

# THE CHALLENGES OF ISLAMIC CRIMINAL LAW IMPLEMENTATION IN ACEH SHARIAH COURT

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## *Abstract*

*This paper explores the reconstruction of Islamic criminal law within the Aceh Shariah Court, highlighting its historical, socio-cultural, and legal context. Aceh, recognized for its special autonomy and predominantly Muslim population, has enacted various qanuns (regional Islamic laws) since 2001 to implement Islamic Sharia, encompassing both civil and criminal law. The study employs non doctrinal research to analyze the framework and challenges of implementing Islamic criminal law in Aceh. The legal substance, including Law No. 11 of 2006 and various qanuns, facilitates public participation and supports the integration of Islamic principles into regional governance. The research discusses the pluralistic legal system in Aceh, incorporating state law, customary law, and Islamic law, and examines the role of the Sharia Court in adjudicating cases under Islamic law. The study identifies two main issues: the enforceability of the qanun concerning non-Muslims and human rights, and the proportionality of punishments. Despite criticisms, the qanuns aim to enhance justice and prosperity in Aceh, reflecting the strong religious and cultural identity of the region. The paper concludes by emphasizing the necessity of ongoing adaptation and refinement in the application of Islamic criminal law to address societal needs and uphold human rights.*

**Keywords:** Aceh; Islamic Criminal Law; Jinayah; Qanun; Sharia Court

## 1. Introduction

The outlook and behaviours of a society as a whole are shaped by a variety of factors, including its history, sociocultural environment, religious traditions, and geographical location. These elements also help define each area's unique characteristics. This circumstance is a societal reality that cannot be refuted throughout the course of the history of a nation. This includes Nanggroe Aceh Darussalam (NAD), a province in Indonesia.<sup>1</sup> Aceh is a region distinguished by its religious context and special autonomy.<sup>2</sup> This particular privilege pertains to the rights associated with the social application of Islamic law within the Aceh region.<sup>3</sup>

The autonomy of Aceh as special province inspires optimism and unlocks opportunities for the advancement of innovation, autonomy, and latitude for the region and Aceh people to redefine their sense of self and expand their domain. The Community component, which includes both the

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<sup>1</sup> Suadi Zainal, "Keistimewaan Aceh Dan Pembangunan Perdamaian Dalam Tinjauan Sosio Historis," *Jurnal Sosiologi USK (Media Pemikiran & Aplikasi)* 16, no. 1 (2022): 87–104, <https://doi.org/10.24815/jsu.v16i1.25706>.

<sup>2</sup> Rukaya Rukaya et al., "Aceh Conflict Resolution, Actions of Non-GAM Acehnese in Peace in Veranda of Mecca Post-MoU. Helsinki," *QISTINA: Jurnal Multidisiplin Indonesia* 2, no. 1 (2023): 134–47, <https://doi.org/10.57235/qistina.v2i1.570>.

<sup>3</sup> Irma Suryani, "Juridical Analysis of The Implementation of Islamic Criminal Law In Aceh From The Perspective of Legal Hermeneutics," *PAMATOR: Jurnal Ilmiah Universitas Trunojoyo* 16, no. 1 (2023): 114–25, <https://doi.org/10.21107/pamator.v16i1.19274>.

Legislative and Executive branches as well as social organizations and non-governmental organizations, has responded positively to this opportunity. On closer inspection, it is possible to argue that the long vertical conflict between the central government and Aceh has brought out to Shariah implementation as consensus. The purpose of this conflict was to improve the relationship between the central government and the region.

Aceh is has officially adopted Islamic law since 2001.<sup>4</sup> The Aceh government has enacted various *qanuns*, which are regional Islamic laws, pertaining to criminal offences subsequent to being granted the power to enforce the Islamic Sharia. Islamic law implementation has expanded beyond its previous scope of Islamic civil affairs to encompass criminal law (*jarimah/jinayah*). So far, a multitude of criminal offences stemming from Islamic Sharia law have been codified in various *qanuns*.<sup>5</sup> Aceh, through the enactment of Aceh Government Law, has been granted certain privileges that allow for public participation and engagement in the development of public policy and local regulations (known as *Qanun in Aceh*).

