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Legal Harmonization Between Aceh's Qanun Jinayat and Indonesia's National Criminal Code

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Abstract: The enactment of Law Number 1 of 2023 concerning the National Criminal Code introduces a new paradigm in Indonesia's criminal justice system emphasizing proportionality, rehabilitation, restorative justice, legal certainty, and human rights protection. Within Indonesia's plural legal system, the Aceh Qanun Jinayat functions as a special criminal law regime grounded in Islamic legal values and regional autonomy, regulating criminal acts through sanctions based on taʿzīr, moral education (ta'dib), deterrence, and social restoration (islah). However, differences between the Qanun Jinayat and the National Criminal Code in terms of sanction models, penal philosophy, legal objectives, and criminal measures raise significant issues concerning harmonization within the national legal system. This study employs a normative juridical method using statutory, conceptual, and comparative approaches to analyze the consistency, compatibility, and integration of legal norms concerning sanctions and criminal measures under the Aceh Qanun Jinayat and Law Number 1 of 2023. The findings reveal fundamental differences in the orientation of punishment, particularly regarding corporal punishment, imprisonment, and rehabilitation, while also identifying convergence in maintaining social order, justice, legal certainty, and human dignity. Harmonization may be achieved through proportional sanctions, restorative and rehabilitative approaches, clarification of legal subjects, and integration of maqāṣid al-syarī'ah with constitutional and human rights principles to ensure legal certainty while preserving Aceh's regional specificity.

Keywords: Qanun Jinayat, legal harmonization, criminal sanctions, penal measures, National Criminal Code.

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Abstrak: *Pemberlakuan Undang-Undang Nomor 1 Tahun 2023 tentang KUHP Nasional memperkenalkan paradigma baru dalam sistem peradilan pidana Indonesia yang menekankan proporsionalitas, rehabilitasi, keadilan restoratif, kepastian hukum, dan perlindungan hak asasi manusia. Dalam sistem hukum pluralistik Indonesia, Qanun Jinayat Aceh berfungsi sebagai rezim hukum pidana khusus yang berlandaskan nilai-nilai hukum Islam dan otonomi daerah, mengatur tindakan kriminal melalui sanksi berdasarkan ta'zir, pendidikan moral (ta'dib), pencegahan, dan pemulihan sosial (islah). Namun, perbedaan antara Qanun Jinayat dan KUHP Nasional dalam hal model sanksi, filosofi pidana, tujuan hukum, dan tindakan pidana menimbulkan isu-isu penting terkait harmonisasi dalam sistem hukum nasional. Studi ini menggunakan metode yuridis normatif dengan pendekatan hukum, konseptual, dan komparatif untuk menganalisis konsistensi, kompatibilitas, dan integrasi norma hukum mengenai sanksi dan tindakan pidana berdasarkan Qanun Jinayat Aceh dan Undang-Undang Nomor 1 Tahun 2023. Temuan menunjukkan perbedaan mendasar dalam orientasi hukuman, khususnya mengenai hukuman fisik, pemenjaraan, dan rehabilitasi, sekaligus mengidentifikasi konvergensi dalam menjaga ketertiban sosial, keadilan, kepastian hukum, dan martabat manusia. Harmonisasi dapat dicapai melalui sanksi proporsional, pendekatan restoratif dan rehabilitatif, klarifikasi subjek hukum, dan integrasi maqāṣid al-syarīʻah dengan prinsip-prinsip konstitusional dan hak asasi manusia untuk memastikan kepastian hukum sekaligus melestarikan kekhasan daerah Aceh.*

Kata kunci: *Qanun Jinayat, harmonisasi hukum, sanksi pidana, tindakan pidana, Kitab Undang-Undang Hukum Pidana Nasional.*

Introduction

Indonesia is a state based on the rule of law that upholds the principle of legality as the foundation for the implementation of its governmental and legal systems. The principle of legality not only emphasizes legal certainty but also accommodates the diversity of social, cultural, and religious values that develop within Indonesian society.[1] This diversity is reflected in the pluralistic national legal system, where national law applies generally throughout Indonesia, while several regions are granted special authority to implement specific legal

[1] Muhibbuthabry Muhibbuthabry Fuad, Zainul, Surya Darma, "Wither Qanun Jinayat? The Legal and Social Developments of Islamic Criminal Law in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022), https://doi.org/10.1080/23311886.2022.2053269.

regulations based on regional autonomy and specialization as guaranteed by the 1945 Constitution of the Republic of Indonesia.[2]

One manifestation of this recognition of regional specificity is the implementation of the Qanun Jinayat in Aceh Province. The Qanun Jinayat constitutes a regional criminal law system that regulates certain criminal acts based on Islamic sharia principles and applies to the Acehnese community in accordance with their socio-cultural and religious characteristics. The existence of the Qanun Jinayat cannot be separated from Aceh's special autonomy status, which grants authority to the regional government to regulate specific governmental affairs, including aspects of criminal law, provided that such regulations do not contradict national law.[3]

