

# Implementation of Jinayat Law in the Context of Indonesian Criminal Law in Aceh

Muhammad Arya Syandika, Ismaidar, Rahmayanti

## Abstract

The province of Aceh is the only region in Indonesia that has been given special authority to formally implement Islamic law, as stipulated in Law No. 44 of 1999 and reinforced by Law No. 11 of 2006 on the Government of Aceh. Qanun Jinayat, as local Islamic criminal law, was passed through Qanun No. 6 of 2014, replacing the three previous qanuns. This study aims to analyze the implementation of Jinayat law in the national criminal law system and assess its role in responding to the legal needs of the Acehnese people, especially the Muslim community. The methods used are a legal-normative and sociological approach, with data collection techniques in the form of literature studies and limited interviews. The results of the study show that although Jinayat law fills a void in local law enforcement, there are still challenges in harmonizing it with human rights principles and the national legal system. Therefore, institutional strengthening and public education are strategic steps to ensure overall justice and legal effectiveness.

**Keywords:** Jinayat Law, Aceh Law, National Criminal Law, Islamic Sharia, Human Right

Muhammad Arya Syandika<sup>1</sup>

<sup>1</sup>Bachelor of Law, Universitas Pembangunan Pancabudi, Indonesia  
e-mail: [maryasyandika@gmail.com](mailto:maryasyandika@gmail.com)<sup>1</sup>

Ismaidar<sup>2</sup>, Rahmayanti<sup>3</sup>

<sup>2,3</sup>Master of Law, Universitas Pembangunan Pancabudi, Indonesia  
e-mail: [ismaidar@dosen.pancabudi.ac.id](mailto:ismaidar@dosen.pancabudi.ac.id)<sup>2</sup>, [rahmayanti@dosen.pancabudi.ac.id](mailto:rahmayanti@dosen.pancabudi.ac.id)<sup>3</sup>

2nd International Conference on Islamic Community Studies (ICICS)

Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era

<https://proceeding.pancabudi.ac.id/index.php/ICIE/index>

## Introduction

Aceh is a region with a unique place in Indonesian political history. Since the era of Islamic kingdoms, this region has been known as the center of Islamic civilization in the archipelago. After independence, the political dynamics and armed conflict between the Government of the Republic of Indonesia and the Free Aceh Movement (GAM) became one of the longest conflicts in Southeast Asia. The earthquake and tsunami on December 26, 2004, became an important turning point that prompted peace negotiations facilitated by international parties, resulting in the Helsinki Memorandum of Understanding (MoU) on August 15, 2005.

As an implementation of the MoU, the Indonesian government passed Law No. 11 of 2006 on the Government of Aceh (UUPA), which gives Aceh special authority to regulate and manage local government affairs, including authority in the field of law. One of its implementations is the implementation of Islamic Sharia law, which covers aspects of worship, muamalah, and criminal law, known as Jinayat Law.

## Literature Review

In the national context, law enforcement through litigation remains the primary strategy for dealing with criminal acts (Ismaidar, 2022). The principles of general criminal law enforcement emphasize the importance of harmony between national norms and the social needs of the community (Ismaidar, 2023a). This is in line with the challenges of jinayat law in Aceh, which requires harmonization with national criminal law, while also taking into account the principle of human rights protection (Ismaidar, 2023b). As with other special laws such as criminal acts of corruption, jinayat law in Aceh also functions as *lex specialis* that complements general criminal law (Ismaidar, 2024).

Qanun, as a local legal product of Aceh, has legal standing nationally as a form of Special Regional Regulation, in accordance with Law Number 12 of 2011 concerning the Formation of Legislation. One of the Qanuns that has become the center of public attention is Aceh Qanun Number 6 of 2014 concerning Jinayat Law, which replaces the three previous qanuns (concerning khalwat, maisir, and khamar) and expands the scope of criminal acts based on Islamic values.