The legal framework governing Aceh, known as *Qanun*, is detailed in *Qanun* No. 3/2006 on the Governance of Aceh, commonly referred to as the LoGA. More precisely, in *Qanun* No. 3/2007 concerning the Protocol for the Establishment of Regional *Qanun* (later amended by the release of *Qanun* No. 5 of 2011) *Qanun Establishment Procedure*.<sup>6</sup> The *qanuns*' existence is highly advantageous as they serve as a foundation for the enforcement of sharia in Aceh. The Acehnese population exhibits a sense of pride in this particular aspect. The individuals assert that their quality of life improves its implementation.<sup>7</sup> The implementation must promote principles of justice, equality, and prosperity, has the potential to enhance the economic, political, and cultural conditions of the Acehnese population.<sup>8</sup> In this paper, the analysis focused on the implementation and the challenges in Aceh Sharia court.

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<sup>4</sup> 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 (2021): 55, <https://doi.org/10.22373/jms.v23i1.9073>.

<sup>5</sup> Yasrul Huda, "Islamic Sharia in Aceh and Its Implications in Other Regions in Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 5, no. 2 (2020): 189–201, <https://doi.org/10.22373/petita.v5i2.98>.

<sup>6</sup> Ida Rahma, "Partisipasi Publik Dan Keterbukaan Informasi Dalam Penyusunan Kebijakan," *Jurnal Hukum Samudra Keadilan* 14, no. 1 (2019): 81–96, <https://doi.org/10.33059/jhsk.v14i1.1101>.

<sup>7</sup> Desi Oktaviana and Prayoga Bestari, "Increasing Community Legal Awareness About the Implementation of Islamic Sharia Law in the City of Sabang in Civic Esucation Perspective," *Proceedings of the Annual Civic Education Conference (ACEC 2021)* 636, no. Acec 2021 (2022): 65–70, <https://doi.org/10.2991/assehr.k.220108.012>.

<sup>8</sup> Faisal A Rani, Fikri Fikri, and Mahfud Mahfud, "Islam and National Law: A Formal Legal Review on Sharia Laws in Aceh," *Al-Risalah* 20, no. 1 (2020): 47, <https://doi.org/10.30631/al-risalah.v20i1.521>.

## **2. Method**

This is a non doctrinal research which conceptualize the law as nomos/behaviour. This research also use an interdisciplinary research so that reality can be understood comprehensively through various perspectives. This research is conducted to understand the implementation of Shariah Criminal Law through interview to related parties who concern on Shariah Law in Aceh. In addition, secondary data is collected through literature research to find essential principle, doctrine, concepts to analyse the reality. So that, this article can be made analytically, sistematically and structurally.<sup>9</sup>

## **3. Results and Discussion**

### **3.1. The Islamic Criminal Law in Aceh Sharia Court**

Islamic law is incorporated into national law through a variety of statutory regulations across different legal domains. The observation can be made that Islamic jurisprudence is extant and adhered to, despite its lack of codification. The term Islamic law refers to the implementation of Islami values and system in life as regulated under Aceh Province Law. This law specifically addresses the privileges of Aceh and was amended to reflect the agreements made in the Helsinki Memorandum of Understanding (MoU) between Indonesia Government and the Free Aceh Movement.<sup>10</sup> The practice of prioritizing religious law and teachings that hold authoritative status in the administration of the Indonesian state is a notable aspect of the country's constitutional tradition. The socio cultural condition of Acehnese society based on religious teaching and considered as life style.<sup>11</sup>

The purpose of Islamic Law is to solve society's problems so that there aren't any problems with how it is applied. Another way to try to solve a problem would be to create a new way of applying Islamic law, including in Aceh.<sup>12</sup> Aceh is plural society due to ethnic variety and the incorporation of Islamic ideals into all aspects of society, including law enforcement. The legal pluralism in Aceh received legal recognition through Aceh Government Law. Based on this, the

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<sup>9</sup> Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2021): 83, <https://doi.org/10.21153/dlr2012vol17no1art70>.

