

## The Differentiation of Gender Bias Paradigm Toward The Qanun Aceh Number 6 of 2014 on *Jinayat* Law

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### Abstract

Qanun Aceh Number 6 of 2014 on *Jinayat* Law, which was amended through Aceh Qanun Number 12 of 2025 concerning Amendments to Aceh Qanun Number 6 of 2014 on *Jinayat* Law, has been implemented for more than a decade and continues to attract national and international attention. Several provisions related to sexual violence have been criticized by gender observer groups through the List of Inventory Problems (DIM), particularly the requirement for female rape victims to provide evidence beyond their own testimony. Critics argue that this provision burdens victims and potentially hinders access to justice. This article also highlights that rape provisions were absent from the initial draft of the Qanun, indicating that the regulation emerged through a complex and contested legislative process. This study employs qualitative field research using primary and secondary data collected through interviews and documentation. Data were analyzed through reduction, display, and verification techniques, supported by sharia, normative-juridical, and empirical-juridical approaches. The findings reveal contrasting perspectives between the Qanun drafters and critics. The drafters view the Qanun as reflecting Islamic legal principles emphasizing repentance over imprisonment, while critics point to inconsistencies with the Indonesian Criminal Code (KUHP), enforcement challenges, and elements of gender bias. This study's novelty lies in its analysis of the legislative trajectory of rape provisions within the *Jinayat* Qanun and its examination of how tensions between Islamic legal values, human rights discourse, and gender

justice continue to shape the reform and implementation of Jinayat law in contemporary Aceh.

**Keywords:** Discrimination, Gender, The Qanun, Sharia Regional Regulations, Women

## Introduction

Understanding gender issues is a complex endeavor that requires extensive research to reach an accurate comprehension. While gender topics are predominantly explored within the social sciences, in contemporary contexts, these issues have also permeated the fields of religious studies and culture. Gender was initially equated with sex and often limited to biological identification. Linguistically, the term *gender* in English refers to a sex category.<sup>1</sup> It has also been interpreted as the visible differences between men and women in terms of values and behaviors.<sup>2</sup> Conceptually, gender is understood as a differentiation between men and women shaped by social and cultural constructs.<sup>3</sup> It is a cultural concept encompassing the different roles, traits, behaviors, mental attributes, and emotional characteristics of men and women as developed in society.<sup>4</sup> While sex is biologically determined, gender is shaped by social understanding and construction.<sup>5</sup>

Qibtiyah illustrated the Indonesian Muslim women's movement's spirit in advocating for justice and gender equality.<sup>6</sup> Hortsman noted that women's value is often measured by their roles as wives and mothers.<sup>7</sup> Nurwanto highlighted Muhammadiyah's textbooks on Islamic teachings that, although promoting gender justice, still exhibit elements of bias.<sup>8</sup> The concepts of gender and age also influence the continuous reconstruction of family life. Marhumah proposed a feminist approach to interpreting hadiths perceived as misogynistic, often taught

<sup>1</sup> John M. Echols and Hasan Sadily, "Kamus Inggris Indonesia," in *Kamus Inggris Indonesia* (Jakarta: Gramedia, 1983).

<sup>2</sup> *Wester's New World Dictionary*, ed. Victoria Neufeldt (New York: Webster's New World Cleaveland, 1984), s.v. "Wester's New World Dictionary."

<sup>3</sup> Elaine Showalter, ed., *Speaking of Gender* (New York: Routledge, 1989).

<sup>4</sup> Siti Musdah Mulia, "Peminggiran Perempuan Dalam Perda Syari'at," *Peminggiran Perempuan Dalam Perda Syari'at*, 2006.

<sup>5</sup> Sugihastuti Sugihastuti and Itsna Hadi Saptiawan, *Gender & Inferioritas Perempuan* (Yogyakarta: Pustaka Pelajar, 2010).

<sup>6</sup> Alimatul Qibtiyah, "Mapping of Muslims' Understandings on Gender Issues in Islam at Six Universities in Yogyakarta, Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (May 2019): 305–40, <https://doi.org/10.14421/ajis.2018.562.305-340>.

<sup>7</sup> Alexander Horstman, "Gender, Tabligh and the 'Docile Agent': The Politics of Faith and Embodiment among the Tablighi Jama'at," *Studia Islamika* 16, no. 1 (2009).

<sup>8</sup> Nurwanto Nurwanto, "The Portrait of Gender Justice and Injustice in the Islamic Teaching Text-Book and Muhammadiyah Teachers' Responses," *Indonesian Journal of Islam and Muslim Societies* 3, no. 1 (June 2013): 149, <https://doi.org/10.18326/ijims.v3i1.149-173>.

in Islamic boarding schools (pesantren).<sup>9</sup> Gazali and Malik observed that while many pesantren are viewed as conservative, some promote tolerance and inclusivity.<sup>10</sup> Nurlaelawati emphasized that female judges in religious courts possess equal rights and authority as their male counterparts.<sup>11</sup>

Gender, thus, continues to evolve in interpreting masculinity and femininity and in reshaping interpersonal relationships within communities. Suhandjati highlighted Saleh Darat's progressive views on women's roles in education and the economy.<sup>12</sup> Kholis observed that women in Islamic Higher Education Institutions tend to be less productive than their male peers.<sup>13</sup> Postmodern and social theories, including ecofeminism, offer deeper insights into gender and human-environment relations.<sup>14</sup> From a religious standpoint, Islam affirms inherent differences between men and women (QS. Ali Imran [3]:36), but the legal formalization of Sharia often yields different practical implications.

Following the enactment of Law No. 32/2004 and its amendment, Law No. 12/2008 on Regional Autonomy, many Indonesian provinces began issuing local regulations, including those based on Sharia. However, these Sharia-based regulations have often been criticized for promoting gender bias.<sup>15</sup> Assyaukanie and Karim et al. viewed the formalization of Islamic law as part of Islam's dynamic evolution in Indonesia.<sup>16,17</sup> Nonetheless, Sharia implementation has led to

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<sup>9</sup> Marhumah Marhumah, "The Roots of Gender Bias: Misogynist Hadiths in Pesantrens," *Indonesian Journal of Islam and Muslim Societies* 5, no. 2 (December 2015): 283, <https://doi.org/10.18326/ijims.v5i2.283-304>.

<sup>10</sup> Hatim Gazali and Abd. Malik, "Pesantren and the Freedom of Thinking: Study of Ma'had Aly Pesantren Sukorejo Situbondo, East Java, Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 47, no. 2 (December 2009): 295–316, <https://doi.org/10.14421/ajis.2009.472.295-316>.

<sup>11</sup> Euis Nurlaelawati, "FOR THE SAKE OF PROTECTING RELIGION Apostasy and Its Judicial Impact on Muslim's Marital Life in Indonesia," *JOURNAL OF INDONESIAN ISLAM* 10, no. 1 (2016): 89–112.

<sup>12</sup> Sri Suhandjati and Hamdan Hadikusuma, "REINTERPRETATION OF WOMEN'S DOMESTIC ROLES Saleh Darat's Thought on Strengthening Women's Roles in Indonesia," *JOURNAL OF INDONESIAN ISLAM* 12, no. 2 (Desember 2018).

<sup>13</sup> Nur Kholis and IAIN Sunan Ampel, *GENDERED CAREER PRODUCTIVITY AND SUCCESS IN ACADEMIA IN INDONESIA'S ISLAMIC HIGHER EDUCATION INSTITUTIONS*, 06, no. 02 (2012): 26.

<sup>14</sup> ratna Megawangi, *Mebiarkan Berbeda: Sudut Pandang Baru Tentang Relasi Gender* (Bandung: Mizan, 1999).

