



## Illuminating the Territorial Principle in Islamic Criminal Law: An In-Depth Investigation into Enforcing Islamic Penalties for Non-Muslims

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### Abstract

**Research Objective:** This study examines the Territorial Principle within Islamic Criminal Law, focusing on jurisdictional boundaries and the enforcement of Islamic punishments for non-Muslims under Islamic governance. **Research Method:** The research employed a literature review methodology, analyzed primary and secondary sources addressing territorial jurisdiction in Islamic legal traditions, and examined contemporary implementation case studies. **Results:** The research identifies divergent jurisprudential positions: Imām Abū Ḥanīfah restricts enforcement to Muslim territories with discretionary authority granted elsewhere, while Imām Malik, al-Syafi'i, and Imām Ahmad advocate universal application emphasizing individual responsibility over geographical boundaries. **Findings and Implications:** Implementation of territorial principles in regions like Aceh reveals jurisdictional conflicts between local Islamic law and national legal frameworks, creating inconsistencies that challenge legal coherence within pluralistic governance structures. **Conclusion:** Diverse interpretations of territorial jurisdiction create practical challenges in contemporary legal systems. Achieving legal harmony requires balancing local religious-legal autonomy with national legal coherence. **Contribution:** This research provides a systematic analysis of territorial jurisdiction principles in Islamic criminal law and their contemporary applications, enhancing understanding of how classical Islamic legal principles operate within modern governance structures. **Limitations:** The study relies exclusively on literature review methodology without empirical data collection. The research primarily examines theoretical jurisprudential positions rather than comprehensive case studies across multiple jurisdictions. **Suggestions:** Future research should explore comparative legal mechanisms navigating jurisdictional tensions between religious and secular systems. The study recommends establishing clearer

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guidelines for territorial application in pluralistic societies, particularly regarding non-Muslim citizens.

## Introduction

Throughout history, Islamic criminal law has attracted attention, particularly when dealing with individuals or groups who do not follow the Islamic faith.<sup>1</sup> The application of punishments to non-Muslims within areas governed by Islamic law has been a focal point in understanding territorial principles.<sup>2</sup> *This has sparked debates and considerations among scholars and legal experts, leading to controversy.*<sup>3</sup> The concept of the territorial principle in Islamic criminal law involves critical questions about the extent to which the geographical area and jurisdiction of an Islamic state can influence the application of Islamic criminal law on individuals within or beyond its borders. Diverse perspectives regarding this territorial principle create complex dynamics in implementing Islamic criminal punishments for both Muslims and non-Muslims, raising ethical and practical questions about justice and the applicability of the law in various contexts.<sup>4</sup>

There is controversy surrounding the state's authority to administer criminal punishments. Ethical and justice-related questions arise regarding the government's role in carrying out punishments that may be considered harsh or disproportionate. Islamic legal scholars have differing interpretations on how territorial principles should be applied. Some groups may take a more liberal approach, while others may adhere to a stricter stance.<sup>5</sup>

The territorial principle in Islamic criminal law raises questions about how Islamic criminal punishments apply to non-Muslims who commit crimes in a particular jurisdiction. Controversies arise, especially when non-Muslims are involved in criminal actions that may go against Islamic law. Some critics argue against this principle, as they believe it could lead to unequal punishments for Muslims and non-Muslims in a specific region, sparking debates on justice and human rights.<sup>6</sup> As Islamic criminal law evolves, debates and controversies continue to emerge, highlighting the complexity and challenges of applying the territorial principle within the framework of justice and security.<sup>7</sup>

In certain situations, Islamic criminal law may impose punishments based on Islamic principles on non-Muslims living in regions where such laws are enforced. This can lead to issues related to human rights and equality, as injustice or discrimination against non-Muslims may

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<sup>1</sup> Silvia Tellenbach, "Islamic Criminal Law," *The Oxford Handbook of Criminal Law*, 2014, 248–68.

<sup>2</sup> N Bakri, "The Territorial Principles in Islamic Criminal Law: Should A Non-Muslim Be Punished," *International Journal of Innovation, Creativity and Change* 13, no. 8 (2020): 486–504.

<sup>3</sup> Wahyu Abdul Jafar, 'Analisis Asas Hukum Pidana Islam Dan Asas Hukum Pidana di Indonesia', *Al-Istinbath: Jurnal Hukum Islam*, 1.1 June (2016), 25–44.

<sup>4</sup> Ze'ev Maghen, "Theme Issue: The Interaction between Islamic Law and Non-Muslims: Lakum Dinukum Wa-Li Dini," *Islamic L. & Soc'y* 10 (2003): 267.

