Protecting Socioeconomically Vulnerable Defendants: Poverty Criminalization in Indonesia and Saudi Arabia

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Abstract

Study Objectives: This article examines how Indonesian and Saudi Arabian criminal justice frameworks protect, or fail to protect, defendants whose socio-economic vulnerability shapes their exposure to the criminal process and punishment.

Method/Approach: It uses normative legal research, including statute, conceptual, and functional comparative approaches.

Novelty: This study advances a social vulnerability-sensitive criminal justice model of poverty.

Findings: The study finds a shared formal commitment to defense rights but divergent institutional designs. Indonesia now combines a statutory legal-aid scheme with the 2025 Criminal Procedure Code, which requires officials to inform indigent persons of legal-aid rights and appoint counsel in specified cases. The 2023 Criminal Code also provides a stronger foundation for individualized and non-custodial sentencing. Saudi Arabia recognizes the accused's right to counsel during investigation and trial and provides a state-funded appointment route in serious crimes, but that route depends on a request, judicial verification of indigence, and a serious-crime threshold. Neither system expressly requires a court to assess the poverty-related consequences of prosecution, fines, detention, or imprisonment.

Conclusion: Defense rights require meaningful access to defense, an ability-to-pay review, a custody-necessity test, written reasons that address social impact, and, where proportionate, restorative or community-based responses.

Keywords: Criminalization of Poverty; Comparative Criminal Justice; Legal Aid; Socioeconomically Vulnerable Defendants.

Introduction

Poverty criminalization describes a pattern in which persons with limited economic resources encounter criminal law not only because of prohibited conduct but also because poverty intensifies exposure to police control, weakens the capacity to secure representation, and magnifies the consequences of monetary and

custodial sanctions.[1] The concept does not presume that every poor person accused of an offense lacks culpability.[2] It identifies a structural risk: criminal justice can convert deprivation into a source of deeper legal disadvantage when it ignores the material conditions a defendant enters the system with.[3]

International scholarship has demonstrated that fines, fees, short custodial penalties, and routine court supervision can extend state control over low-income defendants without producing a commensurate public-safety benefit.[4] The relevance of that scholarship is not confined to the jurisdictions from which the evidence emerged. It exposes a general legal problem.[5] A criminal justice system that treats inability to pay, lack of housing, precarious work, or restricted access to counsel as neutral background facts risks imposing unequal burdens under formally equal rules.[6]

Indonesia and Saudi Arabia provide a productive comparison because both systems affirm the accused's right to defense while locating criminal justice within distinct legal traditions and institutional architectures. Indonesia grounds equality before the law in the 1945 Constitution and has enacted a dedicated Legal Aid Law.[7] Saudi Arabia applies Sharia principles together with state legislation through its Law of Criminal Procedure.[8] The comparison, therefore, does not rank legal traditions. It examines whether each system delivers functionally equivalent safeguards against poverty-driven procedural and sentencing disadvantage.[9]

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[1] Edwine Joshua Ochieng Otieno Otieno, "Cash Bail and Systemic Inequity," *National Security: A Journal of the National Defence University-Kenya* 3, no. 1 (August 18, 2025): 87–106, https://doi.org/10.64403/majp0259.

[2] Elina Nerantzi and Giovanni Sartor, "'Hard AI Crime': The Deterrence Turn," *Oxford Journal of Legal Studies* 44, no. 3 (September 3, 2024): 673–701, https://doi.org/10.1093/ojls/gqae018.

[3] Yael Cohen-Rimer, "'Poverty Has Nothing to Do with It': Criministrative Law and a Call for Poverty Awareness in Child Protection Procedures in Israeli Juvenile Courts," *Law & Social Inquiry*, February 13, 2026, 1–23, https://doi.org/10.1017/lsi.2026.10135.

[4] Joshua Page and Christine S. Scott-Hayward, "Bail and Pretrial Justice in the United States: A Field of Possibility," *Annual Review of Criminology* 5, no. 1 (January 13, 2022): 91–113, https://doi.org/10.1146/annurev-criminol-030920-093024.

[5] Tarunabh Khaitan and Sandy Steel, "THEORIZING AREAS OF LAW: A TAXONOMY OF SPECIAL JURISPRUDENCE," *Legal Theory* 28, no. 4 (December 4, 2022): 325–51, https://doi.org/10.1017/S1352325222000192.

[6] Callan Hummel et al., "Racialized Administrative Burdens and Barriers to Gender-Affirming Identity Documents in Florida," *Politics, Groups, and Identities*, April 24, 2026, 1–19, https://doi.org/10.1080/21565503.2026.2659278.

[7] Ganjar Patria Lugina et al., "Constitutional Recognition of Living Law in Criminal Law: A Comparative Study of Indonesia and Southeast Asia," *As-Siyasi: Journal of Constitutional Law* 6, no. 1 (June 25, 2026): 153–76, https://doi.org/10.24042/as-siyasi.v61.30999.

