

JURIDICAL ANALYSIS OF THE IMPLEMENTATION OF ISLAMIC CRIMINAL LAW IN ACEH FROM THE PERSPECTIVE OF LEGAL HERMENEUTICS

Irma Suryani¹

¹ Faculty of Sharia, Mahmud Yunus Batusangkar State Islamic University. Jl. Jenderal Sudirman No.137,
Limo Kaum, Kec. Lima Kaum, Kabupaten Tanah Datar, Sumatera Barat 27217, Indonesia,
irmasuryani@iainbatusangkar.ac.id

DOI: <https://doi.org/10.21107/pamator.v16i1.19274>

Manuscript received 20th February 2023, Revision 25th March 2023, Published 28th March 2023

Abstract

This study aims to determine the concept of the application of Islamic criminal law in Aceh and to analyze it using the perspective of legal hermeneutics. The research method used is a normative legal research method with statutory approaches (Statute Approach) and case approaches (Case Approach). The study shows that enforcing Islamic criminal law in Aceh is in the context of maintaining the five basic human needs, namely the maintenance of religion, soul, mind, lineage, and property. These five basic needs are necessary for humans. This is determined nothing but to maintain the existence of the five basic human needs, or in other words, the punishments are prescribed solely for the benefit of humans. The current implementation of Islamic law in Aceh is still within the corridor of the trilogy of religious harmony, namely inter-religious harmony, internal religious harmony, and inter-religious harmony with the Government. So if viewed through a hermeneutic lens, Islamic criminal law is basically to achieve harmonious and ideal societal conditions. In implementing Islamic criminal law, the role of all parties is needed, one of which plays an important role is the role of the family. The role is the primary milestone for providing education about Islamic law so as not to become a person who violates Islamic law.

Keywords: Aceh, Islamic Criminal, Qanun, Jinayah

© Authors; This is an Open Access Research distributed under the term of the Creative Commons Attribution-ShareAlike 4.0 International License (CC BY-SA 4.0) (<https://creativecommons.org/licenses/by-sa/4.0/>) which allows re-distribution and re-use of a licensed work on the conditions that the creator is appropriately credited and that any derivative work is made available under “the same, similar or a compatible license”.

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia is the fundamental law; in its opening articles, there is an affirmation regarding the country itself. Article 1, paragraph (3) confirms that Indonesia is a constitutional state. All aspects of national and state life must be based on law. Before this confirmation, paragraph (1) and the same article stated that Indonesia is a unitary state in the form of a republic. The form of the state does not escape the fact that Indonesia is an archipelagic country whose land area is separated by sea. Even so, Indonesia is a plural country rich in customs and culture.

This wealth of customs and culture inspires the granting of freedom to autonomous regions to manage the affairs of their respective regional governments. At present, 34 autonomous regions in Indonesia have developed as Provinces. Furthermore, regions with solid customs, culture, and privileges are given special autonomy, which has even greater rights in managing government affairs according to the region's specificity. These areas are the Special Capital Region of Jakarta, the Special Region of Yogyakarta, Aceh, Papua, and West Papua.

Aceh, as one of the holders of special autonomy, is an area that is privileged in the context of religion, as is the fact that we all know that Aceh is a Muslim-populated area often referred to as Veranda of Mecca. This privilege gives rights regarding applying Islamic Law in social life in Aceh.

The granting of special autonomy to the Province of the Special Region of Aceh as the province of Aceh gives birth to hope and opens opportunities for the growth of creativity, discretion, and freedom for the provincial and district/city governments and the people of Aceh, in general, to reinvent self-identity and develop their territory. This opportunity has been responded to positively by the Community component, both Legislative and Executive, and even social organizations and Non-Governmental Organizations. If examined further, the formalization and legalization of Islamic law in Aceh since the reformation period was the result of a prolonged vertical conflict that occurred between the central government and Aceh to end the disharmonious relationship between the center and the region,