<sup>10</sup> Husni Mubarrak and Faisal Yahya, "Women in the Public Sphere and Religious Discourse Interpretation in the Post-Conflict Aceh," *Mazahib Jurnal Pemikiran Hukum Islam* 19, no. 2 (2020): 195–218, <https://doi.org/10.21093/mj.v19i2.2204>.

<sup>11</sup> Fajri M. Kasim and Abidin Nurdin, "Study of Sociological Law on Conflict Resolution through Adat in Aceh Community According to Islamic Law," *Samarah* 4, no. 2 (2020): 375–97, <https://doi.org/10.22373/sjkh.v4i2.8231>.

<sup>12</sup> Danial Murdani, "Globalization and the Paradigm of Islamic Law Implementation in Aceh," *Mazahib* 21, no. 1 (2022): 1–28, <https://doi.org/10.21093/mj.v21i1.4323>.

customary law system (customary law) and the religious law/islamic law system (religious law/islamic law) are applicable.<sup>13</sup>

The theory of existence explains that the manifestation of Islamic law as part of Indonesian law takes a specific form: the recognition of independence, strength, and authority by national law; the Indonesian national legal system incorporates Islamic legal norms as a filtering mechanism; and the concept of meaning serves as a fundamental component and primary element within the legal framework of Indonesia.<sup>14</sup>

Based on the aforementioned description, the current position of Islamic law as part of Indonesian law can be derived: the application of Islamic law can be directly enforced through statutory regulations, without the need for customary law; the Republic of Indonesia is mandated to enforce regulations in compliance with islamic law, provided that such regulations are exclusively applicable to individuals who identify as Muslims; in the Indonesian legal system, Islamic law holds an equivalent and comparable position to both customary law and Western law; and islamic law constitutes one of the foundations for the development of national law in the Republic of Indonesia, alongside customary law, Western law, and other legal systems.

The utilization of Islamic law in Aceh has prompted endeavors to reinforce Islamic law through diverse regulations pertaining to its implementation. The Aceh legislative body has garnered community support in their efforts to advocate for the implementation of islamic law through formal legal channels, with the aim of securing legal protection.<sup>15</sup> It is imperative to guarantee the legitimacy of sharia-compliant products at the regional level in order to facilitate its implementation.

In accordance with linguistic principles, the concept of law involves the allocation or negation of a particular attribute to or from an object. The *Usul Fiqh* scholars stipulate that the commands of Allah or the Prophet apply to all actions of individuals who have reached puberty

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<sup>13</sup> Erlan Wijatmoko, Armaidly Armawi, and Teuku Faisal Fathani, "Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia," *Heliyon* 9, no. 11 (2023): e21280, <https://doi.org/10.1016/j.heliyon.2023.e21280>.

<sup>14</sup> Muhammad Arifin, "The Efforts of Islamic Criminal Law Integration into Indonesian Law Procedures," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 3, no. 2 (2020): 975–84, <https://doi.org/10.33258/birci.v3i2.925>.

<sup>15</sup> Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah* 5, no. 1 (2021): 426–49, <https://doi.org/10.22373/sjhc.v5i1.9303>.

and possess sound reasoning.<sup>16</sup> These commands may include demands, prohibitions, explanations of permissible actions, or may serve as a cause, condition, or obstruction of a law.<sup>17</sup>

The Acehese ulama controlled the political existence of the local government during the first year of Indonesian independence after 1945. This can be seen through the application of *Kaffah*, which refers to the comprehensive application of this law. This rule ensures that all aspects of religious life are conducted in accordance with its precepts. It addresses issues pertaining to politics, law, the economy, education, healthcare, and the sociocultural sphere.<sup>18</sup>

The implementation of Islamic Law is necessary for the predominantly Muslim population with a long-standing history of making Islam a guiding principle in their lives. The legal regulations that are in place reflect the integral role that Islam plays in community life. The unique religious context of Aceh, particularly in terms of its legal system, presents an intriguing topic for further discussion, exploration, and analysis.