<sup>15</sup> Lies Ariany and Risni Ristiawati, "The Urgency Of Creating Regional Regulations For Supporting The Implementation Of Regional Autonomy," *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (May 2019): 75, <https://doi.org/10.18592/sjhp.v19i1.2652>.

<sup>16</sup> Luthfi Assyaukanie, "Recent Publications on Indonesian Islam," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 167, no. 1 (2011): 140–53, <https://doi.org/10.1163/22134379-90003605>.

<sup>17</sup> Syahrir Karim, Samsu Adabi Mamat, and Bayu Taufiq Possumah, "Islamism and Democratization in Indonesia Post-Reformation Era: Socio-Political Analysis," *International Journal of Islamic Thought* 6, no. 1 (December 2014): 79–86, <https://doi.org/10.24035/ijit.06.2014.008>.

controversy, especially in media portrayals.<sup>18</sup> Wanto noted that West Sumatra was among the provinces most active in issuing Sharia-based regulations.<sup>19</sup> Mudzakir criticized these policies as politicizing religion, potentially compromising religious sincerity.<sup>20,21</sup> Muhtada and Jati highlighted the political motives behind such regulations.<sup>22,23</sup> In Pamekasan, identity politics and legal agendas intersect in Sharia regulation formation.<sup>24</sup> These regulations have legal, political, and social consequences, often adversely affecting non-Muslims and women.<sup>25,26</sup> For example, in Tangerang, after the enactment of Regional Regulation No. 8 of 2005, while prostitution reportedly declined, restrictions on women's mobility after 8 p.m. emerged.<sup>27</sup> Candraningrum argued that such regulations discriminate against women.<sup>28</sup>

Based on the background above, the main question in this article is how the qanun observers demand a revision, how they see the qanun's weaknesses, how the qanun company states its defense and how to find a meeting point for these different views for the qanun in the future. This is field research using statutory,

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<sup>18</sup> Alia Azmi, "KONSTRUKSI REALITAS PEMBERLAKUAN PERDA SYARIAH OLEH KORAN THE JAKARTA POST," *Humanus* 11, no. 1 (December 2012): 18, <https://doi.org/10.24036/jh.v11i1.620>.

<sup>19</sup> Adri Wanto, "The Paradox Between Political Islam and Islamic Political Parties: The Case of West Sumatera Province," *Al-Jami'ab: Journal of Islamic Studies* 50, no. 2 (December 2012): 329, <https://doi.org/10.14421/ajis.2012.502.329-368>.

<sup>20</sup> Mudzakir Mudzakir, "PERDA Shari'ah antara Legalitas dan Prospek," *ISLAMICA: Jurnal Studi Keislaman* 5, no. 2 (January 2014): 201, <https://doi.org/10.15642/islamica.2011.5.2.201-219>.

<sup>21</sup> Ahmad Abrori, "Refleksi Teori Kritis Jurgen Habermas atas Konsensus Simbolik Perda Syariah," *AHKAM: Jurnal Ilmu Syariah* 16, no. 1 (January 2016), <https://doi.org/10.15408/ajis.v16i1.2897>.

<sup>22</sup> Dani Muhtada, "Politics, Local Governments, and Sharia By-Laws in Indonesia Revisiting A Common Assumption," *Mazhab Jurnal Pemikiran Hukum Islam* 17, no. 2 (Desember 2018).

<sup>23</sup> Wasisto Raharjo Jati, "Permasalahan Implementasi Perda Syariah Dalam Otonomi Daerah," *Al-Manabij Jurnal Kajian Hukum Islam* VII, no. 2 (July 2013).

<sup>24</sup> Maimun Maimun and Ainul Haq, "Melacak Motivasi Dan Efektifitas Peraturan Daerah Bernuansa Syariah Di Pamekasan," *Al-Ibkam* 13, no. 1 (June 2018).

<sup>25</sup> Ahmad Fuad Fanani, "The Implementation of Sharia Bylaws and Its Negative Social Outcome for Indonesian Women," *Indonesian Journal of Islam and Muslim Societies* 7, no. 2 (December 2017): 153, <https://doi.org/10.18326/ijims.v7i2.153-174>.

<sup>26</sup> Farkhani Farkhani et al., "Legal Protection of Minority Rights: Study on the Implementation of Qanun Number 6 of 2014 Concerning the Jinayat Law in Langsa City, Aceh Special Region Province," *Al-Manabij: Jurnal Kajian Hukum Islam* 17, no. 2 (October 2023): 215–32, <https://doi.org/10.24090/mnh.v17i2.7897>.

<sup>27</sup> Sukron Kamil, "The Influence of Shari'ah Inspired Regulations on The Life of The Community in Tangerang," *Buletin Al-Turas* 20, no. 1 (January 2020): 159–76, <https://doi.org/10.15408/bat.v20i1.3754>.

<sup>28</sup> Dewi Candraningrum, "UNQUESTIONED GENDER LENS IN CONTEMPORARY INDONESIAN SHARI'AH- ORDINANCES (PERDA SYARI'AH)," *Al-Jami'ab* 45, no. 2 (2007): 32.

and Islamic Sharia approaches. Data were collected through in-depth interviews with Acehnese community leaders, including the Qanun makers/enforcers, Ulama Consultative Council (MPU), DPRA (Regional House of People's Representatives), Hisbah Police, Mahkamah Sharia (Sharia Court) judges, academics, and observers including *Balai Syura*, YARA (Aceh People Foundation), LBH (Indonesian Legal Aid Institute) and another gender observer. The data obtained from the interviews were integrated with the documents forming the Qanun, decisions of the Sharia Court, Circulars of the Supreme Court, case documents in the Wilayatul Hisbah, and others. The data were analyzed using the analytical techniques proposed by Miles and Huberman, namely reduction, display and verification.<sup>29</sup> The analysis was strengthened by the Islamic criminal law approach (*fiqh al-jinayah*)

## Discussion

### Aceh Provincial Qanuns and Related Issues

The Acehnese are one of the ethnic groups belonging to the broader Malay race. The Acehnese community is predominantly Muslim, and simply stating that someone is Acehnese already implies their Islamic identity, even without explicitly mentioning religion.<sup>30</sup> In their social life, *adat* (customary law) plays a central role in regulating, maintaining, supervising, harmonizing, and enhancing the welfare of the people. *Adat* not only serves as a guideline for daily life but also reflects the cultural personality of the ethnic group. In Aceh, Islamic Sharia is integrated with *adat*, and in many cases, the characteristics of *adat* are more apparent than those of Sharia itself.<sup>31</sup> Acehnese *adat* comprises several forms with distinct functions. *Adatullah* refers to customary law that is almost entirely based on divine law. *Adat Tunnah* consists of cultural practices that reflect the principles of the Qanun and *reusam* traditional norms that govern community life. *Adat Mubakamah* is derived from customary law that emphasizes deliberation and consensus. Meanwhile, *Adat Jahiliyah* refers to customs that sometimes do not align with Islamic teachings but remain practiced in society.<sup>32</sup> For the Acehnese, *adat* functions as a legal and social norm closely tied to material governance (*duniawiyah*), historically overseen by the executive or the king.

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<sup>29</sup> Mathew B Miles and A Michael Huberman, *Analisis Data Kualitatif, Alib Bahasa Tjetjep Robendi Robidi, Judul Asli, Qualitative Data Analysis* (Jakarta: UI Press, 1992).

<sup>30</sup> Endri Ismail, "Analisis Yuridis terhadap Legalitas Qanun Aceh No. 6/2014 tentang Hukum Jinayat," *Kanun Jurnal Ilmu Hukum* 20, no. 1 (April 2018): 123–48, <https://doi.org/10.24815/kanun.v20i1.9625>.

