

Criminal Liability for Perpetrators of *Love Scamming* in the Perspective of Positive Law and Islamic Criminal Law

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Abstract: Technological development has significantly facilitated various aspects of human life; however, it has simultaneously generated new forms of crime in cyberspace, one of which is love scamming. Love scamming generally refers to a romance-based fraud in which offenders manipulate victims through fabricated emotional relationships and expressions of affection to illicitly obtain money or other benefits. This study examines the criminal act of love scamming from the perspectives of Indonesian positive criminal law and Islamic criminal law. It employs a normative juridical approach using a comparative analytical framework. The findings reveal that positive law emphasizes the formal elements of fraud offenses, offender accountability based on codified legal provisions, and the application of *lex generalis*, even when the crime is committed through electronic media. Meanwhile, Islamic criminal law highlights the role of *niyyah* (intention), moral accountability, social impact, and public interest in determining sanctions (*ta'zir*), with flexibility in sentencing according to the level of offender involvement and victim losses. Comparatively, both legal systems share aligned objectives, namely the protection of property, deterrence, and justice for victims. The study concludes that the principles of flexibility and public benefit embedded in Islamic criminal law may offer normative insights for the development of national legal policy in addressing emerging digital crimes.

Keywords:
Criminal
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Islamic
Criminal Law;
Love Scamming.

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INTRODUCTION

The rapid advancement of information technology has brought about transformative changes in society. While these developments generate various positive impacts, particularly in facilitating communication and daily activities, they also give rise to negative consequences, including new forms of criminal behavior. Communication through digital media has, in practice, become a catalyst for the emergence of cyber-based crimes. Today, criminal acts are increasingly committed through more sophisticated methods, notably by utilizing the internet. Such offenses are commonly identified as cybercrime—criminal acts committed with the involvement of computers and digital networks, especially by exploiting internet-based systems.¹ The National Cyber and Encryption Agency (BSSN) reported that Indonesia experienced approximately 347.17 million cyberattacks in 2024, marking a 35.72% increase from 266.74 million incidents recorded in the previous year.²

¹ Robert Moore, *Cybercrime: Investigating High-Technology Computer Crime* (Routledge, 2014).

² Febriana Sulistyia Pratiwi, "BSSN Catat 370,02 Juta Serangan Siber Ke Indonesia Pada 2022," last modified 2023, accessed October 5, 2023, <https://dataindonesia.id/internet/detail/bssn-catat-37002-juta-serangan-siber-ke- indonesia-pada-2022>.

Although criminal law frameworks exist to regulate and address these offenses, law enforcement faces persistent challenges due to the dynamic evolution of technology. Various forms of digital abuse continue to emerge, causing harm to individuals and society. Some notable examples include deepfakes, which enable the creation of hyper-realistic manipulated visual or audio materials;³ phishing, a deceptive technique used to obtain personal data such as passwords and credit card numbers; the misuse of communication platforms such as *MiChat* for illicit activities; and fraudulent e-commerce accounts designed to deceive consumers.⁴

Fraud represents one of the most prevalent criminal offenses, occurring both conventionally and online. Online fraud is fundamentally similar to traditional fraud, with the primary distinction lying in the medium employed. Online fraud exploits electronic systems—including computers, the internet, and telecommunication devices—to execute deceitful acts.⁵ One such offense involves persuading and emotionally manipulating victims through romantic engagements to gain their trust and subsequently exploit them.

Within the Indonesian Criminal Code (KUHP), fraud is categorized under Book II on Crimes, specifically in Chapter XXV, Article 378, which stipulates:

“Anyone who, with the intention of unlawfully benefiting themselves or others, by using a false name or false dignity, deception, or a series of lies, induces another person to hand over an object, provide credit, or eliminate a debt, shall be subject to imprisonment of up to four years.”

