



CRIMINAL LAW ENFORCEMENT FOR NON-MUSLIMS IN ACEH

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Article Info	Abstract
Article History Received: 2025-08-05 Revised: 2025-08-06 Published: 2025-09-10 Keywords: <i>Qanun Jinayat, Non-Muslim, Aceh, Substantive Justice, Rule of Law</i>	This study examines the legal and sociological implications of the implementation of the Qanun on Jinayat Law against non-Muslims in Aceh within the framework of the national legal system and efforts to realize substantive justice. The application of the qanun to non-Muslims is legally legitimized through Law Number 11 of 2006 concerning the Governance of Aceh, specifically Article 129, which provides a legal basis for voluntary and automatic submission. However, the mechanism of submission in practice often raises serious problems, because choices that are normatively called voluntary are in reality often merely formalities due to social pressures or pragmatic considerations. This phenomenon creates a dilemma between formal legal certainty and the protection of the basic rights of non-Muslims guaranteed by the constitution. Sociologically, non-Muslims in Aceh are more likely to submit to the Qanun Jinayat (Islamic Law) than to the Criminal Code (KUHP), as caning is seen as a lighter, quicker punishment, and carries less long-term stigma than imprisonment. However, this choice is not a form of substantive acceptance, but rather a coping strategy reflecting social pressure and potential discrimination. This raises critical questions about the extent to which regional laws can harmonize with the constitutional principles of equality before the law and non-discrimination. The research findings indicate that the application of the Qanun Jinayat to non-Muslims is legally valid, but constitutionally and sociologically problematic. To realize substantive justice in Indonesia's rule of law, a clear and transparent reformulation of the submission mechanism is required, along with strict oversight by the central government to prevent Aceh's special autonomy from giving rise to discriminatory practices. Thus, legal pluralism in Indonesia can operate in harmony with the principles of a democratic rule of law that guarantees the protection of the rights of all citizens without exception.

I. INTRODUCTION

This research will discuss the enforcement of the Qanun of Jinayat Law against non-Muslims who commit criminal offenses (jarimah) prohibited in the qanun. Various decisions of the Sharia Court judges decided by judges are more dominant in deciding with caning punishment for non-Muslims. In decision Number 3/JN/2020/MS.Skl, the perpetrator who is legally and convincingly proven to have committed khalwat is sentenced to 8 (eight) canings in public. Then in decision Number 0001/JN/2016/MS-Tkn, the Sharia Court Judge sentenced 'uqubat caning to non-Muslims who are legally and

convincingly proven to have stored and sold alcohol in the Aceh region, so that they are threatened with a punishment of 30 canings.

The implementation of the qanun for non-Muslims is a legal consequence of the Qanun on Jinayat Law in Aceh. There are two criteria for non-Muslims who commit jinayat that can be threatened with punishment, which Khairil Akbar calls voluntary and automatic (forced), namely non-Muslims who commit jinayat violations committed together with Muslims and submit themselves to the qanun, and non-Muslims who commit jarimah not regulated in the Criminal Code or criminal acts outside the Criminal Code

(forced). This is emphasized in Article 5 letters (b) and (c). Article 5 letter (b) states, "Every person of a non-Muslim religion who commits jarimah in Aceh together with Muslims and chooses and submits himself voluntarily to Jinayat Law", and Article 5 letter (c) which states "Every person of a non-Muslim religion who commits jarimah in Aceh that is not regulated in the Criminal Code (KUHP) or criminal provisions outside the KUHP, but is regulated in this Qanun". This provision has sparked controversy and debate among both Acehnese and non-Acehnese communities, leading to concerns among non-Muslims, which is actually inappropriate, given that there is still the opportunity to opt out of it, as they are given the opportunity to choose whether or not to submit to the punishment of the qanun. The implementation of the qanun jinayat for non-Muslims is a legal consequence of Law Number 11 of 2006 concerning the Government of Aceh.