The enactment of Law Number 1 of 2023 concerning the National Criminal Code (KUHP Nasional) marks a fundamental reform in the Indonesian criminal justice system. The new Criminal Code not only replaces the colonial legacy criminal code but also introduces a modern paradigm of criminal law emphasizing proportionality, rehabilitation, restorative justice, legal certainty, and protection of human rights. The reform also reconstructs the objectives of punishment by prioritizing prevention, restoration, rehabilitation, and social reintegration of offenders rather than merely focusing on retributive justice.[4] The emergence of this new national criminal law framework raises important questions regarding the harmonization of various special criminal law systems applicable in Indonesia, including the Qanun Jinayat in Aceh. Differences between the Qanun Jinayat and the National Criminal Code are evident particularly in terms of criminal sanctions and the philosophical orientation of punishment. The Qanun Jinayat recognizes sanctions such as flogging, fines denominated in gold, and imprisonment, which are philosophically rooted in Islamic criminal law values emphasizing ta'dib (moral education), islah (reformation), and the protection of social morality. In contrast, the National Criminal Code adopts a modern criminal

[2] Abdul Halim, "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh," *Human Rights Review* 23, no. 2 (2022), https://doi.org/10.1007/s12142-021-00645.

[3] Ladito Risang Bagaskoro Afandi, Fachrizal, "Islam and State's Legal Pluralism: The Intersection of Qanun Jinayat and Criminal Justice System in Indonesia," *Epistemé* 19, no. 1 (2024), https://doi.org/https://doi.org/10.21274/epis.2023.18.02.115-143.

[4] Danial, *Hukum Pidana Islam* (Jakarta: Sinar Grafika, 2021).

law approach centered on proportionality, individualization of punishment, rehabilitation, and human rights protection.[5]

These differences potentially create disharmony within the national legal system, particularly regarding the principles of legality, sentencing objectives, legal certainty, and standards of human rights protection. [6] If harmonization is not properly conducted, overlapping authority, inconsistencies in criminal sanctions, and disparities in law enforcement practices may emerge, ultimately leading to legal uncertainty and injustice. [7]

Several previous studies have discussed the implementation of the Qanun Jinayat and its relationship with national criminal law. Research by Hamdani examined the application of Islamic criminal sanctions in Aceh from the perspective of regional autonomy and legal pluralism, concluding that the Qanun Jinayat reflects Aceh's socio-religious identity within Indonesia's constitutional framework. Other studies have analyzed the compatibility of flogging punishment with human rights principles and international legal standards. In addition, research concerning the National Criminal Code reform has primarily focused on the modernization of Indonesian criminal law and the incorporation of restorative justice principles within the new Criminal Code system.[8]

However, previous studies generally examine the Qanun Jinayat and the National Criminal Code separately. There remains limited scholarly discussion specifically addressing the harmonization between the Qanun Jinayat and Law Number 1 of 2023, particularly from the perspective of sanctions and criminal actions within the framework of national criminal law reform. Existing studies have not comprehensively analyzed the intersection, compatibility, and

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5 Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Jurnal: Griffith Law Review (Internasional)* 32, no. 2 (2023), https://doi.org/10.1080/10383441.2023.2243772.

6 Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2017).

7 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2019).

8 Henny Saida Flora, "Restorative Justice in the New Criminal Code in Indonesia: A Prophetic Legal Study," *Section Criminal Law* 10, no. 2 (2022), https://doi.org/https://doi.org/10.21070/jihr.v11i0.836.

potential normative conflicts between the two legal systems following the enactment of the new Criminal Code.[9]

Accordingly, the research gap in this study lies in the absence of comprehensive legal analysis concerning the harmonization of the Qanun Jinayat with the National Criminal Code under Law Number 1 of 2023, especially regarding the construction of criminal sanctions and criminal actions within Indonesia's pluralistic legal system. This study seeks to fill that gap by examining the extent to which the principles, objectives, and sanction systems of the Qanun Jinayat can be harmonized with the contemporary orientation of Indonesian national criminal law.

Based on the above background, this research aims to analyze the harmonization of the Qanun Jinayat with the National Criminal Code under Law Number 1 of 2023 from the perspective of sanctions and criminal actions. Furthermore, this study aims to identify points of convergence and divergence between the two legal systems and formulate a harmonized legal construction capable of ensuring legal certainty, justice, utility, and respect for both Islamic legal values and human rights principles within Indonesia's constitutional framework.

