

## Criminal Act of Adultery Against Married Perpetrators Based on Qanun Aceh Number 6 of 2014

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### Abstract

This study examines the crime of adultery committed by individuals who are already married based on the provisions of Qanun Aceh No. 6 of 2014 concerning Jinayat Law. Qanun Jinayat, which enforces Islamic criminal law in Aceh, applies to all residents, both Muslims and non-Muslims, within the province. The primary objective of this qanun is to regulate society's behavior within the framework of Islamic law and to deter violations of Islamic principles through punitive measures, including fines, imprisonment, and flogging. The crime of adultery in Islam is classified into two categories: muhsan (those who have had legitimate sexual relations in marriage) and ghairu muhsan (those who have not). The punishment for muhsan includes stoning, while ghairu muhsan is punished by 100 lashes and exile. In contrast, under Qanun No. 6 of 2014, the punishment for adultery, regardless of the marital status of the offender, is 100 lashes without the distinction between muhsan and ghairu muhsan. Furthermore, the Qanun differs from Indonesia's national law (KUHP Article 284), which requires a formal complaint from the injured spouse for prosecution. In contrast, under Qanun Jinayat, no complaint is required for adultery cases to be prosecuted, and the penalties for those who facilitate or promote adultery are also included. The research also delves into a case study, Case No. 4/JN/2021/MS.Idi, where the perpetrator was sentenced to 100 lashes under Qanun Jinayat for committing adultery. The study compares the treatment of adultery under national law and Qanun Aceh and concludes that the Qanun provides harsher penalties to ensure deterrence and uphold Islamic values in Aceh.

**Keywords:** adultery, Qanun Aceh, Jinayat law, Islamic law.

### INTRODUCTION

The implementation of special autonomy in Aceh is regulated in Law Number 11 of 2006 concerning the Government of Aceh which states that Aceh as a regional government has the right to run a government based on Islamic law. One of the fundamental things that is the content of Law Number 11 of 2006 concerning the Government of Aceh is the legal implementation of the enforcement of Islamic law based on Islamic principles to every community in Aceh without distinguishing position, citizenship, and status in the region according to the boundaries of the Aceh Province.

The elements of Islamic law regulation in Aceh are the existence of Regional Regulations called qanun which are used as a legal umbrella, namely Qanun Number 6 of 2014 concerning Jinayat Law. Qanun Jinayat is an Islamic criminal law that applies to every Acehese society, both Muslim and non-Muslim, which is compiled based on the values and norms of Islamic law. The realization of punishment for criminal acts committed by perpetrators based on Qanun Number 6 of 2014 concerning Jinayat Law is a fine,

imprisonment, and caning. Qanun Jinayat in its implementation has differences with other laws, namely the provision of caning for those who violate it.<sup>1</sup>

The aim of Qanun Number 6 of 2014 concerning Jinayat Law or formally known as Islamic Criminal Law is to direct the process of community life within the framework of Islamic law and as a tool to suppress...

the number of violations of Islamic law. The specificity of this Qanun Jinayat is to provide a punishment of caning for violators of Islamic law with the aim of providing a lesson and deterrent effect to violators and providing learning to other communities in the hope that other communities do not commit acts that are not in accordance with the rules that have been determined in Islam.

This Qanun Jinayat regulates Jarimah, namely acts that are prohibited in Islamic law, including: Khamar (alcohol), Maiisir (gambling), Khalwat (immorality), Ikhtilath (kissing and making out), Zina (having sex without marriage), Sexual harassment, Rape, Liwath (gay), Musahaqah (lesbian), Qadzaf (accusing someone of committing adultery). Qanun Jinayat enforces a caning law policy as a seriousness of the Regional Government and the people of Aceh to implement Islamic law in its entirety.<sup>2</sup>

In Islam, adultery is a serious issue to be faced. So Islamic law views any sexual intercourse outside of marriage as adultery and threatens it, whether the perpetrator is married or not, whether it is done with mutual consent or not. Anyone who commits adultery after having a lawful sexual relationship is called a muhsan adulterer and someone who commits adultery but has never had a lawful sexual relationship before, even though they are married, is called a gairu muhsan adulterer. The punishment for muhsan adulterers is stoning. Meanwhile, gairu muhsan adulterers are subject to punishment in the form of lashing 100 times and exile for one year.<sup>3</sup>

Article 284 of the Criminal Code (KUHP) explains that adultery is extramarital sexual intercourse committed by two people of different sexes, both of whom are adults and one or both of whom are married to another party, prosecution can only be carried out by being preceded by a complaint by the husband or wife who feels aggrieved and is an absolute complaint offense. Meanwhile, according to Qanun Number 6 of 2014 concerning Jinayat Law, it is explained that the punishment for people who have committed adultery is without the need for a complaint from one of the people (husband or wife) of the perpetrator who is harmed.<sup>4</sup>

Islam strictly forbids adultery. Because adultery is one of the most heinous major sins, no religion allows it. Therefore, the sanctions are also very severe because they threaten

<sup>1</sup>Selvia Junita Praja, Wia Ulfa. "Implementation of Qanun Number 6 of 2014 Concerning Jinayat Law in Banda Aceh City, Aceh Province". Journal of Government Policy Vol.3 No.1. 2020, page 12

<sup>2</sup>Ibid, p.12

<sup>3</sup>Hamzah Hasan, Crimes Against Morality from the Perspective of Islamic Criminal Law. 1st ed.; Makassar: Alauddin University Press, 2012, p. 77.

