



## The Implementation of *Qānūn* of *Jināyāt* in Aceh: A Legal Point of View

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### Abstract

*Aceh is the only region in Indonesia granted special rights to implement Islamic law within its territory, as stipulated in Law No. 44 of 1999 regarding the administration of special autonomy in the Aceh Special Region. This uniqueness can be seen as a political solution to the long-standing conflict in Aceh. Several institutions serving as enforcers of Islamic law were established to support the implementation of local regulations on Islamic law, including the Sharia Court, the Sharia Office, and the Wilayatul Hisbah. Additionally, the Aceh regional government collaborates with the police and the prosecutor's office, where they act as investigators, interrogators, and public prosecutors in the implementation of Islamic law. This research examines the implementation of the qānūn of jināyāt in Aceh. The research findings indicate that the implementation of Islamic law in Aceh faces several challenges. Firstly, the Wilayatul Hisbah faces issues related to their authority, as according to Sharia rules, their role is limited to supervision, while investigation falls under the jurisdiction of the police. In practice, the police often disregard Islamic law in Aceh, mainly due to several provisions conflicting with national laws. Consequently, many cases of Sharia violations end with reconciliation processes within the police and do not proceed to court prosecutions. Secondly, the execution process is often lengthy, and in many cases, execution is neglected. The principles of equality before the law and legal certainty have not yet become primary principles in the application of Islamic law in Aceh.*

**Keywords:** *qanun jinayat, Islamic law, Wilayatul Hisbah, local regulations*

## Introduction

This research focuses on the discussion of the implementation of Islamic law as a legal system applicable to the people of Nanggroe Aceh Darussalam (NAD), more commonly known as Aceh, a province located at the westernmost tip of Indonesia. Aceh, as one of the provinces in Indonesia, was granted special authority to comprehensively apply Islamic Sharia within its region (Maifizar, 2022). This grant of special status can be viewed as the government's way of garnering the sympathy of the Acehnese people, thus dampening desires for independence, as seen with movements like Darul Islam and the Free Aceh Movement (GAM) (Asia Report N17, 2006).

The Acehnese rebellion for independence began with the rejection of Jakarta's legitimacy and authority, considered as Islamic separatism, and was triggered by dissatisfaction with Javanese domination, corruption, widespread poverty, and discrimination (Tan dalam Taufik & Farnanda, 2019). The conflict between the Acehnese people and the Indonesian government is one of the longest and most tragic chapters in Indonesia's history (Budiatri, 2022). Although the hope for full independence was not realized, the Acehnese people eventually welcomed the government's steps to support the implementation of Islamic law in Aceh (Watch Human Right, 2001). could even be said that the desire for Islamic law to be applied in Aceh was a shared idea among the religiously renowned Acehnese community (S.Lev, 1990). Aceh was imagined as a place deeply committed to religious piety (E. Said & Dutch-acehnese, 2021).

The first regional regulation (Peraturan Daerah or Perda) in Aceh related to the implementation of Islamic law was Regional Regulation No. 5 of 2001 concerning the implementation of Islamic law in Aceh. This regulation consists of 27 articles that generally outline the procedures and instruments for enforcing Sharia law, such as the establishment of Wilayatul Hizbah (WH), changing the name of the religious court to Mahkamah Syar'iyah (MS) with authority to adjudicate Sharia matters, issues of oversight, and prosecution. Furthermore, in 2002, the Aceh Regional Government enacted regulations referred to as *qānūn*, specifically Qanun No. 22 of 2002 concerning the Mahkamah Syar'iyah. The term Perda previously used for regional regulations was replaced with *qānūn*. The term *qānūn* has been used since 2002 for all regional regulations in Aceh, whether issued by city, district, or provincial governments. Therefore, *qānūn* in this context can refer to regional regulations in Aceh (Muhammad, 2003).

Qanun is a part of Aceh's autonomy agreement with the Indonesian government intended to reflect the conservative Islamic values of the majority of Aceh's population. *Qānūn* covers various areas, including criminal law, family law, and public morality in 2014, all *qānūn* related to the implementation of *jināyāt* (penal) laws in Aceh, including corporal punishment, imprisonment, and fines, were replaced by Qanun No. 6 of 2014 concerning *jināyāt* laws, more commonly known as the *qānūn* of *jināyāt*. In other words, the previous Sharia *qānūn* were

updated with this new *qānūn*, which practically came into effect one year after its enactment (Kamaruzzaman, 2004).

There have been additions to the content of this *qānūn*, where previously the offenses only included *khamr* (alcohol consumption), *maysir* (gambling), and *khalwat* (close proximity). More specifically, the offenses prohibited in this qanun now include *khamr*, *maysir*, *khalwat*, *ikhtilāṭ* (mixing of unrelated men and women), *zina* (adultery and fornication), sexual harassment, rape, *qadhaf* (false accusation of adultery), *liwāt* (homosexuality), and *musāhaqah* (lesbianism) (Article 3, paragraph 2). Aceh Qanun No. 6 of 2014 concerning *jināyāt* has been controversial due to various issues, particularly regarding public floggings as one of the sanctions that judges can choose to impose and are executed in front of a public audience. Article 1 (15) of the *jināyāt* lists items subject to flogging as punishment, including, among others, *zina* (adultery and fornication), *shurb al-khamr* (alcohol consumption), and *maysir* (gambling) (Muhammadin et al., 2019). The implementation of Islamic Sharia law in the province of Aceh, especially after the enactment of Aceh Qanun No. 6 of 2014 concerning *jināyāt*, has had a significant impact on the development of Islamic legal disciplines (Jailani, 2019). The Special Region of Aceh represents one of the most complex experiments in the implementation of Sharia law in the contemporary era (Halim, 2022).