Academically, this research is expected to contribute to the development of discourse on national criminal law reform and Islamic criminal law within the Indonesian legal system. Practically, the findings of this study may serve as a reference for policymakers, legislators, and law enforcement authorities in implementing a criminal law system that is harmonious, just, and responsive to Indonesia's legal pluralism.

Method

This study is a normative juridical study, or normative juridical, which considers law as a standard or provision contained in the legal system. This study emphasizes the harmonization between the Aceh Qanun Jinayat and national criminal legality, particularly Law Number 1 of 2023 concerning the Criminal Code. This research places particular emphasis on how sanctions and criminal acts are regulated. The

[9] Dandi Ditia Saputra Jamaludin, Ahmad, Zulmi Ramdani, "Caning and Penal Legitimacy: The Double Movement of Aceh's Qanun Jinayat Under Indonesia's New Criminal Code," *JURNAL HUKUM ISLAM* 23, no. 2 (2025), https://doi.org/https://doi.org/10.28918/jhi.v23i2.10.

normative method was chosen because this study aims to evaluate how legal norms are integrated, appropriate, and consistent with the national legal system.[10]

Result and Discussion

Regulation of Sanctions and Actions in National Criminal Law and Qanun Jinayat

In terms of language, a system refers to a collection of elements that are interconnected systematically to form a comprehensive entity.[11] Furthermore, a system can be viewed as an aggregation of views, theories, principles, and so on. Therefore, a system (from Greek: "system") can be defined as a whole built from a number of interacting components or subsystems, having an open character, arranged hierarchically, and directed towards achieving a goal.[12] According to this understanding, basically, a system has a number of unique elements. These features are called system features. In explanation, this is explained as follows:

1. National Criminal Code (KUHP): Its primary objective is to maintain public order, legal certainty, justice, and the protection of human rights within a contemporary constitutional rule-of-law framework based on the principle of legality. The National Criminal Code adopts a modern criminal law approach emphasizing proportionality, rehabilitation, restorative justice, and social reintegration. Criminal sanctions generally consist of imprisonment, fines, supervision punishment, community service, and additional penalties, alongside criminal measures regulated under Law Number 1 of 2023.[13]
2. Qanun Jinayat: Based on Islamic law applicable in Aceh. Its purpose is ta'zir, meaning education and deterrence, and cleansing perpetrators of their sins. Like flogging, this punishment emphasizes morality and shame.[14]

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[10] Taufan A. S. Negara, "Normative Legal Research in Indonesia: Its Origins and Approaches," *Audito Comparative Law Journal* 4, no. 1 (2023), https://doi.org/10.22219/aclj.v4i1.24855.

[11] Lexy J Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Rosdakarya, 2020).

[12] Sudarto, *Hukum Dan Hukum Pidana* (Bandung: Alumni, 2013).

[13] Anis Noviya Fitri Arianti, "Implications of the Implementation of the New Indonesian Penal Code in 2026 on Legal Certainty and Human Rights," *JHK Jurnal Hukum Dan Keadilan* 3, no. 2 (2026), https://doi.org/https://doi.org/10.61942/jhk.v3i2.549.

[14] Abdul Gani Isa, "Formalization of Islamic Criminal Law in Aceh: A Study of Qanun Jinayat and Its Penal Philosophy," *Al-Jami'ah: Journal of Islamic Studies* 61, no. 2 (2023), https://doi.org/10.14421/ajis.2023.612.341-369.

In a legal context, the terms "system" and "law" can be considered a complete, integrated unit divided into several interconnected legal subfields. All legal components must work together in a pre-existing manner (Nurhadianto, 2015).[15] Law is essentially a system. As Netti Endrawati points out, Wiener argues that law is a system of behavioral monitoring (ethical control) used for communication. Therefore, not only can law be understood as a total system, but also each aspect can be considered a system according to its proportions. For example, although law is part of the principle, criminal legality itself is a system smaller than law. The subjects of law include:

a. Criminal Code: Every foreign citizen (WNI/WNA) who commits a crime in Indonesia will face these consequences.
b. Qanun Jinayat: Applies to every Muslim living in Aceh, or to every non-Muslim who voluntarily follows the Qanun if they collaborate in a crime with a Muslim individual.

Indonesia's national legal system is considered either open or closed. Constitutional review of regional regulations (Perda/Qanun) against laws, or judicial review of laws, is a way to demonstrate that the national legal framework allows for change. Furthermore, the legislative review process provides further evidence of this openness. This means that Indonesia's national legal system has undergone evolution, as has been amply demonstrated. However, in terms of criminal law, the Criminal Code (KUHP) is in a regrettable state due to its protracted deliberations.

To date, the National Criminal Code remains a Dutch product that has been amended and is no longer applicable in its country of origin.

