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OPPORTUNITIES FOR THE IMPLEMENTATION OF ACEH CRIMINAL LAW AS NATIONAL LAW FROM THE PERSPECTIVE OF ARTICLE 29 OF THE 1945 CONSTITUTION

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ABSTRACT

This study examines the possibility of recognising Acehnese criminal law as national law in Indonesia, a country known as a constitutional state according to Article 29 of the 1945 Constitution. Through the constitutional guarantee of freedom of religion, this study examines the prospects for the national application of Islamic criminal law in Aceh. The lack of understanding among some members of the public regarding Islamic criminal law has led to the perception that these rules are harsh and inhumane. For example, sharp criticism of the punishment of amputation of the hand in Islamic Sharia often fails to consider the specific conditions that must be met before such a punishment is imposed. The application of Islamic criminal law can be effective, especially if its primary objective is to serve as a deterrent. Conversely, the implementation of this law becomes irrelevant if law enforcement is merely seen as a pragmatic tool or a subject of conceptual debate. A strong constitutional foundation and significant opportunities exist to incorporate Aceh's criminal law into national regulations, given that the 1945 Constitution, particularly Article 29, paragraphs 1 and 2, guarantees freedom of religion.

Keywords: Opportunities, 1945 Constitution, and Aceh Criminal Law

INTRODUCTION

Indonesia is a country that firmly adheres to the principle of Rechtsstaat, whereby all branches of government, including the executive, are required to be based on the law and uphold it as an absolute limitation and the ultimate determinant of state power. Within this framework, the principles of equality and limitation work synergistically and coexist harmoniously. Although the form and scope of authority may undergo metamorphosis in line with dynamic external influences, the supremacy of law remains the ultimate instrument for maintaining a balance between public and private interests,

which are often contradictory. Every individual, including the state as a legal entity, bears rights and obligations as a subject of law that cannot be avoided.

Therefore, in a state based on the rule of law, the rights and responsibilities of all parties are guaranteed equally by law, and the relationship between the state and the people must always be maintained so that it remains balanced and not skewed. The concept of a welfare state that goes beyond mere formal aspects in the Indonesian legal system has become an integral and inseparable part of the complex and multi-layered national legal system.

In this conceptual model, Indonesia is often seen as a country governed by the rule of law with unique characteristics and strong independence, with the main goal of creating a society that is not only materially prosperous but also spiritually prosperous, all based on the noble principles of Pancasila, which is the ideological foundation and moral guideline of the nation (Rukmana Amanwinata, 1996).

Historically, Indonesia has recognised three main sources of law that form the pillars of the national legal system, namely Western law, Islamic law, and customary law, each of which has different characteristics and roles but complement each other synergistically (Muhammad Daud Ali, 1997). Islamic law in Indonesia occupies a very strategic position and plays a dual role, namely as positive law that has been officially codified and as normative law that regulates vertical relationships between humans and God Almighty. Both systems of Islamic law are now regarded as 'living law' that evolves dynamically within Indonesian society, prompting the community to not only comply with but also vigorously uphold its existence as an integral part of their social and cultural life:

> *"A new era in Indonesian legal history began with reforms that sought to bring social values closer to prevailing legal standards. The shift in the national paradigm, particularly following the amendments to the 1945 Constitution, marked a transition from a centralised system to regional autonomy, as noted by Romli Atmasasmita. This change had significant implications for the legal system, which previously emphasised the dominance of the central government over regional autonomy and tended to produce legal products that prioritised the interests of those in power over the people."*

Since the early days of Indonesia's independence, the province of Aceh has shown a deep and unwavering desire to make Islam the main foundation of its social order and state life, in the hope of creating harmony and sustainable stability. The collapse of the New Order regime in 1998 opened up

a vast and historic opportunity to realise this noble aspiration, coinciding with the emergence of a far more democratic government following the downfall of the authoritarian regime led by Suharto, thereby enabling Aceh to restructure its social and political framework based on strong and authentic Islamic values.

