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Problems With the Implementation of *Qanun* Aceh Number 6 of 2014 Concerning *Jinayat* Law

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Abstract: *Aceh as part of the Unitary State of the Republic of Indonesia has special privileges and autonomy, one of which is the authority to implement Islamic sharia, and Qanun Aceh Number 6 of 2014 concerning jinayat Law is part of Islamic law which is implemented in Aceh through the struggle of the Acehnese people in the application of Islamic sharia. However, after it was ratified, the implementation of the qanun Aceh gave rise to various problems in various circles. Therefore, through qualitative research with literature studies and data analysis through a deductive frame of mind, this article attempts to analyze the problems that arise after the implementation of the qanun Aceh. The results of this study indicate that the implementation of the qanun Aceh raises various problems. The emergence of pros and cons among the community, academia and the government, is assumed to be a barrier to human togetherness and understanding. The content of the qanun which is considered not comprehensive and discriminatory in nature is contrary to the Constitution and a number of laws.*

Keywords: *Problematics, Qanun Aceh, Islamic Sharia, Jinayat Law.*

A. Introduction

Aceh is known as the Veranda of Mecca¹ where Islam has shaped the identity of the Acehnese people since the early days of its spread outside the Arabian Peninsula.² Legal values and customary norms that apply to the people of Aceh have been integrated with Islam³ so that the people of Aceh have a life style that is quite thick with Islam.⁴ This can be seen from the historical records of Islamic kingdoms which became the center of political power and the spread of Islam. Aceh is one of the regions that has a long history in the development of Islam in the archipelago and the establishment of Islamic kingdoms such as the Peureulak kingdom (840-1291), Samudrai Pasai (1042-1427), Aceh Darussalam (1514-1903) and other Islamic kingdoms.⁵

The realization of Islamic law in Aceh is not new, because Islamic law in Aceh has been implemented late since the days of the Iskandar Muda sultanate.⁶ At this time, the glorious era of the Aceh kingdom in implementing Islamic law. However, the glory and brilliance of Aceh began to retreat and collapse since the Dutch began to attack Aceh⁷ in 1873 and this war lasted for 60 years (1873-1942)

¹ Muliadi Kurdi, *Fikrah Ulama Aceh: Kontribusi Karya Pengkajian Keislaman* (Aceh: CV. Naskah Aceh, 2021), h. 171; See also Bungaran Antonius Simanjuntak, *Harmonious Family: Upaya Membangun Keluarga Harmonis* (Jakarta: Yayasan Pustaka Obor Indonesia, 2013), h. 133.

² Yusni Saby, *Apa Pentingnya Studi Aceh*, dalam M. Jakfar Puteh, *Sistem Sosial Budaya dan Adat Masyarakat Aceh* (Yogyakarta: Grafindo Litera Media, 2012), h. 31.

³ Taufik Jahidin, "Hak Langgeh dalam Proses Jual Beli Tanah pada Masyarakat di Aceh," *LENTERA (Jurnal : Sains, Teknologi, Ekonomi, Sosial Dan Budaya)* 5, No. 3 (June 22, 2021): h. 23-28, <http://journal.umuslim.ac.id/index.php/ltr2/article/view/518>.

⁴ Sri Astuti A. Samad and Munawwarah Munawwarah, "Adat Pernikahan dan Nilai-Nilai Islami dalam Masyarakat Aceh Menurut Hukum Islam," *El-Usrah: Jurnal Hukum Keluarga* 3, No. 2 (August 18, 2020): h. 289-302, <https://doi.org/10.22373/ujhk.v3i2.7716>; See also Fabian Fadhly, "Pemahaman Keagamaan Islam di Asia Tenggara Abad XIII-XX," *Millah: Jurnal Studi Agama* 18, No. 1 (December 31, 2018): h. 52-78, <https://doi.org/10.20885/millah.vol18.iss1.art4>.

⁵ Abidin Nurdin, "Revitalisasi Kearifan Lokal di Aceh: Peran Budaya dalam Menyelesaikan Konflik Masyarakat," *Analisis: Jurnal Studi Keislaman* 13, No. 1 (2013): h. 139, <https://doi.org/10.24042/ajsk.v13i1.645>.

⁶ Muna Sungkar, *Jelajah Ujung Barat Indonesia: Banda Aceh - Sabang* (Jakarta: Elex Media Komputindo, 2015).

⁷ Anton Stolwijk, *Aceh: Kisah Datang dan Terusirnya Belanda dan Jejak yang Ditinggalkan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2021).