Criminal sanctions are imposed when the elements of fraud are fulfilled. Case handling follows the criminal justice process involving multiple institutions, including the Police, the Prosecutor's Office, the Courts, and Correctional Institutions. This mechanism aims to bring offenders before the court to secure a fair and just legal resolution. As information technology advances, particularly within social media ecosystems, digital platforms are no longer confined to communication functions but have expanded into domains such as business, banking transactions, entertainment, and social networking. Platforms such as *Shopee*, *Tokopedia*, *Bukalapak*, *TikTok*, *Instagram*, and *YouTube* exemplify this transformation. Nevertheless, alongside these benefits, misuse of technology persists, particularly in the form of online fraud and the dissemination of false information, demonstrating that technological progress inevitably presents both opportunities and risks.⁶

The advancement of technology, which offers innovation and convenience across various sectors of life, is inevitably accompanied by negative consequences—one of which is the emergence of new cyber-based crimes known as cybercrime. One notable type of cybercrime is love scamming. As stated by Nindi Bimantar, love scam or romance

³ Muhammad Faqih Faathurrahman and Enni Soerjati Priowirjanto, “Pengaturan Pertanggungjawaban Pelaku Penyalahgunaan Deepfakes Dalam Teknologi Kecerdasan Buatan Pada Konten Pornografi Berdasarkan Hukum Positif Indonesia,” *Jurnal Indonesia Sosial Teknologi* 3, no. 11 (2022).

⁴ Zakaria Efendi, “Analisis Komunikasi Pada Aplikasi MiChat Sebagai Sarana Media Prostitusi Online Di Pontianak,” *Panangkaran: Jurnal Penelitian Agama Dan Masyarakat* 4, no. 2 (2021): 86–107.

⁵ Satria Nur Fauzi, “Tindak Pidana Penipuan Dalam Transaksi Di Situs Jual Beli Online (E-Commerce),” *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 7, no. 3 (2018): 250–261.

⁶ A S Novitasari, “Dampak Media Sosial Terhadap Kehidupan Di Era Digital,” *Binus. ac. id*: <https://binus. ac. id/malang/communication/2022/11/15/dampak-media-sosial-terhadapkehidupan-di-era-digital> (2022).

scam—commonly referred to as deception under the guise of affection—constitutes a form of online gender-based violence that utilizes social media, online dating applications, and other digital features to exploit victims for specific purposes.⁷

In criminal law, love scamming as a punishable act may be categorized into two forms of criminal danger: *gevaar in abstracto* and *gevaar in concreto*. *Gevaar in abstracto* refers to dangers determined in a general sense, based on common experience or legal reasoning, whereby an act is inherently deemed dangerous. In this context, although no real harm may yet occur in a particular case, the act is still considered threatening because it possesses a general potential to produce criminal consequences. An example includes submitting falsified data in online loan applications, which is commonly recognized as harmful because it generally has the potential to inflict losses on others.⁸ Conversely, *gevaar in concreto* refers to tangible and specific danger that has already resulted in or is on the verge of causing direct harm in a particular case. Assessment is therefore grounded on concrete factual circumstances. In love scamming cases, when victims have expressed intent to transfer funds or have partially transferred money, *gevaar in concreto* is deemed to exist because the danger has materialized in reality.⁹

Love scamming constitutes a form of fraud as regulated under Article 378 of the Indonesian Criminal Code (KUHP) and Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). Consequently, perpetrators of love scamming may be subjected to criminal sanctions based on applicable legal provisions. Thus, love scamming falls within the category of unlawful acts punishable by law, and offenders may be held criminally accountable pursuant to relevant statutory frameworks.¹⁰

In accordance with the Criminal Procedure Code (KUHAP), the criminal justice process involves several institutions, beginning with the Police, the Public Prosecutor's Office, the Judiciary, and Correctional Institutions. Article 10 of KUHAP stipulates that the Police are responsible for conducting investigation and inquiry. Article 1 of KUHAP states that prosecutors are responsible for prosecution and execution of court decisions. Judges are tasked with examining, adjudicating, and deciding cases, while correctional institutions implement court-imposed imprisonment. Judicial authority to examine, adjudicate, and decide cases is regulated in Article 24 of Law Number 8 of 1981 on KUHAP. Judges are prohibited from refusing to examine a case on the grounds that laws are unclear or absent; instead, they are obligated to adjudicate and resolve criminal cases brought before the court.¹¹

One of the key responsibilities of judges in law enforcement is delivering fair and just decisions, including in cases of love scamming. Judicial rulings function as a benchmark for society, given that the court is regarded as the last bastion of justice. Nevertheless, in practice, numerous judicial decisions still fail to meet public expectations. For instance, public debate surrounded the corruption case involving Harvey Moeis,

⁷ Nindi Bimantari, Sekaring Ayumeida Kusnadi, and Fifin Dwi Purwaningtyas, “Perlindungan Hukum Bagi Korban Kejadian Love Scam,” *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 2 (2023): 173–188.