This situation has attracted the attention of legal experts from around the world to thoroughly examine the crucial role of Islamic law in Aceh. As a region with a Muslim majority, Aceh has become a pioneer and trailblazer in efforts to integrate Islamic law into the positive legal framework applicable in a modern and evolving society, even though at that time the Dutch colonial legal system still left a significant influence and overshadowed the implementation of law in the region.

As a constitutional state or rechtsstaat firmly grounded in the noble values of Pancasila as the ideological foundation and guiding principles for national and state life, Indonesia grants relatively broad freedom to the Muslim community to practise certain elements of Islamic law deemed relevant, contextual, and aligned with the evolving dynamics of national and state life. However, other aspects of Islamic law still await formal legitimisation through official regulations formulated and ratified by the competent legislative body before they can be widely applied and accepted as valid and binding in the national legal system.

The legal position of Aceh's criminal law in the national criminal law reform is consistent with the Indonesian legal framework, supported by: (a) Article 29 of the 1945 Constitution, which guarantees the right to freedom of religion for all citizens; (b) the first principle of Pancasila, 'Belief in One God,' which affirms the freedom to practise one's religion according to one's beliefs; (c) the recognition of Qanun as part of the legal structure through Law No. 18 of 2001 on Special Autonomy for Aceh and subsequently Law No. 11 of 2006 on the Government of Aceh; (d) the existence of criminal Qanun in Aceh as a contribution to national criminal law reform, reflecting the principle that good law must be in harmony with societal values.

Thus, the Aceh legal model can serve as a reference in the adjustment of national law to accommodate the diversity of Indonesia's population. Islamic Sharia is based on three main pillars that form its unshakeable foundation, namely the Qur'an as divine revelation, the Sunnah as the practical guidance of the Prophet Muhammad SAW, and classical fiqh literature, which includes various in-depth and layered academic interpretations.

Fiqh, as a vast and complex scholarly tradition, demands clarity and precision in the formulation of laws to ensure consistent application in the

lives of the community. In Aceh, fiqh interpretations exhibit significant diversity, resulting in judicial decisions that resemble a process of navigating interconnected opinions rather than merely establishing objective and absolute facts.

While respecting established schools of thought and classical references, the Aceh Sharia continues to look forward with a spirit of renewal and adaptation to the dynamics of the times. The application of Islamic law takes place within a legal framework that is officially recognised by the national legal system, in which the Indonesian civil law system is deeply rooted in the colonial heritage of the Netherlands, which once ruled this region extensively and comprehensively.

However, this legal structure has undergone significant and fundamental revisions to align with the spirit of independence and the nation's aspirations for sovereignty. A new legal identity reflecting the sovereignty and national identity of Indonesia has been gradually built through an intensive and dynamic legislative process, thereby accommodating both local values and universal principles within the national legal framework.

In the region of Nanggroe Aceh Darussalam (NAD), Islamic law is applied exclusively and specifically to Muslims, as clearly stated by Muslim Ibrahim. Those who are not Muslim are not bound by these rules and have complete freedom to worship according to their own beliefs and convictions without coercion or restriction. Therefore, Qanun, which is an integral part of Islamic law in NAD, is strictly and exclusively enforced only for Muslims, thereby creating a legal system that is sectoral in nature but still respects religious pluralism.

To this day, the enforcement of Islamic law in Aceh is carried out based on the 'trilogy of religious harmony,' which includes harmony among followers of different religions, among followers of the same religion, and between society and the state. This aligns with the principle of religious freedom as guaranteed by Article 29 of the 1945 Constitution. The main implications of Article 29(1) include: the state must not issue regulations that contradict religious beliefs, the state is obligated to support policies that enable religious communities to practise their teachings, and the prohibition of blasphemy.

Article 29(2) uses the term 'guarantee' in an imperative manner, indicating that the state must take active steps to protect the freedom of religion of its citizens. This proactive role is not merely about avoiding intervention in private beliefs but ensuring that every individual can worship according to their faith. Although issues of religious freedom rarely become

major problems, the main challenge lies in protecting the right to practice one's religion in accordance with one's beliefs.

