



Insults within National Criminal Law and Islamic Criminal Law: Sanctions Perspective and Legal Developments Review

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Article's Information	Abstract
<p>Keywords:</p> <p><i>Insult, Development, Takzir Jarimah.</i></p> <p>DOI :</p> <p>https://doi.org/10.25041/ip.v4i1.2867</p>	<p><i>Insults are a common issue in society, yet it is crucial that the honor, dignity, and respect of all individuals are maintained and shielded from any form of disturbance or insult attempts, as guided by both Islamic provisions and state law. This research aims to explore two primary questions: What are the sanction provisions for insults within Indonesian law? And, how has Islamic criminal law evolved in addressing insult crimes in Indonesia? A normative research method is employed, drawing on both primary and secondary data sources. The primary source is Law Number 1 of 2023 on the Criminal Code, with secondary data derived from related books and articles. Indonesian law, through Law Number 1 of 2023, outlines sanctions for insult crimes, identifying 8 types of insulting behaviors, alongside the Information and Electronic Transactions Law (ITE Law). In Islamic criminal law, regulations are grounded in the Al-Qur'an and authentic Hadiths: Muttafaq alaih. Islamic criminal law's approach to insult crimes utilizes Takzir punishment, also known as jarimah Takzir, highlighting the adaptability of Islamic legal principles in contemporary judicial considerations, allowing judges to apply Takzir punishment provisions in their rulings.</i></p>

A. Introduction

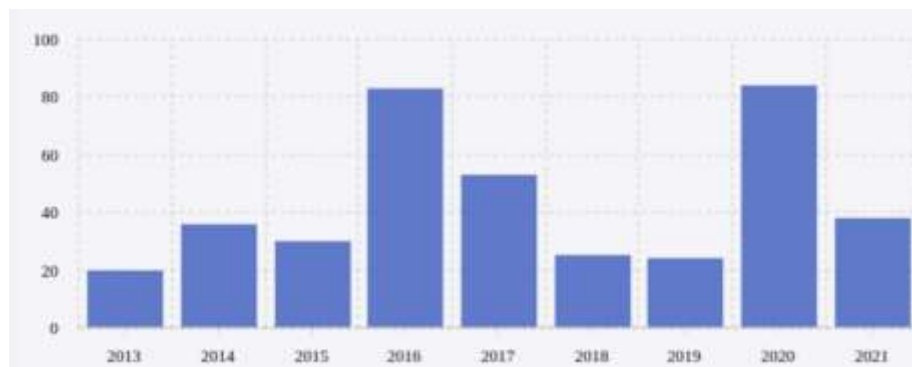
Fostering a sense of security, order and justice among the society requires the implementation of a set of rules related to religion, soul, mind, honor, lineage and property



within social interaction.¹ Within social interaction, disputes are inevitable, including disputes related to honor and reputation. The protection of honor and reputation is embodied in Pancasila, emphasizing belief in one God, adherence to justice, and the importance of civilized humanity living in mutual respect.² Honor, tied to the very essence of being human, mandates that individuals be respected and safeguarded by others. Additionally, the state actively ensures the protection of personal dignity and self-esteem through the regulations set forth in the Criminal Code (*KUHP*).³

Insults are recognized as a form of crime against human honor and reputation, constituting a criminal offense. In Indonesia, such acts are governed by the Criminal Code (*KUHP*).⁴ However, insults are not limited to face-to-face interactions in the physical world; they frequently occur in cyberspace, especially on social media platforms. Offenses against honor on social media fall under the jurisdiction of Law Number 11 of 2008 concerning Information and Electronic Transactions, commonly referred to as the ITE Law.⁵ Over the past nine years, hundreds of individuals have been prosecuted under the ITE Law, highlighting its significance in addressing crimes committed in digital spaces. The data below provides further insight:

Figure 1. Nearly 400 people have been prosecuted under the ITE Law in the last 9 years



Sources: <https://databoks.katadata.co.id/datapublish/2022/07/18/hampir-400-orang-dituntut-dengan-uu-ite-dalam-9-tahun-terakhir>, accessed on 14 January 2023.