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and the war ended with gaining independence in August 1945. The war has demolished and destroyed religious educational institutions in Aceh such as pondok and destroyed the economic foundation of the Acehnese people.⁸

After the war ended, the program to rebuild the implementation of Islamic Sharia in Aceh had been fought for since the beginning of independence. At that time the Aceh kingdom, which was assisted by the support of the ulama, succeeded in maintaining independence at the request of President Soekarno who ruled in 1945-1966 and at that time also President Soekarno promised to give the Aceh government special rights in rebuilding and implementing Islamic Sharia in Aceh. However, President Soekarno ignored the promised privileges so that the Acehnese were disappointed and angry.⁹

Every time there is a change of President of Indonesia, the government and the people of Aceh always ask the President of Indonesia to keep his promise to give Aceh broad autonomy rights so that it can implement Islamic law as before. Until the time of President Habibie or the reformation period, the people of Aceh began to regain the right to implement Islamic Sharia¹⁰ as before with the issuance of Law No. 44 of 1999 on the privileges of Aceh. Then it was legalized by Law Number 18 of 2001 during Megawati's presidency regarding special autonomy which emphasized the article on the implementation of Islamic Sharia in Aceh.¹¹

⁸ Daerah Istimewa Aceh, *Profil Provinsi Republik Indonesia Daerah Istimewa Aceh* (Jakarta: Yayasan Bakti Wawasan Nusantara, Majallah Talstra Strategic dan PT. Intermedia, 1992), h. 187.

⁹ M. Nur El Ibrahimy, *Teungku Muhammad Daud Beureueh Peranannya dalam Pergolakan di Aceh*, Chapter 2 (Jakarta: PT. Gunung Agung, 1986), h. 68.

¹⁰ Iskandar Usman, "Konsep Pembinaan Umat dan Strategi Pelaksanaan Syariat Islam di Aceh," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 16, No. 2 (August 31, 2017): 573–606, <https://doi.org/10.22373/jms.v16i2.1755>; See also Ali Geno Berutu, "Penerapan Syariat Islam Aceh dalam Lintas Sejarah," *Istinbath: Jurnal Hukum* 13, No. 2 (October 25, 2016): h. 163-187, <https://e-journal.metrouniv.ac.id/index.php/istinbath/article/view/290>.

¹¹ Iskandar Iskandar, "Pelaksanaan Syariat Islam Di Aceh," *Jurnal Serambi Akademica* 6, No. 1 (May 1, 2018): h. 78-86, <https://doi.org/10.32672/jsa.v7i2>; See also Ni'matul Huda, *Pelaksanaan Otonomi Khusus di Aceh* (Bandung: Nusamedia, 2021), h. 87; See also Husni Jalil et al., *Hukum Pemerintahan Daerah dalam Perspektif Otonomi Khusus* (Makassar: CV. Social Politic Genius (SIGn), 2017).

Aceh is a unique region in Indonesia because Aceh has been given flexibility in the field of *muamalat* and *jinayat*.¹² The desire of the Acehnese people in implementing Islamic Shari'a does not conflict with the ideology of the Indonesian state, because the first ideology of Pancasila is Belief in One God. This is what gives the Acehnese people the opportunity to apply Islamic sharia law because it does not conflict with the Pancasila ideology of the Indonesian state¹³ and surely very different compared to other regions in Indonesia which are not given a privilege as Aceh has.¹⁴ However, currently the application of Islamic Sharia in Aceh after the legitimacy of the government has caused a lot of polemics among the Acehnese themselves, where the implementation of Islamic Sharia in its entirety is one of the factors that causes the Acehnese to become pro and contra.¹⁵

On this basis, it is important that this study is carried out to see the problems of implementing *qanun* Aceh by using qualitative methods with literature studies. Literature research provides several objectives, including: connecting research with various literatures that are in accordance with the research theme, informing the public about the results of research conducted with similarity to other research themes, and perfecting the gaps in previous research deficiencies.¹⁶ The literature review is intended to analyze, summarize, and interpret theories and concepts related to ongoing research.¹⁷ Data analysis in

¹² Aidil Fan, "Kedudukan Qanun dalam Pandangan Undang-Undang No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Politica: Jurnal Hukum Tata Negara Dan Politik Islam* 6, No. 2 (December 20, 2019): h. 19-42, <https://doi.org/10.32505/politica.v6i2.2733>; See also Jamhir Jamhir, "Hukum Pidana di Provinsi Aceh Analisis Terhadap Dampak Penerapan Qanun Syari'at," *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial* 4, No. 2 (December 27, 2019): h. 108-126, <https://doi.org/10.22373/justisia.v4i2.5964>.

¹³ Sulaiman, *Studi syariat Islam di Aceh* (Banda Aceh: Madani Publisher, 2018), h. 19-20.

¹⁴ Mahkamah Syar'iyah Aceh, *Himpunan peraturan perundang-undangan tentang Mahkamah Syar'iyah di Provinsi Nanggroe Aceh Darussalam* (Aceh: Mahkamah Syar'iyah Aceh, 2007), h. 164.