Aceh's specificity in the field of law can be seen from Law Number 11 of 2006 concerning the implementation of Islamic Shari'at, which was later supported by several institutional wars in Aceh, namely the Shari'at Silam Service, the Syari'at Walaytul Hisbah court, the official in charge of the Ulama Council, and legal instruments in the form of qanuns. Apart from the legal field, Aceh has its characteristics, especially religious matters. Islamic Shari'at for the Acehnese people is an inseparable part of their customs and culture; the enactment of Islamic shari'a in Aceh is not only a symbol but is a demand for the people of Aceh, who are predominantly Muslim, from a long enough background, the people of Aceh make Islam a guide his life, Islam has become his life with all forms of legal regulations that apply,

Aceh's specialties in the context of religion, including the law, are exciting things to discuss, explore, and examine in more depth. Therefore, this paper will describe the concept of enforcing Islamic criminal law and how Islamic criminal law is enforced if viewed according to legal hermeneutics.

RESEARCH METHODS

This research method is normative legal research. Because this research was carried out or aimed only at written regulations or other legal materials and more was done on secondary data in the library.¹ For this research, the statutory approach (statute approach) and case approach (case approach). This statutory approach is used to examine statutory regulations which, in their normalization, still lack or even foster deviant practices, both

¹ Suratman and Phillips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2014), p. 51.

at the technical level and in their implementation in the field.² The case approach is a type of approach in normative legal research where prospective researchers try to build legal arguments in the perspective of concrete cases that occur in the field.³

RESULT AND DISCUSSION

The Concept of Enforcement of Islamic Criminal Law in Aceh

Islamic criminal law is part of Islamic law or fiqh in general, a discipline of Islam or sharia, in which the basic teachings of Islam cover three main aspects, namely faith, Islam, and ihsan; or creed, sharia, and morals. These three main aspects require three different disciplines. The science of faith or aqidah is called the science of monotheism, the science of Islam or sharia is called the science of fiqh, and the knowledge of ihsan or morals is called the science of tasawuf. Islamic criminal law is a translation of jinayah fiqh, one of the six branches of fiqh in Islamic law. The six branches of fiqh are fiqh worship, muamalah, munakahat, jinayah, siyasa fiqh, and Mawaris. The six types of fiqh are Islamic law in the field of worship, muamalah or the relationship of social interaction and business, marriage, crime, politics, and inheritance. Apart from these six types of fiqh, other types of fiqh are associated with other terms as compound words, namely social fiqh, children, women, and da'wah fiqh. However, the last four kinds of fiqh are not as popular as the six kinds of fiqh mentioned earlier.⁴

Islamic criminal law, which is translated from the term fiqh jinayah, when fully defined, includes two main words: fiqh and jinayah. Etymologically, fiqh means understanding speech well. In terms of terminology, fiqh is the science of practical sharia laws, which are explored and found from detailed arguments.⁵ It can be concluded that fiqh is the science of practical sharia laws and is the result of a mujtahid's analysis of detailed arguments, both contained in the Koran and hadith. Jinayah, which also comes from Arabic, means to sin. Jinayah is an action or deed of a person that threatens human physical safety and has the potential to cause harm to human dignity and property so that the act or deed is considered unlawful to do, even the perpetrator must be subject to legal sanctions in this world and in the hereafter as God's punishment.⁶ Through these definitions, it can be said that Islamic criminal law is the science of sharia laws which are explored and inferred from the Qur'an and hadith regarding crimes related to the safety of the soul (life) and limbs, both concerning the five aspects (religion, life), reason, honor, and wealth) or not.

The purpose of Islamic law is in line with the goals of human life as well as the potential that exists within him and the potential that comes from outside him, namely the happiness of living both in this world and the hereafter, or in short terms, for the benefit of humans. This goal can be achieved by taking everything that has benefits and rejecting everything harmful to please Allah by the principle of monotheism. According to al-Syathibi, one of the well-known supporters of the Maliki School, the benefit can be realized if the five main elements are also realized. The five essential elements are

² Irwansyah Irwansyah, *Penelitian Hukum* (Yogyakarta: Mirra Buana Media, 2020), pp. 133–34.

³ Irwansyah, p. 138.

⁴ Nurul Irfan, *Hukum Pidana Islam* (Jakarta: Amzah, 2016), p. 2.

⁵ Amir Syarifuddin, *Ushul Fiqih* (Jakarta: Logos, 2000), p. 3.