[8] Sahat Maruli Tua Situmeang et al., "Contemporary Human Rights Safeguards in Islamic Law Justice: A Comparative Study in Indonesia, Saudi Arabia, and Egypt," *MILRev: Metro Islamic Law Review* 5, no. 1 (April 24, 2026): 575–610, https://doi.org/10.32332/milrev.v5i1.13066.

[9] Niaz Ali et al., "Shattered Dreams, Reclaimed Futures: Social Stratification Affecting at-Risk and out-of-School Children and Addressing Strategies for Reintegration into Formal Schooling,"

The article asks two questions. First, how do Indonesian and Saudi Arabian criminal procedure and sentencing frameworks respond to defendants who cannot afford counsel and face disproportionate consequences because of poverty? Second, which normative safeguards can reduce the criminalization of poverty without diluting accountability for wrongdoing? The article answers these questions through a functional comparison of legal-aid access, appointment of counsel, sentencing individualization, non-custodial measures, restorative mechanisms, and the treatment of monetary sanctions.

The article makes three contributions. It updates the Indonesian analysis to the legal framework effective in 2026, including Law No. 1 of 2023 on the Criminal Code and Law No. 20 of 2025 on Criminal Procedure.[10] It provides a carefully bounded comparison with Saudi Arabia by distinguishing the general right to counsel from the specific state-funded appointment procedure in serious crimes.[11] It also proposes a social vulnerability-sensitive criminal justice model that uses poverty neither as a blanket excuse nor as an aggravating proxy for risk. Instead, it treats socio-economic vulnerability as a legally relevant context for access to defense, proportionality, and the feasibility of sanctions. [12]

Research Method

This study uses normative legal research with prescriptive and analytical characteristics. The primary legal materials are the Constitution of the Republic of Indonesia of 1945,[13] Law No. 16 of 2011 on Legal Aid,[14] Law No. 1 of 2023 on the

International Journal of Adolescence and Youth 31, no. 1 (December 31, 2026), https://doi.org/10.1080/02673843.2026.2665210.

[10] Dyah Kusumaningtyas Setiyowati et al., "The Dynamics of the System of Punitive Measures in the Reform of Indonesian Criminal Law The Transformation of the System of Punitive Measures in Indonesia's New Criminal Code," *Jurnal Pembangunan Hukum Indonesia* 8, no. 1 (April 28, 2026): 95–118, https://doi.org/10.14710/jphi.v8i1.95-118.

[11] "In Search of Resilience: A Case Study of Leadership in Challenging Times in an International School Setting" (University of San Diego, 2026), https://doi.org/10.22371/05.2026.001.

[12] Oleg Dubynskyy, Ihor Dubynskyi, and Olha Nabokova, "CONSTITUTIONAL GUARANTEES FOR THE PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN UKRAINE: ECONOMIC AND LEGAL ASPECT," *Baltic Journal of Economic Studies* 12, no. 1 (February 17, 2026): 163–72, https://doi.org/10.30525/2256-0742/2026-12-1-163-172.

[13] Andi Sugirman et al., "Integration of Constitutional Law and Human Rights: A Comparative Study between Indonesia and South Africa," *Jurnal Suara Hukum* 7, no. 1 (May 11, 2025): 274–97, https://doi.org/10.26740/jsh.v7n1.p274-297.

[14] Wardah Nuroniyah et al., "Assessing Indonesia and Malaysia's Legal Responsiveness to Domestic Violence Victims within Islamic Law Framework," *Al-Manahij: Jurnal Kajian Hukum Islam*, October 24, 2025, 247–70, https://doi.org/10.24090/mnh.v19i2.13736.

Criminal Code, [15] Law No. 20 of 2025 on Criminal Procedure, [16] selected Indonesian restorative-justice and minor-offense instruments, the Saudi Law of Criminal Procedure, and the Saudi Implementing Regulations of the Law of Criminal Procedure.[17] The legal position is stated as of 30 June 2026.

The conceptual approach uses the literature on poverty criminalization, legal debt, substantive equality, responsive law, and restorative justice. [18] The comparative approach is functional. It does not assume that Indonesia and Saudi Arabia share the same sources of law, judicial organization, or theory of punishment. It asks whether each legal system performs comparable functions: ensuring access to counsel, preventing inability to pay from becoming punishment, individualizing sentencing, and avoiding unnecessary custody in low-level cases. [19]

The analysis proceeds in three stages. First, it identifies the procedural and sentencing safeguards in each jurisdiction. Second, it tests whether those safeguards explicitly respond to socio-economic vulnerability or merely recognize formal rights. Third, it develops reform proposals that can be adapted to each system without erasing their doctrinal differences. This design avoids unsupported empirical generalizations about either country and confines the article to verifiable legal materials and established international scholarship.

Results and Discussion

Poverty, Criminalization, and the Socioeconomically Vulnerable Defendant

Poverty criminalization should be understood as a process, rather than a separate offense.[20] It arises when criminal law, procedure, or punishment responds more harshly to the practical consequences of deprivation than to the seriousness of conduct. [21] The process may appear through detention imposed because a person cannot meet bail-related requirements, legal debt enforced without a realistic

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[15] Muhammad Irwan, Ali Rahman, and Amaliyah Amaliyah, "Judicial Law-Finding in the Criminal Justice System: Harmonizing Legal Certainty and Substantive Justice," *SIGn Jurnal Hukum* 7, no. 2 (October 1, 2025): 647–63, https://doi.org/10.37276/sjh.v7i2.502.

