**The Principle of Enforcing the Qanun Jinayat for Non-Muslims who Engage in Jarimah together Muslims in Aceh-Indonesia**

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**ABSTRACT:** The implementation of legal norms in Aceh takes the form of lex scripta, namely the enforcement of Islamic law regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law or Islamic criminal law, which applies not only to Muslims but also to non-Muslims. **Objectives:** This research aims to explain and analyze the appropriate principles in the enforcement of Jinayat Law for non-Muslims who commit crimes together with Muslims in Aceh. **Methods:** The r**esearch method** adopted for this research is normative juridical research with an approach to regulations and a conceptual approach, as well as a comparative approach. The data sources used in this research were obtained from library research, including books, documents, legal instruments, legal journals, laws, qanun, and others. **Results:**. The Results obtained reveal that this model is considered the implementation of Islamic Sharia as regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law or Islamic criminal law, which applies not only to Muslims but also to non-Muslims. This model offers the principle of voluntary submission. because it is in accordance with the values of Pancasila, justice, the ideals of a state governed by law, especially equality before the law, and it is in accordance with the concept of the implementation of Islamic criminal law as well as the concept of rahmatan lil alamin. **Conclusions: T**he principle of voluntary submission is precisely embodied in Law Number 11 of 2006 on Aceh Governance and specifically found in Aceh Qanun Number 6 of 2014 on Jinayat Law.

**Keywords*:*** Basis, Self-submission, Non-Muslim, Jinayat Law

## Introduction

Article 5 letters b and c of Qanun Number 6 of 2014 concerning Jinayat Law opens the opportunity for non-Muslims to commit crimes (Islamic Sharia) in Aceh together with Muslims, and they can choose to voluntarily submit themselves to the qanun jinayat law. Usually, what can be done together includes activities such as gambling (maisir*)*, illicit cohabitation (khalwat*)*, and adultery (perzinahan). Then for non-Muslims who commit crimes in Aceh that are not regulated in the Criminal Code or outside the Criminal Code, they are subject to the qanun jinayat law, such as khalwat (illicit cohabitation), ikhtilath (intimate acts such as kissing, touching, hugging, and kissing between men and women who are not married to each other with the consent of both parties, whether in private or public places), and qadzaf (the act of accusing someone, especially women, of adultery or immoral acts without valid evidence).[[1]](#footnote-0)

Hierarchically, Article 5 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law is a derivative of Article 129 of Law Number 11 of 2006 concerning Aceh Governance, which generally explains that:

1. In the case of a jinayah act committed by two or more people together, among whom some are non-Muslims, the non-Muslim perpetrators can voluntarily choose to submit themselves to jinayah law.
2. Every person who is not a Muslim commits a jinayah act that is not regulated in the Criminal Code or criminal provisions outside the Criminal Code, the jinayah law applies.
3. Aceh residents who commit jinayah acts outside Aceh are subject to the Criminal Code.

The opening of opportunities for non-Muslims to be punished in Aceh has become a subject of debate and criticism in both formal channels, scientific forums, and the media. One of them is in Danial's research, the opening of opportunities for non-Muslims who are considered minorities, with the enactment of the qanun jinayat, will potentially lead to intolerance and human rights violations because it contradicts the 1945 Constitution of the Republic of Indonesia, which guarantees every citizen the right to embrace and practice their religion,[[2]](#footnote-1) And there is also an opinion that the opening of the opportunity to apply the qanun jinayat law to non-Muslims undermines the sense of justice.

Basically, the application of the principle of self-submission for non-Muslims in the qanun of jinayat law has become a debate and an issue regarding the disagreement of non-Muslims being subjected to the qanun of jinayat law. Although the fact on the ground is that many non-Muslims who commit crimes in Aceh, along with Muslims, prefer to voluntarily submit themselves to the qanun jinayat law.

As happened in the city of Sigli, a Buddhist committed a violation of the jinayat law by storing and trading in alcohol. Finally, the suspect decided to voluntarily submit to the qanun jinayat law with the Sigli Sharia Court Decision Number 02/JN/2008/MSy-SGI.[[3]](#footnote-2) In addition, in Takengon there was also a voluntary submission to the qanun jinayat law. The defendant named Remita Sinaga violated the jinayat law by selling alcoholic beverages or khamar to the local community. By choosing to submit, the defendant was sentenced to a caning punishment under Case No: 0001/JN/2016/MS-Tkn.[[4]](#footnote-3) Then Jono Simbolon voluntarily submitted himself to the qanun jinayat because he had committed the act of khamar. So the case was tried by the Banda Aceh Sharia Court with case no 33/JN/2017/Ms.Bna.

Some argue that they do not agree with the application of jinayat law to non-Muslims even if it is done through voluntary submission. On the other hand, another party also argues that they agree with the application of jinayat law in the context of committing jinayat offenses together with Muslims and non-Muslims. Therefore, the application of that principle creates contradictions among the community. Jinayat law or Islamic criminal law[[5]](#footnote-4) is part of Islamic law that has been in effect since the time of the Prophet Muhammad (PBUH). During the time of the Prophet Muhammad (PBUH) and the Rightly Guided Caliphs, Islamic criminal law was applied as public law, enforced by the ulil amri or legitimate rulers.[[6]](#footnote-5) In the perspective of positive law in Indonesia[[7]](#footnote-6) Criminal law is also a branch of public law, which regulates the relationship between the state and its institutions or the relationship between the state and its citizens (protecting the public interest).[[8]](#footnote-7) In the context of criminal law, there is no difference in the law applied if it is done at the same time, by the same person, and in the same place. If one party can choose the law, then that is what is considered unfair in the application of the law from the perspective of law enforcement in Aceh.

