

Negotiated *Ta'zīr*: Islamic Law, State Law, and Semi-Autonomous Normative Ordering in Contemporary Indonesian Pesantren

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Abstract

Ta'zīr (discretionary punishment) in Indonesian pesantren (Islamic boarding schools) operates at the intersection of *fiqh* (Islamic jurisprudence), institutional authority, pedagogical traditions, and state law. However, the processes connecting these normative orders remain insufficiently examined in socio-legal scholarship. Drawing on Sally Falk Moore's concept of the semi-autonomous social field, this article examines how disciplinary norms are produced, translated, and negotiated in contemporary pesantren. The study employs a socio-legal multi-method design, combining doctrinal analysis of *ta'zīr*, *wilāya* (delegated authority), *ta'dīb* (educational discipline), and state law with descriptive survey data from 52 respondents across 18 pesantren in seven provinces, alongside in-depth interviews with four key informants. The findings reveal that reported disciplinary practices are predominantly educational and non-physical, particularly religious assignments and verbal admonitions, while physical disciplinary measures are reported less frequently. This pattern coexists with respondents' limited familiarity with the doctrinal frameworks of *fiqh* and state law, without necessarily indicating that either lacks influence on disciplinary practice. Respondents also demonstrate openness to external guidelines but tend to prefer adapting them to institutional characteristics and needs rather than adopting them wholesale. The article argues that *ta'zīr* constitutes a negotiated normative product within a semi-autonomous social field. *Fiqh* acquires social force through institutional translation into the pedagogical logics of *tarbiya* (moral formation) and *ta'dīb*, while the demands of state law are processed through selective adaptation without automatically determining the internal normative order. This study extends the analytical reach of Moore's concept by showing that pesantren semi-autonomy is sustained not through normative isolation but through the institutional capacity to translate, select, and adapt multiple normative demands into locally authoritative disciplinary practices.

[*Ta'zīr dalam pesantren di Indonesia berada pada persilangan antara fikih, otoritas kelembagaan, tradisi pedagogis, dan hukum negara, tetapi proses yang menghubungkan berbagai tatanan normatif tersebut belum banyak dijelaskan dalam kajian sosio-legal. Berangkat dari konsep semi-autonomous social field dari Sally Falk Moore, artikel ini menganalisis bagaimana norma disipliner diproduksi, diterjemahkan, dan dinegosiasikan dalam pesantren kontemporer. Penelitian menggunakan desain multi-metode sosio-legal yang menggabungkan analisis doktrinal terhadap ta'zīr, wilāya, ta'dīb, dan hukum negara dengan data survei deskriptif dari 52 responden pada 18 pesantren di tujuh provinsi serta wawancara mendalam dengan empat informan kunci. Temuan*

menunjukkan bahwa praktik disipliner yang dilaporkan didominasi oleh tindakan edukatif dan non fisik, terutama tugas keagamaan dan teguran verbal, sedangkan tindakan korektif fisik lebih jarang dilaporkan. Pola ini berjalan beriringan dengan terbatasnya familiaritas responden dengan kerangka doktrinal fikih dan hukum negara, tanpa serta-merta menunjukkan ketiadaan pengaruh keduanya. Responden juga menunjukkan keterbukaan terhadap pedoman eksternal, tetapi cenderung memilih penyesuaian dengan karakter dan kebutuhan institusi daripada adopsi secara penuh. Artikel ini berargumentasi bahwa ta'zīr merupakan produk normatif yang dinegosiasikan dalam medan sosial semi-otonom. Fikih memperoleh daya sosial melalui translasi institusional ke dalam logika tarbiya dan ta'dīb, sedangkan tuntutan hukum negara diproses melalui adaptasi selektif tanpa secara otomatis menentukan tatanan normatif internal. Temuan ini memperluas kegunaan konsep Moore dengan menunjukkan bahwa semi-otonomi pesantren dipertahankan bukan melalui isolasi normatif, melainkan melalui kapasitas institusional untuk menerjemahkan, menyeleksi, dan mengadaptasi berbagai tuntutan normatif menjadi praktik disipliner yang memiliki otoritas lokal.]

Keywords: Islamic Criminal Jurisprudence, Normative Ordering, Semi-Autonomous Social Field, State Law, Ta'zīr, Pesantren.

Introduction

In contemporary *fiqh jināya* (Islamic criminal jurisprudence), *ta'zīr* (discretionary punishment) is among the areas most open to change because neither the form nor the severity of its sanctions is rigidly prescribed in the *naṣṣ* (authoritative scriptural texts), unlike *ḥudūd* (fixed punishments) and *qisās* (retaliatory punishment).¹ This discretionary character allows the competent authority to consider the nature of the offense, the circumstances of the offender, considerations of public welfare, deterrence, and behavioral reform in determining an appropriate response.² At the same time, such flexibility raises questions that remain contested in modern Muslim societies: who is authorized to impose *ta'zīr*, from what sources that authority derives its legitimacy, and to what extent discretion should be constrained by principles of legality, proportionality, protection from harm, and accountability.³ These questions become more complex as *ta'zīr* moves from the doctrinal constructions of classical *fiqh* (Islamic jurisprudence) into contemporary Muslim states and institutions operating within different legal and social configurations. In Indonesia, the application of *ta'zīr* may be moderated and modified to accommodate prevailing social conditions and legal frameworks.⁴ In Saudi Arabia, by contrast, the broad discretionary scope of *ta'zīr* within state law has generated an institutional need to delimit and structure penal authority.⁵ These developments

¹ Hanifah Haydar Ali Tajuddin and Nasimah Hussin, "Islamic Criminal Law," in *Islamic Law in Malaysia*, ed. Adnan Trakic and Hanifah Haydar Ali Tajuddin (Singapore: Springer Singapore, 2021), 29–42.

² 'Abd al-Qādir 'Awda, *Al-Tashrī' al-Jinā'ī al-Islāmī Muqāraran bi al-Qānūn al-Waḍ'ī* (Cairo: Dār al-Turāth, n.d.), 1:685–703; Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (New York: Oxford University Press, 2019), 271–99.

³ Azhari Akmal Tarigan, "Ta'zir dan Kewenangan Pemerintah dalam Penerapannya," *AHKAM: Jurnal Ilmu Syariah* 17, no. 1 (January 2017): 153–70; Mohammad Adnan et al., "The Concept of Ta'zir in Fiqh Jinayat and Its Relevance to Traffic Ticket Sanctions in Indonesian Traffic Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (November 2025): 853–72.

⁴ Topo Santoso, "Implementation of Islamic Criminal Law in Indonesia: Ta'zir Punishment as a Solution?," *IJUM Law Journal* 19, no. 1 (2011): 123–50.

⁵ Chibli Mallat, "Criminal Law II: Ta'zir and 'Everything Else,'" in *The Normalization of Saudi Law*, ed. Chibli Mallat (Oxford University Press, 2022), 145–64.

suggest that contemporary *ta'zīr* cannot be adequately understood merely by asking what forms of punishment are permitted under *fiqh*. Equally important is how *ta'zīr* norms are translated, constrained, and negotiated when they operate within modern social institutions and legal orders.

These issues assume a different configuration in the context of pesantren (Islamic boarding schools), Indonesia's oldest Islamic educational institutions. In pesantren, *ta'zīr* does not operate as criminal punishment imposed by a judge or the state but as a disciplinary practice embedded in education, the cultivation of *adab* (ethical conduct), and the regulation of *santri* (student)'s everyday lives. Pesantren are not simply institutions of formal learning; they are socio-religious environments in which *kyai* (pesantren leader), *ustadz* (teacher), administrators, and *santri* inhabit an order shaped by religious authority, the 'yellow books' or *kitab kuning* (classical Islamic texts) tradition, institutional rules, and distinctive social relations.⁶ Disciplinary authority may therefore involve multiple actors and take the form of various corrective measures, ranging from verbal admonition and religious assignments to restrictions on activities and other forms of discipline understood as part of *tarbiya* (moral formation) and *ta'dīb* (educational discipline).⁷ This institutional character does not mean that pesantren are insulated from social and legal change. Rather, pesantren have maintained their institutional identities through processes of negotiation between tradition and modernity, rather than by simply embracing one at the expense of the other.⁸ A similar process occurs in disciplinary practice, where traditions of *fiqh* and pesantren pedagogy encounter parental expectations, changing social attitudes toward punishment, and a body of state law that, on the one hand, recognizes the distinctive character of pesantren and,⁹ on the other, requires the protection of children in educational settings.¹⁰ Pesantren therefore provide an important setting in which to examine *ta'zīr* not merely as a doctrine of punishment, but as a form of Islamic legal practice whose form and authority emerge through the interaction of *fiqh*, pedagogical traditions, institutional governance, and the broader legal environment.

Existing scholarship on *ta'zīr* and pesantren can be grouped into four broad strands. First, the literature on Islamic criminal jurisprudence treats *ta'zīr* as a domain of discretion that permits sanctions to be adjusted in light of public welfare and the circumstances of particular cases, while also raising concerns about the limits of authority, proportionality, and the potential abuse of discretion.¹¹ Second, studies of the contemporary implementation of Islamic criminal law show that *ta'zīr* does not necessarily move in a linear fashion from

⁶ Zamakhsyari Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java* (Tempe, Ariz: Monograph Series Press, Program for Southeast Asian Studies, Arizona State University, 1999), 33–61; Martin Bruinessen, "Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu; Comments on a New Collection in the KITLV Library," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 146, nos. 2–3 (January 1990): 226–69.

⁷ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia," May 21, 2026.

⁸ Ronald A. Lukens-Bull, "Two Sides of the Same Coin: Modernity and Tradition in Islamic Education in Indonesia," *Anthropology & Education Quarterly* 32, no. 3 (2001): 350–72.