[16] Handar Subhandi Bakhtiar et al., "The Utilisation of Scientific Crime Investigation Methods and Forensic Evidence in the Criminal Investigation Process in Indonesia," *Egyptian Journal of Forensic Sciences* 15, no. 1 (May 29, 2025): 39, https://doi.org/10.1186/s41935-025-00456-y.

[17] Sahat Maruli Tua Situmeang et al., "Contemporary Human Rights Safeguards in Islamic Law Justice: A Comparative Study in Indonesia, Saudi Arabia, and Egypt."

[18] Grit Grigoleit-Richter, "Propertied Bodies: Race, Welfare, and the Carceral State the Texas Way," *Ethnic and Racial Studies* 49, no. 10 (July 27, 2026): 2188–2205, https://doi.org/10.1080/01419870.2025.2607619.

[19] Beth M. Huebner and Kathryn Tapp, "Prosecutorial Power in Probation: Discretion, Violations, and the Pathway to Incarceration," *Criminology & Public Policy* 25, no. 2 (May 9, 2026): 379–402, https://doi.org/10.1111/1745-9133.70025.

[20] Andrei Poama, "Poverty, Provocation, and Punishment," *Criminal Law and Philosophy* 19, no. 3 (October 24, 2025): 359–79, https://doi.org/10.1007/s11572-024-09747-2.

[21] Federica Coppola, "From Liberty to Belonging: Rethinking the Pain of Punishment," *Criminal Law and Philosophy*, April 17, 2026, https://doi.org/10.1007/s11572-026-09799-6.

ability-to-pay inquiry, imprisonment that destroys fragile employment, or the absence of counsel at a decisive stage of investigation. The decisive question is therefore not whether poverty itself is criminalized in statutory text. The question is whether poverty becomes a predictable pathway to more severe criminal justice exposure.[22]

This distinction matters for doctrinal accuracy. Socio-economic vulnerability is not a defense that automatically negates actus reus or mens rea. Nor should it be converted into a risk variable that justifies surveillance or harsher sentencing.[23] Research on risk assessment warns that variables such as unstable housing, unemployment, and low education can reproduce social inequality when they are treated as indicators of dangerousness. A vulnerability-sensitive approach must use economic context to prevent unfair burdens, not to predict future criminality.[24]

The resulting legal category is the socioeconomically vulnerable defendant. This category includes a person whose poverty, debt, homelessness, insecure work, disability-related disadvantage, low literacy, or limited access to legal services materially affects the ability to understand proceedings, retain counsel, pay a sanction, comply with conditions, or absorb the consequences of detention. The category is functional and evidence-based. It should be established through an individualized inquiry, not inferred from stereotypes or neighborhood-based assumptions.[25]

A defensible theory of protection, therefore, has two limits. First, it must preserve the victim's right to recognition, restitution, and safety. Second, it must avoid romanticizing offenses related to subsistence.[26] The claim is narrower: criminal justice loses proportionality when it responds to low-level conduct with sanctions that are foreseeably destructive and fail to address the conditions

[22] Hayun Jang, Kyungeun Song, and Jinho Kim, "Unraveling Gender and Racial/Ethnic Differences in the Life Course Pathways from Adverse Childhood Experiences to Economic Disadvantage in Adulthood," *Child Abuse & Neglect* 167 (September 2025): 107595, https://doi.org/10.1016/j.chiabu.2025.107595.

[23] Tomislav Bracanović, "Sentencing Algorithms and Equal Consideration of Interests," *Ethics & Bioethics* 15, no. 3–4 (December 1, 2025): 246–58, https://doi.org/10.2478/ebce-2025-0015.

[24] Kalsoom Aslam et al., "Climate Justice and Migration: Experiences of Flood-Induced Women in Ravi River Basin, Lahore," *ACADEMIA International Journal for Social Sciences* 5, no. 3(s5) (March 3, 2026): 25–58, https://doi.org/10.63056/academia.5.3(s5).2026.1953.

[25] Sana Khalil, "Gender and Neighborhood Penalties in Karachi's Information Technology Sector," *Journal of Behavioral and Experimental Economics* 119 (December 2025): 102469, https://doi.org/10.1016/j.socec.2025.102469.

[26] Vladisaya Bilyanova Vasileva and Noriyuki Kawano, "Atomic Bomb Survivors (Hibakusha) Studies and Transitional Justice Studies: Fostering Dialogue Between Fields," *International Journal of Transitional Justice* 19, no. 3 (November 20, 2025): 463–79, https://doi.org/10.1093/ijtj/ijaf009.

associated with the conduct. This is the point at which substantive equality becomes operational rather than rhetorical.[27]

Indonesia: Expanded Formal Guarantees, Incomplete Poverty-Sensitive Operationalization

Indonesia offers a more explicit statutory foundation for protecting indigent defendants. Article 27 (1) of the 1945 Constitution affirms equality before the law, while Article 28D (1) protects fair legal certainty and equal treatment[28]. Law No. 16 of 2011 frames legal aid as a state responsibility and provides a legal basis for free assistance to poor persons and groups. These norms move beyond charity. They characterize access to legal services as a condition of equal citizenship in the justice system.