⁶ Irfan.p. 7.

religion, soul, lineage, mind, and wealth.⁷ According to al-Syathibi, the determination of the five basic human needs above is based on the arguments of the Koran and Hadith.

These arguments function as al-qawaid al-kulliyah (general principles) in establishing al-kulliyah alkhamsah (five basic needs). The Koran verses used as the basis are generally Makkiyah verses not sanctioned (legally abolished) and Madaniyah verses, which confirm Makkiyah verses. Among these verses are those related to the obligation to pray, the prohibition of killing the soul, the prohibition of drinking alcohol, the prohibition of adultery, and the prohibition of improperly consuming other people's property. Based on these verses, al-Syathibi ultimately concluded that the existence of these five basic needs for humans occupies something that is qath'iy (necessary) in the sense that it can be accounted for and, therefore, can be used as a basis for establishing law.⁸

To realize and maintain the five primary elements, al-Syathibi put forward three levels of maqashid al-shari'ah (objectives of shari'a), namely the first is the primary goal (maqashid al-daruriyyah), the second is the secondary goal (maqashid al-hajjiyyah), and the three tertiary goals (maqashid al-tahsiniyyah). It is on this basis that Islamic law was developed, both criminal, civil, constitutional, legal politics, and others.⁹ Knowing the objectives of Islamic law will make it easier for jurists to practice law. If the science of law cannot resolve the law of an event, paying attention to these objectives will resolve every legal event quickly.

When Soekarno declared Indonesian independence on 17 August 1945, Aceh was not yet part of the Unitary State of the Republic of Indonesia. Willingness to join the territory of the Republic of Indonesia because of Soekarno's promise that he wanted to give freedom to take care of himself, including implementing Islamic law. The promise was made in 1948. Bung Karno came to Aceh seeking moral and material support for the struggle of the Indonesian people against the Dutch. The freedom to implement the Shari'a is a reward if the Acehnese are willing to assist. After that, special autonomy was given to carry out religious, civil, and educational processes, but the implementation of Islamic law was still limited to what was permitted by the central government. This was stated in the decision of the ruler of the war (1 Aceh military commander/Iskandar Muda, Colonel M.

First: the orderly and thorough implementation of the elements of Islamic religious law for its adherents in the Special Region of Aceh, with due observance of state laws and regulations.

Second: controlling the implementation of the meaning and intent of the first paragraph is left entirely to the government of the Special Region of Aceh. In 1966 the New Order came to power, and local regulation number 1 of 1966 was passed concerning the basic guidelines for the Ulema Consultative Council. The function of this assembly is as a unifying institution for the ummah, as an adviser to the local government in the field

⁷ Asafri Jaya Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi* (Jakarta: Rajawali Pers, 1996), p. 71.

⁸ Fathurrahman Djamil, *Filsafat Hukum Islam (Bagian Pertama)* (Jakarta: Logos, 1997), pp. 125–26.

⁹ Juhaya S. Praja, *Filsafat Hukum Islam* (Bandung: Remaja Rosdakarya, 1991), p. 274.

of religion, and as a fatwa institution that will guide Muslims in their daily and religious life.

In 1974 the government passed a law on the principle of governance in the region, which, among other things, stated that the designation of the Special Region of Aceh was just a name, and the regulations were the same as other regions. The Islamic Shari'a that applies at the gampong level is replaced by Law No. 5 of 1979 concerning Village Administration. During the old order period, Soekarno successfully used the promise of freedom to implement the Islamic syariat to seek support from the Acehnese leader, Abu Beureuh. When the promise never kept was billed through armed resistance, the Islamic Shari'a stance was again used and successful. Some Regional Regulations regulate the implementation of Shari'a but only as permitted by the authorities. The old order period was similar. Islamic Shari'a is just an effort to strengthen their position in the eyes of the people who have lost their patience waiting for the government's promises. After the community's trust grew, Islamic law, carried out for generations at the village level, was abolished and replaced with regulations that apply throughout Indonesia.