Insult and defamation are regulated in Article 27 paragraph (3), while Article 28 paragraph (2) regulates ethnicity, religion, race, and intergroup (*SARA*) in the ITE Law.⁶ One type of insult is defamation. Based on data for 2021, defamation showed the highest number of cases, which details are presented in Figure:

Figure 2. Criminal Case Reports Based on the ITE Law

¹ Permatasari, I. A., & Wijaya, J. H, *Implementasi Undang-Undang Informasi dan Transaksi Elektronik dalam Penyelesaian Masalah Ujaran Kebencian pada Media Sosial*, 2019. hlm. 3

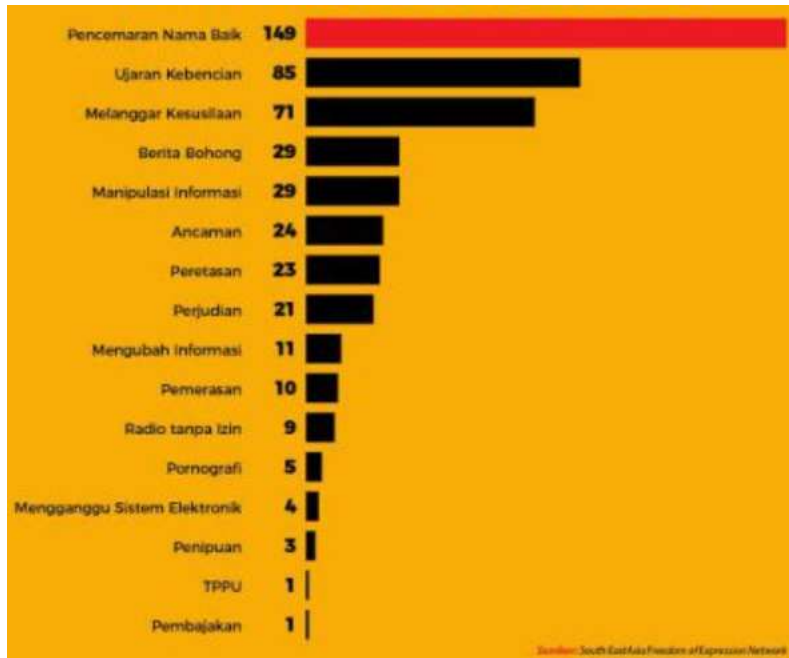
² Maulida Sukmaliaa, Dinie Anggraeni Dewi, "Keberlangsungan dan Implementasi Nilai-Nilai Pancasila Dalam Hidup Bermasyarakat", *Antropocene : Jurnal Penelitian Ilmu Humaniora* 1, no. 2 (2021): 36-42, hlm. 39.

³ Anton Hendrik Samudra, "Pencemaran Nama Baik Dan Penghinaan Melalui Mediateknologi Informasi Komunikasi Di Indonesia Pasca Amandemen Uu Ite", *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 91-105, 99.

⁴ S Supriyadi, "Penetapan Tindak Pidana Sebagai Kejahatan Dan Pelanggaran Dalam Undang-Undang Pidana Khusus", *Mimbar Hukum*, Vol. 27 No. 3, 2015, hlm. 391.

⁵ Dekie GG Kasenda, "Penegakan Hukum Terhadap Tindak Pidana Penghinaan melalui Media Elektronik", *Jurnal Ilmu Hukum Tambun Bungai* 3, no. 1 (2018): 1-31, 19.

⁶ Aldo Ernandi Putra, Tantimin, "Kajian Hukum Pasal 27 Ayat 3 Uu Ite Terhadap Kebebasan Berpendapat Masyarakat", *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 9, no. 5 (2022): 2366.