Article 129 of Law Number 11 of 2006 concerning the Government of Aceh stipulates that:

1. In the event that a jinayah act is committed by two or more people together, one of whom is of a non-Muslim religion, the non-Muslim perpetrator can choose and submit himself voluntarily to the law of jinayah.
2. Every person of a non-Muslim religion commits an act of jinayah which is not regulated in the Criminal Code or criminal provisions outside the Criminal Code, the jinayah law applies.
3. Aceh residents who commit criminal acts outside Aceh apply the Criminal Code.

The above provisions serve as a reference for law enforcement in trying non-Muslim defendants in accordance with the mechanisms specifically regulated in the Qanun on Criminal Procedure as a further elaboration of the Aceh Government Law. Regarding the submission mechanism, it is not regulated at what level a suspect chooses to use the qanun or punishment outside the qanun. In Article 94 of Aceh Qanun Number 7 of 2013 concerning Criminal Procedure, it is stipulated that crimes committed by two or more people together, one of whom is not Muslim, the non-Muslim perpetrator can choose and submit to this qanun and will be examined and tried by the Regency/City Sharia Court. This provision does not explain at the investigation level or at the prosecution level or at the court level regarding submission, but provides a general description that non-Muslim perpetrators can submit.

In general, non-Muslims tend to choose the punishment regulated in the Qanun on Jinayat Law compared to the criminal provisions regulated in the Criminal Code (KUHP) or other criminal provisions. Based on existing data, every jinayat violation as regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law is always submitted to the Sharia Court because this matter falls under its absolute authority. The cases tried are very varied, consisting of alcohol, gambling, and selling alcoholic beverages (khamar). By answering these questions, it is hoped that this research can contribute to stakeholders in law enforcement, this research the author discusses with the research title Criminal Law Enforcement for Non-Muslims in Aceh.

Based on the background above, the problem formulation that the author will discuss is:

1. How is the enforcement of Jinayat Law against non-Muslims who commit criminal offenses (jarimah) regulated in the Qanun?
2. What are the legal and sociological implications of the implementation of the Qanun on Jinayat Law against non-Muslims in Aceh for the national legal system and efforts to realize substantive justice in the Indonesian constitutional state?

II. RESEARCH METHODS

This research method uses a sociological juridical approach to examine the application of criminal law to non-Muslims in Aceh by examining the interaction between written legal norms and social practices in the field. Data were collected through in-depth interviews with officials, non-Muslim communities, legal practitioners, and human rights activists, as well as observations in courts and judicial institutions, plus analysis of legal documents such as the Aceh Qanun and court decisions. The analysis was conducted by identifying key themes, categorizing legal and social data, and evaluating the implementation and interpretation of the law in society. This approach was chosen so that the research is not limited only to documents, but also captures the social dynamics in the application of the law, thus being able to provide a

comprehensive picture and recommendations for realizing a more inclusive and just legal system for all Acehnese, including non-Muslims.

III. RESULTS AND DISCUSSION

A. Enforcement of Jinayat Law against non-Muslims who commit crimes is regulated in the Qanun

Enforcing criminal law against non-Muslims in Aceh is one of the most complex issues in the Indonesian legal system, as it directly intersects with the implementation of Islamic law within the framework of the Unitary State of the Republic of Indonesia (NKRI). This complexity arises from Aceh's position as a region with *lex specialis* through Law Number 11 of 2006 concerning the Government of Aceh, which grants special authority in the implementation of religious life, including the implementation of Islamic law. However, fundamental questions arise when the sharia law in force in Aceh also affects non-Muslim citizens. This issue focuses on how the Qanun on Criminal Law regulates the submission of non-Muslims, and how the Sharia Court's judicial practice renders decisions against them.

Normatively, regulations regarding the applicability of criminal law for non-Muslims can be traced to Article 5 of Aceh Qanun Number 6 of 2014 concerning Criminal Law. This article states:

1. Every Muslim who commits a crime in Aceh is regulated by this qanun.
2. Every non-Muslim who commits a crime in Aceh together with Muslims and chooses and voluntarily submits to Jinayat Law.
3. Any person of a non-Muslim religion who commits a crime in Aceh that is not regulated in the Criminal Code (KUHP) or criminal provisions outside the KUHP, but is regulated in this qanun.