The 2025 Criminal Procedure Code strengthens this position. Article 154 provides legal aid to suspects and defendants who are unable to afford it at every stage of examination and obliges relevant officials to inform them of that right and appoint an advocate or legal-aid provider, subject to an informed refusal.[29] Article 155 adds a mandatory appointment rule for defendants charged with offenses carrying the death penalty, life imprisonment, or imprisonment of fifteen years or more, and for indigent defendants facing an offense punishable by five years or more. The new code, therefore, provides a clearer procedural route than the former threshold-based framework. [30]

The 2023 Criminal Code also changes the normative language of punishment. Article 51 links punishment to prevention, rehabilitation, conflict resolution, restoration of balance, and the cultivation of remorse, while Article 54 requires courts to consider multiple factors in imposing a sentence and permits the court, in limited circumstances, not to impose a penalty where the act is minor, and justice does not require punishment. [31] The Code recognizes supervision, fines, and community service among the forms of principal punishment. This structure creates a real legal basis for avoiding short imprisonment, where a less destructive response can protect the public and restore the victim. [32]

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[27] Benjamin De Cleen, "'Populism' and the Far-Right Capture of Liberal-Democratic Signifiers," *Social Semiotics* 36, no. 1 (January 15, 2026): 64–77, https://doi.org/10.1080/10350330.2025.2601617.

[28] Phil Ryan, "Charles Taylor and the 'Equality of Cultures,'" *Society* 62, no. 3 (June 12, 2025): 363–72, https://doi.org/10.1007/s12115-025-01069-w.

[29] Law of the Republic of Indonesia No. 20 of 2025 on Criminal Procedure, arts. 150, 154, and 155.

[30] Law No. 20 of 2025 on Criminal Procedure, art. 154 (2) and art. 155.

[31] Law of the Republic of Indonesia No. 1 of 2023 on the Criminal Code, arts. 51, 54, 65, 75, and 85.

[32] Law No. 1 of 2023 on the Criminal Code, art. 54(1) (2).

However, the legal framework does not yet require a court to conduct a structured socio-economic impact inquiry.[33] A judge may consider the offender's condition within individualized sentencing, but the law does not prescribe a vulnerability assessment, a documented ability-to-pay hearing, or a custody-necessity test before imposing imprisonment in low-level cases. This omission matters because a fine may be formally lighter than imprisonment but functionally harsher for a person with no stable income. Conversely, a short prison sentence can interrupt work, caregiving, housing, and access to social assistance in ways that far exceed its penal rationale.[34]

Indonesian law nevertheless contains practical entry points. Supreme Court Regulation No. 2 of 2012 recognizes the need to adjust the treatment of minor offenses and outdated fine thresholds.

Regulation of the Attorney General No. 15 of 2020 establishes a prosecutorial route for terminating prosecutions on restorative justice grounds. These instruments are not a complete anti-poverty framework. Yet they demonstrate that proportionality, restitution, reconciliation, and reduced reliance on custody already have a legal foothold. The reform task is to connect them systematically to the defendant's actual capacity and the social consequences of the sanction.[35]

Saudi Arabia: Counsel as a Procedural Right and Indigence as a Serious-Crime Appointment Criterion

Saudi Arabia's Law of Criminal Procedure states that courts apply Sharia principles derived from the Quran and Sunnah together with state laws that do not conflict with those sources. Within that framework, Article 4 recognizes the accused person's right to seek the assistance of an agent or attorney during investigation and trial. The law also prohibits arrest, search, detention, and imprisonment except in legally defined cases and conditions. These provisions establish that defense rights and procedural legality are not external additions to the system. They are part of the statutory criminal process.[36]

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[33] Saima Sarwar and Muhammad Ihsan, "Cost of Litigation and Its Impact on Socio-Economic Decisions of Households: A Transaction Cost Analysis from High Courts of Pakistan," *Public Organization Review*, November 3, 2025, https://doi.org/10.1007/s11115-025-00947-5.

[34] Masahiro Suzuki, Akinori Otani, and Sho Sagara, "Between Condemnation and Compassion: Sentencing Narratives of Eldercide by Family Caregivers in Japanese Criminal Courts," *Punishment & Society*, May 29, 2026, https://doi.org/10.1177/14624745261455041.

[35] Teng Junaidi Gunawan and Maria Grasia Sari Soetopo Conboy, "Deterrence Without Rationality: Economic Analysis of the US Sentencing Guidelines and Lessons for Post-Socialist Criminal Justice Reform," *Journal of Cultural Analysis and Social Change*, December 26, 2025, 2899–2910, https://doi.org/10.64753/jcasc.v10i4.3682.