The Jinayat Qanun regulates criminal sanctions for certain jarimah (crimes) such as adultery, sexual harassment, khalwat, defamation, and alcohol consumption. The criminal sanctions imposed are not only in the form of fines or imprisonment, but also include *uqubat cambuk* (flogging) as a form of physical punishment aimed at deterring crime and maintaining public morals.

This specificity is implemented by institutions such as Wilayatul Hisbah (WH) and the Sharia Court, which have the authority to investigate, examine, and impose penalties based on the principles of Islamic Sharia.

Although the existence of Jinayat law has gained constitutional legitimacy, its implementation faces a number of challenges. One of these is the issue of harmonization between the Qanun Jinayat and national criminal law (KUHP). Several types of criminal acts in the Qanun Jinayat are similar or overlap with provisions in the KUHP, but differ in terms of the types of punishment and judicial mechanisms.

Criticism has also come from human rights activists, both national and international, particularly regarding the practice of *uqubat cambuk* (flogging), which is considered to be contrary to the principle of non-degrading punishment in international human rights instruments such as the ICCPR. On the other hand, there are also opinions that consider the implementation of flogging to be a form of expression of religious freedom and the implementation of Islamic customary law, which is guaranteed by Articles 18B and 29 of the 1945 Constitution.

From the perspective of Islamic legal philosophy, Lubis (2025) offers a more *maslahat*-oriented approach: “Aceh's criminal law should be reoriented beyond formal legality to include broader considerations of public benefit (*maslahah*)”. Meanwhile, Bastiar (2025) discusses concrete cases such as adultery as an example of how *qanun* is integrated with other legal norms.

However, there is still very little empirical research comparing implementation practices, including their impact on society and the judicial system across legal norms (Islamic, customary, and positive). This opens up opportunities to deepen the analysis of legal harmonization in Aceh through normative, socio-legal, and empirical approaches—precisely as proposed by this study.

This study aims to analyze the implementation of *Jinayat* law in Aceh in the context of the Indonesian criminal law system, as well as to assess how this legal mechanism can work in line with the principles of the rule of law, human rights, and legal pluralism. The findings of this study are expected to provide strategic input for:

- Policy makers, in evaluating regulatory design and central-regional legal relations;
- Law enforcement agencies, in developing a fair and inclusive criminal justice system; and
- The community, especially vulnerable groups who need legal protection guarantees in a complex and multi-normative system.

Thus, this research not only contributes to the development of legal science, but also serves as a practical reference in designing criminal policies that are fair, contextual, and uphold the principle of legal diversity in Indonesia.

## Research Methodology

This study uses a **qualitative juridical-normative** approach with **library research** and **documentary study** methods. The main objective of this approach is to understand the implementation of *Jinayat* Law in the criminal justice system in Aceh in a deep and contextual manner, through tracing relevant legal sources, regulations, and institutional documents.

This type of research is **descriptive-analytical** in nature, which means that it attempts to describe the phenomenon of the implementation of *Jinayat* law factually, then analyzes it using a legal approach to find a logical and argumentative understanding. This research not only examines legal norms dogmatically, but also relates them to the accompanying social and institutional realities in Aceh.

This study uses a **normative juridical** approach, combined with **sociological** and **historical** approaches:

- The **normative legal approach** is used to examine the provisions of legislation, both national (such as the Criminal Code and Law No. 11 of 2006) and local (such as *Qanun* Aceh No. 6 of 2014), as well as the underlying legal principles.
- The **sociological approach** is used to understand the social and cultural dynamics of Acehnese society in the application of *Jinayat* law, including resistance, acceptance, and the role of customary institutions.
- The **historical approach** is necessary to examine the background to the emergence of special laws in Aceh, including the development of the Helsinki Memorandum of Understanding and the establishment of *Sharia* law after the tsunami.