⁹ "Law No. 18 of 2019 on Pesantren," October 15, 2019.

¹⁰ "Law No. 35 of 2014 Amending Law No. 23 of 2002 on the Protection of Children," October 17, 2014.

¹¹ Adnan et al., "The Concept of *Ta'zir* in Fiqh Jinayat and Its Relevance to Traffic Ticket Sanctions in Indonesian Traffic Law," 853–72; Haydar Ali Tajuddin and Hussin, "Islamic Criminal Law," 29–42; Mallat, "Criminal Law II," 145–64.

doctrine to practice. Santoso identifies processes of moderation and modification in the application of *ta'zīr* in Indonesia,¹² while Tarigan emphasizes that the flexibility of *ta'zīr* enables Islamic law to respond to new forms of wrongdoing but also requires institutional constraints to prevent that flexibility from becoming arbitrary.¹³ Third, scholarship on pesantren explains how religious authority and institutional norms acquire social force through social relations and traditions of learning. Dhofier identifies the *kiai* as a central figure in the reproduction of pesantren tradition; van Bruinessen demonstrates the importance of *kitab kuning* in shaping pesantren intellectual traditions; and Lukens-Bull shows how pesantren actively negotiate tradition and modernity in their institutional practices.¹⁴ Fourth, studies specifically addressing punishment in pesantren tend to interpret *ta'zīr* primarily through its pedagogical functions, especially as an instrument for character formation, discipline, and behavioral correction.¹⁵ These four strands provide an important foundation, but they have developed with relatively distinct analytical emphases. *Ta'zīr* is examined either as a doctrine of punishment or as a problem of implementing Islamic law; pesantren are analyzed as structures of authority and educational tradition; and disciplinary practices are more often treated as pedagogical instruments.

These tendencies leave an important question insufficiently addressed: how are *fiqh* doctrine, pedagogical traditions, institutional authority, parental and social expectations, and state law processed together into disciplinary norms that actually operate in pesantren life? The research gap, therefore, lies less in any “normative vacuum” between *fiqh* and state law than in the limited explanation of the social and institutional processes that connect these different normative orders. To address this gap, the present study examines how *ta'zīr* is produced as a disciplinary norm in pesantren and seeks to explain three interrelated processes: the translation of *fiqh* into practices of *tarbiya* and *ta'dib*; the production and distribution of disciplinary authority within the institution; and the negotiation of state law and other external normative demands. Adopting a socio-legal approach, the article argues that *ta'zīr* in contemporary Indonesian pesantren is produced within a semi-autonomous social field, such that neither classical *fiqh* nor state law directly determines disciplinary practice. Pesantren possess the capacity to generate and enforce an internal normative order through religious authority, institutional rules, and pedagogical traditions, while remaining permeable to *fiqh*, parental expectations, broader social demands, and state regulation. The article further shows that this semi-autonomy operates through two interrelated institutional processes. Through institutional translation, principles of *fiqh* concerning authority, correction, and the limits of permissible action are processed through pedagogical language, structures of authority, and pesantren institutional practices before assuming an operational

¹² Santoso, “Implementation of Islamic Criminal Law in Indonesia,” 123–50.

¹³ Tarigan, “Ta’zir dan Kewenangan Pemerintah dalam Penerapannya,” 153–70.

¹⁴ Dhofier, *The Pesantren Tradition*, 33–61; Bruinessen, “Kitab Kuning,” 226–69; Lukens-Bull, “Two Sides of the Same Coin,” 350–72.

¹⁵ Muljono Damopolii, Muhammad Shabir U, and Muhammad Alqadri Burga, “The Phenomenon of Punishment at Pesantren in South Sulawesi: An Islamic Law and Islamic Education Approaches,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 3 (October 2023): 1643–60; Ibnu Habibi and Triyo Supriatno, “Charity Punishment in Islamic Boarding School to Improving Santri Discipline,” *Nazhruna: Jurnal Pendidikan Islam* 3, no. 3 (October 2020): 342–54.

disciplinary form. Through selective adaptation, demands arising from state law and the surrounding social environment are neither simply accepted nor rejected but are evaluated and adjusted through the pesantren's internal normative order. Pesantren semi-autonomy is thus sustained not through normative isolation, but through the institutional capacity to process both inherited norms and externally generated demands before they acquire authority in local practice.

Research Methodology

This study employs a mixed-methods design within a socio-legal approach, integrating doctrinal analysis, descriptive survey data, and semi-structured interviews. This methodological choice reflects the character of *ta'zīr* in pesantren, which is not only a category within *fiqh jināya* but also a disciplinary practice shaped by social relations, religious authority, pedagogical traditions, and institutional structures. The study therefore does not assume a linear relationship between *fiqh* doctrine, state law, and disciplinary practice. Instead, these are situated within a broader normative environment in which institutional rules, the authority of the *kiai*, relations with parents, and social expectations also shape how discipline is understood and practiced. The three types of data serve distinct but complementary analytical functions. Doctrinal analysis identifies the normative repertoire concerning disciplinary authority and the limits of permissible disciplinary action; the survey maps descriptive patterns within the sample; and the interviews deepen and contextualize how those patterns are understood and enacted by pesantren actors. This approach allows the analysis to move from questions about what *fiqh* and state law prescribe to the socio-legal question of how different norms are translated, negotiated, and put into practice in the institutional life of pesantren.

The study draws on three complementary sources of data: legal materials and doctrinal literature, a structured survey, and in-depth interviews. On the doctrinal dimension, the study examines classical and contemporary *fiqh* sources on *ta'zīr*, *wilāya* (delegated authority), and *ta'dīb*, particularly those concerning the source and delegation of disciplinary authority, corrective purposes, proportionality, limits on physical measures, and educators' liability. The principal sources include works by al-Māwardī, al-Kāsānī, al-Sarakhsī, Ibn Qudāma, al-Shirbīnī, Ibn 'Ābidīn, and al-Ghazālī, read alongside contemporary scholarship on Islamic criminal jurisprudence. This doctrinal analysis is then situated in relation to Indonesian positive law, particularly the Law No. 18 of 2019 on Pesantren and Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection, together with other relevant legal instruments. On the empirical dimension, the survey was administered through Google Forms from May 21 to 25, 2026, using a 36-item questionnaire covering institutional and respondent profiles, disciplinary practices, jurisprudential understanding, familiarity with state law, and attitudes toward reform and external guidelines. Respondents were recruited through purposive convenience sampling supplemented by snowball sampling and were required to have an active affiliation with a pesantren as a *kiai*, *ustadz*, senior *santri*, staff member, or regular *santri*. The survey yielded 52 responses from 18 pesantren across seven provinces: Banten, West Java, East Java, Aceh, DKI Jakarta, Lampung, and South Kalimantan (see Table 1). The interviews served as a source of contextual explanation to

deepen the descriptive patterns identified in the survey, particularly with respect to the distribution of authority, educational understandings of *ta'zīr*, relations with parents, and responses to external legal norms. In-depth interviews were conducted with four informants drawn from pesantren leadership and administration in Bangkalan, East Java; South Jakarta, DKI Jakarta; Tangerang, Banten; and Samalanga, Aceh. The names of both the informants and institutions were anonymized to protect confidentiality, while geographic locations were retained where relevant to explaining regional and institutional variation.

Figure 1
Pesantren Research Sites in Indonesia



Source: Authors' compilation based on Google Maps (2026).

The data were analyzed interactively through descriptive statistics, thematic coding, and socio-legal interpretation. Likert-scale data ranging from 1 to 5 were analyzed descriptively, while categorical data and open-ended responses were coded thematically to identify patterns and variation across respondent categories. Survey findings were then triangulated with interview data and the results of the doctrinal analysis to examine points of convergence, divergence, and tension between formal norms and institutional practice. At the interpretive stage, the concept of the semi-autonomous social field was used to analyze three interrelated processes: the capacity of pesantren to generate and enforce internal norms, the translation of *fiqh* doctrine into disciplinary practice, and negotiation with state law and other external norms. This strategy made it possible to identify processes of institutional translation and selective adaptation without assuming that pesantren practices directly reproduce *fiqh* doctrine or arise as a direct consequence of state regulation. Because the sample was non-probabilistic and concentrated in urban settings (80.8%) and pesantren affiliated with Nahdlatul Ulama (NU) (96.2%), the quantitative findings are treated as descriptive and exploratory patterns within the study sample rather than as a basis for statistical generalization to pesantren across Indonesia. This limitation also positions the quantitative data as a means of identifying patterns that are subsequently interpreted through interview material, doctrinal sources, and institutional context.

Table 1
Respondent and Institutional Characteristics

Category	Subcategory	n (%)
Gender	Male	26 (50.0%)
	Female	26 (50.0%)
Respondent role	<i>Kiai</i>	5 (9.6%)
	<i>Ustadz</i>	8 (15.4%)
	Senior <i>santri</i>	13 (25.0%)
	Administrative staff	2 (3.8%)
	Regular <i>santri</i>	24 (46.2%)
	<100 <i>santri</i>	12 (23.1%)
Pesantren size	100–500 <i>santri</i>	21 (40.4%)
	501–1,000 <i>santri</i>	13 (25.0%)
	>1,000 <i>santri</i>	6 (11.5%)
Typology	<i>Salafiyya</i> (traditional)	26 (50.0%)
	<i>Mu'allimin (dirāsa Islāmiyya)</i>	14 (26.9%)
	<i>Khalafiyya</i> (modern)	6 (11.5%)
	Convergent/mixed	6 (11.5%)
Geographic setting	Urban	42 (80.8%)
	Rural	10 (19.2%)
Affiliation	Nahdlatul Ulama (NU)	50 (96.2%)
	Independent	2 (3.8%)

Source: Authors' compilation based on fieldwork data (2026).