[36] Mykola Kolomoitsev, "Guarantees of Professional Activity of Defense Attorney in Criminal Proceedings," *Theory and Practice of Forensic Science and Criminalistics* 39, no. 2 (August 9, 2025): 118–32, https://doi.org/10.32353/khrife.2.2025.09.

The most important poverty-related safeguard appears in Article 139. In serious crimes, an accused person who cannot afford to retain an attorney may request that the court appoint one at state expense. The Implementing Regulations specify the procedure. The accused must file a written petition identifying the case and charge, disclosing income and sources of income, and stating the inability to hire counsel. The judicial circuit may investigate the claim, then issue a reasoned and final decision.[37] Where counsel is appointed, the state pays the attorney's fees, and the attorney may not charge the accused.[38]

This model has two strengths. It converts indigence into a legally cognizable fact rather than a private misfortune.[39] It also recognizes that serious criminal liability cannot fairly proceed when an accused lacks the resources to secure a lawyer.[40] Scholarship on legal representation in Sharia-based criminal justice likewise emphasizes that meaningful defense is compatible with the pursuit of justice and should not be reduced to a formal appearance by counsel.[41]

At the same time, the protection is narrower than a general right to state-funded counsel for all indigent defendants. The statutory route is tied to serious crimes, requires an accused person to make a written request, and requires judicial verification of inability to pay.[42] The structure may leave a gap in vulnerability in lower-level cases, even though those cases can generate the very fines, detention, documentation burdens, and employment disruption associated with poverty criminalization. The concern is not that the law lacks a right to a defense. The concern is that access may be weakest where the social harm of the process is high, but the formal seriousness threshold is not met.[43]

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[37] Venkatesh Mishra et al., "Investigating the Shortcomings of LLMs in Step-by-Step Legal Reasoning," in *Findings of the Association for Computational Linguistics: NAACL 2025* (Stroudsburg, PA, USA: Association for Computational Linguistics, 2025), 7795–7826, https://doi.org/10.18653/v1/2025.findings-naacl.435.

[38] Gary M. Maveal, "Tracing the Origins of Michigan's American Rule Denying Attorney Fees to Winners in Civil Litigation," *Michigan Historical Review* 51, no. 1 (March 2025): 27–75, https://doi.org/10.1353/mhr.2025.a958285.

[39] Dolan Bortner, "Private Inequity: Business-Law Solutions for Better PE Health Care," *SSRN Electronic Journal*, 2025, https://doi.org/10.2139/ssrn.5254721.

[40] Georgios Sotiriadis, "Complement or Competition? The Relationship Between Deradicalization and Disengagement Work and Criminal Law," in *Disengagement and Deradicalization in the Context of Islamist Extremism* (Wiesbaden: Springer Fachmedien Wiesbaden, 2025), 321–47, https://doi.org/10.1007/978-3-658-49470-4_19.

[41] Ahmad Muhamad Mustain Nasoha et al., "Criminal Law in Muslim-Majority Countries: Balancing Sharia, Human Rights, and Global Standards," *SHAHIH: Journal of Islamicate Multidisciplinary* 10, no. 1 (June 2, 2025): 1–18, https://doi.org/10.22515/shahih.v10i1.10038.

[42] Abdulmateen Adesanya, " Analysis of the Rights of an Accused Under the Criminal Justice in Nigeria," *SSRN Electronic Journal*, 2025, https://doi.org/10.2139/ssrn.5926264.

[43] Marios Athanasios Loupas, Kostas Athanasakis, and Dimitris Zavras, "Willingness to Pay per QALY: A Systematic Review of Demand-Side Valuations with a Focus on Age and Disease Severity," *Applied Health Economics and Health Policy* 24, no. 1 (January 17, 2026): 47–63, https://doi.org/10.1007/s40258-025-01005-3.

Saudi criminal procedure also reflects an individualized legal setting. The indictment must identify the relevant Sharia or statutory provisions and specify aggravating or extenuating circumstances.[44] In ta'zir matters, judicial assessment has a central role in determining a proportionate response. Yet neither the Law of Criminal Procedure nor its Implementing Regulations articulates an express duty to assess the poverty-related impact of a fine, custody, or ancillary obligation. This is where a vulnerability-sensitive approach can operate without displacing Sharia or state law: it can require transparent reasoning about the defendant's capacity to comply and the necessity of the sanction imposed.[45]

Comparative Findings

The comparison reveals convergence in principle and divergence in delivery.[46] Both jurisdictions recognize the importance of counsel and reject purely arbitrary criminal process.[47] Indonesia offers broader statutory language on legal aid and, under the 2025 Criminal Procedure Code, clearer mandatory appointment duties for indigent persons in designated circumstances.[48] Saudi Arabia grants the accused the right to counsel and provides a defined state-funded mechanism for appointments in serious cases. The key distinction is scope. Indonesia treats legal aid as a general state responsibility for persons unable to afford it, while Saudi Arabia operationalizes state-funded appointments through a serious crime and petition-based mechanism.