This combined approach is expected to produce a **comprehensive and in-depth** understanding of *jinayat* law practices in the Indonesian legal system. This study uses two types of data sources:

1. **Primary data**, obtained through in-depth interviews with key informants, namely community and religious leaders in the Pidie region of Aceh, who have an understanding of the implementation of *Jinayat* law and the surrounding social dynamics.
2. **Secondary data**, obtained from:

- **Primary legal materials:** legislation such as the 1945 Constitution, Law No. 11 of 2006, the Criminal Code, and Aceh Qanun No. 6 of 2014.
- **Secondary legal materials:** books on Islamic criminal law, scientific journals, legal articles, and relevant court decisions.
- **Tertiary legal materials:** legal dictionaries, legal encyclopedias, and other supporting sources.

The data obtained was analyzed using **qualitative descriptive** methods, namely by reviewing and interpreting the content of the data based on legal logic and relevant theories, which were then compiled into a systematic narrative description. The analysis was conducted through:

- **Data categorization based on main themes:** regulations, implementation, institutions, concrete cases, and aspects of legal protection.
- **Normative conclusions:** in the form of the compatibility between jinayat legal practices and national legal principles, as well as their implications for the protection of citizens' rights.

## Results

The implementation of the Qanun Jinayat in Aceh is a manifestation of regional autonomy in the field of law, as stipulated in Law No. 11 of 2006 on the Government of Aceh. This Qanun expands the scope of criminal law by incorporating elements of Islamic law, which are not only normative and formal in nature, but also contain moral and social values that are alive in Acehnese society.

One of the main findings of this study is that the Qanun Jinayat complements national criminal law, particularly in terms of regulating crimes based on morality, such as adultery, khalwat, sexual harassment, rape, and khamar. However, there are major challenges in its implementation, especially in terms of harmonization with the Criminal Code and human rights standards. Efforts to enforce national criminal law that prioritize litigation (Ismaidar, 2022) show a pattern of comparison with the model of Sharia law enforcement in Aceh, which uses the Sharia Court. The principles of general criminal law enforcement (Ismaidar, 2023a) can be used as a benchmark in assessing the application of flogging, which is often criticized from a human rights perspective (Ismaidar, 2023b). On the other hand, the position of jinayat law as *lex specialis* can be equated with other special laws such as those on corruption (Ismaidar, 2024), thus demonstrating the consistency of the pattern of legal pluralism in Indonesia.

Through interviews with community and religious leaders in Pidie Regency, it was revealed that most people support the existence of Qanun Jinayat as a form of enforcing social and religious norms. However, there are still differences in perception regarding the boundaries between religious law enforcement and the constitutional rights of citizens.

In addition, technical aspects of implementation, such as the capacity of the Wilayatul Hisbah apparatus and the procedures of the Sharia Court, still need to be strengthened in terms of procedural law, human resources, and supervision. This study also found that the enforcement of Jinayat law still faces obstacles in terms of synchronization between legal norms, especially when there is an overlap between the provisions of the Qanun and the Criminal Code.

For example, in cases of sexual abuse or rape of biological children, law enforcement officials often have to determine whether the case should be handled under the Qanun Jinayat or the Child Protection Law. This lack of harmony can cause legal confusion and potentially harm the victim.

However, in the socio-cultural context of Aceh, which highly upholds Islamic values, Jinayat law remains an important instrument in maintaining the moral order of society. Therefore, the process of harmonizing Jinayat law, national law, and international human rights instruments is very important to ensure a fair, contextual, and just legal system for all Acehnese citizens.

The process of enforcing criminal law in Islam in Aceh is an effort to address crime based on the principles found in the Quran, Sunnah, and Ijtihad. Islam has established a number of rules to ensure the effectiveness of law enforcement, including the requirement that all provisions must originate from the teachings of the Quran and Sunnah, and if there are no clear guidelines, then ijtihad may be performed. To ensure that the law can be enforced in human life, the Quran provides fundamental principles that are crucial. This is done to achieve equality before the law and to ensure an effective and efficient court system, so that legal decisions are only made after the perpetrator has been proven guilty. The main principle underlying law enforcement is the principle of justice, while other principles are details of these principles. These principles, as stated in the Quran, include:

1. "When you judge between people, judge with justice" (QS. An-Nisa: 58)
2. "Uphold truth and justice, even if it involves yourself, your parents, or your relatives" (QS. An-Nisa: 135)
3. "O you who believe! Be upholders of justice, witnesses for Allah, even if it involves yourself, your parents, and your relatives. Whether the defendant is rich or poor, Allah knows best. Do not follow your desires and deviate from the truth. If you turn away or refuse to be a witness, know that Allah is very meticulous in all your deeds" (QS. An-Nisa: 135).