Precontracts in reaction to this paradigm, certain groups, like Muhammadiyah and NU, promote national law above Islamic sharia legislation initiatives in the local areas. This is due to the fact that the general public now understands that Islamic law as ethical standard with religious teachings as basis. Muslims can truly uphold all of the ethical standards found in Islamic law as a group and as individuals without intervention from the government or pressure. However, Islamic law implementation has been criticized by modern intellectuals who argue that everyone should learn from Aceh's application of orthodox Islamic law. We shouldn't make the same mistakes we did in Aceh and let extremist organizations impose Islamic law. Many members of the community are unaware of the ways in which conservative groups have used Acehese Islam to advance new ideas and practices that are in direct opposition to both Islam and local customs. These new practices include the suppression of women, limitations on free speech, and the imposition of stringent rules of behavior.<sup>19</sup>

The establishment of a number of provincial rules known as *qanuns* or sharia *qanuns* is then used to carry out this authority to enforce Islamic law. Five *qanuns* had been established as the umbrella law prior to 2004. As part of the implementation of Aceh Province Law, Regional

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<sup>16</sup> Ahmad Fausi and Imanuddin Abil Fida, "Child Protection According To Islamic Law and Formal Law," *USRAH: Jurnal Hukum Keluarga Islam* 2, no. 2 (2022): 52–63, <https://doi.org/10.46773/usrah.v2i2.447>.

<sup>17</sup> Moh . Yasir, "Islamic Law and National Law ( Comparative Study of Islamic Criminal Law and Indonesian Criminal Law )," *Al Hurriyah: Jurnal Hukum Islam* 6, no. 2 (2022), <https://doi.org/10.30983/alhurriyah.v6i2.4952>.

<sup>18</sup> Hary Abdul Hakim, "The Islamic Law within the Indonesian Legal System," *Journal Tsaqafah* 17, no. 2 (2021): 349–62, <https://doi.org/10.21111/tsaqafah.v17i2.6213>.

<sup>19</sup> Samsidar Jamaluddin et al., "Opportunities and Challenges of the Implementation of Islamic Law in Indonesia," *International Journal of Social Science* 2, no. 5 (2023): 2177–86, <https://doi.org/10.53625/ijss.v2i5.4930>.

Regulation Number 5 of 2000 laid down logical policy guidelines that were used to prepare the various *qanuns*.

According to regional law, Aceh Islamic sharia must be *kaffah* in nature and based on three pillars in order to be written and applied there, the three main pillars are: fully adhere to the Qur'an and Sunnah; comprehend and reason on the teachings of the Qur'an and Sunnah based on scientific methods to meet the needs of the Acehnese within Indonesian Unitary framework; and be future-oriented to foresee the needs of the people that will arise due to development and progress in the 19th century. the fifteenth hijriyah or the twenty-first century<sup>20</sup>

The implementation of *fiqh jinayah* (islamic criminal law) in particular places is one example of legal diversity. More specifically, Aceh has the power to exercise its privileges under sharia, including *fiqh jinayah* thanks to the enactment of *Qanun* Number 6 of 2014 concerning *Jinayat* Law. It must be reinforced the exercise of Islamic law, particularly *fiqh jinayah*, takes time this was in response to the application of *jinayah fiqh* in various countries. Because it controls the laws and practices used in *fiqh jinayah*.

### **3.2. The Implementations of *Qanun Jinayat* in the Nanggroe Aceh Darussalam Sharia Court**

Islamic criminal law application caused debates within the community, spanning across local (Aceh), national, and global spheres. In other words, the implementation, has led to considerable controversy. Two issues have arisen in relation to the implementation of the *jinayat qanun*.<sup>21</sup>

The first issue to the principle of enforceability as adopted by the *qanun* in the context of non-Muslims and human rights. The second point pertains to the notion of punishment, encompassing various aspects such as its form, content, limit, nature, and the proportionality of acquittal among different forms of punishment such as caning, fines, and imprisonment. But According to Syahrizal Abbasyang, leader of Aceh Islamic Sharia Service, it is possible for individuals to perceive this *qanun* as a breach of human rights.<sup>22</sup> Upon close examination, it can be observed that all the provisions outlined in the *qanun* are consistent with the teachings of the

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<sup>20</sup> Nafi ' Mubarak, "Implementasi Fiqh Jinayah Dalam Qanun Nanggroe Aceh Darussalam : Suatu Tinjauan Historis, Yuridis, Filosofis Dan Sosiologis," *Al-Jinayah: Jurnal Hukum Pidana Islam* 7, no. 2 (2021): 336-361., <https://doi.org/10.15642/aj.2021.7.2.336-360>.