<sup>31</sup> Al Yasa` Abubakar, *Syariat Islam Di Provinsi Aceh Darussalam; Paradigma Kebijakan Dan Kegiatan* (Banda Aceh: Dinas Syariat Provinsi Nagroe Aceh Darussalam, 2006).

<sup>32</sup> Abad Badruzaman and Thoriquil Aziz, "THE LOCALITY OF TAFSÎR AL-AZHÂR HAMKA: An Analytical Study of Surah Âli 'Imrân Interpretation," *ULUL ALBAB Jurnal Studi Islam* 21, no. 1 (June 2020): 158, <https://doi.org/10.18860/ua.v21i1.8703>.

Following the enactment of the Law on Special Autonomy for the Province of Aceh, the Aceh Government began efforts to formalize Islamic Sharia into regional regulations known as *Qanun*. This initiative generated varied responses among the Acehnese. The implementation of Islamic Sharia in Aceh has proven to be more complex than initially anticipated, sparking ongoing debates and controversies within society. These discussions, particularly among young Acehnese intellectuals, signify a positive development, as they reflect critical engagement with the role of Islam in both ideological and practical dimensions. However, since Aceh has been granted special autonomy by law, the debate over the formalization of Sharia through the *Qanun* has become increasingly prominent.<sup>33</sup> Differences in perspective regarding the implementation of Islamic Sharia in Aceh can generally be categorized into two camps. The moderate group contends that Islamic values do not necessarily require formal codification through law.

In contrast, the conservative group strongly supports the formalization of Sharia into legal norms. This dichotomy raises a fundamental question: should the application of Islamic Sharia be associated with state power? Dijk and Kaptein also note this division of thought in their analysis.<sup>34</sup> The enactment of Aceh Special Regional Regulation No. 5 of 2000 concerning the Implementation of Islamic Sharia addressed some of these concerns by providing a legal foundation for subsequent *Qanun* that govern various aspects of religious life. In the process of drafting *Qanun*, gender-related aspects must be taken into serious consideration. The integration of gender equality principles is necessary and should be based on four key indicators: access, participation, control, and benefits.<sup>35</sup> These indicators help ensure fairness and justice for both men and women.

In general, whenever the Province of Aceh enacts a *Qanun* or other regional regulations, various elements of society express concern over certain articles perceived as biased and discriminatory, particularly toward women. One prominent example involves the regulation of dress codes stipulated in Article 15, points (3), (4), and (5) of Regional Regulation NAD Number 5 of 2000 on the Implementation of Islamic Sharia. The formalization of these dress codes and the enforcement thereof have drawn criticism from many parties, despite the strong association between Acehnese identity and Islam. These articles are considered inappropriate when applied to non-Muslim communities, especially due to varying interpretations and often excessive enforcement by *Wilayatul Hisbah* (Sharia

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<sup>33</sup> Azyumardi Azra, *Aceh Dan Syari'at Islam* (Jakarta: UIN Syarif Hidayatullah, 2014).

<sup>34</sup> Chris Chaplin, "Islam, Politics and Change. The Indonesian Experience after the Fall of Suharto, Edited by Kees van Dijk and Nico J.G. Kaptein," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 172, nos. 2–3 (January 2016): 387–90, <https://doi.org/10.1163/22134379-17202010>.

<sup>35</sup> Ida Suselo Wulan, ed., *Parameter Kesetaraan Gender Dalam Pembentukan Peraturan Perundang-Undangan* (Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2012).

police) officers.<sup>36</sup> Criticism intensified following the enactment of Qanun Aceh Number 6 of 2014 concerning Jinayat Law, hereinafter referred to as the *Qanun Jinayat*. While earlier debates focused primarily on dress codes, public attention has gradually shifted toward broader issues of discrimination.<sup>37</sup> Accusations of gender bias in the *Qanun Jinayat* have continued since its implementation. Several articles in the *Qanun* have become focal points of criticism by gender observers and rights activists, leading the Aceh House of Representatives (DPR A) to consider revisions based on public feedback collected through the Problem Inventory List (*Daftar Inventarisasi Masalah* or DIM). Article 3, point (2) of the *Qanun Jinayat* outlines ten types of criminal offenses (*jarimah*): *kehamar* (alcohol consumption), *maisir* (gambling), *kehalwat* (seclusion), *ikhtilath* (intermixing), adultery, sexual harassment, rape, *qadzaf* (false accusation of adultery), *limath* (sodomy), and *musabaqah* (lesbianism). Of these, seven involve only perpetrators, while the remaining three sexual harassment, rape, and *qadzaf* involve both perpetrators and victims. Observers have shifted their critique from the punishments imposed for the seven perpetrator-only offenses to the handling of offenses involving victims, particularly concerning how the law addresses sexual harassment and rape.

These two crimes, sexual harassment and rape, are regulated in Articles 46 to 56 of the *Qanun Jinayat*. The punishments range from a minimum of 45 lashes for harassment to a maximum of 200 lashes for rape committed against a child or *mabram*. The law allows judges to substitute these punishments with either a prison sentence (with one lash equating to one month in prison) or a fine of 450 grams of pure gold per lash. Observers argue that both the content and the implementation of these articles reflect gender bias, particularly against women. Moreover, the same articles outline a mechanism for legal accusation through sworn testimony, which, if proven false, could result in the accuser being charged with *qadzaf* a false accusation of adultery punishable by 80 lashes.<sup>38,39</sup> This legal structure places victims, particularly women, at risk of criminal prosecution if they are unable to provide sufficient evidence in rape cases. Gender observers argue that such provisions not only discriminate against women but also discourage victims from reporting sexual violence. Many observers contend that the *Qanun*

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<sup>36</sup> Kamil, "The Influence of Shari'ah Inspired Regulations on The Life of The Community in Tangerang."

<sup>37</sup> Muzakkir, "Waliyul Hisbah/PPNS from Satpol PP/WH Banda Aceh," 2022, Banda Aceh.

<sup>38</sup> Putri Rahmah Nur Hakim et al., "Contesting Sharia and Human Rights in the Digital Sphere: Media Representations of the Caning Controversy under the Qanun Jinayat in Aceh," *Journal of Islamic Law* 6, no. 2 (July 2025): 206–35, <https://doi.org/10.24260/jil.v6i2.3600>.

<sup>39</sup> Ali Imran Sinaga, Mohd Nizam Sahad, and Mohammad Amir Wan Harun, "SUMBANGAN HUKUMAN TAKZIR 'UMAR BIN AL-KHATTAB DALAM QANUN ACEH DI INDONESIA: THE CONTRIBUTION OF TAKZIR PUNISHMENT OF 'UMAR BIN AL-KHATTAB IN THE QANUN ACEH IN INDONESIA," *Malaysian Journal of Syariah and Law* 12, no. 2 (August 2024): 471–89, <https://doi.org/10.33102/mjssl.vol12no2.545>.

fails to adequately protect women's rights, as its legal mechanisms and enforcement are perceived to disproportionately favor men.