Research Method

The sources of data for this research include books, laws, regulations, and other relevant legal documents; this research is library-based and grounded in legal studies. Article 29 of the 1945 Constitution, Islamic criminal law, and Jinayat law (Qanun Jinayat) are the legal materials analysed in this research. Therefore, this research uses a qualitative approach.

The purpose of this research is to provide an in-depth understanding of Qanun Jinayat, an Islamic legal theory currently being implemented in Aceh. In addition, Indonesian national criminal law is also an important aspect of this study. Given that the majority of Indonesia's population is Muslim and Jinayat law has its roots in Islam, understanding the relationship between the two can help in the formation of a national criminal code in the future.

This descriptive-analytical research focuses on Aceh's Jinayat law and its relationship with the national legal system. The presentation of both legal frameworks is conducted within the context of Indonesia's current legal system and their interactions with one another.

Results and Discussion

Aceh Criminal Law

From a legal perspective, Jinayat Aceh is based on the UUPA, the Aceh Government Law, and Qanun No. 8 of 2014, which reinforces the Islamic legal framework. Qanun Jinayat is a set of rules governing jarīmah (criminal acts), uqūbat (punishments), and perpetrators. Because it explicitly regulates criminal acts, perpetrators, and sanctions, this Qanun is often referred to as Islamic criminal law (ḥukm al-jināyah) (Noviandy (ed.), 2018).

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In determining the subjects of law, this Qanun considers the principles of territoriality and personality. Only Muslims who practise Islam are subjects of law based on the principle of individuality. Non-Muslims are free to choose to submit to these rules, especially if they are involved in criminal acts with Muslims. The Qanun Jinayat can be fully applied if the criminal act is not regulated in the Criminal Code (KUHP). From a territorial perspective, the

Qanun Jinayat only applies within the legal jurisdiction of Aceh Province (Siti Fatimah, 2005). The fundamental values upheld by this Qanun include Islamic principles, legality, justice, balance, public interest, protection of human rights, and educational aspects, which are reflected in 10 chapters and 75 articles (Syahrizal Abbas, 2015).

When compared to other qanuns governing general administrative matters in Aceh, the Qanun Jinayat occupies a distinct position. Syahrizal Abbas states that administrative qanuns hold the same legal standing as Regional Regulations (Perda) and can be revoked by Government Regulations (PP). However, the Qanun Jinayat is an exception. Because it regulates Islamic law, this Qanun cannot be revoked except through judicial review by the Supreme Court, unlike administrative qanuns which can be revoked by PP.

The Qanun Jinayat also stands out because it can impose heavier criminal sanctions than those stipulated in Law No. 12 of 2011 on the Formation of Regional Legislation. The Law stipulates that the maximum penalty that can be imposed by provincial or district/municipal regulations shall not exceed a fine of fifty million rupiah or imprisonment for six months. However, this limitation does not apply to Qanun Jinayat.

The UUPA specifically regulates this exception in Article 241(1) to (4). Under these provisions, penalties in the Qanun Jinayat may exceed those stipulated in Law No. 12/2011 because the Qanun has legal validity and is supported by a strong legislative basis, including: (Rusjdi Ali Muhammad in Mudzakir, 2017)

1. Article 18 paragraph (6) of the 1945 Constitution, which grants local governments the authority to make local regulations.
2. Amendment to the Regulation on the Establishment of Aceh and North Sumatra Provinces of 1956 (Law No. 24 of 1956).
3. Law No. 44 of 1999 concerning the Special Status of Aceh Province.
4. Law No. 18 of 2001 on Special Autonomy for Aceh Province.
5. Law No. 11 of 2006 on the Government of Aceh, specifically Article 125, which establishes criminal law (Hukum Jinayat) as part of the Islamic legal system of Aceh.