¹⁵ Syamsul Bahri, "Konsep Implementasi Syariat Islam di Aceh," *Kanun Jurnal Ilmu Hukum* 15, No. 2 (August 1, 2013): h. 313.

¹⁶ John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (London, New Delhi: SAGE, 2014), h. 40.

¹⁷ Gary Anderson and Nancy Arsenault, *Fundamentals of Educational Research* (Philadelphia, USA: The Falmer Press, Taylor & Francis Inc, 1998), h. 83.

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this study uses deductive logic.¹⁸ It is hoped that this article will illustrate the problems that arise after the implementation of *qanun* Aceh on *jinayat* law.

B. Implementation of *Qanun* Aceh on *Jinayat* Law

Qanun in Arabic is written قانون is the verb form of قان which means making laws. *Qanun* can also be interpreted as law, regulation (rule), and act (statute, code).¹⁹ *Qanun* in terminology is a legal provision based on fiqh obtained through the ijthihad of scholars or fuqaha which function as a rule or law of a certain area.²⁰ *Qanun* is a legal form that has become formal legal.²¹

The implementation of the *qanun jinayat* in Aceh has several legal foundations, including: *First*, Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh. Article 3 of that law states the implementation of Islamic Sharia is a privilege for Aceh. This privilege is part of the recognition of the Indonesian people to Aceh because of their struggle to win the independence of the Republic of Indonesia.²² *Second*, in 2001 the Indonesian government passed Law No. 18 concerning the Special Autonomy Status for the Province of Aceh. This law stipulates that the Aceh Regional Regulation (*qanun* Aceh) as well as the Sharia Court are part of the justice system in Indonesia. After that, Law Number 18 of 2006 was also formed which emphasized that Aceh already has a law that regulates Islamic Sharia and the law is referred to as *qanun* Aceh.²³

¹⁸ Hadi Sutrisno, *Metode Research II* (Yogyakarta: Andi Offset, 2012), h. 42.

¹⁹ Sulaiman, *Studi syariat Islam di Aceh*, h. 75-76; See also Kamarusdiana Kamarusdiana, "Qânûn Jinâyat Aceh dalam Perspektif Negara Hukum Indonesia," *AHKAM: Jurnal Ilmu Syariah* 16, No. 2 (December 11, 2016): h. 154, <https://doi.org/10.15408/ajis.v16i2.4445>.

²⁰ Sulaiman, *Studi syariat Islam di Aceh*, h. 78.

²¹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London; New York: International Institute of Islamic Thought (IIIT), 2008), h. 59; See also Kamarusdiana, "Qânûn Jinâyat Aceh dalam Perspektif Negara Hukum Indonesia," h. 154.

²² Kamarusdiana, "Qânûn Jinâyat Aceh dalam Perspektif Negara Hukum Indonesia," h. 155.

²³ Cut Maya Aprita Sari, "Pro Dan Kontra Implementasi Qanun Syariat Islam Di Aceh," *JRP (Jurnal Review Politik)* 6, No. 1 (June 29, 2016): h. 68-89, <http://jurnaluf.uinsby.ac.id/index.php/JRP/article/view/1105>.

One of the Aceh *qanuns* that have been made and implemented by the Aceh government is Aceh *Qanun* Number 6 of 2014 concerning *Jinayat* Law. This *Qanun* contains the actions of *jarimah*²⁴ and 'uqubat (*hudud* atau *ta'zir*)²⁵ for criminals. The acts of *jarimah* contained in Aceh *Qanun* Number 6 of 2014 concerning *Jinayat* Law are: *Khamar*, *Maisir*, *Khalwat*, *Ikhtilath*, *Zina*, Sexual Harassment, *Liwath*, *musahaqah*, Rape, and *qodzaf*. While the 'uqubat contained in the *qanun* Aceh in the form of *hudud* and *ta'zir*.²⁶

Enforcement and implementation of *qanun jinayat* is an effort to apply the rules of *jinayat* law to parties who violate the *qanun* that has been ratified by the government (executive and legislative).²⁷ In addition, *qanun jinayat* is also the legal umbrella for the Acehese people so that *qanun jinayat* does not only belong to the government but also belongs to the community, and therefore in its implementation it is a shared responsibility. Actually the Aceh government has carried out several very diverse levels or stages in

²⁴ *Jarimah* linguistically comes from the word "*jarama*" (جَرَمَ) and the synonym is (كَسَبَ وَقَطَعَ) it means trying and working, it's just that the meaning of business here is specifically for businesses that are hated by humans. In terms of *syara'* is any action that is prohibited, and the prohibited act is any act that is prohibited by *syara'*, because of the danger to religion, life, reason, honor, or property. *Jarimah* can also be interpreted as actions that are prohibited by *syara'* which are threatened by Allah with *hadd* or *ta'zir* punishments. See more details in Sayyid Sabiq, *Fiqh As-Sunnah, Juz II*, Cet. Ke-6 (Beirut: Darul Al-Fikr, 2002), h. 110; Compare with Muhammad Abu Zahrah, *Al-Jarimah Wa Al-Uqbah Fi Al-Fiqh Al-Islami* (Kairo: Maktabah al Angelo al Mishriyah, tt.), h. 22; Compare with Abu Hasan Al-Mawardi, *Al-Ahkam al-Sultaniyah*, Cet. Ke-3 (Mesir: Musthafa Al-Baby Al-Halaby, 2005), h. 219.