## Methods

This type of research is field research with a qualitative nature, supported by literature data. The study employs a socio-legal approach to further examine the response of Acehnese society to the implementation of *jināyāt* in Aceh (Casaleiro et al., 2023). Data in this study were collected using two methods: documentation and empirical investigation. Documentation aims to obtain information relevant to the research theme and other information related to the research theme. The process involves collecting research findings, journals, and books related to the research theme. Additionally, online media have significantly contributed to providing insights into this research by collecting data from government institution links and other credible sources. Empirical investigation can be understood as a way to collect research data by directly engaging with research subjects and objects. Empirical investigation can be conducted through two stages: interviews and observations.

In this research method, the author began with collecting data obtained from interviews, observations, and document studies in various regions of Aceh. This data was analyzed using a socio-legal theory approach with a constructivist paradigm. Constructivism is a theoretical approach to communication developed in the 1970s by Jesse Deli and colleagues. Constructivist theory states that individuals interpret and act according to various conceptual categories in their minds. According to this theory, reality does not manifest itself in its raw form but must

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first be filtered through how someone perceives it. Finally, the last step involves drawing conclusions from the analysis in accordance with the research problem investigated in this study.

## **Results and Discussion**

### ***Overview of Acehnese Society***

Nanggroe Aceh Darussalam, commonly referred to as Aceh, is the westernmost province of Indonesia. Aceh is the only province in Indonesia that implements Sharia law. This region is known as the Veranda of Mecca and has a strong Muslim cultural identity (Taufik & Farnanda, 2019). The use of the name Aceh, according to Snouck Hurgronje (1985) became popular after the establishment of the Aceh Darussalam kingdom in the mid-15th century. According to some historical records, the indigenous people of this region are said to have originated from Malay migrants from Campa and Khmar/Kamboja, although this claim is still debated by some experts (Atceh, 1996). As Snouck mentioned, Teungku Kuta Karang, who was an Acehnese scholar and fighter, stated that the native population of Aceh consisted of three races: Persian, Indian, and Arab. Snouck rejected this explanation, as the region had been documented in Chinese books in the earliest centuries AD with a different description, indicating the presence of indigenous people who practiced cannibalism (Hurgronje, 1985).

Determining the exact time when Islam first entered Aceh is challenging. Islam is said to have been brought by Arab traders since the early Islamic centuries, long before there were historical records pinpointing the exact beginning of Islamic influence. This hypothesis is supported by Arnold (1981) due to knowledge of Arab traders' connections with the East. In the 2nd century BC, these Arab traders dominated trade with Ceylon. In the 7th century, trade with China experienced rapid growth and development, so by the 8th century, many Arab traders were encountered in Canton. It is therefore suspected that Arab traders had visited and traded in Indonesia, although it wasn't until the 9th century that Arab geographers started mentioning Indonesia in their writings. However, there is a record in Chinese history in 674 AD, as mentioned by Said (2007), which notes an Arab leader who headed a group of Arabs that settled on the west coast of Sumatra.

The 12th century marked the coronation of Johan Syah, with the title Malikus Shaleh, as the first king of Samudra Pasai. According to historical accounts, he was an immigrant from the west who arrived on the west coast of Sumatra to propagate Islam among the local population (Reid, 2005). Aceh's situation began to deteriorate in 1873 when the Dutch started colonizing the Sultanate of Aceh. Eventually, Aceh became affiliated with Indonesia when the country was officially established and declared its independence in 1945 as a democratic and multicultural nation (Rahman, 2022).

After Indonesia gained independence, Aceh initially had independent status as its own province. However, in 1949, through Regulation of the Acting Prime Minister Number 8/Des/WKPM/49 issued on December 17, 1949, Aceh became part of North Sumatra Province. This led to dissatisfaction and protests among the people of Aceh, especially because they felt betrayed by the central government. Several leaders, including Daud Bereueh, even led resistance against the central government. When the decision of the Deputy Prime Minister failed, two years later, on December 4, 1976, Hasan Tiro, one of Daud Bereueh's students and successors, declared a movement demanding independence from Indonesia, known as the Free Aceh Movement. After the conflict, the central government began to offer a new concept for Aceh's special status, which was codified through Law Number 44 of 1999 concerning the Implementation of the Special Autonomy of Aceh. The use of the terminology Islamic Sharia in the General Provisions, Article 1 number 9 states that "Islamic Sharia is the demands of Islamic teachings in all aspects of life (Nurdin, 2020). The uniqueness of Aceh refers to the distinctive characteristics of the Acehnese people in relation to their struggle for the independence of the Republic of Indonesia, which was carried out by the people of Aceh (Nurdin & Nur, 2020).