### **A Critical Analysis of the Qanun Jinayat in Aceh**

Observers of the Qanun came from various elements of society, both from Acehese and other parties outside Aceh who were interested in developing and implementing the Qanun (Islamic Sharia) in this province. There are elements of Acehese who are members of non-governmental organizations such as *Balai Syura*, *Kontras*, Aceh Indigenous Peoples, Legal Aid Institutions, Acehese Foundations, etc. These institutions accommodate the aspirations of some Acehese related to the Qanun, its implementation, and its consequences for social life. *Balai Syura*, a Civil Society Organization (CSO) comprising Acehese women's organizations, presents several perspectives on the possibility of discrimination against women in implementing the *Qanun Jinayat*, especially articles on sexual harassment and rape. In this Qanun, sexual violence is resolved similarly to a case that is not sexual violence (sexual relations with the same preference). The substance of the Qanun protects men, especially in the case of rape, governing the oath, including the oath of *li'an* in Article 55 as a means of proof, even though *Li'an* is only regulated by Sharia in the context of husband and wife (QS. An-Nur (24): 6-9).<sup>40</sup> *Balai Syura* conveyed that there is no oath mechanism for rape cases in Islam. Oath mechanisms are only applied to adultery cases. Applying this article can cause impunity so that the perpetrators can be free and provide unfairness for female victims.<sup>41,42</sup> In this case, the victims can be flogged 80 times because they are positioned by Article 54 as *qazif* (adultery accuser) when it has mentioned the name of the perpetrator but cannot prove the contents of the oath. In addition, the victim must also provide initial evidence that increasingly aggravated the situation as a woman victim of rape. In contrast, at the national level, there was already Law Number 12 of 2022 on the Criminal Acts of Sexual Violence. In their opinion, *jarimah* rape and sexual harassment in Aceh should be completed by referring to this law because it is more comprehensive.

Observers demand that victims be noticed as victims (trusting what victims are conveying). At the same time, according to Abubakar,<sup>43</sup> the conditions have the potential to be abused and easily accuse people of rape perpetrators leading to mistakes in punishing people who should not be punished. Conversely, rape

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<sup>40</sup> Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu*, VII (Beirut: Dar al-Fikr, 1997).

<sup>41</sup> Halili Halili, "Politik Penegakan Hak Asasi Manusia Pada Masa Transisi Di Indonesia," *Jurnal Civics* 13, no. 2 (Desember 2016).

<sup>42</sup> Wahyudi Akmaliah, "Indonesian Muslim Killings: Revisiting the Forgotten Talang Sari Tragedy (1989) and Its Impact in Post Authoritarian Regime," *Indonesian Journal of Islam and Muslim Societies* 6, no. 1 (June 2016): 1, <https://doi.org/10.18326/ijims.v5i2.1-34>.

<sup>43</sup> Al Yasa` Abubakar, "Perumus/Pembentuk Qanun," Agustus 2022.

devastated the life of women.<sup>44</sup> *Balai Syura* explained that no woman would be willing to make false testimony that someone had raped her. It is due to the more severe social impact that they would receive as a victim of rape, not only for themselves but also for their families. Even in certain cases, according to Febriandi & Ansor,<sup>45</sup> a woman who claimed to be raped also impacted the community so that victims/families of victims could be subjected to sanctions and expelled, pay fines, and others. According to *Balai Syura*, this provision makes it easier for the perpetrators to be free and burden the victim because the victim must also submit evidence, while the investigator should provide it.

Akbar,<sup>46</sup> as an academic and an observer of Gender in Aceh, has almost the same perspective as *Balai Syura*. He stated that the Qanun Jinayat was generally noticed as a failure because people whom the Qanun ensnared tended to be people with no power or were potentially criminalized and vulnerable in patriarchal societies. The concept is indeed bilateral, not patriarchal, but in reality, women, children, etc., are still placed in second position. For instance, almost no men are punished in the context of adultery because women often confess. One of the post-*Qanun Jinayat* concerns is the discriminatory potential in its implementation, especially in the case of rape. When the rape victim claimed to be raped, it was not necessarily able to immediately punish the perpetrator due to the constraints of the mechanism of proof that burden women. The concern with the *Qanun Jinayat* is that it will lead Aceh to decline based on the phenomena that have occurred. There was a spirit of renewal when the Islamic Sharia was formalized because the starting point of noticing Islamic Sharia in Aceh was the aspect of *Jinayat*, more precisely as *Hudud*, according to Ahmad.<sup>47</sup> The *Qanun Jinayat* Aceh has already prompted slightly or more into the existing provisions. Since 2019 the Legal Aid Banda Aceh has begun to criticize the application of the law in the context of sexual harassment and rape in the *Qanun Jinayat* because, in the two *jarimah*, there are indications of gender bias in its application. An indication of gender bias lies not only in the victims, mostly women and children, but also in the disproportionate punishments for the perpetrators of the committed crimes against the victims. The punishment is alternative, namely between floggings, fines, or imprisonment. The judge can determine one of the

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<sup>44</sup> Søren Ventegodt et al., "Clinical Holistic Medicine: Holistic Treatment of Rape and Incest Trauma," *The Scientific World JOURNAL* 5 (2005): 288–97, <https://doi.org/10.1100/tsw.2005.38>.

<sup>45</sup> Yogi Febriandi, Muhammad Ansor, and Nursiti Nursiti, "Seeking Justice Through Qanun Jinayat: The Narratives of Female Victims of Sexual Violence in Aceh, Indonesia," *QIJIS (Qudus International Journal of Islamic Studies)* 9, no. 1 (July 2021): 103, <https://doi.org/10.21043/qijis.v9i1.8029>.

<sup>46</sup> Khairil Akbar, "Academics and Qanun Observers," 2022, Banda Aceh.

<sup>47</sup> Kamaruzzaman-Bustamam Ahmad, ed., *Eksposa Edisi II, Majelis Adat Aceh (MAA) Provinsi Nanggroe Aceh Darussalam, Pendidikan Pelatihan Peradilan Adat/Hukum Adat Adat Istiadat Bagi Keuchik Dan Mukim Dalam Provinsi Nanggroe Aceh Darussalam Beserta Qanun-Qanunnya* (Banda Aceh: Majelis Adat Aceh (MAA), 2007).

three sentences for perpetrators who are proven to have committed the crime of sexual harassment and rape. The average sentence determined by the judge is floggings which can last one day, and then the perpetrator is free.<sup>48</sup> The same concern was expressed by Zuhra that this situation is inversely related to the psychological condition of the victims and the vulnerability to repeating *jarimah* against victims, so guaranteeing a sense of security and protection will be problematic to embody.<sup>49</sup>

In contrast to the statements of observers, Bakhtiar and Yusri, as judges at the Banda Aceh Sharia Court, said that the punishment for people who commit sexual crimes is punishable by flogging and prison sentences (disparity).<sup>50,51</sup> This disparity in flogging and prison sentences has magnified the implementation of the *Qanun Jinayat* since it was ratified in 2014. Supreme Court decision Number 06/JN/2016/MS.Aceh states that the perpetrators of rape against *mabrams* are punished with prison sentences of 180 months (15 years), reinforcing the decision of Langsa Sharia Court with the same sentence. In the most recent cases, prison sentences of 156 months in cases of child rape can be noticed, including in the Meureudu Sharia Court Decision Number 2/JN/2022/MS. Mrd. This decision was compared to the Aceh Sharia Court, and the punishment for the perpetrators was revised to 150 floggings. Prison sentences in other sexual crime cases can be discovered, including in the Supreme Court Decision Number 10 K/Ag/JN/2022. The Supreme Court annulled the Decision of the Banda Aceh Sharia Court, which stated that the perpetrator of sexual harassment, in this case, was not proven guilty. In the cassation decision, the perpetrator is found guilty and sentenced to 22 months in prison.