Categorical data are presented as frequencies and percentages, while items measured on a five-point Likert scale were analyzed descriptively to identify the distribution of tendencies within the sample. Open-ended responses and interview transcripts were thematically coded to identify patterns, variation, and contextual explanations concerning sources of authority, forms of discipline, understandings of *ta'zīr*, relations with parents, and responses to external legal norms. The survey findings were then triangulated with interview data and doctrinal analysis to examine points of convergence, divergence, and tension among doctrine, state law, and institutional practice. At the interpretive stage, Sally Falk Moore's concept of the semi-autonomous social field¹⁶ was used to analyze three interrelated processes: the capacity of pesantren to generate and enforce internal norms, the translation of *fiqh* doctrine into disciplinary practice, and negotiation with state law and other external norms. This analytical strategy enables the study to identify processes of institutional translation and selective adaptation without assuming that pesantren practices directly reproduce *fiqh* doctrine or are a direct consequence of state law.

The Concept of *Ta'zīr* in *Fiqh* and State Law

Within the framework of *fiqh jināya*, *ta'zīr* occupies a position distinct from *ḥudūd* and *qisās*. Whereas *ḥudūd* refers to specified offenses whose punishments are established in the *naṣṣ*, and *qisās* concerns proportionate retaliation for offenses against life or bodily integrity, *ta'zīr*

¹⁶ See: Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7, no. 4 (July 1973): 719–46; Sally Falk Moore, *Law as Process: An Anthropological Approach*, 2nd ed. (Hamburg: LIT Verlag Münster, 2000), 54–81.

encompasses conduct for which no fixed punishment is textually prescribed.¹⁷ ‘Awda defines *ta’zīr* as *ta’dīb* for conduct not subject to a specific textual sanction, leaving the determination of the appropriate response to the competent authority.¹⁸ This discretionary character allows the form and severity of the sanction to take into account the nature of the offense, the circumstances of the offender, and the corrective purpose to be achieved. Kamali likewise identifies flexibility as a defining feature of *ta’zīr*, while emphasizing the need to constrain discretion so that it does not become arbitrary.¹⁹ Therefore, discretion in *ta’zīr*, is not equivalent to an unrestricted power to punish. Precisely because the *Shari‘ah* does not rigidly prescribe a single form of sanction, the legitimacy of its exercise—including in pesantren—depends on the source of authority, the purpose for which that authority is exercised, and the limits governing its use.²⁰

Much of the *fiqh* literature places *ta’zīr* within the domain of public authority. Al-Māwardī identifies the *imām* (political authority) and the *qāḍī* (judge) as holders of public authority in the administration of *ta’zīr*. Yet the *fiqh* tradition also recognizes more limited forms of corrective authority within particular social relationships, including those between parents and children and between educators (*mu’addib*) and students.²¹ This distinction indicates that an educator’s disciplinary authority cannot simply be equated with the punitive authority vested in a ruler. In the Ḥanafī tradition, al-Kāsānī connects an educator’s authority to *wilāya* and to the permission underlying the delegation of educational responsibility,²² while Ibn ‘Ābidīn confines that authority within limits defined by the educational function and the permissible scope of corrective action.²³ In this framework, *wilāya* does not create a disciplinary power inhering personally in an educator’s religious status. Rather, such authority is relational and bounded by the educational relationship, the entrustment of responsibility, and the purposes that justify its exercise.

This distinction in forms of authority is particularly relevant to pesantren because the *kiai’s* socio-religious authority—supported by mastery of the *kitab kuning*, the *kiai–santri* relationship, and traditions of *ta’zīm*—does not by itself amount to unlimited juristic authority to impose sanctions. It also shows why pesantren discipline cannot be adequately understood through the abstract category of *ta’zīr* in *fiqh jināya* alone. Within an educational relationship, the concept of *ta’dīb* provides a more specific normative vocabulary for

¹⁷ Andri Winjaya Laksana et al., “Rehabilitative Sentencing for Narcotics Addicts within the Framework of National Law and Maqasid Syari’ah,” *El-Mashlahab* 16, no. 1 (May 2026): 1–22; M. Nurul Irfan, Maskur Rosyid, and Muhammad Fauzinudin Faiz, “Murder by Treachery in Islamic and Indonesian Criminal Law,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 25, no. 2 (December 2025): 165–68.

¹⁸ ‘Awda, *Al-Tashrī‘ al-Jinā‘ī al-Islāmī Muqāraran bi al-Qānūn al-Waḍ‘ī*, 1:78–81.

¹⁹ Kamali, *Crime and Punishment in Islamic Law*, 186–94.

²⁰ Adnan et al., “The Concept of Ta’zir in Fiqh Jinayat and Its Relevance to Traffic Ticket Sanctions in Indonesian Traffic Law,” 853–72; Izhar Arjuna, “Fiqh Punishment and Copyright Infringement: Reassessing Islamic Criminal Law on Intellectual Property Crimes,” *Contemporary Fiqh Studies* 1, no. 1 (April 2026): 1–18.

²¹ Abū al-Ḥasan al-Māwardī, *Al-Aḥkām al-Sulṭāniyya wa al-Wilāyāt al-Dīniyya*, ed. Aḥmad Jād (Cairo: Dār al-Ḥadīth, 2006), 293–95.

²² ‘Alā’ al-Dīn al-Kāsānī, *Badā‘ī‘ al-Ṣanā‘ī‘ fī Tartīb al-Sharā‘ī‘* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1986), 7:64–65.

²³ Muḥammad Amīn Ibn ‘Ābidīn, *Radd al-Muḥtār ‘alā al-Durr al-Mukhtār* (Beirut: Dār al-Fikr, 1992), 4:60–65.

understanding corrective measures directed toward the formation of students' conduct and *adab*. In his discussion of *ādāb al-mu'allim* (the teacher's ethical conduct), al-Ghazālī situates correction within the educator's moral responsibility and emphasizes the importance of guiding students gradually, including through admonition that avoids humiliation where such an approach remains possible.²⁴ Corrective action, therefore, derives its legitimacy not merely from the occurrence of a violation but also from its orientation toward educational purposes and behavioral reform. This orientation distinguishes *ta'dīb* from the use of sanctions as an expression of anger or a display of power. In the pesantren context, the relationship between *ta'ẓīr* and *ta'dīb* is analytically important. *Ta'ẓīr* provides a general category of corrective discretion, while *ta'dīb* clarifies how that discretion acquires a pedagogical character when exercised within an educational relationship. This reading also helps explain why the legitimacy of pesantren discipline cannot be determined solely by the existence of a violation but must also be assessed in relation to the corrective purpose, the structure of authority, and the educational interests underlying the disciplinary measure.

This educational orientation does not eliminate the educator's discretion but locates it within jurisprudential limits that distinguish legitimate correction from excessive punishment. The *fiqh* literature examined in this study indicates that educational authority is constrained by several interrelated considerations: the existence of a valid basis of authority or permission, a legitimate corrective purpose, proportionality, the prohibition on causing harm beyond what educational purposes require, and the possibility of liability when corrective action exceeds permissible limits. Ibn Qudāma connects excessive corrective action with questions of liability (*damān*),²⁵ while al-Sarakhsī discusses the limits of an educator's conduct and the consequences when such conduct causes harm.²⁶ Al-Shirbīnī and Ibn 'Ābidīn likewise situate corrective authority within the purposes of education and the limits of permissible action.²⁷ Contemporary *fiqh* scholarship further describes *ta'ẓīr* as an authority that permits graduated responses according to the nature of the offense and the corrective purpose at stake.²⁸ Taken together, these sources show that discretion and constraint are not opposing principles. Rather, they form part of the same structure of legitimacy: the broader the scope of judgment entrusted to an authority, the more important the questions of purpose, proportionality, and accountability become.

Although a number of these *fiqh* references are studied and incorporated into pesantren education in Indonesia, their practical operation also intersects with state law. The Law No. 18 of 2019 on Pesantren provides a legal basis for recognizing pesantren traditions, values and norms, diversity, and institutional independence within the national education system.²⁹ At the same time, that independence operates within a legal framework that also protects children. The Law No. 35 of 2014 on Child Protection requires children in and around

²⁴ Abū Ḥamid al-Ghazālī, *Ihyā' 'Ulūm al-Dīn* (Beirut: Dār al-Ma'rifa, n.d.), 1:55–58.

²⁵ Muwaffaq al-Dīn Ibn Qudāma, *Al-Mughnī* (Cairo: Maktabat al-Qāhira, 1968), 10:347–50.

²⁶ Shams al-Dīn al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Ma'rifa, 1993), 9:36–38.

²⁷ Ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Durr al-Mukhtār*, 4:60–65; Muḥammad bin Aḥmad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj ilā Ma'rifat Ma'ānī Alfāẓ al-Minhāj* (Beirut: Dār al-Kutub al-'Ilmiyya, 1994), 5:451–55.

²⁸ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuhu* (Damascus: Dār al-Fikr, 1985), 7:5590–96.

²⁹ "Law No. 18 of 2019 on Pesantren."

educational institutions to be protected from physical violence, psychological violence, sexual offenses, and other forms of abuse, including those committed by educators, educational personnel, fellow students, or other persons.³⁰ At the international level, this framework is reinforced by the Convention on the Rights of the Child, which treats protection from physical and mental violence as a state obligation and requires school discipline to be administered in a manner consistent with the child's dignity.³¹ The Committee on the Rights of the Child has further interpreted these provisions as requiring the rejection of corporal punishment and other cruel or degrading forms of punishment.³² Therefore, recognition of the distinctive character and institutional independence of pesantren does not create a normative sphere separate from child-protection law. Rather, pesantren operate at the intersection of legal recognition of institutional distinctiveness and legal obligations that constrain how disciplinary authority may be exercised.