²⁵ *Uqubat* is a punishment that can be imposed by a judge against the perpetrators of *jarimah*. The types consist of *hudud* and *ta'zir*. *Hudud* is a type of 'uqubat which shape and size have been determined in the *qanun* expressly, then *ta'zir* is a type of 'uqubat that has been determined in the *qanun* which shape is optional and the amount is within the highest and/or lowest limits. See more in Article 1 General Provisions paragraphs 17, 18, and 19 of Aceh *Qanun* Number 6 of 2014 concerning *Jinayat* Law. See more in Article 1 General Provisions paragraphs 17, 18, and 19 of Aceh *Qanun* Number 6 of 2014 concerning *Jinayat* Law. Mahkamah Syar'iyah Aceh, "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," (Aceh: 2014).

²⁶ Mahkamah Syar'iyah Aceh, "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," (Aceh: 2014).

²⁷ Ahyar Ahyar, "Aspek Hukum Pelaksanaan Qanun Jinayat di Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 17, No. 2 (June 15, 2017): h. 131-145, <https://doi.org/10.30641/dejure.2017.V17.131-154>; See also Hasnul Arifin Melayu et al., "Syariat Islam dan Budaya Hukum Masyarakat di Aceh," *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 23, No. 1 (June 30, 2021): h. 55-71, <https://doi.org/10.22373/jms.v23i1.9073>.

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implementing the *qanun jinayat* law. The various levels or stages are the lowest level, the level of socialization and raids, then the firm level.²⁸

The lowest level is carried out with various efforts, such as socializing the *qanun jinayat* to the public in various forms, including through radio broadcasts, banners, billboards on the side of the road, recitations, ceremonies, *Musabaqah Tilawatil Qur'an* (MTQ) competitions, Friday sermons and others with the aim that the public can know and understand the implementation of Islamic law as well as the enforcement of *qanun jinayat*. Meanwhile, at the level of socialization and raids, the Aceh Shari'a police conduct inspections and supervision of the implementation of Islamic Shari'a in an applicative manner among the community. The forms of raids at this level are such as raids on headscarves, confiscation of liquor, arrests for those who do not dress in an Islamic manner. Meanwhile, at a firm level, the implementation of the *qanun jinayat* is in the form of the implementation of caning for violators of the *qanun jinayat*, such as caning punishments for *khalwat*, *maisir*, drunkards, lashing for violators of the *qanun Aqidah*, Worship and Islamic Syi'ar, such as selling food in the month of Ramadan at noon and so on.

C. Problems With the Implementation of *Qanun Aceh* Number 6 of 2014 Concerning *Jinayat Law*

Islamic law in Aceh is not new, but Islamic law has long existed and has been present in the lives of the Acehnese people, since the 17th century Nanggroe Aceh has made Islamic law as the basis for laws applied in social life.²⁹ The law was drawn up by the ulama on

²⁸ Fahriansah, "Transformasi Penerapan Hukum Syariat Dalam Qanun Jinayat Aceh," May 9, 2018, h. 12-14, <https://doi.org/10.5281/zenodo.1244197>.

²⁹ Sumardi Efendi and Erha Saufan Hadana, "Hukum Pidana dan Perkembangan Sosial di Aceh," *PROCEEDINGS: Dirundeng International Conference on Islamic Studies*, 2021, h. 185-198, <https://doi.org/10.47498/dicis.v1i1.1034>; See also Bustami Bustami, "Penerapan Qanun Provinsi Nanggroe Aceh Darussalam Nomor 14 Tahun 2003 Tentang Khalwat/Mesum di Kabupaten Aceh Timur," *Jurnal Hukum Samudra Keadilan* 10, No. 2 (2015): h. 177-190, <http://jurnal.unsam.ac.id/index.php/jhsk/article/view/118>.

the orders and cooperation of the *umara*, the ruler or sultan.³⁰ The historical process of the *qanun* Aceh was from the beginning of the entry of Islam in Samudra Pasai (1297-1307 AD) until the birth of the laws of the Republic of Indonesia which had an impact on the realization of the *qanun* on *jinayat* in Aceh in contemporary times.³¹

According to the provisions of Law Number 44 of 1999 concerning the Administration of the Aceh Regional Province, it is explained that the province of Nanggroe Aceh has the authority to carry out Islamic sharia in full.³² This special authority is an inseparable part of the special autonomy granted by the central government, which is then implemented through the design and establishment of provincial regulations or better known as *qanun* or sharia *qanun*.³³

