-Shātibī, *Al-Muwāfaqāt Fī Uṣūl Al-Shari'ah* (Arab Saudi: Dār Ibn 'Affān, 1997).

²⁸ Muḥammad Tāhir Ibn 'Āshūr, *Maqāṣid Al-Shari'ah Al-Islāmiyyah* (Beirut: Dār al-Kitāb al-Lubnānī, 2004); Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon: The International Institute of Islamic Thought, 2010).

²⁹ Ahmad Ibn Muḥammad Ibn Miskawaih, *The Refinement of Character = Tahdhib Al-Akhlaq*, ed. Sayyed Hossein Nasr (Chicago: Great Books of the Islamic World, 2003); Yousef Casewit, "Al-Ghazzālī's Virtue Ethical Theory of the Divine

Names: The Theological Underpinnings of the Doctrine of Takhalluq in Al-Maqṣad Al-Asnā," *Journal of Islamic Ethics* 4, no. 1–2 (December 2020): 155–200, <https://doi.org/10.1163/24685542-12340042>.

³⁰ Jonathan J Koehler and Andrew D Gershoff, "Betrayal Aversion: When Agents of Protection Become Agents of Harm," *Organizational Behavior and Human Decision Processes* 90, no. 2 (March 2003): 244–61, [https://doi.org/10.1016/S0749-5978\(02\)00518-6](https://doi.org/10.1016/S0749-5978(02)00518-6); Jason Aimone, Sheryl Ball, and Brooks King-Casas, "The Betrayal Aversion Elicitation Task: An Individual Level Betrayal Aversion Measure," ed. Daniel Houser, *PLOS ONE* 10, no. 9 (September 2015): e0137491, <https://doi.org/10.1371/journal.pone.0137491>.

³¹ Bujar Aruqaj, "An Integrated Approach to the Conceptualisation and Measurement of Social Cohesion," *Social Indicators Research* 168, no. 1–3

Indonesian Survey Institute (LSI) shows that public confidence in the Indonesian National Police (Polri) has significantly decreased, from 72% in early 2022 to just 53% following the murder of Brigadier Nofriansyah Yosua Hutabarat by Ferdy Sambo.³² This decline demonstrates how acts of betrayal within state institutions can lead to a legitimacy crisis and deepen the gap between the public and law enforcement officials.³³ A similar phenomenon was evident in the 2023 Transparency International Indonesia (TII) survey, which ranked Indonesian law enforcement agencies low on the Corruption Perception Index with a score of 34 out of 100, indicating low perceptions of public institution integrity.³⁴ When legal institutions fail to uphold their mandate, *ghīlah*, a form of betrayal, no longer occurs between individuals but manifests in relations between the state and the people. It reinforces the relevance of a moral analysis of treason-based crimes. Socially, *ghīlah* creates collective fear and suspicion among citizens. Communities lose their sense of security because betrayal can come from those they trust. In the long term, this situation creates what Durkheim called anomie, the loss of social norms that hold society together. When norms of trust collapse, solidarity weakens,

and society becomes vulnerable to horizontal conflict.³⁵ Therefore, the social dimension of *ghīlah* is as essential as its legal dimension.

Public ethics demands protection for citizens from this form of betrayal. If law enforcement fails to deliver justice, people may resort to vigilantism, seeking justice themselves. This phenomenon poses a threat to public order. Therefore, firm and fair law enforcement is key to restoring public trust. When the public sees that perpetrators of *ghīlah* are truly punished fairly, trust in the legal system slowly recovers. From a legal and political perspective, *ghīlah* challenges the state to balance legal certainty, justice, and expediency. Cases like Ferdy Sambo's demonstrate that crimes of treason require a response that is not merely legalistic but also moral and symbolic. Strict punishment has ethical value, showing that the state is there to protect the people from betrayal.³⁶ The ethics of justice also demand equal treatment without discrimination. In some cases, the public highlights the unequal enforcement of the law when the perpetrators are officials or influential figures.³⁷ Injustices like these deepen the social wounds inflicted by *ghīlah*. Therefore, substantive justice must be prioritized over procedural justice.³⁸ In this

(August 2023): 227–63,
<https://doi.org/10.1007/s11205-023-03110-z>.

³² Monavia Ayu Rizaty, "Survei LSI: Kepercayaan Publik Kepada Polri Anjlok Menjadi 53%," dataindonesia.id, 2022.

³³ Muhammad Firdaus, Chryshnanda Dwilaksana, and Muhammad Daffa Auliarizky Onielda, "Shifting Polri's Law Enforcement Strategy: Restorative Justice for Public Trust," *Jurnal Media Hukum* 30, no. 2 (October 2023): 153–70, <https://doi.org/10.18196/jmh.v30i2.18628>.

³⁴ Transparency International Indonesia, "Corruption Perception Index 2023" (Jakarta, 2024).