Simply put, this national legal system can be described as a complete legal entity in which all areas of law work together, have a hierarchy, and share a common goal. Pancasila is the foundation and source of all national legal systems, and the Constitution is the foundation of all national legal systems. All forms and levels of regulation in Indonesia should be based on these five basic principles. The national legal system is more similar to Continental European

[15] Fajar Nurhardianto, "Nurhardianto, Fajar," *Jurnal TAPIs* 11, no. 1 (2015), https://doi.org/https://doi.org/10.24042/tps.v11i1.840.

legal systems or civil law. Although customary law is recognized, written law in the form of statutory regulations is more binding in this large country.[16]

Nurul Qamar cites M. Fuady's classification of world legal traditions, which classifies five legal traditions: European continental law, Anglo-Saxon law, Russian and former Soviet Union socialist law, customary and regional law, and religious law. Furthermore, Nurul Qamar states that civil law, civil law, middle law, northeastern law, and socialist law are classifications that are almost the same as those of M. Fuady and Marc Ancel. After citing these two classifications, Nurul Qamar then states that these legal systems are then mixed. Therefore, additional legal families or mixed legal families should be added. Our observations indicate that Indonesia does not have a complete civil law system, does not have a very diverse customary law system, or only Islamic law. However, there is a tendency for all legal models to become formal. This means that local law is regulated by laws, and Islamic law is regulated by Qanun and UU.

Take Law No. 1 of 1974 concerning Marriage, for example. Inevitably, the a quo law contains Islamic elements. Furthermore, Presidential Instruction No. 1/1991 concerning the Compilation of Islamic Law also exists. Both regulations demonstrate how Islamic law is implemented and developed in Indonesian society. Regulations made by legitimate state institutions must also be obeyed. Indonesia not only accepts Islamic law but has also ratified numerous international conventions, particularly those concerning human rights. Ultimately, openness requires interaction and mutual influence.

Referring to the categories mentioned by Nurul Qamar above, Indonesian national law can be described as a mixed legal system.[17]

Sometimes, this blending occurs at the statutory level, and sometimes at the regional regulation (Perda) or Qanun (Qanun). Islamic law has influenced and incorporated Indonesian national law in the Aceh Qanun. Aceh Government Law Number 11 of 2006 recognizes and validates this. However,

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[16] Khairil, *Pidana Mati Terhadap Penyalahguna Psikotropika Dalam Perspektif Teori Pemidanaan Islam: Studi Terhadap UU No. 5 Tahu 1997 Tentang Psikotropika* (Banda Aceh: UIN ArRaniry, 2014).

[17] Michael Buehler, "Subnational Islamization Through Secular Institutions: Indonesia's Legal Pluralism and Human Rights," *Law & Social Inquiry* 48, no. 2 (2023), https://doi.org/10.1017/lsi.2022.54.

there are many variations in how laws and regulations are blended in Indonesia. One example applies in Aceh, which is part of the Republic of Indonesia, so its laws are included within the national legal system.

Detention is one of the most important forms of restriction on human rights, namely the right to personal liberty. Therefore, in contemporary legal systems, detention must be carried out on a legal basis, with clear procedures, and with legitimate and proportionate grounds. This principle is consistent with international human rights and the constitution, which establishes detention as a last resort in the criminal justice process. The conditions, types, authorities, and duration of detention are strictly regulated by the Criminal Procedure Code (KUHAP) in the Indonesian context. These provisions are made to ensure fair legal proceedings, prevent abuse of authority, and protect the dignity of legal subjects facing criminal justice processes.[18]

As a type of legal regulation in Indonesia, Qanun is not something new, especially in Aceh, it has been known for a long time. Tengku di Mulek's writing in 1257 entitled Qanun Syara' of the Aceh Kingdom is one of the manuscripts that can be referred to. Liaw Yock Fang said that Al Yasa' Abu Bakar, quoted by Ahyar, said that the term "Qanun" is synonymous with "Adat" and is usually used to distinguish between laws written in fiqh and laws written in adat. In the current situation, Qanun, which is based on the UUPA, is a regional regulation that regulates the government and life of the Acehnese people.[19]

The concept of *qanun* should not be understood merely as synonymous with Islamic law in a theological sense. Linguistically, *qanun* refers to law or codified regulation and, in contemporary Islamic legal discourse, generally denotes positive law enacted by state authority. According to Jasser Auda, *qanun* constitutes a form of positive law constructed through the codification of *fiqh* and *ʿurf* (customary practice), rather than a direct manifestation of divine law itself. In Islamic legal theory, a conceptual distinction exists between *sharia*, *fiqh*, and *ʿurf*. *Sharia* refers to the divine and normative dimension of Islamic

[18] Siregar, Taufik et al., "Detention and Human Rights Protection under Indonesian Criminal Procedure Law," *Hasanuddin Law Review2* 9, no. 2 (2023), https://doi.org/10.20956/halrev.v9i2.