This configuration is better understood as one of normative plurality than as a normative vacuum. The notion of a normative vacuum assumes that the absence of state law specifically regulating *ta'zīr* in pesantren leaves an unregulated space. Once attention shifts from state law alone to the full range of sources that give meaning and legitimacy to discipline, however, that space appears to be occupied by multiple normative orders. *Fiqh* supplies the categories of *ta'zīr*, *ta'dīb*, and *wilāya*, together with corrective purposes and limits on conduct that causes harm; state law establishes norms concerning education and child protection; pesantren generate institutional rules and customary practices; the authority of *kiai* and educators provides socio-religious legitimacy for their implementation; and parents and communities bring expectations concerning students' education, safety, and moral formation. This coexistence is consistent with legal pluralism scholarship showing that legal life may be shaped by multiple normative orders operating and interacting within the same social space.³³ The central issue in the application of *ta'zīr* in pesantren, therefore, is not the absence of norms, but how norms derived from different sources acquire authority, are interpreted, and are brought into relation within institutional practice.

Pesantren as a Semi-Autonomous Social Field: Authority, Rules, and Disciplinary Practices

Moore's concept of the semi-autonomous social field provides an analytical framework for understanding how disciplinary authority is constituted and exercised within pesantren. Moore defines a semi-autonomous social field as a social arena capable of generating rules and providing the means to induce or coerce compliance, while simultaneously existing within a wider social matrix that can affect and penetrate it.³⁴ The boundaries of such a field are therefore determined not simply by formal organizational structures but by processes of

³⁰ "Law No. 35 of 2014 Amending Law No. 23 of 2002 on the Protection of Children," Article 54, paragraph (1).

³¹ United Nations, "Convention on the Rights of the Child," November 20, 1989, Article 19 and Article 28.

³² *General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment*, CRC/C/GC/8 (UN Committee on the Rights of the Child (CRC), 2007), Paragraphs 18-22.

³³ Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (January 1988): 869-96.

³⁴ Moore, "Law and Social Change," 719-46.

rule-making and the organization of compliance. In this study, the concept is used to examine the relationship between pesantren's internal regulatory capacity and their embeddedness within broader normative orders. Pesantren are not merely arenas in which *fiqh* doctrine or state law is applied; they also generate institutional rules, distribute disciplinary authority, and determine consequences for violations. This regulatory capacity operates through relationships among *kiai*, *ustadz*, administrators, and *santri*, while also interacting with parents, surrounding communities, and state law.³⁵ Semi-autonomy, in this sense, does not imply that pesantren are separate from their external environment. Rather, it refers to their capacity to constitute and enforce an internal normative order amid the penetration of norms and demands originating outside the institution.

This regulatory capacity is rooted in the character of pesantren as religious educational environments that bring together the transmission of knowledge, religious authority, and communal life. Scholarship on pesantren has emphasized the importance of the *kiai*, *santri*, residential life, and the study of *kitab kuning* in shaping pesantren structures of authority and educational traditions.³⁶ At the same time, pesantren do not preserve these traditions in static form but negotiate them in relation to social change, formal education, and the demands of modernity.³⁷ Within such an environment, *ta'zim* toward teachers also contributes to the social force of educators' authority and students' compliance.³⁸ The survey data illustrate how this regulatory capacity is expressed through a combination of formal rules and institutional custom. Of the 52 respondents, 84.6% reported the existence of written disciplinary rules: 67.3% stated that written rules were available and communicated to *santri*, while 17.3% reported that written rules existed but were not always communicated. A further 15.4% indicated that disciplinary rules were unwritten and understood through customary practice. The consistency with which graduated sanctions were applied received a mean score of 3.52 on a five-point scale.³⁹ These findings suggest that the capacity to generate internal rules does not necessarily depend on formal codification. Both written rules and institutional custom may guide institutional action, although their existence does not by itself ensure uniform implementation. Variation in the dissemination and consistent application of rules instead indicates the need to distinguish the existence of rules from the ways in which they are internalized and enforced. From Moore's perspective, such variation is an important feature of semi-autonomy: institutions possess rule-making capacity, but that capacity operates through social practices that need not be identical across pesantren.⁴⁰

³⁵ Muhammad Najib, Maskuri Maskuri, and M. Mas'ud Sa'id, "Curriculum Management and Power Relations: Strategies for Multicultural Character Development of Santri in Traditional Pesantren," *Munaddibomah: Jurnal Manajemen Pendidikan Islam* 7, no. 1 (January 2026): 109–24; Muhammad Alim Ihsan, Sakaruddin Mandjarreki, and Suparman Suparman, "Religion as Moral Infrastructure: Lived Islam, Welfare Governance, and the Family Hope Program in Indonesia," *Religious: Jurnal Studi Agama-Agama dan Lintas Budaya* 9, no. 3 (December 2025): 347–64.

³⁶ Bruinessen, "Kitab Kuning," 226–69.

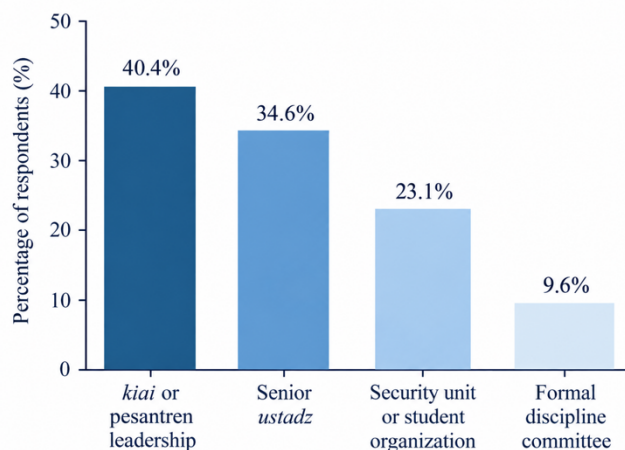
³⁷ Lukens-Bull, "Two Sides of the Same Coin," 350–72.

³⁸ Arina Mufrihah et al., "Rasch Model Analysis of Santri Reverence Morals Scale," *Islamic Guidance and Counseling Journal* 8, no. 1 (January 2025): 1–18.

³⁹ "Survey Data on *Ta'zim* Practices across 18 Pesantren in Indonesia."

⁴⁰ Moore, "Law and Social Change," 719–46.

Figure 2
Distribution of Disciplinary Authority in Pesantren



Source: Authors' compilation based on survey data (2026).

This capacity for rule-making is accompanied by a distribution of authority to enforce those rules. The survey identified *kiai* (40.4%), *ustadz* (34.6%), security units or student organizations (23.1%), and formal disciplinary committees (9.6%) as holders of disciplinary authority. In addition, 38.5% of respondents reported that more than one actor held such authority within their institution (see Figure 2).⁴¹ This pattern indicates that the administration of *ta'zīr* cannot be reduced to the personal action of the *kiai*. Disciplinary authority may be distributed vertically and horizontally among *kiai*, *ustadz*, *wali asuh* (residential mentor), security personnel, and student administrators. AM, a pesantren administrator in South Jakarta, described this arrangement as follows: “The security division has the authority to impose sanctions, of course in communication with the *kiai*, *lurah* (santri affairs coordinator), and *wali asuh*.”⁴² A similar distribution was found in Bangkalan, where the student organization performs certain disciplinary functions with the approval of the security division and *wali asuh*, while the head of security exercises oversight and intervenes in more serious violations.⁴³ In Samalanga, Aceh, minor and intermediate violations may be handled by designated administrators, whereas more serious cases are referred to the head of the relevant division, appointed by the pesantren leadership and generally drawn from among *ustadz*.⁴⁴ This pattern may be understood as distributed institutional authority: authority retains a center of legitimacy, while its exercise is dispersed across multiple positions and organizational levels.

This structure of authority is linked to the repertoire of sanctions used in response to violations. As shown in Figure 3, the most frequently reported sanctions were additional religious assignments (73.1%) and private verbal admonition (67.3%), followed by social or communal service (36.5%), public reprimand (32.7%), written notification to parents

⁴¹ “Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia.”

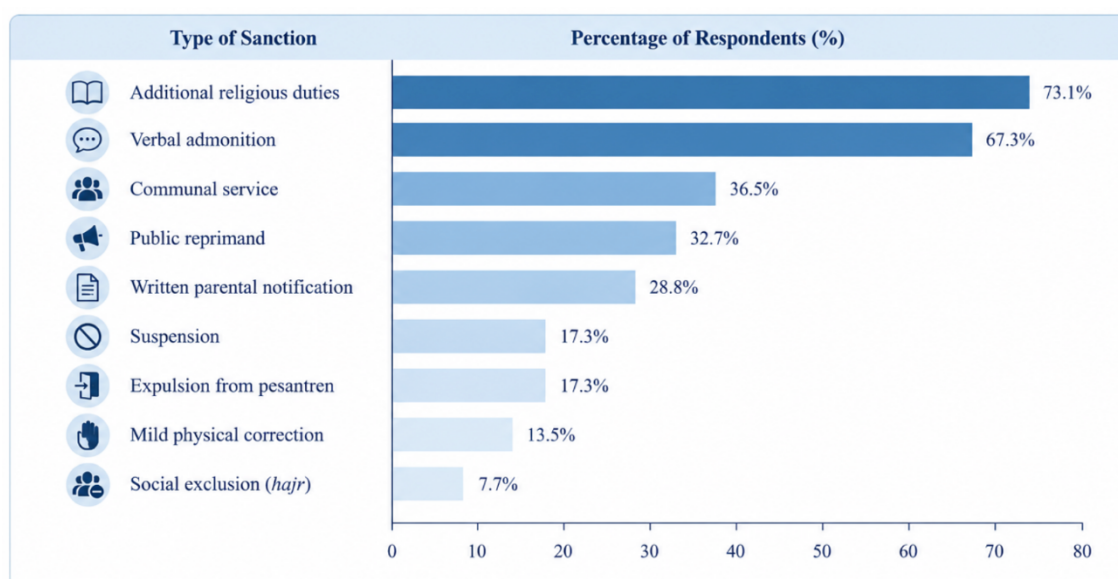
⁴² AM, “Personal Communication with a Pesantren Administrator in South Jakarta, DKI Jakarta,” July 2026.