<sup>21</sup> Arief Budiono et al., "Policy for Implementation of Islamic Law Under Special Autonomous Province," *International Journal of Multicultural and Multireligious Understanding* 9, no. 3 (2022): 626–36, <https://doi.org/10.18415/ijmmu.v9i3.3641>.

<sup>22</sup> Manan, A. (2020). Acceptance of the implementation of Islamic sharia laws in West Aceh, Indonesia. *KnE Social Sciences*, 615-627, <https://doi.org/10.18502/kss.v4i14.7919>

al-Qur'an, sunnah, and the scholarly opinions presented in the sacred text. The imposition of prison sentences is deemed to be a violation of human rights as it infringes upon an individual's fundamental desire to live a life of liberty, free from confinement. The implementation of *Qanun Jinayat* has the potential to serve as a deterrent against the commission of activities that are deemed unlawful under its provisions. Flogging can be considered a method of penance aimed at arousing contrition in the wrongdoer.

The requirements of Islamic Sharia Courts *Qanun* provide the foundation for the application of this Islamic law. The *Qanun* serves as the foundation for the Sharia Court's jurisdiction to review, rule on, and resolve first-level disputes in the areas of *Ahwal al-Syakhshiyah*, *Mu'amalah*, and *Jinayah*. The *Jinayah* cases were decided by the *Syari'ah* Court, and the Aceh Regional Government also stipulated *Qanun* Number 6 of 2014 regarding *Jinayat* Law.<sup>23</sup>

The establishment of an Islamic Sharia Court in Aceh Darussalam is one of the requirements of Aceh Special Province Law, which is carried out by the Sharia Court as a component of the National Judiciary system as stated in Article 25 paragraph (1) of the Law. The Sharia Court was launched on March 4, 2003, which was also the first Muharram of the year 1424 H, in accordance with Presidential Decree No. 11 of 2003. The Presidential Decree's provisions included renaming the Religious Court as the Supreme Court. Sharia and the High Religious Court will merge to become the Provincial Sharia Court, which will gradually gain more power.

The following are the explanations of Article 128 paragraphs (1), (2), (3), and (4) of Aceh Governance Law, this is restrictively prevail for Muslim and the position is independent of all parties, and are a part of the national legal system in Aceh; the *Syariah* Court serves as a court for all residents of Aceh who identify as Muslims; cases including *ahwal al-syakhsiyah* (family law), *muamalah* (civil law), and *jinayah* (criminal law) based on Islamic sharia may be examined, tried, decided, and resolved by the *Syariah* Court; and the Aceh *Qanun* has additional regulations governing the areas of *ahwal al-syakhsiyah* (family law), *muamalah* (civil law), and *jinayah* (criminal law) as mentioned in paragraph (3).<sup>24</sup>

The *Syariah* Court also has the power to adjudicate and decide on *Jarimah* cases (criminal acts), such as spreading heretical sects (*Aqidah*), not carrying out Friday prayers three times in a

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<sup>23</sup> Ida Friatna, "Perlindungan Anak Dalam Perspektif Hukum Islam Dan Qanun Aceh Nomor 11 Tahun 2008," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 2 (2019): 55, <https://doi.org/10.22373/equality.v5i2.5589>.

<sup>24</sup> Jamaluddin, J., Ismail, I., & Rinaldi, Y. (2023). Aceh Government Authority Status in the Land Sector After Presidential Regulation Number 23 of 2015. *International Journal of Multicultural and Multireligious Understanding*, 10(4), 156-164. <http://dx.doi.org/10.18415/ijmmu.v10i4.4494>

row without an excuse for *Syar'i* (Worship), Muslims who provide facilities/opportunities for Muslims without legal age to be able not to fast (Worship), eat and drink during the day during the fasting month in public places (Worship), and not wear Islamic clothing (*syiar islam*).