The application of Islamic law in the era of special autonomy for Aceh is familiar with the words "implementation of Islamic law in a kaffah manner in Aceh." It can be interpreted as an effort to perfectly apply Islam as a legal basis in every Muslim act. The term kaffah is used because the state will involve itself in implementing Islamic law in Aceh. Making favorable laws that align with Shari'a, formulating an Islamic curriculum, and other issues related to Shari'a. The legal basis for implementing Islamic sharia in Aceh is the promulgation of Law No. 44 of 1999 and Law No. 18 of 2001. In Law No. 44 of 1999, Islamic sharia is defined as all aspects of Islamic teachings. In Law Number 1, it is stated that the syar'iyah court will implement Islamic law as outlined in the qanun first. Qanun is a regulation made by the regional government of Aceh to implement Islamic law for its adherents in Aceh.¹⁰

Abdul Wahhab Khallaf gives simple details regarding the application of Islamic criminal law, which is related to the maintenance of the five basic human needs, in his book 'Ilmu Usul al-Fiqh'.¹¹

1. Preserving religion (high al-din)

Religion here means a set of beliefs, worship, laws, and laws made by Allah to regulate human relations with their Lord and between humans. To protect and maintain the needs of this religion from the threat of enemies, Allah prescribes the law of jihad to fight people who hinder the propagation of religion. Allah prescribes prayer, forbids apostasy, and forgets to protect this religion. If this stipulation is ignored, then the existence of the religion will be threatened, and Allah commands to fight against apostates and polytheists.

2. Nurturing the soul (hifzh al-nafs)

¹⁰ Iskandar, 'Pelaksanaan Syariat Islam Di Aceh', *Jurnal Serambi Academica*, 6.1 (2018), pp. 81–83.

¹¹ Yandi Maryandi, 'Gagasan Pemberlakuan Hukum Pidana Islam Di Indonesia', *TAHKIM, Jurnal Peradaban Dan Hukum Islam*, 2.1 (2019), pp. 45–46.

To care for this soul, God obliges them to try to get food, drink, clothing, and shelter. Without this need, the human soul will be threatened. Allah will also threaten with a qishash (killing law) or diyat (acceptable) punishment for anyone who loses a soul. Likewise, Allah forbids throwing oneself into the abyss of destruction (suicide).

3. Maintaining the mind (hifzh al-all)

To maintain and maintain this mind, Allah requires that humans consume excellent and lawful food and enhance the quality of the mind by seeking knowledge. On the other hand, Allah forbids intoxicating liquor. If this prohibition is ignored, the existence of reason will be threatened. In addition, it was determined that there was a threat (40 lashes) for someone who drank liquor.

4. Caring for offspring (hifzh al-nasl)

To preserve Allah's offspring, marriage is lawful and, vice versa, forbids adultery. For people who ignore this provision, the existence of their descendants will be threatened. Even if adultery is prohibited, Allah threatens with a stoning or a hundred lashes.

5. Maintaining wealth (hifzh al-mal)

To maintain this property, the procedures for owning property are prescribed, for example, by muamalah, trade, and cooperation. In addition, Allah forbids stealing or improperly seizing other people's property. If the prohibition against stealing is ignored, then the perpetrator will be threatened with the punishment of cutting off his hand.

From the description above, it is clear that the five basic needs are things that absolutely must exist in humans. Therefore Allah ordered us to make every effort for its existence and perfection. On the other hand, Allah forbids doing actions that can eliminate or reduce one of the five basic needs. Punishment or sanction for the prohibition is firm and absolute. This is determined to be nothing but to maintain the existence of the five basic human needs earlier. Or in other words, the punishments are prescribed solely for the benefit of humans. With the threat of severe punishment, people will be afraid to commit prohibited acts that are threatened with such punishment. Thus, the enactment of Islamic criminal law is also to create benefit among humanity as a whole.

Implementation of Islamic Criminal Law in Aceh According to the Perspective of Legal Hermeneutics

As a form of legislation in Indonesia, Qanun has been introduced previously. Especially in Aceh, qanuns have been known for a long time. One of the texts that can be referred to is the writing of Tengku in Mulek in 1257 entitled Qanun Syara' of the Kingdom of Aceh. Al Yasa' Abu Bakar, as quoted by Ahyar explained that according to Liau Yock Fang the term Qanun means adat and is usually used to distinguish between laws contained in fiqh and laws contained in adat. For the current context and specifically in Aceh, based on the UUPA, Qanun is a statutory regulation similar to a regional regulation that regulates the administration of the Aceh government and the life of the Acehnese people.¹²

¹² Ridwan Nurdin, 'Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia', *MIQOT*, 13.2 (2018), p. 364.