<sup>5</sup> Hasnul Arifin Melayu, Mohammad Zawawi Abubakar, and Norruzeyati Che Mohammad Nasir, 'Minorities in the Shari'a Territory: The Position of Non-Muslims in Aceh's Jinayat Law [Minoritas Di Wilayah Syariat: Kedudukan Non-Muslim Dalam Qanun Hukum Jinayat Aceh]', *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum*, 10.1 (2021), 129–49.

<sup>6</sup> Muhammad Fajrul Falah, 'Egalitarianisme Muslim Dan Nonmuslim Dalam Kitab Al-Musāwah Al-Insāniyyah Karya 'Ali Jum'ah', *Syariah: Journal of Fiqh Studies*, 1.1 (2023), 1–20.

<sup>7</sup> Ahmad E Nassar, "The International Criminal Court and the Applicability of International Jurisdiction under Islamic Law," *Chi. J. Int'l L.* 4 (2003): 587.



arise.<sup>8</sup> The Islamic criminal legal system might enforce penalties for actions considered violations of Islamic teachings. Non-Muslims may face punishment for actions inconsistent with Islamic principles, even if they adhere to different religious beliefs. Sometimes, the application of Islamic criminal punishments to non-Muslims may be inconsistent or unclear, leading to legal uncertainty and concerns about potential misuse of the law.<sup>9</sup>

The affirmation of the territorial principle in Islamic criminal law maintains its relevance and importance in upholding justice and order in a specific region. By establishing the territorial principle, the Islamic criminal legal system can provide legal certainty and assert the authority of an Islamic legal entity to address criminal actions occurring within its jurisdiction. This establishes a clear legal basis for the enforcement of criminal penalties, ensuring that Islamic law is applied in the place where criminal acts occur.<sup>10</sup>

Several studies related to the territorial principle have been conducted. These include research by W. Darmalaksana in the journal 'Perspektif' titled "Analisis Perbandingan Asas Teritorialitas dan Asas Non-Teritorialitas dalam Pemikiran Hukum Islam",<sup>11</sup> research by Nurdin Bakri in the International Journal of Innovation, Creativity, and Change titled "The Territorial Principles in Islamic Criminal Law: Should A Non-Muslim Be Punished?",<sup>12</sup> and research by Emilia Justina Powell in the Law & Contemporary Issues Journal titled "Islamic law states and the authority of the international court of justice: Territorial sovereignty and diplomatic immunity".<sup>13</sup>

This research aims to fill the knowledge gap regarding the territorial principle in Islamic criminal law. It will conduct an in-depth investigation into the implementation of Islamic penalties for non-Muslims. The research will delve deeper into how the territorial principle is applied in Islamic criminal law, particularly in the context of enforcing penalties against non-Muslims. This is important because the territorial principle is a key concept in Islamic criminal law that regulates jurisdiction and the enforcement of penalties in territories under Islamic governance. Therefore, this research will provide a deeper understanding of how Islamic criminal law is applied to non-Muslim individuals under Islamic governance, as well as its implications in the context of justice and human rights.

## Methods

This study adopted a systematic literature review methodology to investigate the territorial principle in Islamic criminal law, with a particular emphasis on enforcement mechanisms concerning non-Muslim populations. The research process began by identifying essential search parameters, including "Territorial Principle," "Islamic Criminal Law," "Enforcing Islamic Penalties," and "non-Muslims," together with relevant synonyms and conceptual

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<sup>8</sup> Muzar Ibnu Syarif, "Political Discrimination against Non-Muslims in Contemporary Indonesia," in *1st International Conference of Law and Justice-Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)* (Atlantis Press, 2017), 69–72.

<sup>9</sup> Abdul Halim, "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh," *Human Rights Review* 23, no. 2 (2022): 265–88.

<sup>10</sup> A Hamid Sarong, "Enforcing Islamic Law for Non-Muslims a Case Study of Indonesia," *Hamdard Islamicus* 10, no. 4 (2018): 99–119.

<sup>11</sup> Wahyudin Darmalaksana, "Analisis Perbandingan Asas Teritorialitas Dan Asas Non-Teritorialitas Dalam Pemikiran Hukum Islam," *Jurnal Perspektif* 7, no. 1 (2023): 1–8.

<sup>12</sup> Bakri, "The Territorial Principles in Islamic Criminal Law: Should A Non-Muslim Be Punished."

<sup>13</sup> Emilia Justyna Powell, "Islamic Law States and the Authority of the International Court of Justice: Territorial Sovereignty and Diplomatic Immunity," *Law & Contemp. Probs.* 79 (2016): 209.



variations to ensure a comprehensive exploration of the subject matter.