In accordance with *Qanun* No. 7 of 2004 concerning Regulations about *Zakat* Management, the Sharia Court is also charged with adjudicating criminal cases involving the management of *zakat*.<sup>25</sup> These offences include neglecting to make a payment by the due date, fabricating documents or official correspondence, and deceiving management on *zakat* management. Although it has been established that the Sharia Court has authority over legal documents in the area of *Mu'amalah* (which are often private), no *qanun* has yet been prepared. Since religious cases, such as those involving endowments, grants, wills, and alms, have long been subject to the jurisdiction of religious courts, no authority in this area may be exercised.

The Sharia Court also has the power to try and decide cases of *Jarimah* (criminal acts), such as spreading heresy (*Aqidah*), not performing Friday prayers three times in a row without *Shar'i* age (Worship), Muslims who provide facilities/opportunities for Muslims without *Shar'i* age to be able not to fast (Worship), eat and drink during the day during the fasting month in public places (Worship), and do not wear Islamic clothing (*islamic syiar*).<sup>26</sup> On the basis of *Qanun* No. 7 of 2004 concerning Regulations on *Zakat* Management, the Sharia Court is also given authority to rule in criminal matters involving the management of *zakat*. These offenses include neglecting to make a payment by the due date, fabricating documents or falsifying official correspondence, and misleading management regarding the administration of *zakat*.<sup>27</sup> However, the *qanun* has not yet been prepared. The legal documentation in the area of *Mu'amalah* (often private) has also been established as the Sharia Court's authority. This is a special procedural law that is governed by Article 73 of Law Number 7 of 1989, in accordance with the dictum that "*lex specialis derogat legi generalis*", or "special rules may preempt general rules", is applicable; absolute power when it comes to reviewing specific types of cases, the judiciary has absolute jurisdiction or competence, and other judicial institutions are completely barred from doing so. This supreme authority will

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<sup>25</sup> Faisal Faisal et al., "Strengthening Zakat Rules in Indonesia: A Legal Study of the Law on Government of Aceh," *Samarah* 7, no. 1 (2023): 126–45, <https://doi.org/10.22373/sjkh.v7i1.13993>.

<sup>26</sup> Khamami Zada, "Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 1–18, <https://doi.org/10.18326/ijtihad.v23i1.1-18>.

<sup>27</sup> Yordan Gunawan and Mohammad Hazyar Arumbinang, "The Climate Change Litigation Based Human Rights Approach in Corporations: Prospects and Challenges," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 288–307, <https://doi.org/10.53955/jhcls.v3i2.116>.



respond to inquiries such whether a specific case of an economic dispute governed by Sharia law falls under the purview of local courts or religious courts.<sup>28</sup>

The *qanun* contains the following information regarding the Sharia Court's authority over some of the General Court's powers: the Implementation of Islamic Shari'ah in the Field of 'Aqidah, Worship, and Islamic *Shiar Qanun* Number 11 of 2002. In this *Qanun* there are five kinds of actions that are considered as *jarimah* (criminal acts), namely the spread of ideas or cults (the field of 'aqidah); No Friday prayers three times in a row without "uzur syar'i" (field of worship); Provide Facilities/opportunities to Muslims without age to abstain from fasting (areas of worship); Eating and or drinking in public places during the day of Ramadan (field of worship); Not dressed in Islamic clothing (Islamic *syiar* field): *Qanun* No. 12 of 2003, which addresses the ban on *Khamar* and similar practices; *Qanun* 13 of 2003, which deals with the ban on *maisir* (gambling); *Qanun* Number 14 of 2003, which deals with the *Khalwat* (Perverted) Prohibition; and *Qanun* Number 7 of 2004 pertaining to *Zakat* Management, there are also a number of crimes that are classified as *jarimah* (criminal acts), and the Sharia Court has the power to judge him.<sup>29</sup>