Table 1: Indigent defense and sentencing architecture in Indonesia and the Arab

[44] "The Role and Impact of Forensic Evidence in the Prosecution of Homicide Cases in the U.S." (Southern Methodist University, Dedmna School of Law, 2025), https://doi.org/10.25172/law_etds.1.

[45] Jitro Gianfranco Behuku Et Al., "The Judge's Role In The Effectiveness Of Anti-Corruption Enforcement In Indonesia: A Juridical Analysis," *Sign Jurnal Hukum* 7, No. 1 (July 30, 2025): 351–67, Https://Doi.Org/10.37276/Sjh.V7i1.464.

[46] Bo Ding Et Al., "Regional Differences, Distributional Dynamics And Spatial Convergence Of Pharmacist Human Resources In China: A Healthcare Tiers Difference Perspective," *Risk Management And Healthcare Policy* Volume 18 (August 2025): 2769–85, Https://Doi.Org/10.2147/Rmhp.S534923.

[47] Lasmin Alfies Sihombing, "Quo Vadis Legal Shielding: Examining The Abuse Of Attorney Immunity As A Corporate Enabler In Indonesia's Money Laundering Landscape," *Cogent Social Sciences* 12, No. 1 (December 31, 2026), Https://Doi.Org/10.1080/23311886.2026.2637242.

[48] Ardi Wiyarso, Yetti, And Anggara Putra, "Prospective Legal Concept On The Fulfillment Of Support Obligations For Convicted Persons," *Jilpr Journal Indonesia Law And Policy Review* 6, No. 3 (June 30, 2025): 494–514, Https://Doi.Org/10.56371/Jirpl.V6i3.458.

Dimension	Indonesia	Saudi Arabia	Comparative implication
Procedural foundation	Equality before the law, statutory legal aid, and mandatory appointment duties under Law No. 20 of 2025.	Sharia and statutory criminal procedure; right to counsel during investigation and trial.	Both systems recognize defense rights, but their legal sources and institutional routes differ.
Indigent defense	Legal aid is available for persons unable to afford it at every stage. Appointment is mandatory in specified cases.	State-funded counsel is available in serious crimes after a written petition and judicial verification of inability to pay.	Indonesia supplies broader textual coverage. Saudi Arabia offers a defined appointment route but confines it to serious crimes.
Sentencing architecture	The 2023 Criminal Code directs courts to consider the offender, the offense, and the effects of punishment; it also recognizes conditional and community-based sanctions.	The procedure code identifies Sharia and state law as applicable sources. In ta'zir matters, judicial assessment is central, yet no express poverty-sensitive sentencing test is prescribed.	A written vulnerability assessment should supplement legal discretion in both systems.
Minor and subsistence offending	Restorative prosecution policy and minor-offence adjustment may reduce unnecessary custody, although application remains institutionally uneven.	The formal state-funded-counsel route does not extend by its terms to all lesser offences.	The greatest protection gap arises where low-level conduct triggers process burdens but not serious-crime safeguards.

Dimension	Indonesia	Saudi Arabia	Comparative implication
Monetary sanctions	Fines and substitute penalties require capacity-sensitive assessment to avoid punishing inability to pay.	Indigence is examined for counsel appointment in serious cases, not as a general statutory limit on monetary sanctions.	Ability-to-pay hearings should be mandatory before imposing or enforcing financial sanctions.

The comparative result should not be overstated. Indonesia's broader statutory language does not guarantee uniform access in practice. Saudi Arabia's more targeted approach to serious crime does not mean that its protection is merely symbolic. The functional weakness in both systems is more precise.[49]Neither legal framework turns socio-economic vulnerability into a mandatory and reviewable stage of decision-making before sanctions are imposed. Poverty appears in the law chiefly as an access-to-counsel problem. It does not yet appear as a structured proportionality problem across prosecution, sentencing, and enforcement.[50]

This gap is particularly important for monetary sanctions. [51]The international literature shows why fixed fines can mislead. A fine that is affordable for one defendant may destabilize another. [52] When nonpayment triggers warrants, detention, substitute imprisonment, or prolonged supervision, the sanction becomes punishment for economic incapacity. The remedy is a credible ability-to-pay inquiry and no escalation based solely on indigence.

A Social Vulnerability-Sensitive Criminal Justice Model

A social vulnerability-sensitive criminal justice model can be formulated without creating a poverty defense.[53] It requires a sequence of institutional duties.

[49] Siwei Qi Et Al., "Machine Learning In Critical Heat Flux Studies In Nuclear Systems: A Detailed Review," *Progress In Nuclear Energy* 179 (January 2025): 105535, Https://Doi.Org/10.1016/J.Pnucene.2024.105535.

[50] Richard S. Frase, "Michael Tonry And Sentencing Proportionality," *Criminal Law Forum* 36, No. 2 (June 20, 2025): 167–90, Https://Doi.Org/10.1007/S10609-025-09511-8.

[51] Seyyed Reza Nakhli and Meysam Rafei, "How Can Optimal Monetary Policies Reduce Oil Sanctions' Impacts? Evidence from Iran," *Economic and Political Studies* 13, no. 2 (April 3, 2025): 144–73, https://doi.org/10.1080/20954816.2024.2312759.