³⁵ Yuke Fatihaturrahmah *et al.*, "The Guardians: The Role of Social Capital in Crime Victimization in Indonesia," *Social Indicators Research* 178, no. 1 (May 2025): 581–600, <https://doi.org/10.1007/s11205-025-03606-w>; Catherine E. Ross, "Collective Threat, Trust, and the Sense of Personal Control," *Journal of Health and Social Behavior* 52, no. 3 (September 2011):

287–96,
<https://doi.org/10.1177/0022146511404558>.

³⁶ Alessandro Corda, "The Legitimacy of Criminal Law and the Performance Crises of Penality," *Criminal Law Forum* 36, no. 2 (June 2025): 351–80, <https://doi.org/10.1007/s10609-025-09509-2>.

³⁷ Rofingi Rofingi, Umi Rozah, and Adifyan Rahmat Asga, "Problems of Law Enforcement in Realizing The Principle of Equality Before The Law in Indonesia," *LAW REFORM* 18, no. 2 (August 2022): 222–37, <https://doi.org/10.14710/lr.v18i2.47477>.

³⁸ David Lewis Schaefer, "Procedural Versus Substantive Justice: Rawls and Nozick," *Social Philosophy and Policy* 24, no. 1 (January 2007): 164–86, <https://doi.org/10.1017/S0265052507070070>; Jonaedi Efendi, "Application of Procedural Justice Vis a Vis Substantive Justice in Law Enforcement," *Arena Hukum* 17, no. 2 (August 2024): 270–89, <https://doi.org/10.21776/ub.arenahukum2024.01702.3>.

context, the Islamic legal perspective, which rejects forgiveness for perpetrators of *ghīlāh*, can be an essential inspiration for strengthening the principle of equality before the law. The integration of law, ethics, and politics can be achieved through an ethical jurisprudence approach—a legal model that bases legal reform on public moral values. This legal reform upholds formal norms and restores social trust and human dignity. Thus, *qatl al-ghīlāh* is not merely a violation of the law but also a reflection of the collapse of public ethics that requires healing through the synergy of legal justice and social morality.

The Relevance of the *Qatl al-ghīlāh* Concept in Indonesian Criminal Law Reform

Indonesian criminal law reform is entering a new phase, with the enactment of the Criminal Code (KUHP) in 2023. The primary challenge of this reform is not only updating the legal substance to conform to modern standards, but also ensuring that the law can address society's substantive justice needs.³⁹ In this context, the concept of *qatl al-ghīlāh* offers a critical perspective that highlights the moral and social dimensions of crime. This concept emphasizes the need for a special category for crimes that threaten public security and undermine social trust, thereby enriching the construction of national criminal law. The relevance of *qatl al-ghīlāh* is evident in high-profile cases that have shaken public trust, such as the KM 50 incident, the Ferdy Sambo case, and the Affan Kurniawan case. The public views these crimes not

simply as premeditated murder, but as a betrayal of humanitarian values and social security.⁴⁰ However, the Criminal Code does not yet have a normative framework that explicitly distinguishes between ordinary murder and murder with elements of treachery. As a result, the ethical and moral dimensions of these crimes are often not reflected in legal decisions. The values of Islamic law can serve as an essential reference for addressing this moral gap.

From a legal pluralism perspective, integrating Islamic values into the national legal system is not intended to replace positive law, but rather to create a dialectic among religious norms, customary law, and state law. As Werner Menski argues, legal pluralism enables productive interaction among "state law, social law, and religious law," the three pillars that shape society's legal system.⁴¹ In the Indonesian context, this approach aligns with the character of national law, which is rooted in Pancasila, a legal system open to integrating substantive justice values from various traditions, including Islam. The mechanism for incorporating the concept of *ghīlāh* into national law can be implemented through three concrete steps. First, reformulating norms by adding the category of treason-based crimes to the articles on premeditated murder in the Criminal Code. It broadens the orientation of criminal law from merely protecting lives to protecting public safety (*hifz al-amn al-ijtimā'i*). Second, a reinterpretation of jurisprudence, where judges can use the

³⁹ Iqbal Kamalludin, "Restoration Of Pancasila Values Against Criminal Law Reform Strategy In Indonesia Political Perspective Of Islamic Law," *Syariah* 22, no. 1 (2022): 31–47; Sriwiyanti, Wahyu Saefudin, and Siti Aminah, "Restorative Justice for Juvenile Offenders in Indonesia: A Study of Psychological Perspective and Islamic Law," *Journal of Islamic Law* 2, no. 2 (2021), <https://doi.org/10.24260/jil.v2i2.335>; Sugeng Riyadi and Beny Timor Prasetyo, "Kebijakan Moderasi Pidana Mati Dalam RUU KUHP Perspektif Nilai-Nilai Pancasila," *Volksgeist: Jurnal*

Ilmu Hukum Dan Konstitusi 4, no. 2 (2021), <https://doi.org/10.24090/volksgeist.v4i2.5329>.