There are four principles of the applicability of criminal law according to space, place, and person, namely: first, the territorial or regional principle, which means that the criminal law of a country applies within the territory of that country, and anyone who commits an offense within the territory where the criminal law applies is subject to that criminal law. Second, the passive nationality principle or the protective principle means that the criminal law of a country (including Indonesia) applies to acts committed abroad if certain interests, especially the interests of the state, are violated outside the territory of that country. Third, the principle of personality or the principle of active nationality, fundamentally this principle of personality is based on the citizenship of the perpetrator. Indonesian criminal law follows its citizens wherever they are. Fourth, the principle of universality, this principle sees criminal law as generally applicable, transcending territorial and personal boundaries (Indonesia). What is protected here is the interest of the world.[[9]](#footnote-8) The implementation of the principle of voluntary submission in the qanun of jinayat law will contradict the concept in criminal law, which is part of public law. Voluntary submission in the context of committing a crime together between Muslims and non-Muslims seems to create legal certainty.

Basically, the principle of voluntary self-surrender is not recognized in Indonesian criminal law, but in the criminal law applicable in Aceh, namely Jinayat law implemented in Qanun Number 6 of 2014 concerning Jinayat Law, the principle of voluntary self-surrender is adopted. This principle has been in effect since the implementation of the jinayat law.

Theoretically, there is no strong foundation for the implementation of the principle of voluntary self-submission in the qanun jinayat in Aceh, which is part of the national criminal law. The implementation of the principle of voluntary self-surrender in the jinayat law in Aceh introduces something new. In addition, the adoption of the principle of voluntary submission in the qanun of jinayat law has become a point of contention among both national and international communities. Thus creating a situation that seems to be a legal chaos in Aceh. Based on the explanation of the problems above, I am interested in conducting research as a study to address the issues within the community and to provide a theoretical foundation for the implementation of the Jinayat law in Aceh. Specifically, the issue related to the Appropriate Principle in the Enforcement of Jinayat Qanun for Non-Muslims who commit crimes alongside Muslims in Aceh.

## Materials and Methods

This research was normative juridical research with a research approach using law regulations and a conceptual approach. Penelitian ini menggunakan jenis penelitian hukum normatif. Kemudian pendekatan yang digunakan dalam penelitian ini yaitu pendekatan perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan perbandingan (*comparative approach*).

The data sources used in this research were obtained from library research, including books, documents, legal instruments, legal journals, laws, qanuns, and others. The nature of this research is normative juridical, which means examining all legal materials that are the object of the study. The data analysis used is the legal interpretation technique. The data used is of a secondary nature, consisting of primary, secondary, and tertiary legal materials.

## Result and Discussion

* 1. **The Position of Qanun Jinayat in Aceh within the National Legal System of Indonesia**

The implementation of Qanun Jinayah Number 6 of 2014 is an order from a higher law, namely Law Number 44 of 1999 concerning the Implementation of Aceh's Special Autonomy and Law Number 18 of 2001 concerning Special Autonomy for the Province of Nanggroe Aceh Darussalam. Lastly, there is Law Number 11 of 2006 concerning the Governance of Aceh. Law Number 18 of 2001 is no longer in effect after Law Number 11 of 2006 was enacted (lex posteriori derogat legi posteriori).

The two legal norms lex scripta that are still in effect in Aceh today are Law Number 44 of 1999 and Law Number 11 of 2006. These two laws, primarily concerning the implementation of Islamic law, are essentially mandated by the 1945 Constitution, Article 18B, paragraph (1), which states: "The state recognizes and respects special or privileged regional government units as regulated by law."

This shows that the implementation of Qanun Jinayah in Aceh does not contradict higher legislation. The state recognizes certain regions in this Republic that implement a legal system different from the national one, even though Indonesia is a unitary state. This recognition is not without strong and logical reasons based on historical records, where Aceh, before integrating into the Republic of Indonesia, was an independent kingdom/sultanate that implemented Islamic law.

In Considerations a, b, and c of Law Number 11 of 2006, it is emphasized:

1. That the system of government of the Unitary State of the Republic of Indonesia according to the 1945 Constitution of the Republic of Indonesia recognizes and respects regional government units that are special or have special status as regulated by law.
2. That based on the journey of the statehood of the Republic of Indonesia, Aceh is a regional government unit that is special or exceptional due to one of the distinctive characteristics of the historical struggle of the Acehnese people who possess high resilience and fighting spirit.
3. That the resilience and high fighting spirit are rooted in a way of life based on Islamic law that gives rise to a strong Islamic culture, making Aceh a capital region for the struggle to seize and maintain the independence of the Unitary State of the Republic of Indonesia.

Furthermore, Article 20 of Law Number 11 of 2006 states that the administration of the Aceh Government and the district/city governments is guided by the general principles of governance, which consist of:

1. The foundation of Islam;
2. Principle of legal certainty;
3. Principle of public interest;
4. The principle of orderly governance;
5. Principle of openness;
6. Principle of proportionality;
7. Principle of professionalism;
8. Principle of accountability;
9. Principle of efficiency;
10. Principle of effectiveness; and
11. Principle of equality.

The initial establishment of Islamic principles indicated that Islamic law became a guide in all dimensions of life in Tanah Rencong. The Central Government recognizes and approves the implementation of Islamic law in Aceh. Ridwan Nurdin stated, "The Aceh Jinayat Qanun remains a legitimate legal product and is recognized in the Unitary State of the Republic of Indonesia."[[10]](#footnote-9)

Further explained, "The Qanun Jinayat Aceh must indeed be viewed and explained from the two perspectives mentioned above." On one hand, it is part of the Islamic legal system, while on the other hand, it is part of the Indonesian legal system. In other words, the Aceh Jinayat Qanun can be referred to as positive Islamic law, meaning Islamic law whose construction is derived from Sharia (the Quran and Sunnah), fiqh, and 'urf, then legislated into a Qanun by the Aceh Regional People's Representative Council and approved by the Aceh Governor. Because the Qanun Jinayat Aceh is viewed as part of the effort to implement Islamic law, the Qanun Jinayat must be seen as part of the sub-field of Islamic law and classified within the Islamic legal system. In addition to its position, the Aceh Jinayat Qanun is also part of the Indonesian legal system, recognized through Law Number 12 of 2011 concerning the Formation of Legislation.”[[11]](#footnote-10) Currently, Law Number 12 of 2011 has been amended by Law Number 15 of 2019, but substantively, it has not been significantly revised from the previous law.