[52] Edward (Ted) A. Snyder and D. Daniel Sokol, "The Fraying of Criminal Antitrust Enforcement," 2025, https://doi.org/10.2139/ssrn.5193065.

[53] Maroš Matiaško, "Situational Perspective on Vulnerability in European Human Rights Law: Beyond Essentialism and Towards Structural Justice," *Nordic Journal of Human Rights* 44, no. 2 (April 3, 2026): 153–70, https://doi.org/10.1080/18918131.2026.2661166.

First, police, prosecutors, and courts should screen for vulnerabilities that materially affect participation in proceedings. [54] The screening should include income instability, housing insecurity, disability-related needs, caregiving responsibilities, literacy, and access to counsel.[55] The purpose is procedural protection, not risk prediction. Courts must prohibit the use of poverty indicators as aggravating evidence of bad character or future dangerousness.

Second, the system should ensure early, effective, and comprehensible access to counsel. Indonesia can operationalize Articles 154 and 155 of the 2025 Criminal Procedure Code through standardized notices, immediate referral protocols, and auditable records of appointment or refusal.[56] Saudi Arabia can reinforce the Article 139 mechanism by requiring early notice of the right to request state-funded counsel, simplified application procedures, and transparent reasons for any denial.[57] A right that depends on a defendant's legal knowledge or writing capacity is less secure for precisely those persons who most need It.[58]

Third, every monetary sanction should be preceded by an ability-to-pay hearing.[59]The inquiry must distinguish refusal to pay from inability to pay. It should consider income, dependants, housing, debt, work status, and realistic payment capacity.[60] Courts should provide installments, conversion to feasible community service where appropriate, remission, or restorative arrangements.[61] They should not use substitute imprisonment merely because a defendant lacks money. This

[54] Rebecca Roiphe and Bruce A. Green, "Under Political Pressure: How Courts And Congress Can Help Prosecutors Do Justice," 2025, Https://Doi.Org/10.2139/Ssrn.5382829.

[55] Miriam Heyman et al., "Housing Stability for Disabled Parents in the United States: Estimates from the American Community Survey," *Housing and Society*, January 7, 2026, 1–18, https://doi.org/10.1080/08882746.2025.2610133.

[56] Songwu Luo, Dongje Cho, and Jaehyun Cho, "When Advance Directives Clash with Family Consent: Designing an Operational Framework for End-of-Life Decision-Making in China and Korea," *BMC Medical Ethics* 27, no. 1 (April 1, 2026): 92, https://doi.org/10.1186/s12910-026-01451-1.

[57] Anish Kumar, "Legal and Regulatory Frameworks Governing Generative AI for Enterprises," in *GenAI and LLMs for Beyond 5G Networks* (Cham: Springer Nature Switzerland, 2026), 39–81, https://doi.org/10.1007/978-3-032-06418-9_3.

[58] Pawel Weichbroth, "AI and the Law: Evaluating ChatGPT's Performance in Legal Classification," 2026, 69–81, https://doi.org/10.1007/978-3-032-13869-9_6.

[59] Brittany Deitch, "Paying For The Crime And The Time: Pay-To-Stay Laws And Constitutional Limits," *SSRN Electronic Journal*, 2026, https://doi.org/10.2139/ssrn.6132466.

[60] Lini Zhang and Haidong Zhao, "From Excessive Spending to Debt Delinquency: Should We Blame Mobile Payments?," *Computers in Human Behavior* 165 (April 2025): 108533, https://doi.org/10.1016/j.chb.2024.108533.

[61] Benjamin J Richardson et al., "Conservation Covenants: What Is the Role of Reciprocity?," *Journal of Environmental Law* 38, no. 2 (July 13, 2026): 196–221, https://doi.org/10.1093/jel/eqag006.

requirement follows the basic principle that equal treatment under criminal law cannot mean identical financial burdens regardless of capacity.[62]

Fourth, decision-makers should apply a custody-necessity test for low-level and non-violent offenses.[63] Before imposing imprisonment, the decision maker should explain why supervision, community service, restitution, diversion, mediation, or restorative justice cannot adequately meet the aims of prevention, accountability, victim repair, and public safety. Indonesia already has legal resources for this analysis through the purposes and guidance of the 2023 Criminal Code, the minor-offense regulation, and the restorative prosecution policy.[64] In Saudi Arabia, the test can operate as a reason-giving discipline within the existing framework of legal procedure and judicial assessment in ta'zir matters.