⁸ Paulus Anselmus Felix Lamintang and Franciscus Theojunior Lamintang, *Dasar-Dasar Hukum Pidana Di Indonesia* (Sinar Grafika, 2022). 390

⁹ Mahrus Ali, “Penegakan Hukum Pidana: Perspektif Penegakan Hukum Pidana In Abstracto Dan In Conreto,” *Jurnal IUTUM* 6, no. 1 (2018).

¹⁰ Edward Omar Sharief Hiariej and M SH, “Pengantar Hukum Acara Pidana,” *Jakarta: Universitas Terbuka* (2016): 128–145.

¹¹ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Rineka Cipta, 2017).

worth 300 trillion rupiah, as concerns arose regarding whether judicial proceedings truly upheld principles of justice and transparency. Similarly, controversy emerged in the case of Rudi Suparmono, who was accused of bribery in securing an acquittal for defendant Ronald Tannur. Similar concerns were also observed by the author in the decision of a love scamming case No. 45/Pid.B/2022/PN.Mgg. Judges are therefore required to explore and internalize legal values and a sense of justice living within society to ensure that court decisions genuinely reflect substantive justice.¹²

Generally, love scamming constitutes romantic deception whereby perpetrators manipulate victims through fabricated affection and false emotional relationships to obtain money or other illicit benefits. According to Merriam, love scamming typically involves perpetrators using false identities on social media or dating platforms, establishing trust and emotional attachment with victims, and subsequently requesting money for various fabricated reasons. The role of judges in adjudicating cyber-based criminal acts such as love scamming is guided by the Electronic Information and Transactions Law (ITE Law), considering that its dissemination is extensive and operates through electronic media, fundamentally differing from conventional offenses. Therefore, judges are required to render decisions that are not only legally sound but also responsive to societal expectations, technological developments, and the evolving dynamics of special criminal law.¹³ For this reason, it becomes essential to examine how judges formulate their decisions in love scamming cases.

METHOD

This study employs a normative juridical approach. This approach focuses on the examination of statutory regulations, legal doctrines, legal principles, and other relevant legal sources related to the research topic. Its primary purpose is to analyze the criminal liability of perpetrators of love scamming within the framework of Indonesian positive law and Islamic criminal law. Data were collected through *library research* by gathering information from primary, secondary, and tertiary legal materials. The data were subsequently analyzed using a qualitative analytical method.

RESULTS AND DISCUSSION

Criminal Liability of Love Scamming Offenders in Court Decision No. 45/Pid.B/2022/PN.Mgg

Although the term “criminal liability” is not explicitly stated in the Indonesian Criminal Code (KUHP), several provisions regulate elements of liability, including the element of intent, as reflected in Article 378, which stipulates:

“Anyone who intentionally and unlawfully gains benefit for themselves or others through deceit or a series of lies to compel another person to hand over property or assets.”

Criminal liability is imposed not only to ensure justice for victims but also to reinforce moral and ethical values upheld by society. Despite living in an increasingly

¹² Siti Nurjanah, “Kewenangan Hakim Dalam Sistem Peradilan Pidana Di Indonesia,” *Jurnal Ilmu Hukum* 10, no. 1 (2019): 45–60.

¹³ Renata Christha Aulia, “Marak Love Scamming, Begini Pengertian Dan Jerat Pidananya,” *Artikel Hukum Online*, 2023.

modern and digital era, these values continue to develop in response to evolving patterns of behavior, particularly concerning acts such as harassment, assault, and crimes against life and property. In fraud cases, criminal liability may be enforced under Article 378 of the KUHP, which prescribes a maximum imprisonment of four years. In the case under review, the court sentenced the defendants, Wiwit Tricia and Linda Tampubolon, to two years' imprisonment.

In this ruling, the indictment submitted was an alternative charge. In addition to Article 378 of the KUHP, the panel of judges also considered another possible applicable provision, namely Article 372 of the KUHP concerning embezzlement, which states:

“Anyone who unlawfully possesses an object wholly or partially belonging to another person, where such object is in their possession not as a result of a crime, shall be subject to imprisonment of up to four years or a fine of up to IDR 900,000.”