From this provision, it can be understood that there are two criteria for non-Muslim submission to the qanun: voluntary and automatic. First, voluntary submission, which occurs when a non-Muslim commits a crime together with a Muslim and chooses to submit to the jinayat law. Second, automatic submission, which occurs when a non-Muslim commits a crime that is not regulated by the Criminal Code or criminal provisions outside the Criminal Code, but is regulated by the qanun. In other words, for crimes for which the *lex specialis* is only found in the qanun, non-Muslims have no choice but to submit to the jinayat law.

The provisions of Article 5 of the Qanun on Jinayat Law are legally a direct derivative of Article 129 of Law Number 11 of 2006 concerning the Government of Aceh. Article 129 paragraph (1) emphasizes that if a jinayat act is committed jointly by Muslims and non-Muslims, then the non-Muslim can choose to voluntarily submit himself to jinayat law. Furthermore, Article 129 paragraph (2) stipulates that every non-Muslim who commits a jinayat act that is not regulated in the Criminal Code or criminal provisions outside the Criminal Code, jinayat law applies. This shows that the law explicitly recognizes the applicability of sharia law to non-Muslims under certain conditions.

In practice, this is reinforced by the decisions of the Sharia Court in Aceh. For example, in Suka Makmue Sharia Court Decision Number 3/JN/2020/MS.Skl, a non-Muslim was sentenced to eight lashes for *khalwat*. Similarly, in Takengon Sharia Court Decision Number 0001/JN/2016/MS-Tkn, the judge sentenced a non-Muslim to 30 lashes for storing and selling alcoholic beverages. These two decisions demonstrate that even though the perpetrators are non-Muslim, the implementation of the qanun remains upheld with a clear legal basis.

However, despite its normative basis, the application of the qanun to non-Muslims has drawn both pros and cons. Supporters argue that this provision represents legal equality in Aceh, as everyone in the Aceh region, both Muslim and non-Muslim, must respect and obey applicable local regulations. This logic is similar to the general principle of *locus delicti* criminal law, which states that every crime is tried based on the law applicable in the place where the crime occurred. Therefore, if someone commits a crime in Aceh, it is reasonable to prosecute them under the applicable jinayat law.

On the other hand, opposition comes from those who believe that the implementation of the qanun for non-Muslims is contrary to the principle of religious freedom guaranteed by the 1945 Constitution, Article 28E and Article 29. They believe that non-Muslims should not be forced to submit to sharia law, because Islamic sharia is part of the teachings of a particular religion, not a universal law for all citizens. However, in response to this argument, the Aceh Government often states that there is an opt-in mechanism provided, so that non-Muslims are not immediately forced. However, this mechanism is often seen as unclear, because Qanun on Jinayat Procedure Number 7 of 2013 only states generally

that non-Muslims can submit themselves to the level of examination in the Sharia Court, without explaining in detail when and how this choice is made.

From a legal theory perspective, the implementation of jinayat law against non-Muslims reflects what Hans Kelsen calls delegated authority, where Aceh's authority is derived from the constitution through organic law, in this case Law No. 11 of 2006. Formally, this regulation is valid, as its formation follows procedures. However, from a sociological perspective, as explained by Soerjono Soekanto in *Factors Affecting Law Enforcement* (1983), law enforcement is not only determined by the legal text, but also by its effectiveness in society. If non-Muslims feel oppressed or discriminated against, then even though it is legally valid, the implementation of qanun has the potential to give rise to social resistance.

Khairil Akbar's (2019) academic study asserts that the pattern of non-Muslim submission to the qanun is ambiguous. Normatively, they are given a choice. However, in practice, this choice is often merely a formality, as social and political pressures make it difficult for non-Muslims to refuse to submit. As a result, the principle of voluntariness is not purely implemented, but rather approaches social coercion.

Furthermore, from a human rights perspective, this regulation has also been frequently criticized. Amnesty International, in its 2015 report, highlighted that the implementation of the qanun for non-Muslims, especially with public caning as a punishment, has the potential to violate the principle of non-discrimination in the ICCPR (International Covenant on Civil and Political Rights), which Indonesia has ratified through Law No. 12 of 2005. The caning punishment is considered to violate Article 7 of the ICCPR, which prohibits cruel and inhumane treatment. However, the Indonesian government argues that the implementation of sharia in Aceh is local wisdom that must be respected within the framework of special autonomy.