Fifth, the model requires written reasons and review. A court or prosecutor that rejects legal aid, imposes a high fine, or chooses custody over a less restrictive alternative should record its assessment of the defendant's capacity and the expected social effect of the sanction. Written reasons serve two functions. They make the individual decision contestable on appeal or review.[65] They also produce institutional data that can reveal whether poverty is being treated as a hidden aggravating factor across a class of cases. This is responsive law in practical form: legal institutions remain accountable to the consequences of their own decisions.[66]

The model is compatible with victim protection. It prioritizes restitution, repair, and safety where feasible and desired, but rejects the false choice between victim interests and defendant vulnerability.[67] A sanction that is impossible to comply with often fails both sides. It neither repairs the victim's loss nor improves the defendant's capacity for lawful participation. Restorative and community-based

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[62] Arif Perdana, Phoebe Li, and Grace Wangge, "Algorithmic Fairness in Context: Liberty, Opportunity, and Well-Being as Ethical Anchors," *AI and Ethics* 6, no. 1 (February 14, 2026): 112, https://doi.org/10.1007/s43681-025-00963-7.

[63] Josimar Antônio de Alcântara Mendes and Thomas Ormerod, "Uncertainty in Child Custody Cases After Parental Separation: Context and Decision-Making Process," *Trends in Psychology* 33, no. 1 (January 10, 2023): 177–204, https://doi.org/10.1007/s43076-022-00253-9.

[64] Siska Amelya, "Reconstructing the Sentencing Framework for Minor Offenses through Restorative Justice: Toward Substantive Justice," *Journal of Law, Politic and Humanities* 6, no. 4 (May 6, 2026): 2356–67, https://doi.org/10.38035/jlph.v6i4.3194.

[65] Olivier Courson, "Can We Delegate the Function of Judging to AI Systems Under the Rule of Law? A Three-Level Analysis of Structural Incompatibility," 2025, https://doi.org/10.2139/ssrn.5930016.

[66] Kasim Balarabe, "Rethinking Institutional Legitimacy and the Future of Responsive Governance," *Jindal Global Law Review* 16, no. 2 (December 15, 2025): 461–86, https://doi.org/10.1007/s41020-025-00282-2.

[67] Lee Kovarsky, "The Victims' Rights Mismatch," *Michigan Law Review*, no. 124.2 (2025): 305, https://doi.org/10.36644/mlr.124.2.victims.

measures should therefore be assessed not as leniency, but as forms of accountable and proportionate justice.[68]

Conclusion

Indonesia and Saudi Arabia both recognize that criminal justice requires legal representation and structured procedure. Their legal systems differ, but the comparison shows a common challenge. Formal defense rights do not by themselves prevent poverty criminalization when inability to pay, limited legal knowledge, unstable work, and the destructive effects of detention remain outside the central reasoning of criminal decisions. Indonesia has a relatively broad statutory legal-aid foundation, reinforced by the Criminal Procedure Code, which took effect in 2026, and by the Criminal Code, which provides space for individualized and non-custodial sentencing.[69] Saudi Arabia recognizes counsel during investigation and trial and provides state-funded appointment in serious crimes for accused persons who demonstrate an inability to pay. Both frameworks nevertheless lack an express, general duty to assess the poverty-related impact of criminal process and sanctions.[70]

The article's contribution is the social vulnerability-sensitive criminal justice model. The model treats poverty as a legally relevant context for equal access to counsel, ability-to-pay assessment, sentencing proportionality, and the necessity of custody. It does not excuse harmful conduct or diminish victim rights.[71] It requires that criminal justice respond to the offense and the offender's legally relevant circumstances without converting deprivation into an unspoken aggravating factor. For Indonesia, the immediate priority is operational guidance under the 2023 Criminal Code and 2025 Criminal Procedure Code.[72] For Saudi Arabia, the priority is to make the existing counsel-appointment route more accessible and to extend vulnerability-sensitive safeguards to lower-level cases. These reforms would make

[68] Hamja Hamja, "Community-Based Correction (CBC): Efforts to Achieve a Balance Between Rehabilitation and Social Justice," *Jurnal Pembangunan Hukum Indonesia* 7, no. 1 (April 8, 2025): 137–49, https://doi.org/10.14710/jphi.v7i1.137-149.

[69] Ratri Novita Erdianti et al., "Challenging Custodial Dominance: Community Service As a Transformative Penal Model in National Criminal Law Modernization," *Justitia Jurnal Hukum* 10, no. 1 (March 4, 2026), https://doi.org/10.30651/justitia.v10i1.29576.

[70] "Is Poverty the Root of All Crime? Rethinking Criminality Amid Institutional Failure in Madagascar," *Kejahatan & Keadilan: Jurnal Kriminologi Indonesia* 1, no. 1 (January 25, 2025), https://doi.org/10.7454/kriminologi.v1.i1.1002.

[71] Mayr Erasmus, "Wronging the Victim: The Role of Directed Obligations in the Criminal Law," *Criminal Law and Philosophy* 20, no. 2 (July 29, 2026): 233–47, https://doi.org/10.1007/s11572-025-09781-8.

[72] Bakhtiar et al., "The Utilisation of Scientific Crime Investigation Methods and Forensic Evidence in the Criminal Investigation Process in Indonesia."

equality before the law more substantive, more transparent, and more resistant to the reproduction of poverty through punishment.[73]

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[73] Sarah Ganty, "Poverty in Judgecraft: New Narratives through the Language of Equality," *German Law Journal* 26, no. 2 (March 1, 2025): 170–97, https://doi.org/10.1017/glj.2025.6.

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