Since the entry into force of Islamic law in Aceh, several qanuns have been promulgated, including the following:¹³

1. Aceh Qanun Number 11 of 2018 concerning Islamic Financial Institutions.
2. Aceh Qanun Number 4 of 2016 concerning Guidelines for Maintaining Religious Harmony and the Establishment of Places of Worship.
3. Aceh Qanun Number 8 of 2015 concerning Guidance and Protection of Aqidah.
4. Aceh Qanun Number 7 of 2015 concerning the Distribution of Governmental Affairs relating to Islamic Shari'a Between the Government of Aceh and District/City Governments.
5. Aceh Qanun Number 8 of 2014 concerning Principles of Islamic Sharia.
6. Aceh Qanun Number 6 of 2014 concerning Jinayat Law.
7. Aceh Qanun Number 7 of 2013 concerning Jinayat Procedure Law.
8. Aceh Qanun Number 2 of 2009 concerning the Ulema Consultative Council.
9. Aceh Qanun Number 10 of 2008 concerning Customary Institutions.
10. Aceh Qanun Number 9 of 2008 concerning Fostering Traditional Life and Customs.
11. Aceh Qanun Number 10 of 2007 concerning Baitul Mal.
12. Qanun of Nanggroe Aceh Darussalam Province Number 11 of 2002 concerning Implementation of Islamic Sharia in the Field of Aqidah, Worship, and Islamic Symbols.
13. Qanun of Nanggroe Aceh Darussalam Province Number 10 of 2002 concerning Islamic Sharia Court.
14. Regional Regulation of the Special Province of Aceh Number 5 of 2000 concerning implementing Islamic Sharia.

These qanuns will continue to evolve according to the legal needs of the Acehnese people, which are influenced by developments in society's culture, science, technology, and legal politics. The definition of Qanun itself in the Big Indonesian Dictionary is known by the name: Kanun, which means: law, regulation, book of laws, law, and rules. So it can be concluded that the meaning of Qanun is a statutory regulation or the rule of law that applies in an area (in this case, Aceh).¹⁴

¹³ Mardani Mardani, *Hukum Acara Jinayat* (Jakarta: Kencana, 2022), pp. 5–6.

¹⁴ Ahyar Ari Gayo, 'Aspek Hukum Pelaksanaan Qanun Jinayat Di Provinsi Aceh', *Jurnal Penelitian Hukum De Jure*, 17.2 (2017), p. 137.

The Encyclopedia of Islam states that al-jinayah is "an act that is prohibited because it can cause damage to religion, soul, mind or property." The word al-jinayah comes from juna-yajni, which means Abkhazia (to take) or often means crime, criminal or criminal. In this case, jinayah is the same as jarimah (shark prohibition, which carries a certain punishment). The word al-jina'iyah is the adjective form of the word al-jinayah. In simple terms, the meaning of the term al-ahkam al-jinayah is criminal punishment or public law. Another term that is synonymous with al-ahkam al-jinayah is al-fiqh al-jina'i. These two terms are still in the realm of fiqh, namely the result of reasoning on the Islamic legal texts of the Qur'an and Hadith).¹⁵ The Government of Aceh stipulates 4 (four) qanuns as qanun jinayah, namely Qanun Number 11 of 2002 concerning the Implementation of Islamic Sharia in the areas of Faith, Worship, and Islamic Sharia; Qanun Number 12 of 2003 concerning Khamr Drinks and the like; Qanun Number 13 of 2003 concerning Maisir (gambling); Qanun Number 14 of 2003 concerning Khalwat (obscene).¹⁶

In this study, the authors use a knife of legal hermeneutic analysis as a theory of new legal discoveries. According to Jazim Hamidi, legal hermeneutics is a philosophical teaching regarding understanding/understanding something or a method of interpretation (interpretation) of a text. The word "something/text" meant here can be in the form of legal texts, legal events, legal facts, official state documents, ancient texts, ahkam verses in the holy book, or the form of opinions and results of ijtihad of legal experts (doctrine). Methods and techniques for interpreting them are carried out holistically within the framework of the interrelationships between text, context, and contextualization.¹⁷