<sup>4</sup> Muzakkir. "Comparative Review of Criminal Sanctions for Adultery Against Perpetrators Who Already Have Legal Partners". Samudra Keadilan Law Journal. Volume 18, Number 1, January – June (2023), p.2

honor and lineage. In addition to adultery being strictly prohibited by religion, adultery also has many negative impacts caused by the act of adultery. Someone who commits adultery can lead to the loss of faith in the heart of the perpetrator. In addition, adultery can also cause dangerous and contagious sexually transmitted diseases. Adultery also has a negative impact on families and society where adultery can damage the joints of household and family life.

Article 33 paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law states that anyone who intentionally commits adultery is threatened with the hudud punishment of 100 (one hundred) lashes. Then in Article 33 paragraph (2) it is explained that for anyone who has been sentenced to 100 lashes for adultery, then repeats the act of adultery, he will be subject to the punishment of 100 lashes and will receive a ta'zir punishment as an additional punishment in the form of a fine of 120 grams of pure gold or a prison sentence of 12 months. The Qanun does not differentiate between muhsan adulterers and ghairu muhsan, which means that adulterers in Aceh, whether married or unmarried, receive the same severe punishment.<sup>5</sup>

Article 34 of the Qanun on Jinayat Law stipulates that every adult who commits adultery with a child, in addition to being threatened with 'uqubat hudud as referred to in Article 33 paragraph (1) can be added with 'uqubat ta'zir of a maximum of 100 (one hundred) lashes or a maximum fine of 1,000 (one thousand) grams of pure gold or a maximum imprisonment of 100 (one hundred) months. This provision emphasizes that the punishment imposed on perpetrators who commit adultery with children is higher than that of adultery with adults. In addition to being subject to hudud punishment as regulated in the Qur'an, it is also added with ta'zir in the form of 100 lashes or 1,000 grams of pure gold or imprisonment for 100 months.<sup>6</sup>

Qanun Jinayat also threatens ta'zir punishment for any person or business entity that intentionally provides a place, facilitates or promotes adultery. Threatened with ta'zir punishment of a maximum of 100 lashes or a fine of 1000 grams of pure gold or a maximum of 100 months in prison. So in the qanun it does not only regulate the punishment for perpetrators of adultery but also for people or business entities that facilitate and promote it.<sup>7</sup>

One of the criminal acts of adultery that has been decided at the Idi Sharia Court is case number 4/JN/2021/MS.Idi, where the defendant Rauzatul Jannah binti Abas (27 years old) a resident of the Border Hamlet, Alue Batee Village, Peudawa District, East Aceh Regency was demanded to be flogged in public 15 (fifteen) times with the alternative charges, namely:

1. Violating Article 37 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law

<sup>5</sup>Laili Naharika. "The Crime of Adultery in the Perspective of Qanun Jinayah Aceh and Brunei Darussalam". Jakarta. Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University. 2017, page 3

<sup>6</sup> Mansari. Ahmad Fikri Oslami. Zahrul Fatahillah, "Uqubat Against Adultery Crimes Involving Children". Judicial Journal Vol. 14 No. 3 December 2021, page 377

<sup>7</sup> Nyak Fadhlullah, "Method for Formulating Qanun Jinayah Aceh: Study of Article 33 concerning Zina". Journal Vol. 7, no. 1, 2017. p. 33

2. Violating Article 28 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law
3. Violating Article 25 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law
4. Violating Article 23 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law

In the trial, the defendant was proven legally and convincingly guilty of committing the crime of adultery based on a confession and was sentenced to hudud punishment in the form of 100 (one hundred) lashes. Based on the background above, the author chose the title of this research, namely: *“Criminal Act of Adultery Against Married Perpetrators Based on Aceh Qanun Number 6 of 2014”*.

### **Formulation of the problem**

The main problems in this research are:

1. How is the Legal Regulation on the Crime of Adultery According to National Criminal Law and Qanun? Aceh Number 6 of 2014 Concerning Criminal Law ?
2. How Law Enforcement Works Regarding Case Number: 4/Jn.2021/Ms.Idi?

### **Research purposes**

The objectives of this research are:

1. To find out and study the legal regulations regarding the crime of adultery according to the National Criminal Law and Qanun Aceh Number 6 of 2014 Concerning Criminal Law
2. To Know and Study Law Enforcement Regarding Case Number: 4/Jn.2021/Ms.Idi

## **LITERATURE REVIEW**

### **Definition of Zina**

The word adultery, linguistically means fahisah, which means heinous, while in terms of Rahman's view, it is a romantic relationship carried out by two people of the opposite sex without being bound by marriage or matrimony.<sup>8</sup> Zainal Abidin said that adultery is a heinous act committed by a man and a woman without any legal ties. One or both of them are married or not.<sup>9</sup>

Adultery in English is called fornication which means sexual intercourse between unmarried adults and adultery which means sexual intercourse carried out by a man with a woman who is not husband and wife and one or both are already bound in marriage with another husband or wife. Terminologically, adultery is defined into two meanings, namely:<sup>10</sup>

1. The act of sexual intercourse between a man and a woman who are not bound by a marital relationship.
2. The act of sexual intercourse between a man who is married to a woman who is not his wife, or a woman who is married to a man who is not her husband.