⁴³ SR, “Personal Communication with a Pesantren Leader in Bangkalan, East Java,” June 2026; AM, “Personal Communication with a Pesantren Administrator in South Jakarta, DKI Jakarta.”

⁴⁴ TH, “Personal Communication with a Pesantren Leader in Samalanga, Aceh,” July 2026.

(28.8%), temporary suspension (17.3%), expulsion from the pesantren (17.3%), mild physical correction (13.5%), and temporary social exclusion (*hajr*) (7.7%).⁴⁵ Because respondents could select more than one option, these percentages represent the proportion of respondents reporting the use of each form of sanction rather than the distribution of all disciplinary incidents. The pattern indicates that the disciplinary repertoire within the sample was characterized more by religious assignments and verbal admonition than by physical correction. These findings suggest that pesantren possess a range of institutional consequences that may be selected and combined in response to violations; the capacity to generate rules is therefore accompanied by a capacity to establish mechanisms for inducing compliance with those rules.

Figure 3
Reported Forms of Disciplinary Sanctions in Pesantren



Source: Authors' compilation based on survey data (2026).

The meaning of this disciplinary repertoire becomes clearer when the survey findings are read alongside the accounts of those involved in disciplinary practice. Of the 35 respondents who provided open-ended examples of *ta'zīr* they regarded as educational, 22 mentioned writing-based sanctions, particularly copying Qur'anic surahs, the *ratib al-haddād*, *āyat al-kursī*, *basmalah*, or *istighfār* (seeking divine forgiveness).⁴⁶ FH, a pesantren leader in Tangerang, explained, "Here, *ta'zīr* is educational in its approach, not physical. [Santri] are instructed to write *Sūrat Yā-Sīn* or *Sūrat al-Wāqī'ah*, so that through repeated Arabic writing, their handwriting improves."⁴⁷ Other practices include standing while reciting *istighfār* and *ṣalamāt* (invocations of blessings upon the Prophet), as well as performing a repentance prayer under the supervision of a *wali asub*. In Bangkalan, minor violations may be addressed by requiring *santri* to recite *Sūrat Yā-Sīn* twenty-one times or clean the pesantren grounds, while violations regarded as

⁴⁵ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁴⁶ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁴⁷ FH, "Personal Communication with a Pesantren Leader in Tangerang, Banten," July 2026.

more serious may result in head shaving.⁴⁸ The data also indicate that this educational framing is not merely a characteristic attributed to particular sanctions but forms part of the way pesantren actors legitimize disciplinary authority. FH emphasized that “*discipline must have the character of tarbiya for them and be grounded in compassion.*”⁴⁹ SR, a *kiai* in Bangkalan, explicitly distinguished between *ta’zīr* that constitutes *ta’dīb* and forms of *ta’zīr* that lack an educational character.⁵⁰ An *ustadz* in Samalanga described a graduated system of sanctions: standing for failure to meet memorization or study obligations; cleaning the surroundings for certain violations; head shaving for more serious violations, such as possessing a mobile phone or leaving the pesantren without permission; and parental summons or transfer for cases deemed serious. The teacher also emphasized that sanctions causing physical pain were no longer used.⁵¹ *Ta’zīr* in the pesantren studied thus acquires meaning through the language of *tarbiya*, *ta’dīb*, discipline, and the formation of religious habits.

These findings identify four features that support an analysis of pesantren as a semi-autonomous social field: the capacity to generate rules, the distribution of authority to enforce them, a repertoire of consequences for violations, and a pedagogical-religious language that legitimizes disciplinary practice. This internal capacity, however, does not make pesantren closed normative orders. The survey data show that parental involvement has been incorporated into some disciplinary mechanisms: 51.9% of respondents stated that parents were notified in connection with certain sanctions, such as suspension or expulsion; 28.8% reported that parents were always informed and their consent sought; 5.8% stated that parents were notified without being asked for consent; and 13.5% regarded discipline as an internal pesantren matter.⁵² This pattern indicates that the boundary between internal authority and the external environment is permeable. *Fiqh* supplies a source of normative language and legitimacy; parents bring both trust in the institution and expectations concerning their children’s education; and state law establishes external limits on institutional action. In Moore’s terms, it is precisely this configuration that gives semi-autonomy its “semi” character.⁵³ Pesantren are capable of generating and enforcing their own norms, but they do so within networks of social and legal relations that may influence, constrain, and reshape the exercise of internal authority.

Translating *Fiqh*: From *Ta’zīr* Doctrine to Pesantren Disciplinary Practice

The relationship between *fiqh* and disciplinary practice in pesantren needs to be understood by distinguishing familiarity with legal categories from the ways in which authority is explained and exercised. In the survey of 52 respondents, familiarity with *ta’zīr* as a category of *fiqh jināya* received a mean score of 2.85 on a five-point scale. When asked to identify the basis of the *kiai*’s disciplinary authority, 17.3% of respondents selected parental delegation

⁴⁸ SR, “Personal Communication with a Pesantren Leader in Bangkalan, East Java.”

⁴⁹ This statement comes from a respondent who serves as a religious teacher at a pesantren in Ciamis, West Java. “Survey Data on *Ta’zīr* Practices across 18 Pesantren in Indonesia.”

⁵⁰ SR, “Personal Communication with a Pesantren Leader in Bangkalan, East Java.”

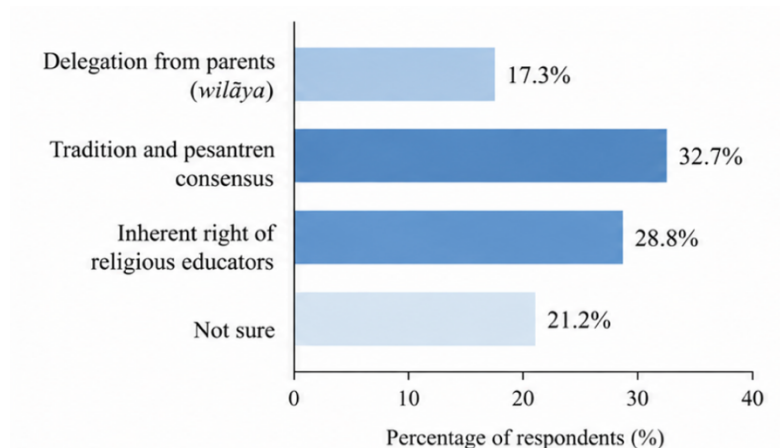
⁵¹ This statement comes from a respondent who serves as an *ustadz* at a pesantren in Samalanga, Aceh. “Survey Data on *Ta’zīr* Practices across 18 Pesantren in Indonesia.”

⁵² “Survey Data on *Ta’zīr* Practices across 18 Pesantren in Indonesia.”

⁵³ Moore, “Law and Social Change,” 719–46.

or *wilāya*, while 32.7% associated it with pesantren tradition and institutional consensus, 28.8% regarded it as an inherent right of religious educators, and 21.2% were uncertain (see Figure 5).⁵⁴ This distribution indicates that respondents explain disciplinary authority through multiple sources of legitimacy rather than solely through the doctrinal categories found in the *fiqh* literature. The reported level of familiarity, however, reflects self-assessment rather than a direct test of jurisprudential competence. Limited familiarity with particular terminology therefore cannot, by itself, be treated as evidence that disciplinary practice is disconnected from *fiqh*. The more important question is how religious knowledge, educational tradition, and understandings of authority interact when pesantren actors assign meaning and legitimacy to disciplinary practices.

Figure 4
Perceived Basis of the *Kiai*'s Disciplinary Authority



Source: Authors' compilation based on survey data (2026).

This pattern becomes clearer when respondents' exposure to *kitab kuning* is taken into account. As reported in Figure 4, 50 respondents (96.2%) had studied *Ta'lim al-Muta'allim*. By contrast, *al-Mughnī*, *al-Fiqh al-Islāmī wa Adillatuhu*, and *al-Tashrī' al-Jinā'ī al-Islāmī* were each mentioned by four respondents (7.7%), *al-Aḥkām al-Sultāniyya* by three respondents (5.8%), and *Badā'i' al-Ṣanā'i'* by one respondent (1.9%).⁵⁵ The survey item allowed multiple responses and identified texts that respondents had studied, rather than the frequency with which those texts were used as a basis for imposing sanctions. Even so, the distribution indicates substantially greater exposure to a text of educational ethics than to works of *fiqh* containing detailed discussions of authority and punishment. *Ta'lim al-Muta'allim*, for example, provides an ethical vocabulary concerning the *adab* of learning, respect for teachers, and student conduct, whereas the *fiqh* literature offers more formal categories concerning the authority, purposes, and limits of *ta'zīr*.⁵⁶ This distinction does not separate *fiqh* from *adab*; rather, it suggests that they may occupy different positions in the transmission of knowledge and the interpretation of discipline. Earlier scholarship on *kitab kuning* has likewise shown

⁵⁴ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁵⁵ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁵⁶ Syekh Az-Zarnuji, *Terjemah Ta'lim Muta'allim*, trans. Abdul Kadir Aljufri (Surabaya: Mutiara Ilmu, 2009), 30–31.

that pesantren intellectual traditions are shaped by diverse textual repertoires transmitted through distinctive educational structures.⁵⁷ Therefore, limited familiarity with particular works of *fiqh jināya* does not in itself indicate that *fiqh* exerts little normative influence; that influence may instead be mediated through texts, pedagogical practices, and relations of authority that are more familiar within everyday pesantren life.