It is interesting to note that, based on data collected by the Aceh Islamic Sharia Office, since the enactment of the Qanun Jinayat from 2014 to 2020, there have been several cases involving non-Muslims. However, almost all of them chose to comply with the qanun rather than the Criminal Code. The reasons often cited are that the jinayat trial process in the Sharia Court is faster, simpler, and the punishment of caning is considered less severe than the prison sentence imposed under

the Criminal Code. For example, the offense of consuming alcohol under the Criminal Code is punishable by lengthy imprisonment, while under the qanun, it is only punishable by caning or a fine. This suggests that non-Muslims choose the qanun more as a practical strategy than an ideological choice.

Legally, the enforcement of criminal law against non-Muslims in Aceh is legitimate under the Aceh Governance Law and its derivative qanuns. However, sociologically and philosophically, this regulation has generated unresolved controversy. It poses a dilemma between respecting Aceh's uniqueness and fulfilling more universal constitutional principles. Based on the responsive legal theory proposed by Philippe Nonet and Philip Selznick, the law should balance certainty, legitimacy, and social responsiveness. In the Acehese context, criminal law does provide formal certainty, but its legitimacy and acceptance among non-Muslims remain uncertain.

Therefore, the answer to this research question is that the enforcement of jinayat law against non-Muslims does have a clear normative basis through Law No. 11 of 2006, the 2014 Qanun on Jinayat Law, and the 2013 Qanun on Jinayat Procedure. This enforcement is realized through the decisions of the Sharia Court that clearly impose penalties on non-Muslims. However, in its implementation, the sociological aspect shows vulnerabilities, both from the side of the voluntary choice that is formal, and from the side of criticism that caning punishment has the potential to violate human rights. Thus, the enforcement of jinayat law against non-Muslims in Aceh is legally valid, but problematic sociologically and philosophically.

B. Legal and sociological implications of the implementation of the Qanun on Jinayat Law against non-Muslims in Aceh

The implementation of the Aceh Qanun on non-Muslims has broad implications, not only locally but also for the national legal system. As a region with special autonomy under Law Number 11 of 2006 concerning the Governance of Aceh, Aceh has the authority to organize religious life by implementing Islamic law. However, problems arise when regulations derived from Islamic law are also applied to non-Muslims. This raises fundamental questions: what is the position of this law in the hierarchy of laws and regulations, how consistent is it with constitutional principles, and what are its social implications for realizing

substantive justice in Indonesia's constitutional state.

From a legal perspective, the legal basis for the application of the qanun to non-Muslims rests on Article 129 of Law Number 11 of 2006. Paragraph (1) states that in cases where a jinayat act is committed jointly between a Muslim and a non-Muslim, the non-Muslim party may voluntarily submit to the jinayat law. Meanwhile, paragraph (2) states that for jinayat acts not regulated in the Criminal Code or other criminal regulations, the jinayat law also applies to non-Muslims. From this provision, it is clear that there is constitutional legitimacy derived from national laws that bind all citizens. In other words, normatively, the application of the qanun to non-Muslims is not a deviation from the law, but rather a derivative of the authority granted by the state through organic laws.

However, within the framework of constitutional law theory, debate has arisen as to whether the implementation of the qanun is consistent with the principle of equality before the law as guaranteed by Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. This principle demands that all citizens be treated equally before the law, without discrimination based on religion, ethnicity, or social class. In the context of Aceh, a dualism in legal treatment has emerged: non-Muslims in Aceh can be punished with caning for certain acts, while non-Muslims in other areas are processed under the Criminal Code. This dualism is legally justifiable due to Aceh's uniqueness, but in principle, justice raises the question of whether this difference in treatment reflects equal protection of rights.