The Islamic spirit in the hearts of the people in this region is a result of the influence of the Islamic religion that has been shaping the souls of the Acehnese people for centuries. During the era of the Aceh Darussalam Kingdom, which was the last kingdom in Aceh, there were recorded legal guidelines that were fundamentally based on Islamic law, such as the *Qānūn Meukuta Alam* and the Decrees of the Kings. Additionally, there was the position of the *muftī* in the Aceh kingdom, who was responsible for resolving disputes based on Islamic law that couldn't be settled at the *sagoe* (area) level. *Sagoe* was an autonomous region at the provincial level, and it was named *sagoe* because it was believed to have a triangular shape.

*Sagoe* was governed by a *sagoe* commander, indicating its military basis. Another level of authority within *sagoe* was the *muqīm* (inhabitants). The number of *muqīm* in a *sagoe* could vary, depending on the political power of the local nobility *uleebalang* in that area. *Muqīm* could be equated with sub-districts or even districts. Each *muqīm* was led by a *muqīm* chief. The *muqīm* oversaw several villages, representing the lowest level of political authority in the hierarchy of power in Aceh. Villages were headed by a *kechiek* or village chief, which is similar to a village head (Piekaar, 1977).

At the *sagoe*, *muqīm*, and even village levels, all are dominated by *uleebalang* or nobility as an extension of the sultan's authority. *Uleebalang* has the responsibility of managing their autonomous regions, including economic, legal, and political affairs. At each level of the political hierarchy, there were judges who held titles such as *abu*, *teungku*, *sayid*, or *syaikh*, and they were appointed by the *uleebalang*. Some researchers, like Snouck Hurgronje, have stated that *uleebalang* represented *adat* (customary law), while the ulama represented Islam. According to Hurgronje (1985), there was a dualism of power in Aceh where *uleebalang* desired the Acehnese

people to follow customary laws, while the ulama sought the people to adhere to Islamic rules comprehensively. Snouck may not have fully realized that *uleebalang* represented a political entity that reconciled with Islamic principles, as evidenced in his own writings. According to Hurgronje (Hurgronje, 1985) there was a dualism of power in Aceh where *uleebalang* desired the Acehnese people to follow customary laws, while the ulama sought the people to adhere to Islamic rules comprehensively. Snouck may not have fully realized that *uleebalang* represented a political entity that reconciled with Islamic principles, as evidenced in his own writings.

*Uleebalang* would not oppose Islamic rules as it was aligned with the interests of the community. Moreover, by supporting Islamic law, their authority remained intact. It is true that some ulama may not have been pleased with the authority of the *uleebalang*, especially during the colonial periods of Dutch and Japanese rule. Many *uleebalang* chose to make peace with the Dutch and Japanese, thereby preserving their authority. However, some *uleebalang* continued to resist alongside the ulama and the community against the colonial powers. Figures like Teuku Umar, Cut Nyak Dhin, and Cut Meutia exemplify this resistance. The conflict between the ulama and *uleebalang* in political matters reached its climax during the Cumbo'ek tragedy in 1947, where armed conflict erupted between the two groups. The ulama emerged victorious, with support from their *santri* (students). Rumors circulated that the *uleebalang* were traitors, communists, and atheists, which swayed uninformed individuals to support the ulama in large numbers. (Insider, 1950).

The Cumbo'ek Tragedy marked the beginning of a new political era in Aceh and the downfall of the old rulers (the *uleebalang*). Several years after this tragedy and the onset of the new political era in Aceh, once again, the ulama, led by Teungku Daud Beureu'ih, declared Aceh's separation from the Republic of Indonesia. One of the contributing factors was that Indonesia did not adopt Islamic law as the national law. Daud Beureu'ih succeeded in persuading a significant portion of officials (who were already influenced by the ulama), the Acehnese community, and there were even reports of some members of the Indonesian military (TNI) switching sides to support him. This movement lasted for quite some time until it was eventually suppressed by the central government (Amin, 1956). It can be observed how fervent the Acehnese people are regarding religious matters. Acehnese individuals, as acknowledged by some experts, are easily stirred by religious issues. Therefore, it's not surprising that the central government utilized religious matters, such as the implementation of Islamic law in Aceh, as one of the methods to quell the Free Aceh Movement rebellion in the later years, which, so far, has appeared to be quite effective.

### ***Discourse on Islamic Law in Aceh***

The provincial government of Aceh is empowered to formulate Islamic laws in accordance with the predominant Islamic character in the province (Fuad et al., 2022). The legal rules governing the special status are mentioned in several laws. First, there is Law No. 44 of 1999 concerning the Implementation of Special Autonomy for the Special Region of Aceh. This law was enacted at the end of the New Order government's tenure. The law was drafted to gain the sympathy of the Acehnese people and religious leaders, with the goal of quelling the desires for independence, as pursued by separatist groups like GAM (Suma et al., 2020). In general, this law outlines the special status of Aceh and grants special rights to implement Islamic Sharia, which is further elaborated in regional regulations (Article 4, Paragraph 1).

In the same year, there was also the Regional Autonomy Law, which granted authority to all regions in Indonesia to manage their respective territories. This autonomy is regulated in several laws, including Law No. 22 of 1999 on regional government, Law No. 25 of 1999 on the financial balance between the central government and regions, Law No. 32 of 2004 on Regional Government, Law No. 32 of 2004 on the financial balance between the central government and regional governments, Government Regulation in Lieu of Law No. 3 of 2005 concerning changes to Law No. 32 of 2004 on Regional Government, and Law No. 12 of 2008 concerning the second amendment to Law No. 32 of 2004 on regional government. Therefore, indirectly, the central government has granted special rights to all regions in Indonesia, changing the governance pattern from centralization to decentralization.