The *jarimah* of sexual harassment and rape was prompted by qanun observers to be abolished from the *Qanun Jinayat* and returned to UURI Number 12 of 2022 on Crimes of Sexual Violence (UUTPKS). Regarding sexual harassment and rape involving children, the regulations are returned to UURI Number 35 of 2014 on Child Protection. The contents of these two laws are considered to be more comprehensive than the *Qanun Jinayat*. This point is of concern to observers as well as law/*qanun* enforcers, so the Attorney General of the Republic of Indonesia issued Circular Letter Number SE-2/E/Ejp/11/2020 on Guidelines for Handling General Crime Cases with *Jinayat* Law in Aceh

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<sup>48</sup> Aulianda Wafisa, "Advocate and Head of Field at LBH Banda Aceh," 2022.

<sup>49</sup> Nadia Maulida Zuhra, "PENERAPAN HUKUMAN CAMBUK BAGI PELAKU PELECEHAN SEKSUAL DALAM PERKARA JINAYAT DIHUBUNGKAN DENGAN JAMINAN AKAN HAK ASASI MANUSIA ATAS RASA AMAN DAN PERLINDUNGAN BAGI KORBAN," *DiH: Jurnal Ilmu Hukum* 16, no. 2 (July 2020): 259–70, <https://doi.org/10.30996/dih.v16i2.3668>.

<sup>50</sup> Muslim Bakhtiar, "Judge (with Special Authority to Handle Jinayat Cases) of the Syar'iyah Court in Banda Aceh," 2022, Banda Aceh.

<sup>51</sup> Yusri, "Judge (with Special Authority to Handle Jinayat Cases) of the Syar'iyah Court in Banda Aceh," 2022, Banda Aceh.

Province. This Circular letter states assertively that the implementation of the *Qanun Jinayat* system is specifically regulated in addition to the general rules in the Criminal Code and Criminal Procedure Code concerning four (4) main principles. The first is provisions that are implemented based on the Qur'an and *Sunnah* (prophetic deed). Second, interpretation and understanding must be related to the needs of local communities. Third, interpretation and understanding are aimed to be future-oriented by responding to the issue of protection of human rights and gender equality. Fourth, the three above-mentioned principles should refer to the principles of *fīqh al-muhafazah 'ala al-qadim al-shalih wa al-akhzu bi al-jadid al-aslah* with the meaning of employing old provisions (*mazhab*) that are still relevant and attempt to discover new provisions that are more reasonable.<sup>52,53</sup> This Circular Letter also lists several problems various elements face in implementing *Jinayat* cases.

The presence of the Circular Letter of the Attorney General of the Republic of Indonesia also reinforces the defence of stakeholders in Aceh because the Qanun is an authority over Aceh's privileges that should be protected by the entire community. If it is demanded to regulate this privilege, serious issues such as corruption, terrorism, and murder should be regulated in the *Qanun Jinayat* with more severe penalties.<sup>54</sup> However, the *Qanun Jinayat* Aceh only regulates ten *jarimah*, of which seven are violations, and three are related to sexual crimes. The *Qanun Jinayat* regulates dating people.<sup>55</sup> This statement corresponds to the data from the *Satpol PP/WH* Banda Aceh, which revealed that most cases being processed at the *Satpol PP/WH* Banda Aceh in 2021 were *ikhtilath* (people in pairs and making out in a quiet/closed place) 50 out of 100 cases, and 49 of them performed by pupils and university students. Correspondingly, from 2022 until August, 26 cases have been processed, and *ikhtilath* still dominates, with 19 perpetrators from pupils and university students.

Some community officers and observers stated that the *Qanun Jinayat* had failed its implementation. This statement concerns numerous parties, especially from the Qanun formation. Daud,<sup>56</sup> as Chairman of the Banda Aceh Sharia Council 2022-2027, said that Islamic Sharia in Aceh was part of the constitution and legitimated by religion and state because the Islamic Sharia is immersed into the Qanun through three state powers: legislative, executive and judiciary. If this process is in the Indonesian Constitutional Law, it is named a formal legal. It corresponds to the statement in the results of studies from Endri and

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<sup>52</sup> Muhammad al-Ghazali, *Al-Ta'assub Wa al-Tasamuh Bain al-Masihyyah Wa al-Islam* (Mishr: Nahdhah, 2005).

<sup>53</sup> Muhammad Junaidi, "Memorie van Teolichting Pembahasan Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," Biro Hukum Setda Aceh, n.d.

<sup>54</sup> Wafisa, "Advocate and Head of Field at LBH Banda Aceh."

<sup>55</sup> YARA, "LSM Pemerhati Qanun," Agustus 2022.

<sup>56</sup> *Penerapan Syariat Islam Gagal Atan Gagal Paham*, directed by Tarmizi M. Daud, Banda Aceh, 2022.

Kamarusdiana.<sup>57,58</sup> It is unacceptable if the *Qanun Jinayat* is considered to fail its implementation. Islamic Sharia discusses substantives, normative, and principles. Abubakar, one of the makers of the Qanun, said that gender equality was not related to certain doctrines in Islam, such as in *fiqh* inheritance 1 to 2 or polygamy for Muslim men. If it is considered biased against women, then it can be said that *fiqh* is a gender bias. However, if some of these things are excluded, the equality of Gender can be discussed. Basically, The *Qanun Jinayat* does not contain an element of gender bias because the diction used in the article relating to the perpetrators always uses the word “every person” who refers to men and women. If both of them violate the Qanun, both victims are punished according to the capacity of their actions. Nevertheless, some people consider certain provisions in the Qanun and other regional rules are noticed as having an element of bias against women. The presence of the Qanun is expected to solve the problems in the community without causing new problems. Because the budget issued for constructing the Qanun is not small. According to Miftalahudin,<sup>59</sup> Head of Subdivision of the trial and study of the legislation of the DPRA Legislation Agency, the budget required to form one the Qanun was 1.2 billion rupiahs with details of 100 million rupiahs for the formulation from third parties and 1.1 billion rupiahs for discussion.

In the *Qanun Jinayat*, the protection of victims and perpetrators was balanced, but the gender observers demanded that the victims have higher than the perpetrators. In this case, it is suitable to use the hadith-based legal theory “it is better to forgive someone by mistake than to punish someone by mistake”,<sup>60</sup> because anyone innocent cannot be considered guilty, even though there are still victims. Apart from the fact that someone has raped others. It is not merely a material matter; in this world, someone can only be blamed if he is proven guilty and the proving process is held in the Sharia Court.<sup>61</sup> He asserted that the Qanun was not biased by Gender. Specifically, in the rape article, the rapist is not only men but also a woman and is punished equally according to their actions. Sabil, an academic, said that in this case, there was a problem because the *Qanun Jinayat* should be noticed from the Islamic perspective and not noticed from the positive legal perspective.<sup>62</sup> When discussing in the context of Islamic criminal law, in specific aspects such as adultery and several other very private things, Islamic

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<sup>57</sup> Ismail, “Analisis Yuridis terhadap Legalitas Qanun Aceh No. 6/2014 tentang Hukum Jinayat.”

<sup>58</sup> Kamarusdiana Kamarusdiana, “Qânûn Jinâyat Aceh dalam Perspektif Negara Hukum Indonesia,” *AHKAM: Jurnal Ilmu Syariah* 16, no. 2 (December 2016): 151–62, <https://doi.org/10.15408/ajis.v16i2.4445>.

<sup>59</sup> Miftalahuddin, “Kasubbag Persidangan Dan Kajian Perundang-Undangan Badan Legislati DPRA,” Agustus 2022.

<sup>60</sup> al-Turmuzi, *Sunan Al-Turmuzi Jilid II* (Beirut: Dar al-Kutub al-Ilmiah, 2011).

<sup>61</sup> Abubakar, “Perumus/Pembentuk Qanun.”