Sources: <https://kejari-batam.go.id/2021/06/03/pencemaran-nama-baik-di-sosial-media-dan-ancaman-hukumannya/>, accessed on 14 January 2023.

The data suggests that insults remain prevalent in society. However, it is essential to uphold and protect everyone's honor, dignity, and reputation, ensuring they are safeguarded from any attempts of degradation, in accordance with Islamic principles and national laws. This research investigates the legal responses to insults in Indonesia, examining both national and Islamic legal frameworks. It specifically questions how Indonesian law sanctions insults and how Islamic criminal law has evolved in addressing such offenses in Indonesia. This research employs a normative, comparative legal method, drawing on secondary data sources, including primary legal materials like Law No. 1 of 2023 concerning the Criminal Code (*KUHP*), and supplementary information from relevant books and articles.

This article introduces a novel approach by analyzing the crime of insult from various perspectives, particularly focusing on the regulations outlined in the 2023 Criminal Code. It distinguishes itself from previous studies, such as Aden Husna Ali Nurdin's research titled "Sanctions for the Crime of Insult in Islamic Criminal Law: Analysis of Article 310 of the Criminal Code," which was based on the 1946 Criminal Code.⁷ The key difference lies in the legal foundation, with this research drawing on the updated 2023 Criminal Code.

B. Discussion

1. Sanctions for the Criminal Act of Insult in Indonesian Law Development

The Criminal Code, inherited from Dutch law or Law No. 1 of 1946 on Criminal Law, addresses various forms of insult including defamation or written defamation (Article 310), slander (Article 311), minor insults (Article 315), complaints made through slander (Article 317), and slanderous accusations (Article 318).⁸ Specifically, Article 310(1) of Chapter XVI, Book II of the Criminal Code (*KUHP*), stipulates: "Anyone who

⁷ Aden Husna Ali Nurdin, "Sanksi tindak pidana penghinaan dalam hukum pidana Islam: Analisis pasal 310 kitab undang-undang hukum pidana", *Diploma thesis*, UIN Sunan Gunung Djati Bandung, (2019): 1.

⁸ Andi Reza Anugrah, "Penerapan Sanksi Terhadap Pelaku Tindak Pidana Pencemaran Nama Baik Melalui Jejaring Sosial", *Legal Opinion* 5, no. 2 (2017): 4.

intentionally harms another's honor or reputation by making an accusation, in such a way that it becomes known publicly, is subject to a penalty of imprisonment for up to nine years and/or a maximum fine of three hundred rupiahs."⁹

The latest Criminal Code, Law No. 1 of 2023, redefines the categories of insults, including: Insulting the Government or State Institutions (Section 2), Insulting Population Groups (Section 3), Insulting Religious Life (Article 304), Mild Insult (Article 436), Defamation (Article 433), Slander (Article 434), Slandorous Complaints (Article 437), False Allegations (Article 438), and Defamation of the Dead (Article 439). The approach to insults in the 2023 Criminal Code remains largely consistent with the previous version in terms of penalties, as seen in Article 433. Notably, the new Code introduces specific provisions for insulting the government or state institutions, an aspect not covered by the 1946 Criminal Code. This inclusion, prior to the ratification of the new Code, sparked significant debate.¹⁰

The concept of insult (*beleediging*) in the Indonesian Criminal Code (*KUHP*) is designed to protect legal interests related to dignity and reputation, despite the law not explicitly defining "insult" as a crime. The term "insult" is preferred over "honor" for its broader implications, though legal discourse in Indonesia often favors the latter. In the *KUHP*, insult is categorized as an offense distinctively linked to honor and reputation:¹¹

- a. Defamation complaint.
- b. The offending service officer.
- c. Wrong assumption.
- d. Violating the deceased.

Any form of insult or defamation constitutes a violation that can be pursued only upon a complaint filed by the aggrieved party, identified by the following five criteria:

- a. Express.
- b. Attacking the honor or reputation of others.
- c. Accused of certain acts.
- d. With the real intention to be known to the public.