*Qānūn of jināyāt* is a new legal system and is part of the history of *jināyāt* thought and the implementation of Islamic law in various regions around the world. One of the four main principles in the formation of *qānūn of jināyāt* is *al-muḥāfaẓah 'alā al-qadīm al-ṣāliḥ wal akhdhu bi al-jadīd al-aṣlah* which means preserving tradition while continuing to innovate (Azkha et al., 2020). The first Acehnese regulation related to the implementation of qanun jinayat was Regulation No. 5 of 2001 concerning the implementation of Islamic law in Aceh. This regulation consists of 27 articles that generally outline the procedures and enforcement mechanisms for Sharia law, including the establishment of the Sharia Police and the renaming of the Religious Court to the Sharia Court with the authority to adjudicate Sharia matters, including *jināyāt* issues. This regulation primarily addresses three offenses under Sharia law: (1) The spreading of deviant beliefs or sects, punishable by two years in prison or 12 strokes of the whip; (2) Failure to perform consecutive congregational prayers three times without a valid excuse, with a penalty of six months in prison or three strokes of the whip; (3) Selling food to non-fasting individuals during daylight hours in the month of Ramadan, carrying a penalty of one year in prison or a fine of 3 million rupiahs, or revocation of their business license and six strokes of the whip. The regulation also mandates Islamic dress for Muslims, with violations subject to discretionary (*ta'zīr*) punishment.

From several actions subject to punishment as stipulated in the law, what practically occurred at that time was the prohibition of selling food (food stalls) during daylight hours in the month of Ramadan and the obligation to wear Islamic attire, specifically the obligation to wear a hijab. In the years before this regulation existed, it was common in Aceh for women not to wear the hijab. This practice was observed from government agencies to formal schools, except those under the Ministry of Religious Affairs. Later, after instructions from the regional government, all government agencies, schools, and the general public began actively adopting the clothing considered Islamic.

To ensure the implementation of Sharia regulations, the Sharia Agency was established, as regulated in Regional Regulation No. 33 of 2001 concerning the Establishment of the Organizational Structure and Work Procedures of the Islamic Sharia Agency of the Special Region of Aceh. The Sharia Agency is responsible for the implementation of Islamic law (Article 3). The authority of the Sharia Agency includes: (1) Planning research programs and the development of elements of Islamic law; (2) Preserving Islamic values; (3) Developing and guiding the implementation of Islamic law in various areas including beliefs, worship, transactions, morals, Islamic education and propagation, *amar ma'rūf nahī munkar* (enjoining good and forbidding evil), *bait al-māl* (the treasury), community affairs, defending Islam, legal matters, *jināyāt* (criminal law), *munākahāt* (marriage), and *mawāriṭh* (inheritance). Overseeing the implementation of Islamic law and nurturing and supervising institutions involved in Quranic recitation development

Furthermore, Qanun No. 22 of 2002 on the Sharia Court was enacted. Perda previously used for regional regulations, was replaced with *qānūn*. Since 2002, the term *qānūn* has been used for every Regional Regulation in Aceh, whether issued by city, district, or provincial governments. Therefore, *qānūn* in this context can refer to regional regulations or positive laws applicable in Aceh. The Sharia Court has the authority to adjudicate both Sharia criminal and civil cases in Aceh. In essence, the Sharia Court is similar to the Religious Courts found in other regions of Indonesia, with the exception that it specializes in Islamic criminal matters.

Despite the Sharia Regional Regulations *qānūn* not being fully implemented as intended due to various factors, the Aceh local government remained enthusiastic about creating Sharia *qānūn*. This is evident in the issuance of Qanun No. 11 of 2002 concerning Sharia in the fields of creed, worship, and propagation. This qanun was not significantly different from Qanun No. 5 of 2001 regarding the implementation of Sharia in Aceh. Subsequently, Qanun No. 12 of 2003 on alcoholic beverages, Qanun No. 13 of 2003 on gambling, and Qanun No. 14 of 2003 on *khalwat* (close proximity) were enacted. Furthermore, all qanuns related to *jināyāt* punishments, including flogging, imprisonment, and fines, were replaced by Qanun No. 6 of 2014 on jinayat law, more commonly known as the *jināyāt*. In other words, the previously existing Sharia qanuns were revised with this new *qānūn*, which practically came into effect a year after its enactment.



There were additions to the content of this qanun, expanding the scope beyond offenses related to alcoholic beverages, gambling, and *khalwat*.