The relationship between religious knowledge and the interpretation of discipline becomes more concrete in the interviews. FH described the use of writing Sūrat Yā-Sīn and Sūrat al-Wāqī'ah as sanctions that were also intended to improve students' Arabic handwriting. Other forms included standing while reciting *istighfār* and *ṣalawāt*, as well as performing a repentance prayer under the supervision of a *wali asuh*. The choice of recitation also reflected the institution's established religious practices. When asked about the use of the *ratīb al-ḥaddād*, FH explained, "*We practice the ratīb al-ḥaddād here, so that is what we use.*"⁵⁸ This account shows how activities already embedded in pesantren religious life may acquire an additional function as corrective measures. The practice is framed in the language of education and compassion. Yet FH's explanation did not stop at pedagogical reasoning. He stated explicitly: "*Today, as times and values change, the Shari'ah—or fiqh—is flexible; this is why we should use social fiqh (fikih sosial).*"⁵⁹ This evidence suggests that disciplinary practices are not always carried out as literal reproductions of *fiqh* prescriptions, but neither can they be reduced to local customs detached from *fiqh*. In this instance, the language of *tarbiya*, the cultivation of *adab*, and *fiqh*-based reasoning operate together in legitimating institutional action. This pattern resonates with scholarship showing that continuity of tradition and adaptation to change are not necessarily opposing processes in pesantren: religious sources of authority may be retained while being reworked in response to institutional needs and shifts in the broader social environment.⁶⁰

These findings shift the analysis from a model of doctrinal application toward a process of institutional translation. Pesantren do not simply extract provisions on *ta'zīr* from *fiqh* texts and reproduce them in identical form; rather, they select and operationalize them through established structures of authority, pedagogical traditions, and institutional distributions of responsibility. Accordingly, *wilāya* does not always appear as an explicit term in the language of pesantren actors, even though educational authority is exercised through relationships among *kiai*, *ustadz*, *wali asuh*, student organizations, and parents. The corrective purposes associated with *ta'zīr* likewise take local form through writing and reciting Qur'anic surahs, memorizing legal maxims, reciting *istighfār* and *ṣalawāt*, performing communal service, or undertaking a repentance prayer.⁶¹ Institutional translation, however, does not necessarily ensure conformity between practice and the normative limits of *fiqh*. Risks arise particularly

⁵⁷ Bruinessen, "Kitab Kuning," 226–69. See also: Sembodo Ardi Widodo et al., "Reproducing Islamic Knowledge in Indonesian Pesantren: *Turāt*, Textual Tradition, and Epistemic Continuity," *British Journal of Religious Education*, April 15, 2026, 1–19; Iswahyudi Iswahyudi, Galih Akbar Prabowo, and Fitri Annas Sholihah, "Moderate and Non-Moderate Discursive Tendencies in Kitab Kuning," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 5, no. 2 (December 2025): 293–316.

⁵⁸ FH, "Personal Communication with a Pesantren Leader in Tangerang, Banten."

⁵⁹ FH, "Personal Communication with a Pesantren Leader in Tangerang, Banten."

⁶⁰ Lukens-Bull, "Two Sides of the Same Coin," 350–72.

⁶¹ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

when authority is delegated without clearly defined limits or adequate supervision. SR observed, “*The problem is that no distinction is made between ta‘zīr that constitutes ta‘dīb and ta‘zīr that does not.*” He also placed a limit on physical measures, stating, “*Ḍarb (striking) must not become mubarrīḥ (severe or injurious); it must not leave any mark or injury.*”⁶² A pesantren administrator in South Jakarta similarly emphasized the importance of communication and deliberation (*musyawarah*) in disciplinary decision-making and criticized unilateral action by senior *santri*.⁶³ These findings show the ambivalent character of institutional translation: it allows *fiqh* to be adapted to pedagogical needs and local institutional structures, while at the same time creating the possibility of divergence between doctrine and practice where authority, interpretation, and oversight are not clearly defined.

The relationship between *fiqh* and pesantren discipline cannot therefore be adequately understood as a binary choice between direct doctrinal application and the absence of doctrinal influence. Familiarity with terminology, experience studying *kitab kuning*, religious reasoning articulated in interviews, and institutional practices reveal multiple pathways through which *fiqh* acquires social force. Within the limits of the present data, *fiqh* may operate socially without always being reproduced in explicit doctrinal formulations. This study does not trace the textual origins of every form of sanction; consequently, similarities between a particular practice and a principle of *fiqh* cannot be treated as proof of a definite derivational relationship. Moore’s concept of the semi-autonomous social field, however, helps explain how norms derived from a broader legal tradition acquire concrete form through rule-making and social relations within a field that possesses its own regulatory capacity.⁶⁴ This interpretation is also consistent with socio-legal scholarship that understands legal pluralism not merely as the coexistence of multiple normative systems but as interaction among normative orders in social life.⁶⁵ In the pesantren context, *fiqh* is therefore not simply an external norm entering the institution; it is also part of an intellectual tradition transmitted, interpreted, and operationalized by actors within it.⁶⁶ The relationship between *fiqh* and disciplinary practice is thus better understood as one of institutional translation than direct doctrinal application. Put differently, Islamic law acquires social force through institutional processes that may preserve, adjust, and negotiate its normative boundaries.

Negotiating State Law: Legal Awareness, Adaptation, and the Limits of Institutional Autonomy

The relationship between pesantren and state law reveals another dimension of their semi-autonomous character. Just as the previous section showed that *fiqh* is not always reproduced directly in disciplinary practice, the present findings indicate a similar pattern in relation to state law. Formal regulation does not necessarily serve as an explicit point of reference in everyday practice. Respondents’ familiarity with the Law No. 18 of 2019 on Pesantren

⁶² SR, “Personal Communication with a Pesantren Leader in Bangkalan, East Java.”

⁶³ AM, “Personal Communication with a Pesantren Administrator in South Jakarta, DKI Jakarta.”

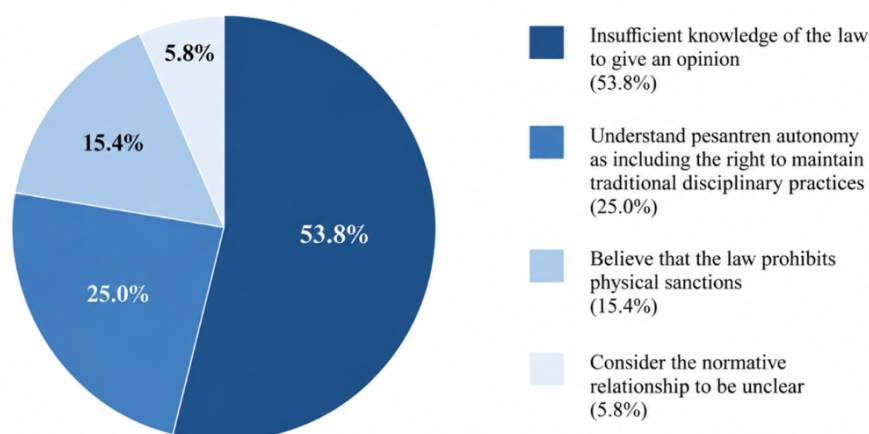
⁶⁴ Moore, “Law and Social Change,” 719–46.

⁶⁵ Merry, “Legal Pluralism,” 869–96.

⁶⁶ Rusdi Abdullah et al., “Islamic Family Law and Its Teaching in Pesantren: Kiai Perspectives on Santri Understanding of the Law in Kalimantan,” *El-Ushrā: Jurnal Hukum Keluarga* 9, no. 2 (September 2026): 951–75.

averaged only 2.33 on a five-point scale, while familiarity with the Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection averaged 2.69 (see Figure 5). When asked whether the Law No. 18 of 2019 on Pesantren preserves pesantren authority to impose physical *ta'zīr*, 53.8% of respondents stated that they lacked sufficient knowledge to express an opinion; 25.0% understood pesantren autonomy as including the right to retain traditional practices; 15.4% believed that the law prohibits physical sanctions; and 5.8% considered the normative relationship unclear.⁶⁷ These findings indicate limited familiarity with state law, but this should not be equated with an absence of legal influence. Scholarship on legal consciousness has long shown that the presence of law in social life is shaped not only by actors' knowledge of written rules but also by how law is understood, experienced, and invoked in everyday relationships and practices.⁶⁸

Figure 5
Perceptions of Pesantren Authority to Apply Physical *Ta'zīr*



Source: Authors' compilation based on survey data (2026).