Based on the above description, it can be stated that Qanun Jinayat has binding legal force as a regional regulation as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation and is further reinforced by Minister of Home Affairs Regulation Number 53 of 2011 concerning the Formation of Regional Legal Products as regulated in Article 1, paragraph 1 as follows: "The formation of regional legal products is the process of making regional legislation starting from the planning, preparation, formulation, discussion, ratification, promulgation, and dissemination stages."

Qanun Jinayat is a legal norm recognized within the rule of law in Indonesia. Muhammad Daud Ali explains that Indonesia, as a rule of law state, in the history of its legal application, recognizes 3 (three) sources of law, namely sources of law originating from the West, Islamic law, and customary law. Islamic law that applies in Indonesia is not only the one that operates formally juridically, meaning it becomes positive law based on or designated by legislation, but also the one that operates normatively, such as the law that governs the relationship between humans and God.

Article 18B paragraph (1) of the 1945 Constitution and Article 29 paragraph (1) of the 1945 Constitution serve as a kind of stepping lock in the implementation of Islamic law, particularly its criminal law (Qanun Jinayat). "The state recognizes and respects regional government units that are special or have special status as regulated by law." (Article 18B paragraph (1) of the 1945 Constitution). "The state is based on the One and Only God." The state guarantees the freedom of every resident to embrace their respective religions and to worship according to their religion and beliefs. (Article 29 paragraphs (1 and 2 of the 1945 Constitution).

Responding to the two important clauses in the 1945 Constitution above, Kamarusdiana stated as follows: "Article 29 paragraph (1) which explicitly states 'The state is based on the One and Only God,' essentially contains three meanings, namely: first, the state is not allowed to create laws or implement policies that contradict the foundation of faith in the One and Only God." Second, the state is obligated to create laws or implement policies for the realization of the expression of faith in God Almighty from a group of adherents of religion who need it. And third, the state is obligated to enact legislation that prohibits anyone from committing acts of harassment against religious teachings.”[[12]](#footnote-11)

Furthermore, Kamarusdiana explained the term "guarantee" as stated in paragraph (2) of Article 29 above. The word "guarantee" is not a static term, but rather an imperative one, meaning the state's obligation to actively make efforts so that every resident can embrace a religion and practice their faith according to that religion. Kamarusdiana continued, "The state's activity here is to provide guarantees so that every resident can freely choose the religion they wish to embrace; and guarantees so that each resident can practice their worship according to the religion and beliefs established by the religion they embrace." Of course, the state's activity is not to interfere with the internal rules established by each religion. The state's guarantee of each resident's freedom to choose the religion they wish to embrace has never seemed to be a serious issue. However, the issue lies in the state's guarantee of every resident's freedom to practice their religion according to its rules.”[[13]](#footnote-12)

In short, it can be concluded that Qanun Jinayat is a positive law as a form of legal renewal in Indonesia that does not contradict international legal instruments, the Indonesian Constitution, and other regulations, and even the Qanun itself is an imperative norm in Indonesia. Its imperative nature lies in the constitutional and regulatory framework that directly governs its implementation, such as Article 18B paragraph (1) of the 1945 Constitution and Article 29 paragraph (1) of the 1945 Constitution as mentioned above. Law Number 44 of 1999 concerning the Implementation of the Special Autonomy of Aceh and Law Number 18 of 2001 concerning Special Autonomy for the Province of Aceh.[[14]](#footnote-13) and Law Number 11 of 2006 concerning the Governance of Aceh.

Article 128 paragraph (3) of Law Number 11 of 2006 (Aceh Government Law) states: "The Sharia Court is authorized to examine, adjudicate, decide, and resolve cases covering the fields of ahwal al-syakhsiyah (family law), muamalah (civil law), and jinayah (criminal law) based on Islamic sharia." In Article 128 paragraph (4) of the UUPA, it is emphasized, "Further provisions regarding the fields of ahwal alsyakhsiyah (family law), muamalah (civil law), and jinayah (criminal law as referred to in paragraph (3) are regulated by the Aceh Qanun." Article 128 paragraph (4) above clearly emphasizes the imperative order to create qanun to regulate one of the matters that fall within the domain of Islamic law in Aceh. The qanun referred to in Article 129 paragraph (4) was then enacted by the legislature and approved by the executive in Aceh, namely Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

Based on the lengthy explanation above, the author concludes that the legal standing of the Qanun Jinayat in Aceh has a strong and binding legal basis. This Qanun is not only a direct mandate of Law Number 11 of 2006, but is also imperatively recognized by the Constitution. Furthermore, this Qanun does not contradict any norms and principles, including international legal instruments.

* 1. **The Presence of Non-Muslims in the Jinayat Law in Aceh**

If we consider the philosophy of Qanun Number 6 of 2014 concerning Jinayat Law or Islamic Criminal Law in Aceh, it is fundamentally not intended to scare outsiders, especially non-Muslims. There is no history of violence against minorities or non-Muslim residents in Aceh. Since the era of the Aceh Sultanate until now, there is no literature indicating that the conflicts in Aceh are related to resistance against non-Muslims. The conflict that has occurred in Aceh since ancient times is due to factors of injustice and discrimination by the central government against Aceh, which has made significant contributions to the establishment and defense of the Unitary State of the Republic of Indonesia.[[15]](#footnote-14)

The existence of the Jinayat Qanun in the westernmost province of Sumatra is fundamentally, according to researchers, to accommodate the command of Allah Swt in the Quran Surah Al-Maidah verse 44 which states: "And whoever does not judge by what Allah has revealed, then it is those who are the disbelievers." On the other hand, the enthusiasm of the Acehnese people to implement Islamic law in their region is to seek Allah's pleasure and receive abundant blessings. From a historical perspective, the implementation of sharia in Tanah Rencong had been carried out long before the Unitary State of the Republic of Indonesia came into existence. Misran stated as follows: "At that time, Islamic law was already in effect in the Aceh kingdom, in accordance with the religion practiced by the Acehnese people." This can be seen with the codification of Islamic laws made by the scholars, which were then enacted as laws (Qanun) in the Aceh Darussalam kingdom. Among those Qanun are Qanun al-Asy, also known as Adat Meukuta Alam, Sarakata Sultan Syamsul Alam, and the Book Safînah al-Hukkâm fî Takhlîsh al-Khashshâm.”[[16]](#footnote-15)