The Aceh Criminal Code has a solid constitutional basis thanks to an established legal system. Dr. EMK Elidar stated that the Criminal Code has a strong legislative foundation, making it highly constitutional. Its criminal provisions are permitted to exceed the penalties stipulated in Regional Regulations (Perda). The uniqueness of the Criminal Code in legal terms, as stipulated in the UUPA, is evident from this exception. In fact, due to its

distinctive legal character, the Criminal Code may contain criminal provisions that exceed those of the national Indonesian Criminal Code (KUHP).

The Opportunity for the Enforcement of Aceh Criminal Law as National Law from the Perspective of Article 29 of the 1945 Constitution

Fundamental rights that cannot be diminished under any circumstances are listed in Article 4 of the law, including the right to life, freedom from torture, personal freedom, freedom of thought and belief, freedom of religion, freedom from slavery, recognition as a subject of law, and prohibition of retroactive prosecution. Human rights in the 1945 Constitution are divided into four categories: economic, social, and cultural rights; the right to development and special rights; the obligations of the state and fundamental human obligations; and civil and political rights. Some rights, including the right to life, freedom of religion, freedom of thought, and the prohibition of retroactive prosecution, are non-derogable rights (1945 Constitution, Chapter XA, Article 28I, Paragraph 1).

Protection of these inalienable rights is regulated in Article 28I(1) of the 1945 Constitution. The exception 'under any circumstances' — including war, armed conflict, or a state of emergency — is further explained in Article 4 of Law No. 39 of 1999.

Thus, the Indonesian constitution requires the continuous protection of these fundamental rights. Freedom to practise religion is guaranteed by the constitution without any restrictions because it is a non-derogable right.

Article 28E paragraph (1) states, 'Every person shall be free to embrace a religion and worship according to his religion, choose education and teaching, choose a profession, citizenship, place of residence within the territory of the state, and shall have the right to enter and leave the state.' Article 29 paragraph (2) affirms that the right to worship freely is guaranteed by the state to all citizens.

The right to practise religion is not a gift from the state or any institution, but stems from the deepest personal beliefs and cannot be forced upon anyone in any form. Islam, as a comprehensive and holistic religion, regulates not only personal matters and vertical relationships between humans and God, but also regulates in detail social matters and horizontal interactions among fellow humans. Both aspects are perfectly guided by the teachings contained in the Qur'an and the Sunnah, which were revealed directly by Allah SWT as the true and eternal guidance for all humanity.

Sharia is an integrated legal system derived directly from the Qur'an and Hadith, fundamentally divided into two main parts: ibadah, which regulates

the vertical relationship between humans and Allah, and muamalah, which regulates all forms of social interaction and horizontal relationships among fellow human beings. The muamalah component encompasses various legal domains such as family law, civil law, criminal law, political law, and constitutional law, while the ibadah component includes the performance of important rituals such as prayer, fasting, zakat, and the Hajj pilgrimage. As part of the religious obligations that must be carried out by every Muslim, the implementation of Sharia is explicitly guaranteed by the 1945 Constitution to provide protection and freedom in practising these teachings (Sodikin, 2013).

The involvement of the state is necessary in the implementation of some aspects of Sharia, while other aspects can be carried out independently. For example, the state has no authority over matters of faith or religious rituals. However, the application of criminal law requires state intervention. In-depth legal and constitutional analysis is needed in adopting Islamic criminal law in Indonesia, whether through integration into the national Criminal Code or direct application. Although freedom of religion is guaranteed by the constitution, the application of Islamic criminal law requires state supervision.

Professor of Law at the University of Indonesia, Dr. Hamid Chalid, argues that Islamic criminal law has a very large and significant influence on the national legal system and the Indonesian constitution as a whole. Pancasila explicitly affirms Indonesia's position as a country that recognises the existence and beliefs of religion as an integral part of the nation's identity. Freedom of religion and the right of every citizen to practise their religious obligations are also fully guaranteed by the constitution, providing ample space for religious practices in society. Therefore, Islamic criminal law has a great opportunity to coexist harmoniously with the existing national legal system. According to Dr. Chalid, the constitution does not prohibit the application of hudud punishments; the main obstacle faced is more political in nature, namely the lack of political will among stakeholders to realise this.