The five forms of *qanun* described above encompass the entirety of Islamic criminal law, which can be divided into two categories as follows:<sup>30</sup> *hudud* (criminal law with a distinct form and scope): The elements of *hudud*, are theft, robbery, *bughah* (coup), and apostasy.<sup>31</sup> The judge is not free to look for other laws because the punishment is unambiguous in its size and structure. In this case, the court only has one chance to decide whether the crime was actually committed by making a "decision". The judge only needs to use the current decision if this action is taken explicitly. According to the mentioned *hudud* regulations, the Aceh government has only established one *hudud* case, which is related to "consuming *khamar*" (alcohol) and similar offenses and carries a 40-caning penalty. This is based on God's commands that must be fulfilled, as the chapter in the *Shari'ah* explicitly states that the decision of this punishment. The Aceh government merely needs to accept, decide, and put it into practice; and *ta'zir* (punishment left up to the judge's discretion): *ta'zir* punishment refers to a form of punishment that is imposed by a judge or

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<sup>28</sup> Ali Geno Berutu, "Mahkamah Syar'iyah Dan Wilayahul Hisbah Sebagai Garda Terdepan Dalam Penegakan Qanun Jinayat Di Aceh," *Paper Knowledge . Toward a Media History of Documents*, no. 44 (2019): 12–26, <https://doi.org/10.24260/al-maslahah.v15i1.1367>.

<sup>29</sup> Nur Anshari and Aminah Aminah, "Kewenangan Peradilan Adat Di Aceh Menurut Qanun No. 10 Tahun 2008 Tentang Lembaga Adat," *MAQASIDI: Jurnal Syariah Dan Hukum*, 2022, 93–103, <https://doi.org/10.47498/maqasidi.vi.1356>.

<sup>30</sup> Muhibbin Syah, "Hukum Pidana Di Provinsi Aceh Analisis Terhadap Dampak Penerapan Qanun Syari'at," *Jurnal Justisia* 4, no. 2 (2019): 1–61, <https://doi.org/10.22373/justisia.v4i2.5964>.

<sup>31</sup> Ali Sodikin, "Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 357–78, <https://doi.org/10.15408/ajis.v21i2.22675>.

government based on their own judgment and considerations. This type of punishment is applied in cases where the violation committed is not explicitly mentioned in the al-Qur'an and Sunnah, or when the prescribed punishment does not meet the necessary conditions for implementation.<sup>32</sup>

### **3.3. The Challenges of Implementing Islamic Criminal Law in Aceh**

The Acehese aspiration to impose *Qanun Jinayat* is not contradictory to Pancasila value as Indonesian ideology.<sup>33</sup> But that doesn't mean there are no problem in implementing the *Qanun Jinayat* in Aceh. Challenges to the implementation of Sharia law can be categorized into two main groups: internal and external reasons. Internal factors involve financial constraints. The majority of respondents recognized a limitation in financial resources, particularly in the case of funding that are not insignificant in amount. Nevertheless, several cities or regencies did not encounter any obstacles in securing funds.

Furthermore, there is a deficiency in the provision of infrastructure, encompassing not just office facilities but also waiting rooms for litigants and other parties involved in legal proceedings. Occasionally, the sharia authorities avail themselves of resources from other entities, such as the attorney general and the police. With the exception of certain places, such as Aceh, most cities and regencies do not have dedicated facilities inside Sharia Offices to handle *jināyat* matters.<sup>34</sup> The other obstacles to the implementation of Sharia law is the incorrect approach taken by certain preachers. These preachers focus solely on the aspect of penalties and the establishment of limits, neglecting other important aspects such as civil issues, personal status issues, social matters, and political and judicial systems.<sup>35</sup>

On the External reasons Sharia in Aceh receives widespread criticism because to its perceived sensitivity and potential infringement on human rights. The local legislation in Aceh can be seen as discriminatory, as they overlook some human rights for certain Acehese individuals.

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<sup>32</sup> Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law," *Samarah* 7, no. 1 (2023): 399–417, <https://doi.org/10.22373/sjhc.v7i1.15101>.