Meanwhile, online fraud is specifically regulated under Article 35 of Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), as amended by Law No. 19 of 2016, which provides:

“Any person who intentionally and unlawfully manipulates, creates, alters, deletes, or damages Electronic Information and/or Electronic Documents, thereby causing such information or documents to appear as authentic, shall be subject to criminal sanctions.”

Violations of this provision may result in imprisonment of up to twelve years and/or a fine of up to twelve billion rupiah.

Criminal liability arises when a criminal act fulfills the elements stipulated under criminal law. Since the KUHP does not explicitly define the meaning of liability, its interpretation relies heavily on doctrinal analysis. A perpetrator may be considered criminally responsible if they possess legal capacity, demonstrate culpability, and are not protected by exculpatory grounds.¹⁴ Determining criminal liability is closely related to identifying the individuals who committed the offense and those who assisted in its commission.

When a criminal act is committed by more than one person, the criminal liability of each participant is not identical; rather, it varies according to the role and degree of involvement of each offender in the commission of the crime. Accordingly, there exists a legal relationship between the individuals involved and the criminal event itself.¹⁵

The criminal provision and sentence imposed by the panel of judges in the court decision regarding fraud through love scamming are as follows: Decision No. 45/Pid.B/2022/PN Mgg, applying Article 378 of the Indonesian Criminal Code (KUHP) in conjunction with Article 55 paragraph (1) point 1 of the KUHP. Each perpetrator was sentenced to two years of imprisonment. The determination of criminal liability in such cases is closely related to identifying the principal offenders and those who assisted in committing the crime. Since love scamming is generally carried out by more than one person, its legal construction falls within the category of participatory offenses (delik penyertaan).¹⁶

¹⁴ Hanafi Amrani and Mahrus Ali, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan* (Jakarta: Rajawali Pers, 2015).

¹⁵ M Rasyid Ariman and Fahmi Raghib, *Hukum Pidana* (setara Press, 2015).

¹⁶ Ibid.

Participation is classified into several forms under Articles 55 to 56 of the KUHP. Criminal liability in relation to participatory offenses becomes relevant because, as reflected in various judicial decisions, these crimes involve multiple offenders. Referring specifically to Decision No. 45/Pid.B/2022/PN.Mgg, the court found Defendant I, Linda Tampubolon, and Defendant II, Wiwit Tricia, guilty of committing fraud for personal gain by exploiting another person's assets through the use of false identities. The element of participation is evident in the decision as it is linked (juncto) to Article 55 of the KUHP. In the execution of the fraud, a foreign national identified as David William (listed as a fugitive/DPO), along with Linda Tampubolon and Wiwit Tricia, jointly participated in the offense.

This case occurred between 15 March and 7 May 2022 in the City of Magelang. The victim, a woman named Veronica Lianawaty, became a target of love scamming conducted by the two defendants, Linda and Wiwit. Initially, the victim developed a relationship with an individual identifying himself as David William, who claimed to be from the United Kingdom and promised to send a valuable gift package. Subsequently, the victim was contacted by several individuals posing as immigration and customs officials, who demanded money transfers allegedly required to process the package.

During this period, the victim transferred money in several installments, resulting in a total financial loss of approximately IDR 400,000,000. The funds were transferred to accounts belonging to the defendants and other involved parties under the pretext of tax payments, customs duties, certification fees, and visa processing. Linda and Wiwit received financial benefits from this activity amounting to IDR 27,060,000 and IDR 30,640,000 respectively.

Upon realizing significant irregularities and feeling deceived, the victim reported the case to the police. The case was subsequently brought to trial under Decision No. 45/Pid.B/2022/PN.Mgg, where both defendants were sentenced to two years' imprisonment based on Article 378 of the KUHP concerning fraud. From a legal perspective, however, the case also substantively fulfilled the elements of a cybercrime offense under the Electronic Information and Transactions Law (ITE Law), although this provision was not applied in the indictment.

Criminal Liability for Perpetrators of Love Scamming from the Perspective of Islamic Criminal Law

Online fraud is one of the most prevalent forms of *cybercrime* occurring in the digital sphere. This offense is typically committed by manipulating victims into transferring money or disclosing personal information through electronic media such as email, fraudulent websites, or social networking platforms. Perpetrators often construct convincing scenarios—such as promising rewards or lucrative investment opportunities—while their primary objective is to unlawfully gain financial or personal benefit.¹⁷

From the perspective of Islamic law, fraud is classified under *tadlis* (deception) or *ghash* (misrepresentation), both of which are strictly prohibited in Islamic jurisprudence. The Prophet Muhammad (peace be upon him) explicitly condemned deceit, stating:

¹⁷ Achmad Kholid and Akhmad Shodikin, *Cyber Law, Cyber Crime, Dan Pidana Islam* (Yogyakarta, 2025).