The formalization of Islamic shari'a today is more illustrative of the wishes from above (*sharia from above*) rather than demands from below (*sharia from below*) as was the case in the past Darul Islam (DI). The difference between the two is quite clear, where the demands of Shari'ah from below show more awareness of a necessity and obligation that is believed to be able to maintain and uphold a distinctive Muslim identity in the midst of the current era of information globalization. While the formalization of sharia from above (the rulers) often makes sharia only a symbol of legitimacy for political interests that are not in line with religious interests.³⁴

³⁰ Rusjdi Ali Muhammad, *Revitalisasi Syari'at Islam Di Aceh*, Cet. Ke-1 (Jakarta: Logos, 2003), h. 48.

³¹ Taufik Adnan Amal and Syamsu Rizal Pangabeian, *Politik Syariat Islam: Dari Indonesia Hingga Nigeria* (Jakarta: Pustaka Alvabet, 2004), h. 41-44.

³² The application of Islamic law in Aceh is also based on Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh. Then it was renewed with the issuance of Law Number 11 of 2006 concerning the Government of Aceh which more explicitly stated the authority of Aceh in enforcing Islamic law.

³³ Natangsa Surbakti, "Penegakan Hukum Pidana Islam (Jinayah) Di Provinsi Nanggroe Aceh Darussalam," *Jurnal Media Hukum* 17, No. 2 (2010): h. 190, <https://doi.org/10.18196/jmh.v17i2.377>.

³⁴ Arskal Salim, "'Sharia from below' in ACEH (1930s–1960s): Islamic Identity and the Right to Self-determination with Comparative Reference to the Moro Islamic Liberation Front (MILF)," *Indonesia and the Malay World* 32, No. 92 (March 1, 2004): h. 80-99, <https://doi.org/10.1080/1363981042000263471>; See also Kamaruzzaman Bustamam-Ahmad, *Islamic Law in Southeast Asia: A Study of Its*

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Shari'ah Islam in Aceh is the fruit of a "political compromise" and not something that has been *established* moreover *by Design*. In addition, the implementation and legislation of Shari'ah law that is developed must be within the scope of the "national legal and judicial system". Although the historical background (demands of Darul Islam in the 1950s) and the socio-cultural conditions of the Acehnese society which are typical of Islam cannot be ruled out, the choice of formalization and authority of the current shari'a legislation can factually be read in terms of efforts to "resolve the disharmony of relations between Center-Region in the last 3 decades".³⁵

Referring to the provisions of Law Number 44 of 1999, the implementation of privileges in the Province of the Special Region of Aceh includes the implementation of religious life, customary life, education, and the role of ulama in determining regional policies. The implementation of religious life in the region is manifested in the form of implementing Islamic law for Moslems in society.³⁶ The goal of the Aceh government according to the mandate of the law is to actualize and apply Islamic law in Aceh in a *kaffah* manner. To achieve this, the Aceh government has established a number of *qanun* in the field of Islamic Shari'ah, not least in the field of *jinayat* (criminal law).³⁷

After the ratification of the *qanun jinayat*, various assumptions emerged that the *qanun jinayat* would be openly accepted by all the people of Aceh, because the *Qanun* has been the aspiration of the Acehnese people from a long time ago. However, the fact has given rise to various responses among the people of Aceh and people

Application in Kelantan and Aceh, Islam in Southeast Asia: Views from Within (Bangkok, Thailand: Chiang Mai, Thailand: Asian Muslim Action Network; Silkworm Books, 2009), h. 47.

³⁵ Husni Mubarrak A. Latief and Husni Mubarrak, *Sengkarut Syariat Atas-Bawah* (Banda Aceh: Gelombang Baru, 2009), h. 113.

³⁶ This is regulated in Article 4 of Law Number 44 of 1999 concerning the Administration of the Aceh Regional Province. Look in Dwiyana Achmad Hartanto, "Kontribusi Hukum Islam Dalam Pembaharuan Hukum Pidana Di Indonesia (Studi Pidana Cambuk Di Nanggroe Aceh Darussalam)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 2, No. 2 (2016): h. 173, <https://doi.org/10.22515/alakhkam.v2i2.147>.

³⁷ Zaki Ulya, "Dinamika Penerapan Hukum Jinayat Sebagai Wujud Rekonstruksi Syari'at Islam Di Aceh," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 5, No. 1 (April 30, 2016): h. 137, <https://doi.org/10.33331/rechtsvinding.v5i1.9>.

outside Aceh. There are those who support the ratification and implementation of the *qonun jinayat* and others who reject it. So that it then raises various problems, both from the Acehnese community and people outside Aceh, both from the Aceh government and governments outside Aceh.