Data collection was conducted through systematic searches across reputable academic databases. The selection of source materials followed rigorous inclusion and exclusion criteria, prioritizing relevance, scholarly credibility, and timeliness in order to ensure analytical precision. The methodology integrated both classical Islamic jurisprudential texts and contemporary legal scholarship, thereby establishing historical continuity and contextual grounding for modern applications.

The analytical framework employed critical textual analysis, with a focus on jurisprudential interpretations of territorial jurisdiction across major Islamic legal schools. Primary literature analysis examined foundational texts that articulated territorial principles within Islamic criminal law, while secondary analysis assessed scholarly interpretations and practical case applications. This dual-layered analytical approach enabled a holistic understanding of both theoretical underpinnings and their practical implications, thereby contributing to a more nuanced discussion of enforcement dynamics within Islamic legal traditions.

### ***Analysis of Theological Parameters: Beliefs and Worship***

In this context, the author categorizes the issues into three main parts. The initial part pertains to issues related to beliefs and the practice of worship. The second part delves into transactions (*muāmalah*), while the third part addresses aspects of criminal punishment.

#### **1. Beliefs and Worship**

The fields of beliefs (*'aqīdah*) and worship (*'ibādah*) play a crucial role in distinguishing religious teachings. Beliefs, or faith, and worship, or religious rituals, are the core of any belief system. In the context of Islam, scholars emphasize that there is no tolerance granted regarding beliefs and worship. In principle, non-Muslims are not obligated to perform the rituals that are part of the duties of the Islamic community.<sup>14</sup>

Differences in the realms of beliefs (*'aqīdah*) and worship (*'ibādah*) are considered fundamental to establishing an unwavering religious identity. Islamic beliefs encompass faith in one God, His messengers, His books, His angels, the Day of Judgment, and destiny, forming the cornerstone of a Muslim's life. As a result, there is no pressure or obligation on non-Muslims to conform to the teachings and rituals of Islam.

Islam respects the freedom of religion and the right to adhere to one's own beliefs.<sup>15</sup> While emphasizing the importance of spreading and preserving faith within the Muslim community, there is no requirement for non-Muslims to follow these teachings. This principle is in line with the values of tolerance and religious freedom embraced by Islam.<sup>16</sup>

In this context, interfaith relations are esteemed and maintained with the principle of mutual respect. Tolerance towards differences in beliefs and worship practices reinforces the idea that every individual has the right to practice their own beliefs without interference or pressure from others.<sup>17</sup> Although the Muslim community staunchly upholds its religious teachings, this

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<sup>14</sup> Alexander J Mussap, "Strength of Faith and Body Image in Muslim and Non-Muslim Women," *Mental Health, Religion and Culture* 12, no. 2 (2009): 121–27.

<sup>15</sup> Abdullah Saeed, *Freedom of Religion, Apostasy and Islam* (Routledge, 2017).

<sup>16</sup> Mohsen Kadivar, "Freedom of Religion and Belief in Islam," *Islam and Religious Diversity. Critical Concepts in Islamic Studies*, 2006, 198–220.

<sup>17</sup> Vahit Göktaş and Saeyd Rashed Hasan Chowdury, 'Freedom of Religion, Faith and Religious Tolerance in Bangladesh: A Case Study on The Islamic Mysticism/Bangladeş'te Din Özürlüğü, İnanç ve Dinî



principle reflects the inclusive values and justice upheld in Islamic teachings.

## 2. Mu'āmalah

The interaction between Muslims and non-Muslims in Islam is guided by the universal principles of Islamic teachings, encapsulated in two main concepts. The first concept, "Islam *rahmatan li al-ālamīn*," translates to "Islam as a mercy to the worlds." It signifies that Islamic teachings are intended not only for Muslims but for all of humanity and the entire universe, emphasizing the expectation for Muslims to embody mercy and bring benefit to all of Allah's creation, irrespective of religious differences. The second concept, "*ḥabl min Allāh* and *ḥabl min al-nās*,"<sup>18</sup> emphasizes the qualities of mutual understanding and openness, as well as attitudes of respect, tolerance, and justice in everyday interactions.<sup>19</sup>

Prophet Muhammad serves as a real-life exemplar in conducting transactions with non-Muslims, as evidenced in several hadiths. He demonstrated traits of tolerance, justice, and patience in his interactions with those who did not embrace Islam. For instance, in a Hadith narrated by Bukhārī and Muslim, a non-Muslim came to reclaim a loan that had been extended to him before he embraced Islam. Prophet Muhammad not only returned the borrowed property but also added something extra, exemplifying principles of justice and kindness.<sup>20</sup>