[19] Ahyar Ari Gayo, "Aspek Hukum Pelaksanaan Qanun Jinayat Di Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 17, no. 2 (2017), https://doi.org/https://doi.org/10.30641/dejure.2017.V17.131-154.

guidance, whereas *fiqh* represents juristic interpretation derived from scriptural texts through *ijtihad*, reflecting the cognitive and interpretive efforts of legal scholars (*fuqaha'*). Meanwhile, *'urf* functions as a contextual and sociological element influencing legal development. The ambiguity between *sharia* and *fiqh* may lead to the sacralization of juristic interpretations, potentially reducing interpretive plurality and generating exclusionary legal claims within religious and legal discourse.[20]

However, Qanun and "urf" respectively refer to specific legal systems and customs. With this explanation, Qanun is not at all Islamic law with a divine dimension (not sharia) in the eyes of Audah. However, in Aceh, the term sharia is actually associated with Qanun. Even in the Law, the Aceh Qanun Jinayat is referred to as a law containing Islamic rules. The inclusion of jarimah and "uqûbât hudûd" in the Qanun demonstrates this. As Syahrizal stated, Hudûd in the Aceh Qanun Jinayat are rules incorporated into the Qanun in accordance with the text. Such a claim is certainly dangerous and can be considered a claim of "holiness." In other words, Syahrizal divides Qanun into two dimensions: the divine dimension with its hudûd rules, and the human dimension with its ta'zir rules.[21]

Therefore, Jasser Audah's clearly defined boundaries do not apply exclusively to Aceh. Aceh has a unique context. However, what Jasser Audah describes is more a theory or ideal concept than a fact. The Aceh Qanun Jinayat is a concrete example of how Islamic criminal law is applied in the era of different nation states. It can be seen that here, the Aceh Qanun Jinayat is better known as a law derived from sharia (the Qur'an and Sunnah), fiqh, and "urf." Jasser Audah places the Qanun (in this case the Qanun Jinayat), and in the Acehnese context, the author observes that the divine dimension of the Qanun is the same as the divine dimension of the Sunnah of the Prophet. Indeed, some consider the entire Sunnah to be sharia, but according to Jasser Audah, parts of the Sunnah must be outside the divine dimension (sharia). However, the Sunnah has no impact whatsoever; instead, it influences the beginning of fiqh. Meanwhile, the Qanun is influenced by fiqh and "urf" in addition to having

[20] Jasser. Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach (Revised Edition)* (London: International Institute of Islamic Thought (IIIT), 2022).

[21] Danial, *Fikih Mazhab Iran Dan Aceh: Analisis Konsep Pemidanaan Dalam Hukum Pidana Iran Dan Aceh* (Yogyakarta: Sekolah Pascasarjana UGM, 2015).

universal sharia standards. Qanun is included in the Indonesian national legal system as part of the country's legislative system. As previously mentioned, the Aceh Qanun Jinayat is on the same level as regional regulations in other regions, as Law Number 12 of 2011 places it in sixth place, or on the same level as provincial regulations. Presidential Regulations, Government Regulations, Laws/Perppu, MPR Decrees, and the 1945 Constitution are above Qanun. Therefore, the Aceh Qanun Jinayat must be examined and explained from the two perspectives above because in addition to being an Aceh Provincial Regulation, it is also part of Islamic law. Legislated by the Aceh Regional People's Representative Council (DPRA) and approved by the Governor of Aceh. It is included in both the Islamic and Indonesian legal systems.[22]

In other words, the Aceh Qanun Jinayat can be defined as a positive Islamic law. It is Islamic law derived from sharia (the Qur'an and Sunnah), fiqh, and "urf." After being legalized by the Aceh People's Representative Council and approved by the Governor of Aceh, the Aceh Qanun Jinayat is considered part of the efforts to implement Islamic law, and therefore should be considered a sub-field of the Islamic legal system. According to Law Number 12 of 2011 concerning the Formation of Legislation, the Aceh Qanun Jinayat is also part of the Indonesian legal system. However, not all Aceh Qanuns are part of the sharia that is designated as special and specific by the Law. For example, regarding the implementation of elections, the Aceh Qanun concerning elections should be considered part of the National legal subsystem solely because it is not included in Islamic law. Even Aceh Qanuns that are included in the special group are not always part of the Islamic legal subsystem. Thus, all Aceh Qanuns are part of the National legal subsystem, only a small portion can be categorized as part of the Islamic legal subsystem. The Sharia Qanuns must be seen and considered as legal products of two legal systems: Islam and Indonesia.