From a socio-cultural perspective, Islamic law in Aceh serves as a dominant element in societal control that has shaped a distinct identity. Since the early spread of Islam, the Acehnese people accepted Islam as their chosen religion without any resistance, and have made it their way of life until now. From a socio-cultural perspective, the Acehnese people essentially present customs and Islam as dominant elements in controlling the movement of society. Islam has shaped the identity of the Acehnese people since the early days of its spread beyond the Arabian Peninsula. The values of law and customary norms that have merged with Islam constitute a way of life for the Acehnese people.”[[17]](#footnote-16)

Indian sources, Rawdla al-Tahirin as quoted by Ayang Utriza, confidently explain that during the Aceh Sultanate, the law in force was strictly Islamic law. At that time, a person proven to have committed theft would have their hand cut off, and if they repeated the act, their leg would be cut off.[[18]](#footnote-17) Cutting off the hands of thieves is a command from Allah in the Quran as emphasized in Surah Al-Maidah verse 38 which states: "As for the male and female thief, amputate their hands in recompense for what they earn as a deterrent [punishment] from Allah. And Allah is All-Powerful, All-Wise.”

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Cutting off the foot is also part of Islamic law, as Mardani wrote: "Imam Shafi'i argued based on the actions of the companion Abu Bakr Siddiq, who punished a thief from Yemen whose hands and feet had been cut off." Then he imposed the punishment of cutting off his hand. Based on the narration of the companions, Imam Shafi'i opined: Therefore, we adopt (the ruling). If a thief steals for the first time, then I will cut off his right hand up to the wrist and then brand it with fire. If he steals for the second time, then I will cut off his left foot up to the wrist and then burn it. If he steals for the fourth time, then I will cut off his right leg up to the ankle, then I will brand him. If he steals for the fifth time, then he will be imprisoned.“[[19]](#footnote-18)

Based on the verses of the Quran and the explanation provided by Mardani above, it is quite clear to conclude based on the opinions of Imam Shafi'i and Imam Malik that the cutting off of hands and feet for thieves is a command from Allah and is included in Islamic law. The cutting off of hands and feet in the Aceh kingdom was a manifestation of the implementation of Islamic law, and this shows that historically, Islamic law in Aceh has existed since ancient times before the establishment of the Unitary State of the Republic of Indonesia.

Similarly, the implementation of Jinayat Law in Aceh, especially since Islamic criminal law has been applied in a limited manner, such as Aceh Qanun Number 12 of 2003.[[20]](#footnote-19), Aceh Qanun Number 13 of 2003[[21]](#footnote-20), and Aceh Qanun Number 14 of 2003[[22]](#footnote-21) becomes positive law without discrimination in its implementation. Then, the three "Criminal" Qanun were revised and perfected by Governor Zaini Abdullah in 2014 into Aceh Qanun Number 6 of 2014 concerning Jinayat Law. In this latest Qanun, the scope of criminalization has been expanded to include 10 cases of offenses that can be punished. The administration of punishment for all cases of jarimah is carried out by prioritizing the following principles:[[23]](#footnote-22)

1. Islam
2. Legality
3. Justice and balance
4. Public interest
5. Protection of human rights; and
6. Learning for the community (tadabbur).

The principle of Islam can be interpreted that the provisions regarding crimes and punishments in Law Number 6 of 2014 must be based on the Quran and Hadith, or principles derived from both. Likewise, the awareness to implement and adhere to this law is related to obedience to these two main sources. What is meant by the principle of "legality" is that no act can be punished except based on provisions in legislation that existed before the act was committed. Then the principle of "justice and balance" is the determination of the severity of punishment in the Qanun, and after that, its imposition by the judge must consider justice and balance for three parties:[[24]](#footnote-23)

1. The dignity and honor of the victim in the form of the right to obtain restitution for the suffering and losses they have endured in a fair and just manner
2. The dignity and honor of the perpetrator of a crime in the form of fair punishment, so that they are protected from injustice, as well as the restoration of reputation and compensation in case of errors in arrest and/or detention; and
3. General community protection, so that security, order, comfort, and social solidarity (takaful, symbiosis) are created among them.

The meaning of the principle of "maslahah" is that the provisions in this Qanun aim to realize part of the five protections that are the objectives of the revelation of Sharia, namely the protection of religion, life, intellect, lineage, and property. Acts that harm, whether to others or to oneself, will be prohibited by the Qanun and will be subject to punishment. Another important principle mentioned in Aceh Qanun Number 6 of 2014 is the "protection of human rights." What is meant by the principle of "protection of human rights" is the guarantee that the formulation of crimes and their punishments will align with efforts to protect and respect the nature, dignity, and honor of humanity, in accordance with the understanding of Indonesian Muslim society about human rights.

The last principle is the principle of "education for the community (tadabbur)," which means that all contents of the qanun, including the formulation of crimes, types, forms, and the magnitude of 'uqubat, are presented in an easily understandable manner so that it contains educational elements. This is to ensure that the community complies with the law, knows the prohibited actions and believes them to be bad actions that must be avoided, understands the 'uqubat they will suffer if the prohibition is violated, and comprehends the balanced protection for victims, perpetrators of crimes, and society.[[25]](#footnote-24) In Article 5 of Aceh Qanun Number 6 of 2014, it is explicitly stated, "Every person of a non-Islamic religion who commits a Jarimah in Aceh that is not regulated in the Criminal Code (KUHP) or criminal provisions outside the KUHP, but regulated in this Qanun."

The above phrase can be understood as an affirmation of the applicability of Qanun Jinayat, which regulates the provisions of crimes (penalties) for non-Muslims. For non-Muslims, they can choose or submit themselves to either the Qanun or the Criminal Code (KUHP), but for crimes not mentioned/regulated in the Qanun, those non-Muslims will be processed and punished according to the provisions of the criminal law (KUHP) or other legislation regulating criminal matters, such as Law Number 31 of 1999 on the Eradication of Corruption, Law Number 35 of 2009 on Narcotics, Law Number 5 of 2018 on the Eradication of Terrorism, and others.