During his residence in the city of Madinah, Prophet Muhammad established the Constitution of Madinah, which guaranteed the rights of non-Muslims, granting them religious freedom and autonomy in managing their internal affairs. His inclusive attitude towards non-Muslims in this context reflects the concepts of justice and appreciation for the diversity within society.<sup>21</sup>

Furthermore, some hadiths document how Prophet Muhammad engaged in trade and business transactions with non-Muslim merchants. A professional, honest, and fair approach to business dealings was an integral part of Prophet Muhammad's actions, setting an example for Muslims to conduct their daily interactions with tolerance, appreciation for differences, and a commitment to uphold the values of justice, even in the context of business relationships with non-Muslims.

## 3. Jināyat

In Islamic law, the application of '*uqūbāt* (sanctions) to non-Muslims is rooted in the principles of justice and the safeguarding of individual rights. Islamic law governs sanctions for transgressions, regardless of whether the transgressor is Muslim, non-Muslim, classified as *zimmī*, or a *Musta'mīn*. The core tenet guiding the imposition of sanctions is justice, irrespective of the transgressor's religious affiliation.<sup>22</sup>

Should a non-Muslim transgress the rights of a Muslim, Islamic Sharia provides a legal framework for imposing sanctions commensurate with the severity of the transgression. Emphasizing justice and the protection of human rights takes precedence in enforcing sanctions, applicable to all individuals under the jurisdiction of Islamic law, regardless of their religious

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Hoşgörü: İslâm Tasavvufu Üzerine Örnek Bir Araştırma', *Disiplinlerarası Sosyal Bilimler Dergisi*, 5, 2019, 41–67.

<sup>18</sup> Muhammad Jamhuri, "Humanisme Sebagai Nilai Pendekatan Yang Efektif Dalam Pembelajaran Dan Bersikap, Perspektif Multikulturalisme Di Universitas Yudharta Pasuruan," *Jurnal Al-Murabbi* 3, no. 2 (2018): 317–34.

<sup>19</sup> Umar F Abd-Allah, *Living Islam with Purpose* (Tabah Foundation Abu Dhabi, 2012).

<sup>20</sup> Timothy J Woods, "Islam, Peace and the Quest for Justice," *Theology* 109, no. 852 (2006): 412–20.

<sup>21</sup> Abū 'Abdullāh Muḥammad Ibnu Ismā'īl Al-Bukhārī, *Al-Jāmi' Al-Ṣaḥīḥ*, Cet. I (al-Qāhirah: Dār al-Salafiyyah, 1422).

<sup>22</sup> Sarong, "Enforcing Islamic Law for Non-Muslims a Case Study of Indonesia."





beliefs.<sup>23</sup> Similarly, in cases where transgressions against the rights of individuals classified as *zimmī* or *Musta'mīn* occur, the paramount principle is the protection of their rights. *Ẓimmī* refers to a non-Muslim living under the protection of an Islamic state, while *Musta'mīn* is a non-Muslim guest or visitor granted security guarantees by the Islamic State. In both instances, Islamic law mandates the protection of their rights and the imposition of sanctions for any ensuing violations.<sup>24</sup>

It is important to note that sanctions imposed within the framework of Islamic law must adhere to the principles of justice, proportionality, and respect for human rights. Islamic law underscores these principles in the application of sanctions to ensure that every individual, including non-Muslims, is treated fairly and by the humanitarian values recognized by Islamic law.

### ***Socio-Economic Interactions: Mu'āmalah Framework***

The territorial principle in Islamic criminal law has been a subject of debate, particularly regarding the application of Islamic law in specific regions. One of the contentious issues is the application of punishments to non-Muslim individuals in areas governed by Islamic law. Some argue that Islamic punishments should exclusively apply to Muslims, while others believe that Islamic criminal law should encompass all residents, including non-Muslims, in the territory of an Islamic state.

In the practical application of Islamic criminal law, despite its universal nature, its implementation tends to be more local or regional. This approach raises questions about how Islamic criminal law addresses criminal actions involving individuals who do not adhere to Islam or are outside the territory of Islamic governance. It is important to understand that Islamic criminal law, despite its universal basis, faces challenges in an increasingly globalized world. Therefore, a deeper exploration of the territorial principle in Islamic criminal law is necessary to understand the extent to which the enforcement and application of punishments can be carried out in a broader geographical context.<sup>25</sup>