“Whoever deceives us is not one of us” (Hadith narrated by Muslim). This hadith underscores that fraud in any form is considered reprehensible in Islam. Fundamentally, fraud constitutes a violation of the principle of honesty (*amanah*), which is a core ethical value that every Muslim is obliged to uphold in daily life and in all forms of transactions.¹⁸

From a *fiqh* perspective, online fraud may be analogized to the unlawful appropriation of another person’s property. This interpretation aligns with the concept of *sariqah* (theft) in Islamic criminal law, whereby an individual takes possession of another person’s property without permission and without rightful entitlement. Although online fraud does not involve physical theft, it still inflicts financial harm and violates the victim’s rights. Therefore, within the framework of Islamic criminal law, perpetrators of online fraud may be subjected to *ta’zir* sanctions, imposed by judicial authority based on the degree of harm caused. Such sanctions may take the form of fines, imprisonment, or other corrective measures intended to deter future offenses and promote moral accountability.¹⁹

Love scamming represents a transformation of conventional fraud into the digital domain. Substantively, it shares the same characteristics as traditional fraud, with the primary distinction being its execution through online platforms. Love scamming often occurs because victims—frequently women—are deceived into emotional dependence through fabricated romantic relationships. This form of fraud is particularly alarming as it exploits emotional vulnerability and inflicts psychological as well as financial harm. Under Islamic criminal law, perpetrators of romance-based deception are subject to *ta’zir* punishment, with the determination of sanctions entrusted to judicial discretion (*ijtihad al-qadi*).²⁰

From the viewpoint of Islamic criminal law, love scamming is categorized as a *jarīmah ta’zir*. The purpose of *ta’zir* punishment is not only to prevent offenders from repeating their actions but also to function as a corrective mechanism, fostering awareness and repentance. Fraud offenses fall under *jarimah ta’zir* because, although the prohibited conduct is addressed in scriptural sources (*nash*), the specific sanction is not explicitly stipulated. Consequently, the authority to determine and implement appropriate punishment rests with the legitimate governing authority (*ūlī al-amr*). In Islamic criminal law, *jarimah ta’zir* is generally classified into two categories, namely:

1. *Jarimah Ta’zir Syar’i*

Jarīmah ta’zir syar’i refers to offenses in which the type of prohibited act is explicitly mentioned in the Qur’an or Hadith, but the determination of sanctions is delegated to the legitimate authority (*uli al-amr*). Examples of *jarimah ta’zir syar’i* include false oaths, perjury, fraudulent practices, manipulation of weights and measures, breach of trust, deception, and violation of contractual commitments.

2. *Jarimah Ta’zir Uli al-Amr*

Jarīmah ta’zir uli al-amr refers to offenses for which both the type of act and the corresponding sanctions are entirely determined by the governing authority in the interest of public welfare. In this context, the substantive nature of the act

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Riadus Solihin and Ahmad Zuhri, “Criminal Liability of Love Scam Perpetrators in the Perspective of Positive Law and Islamic Criminal Law,” *LEGAL BRIEF* 13, no. 4 (2024): 1043–1051.

becomes the primary basis for legal consideration. A common example of this category includes violations of traffic regulations.

From the perspective of Islamic criminal law, the two defendants—Wiwit Tricia and Linda Tampubolon—who were involved in love scamming may be subjected to sanctions in the form of fines (*ta’zir bi al-mal*) and imprisonment (*ta’zir bi al-sijn*). These sanctions are imposed within the framework of *jarimah ta’zir*, which grants judicial discretion (*ijtihad al-qadi*) to determine the type and severity of punishment based on the offender’s level of culpability, the extent of harm caused, and broader societal interests.²¹ The following provides a more detailed explanation:

1. Legal Basis in Islamic Criminal Law

In Islamic criminal law, love scamming is classified as a form of fraud (*gharar* or *tadlis*), intended to unlawfully appropriate another person’s property through deception. Since this specific offense is not explicitly stipulated with a fixed punishment in the Qur’ān or Hadith, it falls within the category of *jarimah ta’zir*. *Ta’zir* punishments are discretionary and may be adjusted by the judge in accordance with the seriousness of the offense, the harm inflicted upon the victim, and its broader implications for society.²²