The case of whipping a non-Muslim on February 27, 2018, for a gambling (maisir) offense is a real example where the individuals themselves chose their punishment from the investigators and public prosecutors. The couple, caught gambling, were each sentenced to seven lashes.

Evendi Abdul Latif, Head of Enforcement for the Satpol PP and Sharia Police of Banda Aceh, stated that the convicted individuals in the gambling case were offered the option to choose between being whipped (under Jinayat law) or receiving punishment under the Criminal Code (KUHP). The defendants confidently and willingly chose to submit voluntarily to Islamic law. The investigators from Civil Service Police Unit and Sharia Police (Satpol PP-WH) did not force them, but offered the option of either following the KUHP or adhering to the norms of the Qanun Jinayat. "If they wanted to follow the KUHP, they could, and the case could be transferred to the police, but they chose to be whipped."[[26]](#footnote-25)

A similar case occurred in Lhokseumawe on August 7, 2018, where a Christian (non-Muslim) was whipped seventeen times for being proven to possess and sell alcoholic beverages. The defendant was legally and convincingly found guilty of violating Article 5 of Aceh Qanun No. 6 of 2014. The judge of the Sharia Court of Lhokseumawe City sentenced him to 25 lashes, but because he had already been detained for three months, the punishment was reduced to 17 lashes. During the prosecution process, he personally chose to be whipped according to the Qanun Jinayat, rather than under the Criminal Code (KUHP).[[27]](#footnote-26)

The latest case occurred involving three non-Muslims who committed the crime of consuming alcoholic beverages in Banda Aceh on February 8, 2021. The convicted individuals chose to be whipped 40 times, citing the reason that it would allow them to be released sooner.[[28]](#footnote-27) Cases of voluntary submission have occurred quite frequently in Aceh, where non-Muslim defendants are asked to voluntarily choose between national law (KUHP) or local law (Islamic Sharia). All of the non-Muslim perpetrators of crimes have chosen the option of being whipped, citing various reasons, one of which is that it provides a quick resolution and doesn't require a long time in prison, allowing them to resume their activities and continue earning a living for their future and their families.

Based on the explanation above, it can be stated that the treatment of non-Muslims under the Qanun Jinayah in Aceh does not essentially differ. However, they are allowed to choose or voluntarily submit to the Qanun Jinayah for various reasons. Almost all cases of Sharia violations in Aceh committed by non-Muslims have resulted in the defendants choosing to be punished according to Islamic law or to be whipped.

* 1. **Acts committed by non-Muslims that can be punished under the Qanun Jinayat**

Non-Muslims are all people who are not part of the Muslim community. During the era of the Prophet Muhammad (PBUH) as the head of the Islamic state in Medina, there were other communities outside of Islam. This means that the presence of non-Muslims within the jurisdiction of Islam was exemplified by the Prophet himself as "representative" of Allah on earth. Another term for non-Muslims, when viewed in the terminology of the Quran, is kafir. Mohammad Gozali stated that kafir refers to those who do not acknowledge Allah (SWT) as their God or those who do not accept the teachings of Islam.[[29]](#footnote-28)

The term kafir in the Quran, along with its derivatives, is mentioned 525 times, spread across 73 surahs out of the 114 surahs in the Quran.[[30]](#footnote-29) Ibn Taimiyah explained that a kafir is someone who does not believe in Allah (SWT) and His messengers, whether accompanied by denial or not, or someone who turns away from following the Prophet Muhammad (PBUH) due to envy (hasad) or arrogance, or because they follow their desires that divert them from adhering to the message.[[31]](#footnote-30)

Non-Muslims are classified into four categories: **kafir dzimmi** or ahl al-dhimmah (those who make peace with the Islamic authority and follow all its rules), **kafir harbi** (those who must be fought), **kafir mu’ahad** (those who have a treaty with the Islamic authority), **kafir musta’min** (non-Muslims who seek protection from the Islamic authority), and **kafir ahli kitab** (those who acknowledge the scriptures of the prophets and messengers, but have not embraced Islam). The treatment of these different types of non-Muslims is not the same. The last category may be confronted or dealt with repressively, as they are considered non-Muslims who harm or threaten the interests of Islam.

Except for kafir harbi, non-Muslims must not be harmed, discriminated against, or oppressed. In terms of legal treatment, there should be no difference between Muslims and non-Muslims, except in the case of harbi. Regarding this, the Prophet Muhammad (peace be upon him) said:

Non-Muslims, aside from kafir harbi, are to be treated in ways not much different from how Muslims are treated, including regarding their rights and responsibilities in daily activities. Ahmad Rivai, as quoted by Fitriani and Siti Aisyah, defines kafir harbi as:[[32]](#footnote-31)“And fight in the way of Allah those who fight you, but do not transgress. Indeed, Allah does not like transgressors.”(Surah Al-Baqarah: 190). “I have been commanded to fight the people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, establish prayer continuously, and pay the zakat. If they do that, then their blood and wealth are protected from me, except for the right of Islam, and their reckoning is with Allah.”(Narrated by Bukhari, Muslim, and others)

In general, ahl al-dhimmah (non-Muslims living under Islamic rule) receive the same rights as those granted to Muslims, except in certain matters related to national security, where their rights may be slightly restricted.[[33]](#footnote-32) Special treatment and protection are also granted to non-Muslims who are not classified as harbi, in the form of legal justice, with a guarantee that no injustice will be inflicted upon them.[[34]](#footnote-33) During the reign of Uthman ibn Affan as head of state, punishments were applied without discrimination. Even a Muslim who was proven to have killed a non-Muslim could be subjected to ta'zir punishment, including the death penalty or qisas (retaliatory punishment).[[35]](#footnote-34)

Based on this case, it can be stated that criminal punishment within the Islamic system of governance is applied fairly. The principle of justice is a fundamental foundation in Islamic criminal law. If a non-Muslim is killed within the jurisdiction of an Islamic state, the perpetrator is punished no differently than if a Muslim were to kill another Muslim. Legal justice is truly upheld in Islamic law, except when there is other evidence (qarinah) that serves as justification or excuse for the act. Indonesia is a state governed by law (rechtstaat), not a state of power (machtstaat). As a legal state that follows the legism school of thought and adopts the civil law system (or Continental European legal system), the supremacy of law and legal equality are its main characteristics.