⁴⁰ Sholihin Bone et al., "Power Dynamics and Social Relations in Law Enforcement: A Critical Theory Perspective on the Ferdy Sambo Case," *Constitutional Law Review* 3, no. 2 (October 2024): 148–63, <https://doi.org/10.30863/clr.v3i2.5642>.

⁴¹ Werner F. Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), 15–20.

principles of substantive justice and Islamic moral values as ethical considerations in deciding cases involving elements of deception and abuse of trust. This step aligns with the principles of living law recognized by the Constitutional Court. Third, strengthening criminal law policy (penal policy) by using the values of *ghīlāh* as a moral reference in preparing the National Legal Development Plan (RPHN) and ethics training for law enforcement officers. Thus, Islamic values function as moral inspiration and concrete, contextual guidelines for legal policy.⁴² A comparative approach plays a central role in this process. The approach used is not simply comparative law, which compares the norms of articles across legal systems, but comparative jurisprudence, a comparison of the philosophical values, ethical goals, and principles of justice that underlie the formation of law. In this way, the values of *ghīlāh* can be translated into a modern legal context without losing their moral basis.⁴³ Such an analysis positions *ghīlāh* not only as a *fiqh* norm but also as a philosophical framework that broadens the meaning of legal protection for public security and social justice. Applying the values of *ghīlāh* also aligns with Indonesia's constitutional commitment to protecting human rights.⁴⁴ Victims of murder by deception lose their right to life most unjustly. By providing a special category and imposing strict penalties on perpetrators, the state affirms its commitment to protecting the right

to life and citizens' sense of security, as guaranteed by Articles 28A and 28G of the 1945 Constitution. This step does not contradict universal human rights principles but strengthens them with a moral foundation rooted in substantive justice.⁴⁵ Thus, the relevance of *qatl al-ghīlāh* in Indonesian criminal law reform lies in its ability to introduce ethical, social, and preventive dimensions into the national legal system. This concept fills a gap in the Criminal Code regarding the danger posed by betraying public security. It strengthens legal legitimacy through moral values imbued in society. This integration reflects the spirit of Indonesian legal pluralism—unifying modern rationality and the wisdom of Islamic tradition within a single framework of justice with character.

Conclusion

This study confirms that *qatl al-ghīlāh* in Islamic criminal law is a form of homicide with a special status compared to ordinary murder. The elements of betrayal and deception make this crime more dangerous because they undermine public security and destroy social trust. Therefore, Sharia stipulates a punishment of *qiṣāṣ* that cannot be abated by forgiveness from the victim's family. The relevance of this concept becomes even more apparent when linked to cases in Indonesia, such as the KM 50 case, Affan Kurniawan, Ferdy Sambo, and other similar incidents that have caused social trauma. A

⁴² Nanang Nurcahyo, Ricky Ricky, and Ramalina Ranaivo Mikea Manitra, "Reform of the Criminal Law System in Indonesia Which Prioritizes Substantive Justice," *Journal of Law, Environmental and Justice* 2, no. 1 (April 2024): 89–108, <https://doi.org/10.62264/jlej.v2i1.91>.

⁴³ Abdul Wahid, Amiruddin Hanafi, and Syachdin Syachdin, "Integration of Local and Universal Values in Indonesian Criminal Law Reform," *Academia Open* 10, no. 2 (July 2025), <https://doi.org/10.21070/acopen.10.2025.11335>; Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (April

2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>.

⁴⁴ Muhammad Ali and Farhana, "Perlindungan Hukum Hak Asasi Manusia Terhadap Korban Unlawful Killing Dalam Sistem Peradilan Pidana Di Indonesia," *Reformasi Hukum* 27, no. 1 (April 2023): 59–70, <https://doi.org/10.46257/jrh.v27i1.601>.

⁴⁵ Zumiyat Sanu Ibrahim *et al.*, "Integration of Maqaṣid Al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity," *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44, <https://doi.org/10.28918/jhi.v23i1.04>.

comparison with the Indonesian Criminal Code reveals common ground and fundamental differences, particularly in philosophy and legal orientation. Thus, *qatl al-ghīlah* offers an essential perspective on Indonesian criminal law reform, oriented toward substantive justice and the public good. Based on these findings, this article recommends that Indonesian criminal law reform consider Islamic legal values, particularly *qatl al-ghīlah*. Legislators and academics should use this perspective as a source of inspiration in formulating a clearer category for homicide in the Criminal Code. Furthermore, law enforcement officials must be more sensitive to the social and ethical dimensions of homicide so that their decisions are legal and formal and convey a sense of justice to the community. Integrating these values will strengthen legal legitimacy, maintain social stability, and revitalize public trust in the state.

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