The enforcement of criminal law is inseparable from the provisions of Law Number 48 of 2009 concerning Judicial Authority (Judicial Authority Law) and the provisions of Islamic criminal law. The harmonization between the two provisions can be seen through several aspects, including:

1. **Principles of Justice and Benefit (Maqashid al-Shariah):** Both legal systems have similar principles in achieving the goals of justice and benefit for society. Justice and benefit are important aspects of criminal law that can serve as a basis for harmonization.
2. **Protection of Human Rights:** Both legal systems generally emphasize the protection of human rights. Harmonization can occur by placing human rights as the main focus, so that the enforcement of criminal law does not violate these rights.
3. **Legal Procedures and Courts:** Harmonization can be achieved by adjusting legal and court procedures between positive law and Islamic law. The application of fair and transparent procedures is key to creating a balanced legal system.
4. **Understanding the Concept of Crime:** Harmonization can be achieved by finding similarities in the understanding and definition of crime between positive law and Islamic law. It is important to reach a common understanding in assessing unlawful acts.
5. **Punishment and Rehabilitation:** A common understanding of the types of punishment and rehabilitation approaches can be a point of convergence. A more rehabilitative approach can be integrated to achieve the goals of resocialization and crime prevention.
6. **Alignment of Criminal Sanctions:** Harmonization can occur by aligning criminal sanctions so that the penalties imposed are in accordance with the provisions of positive law and Islamic law without violating humanitarian principles.
7. **Role of Judicial Institutions:** Regarding the functions and roles of judicial institutions, harmonization can be achieved by ensuring the independence of these institutions in carrying out their duties, both in positive law and Islamic law.

It is important to note that harmonization between positive law and Islamic law needs to take into account the specific characteristics of each system and cultural values in the context of a particular society. This harmonization process must also involve the participation of all relevant parties, including legal experts, religious scholars, and the general public, to ensure acceptance and sustainability of its implementation.

#### The Views and Responses of the Acehnese People to Jinayat Law

In addition to normative analysis and institutional review, it is important to understand how the people of Aceh respond to the application of Qanun Jinayat in their daily lives. Interviews with community and religious leaders in Pidie Regency show that the majority of the community fully supports the existence of this Qanun. This support is based on the belief that Jinayat law is part of Aceh's Islamic identity as well as an instrument for maintaining morality and social order.

These findings are in line with a study in West Aceh Regency (2018–2021) which shows that the community generally accepts flogging as a form of Sharia enforcement and considers it effective in providing a deterrent effect through the shame that arises when the execution is carried out openly. This support is emotional and religious in nature, even though the community's formal knowledge of the substance of the articles of the Qanun Jinayat is relatively limited.

However, this widespread acceptance does not preclude criticism, both from within and outside Aceh. Human rights organizations such as Amnesty International argue that flogging is potentially contrary to the principle of non-degrading punishment recognized in international law, while Solidaritas Perempuan highlights the vulnerability of women in proving cases of sexual violence.

On the other hand, academics such as Hamdani (Malikussaleh University) assert that the implementation of the Qanun Jinayat is a manifestation of religious freedom guaranteed by the constitution and is therefore legally valid under national law. The view expressed by Hamdani, an academic from Malikussaleh University, linking the implementation of the Qanun Jinayat to the freedom of religion guaranteed by the constitution and its national legal legitimacy, has sparked pros and cons. As a form of Islamic criminal law in Aceh, the Qanun Jinayat is often in the spotlight in relation to the fulfillment of constitutional guarantees and the protection of human rights.