The *jināyāt* is divided into ten chapters, each addressing different aspects related to the implementation of Islamic criminal law in Aceh. These chapters are general provisions (Chapter I), principles and scope (Chapter II), justifications and excuses (Chapter III), offenses and punishments (Chapter IV), compounding of offenses (Chapter V), offenses and punishments for minors (Chapter VI), compensation and rehabilitation (Chapter VII), other provisions (Chapter VIII), transitional provisions (Chapter IX), and closing provisions (Chapter X). The scope regulated by the *qānūn* of *jināyāt* in Aceh is explained in Article 3, Paragraph 1, which covers offenders, offenses, and punishments. In this qanun, offenses (*jarīmah*) are defined as actions prohibited by Islamic Sharia and are subject to *‘uqubāt hudūd* and/or *ta’zīr* punishments (Article 1, Paragraph 16). Meanwhile, *uqubāt* refers to the penalties that can be imposed by judges on offenders (Article 1, Paragraph 17). Specifically, the offenses prohibited in this qanun include: *khamr* (alcoholic beverages), *maysir* (gambling), *khalwat* (close proximity), *ikhtilāṭ* (mixing of the sexes), *zinā* (adultery), sexual harassment, rape, *qadhaf* (false accusation of zina), *liwaṭ* (sodomy), dan *musāhaqah* (lesbianism). For the types of *‘uqubāt* imposed on these offenses, it can refer to the following table:

**Table 1. Punishments based on Qanun Jinayat Aceh No. 6 of 2014**

No.	Jarīmah (Crime)	Punishment
1.	<i>Khamr</i>	40 lashes
2.	<i>Maysir</i>	12 lashes / 120 grams of pure gold / 12 months in prison
3.	<i>Khalwat</i>	10 lashes / 100 grams of pure gold / 10 months in prison
4.	<i>Ikhtilāṭ</i>	30 lashes / fine of 450 grams of pure gold / 45 months in prison
5.	Accusing of committing <i>ikhtilāṭ</i>	30 lashes / 300 grams of pure gold / maximum prison term of 30 months
6.	<i>Zinā</i>	100 lashes
7.	Sexual harassment	45 lashes/540 grams of pure gold/45 months of imprisonment
8.	Rape	125 lashes/1250 grams of pure gold/175 months of imprisonment
9.	<i>Qadhaf</i>	80 lashes
10.	<i>Liwaṭ</i>	100 lashes/1000 grams of pure gold/100 months of imprisonment

No.	<i>Jarīmah</i> (Crime)	Punishment
11.	<i>Musāhaqah</i>	100 lashes/1000 grams of pure gold/100 months of imprisonment

The criminal law system in Islam, as outlined in the books of Islamic jurisprudence (*fiqh*), categorizes criminal punishments into three main categories: *ḥudūd*, *qisās*, and *ta'zīr*. However, the *qānūn* of *jināyāt* can be said to still be in a trial or experimental phase (Abubakar, 2008). In the realm of *hudud*, the majority of scholars believe that the actions and punishments specified in the *hudud* section are direct decrees from Allah that cannot be substituted with other punishments. For example, in the case of a married adulterer, the punishment is stoning to death (*rajm*), while an unmarried adulterer is subjected to 100 lashes. This is considered an unalterable provision. However, there are differences in its application in the *qānūn* of *jināyāt* of Aceh, where the punishment of 100 lashes is applied to every individual involved in the act of adultery, regardless of their marital status.

Not all actions classified as *ḥudūd* offenses are included in the *qānūn* of *jināyāt*. For example, the offense of adultery (*zinā*) is not specified in the *qānūn* of *jināyāt*. In this view, the punishments imposed do not consider the factor of marriage, while in classical *fiqh* (Islamic jurisprudence), marriage has an impact on the punishment given. According to classical *fiqh*, a married adulterer is typically punished with stoning to death *rajm* or execution for their act of adultery. However, in the implementation of the *qānūn* of *jināyāt* of Aceh, the punishment of 100 lashes is applied without taking into account the marital status.

### **Implementation of *Qānūn* of *Jināyāt* in Aceh**

As is known, the implementation of Islamic law (*sharia*) in Aceh is based on Law No. 44 of 1999 concerning the Governance of Special Autonomy for the Aceh Special Region. This law contains provisions that grant Aceh the special privilege to implement Islamic law, which is further regulated by the local government in Aceh. The Aceh provincial government initiated the establishment of mechanisms for implementing Islamic law, along with a responsible body to oversee its enforcement. The Mahkamah Syar'iyah (Sharia Court) was established as a judicial institution responsible for adjudicating violations of Islamic law. Additionally, the Sharia Affairs Office (Dinas Syariat) was formed to manage the drafting of regional regulations or *qānūn* related to Islamic law and to promote the socialization of Islamic law in Aceh. Lastly, the Wilayatul Hisbah (WH) was created as an independent institution tasked with monitoring the implementation of Islamic law in Aceh. It is important to note that the Aceh government also collaborates with other institutions such as the police, responsible for investigation and inquiry, and the prosecutor's office, which acts as the public prosecutor in Sharia Courts for violations of Islamic law.

The utilization of the services of both these national-level institutions, which are not directly related to Aceh's local regulations, has raised questions among some academics and scholars in Aceh. This is because, according to Law No. 44 of 1999 on the Special Autonomy of Aceh Province, along with Law No. 11 of 2006 on the Government of Aceh (often referred to as UUPA), the Aceh government has the authority to regulate the implementation of Islamic law. Therefore, the Aceh Regional Government has the right to designate institutions like Wilayatul Hisbah (WH) as investigators, prosecutors, and not necessarily collaborate with the police and the public prosecutor's office. Currently, institutions like WH primarily serve as supervisors, similar to regional civil security police units (Satpol PP). According to the Aceh government, as revealed in an interview, they were not yet prepared to establish an independent institution as investigators and prosecutors for Sharia violations. Hence, they decided to cooperate with the police and the public prosecutor's office, both of which already had experience in handling such matters.