The Aceh Qanun Jinayat cannot be enacted until it has passed religious considerations because it is Islamic law. Therefore, the debate regarding its Islamic nature must be resolved before discussing the legislative process. However, Islamic polemics cannot be examined before being positively

[22] Ali Geno Berutu, "Pengaturan Tindak Pidana Dalam Qanun Aceh: Komparasi Antara Qanun Nomor 12, 13, 14 Tahun 2003," *Jurnal Mazahib* 16, no. 2 (2017), https://doi.org/10.21093/mj.v16i2.821.

considered. When the Aceh Qanun Jinayat is subjected to a material review in the Supreme Court, the test is on its compliance with higher laws. However, its compliance with Islamic law is merely an abstract dispute and can only arise in the DPRA (Regional People's Representative Council) hearing (either during the taqnîn process or during the judicial review). This is undoubtedly a weak point, especially in efforts to implement unbiased and pure Islamic law. The Qanun Jinayat must be discussed in the Supreme Court's judicial review hearing to demonstrate its compliance with Islamic standards.

Harmonization of Qanun Jinayat with National Criminal Law from the Perspective of Sanctions and Criminal Actions

The Aceh Qanun Jinayat constitutes a special criminal law regime operating within Indonesia's plural legal system and functions as a regional legal instrument governing conduct not comprehensively regulated under national criminal law. In several respects, the Qanun Jinayat establishes legal standards and criminal sanctions that differ from those contained in the National Criminal Code and other national criminal legislation. The formalization of Islamic law in Aceh, enabled through special autonomy, distinguishes the province from other regions in Indonesia and is reflected in the regulation of offences such as *zina* (adultery), *khamr* (consumption of alcoholic beverages), gambling, and certain forms of sexual misconduct. Compared with the National Criminal Code, the Qanun Jinayat adopts different legal definitions, evidentiary standards, and *ta'zir*-based sanctions aimed at moral discipline, deterrence, and the preservation of social order.[23]

Initially, the Qanun Jinayat consisted of two separate sections. Now, all types of jarimah (criminal offenses) and their related "uqûbât" (criminal offenses) are integrated into one Qanun, and the number of jarimah and "uqûbât" has even increased. According to Article 3 Paragraph 2 of the Aceh Qanun Jinayat, only ten different types of jarimah (offenses) are regulated in this Qanun. Khamr, maisir, khalwat, ikhtilâth, zina, sexual harassment, rape, qadzaf, liwath, and musâhaqah are ten jarimah or crimes. Khalwat, sexual harassment, alcohol, (maisir), gambling, and rape have similarities with the

[23] Sharyn Graham Davies, "Gender, Sexuality and the Politics of Sharia in Aceh," *Asian Studies Review* 47, no. 3 (2023), https://doi.org/10.1080/10357823.2023.2190411.

Criminal Code. The only difference is the type and form of sanctions. However, the definition and consequences of zina are different. Aceh has addressed the issue of homosexuality (liwâth and musâhaqah) several years earlier. Because the Constitutional Court cannot legislate regulations, it did not grant the attempt to criminalize LGBT. The Aceh Qanun Jinayat stipulates the following sanctions based on hierarchy and category. First of all, hûdûd. In the Aceh Qanun Jinayat and Islamic criminal law (fiqh jinâyat), hudûd is considered the most severe and serious sanction, and takes the form of caning. There are no additional penalties that recognize the term hudud. Acts punishable by this punishment are considered serious violations and must be handled seriously. The term hudud frequently appears in Islamic jurisprudence (fiqh). This means that hudud can also be considered a product of human ijtihâd (intelligence). Therefore, hudud can be understood in various ways, including non-legal factors; these factors, such as contemporary and socio-cultural developments, significantly shape the hudud paradigm. Second, ta'zir (imprisonment). Additional rights include state guidance, restitution by parents or guardians, dissolution of marriage, revocation of permits and rights, confiscation of certain assets, and community service. The main rights include flogging, fines, imprisonment, and restitution.

This latest Aceh Qanun Jinayat is interesting because it modifies the structure of sanctions to make them appear more orderly and consistent. Sanctions are structured in a different pattern than hierarchically. As an illustration, Article 25 Paragraph (1) states that "any person who intentionally commits Jarimah Ikhtilâth is threatened with "uqûbât lashes of a maximum of 30 (thirty) times or a fine of a maximum of 300 (three hundred) grams of pure gold or a maximum of 30 (thirty) months in prison." One can understand the pattern of sanctions regulated in the Aceh Qanun Jinayat by listening to one of the articles above. The article above indirectly states that one lash is equivalent to one month in prison and is equivalent to ten grams of pure gold. This pattern is not only new in the Indonesian criminal system, but also applies consistently. If a sanction is categorized as ta'zîr, not hudûd, then this pattern does not apply.: Article 3 paragraph 2 Here it can be understood that the category of sanctions in the Aceh Qanun Jinayat is very different from its parent category, namely the Criminal Code.