<sup>62</sup> Jabbar Sabil, “Akademisi,” Agustus 2022.

Sharia does not refer to judgment. The Prophet (peace be upon Him) recommends that people who have confessed to a sexual crime cancel their confession. In the case of adultery, the base refers to *iqrar* (confession of the perpetrators).

### Substantive Justice in Addressing Gender Bias in Aceh's Criminal Law

In an in-depth interview, Akbar as an observer explains several weaknesses in the Qanun Jinayat. First, the implementation of Islamic law in the Qanun is considered less responsive to contemporary social developments because it still relies heavily on classical fiqh perspectives. This orientation is reflected in several provisions of the current Qanun. Understanding Islam should correspond to the current conditions. The discussion on *jarimah* conducted by ulama (Islamic scholars) in Aceh is still limited to *hudud*. Furthermore, it has not yet reached broader *jinayat* concepts such as election fraud, criminal acts of corruption, etc., so the perspective on *jarimah* is broader than that of *jarimah hudud*, which has limited provisions in Islamic Sharia. Second, the Qanun has not adequately developed or adapted classical Islamic legal concepts to contemporary legal needs, particularly regarding restitution for victims. In Islamic criminal law, the concept of *diyat* traditionally functions as financial compensation for certain crimes. Therefore, restitution could be integrated as a modern legal development of *diyat* to provide greater protection and recovery for victims.<sup>63</sup> Third, the Qanun Jinayat has not been fully harmonized with Indonesia's national criminal law system, particularly in terms of legal procedures and the protection of human rights. This lack of harmonization has raised debates regarding the implementation of the Qanun within the broader framework of Indonesian law (Akbar, 2022).

The *Qanun Jinayat* in articles 66-67 states that *uqubat* (*Jarimah* punishment) in this Qanun also applies to children in the age range of 12-18 years, which means that the punishment is a maximum of 1/3 of an adult's sentence or they are returned to their parents or becomes a child of the state. The article of The *Qanun Jinayat*, which explains the parameters of children, is absolutely different from the observers' perspective because the category of children according to the law is measured based on age limits. In contrast, the category of children in Islamic Sharia generally refers to physical signs, both the first wet dream in boys and the first menstruation in women, and by law, they can be hit above the age of 10 according to the hadith of the Prophet (peace upon Him) *wadbrribubu*.<sup>64</sup> As a result, there is ambiguity in the judges' perspectives when handling cases involving children in Sharia Court. The judge realizes that the perpetrator/victim is an adult

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<sup>63</sup> Elda Maisy Rahmi, Ali Abu Bakar, and Suhaimi Suhaimi, "Pelaksanaan 'Uqubat Restitusi terhadap Korban Perkosaan," *Kanun Jurnal Ilmu Hukum* 21, no. 2 (August 2019): 227–40, <https://doi.org/10.24815/kanun.v21i2.11317>.

<sup>64</sup> Imam Abu Daud, *Sunan Abi Daud Jilid IV* (Indonesia: Maktabah Dahlan, 1987).

according to Sharia but is still considered a child according to the law, so the judge has difficulty providing a fair and impartial decision based on this age criterion.<sup>65</sup>

Fourth, there is confusion in the principle of enforcing the *Qanun Jinayat*, which leads to confusion in the enactment of the Qanun between the desire to succeed as a regional regulation or Islamic Sharia. Uncertainty in positioning the Qanun as religious law or state law. It refers to the *Qanun Jinayat* as the Aceh version of the Criminal Code (Nuridin, 2018). This uncertainty impacts the application of the Qanuns when dealing with non-Muslim communities. If it is not applied to non-Muslims, the Qanun becomes religious law; if it is applied to non-Muslims, it becomes state law. In the Indonesian context, religious law only applies to certain religions, and state law applies to everyone without exception. In the end, the principle of the validity of the *Qanun Jinayat* was made that the Qanun applies to every Muslim who commits *jarimah* in Aceh, to non-Muslims who commit *jarimah* with Muslims, to non-Muslims who surrender themselves to the Qanun. In addition, it applies to every non-Muslim who committed *jarimah* in Aceh when the Criminal Code and other laws and regulations did not regulate the activity. In the last two contexts, it seems impossible because, in the end, the Qanun applies to all Acehnese, Muslims, and non-Muslims. Furthermore, non-Muslims who commit *jarimah* can be punished by The *Qanun Jinayat* since no other laws govern it. The Sharia Court has carried it out in trials, including the decisions stated in MS Number 21/JN/2020/MS Bna and Number 28/JN/2020/MS.Bna for Acehnese Buddhists. However, for some observers, this is still discriminatory against them.<sup>66</sup>

In an in-depth interview, Wafisa, as a legal practitioner, stated that there are some weaknesses of *Qanun Jinayat*. First, *Qanun Jinayat*, besides overlapping with the laws and regulations which are higher, the form of punishment, including flogging in the Qanun, seemed to alleviate the perpetrators or it was not suitable for the crime the perpetrators had committed. Second, the right to restitution or recovery of victims in which regulation is unclear. However, it has been overcome by the Aceh Governor Regulation Number 05 of 2018 on the Implementation of *Jinayat* Procedure Law Article 25-29. Third, the competency of the authority to attempt the urgent *Jinayat* case. The authority to prosecute The *Qanun Jinayat* is in the Shariah Court and is called the Religious Court in other provinces.<sup>67</sup> The judges are the ones who are accustomed to handling religious civil cases. Simultaneously, the Sharia Court in Aceh is granted the authority to examine criminal cases (*Jarimah*), while the Civil Proof scheme with criminals differs. This

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<sup>65</sup> Yusri, "Judge (with Special Authority to Handle Jinayat Cases) of the Syar'iyah Court in Banda Aceh."

<sup>66</sup> Zainuddin Zainuddin and Sahban Sahban, "PROBLEMATICS OF JINAYAT QANUN IMPLEMENTATION IN NANGGROE ACEH DARUSSALAM COMMUNITY," *Tadulako Law Review* 3, no. 2 (2018): 221–34.

<sup>67</sup> Wafisa, "Advocate and Head of Field at LBH Banda Aceh."

weakness was indeed recognized by Bakhtiar as the Chief Judge of the Banda Aceh Sharia Court, and Yusri is a judge in the court.

In the rape article instance, (proof of rape in the Aceh Qanun is regulated primarily in Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law, particularly regarding legal evidence, as well as Aceh Qanun Number 6 of 2014 concerning Jinayat Law (Articles 48-50) which regulates the material acts and the threat of punishment), it is stated that a woman who is a victim of rape can prove herself by taking an oath or bringing at least four witnesses. Numerous critics have highlighted this article because women as victims are also burdened to present evidence of rape against themselves. According to Abubakar, this article is not completely a burden because raped women are usually reluctant to report the crime on their behalf. In this case, the Qanun allows the victim to defend herself by presenting evidence and taking an oath. The Qanun has allowed the victim to protect herself and boldly stated in her oath that person A had raped her. One oath is enough because there is one piece of evidence from law enforcement officers and one oath from the victim. However, in that situation, the accused person can also defend himself by swearing that he is not the perpetrator. If there are two oaths, it is considered that both do not end the case. It means that both are considered non-existent, so there must be other evidence.