2. Fines (*Ta’zir bi al-Mal*)

Fines constitute one of the appropriate sanctions that may be imposed on perpetrators of love scamming. In this regard:

- a. Fines function as financial compensation to redress the material losses suffered by the victim. The amount should be proportional to the extent of financial harm caused by the offenders’ actions.
- b. Fines also serve a preventive function by deterring offenders from repeating similar conduct in the future.
- c. In the case of Wiwit Tricia and Linda Tampubolon, the imposition of substantial fines would be justified given the significant financial losses typically associated with love scamming offenses.

3. Imprisonment (*Ta’zir bi al-Sijn*)

Imprisonment may also be imposed as a sanction in love scamming cases. Its objectives include:

- a. recognize the gravity of their actions.
- b. Protecting the public from the risk of similar offenses in the future.
- c. In this case, imprisonment may be determined by considering the degree of participation of each defendant. Although they were classified as participants, their active involvement contributed significantly to the commission of the offense.

4. Combination of Fines and Imprisonment

In many *jarimah ta’zir* cases, courts frequently impose a combination of fines and imprisonment. This combined sanction ensures that justice is achieved both in

²¹ Qosim Khoiri Anwar, “Budaya Ta’zir Bil Mal Dalam Perspektif Ulama Konvensional,” *Fikri: Jurnal Kajian Agama, Sosial dan Budaya* 1, no. 2 (2016): 361–390.

²² Kirana, “Perspektif Hukum Pidana Islam Terhadap Saknsi Bagi Pelaku Tindak Pidana Penipuan Dalam Bentuk Love Scammer Di Media Sosial” (Universitas Islam Negeri (Uin) Raden Fatah Palembang, 2023).

terms of compensating victims and rehabilitating offenders. Accordingly:

- a. Fines may serve as a means of compensating financial losses.
- b. Imprisonment may function as a corrective and moral reform mechanism to prevent future misconduct.

5. Judicial Considerations in Islamic Law

In determining sanctions, a *qadi* (judge) will typically consider several factors:

- a. Degree of Culpability: Whether the defendant acted as a principal offender or merely as an accomplice.
- b. Extent of Harm: Including both material and immaterial losses suffered by the victim.
- c. Social Impact: Particularly the erosion of trust and social security resulting from the proliferation of love scamming.
- d. Remorse and Cooperation: Demonstrated repentance and cooperative behavior from the offenders may constitute mitigating factors.

In Islamic criminal law, love scamming is classified as a *jarimah ta‘zir*, namely an offense prohibited and punishable by the governing authority (*uli al-amr*), although it is not explicitly regulated in the Qur'an or Sunnah. Fraud in the form of love scamming falls under the concept of *tadlis* (deception or misrepresentation), intended to unlawfully seize another person's property, and thus belongs to the prohibition of *akl al-mal bi al-batil* (illicit appropriation of wealth).²³

Within Islamic criminal law, a fugitive (DPO) who designs and orchestrates the fraudulent scheme is considered the principal perpetrator. Such an individual bears full criminal responsibility because they possess clear criminal intent (*niyyah*) and directly engage in planning the offense. Their actions constitute *al-khiyanah* (breach of trust) and *tadlis* (deception), both of which are firmly prohibited by Islamic law. Meanwhile, defendants acting as impostor immigration officers may be categorized as accomplices (*sharik*) or *al-musa‘id*, depending on the extent of their involvement. In fiqh *jinayah*, accomplices remain liable to *ta‘zir* punishment in accordance with their level of participation.²⁴

Their actions are still considered sinful, as they contribute to misleading the victim into deception. Since no *hudud* or *qishash* provisions specifically govern this form of crime, punishment is imposed through *ta‘zir*, determined by the judge or the state based on considerations of public interest (*maslahah*) and the degree of harm caused. *Ta‘zir* sanctions may take various forms, including imprisonment, fines, or even public disclosure of the offender's wrongdoing as a deterrent measure.²⁵

The author argues that within the framework of Islamic criminal law, both the principal perpetrator (DPO) and the participating offenders (defendants) bear moral and legal responsibility. Islamic law does not assess wrongdoing solely on the basis of outcomes; it also evaluates intention and level of involvement. Islam places strong emphasis on the protection of wealth and personal dignity. Therefore, love scamming constitutes a serious criminal act. Through the doctrine of *ta‘zir*, Islamic law provides

²³ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, Jilid 6. (Damaskus: Dār al-Fikr, 2019).