Hudud is the only type of crime and sanction that is not found in either the Criminal Code or the Draft Criminal Code. Meanwhile, ta'zir (imprisonment) shares many similarities in its form. Essentially, the death penalty ('uqûbât) is included in the Jinayat punishments. Some experts even consider stoning to be part of the recognized Islamic punishment methods, applicable to married adulterers (muhshan). However, given the changing times, the Aceh Jinayat Law does not adopt such a punishment, and theoretically, there is heated debate. One reason is the protection of human rights. While imprisonment is also mentioned in the Aceh Jinayat Law, specifically under the ta'zir category, only imprisonment is recognized in this category; the similar punishment of imprisonment is not recognized at all.[24]

However, imprisonment is essentially the same as a prison sentence. Imprisonment is longer, up to life imprisonment, while a prison sentence is only 1 year and 4 months or 1 year. The work obligations for these two types of punishments also have different severity. Finally, the Criminal Code (KUHP) includes both terms because it recognizes the term "violation" that includes imprisonment as a sanction. However, imprisonment only applies to criminal acts rather than misdemeanors.:33 The Aceh Qanun Jinayat only recognizes the term "imprisonment" and does not recognize such a classification of offenses (jarimah).

Next, there are fines. In the Aceh Qanun Jinayat, fines are also included among the most important ta'zir (reprehensible) penalties. This fine pattern is adjusted to the "uqûbât" (flogging) or imprisonment that must be imposed on the perpetrator of the crime. The Aceh Qanun Jinayat does not specify a type of sanction such as a closed sentence. This type of punishment, which is usually motivated by specific reasons and stems from the ideology or beliefs held by the perpetrator, is called a closed sentence. Because the perpetrator is detained in a closed house, a closed sentence differs from imprisonment or detention. A closed sentence is certainly better than imprisonment. In general, additional penalties are equivalent to additional penalties, and additional penalties have more forms than additional penalties in the Criminal Code.

[24] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (London: Oxford: Oneworld Publications, 2022).

The purpose of punishment is influenced by the differences in sanctions mentioned above. One prominent difference between the Criminal Code and the Qanun is that the Aceh Qanun Jinayat maintains the agreement contained in the verses of the Quran and the Prophet's Sunnah. Here, the purpose of punishment is the same as the purpose of worship, which is accepted as is. There is a dimension to the afterlife where punishment is used to improve a person in this world and cleanse them from sin. These differences deserve greater attention and more in-depth study. In the future, the findings of in-depth research in this area will undoubtedly benefit the Indonesian Criminal Code (KUHP), other criminal laws, and the Aceh Qanun Jinayat (Islamic Law).

Historically, the development of the Aceh Qanun Acara Jinayat (Islamic Criminal Procedure Law) was motivated by the need to accommodate procedural principles derived from Islamic legal traditions within Aceh's special autonomy framework. Although the Indonesian Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*—KUHAP) remains the principal procedural framework in national criminal justice, certain procedural orientations in Islamic criminal law differ in terms of evidentiary standards, judicial reasoning, and the philosophical basis of criminal proceedings. Nevertheless, the Aceh Qanun Acara Jinayat shares many procedural similarities with the KUHAP, particularly concerning due process, investigation, prosecution, adjudication, and legal safeguards. Differences arise mainly in specific evidentiary mechanisms and the accommodation of Islamic legal concepts such as *iqrār* (confession), witness testimony, and other forms of proof recognized within Islamic legal doctrine. In both systems, evidentiary standards are intended to prevent arbitrary law enforcement and ensure fairness in criminal proceedings, although confession evidence is subject to procedural safeguards and cannot independently justify criminal liability without judicial scrutiny.[25] The Qanun Acara Jinayat, however, allows for the defendant's re-confession, because punishment is not only a punishment in Islam but also a means of repentance. According to the theory of jawabir, "uqûbât has the ability to erase the sins of the perpetrator of jarimah." Even the hadith confirms this.

[25] Sarah J. Summers. Jackson, John D., *The Internationalisation of Criminal Evidence* (Cambridge: Cambridge University Press, 2023).

To maintain consistency in the national legal system without negating Aceh's uniqueness, it is crucial to harmonize the Qanun Jinayat with national criminal law in terms of sanctions and criminal acts. Harmonization is the process of adjusting values, principles, and limitations so that differences in sanctions in the Qanun Jinayat remain within the constitutional framework, the hierarchy of laws and regulations, and Indonesia's commitment to human rights. Harmonization should not be interpreted as absolute uniformity. Ta'zir sanctions, which focus on development, restitution, community service, and social recovery, must be strengthened as a meeting point with the contemporary paradigm of just and restorative sentencing. On the other hand, Qanun Jinayat sanctions, particularly physical ones, such as caning, must be interpreted and applied strictly, proportionally, and as a last resort. Furthermore, harmonization requires a clearer conceptual separation between sanctions as punishment and actions as development in the Qanun Jinayat.