The various schools of thought within Islamic law offer different perspectives on the territorial principles and the boundaries of the applicability of Islamic criminal law. Each school has unique interpretations and approaches based on their understanding of Islamic law principles. The question of the applicability of criminal law based on a specific location in the context of Islamic law has been addressed by the Imām of the *maḏhabs*. Abū Ḥanīfah, Abū Yūsuf, al-Syāfi'ī, Mālik, and Aḥmad bin Ḥanbal each have their perspectives on this matter. According to Abū Ḥanīfah, Islamic law applies to criminal acts occurring in *dār al-salām*, which is the territory.<sup>26</sup>

The different schools of thought within Islamic law have varying perspectives on the territorial principles and boundaries of the applicability of Islamic criminal law. Each school has unique interpretations and approaches based on their understanding of the principles of Islamic law. Here is a general overview of some prominent schools of thought. The question of the applicability of criminal law based on a specific location in the context of Islamic law has drawn attention from the theories embraced by the Imāms of the *madhabs*. Abū Ḥanīfah, Abū Yūsuf, al-

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<sup>23</sup> Muhammad Lutfi Hakim and Khoiruddin Nasution, "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era," *Oxford Journal of Law and Religion* 11, no. 2–3 (2022): 288–313.

<sup>24</sup> Zainuddin Puteh and Faisar Ananda Arfa, "Non-Muslim Sebagai Subjek Hukum Islam Dalam Konsep Mukallaf," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 1 (2022): 78–93.

<sup>25</sup> L. Amin Widodo, *Fiqh Siyasah Dalam Hubungan Internasional* (Yogyakarta: Tiara Wacana, 1994).

<sup>26</sup> Rudolph Peters, "Dar Al-Harb, Dar Al-Islam Und Der Kolonialismus," in *Shari'a, Justice and Legal Order* (Brill, 2020), 418–27.



Syafi'i, Malik, and Ahmad bin Hanbal each have their perspectives on this matter.

### ***Territorial Jurisdiction: Competing Juridical Perspectives***

According to Abū Ḥanīfah, Islamic law applies to criminal acts occurring in *Dār al-salām*, which is the territory under the authority of Islamic governance, regardless of the type of crime or the identity of the perpetrator, be they Muslim or non-Muslim. Outside of *dār al-salām*, Islamic criminal law only applies to crimes that involve violations of individual rights (*ḥaq 'adamiy*).<sup>27</sup> This perspective provides an important context for understanding the implementation of Islamic criminal law according to the location and situations involving individuals, religions, and different jurisdictions.<sup>28</sup>

In the theory of Imām Abū Ḥanīfah, it is stated that the rules of Islamic criminal law are fully applicable only within the territories of Muslim countries, that is, in the territorial areas of the Islamic state. Regardless of the type of criminal violation (*Jināyat*) committed, whether by a Muslim or a non-Muslim individual (*ẓimmī*), the sanctions of *'uqūbāt* can be applied. For Muslim individuals, punishments by Islamic Sharia will be implemented. Meanwhile, for *ẓimmī* individuals, as they have submitted to Islamic law when accepting the status of *ẓimmī*, sanctions also apply to them.<sup>29</sup>

Outside the territories of the Islamic state, whether by Muslim or *ẓimmī* individuals, such actions will not be punished according to Islamic law, regardless of whether the perpetrator comes from an Islamic state traveling to a non-Islamic state. Abū Ḥanīfah argues that the basis for the application of Islamic law is not their compliance with Islamic laws wherever they may be. Instead, it is the duty of the Imām (ruler of the state) to implement it. However, if the Imām does not have the authority to apply Islamic law in the area where the violation occurred, there is no obligation to enforce punishment. In this context, Abū Ḥanīfah acknowledges that without authority, punishment is not obligatory.<sup>30</sup>

Abū Yūsuf, a prominent jurist within the Ḥanafī school, expressed the view that Islamic law applies to all criminal acts within the legal jurisdiction of *dār al-salām*. This perspective encompasses individuals residing permanently (residents), whether they are Muslim or non-Muslim. The opinion is based on the belief that a Muslim is obligated to follow and abide by Islamic law due to their Islamic identity, while a non-Muslim is expected to comply with Islamic law because of the *ẓimmah* contract that guarantees their safety in *dār al-salām*. *Musta'mīn*, who resides for a specific period, is required to adhere to Islamic laws during the secure period

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<sup>27</sup> Muhammad Hasbi Ash-Shiddieqy, "Hukum Antar Golongan," *Semarang: Pustaka Rizki Putra*, 2001.