<sup>8</sup> A.Rahman I Doi, Criminal Acts in Islamic Law. Jakarta: Rineka Cipta, 2011, p. 31.

<sup>9</sup> Zainal Abidin, Islamic Criminal Law. 1st ed.; Jakarta: Sinar Grafika, 2015, p. 6

<sup>10</sup> Oemar Seno Adji, Criminal Law (Procedure) in Prospection, Jakarta, Erlangga, 2016, p. 49

Sociologically, adultery is sexual intercourse committed by a man and a woman without questioning the status and perpetrators. While adultery is legally good, one of the perpetrators is bound in a marriage and there is a law that regulates it. Adultery is sexual intercourse committed by a man or woman who is married to a woman or man who is not his wife or husband, in order to enter this article, the sexual intercourse must be done with mutual consent, so there must be no coercion from either party.<sup>11</sup>

In the explanation of Article 284 b of the Criminal Code, adultery is divided into two meanings. According to the general meaning, adultery is interpreted as sexual intercourse committed by a man and a woman on the basis of mutual consent that is not yet bound by marriage. Adultery is interpreted as sexual intercourse committed by a man and a woman who are married to a woman or a man who is not his wife or husband. Acts of sexual intercourse outside of marriage that can be included in criminal acts are:<sup>12</sup>

- a. Extramarital intercourse is committed by a man and a woman, both or one of whom is legally married to another person.
- b. Extramarital intercourse committed by a man against a woman who is unconscious.
- c. Extramarital intercourse committed by a man against a helpless woman.
- d. Sexual intercourse outside of marriage committed by a man with a woman whom he knows or should or suspects is not yet 15 years old.
- e. Sexual intercourse outside marriage carried out by a man against a woman whom he knows or should reasonably suspect is not yet the time for marriage.

In Islam, adultery is considered a very heinous act and is considered a jarimah or literally means fahishah. Abdul Qadir Audah is of the opinion that adultery is a forbidden sexual intercourse and is done intentionally by the perpetrator. The fuqaha interpret adultery as having sexual intercourse in the sense of inserting a man's penis into a woman's vagina which is declared forbidden, not because of doubt and on the basis of lust.<sup>13</sup> Adultery is sexual intercourse between a man and a woman who is not or has not been bound in a marriage relationship without any element of doubt in the sexual relationship.<sup>14</sup>

So in general, adultery can be defined as sexual intercourse between a man and a woman without any marital status between the two and based on mutual consent.

## **Review of the Criminal Code**

Qanun is a type of legislation similar to a Provincial/District/City Regional Regulation that regulates the implementation of government and the lives of the Acehnese people. This definition of qanun provides an understanding that the Qanun in Aceh consists of two categories, namely the Qanun material that regulates the implementation of Government and

<sup>11</sup> Rahmawati, "The Criminal Act of Adultery in a Comparative Perspective Between the Criminal Code and Islamic Criminal Law" *An Nisa Journal*, Vol. 8, No. 1, Year 2013, p. 18.

<sup>12</sup> R. Sugandhi, *Criminal Code and its Explanation*, Surabaya, National Business, 2011, p. 300

<sup>13</sup> Zainuddin Ali, *Islamic Criminal Law*. Jakarta: Sinar Grafika: 2019, p.37.

<sup>14</sup> Dahlan, *Encyclopedia of Islam*. Volume 7. Jakarta: PT Ichtiar van Hoeve. Year 2015, page 2026

the Qanun material that regulates the implementation of the lives of the Acehnese people in general.<sup>15</sup>

The term Jinayah or Jarimah is something that is often used by the Fuqaha. Jinayah comes from the word Jana which means sin or wrong, while Jinayah linguistically means sin or wrongdoing. In legal language, Jinayah is defined as a criminal act. In terms of terminology, it means actions that are prohibited by Sharia' which are threatened by Allah SWT with the punishment of hadd or ta'zir.<sup>16</sup>

The implementation of Qanun Jinayat is based on several statutory regulations, namely:<sup>17</sup>

1. Law Number 44 of 1999 concerning the Implementation of the Special Status of the Special Region of Aceh Province.

Based on Article 3, the implementation of Islamic law is a special right for Aceh.

2. Law Number 18 of 2001 concerning Special Autonomy

This law states that Aceh's regional regulations (qanun Aceh) and the Sharia court are part of the justice system in Indonesia.

3. Law Number 11 of 2006 concerning the Government of Aceh

Based on this law, the Aceh Regional Government is given legitimate rights to implement Islamic law massively based on legal regulations.

In Aceh Qanun Number 3 of 2007 concerning the Procedures for the Formation of Qanuns, it is stated in Article 1 (1) numbers 14 and 15 that the Aceh Qanun is a Legislation similar to a Provincial Regulation that regulates the implementation of government and the lives of the Acehnese people. The Regency/City Qanun is a Legislation similar to a Regency/City Regional Regulation that regulates the implementation of government and the lives of the regencies/cities in Aceh.