From the three legal system theories put forward by Lawrence Meir Friedman, it can be concluded that Qanun Jinayat is detected in legal culture. The existence of the Qanun Jinayah is based on a philosophical, sociological, juridical, and historical basis. The existence of 4 (four) foundations is a factor in the presence of the Qanun Jinayah Aceh. However, it all boils down to the aspirations of a sociological basis, the people of Aceh have become a religious population, and Islam is the majority religion that the people of Aceh widely embrace. The sociological foundation is a factor with economic conditions, religious views, and the psychology of society related to the history of law, religion, economics, and philosophy.¹⁸ However, the existence of the Qanun Jinayah lies on the artistic side, one of Friedman's theories, namely legal culture, which can be drawn from the formation of law. The formation of law is inseparable from the Legislative Regulations. Based on the form of law consists of written law, unwritten law, and judicial law (judge-made law).

Qanun Jinayah, in structuring the National Criminal Law, adheres to the principle of statutory regulations, which adheres to the principle of *lex specialist derogat lex generalis*, which means that specific laws override general laws. From this, one can assume that what has become a foundation is the basis for the Aceh government to continue implementing the Qanun Jinayah, which adheres to Allah's Teachings contained in the Al-Qur'an, hadith, *ijma'*, and *qiyas*.

¹⁵ Ali Abu Bakar and Zulkarnain Lubis, *Aceh Jinayah Law: An Introduction* (Jakarta: Kencana, 2019), p. 3.

¹⁶ Mahdi, 'Sistem Hukum Penegakan Qanun Jinayat Di Aceh', *Jurnal Media Syariah*, 13.2 (2011), p. 181.

¹⁷ Jazim Hamidi, *Hermeneutika Hukum* (Malang: UB Press, 2011), p. 94.

¹⁸ Zaeni Asyhadie, *Ilmu Pengantar Hukum* (Jakarta: Rajawali Pers, 2016), p. 86.

The implementation of Qanun Jinayat from the perspective of national criminal law lies in the eyes of the individual. Have the firmness that the Aceh Qanun Jinayah and the national criminal law have differences but are not contradictory. The difference lies in procedural law. Procedural law is formal, namely the law that regulates how to implement the law and how to sue if another person violates someone's rights. There are five procedural laws, including Civil Procedural Law, Religious Court Procedural Law, Criminal Procedural Law, Administrative Court Procedural Law, and Constitutional Court Procedural Law.¹⁹ In the enactment of the Jinayah Qanun, there is one element, namely the formal element. The formal element in Islamic criminal law is the rules governing actions that can be declared as finger actions or the existence of syara' provisions from the Shari'a or texts, which state that every act committed is an act that has been stated by law. The most substantial thing in the elements of law is the rules or rules of public behavior held by official bodies that are binding and coercive, and there are strict sanctions for every human being who violates them.²⁰

From a sociological point of view, the community upholds more with the enactment of the Qanun Jinayah Aceh; the dominant community is Santri, scholars, academics, and practitioners of Islamic law (religious people). However, the reflection of society is inseparable from the influence of outside culture and is accustomed to the implementation of criminal law nationally. This is why many people are against the enactment of the Qanun Jinayah Aceh. The various reflections of society on the enactment of the Qanun Jinayah are one of them with the application of the Caning Punishment. Caning law is considered to be able to generate controversy because caning punishment is considered inhumane and can degrade human dignity.²¹ By implementing Qanun Jinayah Aceh, the Government needs to carry out outreach to the community so that people do not assume negatively and as law enforcers must comply with applicable regulations and indiscriminately, and as written law must be implemented according to the rules. The importance of socialization to the community, which is carried out in a sustainable manner that triggers a variety of perceptions. In implementing the Qanun Jinayah, the role of all parties is needed, one of which plays an important role is the role of the family. The role is the primary milestone for providing education about Islamic law so as not to become a person who violates Islamic law in addition to the role of the family, namely the environment. The environment is a factor in carrying out a controlling system for individuals capable of neutralizing norm violations.