Albert Venn Dicey stated that one of the essential characteristics or key elements of a state governed by the rule of law is the principle of equality before the law.[[36]](#footnote-35) The opinion of Albert Venn Dicey above is supported by Jimly Asshiddiqie..[[37]](#footnote-36) The opinion of Albert Venn Dicey above is supported by Jimly Asshiddiqie, who stated that there is no difference in the characteristics of a state based on the rule of law, whether it adheres to the civil law system or the common law system—the key principle remains equality before the law.

Imam Abu Hanifah, a leading Islamic jurist, stated: “Islam permits the ahl al-dhimmah to drink alcoholic beverages, eat pork, and practice all aspects of their religion within a region governed by Islamic law, as long as these acts are done privately and not in public. Otherwise, they will be punished according to Islamic law.”[[38]](#footnote-37) This legal conclusion indicates that the territorial principle does not apply to non-Muslims, with the condition that prohibited legal actions are not conducted in public.Dzazuli states that criminal liability in Islamic law must have several indicators, as follows:[[39]](#footnote-38)

1. Committing acts that are prohibited and neglecting acts that are obligatory.
2. The act is done voluntarily, meaning the actor has the choice to perform or not perform the action; and
3. The actor is aware of the consequences of the act they have committed.

An act can be considered a criminal act if the following elements are met:[[40]](#footnote-39)

1. There is a legal prohibition accompanied by a legal sanction. This element is called the formal element (shar'i rukun);
2. There is a criminal act. This element is called the material element (madani rukun); and
3. The perpetrator of the crime must be legally competent (mukallaf). This element is called the moral element (adabi rukun).

The definition of criminal responsibility in Islam is the imposition upon a person of the consequences of an act or the absence of an act they committed (objective element) with their own will, where the person is aware of the intent and consequences of their actions (subjective element).[[41]](#footnote-40) From the above explanation, it can be concluded that criminal responsibility in Islamic law must contain elements (indications) as previously described by Dzazuli and Abdul Kadir Audah. Ibn Hajar Al-Asqalani explains that the condition of being mukallaf (legally accountable) alone is not sufficient if the perpetrator of the offense has impaired reasoning. If their reasoning is lacking, then the ability to think is absent. Another condition, according to the author of the book Bulughul Maram min Adillat al-Ahkam, is ikhtiyar (free will or choice).[[42]](#footnote-41)

Meanwhile, in the perspective of the current criminal law in Indonesia, a person can be punished if they are considered capable of bearing responsibility. In this regard, for example, Simons formulates the ability to bear responsibility as follows:[[43]](#footnote-42)

1. Capable of knowing/realizing that their actions are contrary to the law;
2. Capable of determining their will in accordance with their awareness.

Pompe stated that the elements that must be possessed by someone considered capable of bearing responsibility are:[[44]](#footnote-43)

1. The ability of the perpetrator to think, which allows them to control their thoughts and determine their will;
2. The perpetrator can understand the meaning and consequences of their actions;
3. The perpetrator can determine their will in accordance with their own judgment.

Criminal responsibility is determined based on the perpetrator's fault and not merely by the fulfillment of all elements of a criminal act. Thus, fault is considered the determining factor for criminal responsibility and is not merely seen as a mental element in the criminal act.[[45]](#footnote-44) A person is said to have committed a fault, which is related to the issue of criminal responsibility.[[46]](#footnote-45)

Roeslan Saleh defines toerekenbaarheid, or in English "criminal responsibility" or "criminal liability," as "criminal responsibility," while Moeljatno refers to it as "responsibility in criminal law." Meanwhile, other legal experts more commonly use the term "criminal responsibility."[[47]](#footnote-46)

Responsibility, or what is known as the concept of "liability" in terms of legal philosophy, is defined by Roscoe Pound as: "I use the simple word 'liability' for the situation whereby one may exact legally and another is legally subjected to the exaction." Criminal responsibility, according to Pound, is understood as an obligation to pay the retribution that the perpetrator will receive from someone who has been harmed.[[48]](#footnote-47)

According to Roscoe Pound, the responsibility involved is not only a matter of law, but also involves moral values or ethics present in a society. In addition to Roscoe Pound, several experts have provided definitions of criminal responsibility, including: Simons states that the ability to bear responsibility can be understood as a psychological state such that the imposition of a criminal penalty, both in general and from the perspective of the individual, can be justified. He further states that a perpetrator of a criminal act is capable of bearing responsibility if: (1) they are able to know/realize that their actions are contrary to the law; (2) they are able to determine their will in accordance with their awareness.[[49]](#footnote-48)

Van Hamel defines criminal responsibility as a normal psychological state and skill that entails three abilities: first, the ability to understand the true meaning and consequences of one's actions; second, the ability to realize that those actions are contrary to public order; third, the ability to determine the will to act.[[50]](#footnote-49)

Moeljatno states that a person who is considered to have violated the law or can be held criminally responsible must fulfill the following four elements:[[51]](#footnote-50)

1. Committing a criminal act
2. Capable of bearing responsibility
3. With intent or negligence; and
4. There is no justification for the act

The criteria put forward by Moeljatno above are not different from those expressed by Sudarto, who stated that for a person to have criminal responsibility, several conditions must be met, namely: (a) the existence of a criminal act committed by the perpetrator; (b) the presence of fault in the form of intent or negligence; (c) the perpetrator being capable of bearing responsibility; and (d) the absence of justification or excuse.[[52]](#footnote-51)

Based on the detailed explanation above, it can be concluded that criminal responsibility for non-Muslims—except for non-Muslims considered kafir harbi—should generally not differ, because the essence of Islam is to uphold justice for everyone. The criminal process for non-Muslims is not different from that for Muslims. However, in Aceh, this is not the case. Non-Muslims in Aceh, if proven to have violated jinayat (Islamic criminal) law, may choose to submit themselves either to Islamic law or to the provisions of national criminal law. Acts committed by non-Muslims that can be punished under Islamic law in Aceh include adultery (zina), seclusion (khalwat), close interaction between non-mahram individuals (ikhtilat), LGBT behavior, accusing others of adultery without proof (qadzaf), gambling, drinking alcohol, and others.