Law Number 18 of 2001 which was later revoked by Law Number 11 of 2006, in its position is on the same level as provincial and district/city regulations, so Qanun should not be considered higher than the laws and regulations at the central level. The content of the Qanun should not exceed the material that should be contained in regional regulations in the form of laws. Law Number 11 of 2006 concerning the Government of Aceh is a legal umbrella for formulating, compiling and issuing regulations in the form of Qanun as government policies in implementing these laws and regulations. Among other things, Qanuns were issued as derivatives of the Aceh government law.

The drafting of these qanuns cannot be separated from the national policy guidelines outlined in Regional Regulation Number 5 of 2000 as the Implementation of Islamic Sharia

<sup>15</sup> Usammah; Rasyidin Muhammad; Zamri. "Understanding and Introduction of Qanun Jinayat Law for Remote Area Communities in North Aceh (Research Study in Alue Leuhop and Cot Girek Villages, Cot Girek District, North Aceh Regency)". *Jurnal Bidayah: Study of Islamic Sciences*, Volume 9, No. 2, December 2018, p.117

<sup>16</sup> Zulkarnain Lubis and Bakti Ritonga, *Basics of Criminal Procedure Law*, Jakarta, Publisher Prenadamedia Group, 2016, page 2

<sup>17</sup> Hudzaifah Achmad Qotadah, Adang Darmawan Achmad. "Aceh Jinayat Qanun Between Implementation, Issues and Challenges". *Adliya: Journal of Law and Humanity*, Vol. 14, No. 2, December 2020, page 177

in Aceh which is comprehensive (comprehensive, covering all aspects of life) which is upheld on three main principles:<sup>18</sup>

1. Adhere to the Al-Quran and Sunnah in full
2. Carrying out understanding and reasoning on the provisions of the Qur'an and Sunnah based on scientific methods (qualifying and accountable) in order to fulfill the needs of the contemporary Acehnese community within the framework of the Unitary State of the Republic of Indonesia; and
3. Forward-looking to anticipate the needs of the people that arise due to development and progress

The actions regulated in Qanun Jinayat are as follows:<sup>19</sup>

- a. Intoxicating liquor (Khamar) applies to those who drink, buy, sell/store/produce it
- b. Gambling (Maisir) applies to perpetrators and providers of gambling venues
- c. The crime of khalwat is imposed on the perpetrators and providers of facilities or those who promote the crime of khalwat.
- d. Ikhtilath is an act of affection such as making out, touching, hugging and kissing between a man and a woman who are not husband and wife without any element of coercion, whether done in an open or closed place.
- e. Adultery applies to both the perpetrator and the provider of the facility
- f. Sexual Harassment is imposed on the perpetrator and with greater severity if it is committed against a child.
- g. Liwath is the act of sodomy
- h. Musahaqah is a lesbian act
- i. Rape is imposed on the perpetrator and is aggravated if it is committed against a mahram or child.
- j. Qadzaf Accusing someone of committing adultery without clear evidence and 4 witnesses

Aceh Qanun Number 6 of 2014 concerning Criminal Law, commonly called Qanun Jinayah. Jinayah is generally called criminal. So, qanun jinayah can be called a Regional Regulation on Criminal Law. The presence of qanun jinayah which is material in nature has been supported by procedural law because previously Aceh also had Qanun Number 7 of 2013 concerning Jinayat Procedural Law

### **Position of Aceh's Qanun Jinayat in the Indonesian National Criminal Law System**

Aceh Qanun both at the provincial and district/city levels have the same legal force as other provincial and district/city regulations in Indonesia, as regulated in Law Number 12 of 2011 concerning the Formation of Legislation and also strengthened in the Regulation of the Minister of Home Affairs Number 53 of 2011 concerning the Formation of Regional Legal Products. Article 1 number 5 of the Regulation of the Minister of Home Affairs Number 53 of 2011 concerning the Formation of Regional Legal Products states:

<sup>18</sup> Al Yasa Abubakar, Study of Aceh Government Law and Essay on Women, Marriage and Child Guardianship, Banda Aceh: Aceh Sharia Office, 2007, p. 17

<sup>19</sup> Opinion Cit, page 179

*The formation of Regional Legal products is the process of making regional legislation that starts from the planning, preparation, formulation, discussion, ratification, enactment, and dissemination stages. (Article 1 number 1). Provincial Regional Regulations or other names and Regency/City Regional Regulations or other names, hereinafter referred to as Perda, are legislation that is formed by the DPRD with the joint approval of the Regional Head.*

Based on Law Number 12 of 2011 concerning the Formation of Legislation, Qanun Jinayat is aligned with Provincial and Regency/City Regional Regulations. Although the Law does not directly mention Qanun. However, the use of the term Qanun in the Making of Aceh Regional Regulations de jure and de facto is directly stated in Article 1 point 21 of Law Number 11 of 2006 concerning the Government of Aceh. Where in the regulation consists of two categories, namely:<sup>20</sup>

1. Qanun which regulates the material for the implementation of government and
2. Qanun which regulates the material for organizing the life of the Acehnese people based on Islamic law

In general provisions, numbers 21 and 22 of Law Number 11 of 2006 concerning the Government of Aceh state:

*Aceh Qanun is a type of statutory regulation in the form of a provincial, district/city regulation that regulates the implementation of government and the lives of the Acehnese people or the lives of the district/city communities in Aceh.*