By taking into account the overall content of the qanuns in Nanggroe Aceh Darussalam, there are two types of qanuns, namely Islamic qanuns and non-shari'at qanuns (which deal with mundane aspects only). Particularly about the shari'at qanuns, it only applies to Muslims, while the non-shari'at qanuns will generally apply to the people of Nanggroe Aceh Darussalam as a whole. This polarization remains within the framework of maintaining the freedom to practice their respective religions and beliefs by the people of Nanggroe Aceh Darussalam. Considering the description above, it can be seen that the application of Islamic criminal law in Nanggroe Aceh Darussalam adheres to the principle of Islamic personality. This means that the qanuns of the sayari'at,

¹⁹ Ashhadie, p. 30-31.

²⁰ Mustofa Hasan and Beni Ahmad Saebani, *Hukum Pidana Islam Fiqh Jinayah* (Bandung: Pustaka Setia, 2013), p. 170.

²¹ Anifah and Edi Sukardi, 'Tanggapn Masyarakat Terhadap Penerapan Hukuman Cambuk Di Daerah Singkil Kabupaten Aceh Singkil', *Jurnal Sekolah*, 3 (2019), p. 197.

as stated above, only apply to Muslims. At the same time, non-Muslims in general (Protestants, Catholics, Hindus, and Buddhists, even adherents of the belief system) are not included in it, let alone being forced to carry it out, which is impossible. Thus, for non-Muslim residents in Nanggroe Aceh Darussalam, it is no difficulty remaining in Nanggroe Aceh Darussalam because they are still subject to the Criminal Code as legal provisions apply nationally, in addition to continuing to comply with qanuns that are non-syari'at.

To appreciate this, it seems to us that the current implementation of Islamic law in Nanggroe Aceh Darussalam is still in the corridor of the trilogy of religious harmony, namely inter-religious harmony, internal religious harmony, and inter-religious harmony with the Government, also in line with basic guidelines in religion for the Indonesian nation which are regulated in article 29 of the 1945 Constitution concerning the freedom to carry out the teachings of each religion and belief. Apart from referring to the principle of Islamic personality as previously stated, it is also guided by Law No. 18 of 2001, Qanun No. 5 of 2000, and expert statements; this has also been understood correctly by non-Muslims. For example, Friez R. Tambunan (Christian Expert who is now the Secretary of the Institute for Research and Community Service (LP3M), Head of the Humanities Research Center, and Head of the Community Service Center at St. Thomas Medan.) said; Head of the Nanggroe Aceh Darussalam Islamic Shari'a Service Al Yasa` Abubakar has indeed emphasized that the application of Islamic Shari'a only applies to Muslims, so those who are non-Muslims do not need to be overly afraid of hearing Islamic Shari'a.

He also guarantees that Islamic law regulates and guarantees the rights of non-Muslims in Nanggroe Aceh Darussalam; if this works well in Nanggroe Aceh Darussalam, various parties must have a wrong perception regarding implementing Islamic law as an alternative system of governance. Effective statehood to achieve general welfare will be corrected. Head of the Nanggroe Aceh Darussalam Islamic Shari'a Service Al Yasa` Abubakar has indeed emphasized that Islamic Shari'a only applies to Muslims, so those who are non-Muslims need not feel excessively afraid of hearing Islamic Shari'a. He also guarantees that Islamic law regulates and guarantees the rights of non-Muslims in Nanggroe Aceh Darussalam; if this works well in Nanggroe Aceh Darussalam, there must be a wrong perception on the part of various parties regarding the implementation of Islamic law as an alternative system of governance. Effective statehood to achieve general welfare will be corrected.²² Islamic criminal law is basically to achieve harmonious and ideal societal conditions, contains rules and norms that are harmonious/non-contradictory, and highly upholds legal norms that apply universally so that no particular people feel disturbed.

²² Friez R. Tambunan, *Dinas Syari'at Islam Propinsi Nangroe Aceh Darussalam, Syari'at Di Wilayah Syari'at Pernik-Pernik Islam Di Nangroe Aceh Darussalam* (Banda Aceh: Yayasan Ulul Arham, 2022), pp. 287–88.