The evolution of law in Indonesia is significantly influenced by advancements in science and technology, which naturally extends to the realm of specific criminal acts. This is exemplified by the ITE (Information and Electronic Transactions) Law, which addresses prohibited conduct involving insults and defamation of character under Article 27, paragraph (3).¹² This provision states that "everyone intentionally" who has no right distributes, transmits, or allows access to electronic information or documents containing insulting or defamatory content is subject to regulation. Historically, the stipulations of Article 27, paragraph (3) of the ITE Law draw upon the principles found within the Criminal Code (*KUHP*). The detailed formulation of Article 27, paragraph (3) of the ITE Law encompasses the following aspects:¹³

⁹ Fidelis P Simamora, Lewister D Simarmata, dan Muhammad Ansori Lubis, "Kajian Hukum Pidana Terhadap Perbuatan Pencemaran Namabak Melalui Media Sosial", *Jurnal Retenrum* 1, no. 02 (2020): 34-43, 40.

¹⁰ Athallah Zahran Ellandra, Muhammad Faqih, Kemal Azizi, "Status Quo Pengaturan Pasal Penghinaan Presiden Sebagai Pembatas Hak Konstitusional Terkait Kebebasan Berpendapat Di Indonesia Beserta Potensi Pengaturannya Di Masa Depan: Studi Kasus Penghinaan Presiden Di Media Sosial (Kasus Ruslan Buton)", *Jurnal Studia Legalia : Jurnal Ilmu Hukum* 3, no. 1 (2022): 1-12, hlm. 1.

¹¹ Reydi Vridell Awawangi, "Pencemaran Nama Baik Dalam Kuhp Dan Menurut Uu No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik", *Lex Crimen* 3, no. 4 (2014): 114.

¹² Aziz Syamsuddin, *Tindak Pidana Khusus*, Jakarta: Sinar Grafika, 2011, hlm. 44.

¹³ Sry Wahyuni, Helfira Citra, Elwidarifa Marwenni, "Penerapan Sanksi Terhadap Tindak Pidana Penghinaan Dalam Undang-Undang Informasi Dan Transaksi Elektronik", *Jurnal Penelitian Dan Pengkajian Ilmiah Sosial Budaya* 1, no.01 (2022): 142.

1) Individual Matter

The ITE Law applies universally to individuals, including both Indonesian citizens, foreign nationals, and legal entities. It governs any party that engages in activities outlined in the ITE Law, irrespective of whether these actions occur within or beyond Indonesian territory, provided the legal repercussions of such actions impact the jurisdiction of Indonesia and/or harm the interests of Indonesia. This broad applicability is detailed in Articles 1 and 2 of the ITE Law.

2) On Purpose Matter

The theory of intent articulates that intention encompasses both the act and the desired outcome of a crime by the perpetrator. This element of intent, while not always explicitly included in legal formulations, is inherently attributed to the perpetrator; however, it necessitates tangible evidence for its explicit recognition. Thus, in the context of Article 27, paragraph (3) of the ITE Law, establishing that the perpetrator acted with intent requires proof that they were aware of and desired the legal consequences of their actions when distributing, transmitting, or making insulting or defamatory Electronic Information and/or Electronic Documents accessible. Essentially, engaging in such conduct through electronic means implies an underlying acknowledgment by the perpetrator of the certainty of the outcome, despite not aiming for a criminal consequence, yet understanding that such an outcome is a likely result of their actions.

3) Against the Law Matter

In this context, the term "Against the Law" equates to "without rights." The phrase "without rights" signifies lacking the legal entitlement to act upon or with something that one does not own or possess any legal basis for, whether that basis would be an agreement or rights established by law.

4) Action Matter

In this context, the action matter refers to the act of distributing and/or transmitting and/or making electronic information and/or electronic documents accessible.