Then in Article 233 paragraph (1) which states Law Number 11 of 2006 concerning the Government of Aceh states:

*Qanun was formed in order to organize the governance of Aceh, the district/city government and the implementation of assistance tasks.*

Furthermore, Qanun Number 3 of 2007 states:

*Qanun was formed in the context of organizing the governance of Aceh and the Regency/City, regulating matters relating to the special conditions of the regions carrying out assistance tasks and further elaboration of statutory regulations.*

Aceh's Qanun Jinayat must be viewed and explained from two perspectives. On the 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, Aceh's Qanun Jinayat can be called a positive Islamic law, namely Islamic law whose construction is derived from sharia (the Qur'an and Sunnah), fiqh and 'urf and then legislated into a Qanun by the Aceh People's Representative Council and approved by the Governor of Aceh. Because Aceh's Qanun Jinayat is viewed as part of efforts to implement Islamic law, Qanun Jinayat must be viewed as part of a sub-field of Islamic law and is included in the Islamic legal system. In addition to its position, Aceh's Qanun Jinayat is also part of the Indonesian legal system which is recognized through Law Number 12 of 2011 concerning the Formation of Legislation.

<sup>20</sup> S. Abbas, *New Paradigm of Law in Aceh: Analysis of Qanun on Jinayat Law and Qanun on Jinayat Procedure Law*. Banda Aceh, Aceh Islamic Sharia Service, 2002, p. xi



As part of the Indonesian legal system, the Aceh Qanun Jinayat is here to complement what is not yet regulated in the national criminal law. Sometimes, the Aceh Qanun Jinayat even requires norms that are relatively different from the Criminal Code and other national criminal laws. The spirit of formalizing Islamic law in Aceh cannot be denied, indeed, to make Aceh different from other provinces in Indonesia. That is why in the case of adultery (for example), Aceh has its own definition. Or in the case of khamr (alcoholic drinks), Aceh also has its own standards. For sexual harassment, Aceh sets sanctions that are relatively heavier than the Criminal Code. Meanwhile, for behavior such as lesbian and gay, Aceh does not just prohibit it, but also sets severe ta'zir sanctions.<sup>21</sup>

The Aceh Jinayat Law stipulates the following sanctions:<sup>22</sup>

1. Hudud

Hudud is in the form of whipping and is the main punishment. Hudud in the Aceh Qanun Jinayat and Islamic criminal law (fiqh jinayat) is seen as the most severe and serious sanction. Acts that are threatened with this punishment are classified as serious crimes that must be handled seriously.

2. Ta'zir.

Understanding of uqubat ta'zir is divided into two, namely the main uqubat ta'zir and additional uqubat ta'zir. For the main uqubat ta'zir consists of whipping, fines, imprisonment, and restitution. While the additional uqubat ta'zir consists of guidance by the state, restitution by parents/guardians, return to parents/guardians, termination of marriage, revocation of permits and revocation of rights, confiscation of certain goods, and social work.

## METHOD

### Types of research

This type of research is normative legal research, namely by using a statutory regulatory approach. The focus of normative legal research, in accordance with the unique character of legal science, lies in the legal review or legal study of positive law, which includes three layers of legal science, consisting of legal dogmatics review, namely the review carried out on identification in positive law, especially statutes. While at the level of legal theory, a review is carried out on theories that can be used. The type of research in this study is normative legal research that critically and comprehensively examines the legal enforcement of traffic violations.

### Problem Approach

The problem approach used in this research is case approach in conducting case analysis (case study). The case approach is carried out by conducting a review of case Number 4/JN/2021/MS.Idi

<sup>21</sup> Ridwan Nurdin. "The Position of Aceh's Qanun Jinayat in the Indonesian National Criminal Law System". *Miqot Journal* Vol. XLII No. 2 July-December 2018, p.367

<sup>22</sup> *Ibid*, page 368

## Source of Legal Material

Primary legal materials consist of laws and government regulations, court decisions that have permanent legal force, other related regulations such as the Criminal Code, Aceh Qanun Number 6 of 2014 Concerning Jinayah. Secondary legal materials are materials that provide explanations regarding primary legal materials such as research, proceedings related to research. Tertiary legal materials, namely materials that provide instructions or explanations for primary legal materials and secondary materials such as dictionaries, encyclopedias (wikipedia) and tables related to the object of research.

## RESULT AND DISCUSSION

Indonesia as a country of law in the history of its legal implementation recognizes 3 (three) sources of law, namely sources of law originating from the West, Islamic law and customary law. It turns out that Islamic law in force in Indonesia is not only that which applies in a formal legal manner, namely being a positive law based on or because it is designated by statutory regulations, but also that which applies normatively such as the law that regulates the relationship between humans and God. Both norms have become living laws in society. This is because, not only because Islamic law is a religious entity that is adhered to by the majority of the population to this day, but in its practical dimension in several regions it has become part of the traditions (customs) of society which are sometimes considered sacred.<sup>23</sup>