In Aceh Qanun Number 6 of 2014 concerning Jinayat Law, Article 3 states that there are 10 types of jarimah (Islamic criminal offenses). Individuals who are present or reside in Aceh, including non-Muslims, may be subject to jarimah in accordance with Islamic law. The scope of Qanun Number 6 of 2014 includes the regulation of perpetrators of jarimah, the jarimah offenses themselves, and the corresponding uqubat (punishments). The jarimah referred to in the Qanun include:

1. Khamr (consumption of intoxicating drinks);
2. Maisir (gambling);
3. Khalwat (being alone in seclusion with a non-mahram);
4. Ikhtilath (intermingling between non-mahram individuals);
5. Zina (adultery/fornication);
6. Sexual harassment;
7. Rape;
8. Qadzaf (false accusation of adultery);
9. Liwath (sodomy); and
10. Musahaqah (lesbianism).

The term ‘uqubat (punishment) as referred to in the Qanun consists of hudud and ta'zir punishments. Hudud punishments take the form of public flogging, while ta'zir punishments may include flogging, fines, imprisonment, and the payment of restitution.[[53]](#footnote-52) It is further explicitly stated that this Qanun applies not only to every Muslim who commits a jarimah (Islamic criminal offense), but also to every non-Muslim who commits a jarimah in Aceh together with a Muslim and voluntarily chooses to submit to the Jinayat Law. Likewise, it applies to any non-Muslim who commits a jarimah in Aceh that is not regulated under the Indonesian Criminal Code (KUHP) or other criminal provisions outside the KUHP, but is regulated in this Qanun. Business entities operating in Aceh are also subject to the Qanun, which was enacted on October 22, 2014, by Governor Zaini Abdullah.[[54]](#footnote-53)

Another Qanun that regulates the imposition of sanctions on non-Muslims is Aceh Qanun Number 8 of 2016. In Aceh Qanun Number 8 of 2016 concerning the Halal Product Assurance System, it is stated that anyone who fails to maintain the halal status of certified products may be subject to one of three penalties: 60 lashes, a fine of up to 2 billion rupiah, or imprisonment for up to 5 years.[[55]](#footnote-54)

Article 47 paragraph (3) states that the criminal sanction "may be chosen and voluntarily submitted to in accordance with the provisions referred to in paragraph (1).”

Based on the detailed explanation above, it can be concluded that the imposition of fair sanctions (equality before the law) in the Qanun Jinayat represents justice and legal equality within a state governed by law, regardless of the legal system in place. Likewise, the application of criminal penalties (jarimah) to all citizens within a territorial jurisdiction aims to create a deterrent effect and, more importantly, to rehabilitate the offender for the better in the future. Sanctions should not be seen merely as punishment, but rather as a means of maintaining public order and promoting the common good.

* 1. **The appropriate principle in the enforcement of the Jinayat Law for non-Muslims who commit crimes alongside Muslims in Aceh**

The existence of the principle of voluntary submission in the Qanun Jinayat in Aceh, specifically in Article 5 letter b, explains that this Qanun applies to: "Every non-Muslim person who commits a Jarimah in Aceh together with Muslims and chooses to voluntarily submit to the Jinayat Law", becoming a debate. There are two opposing views regarding the existence of this principle: first, its existence is not in line with the concept of criminal law, and second, on the other hand, it is considered a violation of Human Rights because it is seen as opening up opportunities for non-Muslims to be subjected to the Jinayat law. Therefore, a concrete study is needed regarding which principle is appropriate for non-Muslims who commit crimes together with Muslims in Aceh.

Legal politics in Aceh positions the existence of this Jinayat Qanun within the framework of the Indonesian legal system and aligns it with the legal aspirations of the Acehnese people themselves. The goal of legal politics is an idea or aspiration that indicates the formation of legislation in order to organize a legal system in Indonesia that can meet the needs and objectives of the society, nation, and state of Indonesia towards a just, prosperous, and thriving society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.[[56]](#footnote-55)

Based on the explanation above, the purpose of legal politics can be explained as follows:

|  |  |
| --- | --- |
| No. | Description |
| 1 | To realize legal certainty and justice in community life, nationhood, and statehood. |
| 2 | To realize happiness and peace in community life, nation, and state |
| 3 | To regulate order and tranquility in community, national, and state life |
| 4 | To realize the simplicity of law, the unity of law, and the renewal of law in community life, nationhood, and statehood |
| 5 | To regulate rights and obligations in the fulfillment of basic human needs in an orderly manner in accordance with human rights |
| 6 | To ensure the fulfillment of the fundamental values contained in Pancasila and the Preamble of the 1945 Constitution |
| 7 | To guarantee protection, respect, promotion, certainty, and justice in the fulfillment of human rights |
| 8 | To ensure the formation of state power in a democratic and constitutional manner |
| 9 | To determine the structure, division, and limitation of state power in a balanced and constitutional manner |
| 10 | To establish the form, content, and direction of every legislation in force in Indonesia |
| 11 | To realize a nation that can protect all the people and the entire territory of Indonesia, promote the general welfare, educate the nation's life, and participate in establishing world order based on Freedom, Eternal Peace, and Social Justice[[57]](#footnote-56) |

Pancasila is the source of all sources of law in Indonesia, therefore the law must be aimed at building social justice for all Indonesian people. Meaning, all people are treated fairly in the fields of law, politics, economy, culture, and spiritual needs, so that a just and prosperous society is created.[[58]](#footnote-57) Understanding the concept of justice must be translated in relation to Pancasila, and then linked to the interests of the Indonesian nation as a nation that must experience that justice. In relation to legal regulation according to the Pancasila justice concept, regulation is carried out through legal arrangements that protect the nation, namely by passively (negatively) protecting humans by preventing arbitrary actions, and actively (positively) by creating humane social conditions and allowing social processes to proceed fairly, so that each person fairly has the opportunity to develop their full human potential.Protection in this case means that the sense of justice within the conscience of the Indonesian people must be fulfilled.