### ***Wilayatul Hisbah***

In Qanun No. 11 of 2002 on faith, worship, and the propagation of Islam, it is stated that the law enforcement institution for Sharia in Aceh is Wilayatul Hisbah (WH). Furthermore, this institution is expected to be the enforcer of Sharia in Aceh comprehensively. This aligns with Article 1, Paragraph 11 of Qanun No. 11 of 2002, which states that WH is responsible for monitoring the implementation of Islamic law. Additionally, this institution has the authority to advise and counsel those who violate these Qanun regulations. If the admonition and counseling process does not result in a change in the behavior of the violator, then the WH officials will refer the violation case to investigative authorities (Article 14, Paragraphs 3-4). However, this institution does not have the power to conduct investigations and prosecutions. In terms of investigations, every Sharia violation case is handled by the police, as stated in Article 15 of Qanun No. 11 of 2002, which outlines that the authority for conducting investigations lies with (a) police officers in the Province of Aceh or (b) civil servant investigative officers within the regional government who have been granted authority.

Furthermore, this Qanun also includes provisions regarding the prosecution of Sharia violations. In Article 16 of Qanun No. 11 of 2002, a prosecutor is defined as a prosecutor or other authorized officer responsible for initiating prosecutions and enforcing the judgments of the Sharia court. The specific powers of the public prosecutor are detailed in Article 17. Furthermore, regarding the authority of the Sharia Court, it is outlined in Article 19 as an institution empowered to examine and decide on violations of the provisions contained in this Qanun. However, in practice, the investigators and prosecutors often struggle to perform their roles effectively in cases of Sharia law violations. Several factors contribute to this situation, including the limited capacity and understanding of Sharia law among investigators and prosecutors. As

highlighted by Armia Ibrahim, a judge at the Sharia Court of Aceh, there have been cases where a prosecutor pursued charges against a non-Muslim defendant in a *maysir* (gambling) case, even though the legal provisions (Qanun) are intended only for Muslims.

This situation underscores the need for a more comprehensive understanding of Sharia law among law enforcement officials and legal practitioners in Aceh, as well as the importance of correctly applying legal provisions to individuals based on their religious status. Enhancing the knowledge and capacity of those involved in the enforcement of Sharia law may help address these challenges and improve the effectiveness and fairness of Sharia law enforcement in Aceh. In such a situation, WH actually needs to be given greater authority in the implementation of Islamic law in Aceh. This institution should not only serve as a supervisor of Sharia but also as an enforcer of Islamic law. As a specialized body in enforcing Sharia law, WH should have comprehensive authority, including in the areas of investigation, inquiry, and prosecution. This would ensure that the enforcement of Sharia law is handled by individuals who have a deep understanding of Islamic jurisprudence, rather than being entirely handed over to other law enforcement agencies. Furthermore, the recruitment process for WH members should be based on knowledge and moral standards. This would serve as a preventive measure against the misconduct of certain individuals within WH who violate Islamic law. Currently, the recruitment process for WH often mirrors the recruitment of Satpol PP (Public Order Agency) personnel, and some of them are contract or honorary workers. This means that a majority of WH members are job seekers without a strong foundation of knowledge in comprehensive and total enforcement of Sharia law. With improved selection and training, WH can become a more effective institution in enforcing Islamic law in Aceh.

In carrying out their duties to handle Sharia violations, a spokesperson from WH explained that they operate according to a work program. In this program, WH plans when and where they will conduct raids against Sharia violations. The frequency of these raids is not fixed; it could occur once a month, twice a month, or perhaps not at all. The main challenge in WH's performance is budget-related, both for the salaries of WH personnel and operational expenses. In addition to their primary duty of conducting raids, WH also processes reports from the community regarding Sharia violations they have encountered. They collaborate with *tuha peuet* (four elderly village members) to discuss the best approach for handling these cases, whether to proceed with investigation and prosecution in Sharia courts or resolve them amicably.

In many cases, amicable settlements are preferred by the community because legal processes are seen as slow. For example, in cases of unmarried individuals involved in adultery (*zina*), an amicable settlement could involve marriage between the two individuals involved in adultery. In cases involving alcohol, often, warnings are given by village authorities. The consideration for amicable settlements is driven by the belief that legal proceedings can take a long time, while peaceful approaches are deemed more effective. WH revealed that a case can

take a minimum of 6 months to over 1 year to be tried and executed because each flogging punishment requires a significant budget.

In the North Aceh region, WH operations involve approximately 10 WH members, both men and women. They wear dark green vests with stripes and the inscription of WH as the official sign of their operation. Before each operation, WH officers carry an operation certificate issued by the WH office, and they inform the local Sharia Office about the operation in advance. Additionally, WH notifies the local police in the operational area through a notification letter. During operations, there are usually two police officers who serve as supervisors.