Islamic law as one of the sources of law and still alive in Indonesian society, has experienced ups and downs according to the existing political conditions. Islamic law has a long history. Since the time of the kingdoms and even until the independence era, the enforcement of Islamic law has continued to be fought for, especially in Aceh. The implementation of Islamic law in Aceh Province that exists today is clearly still within the corridor of the trilogy of religious harmony, namely harmony between religious communities, harmony within religious communities, and harmony between religious communities and the Government, also in line with the basic guidelines in religion for the Indonesian nation which are regulated in Article 29 of the 1945 Constitution concerning freedom to practice religious teachings and beliefs of each.<sup>24</sup>

The Aceh Government in applying and enforcing Islamic law in the lives of the people of Aceh, has ratified Aceh Qanun Number 6 of 2014 concerning Jinayat Law (material criminal law) and Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law (formal criminal law). The existence of these two Jinayat Qanuns will be the basis for punishing perpetrators of criminal acts imposed by the Sharia Court Judge who has the authority to examine, try and decide a Jinayat case covering the fields of khalwat (acts between two people of different sexes who are not mahram), ikhtilat (acts of affection between two people of different sexes who are not husband and wife), adultery, sexual harassment, and rape. In addition, qadhaf (accusing someone of committing adultery without

<sup>23</sup>Cik Hasan Bisri, *Anthology of Religious Courts in Indonesia*, Bandung: Ulil Albab Press, 2017, p. 73.

<sup>24</sup> Kamarusdiana. "Qanun Jinayat Aceh in the Perspective of the Indonesian Legal State". *Ahkam Journal*: Vol. XVI, No. 2, July 2016, page 158

being able to present at least 4 witnesses), liwat (homosexuality), and mushadaqah (lesbian).<sup>25</sup>

### ***1. Legal Aspects of the Crime of Adultery According to National Criminal Law and Qanun Aceh Number 6 of 2014 Concerning Criminal Law***

Adultery is one of the criminal acts prohibited in Indonesian Positive Law, customary law system, and Islamic law system. The norm of adultery in positive law has been formulated in article 284 of the Criminal Code (KUHP). Adultery is sexual intercourse committed by a man with a woman who is not bound by a valid Islamic sharia marriage, based on mutual consent from both parties, without doubt (syubhat) from the perpetrator or perpetrators of adultery concerned.<sup>26</sup>

In general, the formulation of the crime of adultery is regulated in Article 284 of the Criminal Code which can be categorized as one of the crimes against morality. Based on Article 284 of the Criminal Code, the act referred to as adultery is the act of sexual intercourse committed by a man and a woman, both or one of whom are married.<sup>27</sup> So if the act of adultery is committed by a man and a woman who are both not bound by marriage to another person, then it is not considered an act of adultery. In addition, the crime of adultery regulated in Article 284 of the Criminal Code is an absolute complaint offense (absolute klachtdelicten). This means that this crime can only be prosecuted if there is a complaint from the victim who is harmed. This interested party is usually the husband or wife of the perpetrator of the crime of adultery or the person who feels harmed.<sup>28</sup>

Article 284 states:

- (1) *Threatened with a maximum prison sentence of nine months:*
  - 1.a. *A married man who commits adultery, even though it is known that Article 27 of the Civil Code applies to him;*
  - 1.b. *A married woman who commits adultery, even though it is known that Article 27 of the Civil Code applies to her;*
  - 2.a. *A man who participates in the act, even though it is known that the other person is married;*
  - 2.b. *A married woman who participates in committing this act, even though she knows that the person who is also guilty is married and Article 27 BW applies to her;*
- (2) *No prosecution is carried out except upon a complaint from the husband/wife who is being sullied, and if Article 27 of the Civil Code applies to them, within a period of three months this is followed by a request for divorce or separation from bed and board for that reason as well.*

<sup>25</sup> Suhartini, Syandi Rama Sabekti. "Resolving Adultery Crimes Through Mediation from the Perspective of Positive Law and Islamic Law". *Jurnal Bina Mulia Hukum*. Volume 4, Number 1, September 2019, p.73

<sup>26</sup> Ishak, "Analysis of Islamic Law on Adultery in Article 284 of the Criminal Code in Criminal Law Reform", *Kanun Jurnal Ilmu Hukum*, Vol. 14 No. 1 April 2012, p. 166

<sup>27</sup> R. Soenarto Soerodibroto, *Criminal Code and Criminal Procedure Code Complete with Supreme Court and Hoge Raad Jurisprudence*, Fifth Edition, Jakarta: RajaGrafindo Persada, 2019, p. 176

<sup>28</sup> Suhartini, Syandi Rama Sabekti. *Op.Cit.*, p.6

- (3) *Articles 72, 73 and 75 do not apply to this complaint.*
- (4) *A complaint may be withdrawn as long as the hearing in the court hearing has not yet begun.*
- (5) *If the husband/wife is subject to Article 27 BW, complaints will not be heeded as long as the marriage has not been terminated due to divorce or before the decision stating that the separation of table and bed becomes permanent.*

The crime of adultery or overspel referred to in Article 284 paragraph (1) of the Criminal Code is an opzettelijk delict or a crime that must be done intentionally. This means that the element of intent must be proven in the perpetrator, so that he can be declared proven to have fulfilled the element of intent in committing one of the crimes of adultery from the crime of adultery regulated in Article 284 paragraph (1) number 1 letter a or b and number 2 letter a or b of the Criminal Code. If the element of intent in the form of will or in the form of intent to commit adultery in the perpetrator cannot be proven, then the judge will give a verdict of acquittal from legal charges or ontslag van rechtsvervolgving for the perpetrator.<sup>29</sup>

The criminal threat in the Criminal Code against perpetrators of adultery is a maximum sentence of 9 (nine) months in prison and must meet several conditions, as explained in Article 284 of the Criminal Code (KUHP), that a man or woman is said to have committed the crime of adultery, namely:<sup>30</sup>

1. Having sexual intercourse with a woman or man who is not the husband or wife;
2. Article 27 of the Civil Code for Indonesia (BW) applies to him;
3. He is currently married.