5) Crime Object Matter

Given that the details for the comparative table of sanctions related to insults across the 1946 Criminal Code, the 2023 Criminal Code, and the ITE Law are not provided, I'll outline a structure for how such a table could be organized. This structured approach will help in visualizing the differences in sanctions among these legal frameworks for insult-related offenses.

The table serves as a comparative tool, offering a clear visual representation of how sanctions for insults have evolved within Indonesian law from the 1946 Criminal Code through the 2023 Criminal Code, and into the realm of cyber law with the ITE Law. To complete the table¹⁴, specific details for each legal framework's provisions and their corresponding sanctions would need to be filled in based on the relevant legal texts and updates.

The comparison between sanctions related to insults from the 1946 Criminal Code, the 2023 Criminal Code and the ITE Law can be seen from the following table:

Criminal Code 1946	Criminal Code 2023	ITE Law
Article 310 Insult: - Imprisonment for a maximum of nine months	Article 240 Insulting the Government or State Institutions:	Article 45 paragraph (1) imprisonment for a maximum of 6 (six) years

¹⁴ Muhammad Kamran, Maskun, "Penipuan Dalam Jual Beli Online: Perspektif Hukum Telematika", *BALOB Law Journal* 1, no. 1 (2021): 50.

<p>or a maximum fine of four thousand five hundred rupiahs.</p> <ul style="list-style-type: none"> - One year and four months prison or a maximum fine of four thousand five hundred rupiahs. 	<ul style="list-style-type: none"> - Imprisonment for a maximum of 1 (one) year and 6 (six) months or a fine. - Maximum imprisonment of 3 (three) years or a fine. 	<p>and/or a fine of a maximum of IDR 1,000,000,000.00 (one billion rupiah)</p>
Article 311 relates to the criminal act of insult with a maximum imprisonment of four years.	Article 241 insult for the Government or State Institutions: <ul style="list-style-type: none"> - Maximum imprisonment of 3 (three) years or a fine. Maximum imprisonment of 4 (four) years or a fine.	
Article 315 Minor insult is punishable by a maximum imprisonment of four months and two weeks or a maximum fine of four thousand five hundred rupiahs.	Article 242 Insult for Population Groups: Maximum imprisonment of 3 (three) years or a fine	
Article 317 complaints of slander, with a maximum imprisonment of four years.	Article 243 Insult for Population Groups: Maximum imprisonment of 4 (four) years or a fine	
Article 318 presumed false, with a maximum imprisonment of four years.	Article 304 Insult of Religious Life: Maximum imprisonment of 1 (one) year or fine.	
	Article 433 vilification: <ul style="list-style-type: none"> - Maximum imprisonment of 9 (nine) months or a fine. - Maximum imprisonment of 1 (one) year 6 (six) months or a fine. 	
	Article 434 Defamation: Maximum imprisonment of 3 (three) years or a fine.	
	Article 436 Light insult is punishable by imprisonment for a maximum of 6 (six) months or a fine.	
	Article 437 complaints of libel, with a maximum imprisonment of 3 (three) years and 6 (six) months or a fine.	
	Article 438 false suspicion, with a maximum imprisonment of 3 (three) years and 6 (six) months or a fine.	

	Article 439 written defamation of a person who has died, shall be punished with imprisonment for a maximum of 6 (six) months or a fine.	
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Source: Processed by the Author.

The table presented shows that the 1946 Criminal Code prescribed sanctions for insult under five articles, imposing penalties ranging from a minimum of four months to a maximum of four years in prison, along with a fine of Rp. 4,500. In contrast, the 2023 Criminal Code expands its coverage with 11 articles dedicated to the regulation of sanctions for insult offenses. Under this code, offenders may face imprisonment ranging from six months to four years, in addition to fines categorized under levels II, III, and IV, which span from 10 million to 200 million rupiah. Meanwhile, the Information and Electronic Transactions (ITE) Law specifies sanctions for insult in a single article, setting the penalties at up to six years in prison and/or fines reaching one billion rupiah.