<sup>28</sup> Ali Raza Naqvi, "Laws of War in Islam," *Islamic Studies* 13, no. 1 (2013): 25–43, <http://www.jstor.org/stable/20846902>; Hadassa A. Noorda, "The Islamic Law of War – Justifications and Regulations," *Journal of Military Ethics* 11, no. 1 (2012): 67–69, <https://doi.org/10.1080/15027570.2012.674243>; Shaheen Sardar Ali and Javaid Rehman, "The Concept of Jihad in Islamic International Law," *Journal of Conflict and Security Law* 10, no. 3 (2005): 321–43, <https://doi.org/10.1093/jcsl/kri017>.

<sup>29</sup> Hendun Abd Rahman Shah and Suraiya Osman, "The Universality of Hadd Punishment with Special Reference to Piracy and Hirabah 1 Hendun," no. Unclos Iii (1397): 1–19.

<sup>30</sup> John Tolan, "THE LEGAL STATUS OF ẒIMMĪ'S IN THE ISLAMIC WEST," in *Religion and Law in Medieval Christian and Muslim Societies 1*, ed. Nicolas De Lange et al. Camilla Adang, Nora Berend (Turnhout, Belgium: Brepols Publishers n.v., 2013), 1–416; Ahmad Hanafi, "Asas-Asas Hukum Pidana Islam," (*No Title*), 1967.



guaranteed by the 'and al-amn (security agreement).<sup>31</sup>

In cases of actions carried out outside the territory of Islam, Abū Yūsuf's opinion aligns with Imam Abū Hanifah's, with two exceptions:

Firstly, regarding usurious agreements made by Muslim and *zimmī* residents with people outside the Islamic state, whether they are Muslims or non-Muslims, Abū Yūsuf asserts that these actions are not violations in non-Islamic countries. Although Islam prohibits it, this prohibition does not apply to non-Islamic countries. However, the maker of the agreement is still bound by Islamic criminal law wherever it may be. The action cannot be subject to punishment as there is no authority to enforce penalties in the location of the violation.

Secondly, concerning cases of the killing of Muslim prisoners (residents of the Islamic state) committed by Muslims or *zimmī* individuals outside the Islamic state, Imam Abū Hanifah states that the perpetrator cannot be subjected to *qisās* or *diyat*. According to him, by being captured, the individual has lost their guarantee of life and property. On the other hand, Imam Abū Yūsuf argues that the perpetrator can be subject to *diyat* punishment because their guarantee is not lost due to captivity. He also states that, in reality, the appropriate punishment should be *qisās*, but due to the absence of authority at the place and time of the incident, *qisās* cannot be carried out.<sup>32</sup>

Imām Mālik, Imām al-Syāfi'ī, and Imam Ahmad, on the other hand, argue that Islamic law can be applied to all crimes that occur anywhere as long as the place is within the jurisdiction of *dār as-Salām*. The application of this law is not dependent on the religion of the perpetrator, whether they are Muslim, *zimmi* (non-Muslim living under Muslim rule), or *musta'mīn* (non-Muslim living temporarily in a Muslim land). In this view, criminal rules are not restricted by geographical boundaries but are bound by the legal subject. Therefore, every Muslim is prohibited from committing legal violations wherever they may be. This perspective emphasizes that the obligation to comply with Islamic law is not only related to the location but is also the responsibility of the individual as a legal subject to Islamic law.<sup>33</sup>

This discussion on the territorial principle underscores the need to adapt Islamic criminal law to the challenges posed by an increasingly globalized world. While principles may be universal, their practical application tends to be influenced by regional dynamics. The ongoing discourse on the territorial scope of Islamic criminal law invites further exploration into how these principles can navigate complexities involving non-Muslims or cases beyond the boundaries of *dār as-salām*. Ultimately, understanding and refining the territorial principle in Islamic criminal law is crucial for ensuring justice, coherence, and relevance in a diverse and interconnected world.

## Conclusion

This research systematically examines the rights and responsibilities of non-Muslims under Sharia law across three critical domains: theological parameters (belief and worship), socio-economic interactions (business dealings), and criminal justice applications. The findings reveal a nuanced legal framework that strikes a balance between religious distinctiveness and principles of justice and coexistence. This demonstrates that Islamic jurisprudence establishes clear boundaries that preserve religious identity while respecting the autonomy of non-Muslim

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<sup>31</sup> Anver M. Emon, *Dhimmi's and Others in the Empire of Law*, ed. Clark B. Lombardi and Lynn Welchman, Cet. I (United Kingdom: Oxford University Press, Inc., 2012); Ali Abubakar, "Kedudukan Non-Muslim Dalam Qanun Jinayat" (Dinas Syariat Islam Aceh, 2022).