WH operations involve standing on the roadside and stopping motorists, especially those who appear to be violating Sharia regulations, such as women wearing tight clothing, not wearing a hijab, or couples suspected not to be married or *mahram* (close relatives). Individuals caught in these operations are directed to a prepared location for questioning. Many cases are resolved on the spot by issuing warnings and providing some religious lectures regarding Islamic laws. If the operation targets specific places like cafes, hotels, or other locations suspected of violating Sharia, several police officers may assist. The police play a role in investigation and inquiry before cases are referred to the prosecutor's office. If, during the investigation phase, the police find insufficient evidence or for certain legal considerations, they can halt the investigation, and in such cases, the case is closed.

As is common in the Indonesian legal system and also in Aceh, the authority for investigation remains with the police, while prosecution is carried out by the prosecutor's office. Therefore, WH typically does not have the authority to interfere with or challenge the decisions made by the police during the investigative process. Investigation and prosecution are responsibilities governed by applicable laws and legal regulations. However, there are indeed doubts and questions about the role of the police in investigating Sharia violations, especially due to the lack of understanding among police officers regarding the Sharia laws applicable in Aceh. Furthermore, this task is not part of their primary authority based on existing legal regulations. If they were to be given the authority to conduct investigations related to Sharia violations (*jināyāt*), it is likely that they would require training and specialized understanding of the aspects of Islamic law applicable in Aceh. Additionally, because this task is outside the primary responsibilities of the police, specific budget allocation would be needed to support its implementation. Regarding this issue, there may be considerations to ensure that the enforcement of Sharia law in Aceh is carried out by an institution that has a strong understanding of Islamic law and has the appropriate authority. Furthermore, one of the factors suspected to contribute to the lack of support from the police towards WH is the issue of unclear funding allocation. As known, the implementation of Sharia law in Aceh is funded by the Regional Budget (APBD) of Aceh, not by the central government.

Furthermore, there are situations where non-official entities also conduct raids related to Sharia law. These entities are usually sympathizers or individuals affiliated with various groups. Although they are not official institutions, they conduct raids while wearing turbans, Islamic robes, and sarongs often associated with students of Islamic boarding schools. Their activities involve conducting raids along roadsides or visiting places suspected of Sharia violations. The majority of their targets are women whom they consider to be not dressed appropriately in Islamic clothing, with indicators including the absence of a *hijab* (headscarf) or wearing tight pants (Salma et al., 2014). When they encounter women wearing tight pants, they issue warnings or sometimes take further actions, such as spraying paint on the pants or providing sarongs as a replacement for the pants, which are then taken and burned. They insist that Muslim women should wear appropriate clothing in public spaces (Pirmasari, 2021). While some may see Sharia as limiting the movement and expression of young people, many young women in Aceh have embraced Sharia with adaptation and compromise. New forms of creativity have emerged among young people in response to these Sharia restrictions (Zada et al., 2022).

According to the formal legal framework, actions like these raids by sympathetic groups are considered illegal and invalid. However, it seems that no one dares to reprimand them. Additionally, such groups are spread throughout the Aceh region. In some villages, there are youth groups that self-organize to carry out raids based on Islamic legal principles. These groups can be compared to the Islamic Defenders Front (FPI) in Java, which was initiated by Riziq Shihab, and in reality, FPI has developed and found a place among students in *Salafi* Islamic boarding schools in Aceh (Maifizar, 2022).

Based on an interview with one of the sympathizers involved in the raids in the Gampoeng Tengeh area, Sawang District, North Aceh, which is often targeted by sympathetic groups, the motive behind these actions is revealed. When asked about the reason for their raids, their answer is related to the principle of *amr ma'rūf nahi munkar* which is an Islamic teaching emphasizing the importance of promoting good deeds and preventing wrongdoings. According to their view as Muslims, they feel responsible for warning fellow Muslims about actions forbidden by religion, even if it involves the use of strong measures. They believe that in *amr ma'rūf*, the first recommended step in religion is taking real action, such as conducting raids. These sympathizers also acknowledge the existence of WH. However, in their view, WH's performance is less than optimal, and raids are only conducted occasionally. They also highlight the limited number of WH members. As a result, they feel the need to participate in actions like raids to maintain order in society and ensure understanding of the Shariah laws they believe in.

### ***Islamic Sharia Court***

There is no distinction between the Shariah Court and religious courts in other regions of Indonesia. The Shariah Court has a similar role, which is to adjudicate civil cases involving Muslim

citizens. However, what sets the Shariah Court in Aceh apart is that this judicial institution has broader jurisdiction based on Qanun No. 22 of 2002 concerning the Shariah Court. This Qanun grants the Shariah Court in Aceh special authority to adjudicate cases governed by Aceh's regional regulations, including matters related to *jināyāt* (Dja'far, 2003).

*Qanun* is another name for regional regulations. In terms of the hierarchy of legislation in Indonesia, according to Law No. 12/2011 concerning the formation of legislation, the position of Qanun is equivalent to that of local regulation in other region (Hamdan & Nasution, 2020). While *Mahkamah Syar'iyah* is another name for the Religious Court. When translated, *mahkamah* means a place of judgment, while *syar'iyah* can be understood as something based on Islamic law. So, *mahkamah syar'iyah* can be interpreted as a place of judgment based on Islamic law. This tendency to use such terminology is, in part, to give it a more Islamic appearance. However, when asked, the proponents of these terms might provide more complex reasons, possibly linking it to the historical use of *mahkamah syar'iyah* during the time of the Aceh Sultanate or other Islamic authorities. A similar trend can be found in the signage of government offices and public schools in Aceh, where the names of these institutions are written in both Latin letters and Arabic Pegon script (Kamaruzzaman, 2004).