2. The Development of Islamic Criminal Law Related to the Crime of Insult in Indonesia

Islamic law aims to safeguard human dignity and honor, strictly prohibiting actions that demean individuals. This principle, embodying mercy for all, ensures everyone's honor is protected. Specifically, Islamic law addresses and penalizes baseless accusations, such as unfounded charges of adultery, highlighting the importance of integrity.¹⁵

The Quran denounces insult and defamation as the acts of unjust individuals. Surah Al-Hujurat, verse 11, "O you who religious do not be a group of men from other bands, maybe those who are laughed at are better for them. And don't let a group of women put it down to another, maybe lesser is better. And don't criticize and don't call them ridiculous titles. The worst call is the wrong call after conviction and no regrets, these are the people Cruel. (Q.S Al-Hujurat verse 11)."¹⁶

The verse emphasizes the importance of respecting and protecting others, highlighting the prohibition of mocking, demeaning behavior, and all forms of unfair treatment. As members of a social community, it is crucial to foster an environment of comfort, safety, and harmony among all of God's creations. In support of this, a hadith from Rasulullah SAW explicitly condemns the act of insulting others, stating: "Narrated by Muhammad bin Abdullah bin Bazi', from Abdul Hakim bin Mansur Al Wasithi, from Abdul Malik bin Umair, from Abdurrahman bin Abdullah bin Mas'ud, from his father, who reported: The Messenger of Allah said, 'A Muslim who murders another Muslim commits an act of disbelief (kufr), and insulting a fellow Muslim is an act of sinfulness (fisq),' " authentically agreed upon (Sahih: Muttafaq alaih). In Islamic criminal law, the punishment for insults, known as *Takzir*, falls into three primary categories: '*uqubah Hudud*,' '*uqubah Qisas*' and '*diyat*,' and '*uqubah Takzir*.' The distinctions lie in their basis of determination—while '*uqubah Hudud*,' '*uqubah Qisas*,' and '*diyat*' are directly specified by the Qur'an and Sunnah, '*uqubah Takzir*' is at the discretion of the governing authorities.¹⁷

Islamic law encompasses worldly penalties for actions that assault personal dignity, primarily through slander or defamation. This is addressed under the concept of *Takzir*, a

¹⁵ Nur Sa'idatul Ma'nunah, "Pencemaran Nama Baik Melalui Media Sosial Perspektif Hukum Islam", *al-Jinayah: Jurnal Hukum Pidana Islam* 3, no. 2, (2017): 403-425, 403.

¹⁶ Sudarto, *Hukum Pidana Islam*, Semarang: Yayasan Sudarto, 1990, hlm. 21.

¹⁷ Fratama Ario Erikson, Fatah Hidayat, "Pandangan Hukum Pidana Islam Terhadap Penghinaan Orang Yang Telah Meninggal Dunia Melalui Media Sosial", *Ta'zir: Jurnal Hukum Pidana* 6, no. 2 (2022): 148-156, 152.

discretionary punishment for minor offenses that do not fall under the category of severe, specified crimes. Essentially, Islamic criminal jurisprudence lacks explicit penalties for insults, leaving room for judicial discretion. *Takzir*, derived from the terms meaning to reject or to prevent, represents a relatively minor corrective measure, its severity and form left to the judgment of judicial authorities. Unlike fixed punishments prescribed by Shari'a for certain grave offenses.¹⁸ *Takzir* sanctions are flexible, tailored by officials to fit the nature of the lesser offense, without a predefined limit set by Islamic law.¹⁹ Thus, the imposition of *Takzir* aims at a broad range of penalties, varying in severity, based solely on the discretion of the authorities involved.