Regarding Islamic criminal law in Indonesia, Mahrus Munajat states that the punishments outlined in the Qur'an and Hadith do not have to be applied rigidly and literally without considering the context of the times. As long as they do not violate the main principles of maqasid al-shariah, which are the noble objectives of sharia, these punishments can be flexibly adapted to social, cultural, and evolving conditions. If more contextual and adaptive alternative punishments prove ineffective in achieving the goals of justice and order, then the punishments stipulated in the Quran and Hadith may be applied as a last resort to enforce the law firmly and validly.

The Aceh Legislative Council explicitly established the application of Islamic criminal law through the Qanun Jinayat, in accordance with the religious provisions of the 1945 Constitution. Therefore, allegations that the Qanun Jinayat violates human rights or is invalid are unfounded.

The Qanun Jinayat is, in fact, an expression of respect for the right to freedom of religion and the practice of religious teachings within the majority Muslim culture in Aceh, as stipulated in the constitution (hukumonline.com). Every person is guaranteed the right to profess a religion and worship according to their beliefs, as enshrined in Article 29(2) of the 1945 Constitution.

Legal expert Hazairin argues that the term 'worship' in this article should be understood as the implementation of religious law (sharia), as a continuation of the promise of religious freedom. According to Hazairin, every religion in Indonesia has its own rules, and the state has a constitutional obligation to respect and enforce those rules.

Article 28J of the 1945 Constitution states that new regulations must be made to regulate the implementation of religious law (Makhrus Munajat, 2008). The implementation of Qanun Jinayat in Aceh also symbolises the fulfilment of non-derogable rights that cannot be reduced under any circumstances.

The right to freedom of belief and worship is guaranteed in Article 28I paragraph (1) and Article 28E paragraph (1) of the 1945 Constitution. Article 22 of the Human Rights Law No. 39/1999 states, "Everyone is free to embrace a religion and worship according to their religion and beliefs." Therefore, the state has an obligation to protect, respect, and uphold these fundamental rights (Makhrus Munajat, 2008).

Thus, the government of the Republic of Indonesia has an absolute obligation to respect, protect, uphold, and develop freedom of religion in accordance with the provisions of the constitution, which is the highest legal foundation of the state. The state's involvement in the drafting and implementation of the Aceh Criminal Code is not merely as a facilitator and protector, but also as an active and integral part of the legislative process that formulates the content and substance of the Code. The constitutional obligation of the government includes the responsibility to ensure that such active involvement is carried out optimally, effectively, and in accordance with the principles of democracy and the supremacy of law that guarantee the rights of all citizens (Syahrizal Abbas, 2025).

The Future Prospects of Criminal Law in Aceh

The province of Aceh has begun to open up broader and more intensive discussions on issues of Islamism and ethno-nationalism following the enactment of the Aceh Government Regulation (UUPA) as an important milestone in the region's political and social development. Democratic institutions, particularly the regional parliament, which plays a strategic role in decision-making, have transformed into the main forum for constructive conversation and dialogue on these two phenomena, allowing various aspirations and views of the community to be expressed openly and dynamically (Danial, 2012).

Former GAM leaders who previously fought to secure political seats are now actively involved in the legislative process as members of the Aceh Party Faction (FPA). Law No. 11 of 2006 serves a dual function: it legitimises Aceh's long-fought identity (ethno-nationalism) while strengthening the enforcement of Islamic law in Aceh.

In contrast to the enthusiastic and passionate response to the ideology of Islamism, which has taken root among the Acehnese people, efforts to express ethno-nationalist views in the public sphere have received a relatively lukewarm and uninspiring response from the majority of Acehnese people. Since ancient times, Aceh has been grappling with a complex dilemma between two major choices: achieving independence as a politically autonomous entity or implementing Islamic law formally as the main foundation of national and state life. These two major ideologies—ethno-nationalism and Islamism—have dominated the intellectual landscape and political discourse in Aceh since the reform era began, becoming two opposing forces pulling in different directions in determining the future direction of the region (Muhammad Alkaf, 2018).