There is a clear difference in the paradigm of thought between Islamic Sharia and positive law. In Islamic Sharia, if a judge is required to make a decision, then the means for the judge to determine it is not through his success in proving the perpetrator committed a crime but through testimony. There is a difference between proving the truth about the occurrence of a legal act and the conviction of a judge to impose a sentence. In this case, the witness is a human being. It means the judge still has a reference to declaring that the accused is guilty based on the testimony of a witness. It indicates that there are witnesses whose testimonies can be trusted. On the other hand, if the judge employs testimony as evidence, the burden of proof in positive law should rest on the judge. It is not the same as in Islamic Sharia because proof does not rely on the judge but on witnesses. It manifests the difference in burdens in implementing the Qanun which directly and indirectly affect women as victims of sexual crimes. It shows that there are paradigms of thought with different orientations. Islamic (criminal) law is constructed based on testimony so that the judge's burden is decreased because the judge does not have to prove it, but the judge must attach to the testimony. If the judge makes a mistake in his decision, this witness can be asked for accountability.

However, in the pattern of proof using evidence, the judge is still fully responsible for the error in the decision. This paradigm also raises a problem in determining a sentence that can create another burden. In the context of *jinayat* law, due to public opinion, justice is a correspondence, which is a discussion between what is rightly conducted and then determined. Meanwhile, judges do

not have the means to access evidence that what is recognized at trial corresponds purely to facts. In Islamic Sharia, there is a hadith-based *fiqh* rule which states that *nahnu nahkumu bi al-zawahir*,<sup>68</sup> whereas in positive law, the judge must decide what is right. Finally, in society, there is a misunderstanding. It is because the public recognizes the situation only from media information, which states that it is easy to happen even though the judge has reached the limit of his ability. The job and duty of the judge must prove a case correctly. Society does not understand how heavy the burden a judge faces when the judge hears a case, especially cases involving perpetrators and victims in the expanses of testimony. Thus, public opinion is led to their truth assumption corresponding to the real truth. While in the circumstances of conducting the trial, the judge cannot do the same. The most crucial problem because numerous parties notice Islamic criminal law from a positive perspective.<sup>69</sup> Finally, in practice in Aceh, when the Sharia Court judge acquitted a perpetrator of *jinayat*, the acquittal was due to insufficient evidence to determine that someone was guilty. It corresponds to the statement of the Head Judge MS of Banda Aceh,<sup>70</sup> who acquitted several accused of rape in the decision but was later annulled by the Supreme Court 5 that some consider the decision to be gender-biased decisions.

Gender observers view the Qanun from the perspective of positive law and notice injustice. In fact, if the Qanun is viewed from the perspective of Islamic Sharia, it will be found that things are indeed normative in Islam provisions. From the perspective of Sabil and other reformers, it is considered that the direction of the Qanun has been positive. In the implementation process, there are always gaps to learn. Of the several cases that occurred, quite a number of cases were complicated and difficult to resolve. Febriandi et al. indicated that among these difficulties is enforcing justice for victims of rape and sexual abuse.<sup>71</sup> Damanhuri also revealed that implementing the *Qanun jinayat* in Aceh positively impacted society because it can change a person's perspective on behaviour that previously seemed unfamiliar and eventually has become part of community life.<sup>72</sup> The punishment provisions in The Qanun are without any coercion and independent to choose, but most perpetrators prefer flogging because it is easier than other punishments such as prison sentences. More concrete evidence of implementing the *Qanun Jinayat* as the request of non-Muslim women can be noticed in the Banda Aceh Sharia Court Decisions Number 28/JN/2020/MS.Bna and Number 21/JN/2020/MS.Bna. The Aceh Islamic Sharia Service (2022) also explained that

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<sup>68</sup> al-Syaukani, *Nail Al-Authar Sharh Muntaha al-Akbar Min Ahadits Said al-Akhyar Jilid I* (Beirut: Dar al-Fikr, 1994).

<sup>69</sup> Sabil, "Akademisi."

<sup>70</sup> Bakhtiar, "Judge (with Special Authority to Handle Jinayat Cases) of the Syar'iyah Court in Banda Aceh."

<sup>71</sup> Febriandi, Ansor, and Nursiti, "Seeking Justice Through Qanun Jinayat."

<sup>72</sup> Damanhuri, "Chairman of the Banda Aceh Ulema Consultative Assembly (MPU).," 2022, Banda Aceh.

implementing the flogging sentence had been conducted at its best, but parties from outside Aceh considered the punishment a sham.

According to Yusri, forming the *Qanun Jinayat* was prompted by cases occurring in Aceh, including rape of women and children, gambling, and drunk. Even though these crimes cannot be avoided, The *Qanun Jinayat* helps people be more mindful of their actions. As a result, cases that usually occur in society are decreasing. Before the enactment of the Qanun, numerous unmarried couples sat together in quiet places; women left the house until late at night, and it became common. After the *Qanun Jinayat* was issued, people were wary because they feared flogging punishments. The presence of the Qanun has a very significant influence on society. Wahyuni & Nisa regarded this situation as social learning.<sup>73</sup> Statistical facts show that out of 300,000 Acehnese, only 51 criminal cases occurred and were reported in Sharia Court. In contrast, from the beginning of 2022 until August, there were only 7 cases. It is proof of The *Qanun Jinayat* influence in preventing people from committing *jarimah* in Aceh. Yusri added that the Qanun is very effective viewed from a formalistic legal point of view. Unfortunately, the commitment from the government is not obvious. Furthermore, the implementation is not following the provisions of the law, so it affects the implementation of the flogging sentence after the Sharia Court decision. The implementation of flogging sentence budgets from the government because it is conducted in a public place.

Marzuki explained that cases investigated by the *Satpol PP-WH* Aceh Islamic Sharia Enforcement should no longer be investigated by other law enforcers.<sup>74</sup> Article 133 of the Law on Governing Aceh explains that the investigatory and investigative powers, so long as they are under the authority of the Sharia Court, are conducted by *PPNS* and Police. The number of handled cases depends on reports from the public and the results of surveillance or raids. There are two or three cases that can be processed immediately in a month. Suppose the number of cases is calculated that most of the ten *jarimah* are cases of *khalwat*, *ikhtilath*, including adultery and drunk.<sup>75</sup> Men and women are treated equally in the case process, and there is no difference between them. All processes correspond to the rules regulated by the state, following the Criminal Procedure Code and the *Qanun Jinayat*. Of the cases in the field, women's cases are processed a lot more because there are more women than men in Aceh, and it is valid that more women are

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<sup>73</sup> Wahyuni Wahyuni and Haiyun Nisa, "Stakeholders' Views Regarding Social Learning in Implementation The Law of Caning," *Psikoislamika: Jurnal Psikologi Dan Psikologi Islam* 18, no. 2 (2021).

<sup>74</sup> Marzuki, "Waliyul Hisbah/PPNS at Satpol PP/WH Banda Aceh," 2022, Banda Aceh.

<sup>75</sup> Mulizar Mulizar, Asmuni Asmuni, and Dhiauddin Tanjung, "Maqashid Sharia Perspective of Legal Sanction for Khalwat Actors in Aceh," *Al-Istinbath : Jurnal Hukum Islam* 7, no. 1 (May 2022): 161, <https://doi.org/10.29240/jhi.v7i1.3587>.

violated. Pirmasari found the same thing that the law in Aceh is constructed on a patriarchal interpretation and regulates women more than men.<sup>76</sup>

The punishment in the *Qanun Jinayat* as an alternative between flogging, imprisonment, and fines. While the judges' decision is only one, and they tend to choose flogging sentences. It does not give some people a sense of justice. Compared to the Child Protection Act, there is chemical castration for perpetrators who have committed sexual crimes several times. The punishment is considered to provide more justice to the victim, but it can also provide an opportunity for the perpetrator to benefit from it. Thus, a sense of justice cannot be fully provided to the victim. No matter how severe the punishment is given to the perpetrators, it will not provide a sense of justice and satisfaction. Many people can feel the pain of an abused woman, but nothing can decline the injustice committed against her.<sup>77</sup> Therefore, Indonesia regulates the punishment of castration because this act of sexual harassment is really bad. The punishment given was not necessarily fair for the victims. In contrast to observers who generally state that the *Qanun jinayat* is Gender biased, the Acehese Foundation (2022) believes that gender bias has not (yet) been found in implementing The *Qanun Jinayat*. Regarding the law being applied equally to men and women, there is no different treatment for them. Although some think that certain articles in the Qanun discriminate against women, after observing the principle of justice, it does not actually lie in the justification because punishment is a form of effort to regain the victims' rights.