Based on Article 284 paragraph (1) of the Criminal Code (KUHP), a person cannot be charged with the crime of adultery if it is committed by a single man with a woman who is also single. The Criminal Code only defines adultery as an act of sexual intercourse committed by a married man or woman with a woman or man who is not his wife or husband.

Qanun jinayat views that the crime of adultery committed by people who are married or not is a very reprehensible act and is a very serious and dangerous crime. Meanwhile, the Criminal Code has opened up opportunities for sexual freedom among teenagers. This is in line with the opinion of Kartini Kartono, one of the causes of sexual freedom and prostitution is because there is no law prohibiting sexual relations outside of marriage and there is no law prohibiting prostitution activities.<sup>31</sup>

The crime of adultery is strictly regulated in Article 33 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, which reads:

- (1) *Anyone who intentionally commits adultery is threatened with 'Uqubat Hudud', which is 100 (one hundred) lashes.*
- (2) *Every person who repeats the act as intended in paragraph (1) is threatened with 'Uqubat Hudud 100 (one hundred) times and can be added to 'Uqubat Ta'zir a fine of a*

<sup>29</sup>PAF Lamintang and Theo Lamintang, Crimes Violating Moral and Propriety Norms, Jakarta: Sinar Grafika, 2019, p. 78.

<sup>30</sup>Andi Hamzah, Criminal Code and Criminal Procedure Code, Jakarta: Rineka Cipta, 2011, p. 114

<sup>31</sup>Kartini Kartono. Social Pathology, , Jakarta: RajaGrafindo Persada, 2019, p. 207.

*maximum of 120 (one hundred and twenty) grams of pure gold or 'Uqubat Ta'zir imprisonment of a maximum 12 (twelve) months.*

- (3) *Any person and/or business entity who intentionally provides facilities or promotes the crime of adultery, is threatened with Uqubat Ta'zir with a maximum of 100 (one hundred) lashes and/or a maximum fine of 1000 (one thousand) grams of pure gold and/or a maximum of (100) one hundred months' imprisonment.*

Criminal liability for perpetrators of adultery regulated in this qanun is not only limited to husband and wife but can also be imposed on two unmarried couples if they have sexual intercourse (adultery). In addition, the Aceh Jinayat law qanun has the quality of providing a deterrent effect on the perpetrators and can also be an example so that other people do not commit adultery.

In the formulation of Article 33 paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, there are the following elements:<sup>32</sup>

1. Each person

In accordance with the provisions of Article 1 number 38 of Qanun Number 6 of 2014, the element "every person" means an individual, or any person who is Muslim who commits a crime (criminal act) in Aceh (Article 5), so that the person can be held accountable for a crime committed.

2. Intentionally committing adultery

Intention is the evil intention of a person who deliberately does something, even though he knows that the act is forbidden. What is meant by the element of intention "committing adultery" is intentionally, consciously, of one's own will and without coercion from another person to commit adultery.

3. The object that performs

In accordance with the provisions of Article 1 number 26, what is meant by adultery is sexual intercourse between one or more men and one or more women without the bonds of marriage with the consent of both parties.  
party.

Governor Regulation Number 10 of 2005 concerning Technical Instructions for the Implementation of Uqubat Campang, among other things, stipulates the following:

1. The execution is carried out by the prosecutor.
2. Provision of facilities and preparation is carried out by the Islamic Sharia Service.
3. The flogging was carried out in a place that could be witnessed by many people, in the presence of the public prosecutor and an appointed doctor.
4. The whipping is carried out with a rattan that is 1 cm in diameter, 1 m long and does not have double/split ends.
5. Flogging was carried out on any part of the body except the head, face, neck, chest and genitals.
6. The level of beating or whipping does not cause injury.

<sup>32</sup> Rahmat Satria Kurniawan. "The Effectiveness of Aceh Qanun Number 6 of 2014 Concerning Jinayat Law Against the Crime of Adultery (Study of Wilayahul Hisbah Banda Aceh)". Medan. Faculty of Law, University of Muhammadiyah North Sumatra, 2019, page 53

7. The male convicts were whipped in a standing position without support, without being tied up and wearing thin clothes that covered their genitals. While the women were in a sitting position and covered with cloth above them.

8. Flogging of pregnant women is carried out 60 days after the woman gives birth.

This Aceh Qanun Jinayat does not differentiate the punishment between muhsan adulterers and ghairu muhsan adulterers, where the punishment for muhsan adulterers according to Islamic law is stoning. The punishment or 'Uqubat whipping imposed on adulterers can provide a deterrent effect for the perpetrators both physically and psychologically because the execution process of the punishment is carried out in front of the public. However, the consequences of the whipping punishment are not only physical and can also be threatened from a sociological perspective.