The implementation of the *qanun jinayat* in Aceh cannot avoid criticism and skepticism from the people who view Aceh's *qanun jinayat* as a barrier to human togetherness and reconciliation.³⁸ Islam is not the only religion embraced by the people in Aceh. This is as recorded in the data from the Central Statistics Agency in 2021 that out of 5 million people, there are still 54 thousand (1.07%) people who adhere to a religion other than Islam.³⁹ This is also the concern of the non-Muslim community regarding the implementation of the *qanun*, as Friez R. Tambunan expressed concern about the fate of the non-Muslim community in Aceh, especially in dealing with the *qanun* implemented by the Aceh kingdom.⁴⁰

Various problems emerged along with the implementation of *Qanun* Number 6 of 2014 in Aceh. There are those who support and others who reject the implementation of the *qanun*. The government itself supports the implementation of *qanun* in Aceh by establishing an Islamic Syariat Service equipped with an Islamic law police and a Syariat Court that specifically handles the application of Islamic law in Aceh.⁴¹ Likewise, other institutions support the implementation of

³⁸ *Islah* is repairing, reconciling, and eliminating disputes or damages. Trying to make peace; bring harmony; encourage people to make peace with one another; do good deeds; behaving as a holy person (good), the scope of the discussion of *islah* covers aspects of human life, both personal and social. See in Abdul Azis Dahlan, *Ensiklopedi Hukum Islam*, Vol. 4 (Jakarta: Ichtar Baru, 2003), h. 740; *Islah* in the *Encyclopedia of Religion* is peace and the resolution of disputes. According to the term, *islah* is reconciling a dispute, if there is a difference in one group, there needs to be a third party to mediate and reconcile it. See in Nasiruddin Zuhdi, *Ensiklopedi Religi: Kata-kata Serapan Asing Arab-Indonesia* (Jakarta: Republika, 2015), h. 305.

³⁹ Badan Pusat Statistik Provinsi Aceh, *Provinsi Aceh Dalam Angka Tahun 2022* (Aceh: BPS Provinsi Aceh, 2002), h. 243.

⁴⁰ Friez R. Tambunan Pr in Fairus M. Nur (Ed.), *Syariat Di Wilayah Syariat: Pernik-Pernik Islam Di Nanggroe Aceh Darussalam* (Banda Aceh: Dinas Syariat Islam NAD, 2002).

⁴¹ Sehat Ihsan Shadiqin, "Islam dalam Masyarakat Kosmopolit: Relevankah Syariat Islam Aceh untuk Masyarakat Modern?," *Kontekstualita: Jurnal Penelitian Sosial Keagamaan* 25, No. 1 (2010): h. 23-51.

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qanun in Aceh such as the Ulama Consultative Council (MPU), the Aceh Dayah Ulama Association (HUDA), the Aceh Nanggroe Ulama Council (MUNA) and various other institutions.⁴²

Besides the community and groups that support it, there are also other communities and groups who reject the implementation of the *qanun jinayat*. For example, people from academics at universities in Aceh and Non-Governmental Organizations (NGOs) who are engaged in human rights and women's issues. This group is more about criticizing the contents of the *qanun* which is considered not comprehensive and discriminatory. According to this group, in terms of the content of the *qanun*, it has bypassed the country's national laws. They feel that the *qanun* causes the dualism of state law. This means that Aceh must implement two laws: the *qanun* law and the national law of the Indonesian state. According to this group, Aceh should implement the Indonesian national law because it is within the territory of the Indonesian state.⁴³

A number of other Non-Governmental Organizations (NGOs) who are members of the Civil Society Network for Advocacy of the *qanun jinayat* urge the Government of Indonesia, the Government of Aceh and the Aceh People's Representative Council (DPR) to review the *qanun jinayat* or Regional Regulation of Islamic Sharia in Aceh, due to some of its contents and implementation that is considered contrary to the Constitution and detrimental to women. "The regulations contained in the *qanun jinayat* contradict the Constitution and a number of laws, both in substance and in the process of their formation". That statement was made by a number of NGOs which were distributed to journalists.⁴⁴

Director of the Indonesian Legal Aid Foundation (YLBHI), Asfinawati said the existence of the *qanun jinayat* (i.e. article 5 letter C) resulted in duplication of criminal acts already regulated in the Criminal Code, resulting in overlapping laws and regulations,

⁴² Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawaii Press, 2008), h. 143-147.

⁴³ Sari, "Pro dan Kontra Implementasi Qanun Syariah Islam di Aceh," h. 79.