The principle of justice built within the concept of Pancasila is related to the principle of voluntary submission for non-Muslims who commit crimes in Aceh, which means building justice while respecting interfaith communities without forcing other religions to submit to a particular religion. Thus, the existence of the principle of voluntary submission truly accommodates the sense of justice built on the values of Pancasila.

According to Thomas Hobbes, justice is an act that can be considered just when it is based on an agreement that has been mutually accepted. From that statement, it can be concluded that justice or a sense of justice can only be achieved when there is an agreement between two parties who promise. The agreement here is understood in a broad sense, not limited to just the agreement between two parties entering into a business contract, lease, and so on. Rather, agreements here also refer to the verdicts between judges and defendants, and legislation that does not favor one party but prioritizes the interests and welfare of the public,[[59]](#footnote-58) In this case, for non-Muslims who voluntarily submit themselves to Qanun Jinayat, there is an agreement/declaration to voluntarily submit themselves, which is due to the legal subject being of a different religion or non-Muslim. This principle provides justice as no religious law should be enforced unless it is by their own will with an agreement made to submit. In addition, Hans Kelsen,[[60]](#footnote-59) explains that justice is a certain social order under whose protection the effort to seek truth can develop and flourish. Because justice, according to him, is the justice of freedom, the justice of peace, the justice of democracy – the justice of tolerance.

The Republic of Indonesia is a state based on law. The 1945 Constitution of the Republic of Indonesia establishes that the Republic of Indonesia is a state of law (rechstsaat), as evidenced by the Provisions in the Preamble, the Body, and the Explanation of the 1945 Constitution. Equality before the law in its simplest sense means that everyone is equal before the law. Equality before the law is one of the most important principles in modern law. In the Amendment of the 1945 Constitution of the Republic of Indonesia, the principle of equality before the law is included in Article 27 paragraph (1) which states that: "All citizens are equal before the law and the government and are obliged to uphold the law and the government without exception."

The principle of equality before the law internationally is guaranteed by Article 7 of the Universal Declaration of Human Rights (1948) and Article 26 of the International Covenant on Civil and Political Rights (1966).[[61]](#footnote-60) Indonesian legislation adopted this principle since the colonial era through the Burgelijke Wetboek (Civil Code) and the Wetboek van Koophandel voor Indonesie (Commercial Code) on April 30, 1847, through Stb. 1847 No. 23.But during the colonial period, this principle was not fully implemented due to the politics of legal pluralism, which provided different spaces for Islamic law and customary law alongside colonial law. According to this principle, the state is obligated to protect every citizen from all forms of discrimination, whether based on race, skin color, gender, language, religion, political stance, nationality, property, or birth.

Based on the explanation, as a rule of law country that upholds the principle of equality before the law, the laws that are formed must not be discriminatory. The application of the Jinayat Qanun must not discriminate against non-Muslims by forcing them to adhere to the Jinayat Qanun. So that discrimination does not occur, non-Muslims who commit crimes alongside Muslims in Aceh should be given legal options to avoid discrimination. In the context of the implementation of Islamic criminal law According to Imam Abu Hanifah, the rules of Islamic criminal law only fully apply to the regions of Muslim countries, specifically in the territorial areas of Islamic states. No matter what type of crime is committed, whether done by a Muslim or a dhimmi, can be subject to punishment. For Muslims, the applicable punishment (Islamic Sharia) is imposed on them. As for the dhimmi, because they have submitted to Islamic law when accepting the agreement (status) as a dzimmi (non-Muslim living in an Islamic state and coexisting with Muslims), it also applies to them.[[62]](#footnote-61)

That based on the explanations above, the appropriate principle for non-Muslims committing crimes (Islamic Sharia) in Aceh is the principle of voluntary submission, as it aligns with the values in Pancasila, justice, the ideals of a legal state, especially equality before the law. And it is in accordance with the concept of the implementation of Islamic criminal law. Aceh is one of the regions that upholds religious pluralism. Which, historically, is illustrated by religious pluralism in the Medina Charter.

Concretely, the principle of voluntary self-submission has been precisely established in Law Number 11 of 2006 concerning the Governance of Aceh and specifically found in Aceh Qanun Number 6 of 2014 concerning Jinayat Law. The enactment of Law Number 6 of 2006 on Aceh Governance is a formulation of the long-awaited desires and aspirations of the Acehnese people, which have become the right to Aceh's autonomy guaranteed by the constitution in the 1945 Constitution of the Republic of Indonesia, and politically, Law Number 11 of 2006 on Aceh Governance became the meeting point for peace in the long-standing Aceh conflict.

## Conclusion

The appropriate principle in the enforcement of the Jinayat Law for non-Muslims who commit crimes (Islamic Sharia) together with Muslims in Aceh is the principle of voluntary submission, as it aligns with the values of Pancasila, justice, and the ideals of a legal state, particularly equality before the law, and it has been in accordance with the concept of implementing Islamic criminal law. Aceh is one of the regions that upholds religious pluralism. Which, historically, is illustrated by religious pluralism in the Medina Charter. Concretely, the principle of voluntary submission is precisely embodied in Law Number 11 of 2006 on Aceh Governance and specifically found in Aceh Qanun Number 6 of 2014 on Jinayat Law.

The enactment of Law Number 6 of 2006 on the Governance of Aceh is a formulation of the long-awaited desires and aspirations of the Acehnese people, which became the right to Aceh's autonomy guaranteed by the constitution in the 1945 Constitution of the Republic of Indonesia. And politically, Law Number 11 of 2006 on Aceh Governance became a meeting point for peace in the Aceh conflict that had been ongoing for quite some time.

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