### **The manifestation of the Meeting Point of Gender Bias Paradigm Differentiation toward the Qanun**

The enactment of a law on *jarimah*/criminal acts will not prevent people from committing evil deeds. No matter how developed a country is with the sophistication of its rules and the rule of law in its implementation, it still does not prevent people from murdering, stealing, robbing, raping, or corrupting. It means that efforts to enforce local wisdom-based rules as an extension of the state should be appreciated because the formation of these rules is nothing but to regulate and minimize security disturbances in society by using provisions that they are familiar with. The province of Aceh can benefit from the privileged juridical basis to adopt Islamic Sharia as part of local wisdom in forming the Qanun. However, the use of local wisdom should involve all elements of society maximally, comprehensively, and massively in the process of its formation. Involvement of the community from various elements certainly requires a long and quality time to embody, including thorough socialization, cultivating Islamic Sharia in

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<sup>76</sup> Desy Ayu Pirmasari, "Gender Discourse within the Application of Islamic Law in Aceh, Indonesia" (Thesis, Lancaster University, 2020).

<sup>77</sup> Faisal Yahya, "Academician and Qanun Observer from UIN Ar-Raniry Banda Aceh," 2022, Banda Aceh.

educational institutions to embody one understanding and utilization of all resources at all levels of society to connect the separate parts of society dichotomously regarding the understanding of the Sharia which will be employed as the basis of the Qanun.

The Qanun maker also needs to open up opportunities for improvement of the quality of the *Jinayat*. The Qanun rules to achieve the desired objectives. There are parts of *hudud*-based rules that are supposed to be like that, but several parts of understanding from *hudud* become areas of *ijtihadiah* (thought) that can be improved and perfected according to the necessities of the community, such as the rape article. In the Qur'an and *Sunnah*, there is no specific mention of this rule regarding rape besides the hadith, which states that the sins of a raped person will be forgiven by The God (*ghafarallahu laha*). In material affairs related to punishment (*'uqubah*) for those who commit rape, Allah's forgiveness for the victim is insufficient except if the perpetrator is severely punished equally to the committed crime. Accusations of adultery are obvious in *hudud* but cannot (necessarily) be mixed up with accusations of harassment or rape.

Thus, this part also becomes an area of *ijtihadiah* that can be corrected and perfected. Therefore, the process of punishing the perpetrators leads the people to conduct *ijtihad* to solve the problems. It should be noted that harassment and rape usually occur as people do not know the action, which leads to difficulty determining the truth. Therefore, the Qanun maker must utilize the suggestion from observers to be generated as material for studying the improvement/revision of the Qanun to make it better and fairer to all parties, both men and women. In response to this article, the step taken by the Qanun maker by referring to all punishments as *'uqubat ta'zir* is appropriate because this method can become a *helah* Sharia for mentioning the Qanun. Therefore, the articles of oath for a person accused of being a rapist can be revised because it is an area of *ijtihadiah* that can be corrected following society's need. In the hadith of the Prophet (peace be upon Him) narrated by at-Turmuzi,<sup>78</sup> it is narrated that a woman went to the mosque to perform congregational prayers, and on the way, she was raped by a man. The woman complained to Rasulullah (peace be upon Him) and mentioned the man who raped her. Prophet companions attempted to find the perpetrator and confirmed it with the woman before being punished. The Prophet (peace be upon Him) did not ask the woman to swear an oath, but the Prophet assigned His companions to find the real perpetrator mentioned by the woman. Furthermore, the perpetrator was punished, and the woman was told that The God had forgiven her sins. This argument can be employed as a reference to replace the article on the victim's oath in this rape. *Helah-helah* Sharia, in other forms, to perfect article by article, which is considered imperfect and controversial, can also be employed. Sitting together with proper and sincere intentions for the benefit of the Acehnese

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<sup>78</sup> al-Turmuzi, *Sunan Al-Turmuzi Jilid II*.

community must be constructed together by society all elements. Thus, the Qanun can unify the Acehnese rather than not splitting them up. The authorities must take the suggestion to improve the Qanun in addressing its weaknesses. Harmonization and integration between local laws and national laws need to be constructed properly so that the Qanun must be in its position as a regional regulation within the scope of Aceh Province.

## Conclusion

Based on the discussion presented above, several conclusions can be drawn. First, the debate surrounding the formulation and implementation of the *Qanun Jinayat* reflects the continuing tension between Islamic legal values, national criminal law, and contemporary human rights discourse in Aceh. The emergence of accusations of gender bias against the *Qanun Jinayat* is closely related to differing interpretations regarding the evidentiary standards applied in sexual violence cases, particularly rape. While the Qanun drafters argue that the regulation was formulated within the framework of Islamic legal principles emphasizing morality, repentance, and social order, critics contend that several provisions may place victims in vulnerable positions and hinder their access to justice. Second, the differing perspectives between the Qanun formulators and gender observers demonstrate that the controversy over the *Qanun Jinayat* is not merely a legal issue, but also an epistemological contestation between sharia-based legal reasoning and modern positive law approaches. From the standpoint of positive law and human rights, critics identify inconsistencies between the *Qanun Jinayat* and the Indonesian Criminal Code (KUHP), particularly regarding victim protection and evidentiary mechanisms in sexual violence cases. Conversely, from the perspective of Islamic criminal law, the Qanun is understood as a normative effort to institutionalize sharia values within Acehnese society. Third, the amendment of Aceh Qanun Number 6 of 2014 through Aceh Qanun Number 12 of 2025 demonstrates that the *Qanun Jinayat* remains a dynamic legal instrument open to evaluation and reform. This amendment indicates the existence of ongoing negotiation between religious authority, state law, and public criticism in shaping Islamic criminal law in contemporary Aceh. The novelty of this study lies in its analysis of the legislative trajectory of rape provisions within the *Qanun Jinayat* and its examination of how legal reform continues to be influenced by the intersection of Islamic law, gender justice, and human rights discourse in Indonesia.

The provisions do not notice whether the perpetrator is male or female, so the formula consistently applies the diction "everyone" for men and women. However, if the provisions in the Qanun are neutral, in the same position, gender bias occasionally occurs because the law cannot be separated from the social context that influences it. If the social context shows inequality, neutral laws cannot be applied. As an illustration, when women and men are treated equally, the result will seem injustice on that side. This situation is an anomaly because

some people comprehend gender justice as men and women are equal, even though it is not always applied in this manner. Based on these findings, other possibilities for further research have emerged. One example is a study of the position of children in the qanun, both as perpetrators and victims. This is possible because children are one of the dilemmas in the law. The Qanun Jinayat may address this dilemma, requiring a just solution for society.

This study focuses on the perspectives of legal experts, religious leaders, law enforcement officials, and related stakeholders involved in the implementation of Qanun Aceh Number 6 of 2014. Therefore, the findings may not fully represent the broader experiences and perceptions of all Acehnese communities. Future research is recommended to explore the long-term social impact of the Qanun Jinayat, especially regarding gender relations and community responses across different social groups in Aceh.

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