⁴⁴ Ali Abubakar, *Kedudukan Non-Muslim Dalam Qanun Jinayat* (Banda Aceh, Aceh: Dinas Syariah Islam Aceh dan CV. Rumoh Cetak, 2020), h. 74.

including differences in criminal sanctions. This dualism and duplication are considered contrary to the principles of order and legal certainty as regulated in Law Number 12 of 2011 concerning the Establishment of Legislation.⁴⁵

Regarding the position of women, the *qanun jinayat* has also been criticized by various parties, for example, the Coordinator of the National Women's Solidarity Program, Nisaa Yura, said that the *qanun jinayat* is unable to protect women in Aceh from violence, and instead strengthens the potential for criminalization and discrimination. This can be seen from the articles regulated in the qanun, for example, article 52 paragraph 1 of *Qonun Aceh* Number 6 of 2014 which regulates rape victims to provide evidence.⁴⁶

The implementation of the *qanun* in Aceh has drawn criticism, particularly the *qanun jinayat*, with the application of caning punishments for violators of the local regulations governing Islamic crimes. The application of caning through *qanun jinayat* has been implemented in recent years. However, residents consider the implementation of the *qanun* only to target the lower classes, while officials are 'beyond the law'. One of the residents, Siska Amelia called the implementation of the qanun "discriminatory". Siska explained that "If the little people make a mistake, it is immediately taken to a further and more severe legal route. Meanwhile, people who are "big", people who are high in rank, even make a few mistakes are not taken to a higher legal path".⁴⁷

In addition, the Aceh Child Supervision and Protection Commission (KPPA) also rejected the implementation of the *qanun jinayat* in Aceh after the acquittal of the Aceh Syar'iyah Court against DP (35) perpetrators of raping children in Lhoknga District, Aceh Besar Regency. According to Firdaus Nyak Idin, the Aceh KPPA, he explained that the freedom of the DP further proves that the *qanun jinayat* does not take sides with children who are victims of sexual violence. KPPA Aceh rejected the qanun jinayat and said that "For

⁴⁵ Abubakar, h. 74-75.

⁴⁶ Abubakar, h. 75.

⁴⁷ Ayomi Amindoni, "Qaun Jinayat di Aceh dianggap 'Diskriminatif': Kalau Rakyat Kecil Membuat Kesalahan, Langsung Dibawa Jalur Hukum," *BBC News Indonesia*, December 17, 2019, <https://www.bbc.com/indonesia/indonesia-50818812>.

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us, the *qanun jinayat* is outdated and fails to provide justice for child victims of sexual violence”.⁴⁸

Various problems emerged along with the implementation of *qanun* in Aceh. This is due to various cases that are often detrimental to one party and are discriminatory. Even Amnesty of *International and the Institute for Criminal Justice* (ICJR) are very concerned and take seriously the applicable *qanun jinayat* in Aceh. Amnesty organization calls on the Indonesian government to comply with international human rights obligations by ending caning as a form of punishment, as well as repealing the provisions of the Aceh *qanun jinayat* which violate international law, particularly related to sexual relations outside of marriage.⁴⁹ According to Amnesty International, consensual sexual relations should not be treated as a crime or a crime against “morality”. The United Nations Human Rights Committee and other human rights expert bodies have raised concerns about laws criminalizing “adultery” or consensual sexual relations outside of marriage, for violating the right to privacy. Our organization calls on Indonesian authorities to repeal provisions criminalizing consensual sex and intimacy outside marriage.⁵⁰

Some things that are common problems include that in Article 7 of Aceh *Qanun* Number 8 of 2014 concerning the Principles of Islamic Shari’a; it explains that Islamic Shari’a only applies to the people of Aceh who are Muslim,⁵¹ so that Acehnese people of other religions are not entangled in the implementation of Islamic law in Aceh.⁵² Thus the *qanun* as part of the Islamic law that applies in Aceh

⁴⁸ Anugrah Andriansyah, “Kerap Rugikan Korban Pemerkosaan, Qanun Jinayah di Aceh Diminta untuk Direvisi,” VOA Indonesia, May 27, 2021, <https://www.voaindonesia.com/a/kerap-rugikan-korban-pemerkosaan-qanun-jinayah-di-aceh-diminta-untuk-direvisi/5905436.html>.

⁴⁹ Amnesty International, “Indonesia: Criminalization of Consensual Intimacy or Sexual Activity for Unmarried Couples in Aceh Must End,” *Amnesty International*, October 27, 2016, h. 2, <https://www.amnesty.org/en/documents/asa21/5039/2016/en/>.

⁵⁰ Amnesty International, h. 2.