CONCLUSION

Based on the description above, it can be concluded that:

1. The concept of enforcing Islamic criminal law in Aceh is in the context of maintaining the five basic human needs: the maintenance of religion, soul, mind, lineage, and property. These five basic needs are essential for humans. Therefore Allah ordered us to make every effort for its existence and perfection. On the other hand, Allah forbids doing actions that can eliminate or reduce one of the five basic needs. Punishment or sanction for the prohibition is firm and absolute. This is determined to be nothing but to maintain the existence of the five basic human needs earlier. Or in other words, the punishments are prescribed solely for the benefit of humans.
2. Let's pay attention to the overall content of the qanuns in Nanggroe Aceh Darussalam. In that case, there are two kinds of qanuns, namely qanun sayari'at and non-shari'at qanuns (which deal only with mundane aspects). The shari'at qanuns, only apply to Muslims, while the non-shari'at qanuns will generally apply to the people of Nanggroe Aceh Darussalam. The framework of maintaining the principle of freedom to carry out their respective religious teachings and beliefs by the people of Nanggroe Aceh Darussalam. The current implementation of Islamic law in Nanggroe Aceh Darussalam is still within the trilogy of religious harmony corridor, namely inter-religious harmony, internal religious harmony, and inter-religious harmony with the Government. Islamic criminal law is basically to reach the conditions of a harmonious and ideal society, contains rules and norms that are harmonious/non-contradictory, and highly upholds legal norms that apply universally so that no particular people feel disturbed.

BIBLIOGRAPHY

- Anifah, and Edi Sukardi, 'Tanggapn Masyarakat Terhadap Penerapan Hukuman Cambuk Di Daerah Singkil Kabupaten Aceh Singkil', *Jurnal Sekolah*, 3 (2019)
- Asyhadie, Zaeni, *Ilmu Pengantar Hukum* (Jakarta: Rajawali Pers, 2016)
- Bakar, Ali Abu, and Zulkarnain Lubis, *Hukum Jinayat Aceh: Sebuah Pengantar* (Jakarta: Kencana, 2019)
- Bakri, Asafri Jaya, *Konsep Maqashid Syari'ah Menurut Al-Syatibi* (Jakarta: Rajawali Pers, 1996)
- Djamil, Fathurrahman, *Filsafat Hukum Islam (Bagian Pertama)* (Jakarta: Logos, 1997)
- Gayo, Ahyar Ari, 'Aspek Hukum Pelaksanaan Qanun Jinayat Di Provinsi Aceh', *Jurnal Penelitian Hukum De Jure*, 17.2 (2017)
- Hamidi, Jazim, *Hermeneutika Hukum* (Malang: UB Press, 2011)
- Hasan, Mustofa, and Beni Ahmad Saebani, *Hukum Pidana Islam Fiqh Jinayah* (Bandung:

-
- Pustaka Setia, 2013)
- Irfan, Nurul, *Hukum Pidana Islam* (Jakarta: Amzah, 2016)
- Irwansyah, Irwansyah, *Penelitian Hukum* (Yogyakarta: Mirra Buana Media, 2020)
- Iskandar, 'Pelaksanaan Syariat Islam Di Aceh', *Jurnal Serambi Academica*, 6.1 (2018)
- Mahdi, 'Sistem Hukum Penegakan Qanun Jinayat Di Aceh', *Jurnal Media Syariah*, 13.2 (2011)
- Mardani, Mardani, *Hukum Acara Jinayat* (Jakarta: Kencana, 2022)
- Maryandi, Yandi, 'Gagasan Pemberlakuan Hukum Pidana Islam Di Indonesia', *TAHKIM, Jurnal Peradaban Dan Hukum Islam*, 2.1 (2019)
- Nurdin, Ridwan, 'Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia', *MIQOT*, 13.2 (2018)
- Praja, Juhaya S., *Filsafat Hukum Islam* (Bandung: Remaja Rosdakarya, 1991)
- Suratman, and Phillips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2014)
- Syarifuddin, Amir, *Ushul Fiqih* (Jakarta: Logos, 2000)
- Tambunan, Friez R., *Dinas Syari`at Islam Propinsi Nangroe Aceh Darussalam, Syari`at Di Wilayah Syari`at Pernik-Pernik Islam Di Nangroe Aceh Darussalam* (Banda Aceh: Yayasan Ulul Arham, 2022)