<sup>32</sup> Muhammad Hameedullah Md Asri and Md Khalil Ruslan, "The Crime of Hirabah: Approach, Justification and Significance," *Jurnal Syariah* 28, no. 3 (2020): 383–416, <https://doi.org/10.22452/js.vol28no3.3>; Abubakar, "Kedudukan Non Muslim Dalam Qanun Jinayat."

<sup>33</sup> Bakri, "The Territorial Principles in Islamic Criminal Law: Should A Non-Muslim Be Punished."





communities.

The principle of non-compulsion in matters of faith emerges as a foundational element of Islamic legal thought. Additionally, the concept of "Islam raḥmatan li al-ālamīn" serves as a theoretical basis for ensuring equitable treatment in commercial, social, and civic contexts.

In terms of criminal justice, the research uncovers a legal framework that places emphasis on the protection of individual rights, irrespective of religious affiliation. Fundamental principles of justice, proportionality, and rights protection remain consistent across various classifications of non-Muslims. The territorial analysis reveals significant diversity in scholarly interpretations regarding the application of Islamic criminal law across different jurisdictions. The theoretical contributions of jurists such as Abū Ḥanīfah and Abū Yūsuf showcase sophisticated legal reasoning that differentiates between territorial and personal jurisdiction.

This study challenges polarized narratives that portray Islamic law as either inherently oppressive toward non-Muslims or entirely uniform in its treatment of religious communities. Instead, the evidence points to a complex legal tradition that establishes definitive religious boundaries while developing mechanisms to ensure justice, protect individual rights, and promote peaceful coexistence across religious divides. These findings contribute to a more nuanced understanding of Islamic legal history and offer conceptual resources for contemporary discussions about religious pluralism within increasingly globalized legal frameworks.

### CRediT Authorship Contribution Statement

**Islamul Haq:** Conceptualization, Methodology, Writing -original Draft. **Purnama Suci:** Supervision, Methodology, Writing - review & editing, **Resi:** Supervision, Writing - review & editing. **Mustafakama Waedureh:** Writing - review & editing.

### Declaration of Competing Interest

The authors declare that they have no competing financial interests or personal relationships that could influence the work reported in this paper.

### Data Availability

Data will be made available on request

### References

- Abd-Allah, Umar F. *Living Islam with Purpose*. Tabah Foundation Abu Dhabi, 2012.
- Abubakar, Ali. "Kedudukan Non-Muslim Dalam Qanun Jinayat." Dinas Syariat Islam Aceh, 2022.
- Al-Bukhari, Abu 'Abdullah Muhammad Ibnu Isma'īl. *Al-Jami' Al-Sahih*. Cet. I. al-Qahirah: Dar al-Salafiyyah, 1422.
- Ali, Shaheen Sardar, and Javaid Rehman. "The Concept of Jihad in Islamic International Law." *Journal of Conflict and Security Law* 10, no. 3 (2005): 321–43. <https://doi.org/10.1093/jcsl/kri017>.
- Ash-Shiddieqy, Muhammad Hasbi. "Hukum Antar Golongan." *Semarang: Pustaka Rizki Putra*, 2001.
- Bakri, N. "The Territorial Principles in Islamic Criminal Law: Should A Non-Muslim Be Punished." *International Journal of Innovation, Creativity and Change* 13, no. 8 (2020): 486–504.
- Darmalaksana, Wahyudin. "Analisis Perbandingan Asas Teritorialitas Dan Asas Non-Teritorialitas Dalam Pemikiran Hukum Islam." *Jurnal Perspektif* 7, no. 1 (2023): 1–8.
- Emon, Anver M. *Dhimmi's and Others in the Empire of Law*. Edited by Clark B. Lombardi and Lynn Welchman. Cet. I. United Kingdom: Oxford University Press, Inc., 2012.