⁵¹ See Article 7 of Aceh *Qanun* Number 8 of 2014 Concerning Principles of Islamic Shari’a

⁵² To find out the religious status of a person who commits an act prohibited by the *Qanun Aceh*, the Aceh police conduct a checking of the identity card in the form of an Identity Card or it can also be through confession. Firmness in knowing the religion of the perpetrators of criminal acts in Aceh Province is very important in determining their legal compliance.

is only applied to Muslims only.⁵³ However, in practice, the *qanun jinayat* does not only apply to the people of Aceh who are Muslim. This also applies to the Acehnese who are non-Muslims who commit *jarimah*. This is as explained in Aceh *Qanun* Number 6 of 2014 Chapter I Article 1 Paragraph 16 that the act of *jarimah* is an act that is prohibited by Islamic law and in the *jinayat qanun* will be subject to the punishment of *'uqubat hudud* or *ta'zir*.⁵⁴

Qanun jinayat also applies to non-Muslim perpetrators if that person commits a crime in Aceh together with Muslims on the condition that the perpetrator (non-Muslim) chooses and submits himself voluntarily to the *qanun jinayat*.⁵⁵ An example is the case of L Liu alias YM. This Buddhist resident of Sigli town is accused of storing and selling *khamar*. Liu was finally tried at the Sigli Syar'iyah Court, because Liu had stated that he had voluntarily submitted himself to the *jinayat qanun*, this is as stated in the Sigli Syar'iyah Court's decision No. 02/JN/2008/MSy-SGI.⁵⁶ Another example is related to *jarimah* conducted by a woman with the initials DN, birth and address in Purworejo, Central Java. DN is 39 years old (born 29 November 1979); Protestant Christian. In the results of the examination at the trial, it was proven that Defendant DN had committed a criminal act that intentionally insulted and harassed Aqidah as stated in Article 18 paragraph (2) Jo. Article 7 Paragraph (6) *Qanun* Aceh Number 8 of 2015 concerning Guidance and Protection Aqidah. This is as stated in Decision Number 6 /JN/2018/MS.Sgi.

Non-Muslims in Aceh are actually in a position of not being able to choose their submission to the *qanun jinayat*. This is different from the opinion that has developed so far that non-Muslims in Aceh are given the choice to submit or not when they violate the *qanun jinayat*. The non-freedom of non-Muslims in choosing punishment is

⁵³ Kamarusdiana, "Qânûn Jinâyat Aceh dalam Perspektif Negara Hukum Indonesia," h. 158.

⁵⁴ Sulaiman, *Studi syariat Islam di Aceh*, h. 167.

⁵⁵ Sulaiman, h. 168.

⁵⁶ MYS/M-22, "Dua Kategori Non-Muslim yang Bisa Terjerat Qanun Jinayah," hukumonline.com, February 11, 2015, <https://www.hukumonline.com/berita/a/dua-kategori-non-muslim-yang-bisa-terjerat-qanun-jinayah-lt54da9dfa18fc9>.

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motivated by the provisions of Article 5 letter c of Aceh *Qanun* Number 6 of 2014 which positions non-Muslims not being able to choose their submission. The article reads, "Every person of a non-Muslim religion who commits *jarimah* acts in Aceh which are not regulated in the Criminal Code (KUHP) or criminal provisions outside the Criminal Code, but are regulated in this *qanun*". This means that the freedom to choose punishment for non-Muslims only applies if there is a similar crime regulated in the Criminal Code with the *qanun jinayat*. Meanwhile, if there are actions that are not regulated in the Criminal Code or criminal provisions outside the Criminal Code, then non-Muslims must accept being punished with *qanun jinayat*.

In relation to the position of non-Muslims and the *qanun jinayat*, sharp and constructive criticisms were put forward in several news media, for example in an article entitled "Islamic Sharia for Non-Muslims" it was stated that differentiating the application of *qanun jinayat* for non-Muslims would only create new problems. There will be legal uncertainty for non-Muslims who violate their rights, especially for criminal offenses that are not specifically regulated in the Criminal Code, such as *khalwat*, gambling, liquor, and others. This legal discrimination is indirectly considered to provide freedom for non-Muslims to escape from the bondage of the law.⁵⁷

In other words, for non-Muslim *jarimah* perpetrators, *qanun jinayat* regulates two things. First, non-Muslims who commit criminal acts (*jarimah*) together with Acehese Muslims can be sanctioned according to the *qanun jinayat*. Second, every non-Muslim who commits *jarimah* in Aceh which is not regulated in the Criminal Code or other criminal provisions outside the Criminal Code, but is regulated in Qanun Jinayat, can be given sanctions according to *qanun jinayat*.

D. Conclusion

Qanun Aceh Number 6 of 2014 concerning *jinayat* law is one of the government's regulatory actions to ensure the goal of legal

⁵⁷ Abubakar, *Kedudukan Non-Muslim Dalam Qanun Jinayat*, h. 75.

certainty for the community. This *qanun* is a revitalization of all the *qanuns* that regulate jinayat separately that have been applicable in Aceh before. However, in its application, it raises various problems, including the emergence of pros and cons among the community, academics and the government, which is assumed to be a barrier to human togetherness and understanding. The content of the *qanun* which is considered incomprehensible and discriminatory in nature, contradicts the Constitution and a number of laws, overlaps legislation, is unable to protect women from violence and actually strengthens the potential for criminalization and discrimination, and is outdated and fails to fulfill justice.

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