The limits of semi-autonomy become more visible when conduct occurring within pesantren produces consequences that prompt the involvement of external institutions. One survey response described an incident that began with an allegation of theft by a student. The student was subsequently subjected to physical punishment by fellow students and sustained facial injuries, after which the family reported the matter to the police before it was ultimately addressed through family mediation.⁶⁹ This account indicates that a matter originating within the normative environment of a pesantren may move into the domain of state law when internal conduct is challenged by an affected party. In this context, child-protection law provides a relevant external normative limit. The Law No. 35 of 2014 on Child Protection guarantees protection for children in educational settings from violence

⁶⁷ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

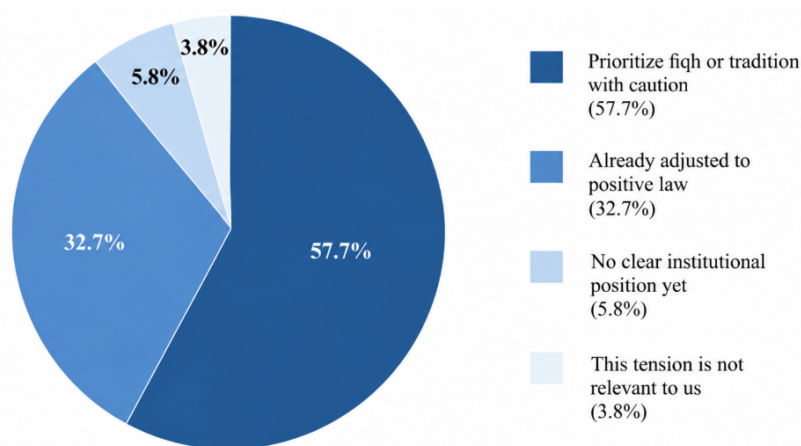
⁶⁸ Lynette J. Chua and David M. Engel, "Legal Consciousness Reconsidered," *Annual Review of Law and Social Science* 15 (2019): 335–53; Laras Shesa et al., "Reconstructing Islamic Legal Authority through Inheritance Practices: Legal Consciousness and Gender Justice among Sundanese Muslims in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 25, no. 2 (September 2026): 317–30.

⁶⁹ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

committed by educators, educational personnel, or fellow students.⁷⁰ Police involvement in this incident, therefore, need not be understood as displacing the pesantren's internal authority; rather, it indicates that institutional capacity to regulate students' everyday lives does not place such conduct beyond the reach of state legal protection.

At the same time, the data show that objections to disciplinary practices do not necessarily move directly toward formal legal enforcement. Of the 29 respondents who provided open-ended answers concerning complaints or legal consequences, ten referred to resolution through mediation or a familial approach, while three described adjustments to practice following complaints, such as discontinuing particular sanctions, seeking alternatives, or exercising greater caution. Fourteen respondents stated that they were unaware of any complaints, while three others were unable to provide a definite answer.⁷¹ One respondent from Samalanga explained: *"I personally have not witnessed such a case. I have only heard reports of parental complaints regarding santri discipline. The resolution is usually through musyawarah and a familial approach."* A pesantren administrator in South Jakarta likewise emphasized parental involvement before serious sanctions were imposed. As AM stated, *"When imposing a serious sanction, we would normally discuss it with the santri's parents or guardians first."*⁷² These findings suggest that parents may function not merely as recipients of pesantren decisions but also as actors who influence how disciplinary authority is exercised and contested. This pattern resonates with earlier studies showing that dispute processing may occur across multiple forums and that actors do not necessarily move in a linear fashion from social norms to state legal institutions.⁷³

Figure 6
Pesantren Responses to State Law



Source: Authors' compilation based on survey data (2026).

⁷⁰ "Law No. 35 of 2014 Amending Law No. 23 of 2002 on the Protection of Children," Article 54, paragraph (1).

⁷¹ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁷² AM, "Personal Communication with a Pesantren Administrator in South Jakarta, DKI Jakarta."

⁷³ Keebet Von Benda-Beckmann, "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra," *The Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (January 1981): 117–59; Arfiansyah and Adriaan Bedner, "Forum-Shopping in Criminal Law: Power and Pragmatism in Gayo, Aceh, Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (September 2024): 479–96.

Variation in pesantren responses to state law is also evident in respondents' assessments of possible tensions between disciplinary traditions and child-protection law. A total of 57.7% stated that their pesantren continued to prioritize *fiqh* or institutional tradition while exercising caution, whereas 32.7% reported that practices had been adjusted to conform to positive law. A further 5.8% indicated that there was no clear institutional position, while 3.8% regarded the perceived tension as irrelevant (see Figure 6).⁷⁴ These responses show that state norms enter pesantren through different channels and elicit different institutional responses. A teacher in South Jakarta, for example, referred to administrative communication concerning the Child-Friendly Pesantren initiative, suggesting that external legal and policy norms may become known through institutional socialization rather than solely through direct engagement with statutory texts.⁷⁵ This finding is consistent with relational approaches to legal consciousness, which understand legal awareness as shaped by social interaction, institutional settings, and relations of power rather than merely by individual knowledge of legal texts.⁷⁶

These findings further underscore the relevance of Moore's concept of the semi-autonomous social field. A social field is semi-autonomous not because it is free from state law, but because it possesses the capacity to generate rules and secure compliance while remaining open to rules and forces originating in the wider social environment.⁷⁷ In the present study, pesantren continue to establish internal rules, distribute disciplinary authority, determine forms of sanction, and manage certain disputes through internal mechanisms. Yet this regulatory capacity operates in relation to parents, surrounding communities, state administrative bodies, the police, and child-protection norms. Legal pluralism helps explain why such normative orders do not operate as wholly separate systems but instead interact, compete, and, in some circumstances, reshape one another.⁷⁸ Von Benda-Beckmann and Turner similarly emphasize the importance of understanding the relationship among legal pluralism, social theory, and the state as dynamic rather than as the mere coexistence of multiple bodies of rules.⁷⁹ In the Indonesian context, Benda-Beckmann's earlier study of dispute processing in Minangkabau likewise showed how state and non-state forums may coexist and form part of the same dispute-resolution strategy, even though the empirical configuration differs from that of the pesantren examined here.⁸⁰

⁷⁴ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁷⁵ AM, "Personal Communication with a Pesantren Administrator in South Jakarta, DKI Jakarta."

⁷⁶ Chua and Engel, "Legal Consciousness Reconsidered," 335–53; Lilik Abdul Malik Jamjani and Cholila Cholila, "Suspending Dogma, Structuring Law: Legal Consciousness and the Niqāb Fatwa of Egyptian Scholar, Ali Gomaa," *Indonesian Journal of Sharia and Socio-Legal Studies* 2, no. 1 (April 2026): 23–41; M. Harir Muzakki et al., "The Transformation of Legal Consciousness: From Unregistered to Official Marriages in Pekoren Village, Rembang, Pasuruan, East Java," *Al-'Adalah* 23, no. 1 (June 2026): 245–88.

⁷⁷ Moore, "Law and Social Change," 719–46.

⁷⁸ Merry, "Legal Pluralism," 869–96.

⁷⁹ Keebet von Benda-Beckmann and Bertram Turner, "Legal Pluralism, Social Theory, and the State," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (September 2018): 255–74.

⁸⁰ Von Benda-Beckmann, "Forum Shopping and Shopping Forums," 117–59. See also: Zainuddin et al., "Integrating Contemporary Islamic Law and Local Custom: A Study on the Teseng Agreement in the Bugis-Makassar Community," *MILRev: Metro Islamic Law Review* 5, no. 2 (August 2026): 1389–425; Wahyu Utami and Yogabakti Adipradana Setiawan, "Reconstructing Indonesia's Bipartite Labor Dispute Resolution through Customary Bedamai: A Legal Pluralism Perspective," *Syariah: Jurnal Hukum dan Pemikiran* 26, no. 1 (August 2026): 196–218; Irma Suryani et al., "Between Culture and Safety: The Paradox of Protecting

Negotiated *Ta'zīr*: The Semi-Autonomous Production of Disciplinary Norms

Taken together, the findings of this study suggest that *ta'zīr* in pesantren is better understood as the product of institutional processes that engage multiple normative sources than as the direct application of either *fiqh* doctrine or state law. Written rules, educational customs, distributions of authority, and relationships with parents constitute the social conditions through which disciplinary norms acquire meaning and are put into practice. *Fiqh* provides considerations concerning authority, corrective purposes, and the limits of permissible action, while state law serves as a normative reference through which disciplinary practices may be assessed or challenged. Neither, however, operates independently of pesantren structures of authority and pedagogical traditions.⁸¹ In this article, this process is understood as normative negotiation: pesantren actors draw together multiple sources of legitimacy when determining which measures are considered educational, who is authorized to impose them, and what limits should govern their exercise. Negotiation does not necessarily take the form of formal agreement among parties; it also occurs through the interpretation of rules, the allocation of responsibilities, and responses to objections. The central question, therefore, is not whether *fiqh* or state law prevails, but how each acquires normative force through the institutional relationships that sustain the practice of *ta'zīr*.

These findings clarify the analytical value of the semi-autonomous social field. Moore situates a social field's capacity to generate rules and organize compliance in relation to the social forces capable of affecting that field.⁸² The existence of internal rules alone is therefore insufficient to explain pesantren semi-autonomy. Such rules must be understood alongside relations of authority, mechanisms of implementation, and interactions through which they are maintained or contested. This perspective is consistent with Merry's account of legal pluralism, which emphasizes not merely the presence of multiple normative orders but also the relationships among them in social life.⁸³ In this study, these relationships are evident in the continuing importance of the *kiai's* authority even as its exercise involves teachers, administrators, *wali asuh*, and parents. Acceptance of delegated authority likewise does not necessarily displace recognition of the *kiai's* spiritual authority; both may coexist in respondents' understandings.⁸⁴ Disciplinary legitimacy, therefore, does not simply shift from personal to procedural authority. What emerges instead is a layered configuration of authority in which religious standing, responsibilities of care, and institutional divisions of function may reinforce one another while also generating tensions. Semi-autonomy, accordingly, is not synonymous with consensus or equality but denotes a regulatory capacity exercised within particular relations of power.