Muhammad Alkaf states that after the Helsinki Memorandum of Understanding (MoU) and the enactment of the Aceh Special Autonomy Law (UUPA), Islamism became the primary political ideology in Aceh, while ethno-nationalism began to lose ground. This opened up a broader political space for Islamic law. In stark contrast to ethno-nationalist efforts such as the Aceh flag and the regional anthem 'Wali Nanggroe,' which failed to gain widespread support and even faced rejection, sharia-based legal products were warmly accepted by the public. Looking at the history of Aceh, the victory of Islamism is particularly evident in the codification of Islamic law

The current political situation shows a significant and growing opportunity for the full ratification of jināyah ḥudūd in the Qanun Jinayat, a step that is considered crucial by many. The public's desire to implement Islamic law comprehensively aligns with the local government's steadfast

political commitment to advance the Islamic Criminal Code as a legitimate and robust legal foundation. Conversely, the government's efforts further strengthen the public's aspirations to establish a legal system rooted in Sharia principles in a comprehensive and consistent manner.

According to the concept of Islamic political law, which views the implementation of Islamic law as a reflection of a dynamic legal system that is closely intertwined with societal life, the Aceh Criminal Code holds significant potential to codify hudud crimes comprehensively and thoroughly, thereby serving as a legal foundation that is not only normative but also practical in regulating the social behaviour of Muslims in the region. This approach emphasises the importance of law as a reflection of living values, not merely rigid rules, so that the Qanun Jinayat can become an integral legal instrument in maintaining order and upholding justice based on Sharia.

Historical, philosophical, sociological, and legal factors support this possibility. The peak of Islamic law enforcement in Aceh occurred during the reign of Sultan Iskandar Muda with the implementation of the death penalty by stoning. Islamic principles permeated city life and became an integral part of Aceh's identity as the 'Veranda of Mecca.' Islamic values are deeply rooted in Acehnese culture and form the foundation of their existence.

The Acehnese people believe that divine law governs all aspects of life, from worship and social interaction to criminal punishment. The old proverb 'Islam ngen adat lagei qalam deungon daweut'

and then "hukom ngen adat, lagei zat ngen sifeut" clearly reflect a deep sociological perspective, where adherence to Islamic principles is considered an ingrained obligation within local customs and traditions that have been rooted since ancient times. These expressions emphasise how religious norms and community customs are closely intertwined, so that practising Islam is not merely a spiritual obligation but also an integral part of the cultural and social identity of the local community.

Article 29(2) of the 1945 Constitution guarantees every individual's right to practise their religion and beliefs; this provision serves as the legal basis for the implementation of qanun jinayat in Aceh. Law No. 11 of 2006, which grants Aceh broad authority to apply Islamic law in all aspects of governance, further strengthens this authority. Given this context, it is clear that Islamic law has a real political opportunity in Aceh, which could lead to the full positivisation of Islamic criminal law as enshrined in the Qanun Jinayat. After gaining widespread support from the Acehnese public, the formalisation of Islamic law now requires support from government officials,

legislators, academics, and religious leaders to ensure its implementation in accordance with established political and legal policies.

Conclusion

The regulation considered constitutional is Qanun Aceh No. 6 of 2014 on Criminal Law. This Qanun regulates three types of criminal offences. Thanks to the explicit mandate in Law No. 11 of 2006 on the Government of Aceh, the Criminal Qanun has a solid constitutional basis. The principle of human rights is reflected in the inclusion of hudud offences, including flogging, in the Criminal Code, in accordance with constitutional interpretation theory that addresses human rights provisions.

Article 29(2) of the 1945 Constitution states, "The state guarantees freedom for every citizen to embrace their respective religions and to worship according to their religion and beliefs." The Aceh Criminal Code is an important part of Acehnese society and is highly amenable to constitutionalisation due to its strong constitutional foundation. A modern interpretation of the Qanun Jinayat that takes into account the ideals of a unitary state is necessary to ensure that this law does not become obsolete and remains relevant in the future.

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