<sup>33</sup> Hudzaifah Achmad Qotadah, Ali Abdul Wakhid, and Is Susanto, "Problems With the Implementation of Qanun Aceh Number 6 of 2014 Concerning Jinayat Law," *Analisis: Jurnal Studi Keislaman* 22, no. 1 (2022): 111–32, <https://doi.org/10.24042/ajsk.v22i1.6556>.

<sup>34</sup> Muhammad Amin Suma, Ridwan Nuridin, and Irfan Khairul Umam, "The Implementation of Sharia in Aceh: Between The Ideal and Factual Achievements," *Ahkam: Jurnal Ilmu Syariah* 20, no. 1 (2020): 19–48, <https://doi.org/10.15408/ajis.v20i1.14704>.

<sup>35</sup> Sarwan S Mafazi, "Enforcement of Aceh Sharia Customary Law for Aceh's Non-Muslim Communities," *Jurnal Hukum Lex Generalis* 3, no. 3 (2022): 195–212, <https://doi.org/10.56370/jhlg.v3i6.274>.

For example, there is a *Qanun* that prevents unmarried couples from driving vehicles together, a practice known as *khalwat*.<sup>36</sup>

As a result of the enactment of Aceh Special Province Law, the execution The *Qanun Jinayat* is a set of laws that impose harsh penalties. Nonexistent penalty in our country Legal system. It is not in compliance with the legislation of Indonesia.<sup>37</sup> Despite possessing the inherent authority to oversee their domestic affairs, in fact The *Qanun* should be implemented. Aligned with national legislation. The *Qanun Jinayat* imposes harsh penalties and Regulations that contravene certain articles of the The Universal Declaration of Human Rights Specifically safeguarding the entitlements to privacy, freedom of religion, thought, conscience, and belief, as well as the freedom of expression, are applicable in this context.<sup>38</sup> The covenant explicitly forbids any form of discrimination on the basis of sex. Religion and sexual orientation are two distinct statuses. The orientation, as stated in article 2, is likewise prohibited. Penalties such as flogging that have the potential to Constitute a form of torture or cruel and degrading treatment Article 7.<sup>39</sup>

#### **4. Conclusion**

The resolution of criminal offences in Aceh is governed by Jinayat Law and is subject to the terms of *Qanun* Number 6 of 2014. The Sharia Court has the power to carry out the two primary responsibilities of the religious court (Aceh Provincial Sharia Court). The absolute power when it comes to reviewing specific types of cases, the judiciary has absolute jurisdiction or competence, and other judicial institutions are completely barred from doing so. The Acehnese people's aspiration to impose *Qanun Jinayat* is not contradictory to Pancasila as legal philosophy of Indonesian. The legal basis for the implementation of Islamic law is based on Aceh Special Province Law but this implementation still faces two challenges namely internal and external. Internal factors involve financial constraints. Another challenge namely there is a deficiency in the provision of infrastructure.

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<sup>36</sup> Hasni, Khairul. "Qanun Jinayat and Sharia Police: A New Violence in the Context of Gender in Aceh Indonesia." *Musāwa Journal of Gender Studies and Islam*, vol. 19, no. 2, 2020, pp. 187-203, <https://doi.org/10.14421/musawa.2020.192-187-203>.

<sup>37</sup> Helmi Helmi and Nyak Fadhlullah, "Positivation of Islamic Sharia as Local Government Regulations for Minority Citizens as Liyan in Aceh," *Journal of Governance and Social Policy* 1, no. 1 (2020): 17–23, <https://doi.org/10.24815/gaspol.v1i1.17326>.

<sup>38</sup> Herdi Sahrasad, Al Chaidar, and T Alfiady, "An Interpretation on Sharia , Islamic Nomocracy and the Muslim World: The Case of Aceh Special Region," *ICoSPOLHUM*, no. ICoSPOLHUM (2023): 1–9, <https://doi.org/10.29103/icospolhum.v4i.371>.

<sup>39</sup> Ria Delta and Erina Pane, "The Implementation of Islamic Qanun Law in the Modern Aceh Society," *Proceedings of the 1st Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019)* 492, no. RIICMuSSS 2019 (2020): 195–99, <https://doi.org/10.2991/assehr.k.201113.037>.

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