This is done to ensure that its implementation does not conflict with the principles of inalienable rights and due process of law. Philosophically, this harmonization provides a strong foundation for the integration of the principles of maqāṣid al-syarī'ah and human rights, both of which focus on protecting human dignity, substantive justice, and social order. The Qanun Jinayat is not only maintained as a symbol of the formalization of sharia, but is also transformed into a flexible, humanistic legal instrument that aligns with Indonesia's national criminal law system through a progressive legal approach. The paradigm of justice shifts from retributive justice (retribution) to corrective, restorative, and rehabilitative justice along with the synchronization of the philosophy of punishment in the New National Criminal Code (Law 1/2023).

This actually has a meeting point with the Qanun Jinayat:

1. Purpose of Sanctions: Sanctions in the Qanun serve as warnings and self-purification, not merely suffering.
2. Point of Harmonization: Both parties now agree that imprisonment is not the only option. Community service and supervision were recently introduced into the Criminal Code, which aligns with the spirit of the Qanun, which prioritizes the offender's presence in society, with a shorter sentence than years of imprisonment.

The main challenge for harmonization is the differences in the types of physical sanctions. However, synchronization efforts are being made through:

1. Choice of Law (Resolving Disparities): For harmonization, legal subjects must be clarified. Non-Muslims in Aceh have the option to comply with the National Criminal Code or Qanun, except for certain acts prohibited by the Criminal Code, such as drinking alcohol.
2. Conversion of Sanctions: A conversion mechanism exists to prevent injustice. According to the Criminal Code, a person convicted under a law may not be punished again for the same offense (ne bis in idem).
3. Modification of Sanctions: The Criminal Code recently introduced "Fines," or fines, which are very flexible. This aligns with the Qanun, which uses gold units whose value fluctuates over time.

In terms of "Action", these two systems show a very strong convergence:

1. Rehabilitation: The New Criminal Code (KUHP) places a strong emphasis on rehabilitation for people with mental disorders and addicts, and the Qanun Jinayat (Islamic Law) has also begun to incorporate rehabilitation, particularly for moral violations caused by medical or environmental factors.
2. Juvenile Criminal Justice System (SPPA): In accordance with the spirit of the National Juvenile Criminal Justice Law, the Qanun Jinayat strictly adheres to it. Sanctions such as caning or imprisonment are less important than measures for the child, such as returning to their parents or to Islamic boarding schools.
3. Judicial Pardon: According to the New Criminal Code, judges can refuse to impose a sentence if the crime is minor. This concept aligns with the concept of ishlah (reconciliation) in Acehnese Islamic law.[26]

Conclusion

Conceptually and philosophically, the national criminal law and the Aceh Qanun Jinayat regulate sanctions and criminal acts differently. The Qanun Jinayat combines punishment, moral education, and religious aspects through hudūd and ta'zīr,

[26] Kadriah Husin, *Sistem Peradilan Pidana Di Indonesia* (Banda Aceh: Syiah Kuala University Press, 2016).

resulting in a specific form of sanction that has the potential to create normative tensions. On the other hand, the national criminal law emphasizes the separation of criminal and criminal acts with an orientation towards human rights protection and proportionality. The main difference between the two is how they punish. While the Qanun Jinayat prioritizes public corporal punishment (flogging) to instill shame and social learning, while still providing the option of fines or imprisonment as alternatives, the National Law prioritizes imprisonment for the isolation of perpetrators. The constitutional obligation to harmonize the Qanun Jinayat with the national criminal law can be achieved without losing Aceh's characteristics through the application of proportional and humane sanctions, strengthening ta'zīr which focuses on development and restoration, and integrating the values of maqāṣid al-syarī'ah with the principles of human rights and due process of law.

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Author Contributions Statement

DM, contributed to the conceptualization of the study, data collection, data analysis, manuscript drafting, and substantive refinement of the article. FR, contributed to the development of the research methodology, validation of data and findings, academic supervision, and manuscript review and revision. All authors have read, approved, and accepted responsibility for the final version of the manuscript.

AI Usage Statement

The authors declare that the use of Artificial Intelligence (AI) in this research was limited to supportive functions, including language editing, grammar checking, and enhancing the clarity and readability of the manuscript. AI was not used to generate the main research ideas, conduct substantive analyses,

interpret data, or formulate scientific conclusions. The authors assume full responsibility for the originality, accuracy, and academic integrity of the entire content of this article.

Conflict of Interest

The authors declare that there are no conflicts of interest regarding the conduct of this research, the preparation of the manuscript, or the publication of this article.

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