The concern about dualism in criminal law in the province of Nangroe Aceh Darussalam arises from the coexistence of two legal systems: Indonesian criminal law, which applies generally, and Nangroe Aceh Darussalam's criminal law, which is governed by the qanun (local regulations) as an implication of the implementation of Islamic Sharia on the other side (Kamarusdiana, 2016). The scope of authority of the Mahkamah Syar'iyah is relatively similar to that of the Pengadilan Agama (Religious Courts). At the district/city level, the Mahkamah Syar'iyah has the authority to adjudicate cases at the first instance. Then, at the provincial level, the Mahkamah Syar'iyah has jurisdiction over Sharia cases at the appellate or second instance level. Finally, for the last legal recourse through cassation and extraordinary legal review), the authority lies with the Mahkamah Agung (Supreme Court).

Every case that is to be brought before the Mahkamah Syar'iyah must follow the criminal legal procedures that have been established. The initial stage begins with investigation and inquiry, which is the responsibility of the police. Cases can originate from direct observations, reports from Wilayatul Hizbah (WH), or reports from the public about Sharia violations. During the investigation stage, investigators conduct initial examinations and crime scene investigations (TKP) to verify the reports. If the report is deemed accurate, the investigation process continues to gather preliminary evidence and identify suspects. Typically, in cases of Sharia violations, this process is relatively straightforward because it often involves individuals being caught in the act by the public, WH, or the police.

The prosecution stage occurs after the investigators submit the case to the prosecutor's office, provided that the conditions for prosecution are met, including the presence of sufficient

preliminary evidence. The prosecutor's office will review the case and decide whether to pursue it or not. However, there are situations where the prosecutor's office may not fully understand or assess the case in accordance with the rules in the qanun. For example, there have been cases where a non-Muslim defendant was prosecuted in a *maysir* (gambling) case, even though the legal provisions only apply to Muslim individuals.

Incidents like this are rare but do highlight that the prosecutor's office can sometimes be confused in interpreting the rules found in the qanun in Aceh, especially in cases such as rape and sexual harassment, which are regulated in both *qānūn of jināyāt* and in national criminal legislation. There are challenges in harmonizing these rules. This reflects the complexity and challenges of applying Sharia law within the context of national law in Aceh. Following the scope outlined in the *qanun*, it applies to all Muslims in Aceh. Additionally, it also applies to non-Muslims in cases that are not covered by the Indonesian Criminal Code (KUHP) (Article 5).

The issue faced by the prosecutor's office in the prosecution process or by the investigators in transferring cases to the prosecutor's office is that although the qanun is considered a specific legal regulation in Aceh, it is still categorized as a regional regulation. Therefore, the qanun ranks last in the legal hierarchy in Indonesia. In the context of criminal offenses such as rape and sexual harassment, which are covered both in the Indonesian Criminal Code (KUHP) and in the *qānūn of jināyāt*, the police and the prosecutor's office will still refer to national criminal law. Despite the duality of regulations, the prosecution process will take place in the District Court (Pengadilan Negeri), not in the *Mahkamah Syar'iyah*. Both of these institutions are part of the national law enforcement apparatus, so criminal legal actions that encompass overlapping legal areas will be carried out within the framework of the national criminal justice system. Therefore, as seen from data in the Mahkamah Syar'iyah Aceh Utara, there have been no cases of rape or sexual harassment prosecuted under the *qānūn of jināyāt*, even though sexual harassment and rape are crimes that are reported dominantly by the local police and media.

After the prosecution process by the prosecutor, the judges in the Mahkamah Syar'iyah will then make a decision based on the evidence and testimonies presented by the prosecutor and the defendant. The judge's decision in the Mahkamah Syar'iyah can result in the defendant being acquitted of all charges, being sentenced, or being declared free. In the *qānūn of jināyāt*, there are three types of punishments that can be imposed on convicts: caning, fines, or imprisonment, but caning and fines are the most commonly imposed, while imprisonment has not been imposed at all. Additionally, there is no facility to accommodate imprisoned convicts in this context.



## Conclusion

The implementation of Islamic law in Aceh is indeed more complex than what has been discussed in this research, which still has limitations in terms of information comprehensiveness. This research finds out that the implementation of Islamic law in Aceh faces several challenges. Firstly, the Wilayatul Hisbah faces issues related to their authority, as according to Sharia rules, their role is limited to supervision, while investigation falls under the jurisdiction of the police. In practice, the police often disregard Islamic law in Aceh, mainly due to several provisions conflicting with national laws. Consequently, many cases of Sharia violations end with reconciliation processes within the police and do not proceed to court prosecutions. Secondly, the execution process is often lengthy, and in many cases, execution is neglected. The principles of equality before the law and legal certainty have not yet become primary principles in the application of Islamic law in Aceh.

More intensive research is needed, involving various scholarly approaches, to gain a deeper understanding of the implementation of Islamic law in Aceh. This work plays a critical introductory role in comprehending the existing Sharia context in Aceh. In practice, this work holds valuable insights for policymakers, especially the government of Aceh, to conduct a more in-depth evaluation of the implementation of Islamic law in the region.

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