In the relationship between pesantren and *fiqh*, this configuration of authority mediates between religious knowledge and disciplinary practice. The language of *tarbiya*, *ta'dīb*, *adab*, and pastoral care does not simply replace legal terminology; rather, it provides a vocabulary

Domestic Violence Victims in Mediation at the Batusangkar Religious Court, Indonesia," *Nusantara: Journal of Law Studies* 5, no. 1 (April 2026): 331–58.

⁸¹ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁸² Moore, "Law and Social Change," 719–46.

⁸³ Merry, "Legal Pluralism," 869–96.

⁸⁴ Moore, "Law and Social Change," 719–46.

through which the purposes and justifications of disciplinary measures are articulated within educational life. Informants' accounts of the flexibility of *fiqh* and their use of religious practices as sanctions indicate that institutional adaptation may be accompanied by explicitly articulated religious reasoning. This finding extends Lukens-Bull's analysis of how pesantren negotiate tradition and modernity through their educational aims and practices.⁸⁵ Whereas Lukens-Bull focuses on the negotiation of education and identity, the present study shows its implications for legal authority: religious traditions are used to give meaning to, authorize, and constrain corrective measures. This reading also speaks to Damopolii, Shabir, and Burga's finding that punishment in pesantren is directed toward educational and moral-formative purposes, even though written rules do not entirely eliminate the discretion of *kiai* or *ustadz*.⁸⁶ The present study develops this issue further by distinguishing the educational purpose asserted by those administering discipline from either the effectiveness or the legal legitimacy of a particular measure. Describing a sanction as "educational" forms part of an institutional process of justification; it does not, by itself, establish that the relevant limits on authority have been observed. The translation of *fiqh* may therefore preserve a corrective orientation while still leaving room for divergent interpretations of what constitutes a proportionate disciplinary measure.

The relationship with state law reveals a different form of mediation. Limited familiarity with legislation does not preclude legal considerations from entering institutional practice through administrative communication, parental objections, or assessments of the consequences of disciplinary measures. The relational approach to legal consciousness discussed by Chua and Engel helps explain how understandings of law are formed through social interactions and experiences rather than solely through individual knowledge of legal rules.⁸⁷ In this study, state law becomes relevant when disciplinary actors connect it to their choice of disciplinary measures or when other parties invoke it to challenge institutional decisions.⁸⁸ These findings add specificity to Nurtawab and Wahyudi's analysis of state recognition of pesantren, which shows that formal recognition creates institutional opportunities while also carrying the possibility of changes to long-standing values and governance arrangements.⁸⁹ At the level of disciplinary practice, this relationship unfolds through everyday decisions and interactions: demands for protection may encourage greater caution, complaints may prompt adjustments to sanctions, and internal disputes may be brought before state institutions. Such influence, however, does not amount to the wholesale replacement of pesantren rules. State law may reshape the grounds on which disciplinary measures are justified, the scope of accountability, and the range of actors entitled to raise objections, while pesantren continue to exercise internal regulatory authority. Partial convergence between disciplinary practices and protective objectives therefore cannot be equated with verified legal compliance.

⁸⁵ Lukens-Bull, "Two Sides of the Same Coin," 350–72.

⁸⁶ Damopolii, U, and Burga, "The Phenomenon of Punishment at Pesantren in South Sulawesi," 1643–60.

⁸⁷ Chua and Engel, "Legal Consciousness Reconsidered," 335–53.

⁸⁸ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁸⁹ Ervan Nurtawab and Dedi Wahyudi, "Restructuring Traditional Islamic Education in Indonesia: Challenges for Pesantren Institution," *Studia Islamika* 29, no. 1 (June 2022): 55–81.

The preference for adapting external guidelines rather than simply accepting or rejecting them underscores the importance of institutional interpretive capacity. In a different context, Merry explains how human rights ideas acquire local meaning through intermediaries who translate them into forms of language and social relations familiar to local communities. Such translation is not neutral, as it is shaped by the positions, interests, and resources of those who perform it.⁹⁰ This comparison helps illuminate the role of pesantren actors as they relate external guidelines to educational purposes, institutional typologies, and regional contexts. Unlike intermediaries in human rights movements, however, some pesantren actors simultaneously exercise the disciplinary authority that external norms seek to regulate. Adaptation may therefore serve to clarify protections and responsibilities while also preserving existing spaces of institutional discretion. Openness to external regulation does not, by itself, indicate the disappearance of these institutional interests. The survey responses concerning Ministry of Religious Affairs guidelines also describe attitudes toward a hypothetical scenario rather than the observed implementation of an existing guideline.⁹¹ The findings thus indicate an orientation toward selective adaptation, while the form, consistency, and consequences of its implementation require further investigation. Within these limits, openness to external regulation and the preservation of interpretive authority are not mutually exclusive positions but part of how pesantren situate themselves in relation to external regulation.

The contribution of this article, therefore, lies in explaining how semi-autonomy operates through institutional mediation in Islamic legal practice. Scholarship on pesantren has demonstrated these institutions' capacity to negotiate tradition and educational change,⁹² while the literature on legal pluralism has explained the coexistence and interaction of multiple normative orders.⁹³ This study connects these discussions by identifying two more specific mechanisms in the practice of *ta'zīr*: institutional translation and selective adaptation. Through institutional translation, principles of *fiqh* acquire operational form through pedagogical interpretation, distributions of authority, and the everyday practices of pesantren; through selective adaptation, demands arising from state law and external actors are considered, negotiated, and, under certain conditions, incorporated into internal regulation without automatically displacing the pesantren's normative order. Together, these processes explain why *ta'zīr* in the pesantren examined here constitutes a negotiated normative product rather than the direct application of any single source of law. The findings extend the analytical reach of Moore's concept⁹⁴ by showing that semi-autonomy is

⁹⁰ Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle," *American Anthropologist* 108, no. 1 (March 2006): 38–51.

⁹¹ "Survey Data on *Ta'zīr* Practices across 18 Pesantren in Indonesia."

⁹² Lukens-Bull, "Two Sides of the Same Coin," 350–72.

⁹³ Ahmad Agus Ramdlany et al., "Integrating Fiqhiyyah Legal Maxims and Positive Law Principles in the Formation of Indonesia's New National Criminal Code," *Nusantara: Journal of Law Studies* 5, no. 1 (April 2026): 453–84; Mohsi Mohsi et al., "Harmonizing Legal Pluralism in Marriage Laws: Policy Challenges on Child Marriage in Madura," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 10, no. 2 (November 2025): 100–118; Opik Rozikin et al., "Contextualizing Maqāṣid Al-Sharī'ah in Indigenous Legal Practices: A Comparative Study of Family Resilience in Kasepuhan Ciptagelar and Kampung Naga," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 25, no. 2 (September 2025): 344–62.

⁹⁴ Moore, "Law and Social Change," 719–46.

characterized not only by a social field's capacity to generate and enforce rules amid the penetration of external norms but also by its institutional capacity to process both inherited norms and externally generated demands before they become locally operative. Pesantren semi-autonomy is thus sustained not through normative isolation or the rejection of external law, but through the capacity to translate, select, and adapt normative demands into an institutional order that acquires local authority.

Conclusion

This study shows that *ta'zīr* in the examined pesantren does not function as a direct application of *fiqh* doctrine nor as straightforward compliance with state law. Instead, disciplinary practices are shaped through the interaction of the normative repertoire of *fiqh*, pedagogical traditions, internal authority structures, relationships with parents and surrounding communities, and the demands of state law. Within this process, *fiqh* retains social influence even when its doctrinal categories are not explicitly enacted in practice, while state law may shape the orientation and boundaries of discipline despite respondents' relatively limited familiarity with formal legal frameworks. The predominance of educational and non-physical forms of discipline, the distribution of authority among multiple internal actors, and the tendency to adapt external guidelines to institutional characteristics indicate that the relationships among these normative orders do not operate through direct adoption. Instead, the findings suggest that *ta'zīr* is a negotiated normative product whose meaning, form, agents, and limits become operational through institutional processes that interpret, prioritize, and adjust overlapping or potentially conflicting normative claims. In this context, "negotiation" does not imply direct bargaining or consensus among actors; rather, it refers to institutional processes that determine how different normative sources acquire varying degrees of weight and practical influence in pesantren disciplinary practice.

Theoretically, these findings expand the analytical scope of Moore's concept of the semi-autonomous social field by identifying the institutional mechanisms through which semi-autonomy is produced and sustained within the context of contemporary Islamic education. Pesantren semi-autonomy does not depend on normative isolation or the outright rejection of external law but operates through two interrelated processes: institutional translation, whereby principles of *fiqh* are interpreted and operationalized through pedagogical logics and pesantren authority structures; and selective adaptation, through which the demands of state law and external actors are considered and adjusted without automatically displacing the internal normative order. This perspective contributes to scholarship on Islamic law and pesantren by demonstrating that the social force of Islamic law depends not solely on the reproduction of doctrine but also on institutional processes that translate normative sources into locally authoritative practices. At the same time, semi-autonomy is a socio-legal condition—not a claim that pesantren are exempt from generally applicable state law—and normative negotiation occurs within relations of authority that are not necessarily equal. These conclusions should be interpreted in light of the study's methodological limitations. The survey sample was non-probabilistic and concentrated among urban pesantren and institutions affiliated with NU, while the in-depth interviews were limited to four informants from four different pesantren. Therefore, the quantitative

findings are descriptive and exploratory rather than statistically representative of pesantren across Indonesia. Future research could compare how institutional translation and selective adaptation operate across pesantren with more diverse affiliations, institutional types, geographic locations, and governance structures. Longitudinal studies are also needed to examine how regulatory changes, parental objections, and generational shifts in leadership reshape the boundaries of semi-autonomy in pesantren disciplinary practices over time.

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