### **Qanun Jinayat and Freedom of Religion**

Qanun Jinayat contains provisions on various criminal offenses derived from Islamic law and the corresponding penalties. Its implementation is considered a manifestation of religious freedom for the people of Aceh, the majority of whom are Muslim, as they have the right to practice their religious laws in their daily lives. However, some parties are concerned about its potential conflict with the principles of equality and non-discrimination guaranteed by the constitution, especially for religious minorities or non-Muslims living in Aceh.

### **Connection with the Constitution and National Law**

The Indonesian Constitution guarantees freedom of religion while affirming the principle of the rule of law. Within this framework, the implementation of the Qanun Jinayat should remain in line with constitutional values and national legal regulations. The question that arises is to what extent this qanun can be implemented without violating individual rights or generally accepted legal principles.

### **Legal Issues and Debates**

The implementation of the Qanun Jinayat in Aceh has long been a subject of legal debate. Some consider this qanun to be valid because it is a regional regulation that was born out of

special autonomy as stipulated in Law Number 11 of 2006 concerning the Government of Aceh. On the other hand, there are opinions that emphasize the need to harmonize the Qanun Jinayat with national positive law in order to avoid conflicts between norms.

Hamdani's statement represents one perspective in the long discussion about the Qanun Jinayat. This issue is multidimensional, involving interrelated legal, social, and religious aspects that require a comprehensive approach.

In addition, several studies have found the practice of customary law enforcement or "community justice" at the village level, which is sometimes not in line with the procedures of the Sharia Court or Wilayatul Hisbah. This phenomenon can lead to inconsistent decisions and the risk of injustice for certain parties, especially vulnerable groups.

Therefore, although Acehnese society's support for Jinayat law is relatively high, the sustainability and legitimacy of its implementation require efforts to increase public understanding, harmonize procedures between customary and formal law, and strengthen the capacity of law enforcement officials. Synergy between Islamic values, the principle of the rule of law, and the protection of human rights is key to ensuring that Qanun Jinayat is not only socially accepted but also meets substantive justice standards.

## Conclusion

The implementation of Qanun Jinayat in Aceh reflects a form of special autonomy within the national legal system that provides space for law enforcement based on Islamic values. The existence of Qanun No. 6 of 2014 does not conflict with the state constitution, but adds complexity to the national legal system, especially in the context of harmonizing Sharia norms and general criminal law. This study finds that Jinayat law serves to complement national law, particularly in matters of morality and decency, but still faces challenges in its implementation, such as overlapping norms, criticism of human rights violations, and the limited capacity of Sharia law enforcement agencies.

The Acehnese community generally accepts the existence of Jinayat law, but there is still room for improvement in procedural and substantive justice aspects, especially in handling sensitive cases such as sexual abuse and violence against children within the family. This shows the need for synergy between the approaches of Islamic law, national law, and human rights protection principles.

## Recommendations

1. The central and regional governments need to strengthen the regulations derived from the Qanun Jinayat so that they do not conflict with internationally recognized human rights principles.
2. The Wilayatul Hisbah and Sharia Court institutions need to continue to improve the capacity of law enforcement officials in terms of procedural and professional aspects.
3. Periodic evaluations of the implementation of the Qanun Jinayat need to be conducted through empirical research based on data and civil society participation.
4. Public education regarding the essence and objectives of Jinayat law needs to be expanded so that the public understands that the enforcement of Sharia law is not a form of discrimination, but rather a reflection of religious and social values in Aceh.