²⁴ Abdul Qadir Audah, *At-Tasyri’ Al-Jina’i Al-Islami* (Beirut: Muassasah ar-Risalah, 2018).

²⁵ Amir Syarifuddin, *Gharar Dan Akad Bermasalah Dalam Fiqh Dan Peraturan Perundangan Undangan* (Jakarta: Kencana, 2019).

judges with discretion to impose proportional punishment, taking into account the offender's level of culpability, the extent of harm suffered by the victim, and broader societal interests, while prioritizing justice and public welfare. Accordingly, the Indonesian legal system may draw inspiration from Islamic concepts of justice in responding to contemporary digital crimes such as love scamming, in order to ensure comprehensive protection for society.

Comparative Analysis of Criminal Liability for Love Scamming in Indonesian Positive Criminal Law and Islamic Criminal Law

From the perspective of Indonesian positive criminal law, love scamming is classified as a form of fraud as stipulated in Article 378 of the Criminal Code (KUHP), with essential elements including intent, deceitful conduct, and material loss suffered by the victim. Court Decision No. 45/Pid.B/2022/PN.Mgg demonstrates that the panel of judges emphasized criminal liability based on the fulfillment of these elements, along with the involvement of the defendants through the doctrine of participation as regulated in Article 55 of the KUHP. Although the offense was committed through electronic media, the court continued to apply the KUHP as *lex generalis* rather than invoking specific provisions under the Electronic Information and Transactions Law (ITE Law). This reflects a legal approach grounded in formal legal certainty, focusing on the *actus reus*, the role of the offenders, and normative evidentiary standards.

In contrast, from the perspective of Islamic criminal law, love scamming is understood as an act of deception (*tadlis/gharar*) and unlawful appropriation of property (*akl al-mal bi al-batil*), and is categorized as a *jarimah ta'zir*. Unlike positive criminal law, which relies primarily on codified provisions, Islamic criminal law places stronger emphasis on moral accountability, intention (*niyyah*), and the broader social implications of the offense. Since specific sanctions for this conduct are not explicitly prescribed in the Qur'an or Sunnah, punishment is determined through judicial discretion (*ijtihad al-qadi*) or by the governing authority, taking into account the degree of involvement of the offender, the extent of the victim's losses, and considerations of public welfare (*maslahah*). Consequently, sanctions are flexible and may include fines (*ta'zir bil-mal*), imprisonment (*ta'zir bis-sijn*), or a combination of both.

Comparatively, the fundamental difference between the two legal systems lies in their orientation toward criminal liability. Indonesian positive criminal law tends to prioritize formal legal provisions and proportional punishment based on written legislation, while Islamic criminal law adopts a more preventive, educational, and ethically driven approach in determining sanctions. Nonetheless, both systems converge in their ultimate objectives, namely the protection of property, deterrence of criminal behavior, and the pursuit of justice for victims. Therefore, this study suggests that the principles of Islamic criminal law—particularly the flexibility of *ta'zir* sanctions and the emphasis on public welfare—may serve as valuable normative inspiration for the development of national legal policy in addressing modern digital crimes such as *love scamming*.

CONCLUSION

This comparative analysis demonstrates that love scamming is treated differently under Indonesian positive criminal law and Islamic criminal law. Indonesian positive law emphasizes the formal elements of fraud, offender liability based on codified provisions (Articles 378 and 55 of the KUHP), and the application of lex generalis principles even when the offense is committed through electronic platforms. Conversely, Islamic criminal law prioritizes intention (*niyyah*), moral and social impact, and public welfare in determining *ta’zir* sanctions, allowing flexible punishment tailored to the level of harm and degree of offender involvement. Despite differences in orientation and methodology, both legal systems share common objectives: protection of property, deterrence, and the realization of justice for victims. The findings indicate that Islamic criminal law values—particularly the flexibility of *ta’zir* sanctions and the emphasis on societal welfare—may offer constructive normative insights for the refinement of national legal policies in addressing contemporary digital crimes.

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