## **2. Law enforcement Regarding Case Number: 4/Jn.2021/Ms.Idi**

In Case Number: 4/Jn.2021/Ms.Idi, where the defendant Rauzatul Jannah binti Abas (27 years old), a resident of the Border Hamlet, Alue Batee Village, Peudawa District, East Aceh Regency, was demanded to be flogged in public 15 (fifteen) times with the alternative charge, namely:<sup>33</sup>

- a. Violating Article 37 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law
- b. Violating Article 28 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law
- c. Violating Article 25 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law
- d. Violating Article 23 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law

The case began with the defendant's confession to the defendant's husband (Witness Anwar bin m. Hasan) when asked about the state of their household which had recently been less harmonious to the Defendant Rauzatul Jannah. In the trial the following facts were revealed:<sup>34</sup>

1. That the Defendant admitted to having committed the crime of adultery with a man who was not her husband;
2. That the Defendant confirmed all the Defendant's confessions of adultery that the Defendant had given at the investigation stage as contained in the Investigation Examination Report and the Report of Admission to Committing Adultery;
3. That the Defendant stated that he was continuing to admit his adultery and the Defendant swore that the Defendant had committed the act of adultery;
4. That the Defendant admitted his mistake and deeply regretted his actions and the Defendant was willing to repent.

<sup>33</sup>Excerpt from decision number: 4/Jn.2021/Ms.Idi

<sup>34</sup>Excerpt from decision number: 4/Jn.2021/Ms.Idi

Based on the legal facts revealed in the trial which are in accordance with the defendant's statement, witness statements, and evidence presented in the trial, the Panel of Judges of the Sharia Court decided the following verdict:<sup>35</sup>

1. Declaring the Defendant (Rauzatul Jannah binti Abas) legally and convincingly proven guilty of committing the crime of adultery based on the confession as in the first indictment of the Public Prosecutor violating Article 37 paragraph (1) of Qanun Number 6 of 2014 concerning Jinayat Law;
2. Punishing the Defendant (Rauzatul Jannah binti Abas) therefore with 'uqubat hudud in the form of lashing 100 (one hundred) times

The decision of the panel of judges is correct and in accordance with Aceh Qanun Number 6 of 2014 concerning Jinayat Law, although the number of Uqubat Canings imposed is much greater than the prosecutor's demands. The Judge's considerations are in accordance with Article 1 number 18 of Aceh Qanun Number 6 of 2014 stating that hudud is a type of 'uqubat whose form and amount have been determined in the qanun explicitly, so the 'uqubat that will be imposed is the 'uqubat that has been determined in the article and the Panel of Judges has no authority to divert or replace it with another 'uqubat and there is no other option for the Panel except to apply it as has been determined, namely the hudud uqubat in the form of 100 (one hundred) canings.

In general, in accordance with Islamic law, as stated in the Koran, letter an-Nisaa verse 15 and Article 182 paragraph (5) of Aceh Qanun Number 7 of 2013, which states that proof of the crime of adultery is with 4 (four) witnesses who directly saw the process which shows that the act of adultery occurred at the same time, place and person and Article 181 paragraph (1) letter f jo. Article 187 paragraph (1) and (4) of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law, which states that the Defendant's confession alone is not enough to prove that the Defendant is guilty of committing the act with which he is accused, but must be accompanied by other evidence, but in adultery cases Article 187 paragraph (4) of Aceh Qanun Number 7 of 2013 permits it in line with the provisions contained in Article 38 paragraph (1), (2) and (3) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, which states that the Defendant's confession is one of the pieces of evidence and the confession is followed by an oath taken by the Defendant at trial.

The crime of adultery cannot be resolved through mediation according to Aceh Qanun Number 6 of 2014 concerning Jinayat Law, except for indecent acts (khalwat) which can be resolved according to the provisions of the Aceh Qanun concerning the development of customary life and customs and/or other laws and regulations concerning customs, although according to the Criminal Code there is an open way for peaceful and family resolution efforts or restorative justice, because Article 284 of the Criminal Code places the crime of adultery as an absolute complaint offense.

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<sup>35</sup>Excerpt from decision number: 4/Jn.2021/Ms.Idi

## CONCLUSION

Qanun jinayat views that the crime of adultery committed by people who are married or not is a very reprehensible act and is a very serious and dangerous crime. This is in accordance with the guidance of the Al-Isra letter of the Qur'an, verse 32, which states: "And do not come near adultery. Indeed, adultery is a vile act and an evil way."

Adultery is regulated in Article 284 of the Criminal Code (KUHP). categorized as one of the crimes against morality and is an absolute complaint offense (absolute klachtdelicten). This means that this crime can only be prosecuted if there is a complaint from the victim who has been harmed. This interested party is usually the husband or wife of the perpetrator of the crime of adultery or a person who feels aggrieved with a maximum sentence of 9 (nine) months in prison.

The crime of adultery is strictly regulated in Article 33 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law with the punishment of Uqubat Hudud 100 (one hundred) lashes. In Aceh Qanun Number 6 of 2014 concerning Jinayat Law, there is no distinction between perpetrators who are married or unmarried.

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