## References

- [1] Agnesta, K. L., Nyoman, N. I., Prija, D., & Nurini, A. (2021). THE URGENCY OF HARMO-NIZATION OF OFFENSE TYPES IN THE QANUN JINAYAT AS AN EFFORT TO AVOID DUALISM IN APPLICATION OF LAW. Russian Journal of

- Agricultural and Socio-Economic Sciences, 112(4), 15-21.  
<https://doi.org/10.18551/rjoas.2021-04.02>
- [2] Bastiar. (2025). Legal harmonization: Adultery in the Indonesian Criminal Code and Aceh Qanun No. 6/2014 on Jinayat Law. *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, 22(1), 75–91.  
<https://jurnal.iainponorogo.ac.id/index.php/justicia/article/view/9913>
- [3] Bastiar, B., Bukhari, B., Anwar, A., Iswandi, I., & Masuwd, M. A. (2025). Syariat in Action: Assessing the Impact of Jinayat Law on Social Order in Aceh. *Justicia Islamica*, 22(1), 159-184.
- [4] Hamdani, H. (2019). Penegakan Syariat Islam di Aceh dalam Perspektif HAM. *REUSAM: Jurnal Ilmu Hukum*, 7(2), 15-39.
- [5] Ismaidar. (2022). *Upaya penegakan hukum terhadap pelaku tindak pidana melalui jalur litigasi di Indonesia*. Medan: CV. Tungga Esti. ISBN 978-623-8612-00-0.
- [6] Ismaidar. (2023). *Prinsip-prinsip penegakan hukum terhadap pelaku dalam kategori tindak pidana umum*. ISBN 978-623-88988-7-9.
- [7] Ismaidar. (2023). *Hukum dan hak asasi manusia*. ISBN 978-623-88988-8-6.
- [8] Ismaidar. (2024). *Mengulas terhadap delik-delik dalam tindak pidana korupsi di Indonesia*. ISBN 978-623-88988-9-3.
- [9] Isnin, H., & Cahyani, I. F. (2021). Komparasi Jinayat dengan Hukum Pidana Nasional dalam Penjatuhan Sanksi terhadap Pelaku Tindak Pidana. *Al-Jinayah: Jurnal Hukum Pidana Islam*, 7(1), 169-189.  
<https://jurnal.fsh.uinsa.ac.id/index.php/HPI/article/view/1279>
- [10] Juliandika, A., & Fazzan, F. (2024). The implementation of Islamic Sharia in the enforcement of Qanun Jinayat in Aceh: A legal analysis and social impact. *Ahlika: Jurnal Hukum Keluarga dan Hukum Islam*, 1(2), 148-161.  
<https://journal.abdurraufinstitute.org/index.php/ahlika/article/view/94>
- [11] Krisna, L. A., Nurjaya, I. N., Djatmika, P., & Aprilianda, N. (2021). Discourse on the formulation of the Jarimah of sexual violence against children in the Aceh Qanun Jinayat. *Research, Society and Development*, 10(11)  
<https://doaj.org/article/ac7b794213144b588cfe14f776935ebd>
- [12] Lubis, R. H., & Faisal, F. (2025). CONTRADICTIONS AND LEGAL CERTAINTY IN HANDLING CHILD SEXUAL ABUSE IN ACEH: NATIONAL LAW AND SHARIA PERSPECTIVES. *International Journal of Cultural and Social Science*, 6(1), 284-292.  
<https://www.pcijournal.org/index.php/ijcss/article/download/1023/533>
- [13] Mubarak, S. (2025). Penegakan Hukum Qanun Jinayat di Aceh Kaitannya dengan Pluralisme Hukum. *Jurnal Hukum Lex Generalis*, 6(2).
- [14] Pakpahan, F. N., Andita, N., & Tazkia, R. (2024). Perspektif Hukum Adat terhadap Kasus Jarimah Zina Berdasarkan Qanun Jinayat Aceh. *Media Hukum Indonesia (MHI)*, 2(4).
- [15] Saputra, J., Abbas, S., Din, M., & Hasyim, S. (2025). The role enforcement of Qanun Jinayat for Non-Muslim who commit crimes (Islamic Sharia) together with Muslim's in Aceh-Indonesia. *Multidisciplinary Science Journal*, (Accepted Articles).
- [16] Suryani, I. (2023). Juridical Analysis of the Implementation of Islamic Criminal Law in Aceh from the Perspective of Legal Hermeneutics. *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo*, 16(1), 114-125.