An act is deemed violative within the societal framework when it potentially harms public order, religious beliefs, or infringes upon the rights and reputations of community members. Distinct from the more severe *Hudud* and *Qisas* penalties,²⁰ which are strictly defined, the scope of *Takzir* offenses remains unfixed, covering a wide array of unethical behaviors without prescribed limits on their penalties. This flexibility underscores the differentiation of *Takzir* from other forms of Islamic punitive measures. In Indonesia, the evolution of legal practices incorporates Islamic law perspectives, particularly in adjudicating defamation cases within the realm of electronic media in today's digital age. This integration signifies a blend of traditional Islamic principles with contemporary legal challenges, reflecting an adaptive approach to criminal justice in a modern context.

In deciding cases involving acts of contempt, judges in Islamic criminal law contexts, such as in the example of the Rantau Prapat District Court's review of case number 962/Pid.Sus/2016/Pn.Rap, lean on the provisions of *jarimah Takzir*. This approach is rooted in the law's flexibility concerning contempt, which lacks a prescribed punishment, thus allowing judges to tailor penalties based on the case's specifics and legal facts. Their authority to adjudicate, grounded in Islamic jurisprudence's mandate to uphold laws derived from the Qur'an and Hadith, empowers them to interpret and apply sanctions appropriately. This process illustrates the judicial discretion inherent in Islamic criminal law, enabling judges to address offenses with considerations that extend beyond fixed penal codes, reflecting the nuanced application of justice as guided by Islamic principles.

C. Conclusion

In Indonesia, sanctions for acts of insult are delineated across several legal statutes, including the 1946 Criminal Code (Law No. 1 of 1946), the 2023 Criminal Code (Law No. 1 of 2023), and the Information and Electronic Transactions (ITE) Law. The 1946 Criminal Code specifies penalties within five articles, ranging from imprisonment of 4 months to 4 years and fines up to IDR 4,500. Meanwhile, the 2023 Criminal Code expands its coverage to 11 articles, with penalties including imprisonment between 6 months to 4 years and fines categorized between IDR 10 million and IDR 200 million (categories II, III, and IV). The ITE Law, focusing on digital and electronic violations, outlines sanctions in a single article, prescribing imprisonment and/or fines up to one billion rupiah for acts of insult.

The evolution of Islamic criminal law in Indonesia, particularly concerning criminal acts of insult, is grounded in the teachings of the Al-Qur'an and Sahih Hadith, under the

¹⁸ Zahratul Idami, "Prinsip Pelimpahan Kewenangan Kepada Ulil Amri Dalam Penentuan Hukuman Ta'zir Macamnya Dan Tujuannya", *Jurnal Hukum Samudra Keadilan* 10, no. 1 (2015): 22.

¹⁹ Darsi Darsi, Halil Husairi, "Ta'zir dalam Perspektif Fiqh Jinayat", *AL-QISTHU Jurnal Kajian Ilmu-ilmu Hukum* 16, no. 2 (2019): 60-64, 60.

²⁰ Misran, "Kriteria Jarimah Takzir", *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial* 2, no. 1 (2017): 4.

consensus (*Muttafaq alaih*). Islamic law categorizes punishments for insult into three primary types: '*uqubah Hudud*' (fixed punishments), '*uqubah Qisas* and *diyat*' (retributive justice and blood money), and '*uqubah Takzir*' (discretionary punishments). The key distinction lies in the source of these penalties: '*uqubah Hudud*, *Qisas*, and *diyat*' are explicitly defined by the Qur'an and Sunnah, whereas '*uqubah Takzir*' is determined by governmental authority. In the contemporary landscape, the application of *Takzir* punishments or *jarimah Takzir* for acts of insult reflects the ongoing relevance of Islamic criminal law within the judicial system, allowing judges to consider Islamic principles when imposing penalties according to the flexible guidelines of *Takzir*.

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D. Regulation

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- Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP 2023).
- Undang-Undang Nomor 11 tahun 2008 tentang Informasi dan Transaksi Elektronik (UU ITE).