- Falah, Muhammad Fajrul. "Egalitarianisme Muslim Dan Nonmuslim Dalam Kitab Al-Musāwah Al-Insāniyyah Karya 'Ali Jum'Ah." *Syariah: Journal of Fiqh Studies* 1, no. 1 (2023): 1–20.
- Göktaş, Vahit, and Saeyd Rashed Hasan Chowdury. "Freedom Of Religion, Faith and Religious Tolerance in Bangladesh: A Case Study on The Islamic Mysticism/Bangladeş'te Din Özürlüğü, İnanç ve Dinî Hoşgörü: İslâm Tasavvufu Üzerine Örnek Bir Araştırma." *Disiplinlerarası Sosyal Bilimler Dergisi*, no. 5 (2019): 41–67.
- Hakim, Muhammad Lutfi, and Khoiruddin Nasution. "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era." *Oxford Journal of Law and Religion* 11, no. 2–3 (2022): 288–313.
- Halim, Abdul. "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh." *Human Rights Review* 23, no. 2 (2022): 265–88.
- Hanafi, Ahmad. "Asas-Asas Hukum Pidana Islam." (*No Title*), 1967.
- Hendun Abd Rahman Shah and Suraiya Osman. "The Universality of Hadd Punishment with Special Reference to Piracy and Hirabah 1 Hendun," no. Unclos Iii (1397): 1–19.
- Jafar, Wahyu Abdul. "Analisis Asas Hukum Pidana Islam Dan Asas Hukum Pidana Di Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 1, no. 1 June (2016): 25–44.
- Jamhuri, Muhammad. "Humanisme Sebagai Nilai Pendekatan Yang Efektif Dalam Pembelajaran Dan Bersikap, Perspektif Multikulturalisme Di Universitas Yudharta Pasuruan." *Jurnal Al-Murabbi* 3, no. 2 (2018): 317–34.
- John Tolan. "THE LEGAL STATUS OF ZIMMI'S IN THE ISLAMIC WEST." In *Religion and Law in Medieval Christian and Muslim Societies 1*, edited by Nicolas De Lange at.al Camilla Adang, Nora Berend, 1–416. Turnhout, Belgium: Brepols Publishers n.v., 2013.
- Kadivar, Mohsen. "Freedom of Religion and Belief in Islam." *Islam and Religious Diversity. Critical Concepts in Islamic Studies*, 2006, 198–220.
- L. Amin Widodo. *Fiqh Siyasa Dalam Hubungan Internasional*. Yogyakarta: Tiara Wacana, 1994.
- Maghen, Ze'ev. "Theme Issue: The Interaction between Islamic Law and Non-Muslims: Lakum Dinukum Wa-Li Dini." *Islamic L. & Soc'y* 10 (2003): 267.
- Md Asri, Muhammad Hameedullah, and Md Khalil Ruslan. "The Crime of Hirabah: Approach, Justification and Significance." *Jurnal Syariah* 28, no. 3 (2020): 383–416. <https://doi.org/10.22452/js.vol28no3.3>.
- Melayu, Hasnul Arifin, Mohammad Zawawi Abubakar, and Norruzeyati Che MohammadNasir. "Minorities in the Shari'a Territory: The Position of Non-Muslims in Aceh's Jinayat Law [Minoritas Di Wilayah Syariat: Kedudukan Non-Muslim Dalam Qanun Hukum Jinayat Aceh]." *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 1 (2021): 129–49.
- Mussap, Alexander J. "Strength of Faith and Body Image in Muslim and Non-Muslim Women." *Mental Health, Religion and Culture* 12, no. 2 (2009): 121–27.
- Naqvi, Ali Raza. "Laws of War in Islam." *Islamic Studies* 13, no. 1 (2013): 25–43. <http://www.jstor.org/stable/20846902>.
- Nassar, Ahmad E. "The International Criminal Court and the Applicability of International Jurisdiction under Islamic Law." *Chi. J. Int'l L.* 4 (2003): 587.
- Noorda, Hadassa A. "The Islamic Law of War – Justifications and Regulations." *Journal of Military Ethics* 11, no. 1 (2012): 67–69. <https://doi.org/10.1080/15027570.2012.674243>.
- Peters, Rudolph. "Dar Al-Harb, Dar Al-Islam Und Der Kolonialismus." In *Shari'a, Justice and Legal Order*, 418–27. Brill, 2020.



- Powell, Emilia Justyna. "Islamic Law States and the Authority of the International Court of Justice: Territorial Sovereignty and Diplomatic Immunity." *Law & Contemp. Probs.* 79 (2016): 209.
- Puteh, Zainuddin, and Faisar Ananda Arfa. "Non-Muslim Sebagai Subjek Hukum Islam Dalam Konsep Mukallaf." *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 1 (2022): 78–93.
- Saeed, Abdullah. *Freedom of Religion, Apostasy and Islam*. Routledge, 2017.
- Sarong, A Hamid. "Enforcing Islamic Law for Non-Muslims a Case Study of Indonesia." *Hamdard Islamicus* 10, no. 4 (2018): 99–119.
- Syarif, Muzar Ibnu. "Political Discrimination against Non-Muslims in Contemporary Indonesia." In *1st International Conference of Law and Justice-Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)*, 69–72. Atlantis Press, 2017.
- Tellenbach, Silvia. "Islamic Criminal Law." *The Oxford Handbook of Criminal Law*, 2014, 248–68.
- Woods, Timothy J. "Islam, Peace and the Quest for Justice." *Theology* 109, no. 852 (2006): 412–20.