Another legal implication concerns the integration of the national legal system. With the existence of qanuns, Indonesia actually has a pluralistic criminal code. On the one hand, the Criminal Code applies nationally as *lex generalis*, but in Aceh, the *lex specialis*, the Qanun Jinayat, applies. This pluralism is recognized in the legal system theory proposed by Lawrence Friedman, which states that law consists of legal structure, legal substance, and legal culture. Structurally, Aceh is authorized by Law 11/2006 to establish qanuns. Substantively, jinayat law is part of positive law in Aceh. However, in terms of legal culture, this pluralism creates friction between the universal principles of Indonesian criminal law and local Sharia-based specificities.

From a national criminal law perspective, the application of qanun to non-Muslims carries dual

implications. On the one hand, it enriches legal practice by providing local wisdom recognized by the constitution. On the other hand, it raises issues of substantive justice because it places non-Muslims in a dilemma: choosing to comply with qanun with the consequences of sharia punishment or comply with the Criminal Code with the risk of harsher penalties. This dilemma raises questions about the extent to which this choice is truly voluntary, or merely a formality driven by social and political pressure.

The sociological implications are equally significant. For non-Muslims, the implementation of the qanun often creates anxiety and social isolation. Public caning, while considered an effective deterrent by Acehnese society, is often considered a violation of human dignity by non-Muslim groups and human rights organizations. Amnesty International (2015), for example, calls caning a form of cruel treatment that violates the principles of Article 7 of the ICCPR, which Indonesia has ratified. Consequently, Indonesia's international image is often questioned for being perceived as accommodating discriminatory criminal practices.

On the other hand, sociological implications are also evident in the behavior of non-Muslim communities themselves. Data from the Aceh Islamic Sharia Office shows that the majority of non-Muslims prefer to comply with the qanun rather than the Criminal Code. The reasons given are not ideological, but rather practical: caning is considered a quicker, lighter punishment, and does not leave a long-term criminal record like prison sentences. Sociologically, this choice is a survival strategy, not a free choice. This demonstrates the tension between the "voluntary" theory in the qanun article and the social reality on the ground.

The next implication concerns substantive justice in Indonesia's constitutional state. According to Satjipto Rahardjo, substantive justice does not arise solely from legal certainty, but from the law's ability to address the public's sense of justice. In the Acehnese context, substantive justice for non-Muslims remains a question. Is justice fulfilled if non-Muslims are sentenced under sharia law, which is not part of their beliefs? Or is substantive justice born when everyone is treated equally by local laws applicable in a region, regardless of religion? These two perspectives continue to clash.

These implications also touch on aspects of central-regional relations. Indonesia's rule of law adheres to the principle of unitary state with

asymmetric decentralization. Aceh's special autonomy is an embodiment of this principle. However, if the implementation of the qanun against non-Muslims is deemed discriminatory, the central government faces a dilemma: should it respect Aceh's autonomy or intervene to ensure universal human rights principles? This is what makes the implications of jinayat law against non-Muslims not only a local issue, but also a national and even international one.

Thus, the legal and sociological implications of the implementation of the Qanun on Jinayat Law against non-Muslims in Aceh can be summarized as follows. First, legally, the qanun has formal legitimacy under Law No. 11 of 2006, but creates tension with the constitutional principle of equality before the law. Second, sociologically, the implementation of the qanun creates a sense of discomfort and potential discrimination for non-Muslims, although in practice many choose the qanun for pragmatic reasons. Third, nationally, the implementation of this qanun tests the extent to which criminal law pluralism can operate in harmony with the principles of a democratic state based on the rule of law.

Therefore, to realize substantive justice in Indonesia's constitutional state, a reformulation of the mechanism for non-Muslim submission is necessary. The "voluntary" mechanism must be more clearly regulated at the investigation and prosecution level, thereby truly guaranteeing the freedom of choice for non-Muslims. Furthermore, the central and regional governments need to find a compromise that respects Aceh's uniqueness without violating universal human rights principles. In this way, legal pluralism in Indonesia will be not only formally legitimate but also substantively just.

IV. CONCLUSIONS AND RECOMMENDATIONS

The legal enforcement of the Qanun on Jinayat Law against non-Muslims in Aceh does have formal legitimacy through Law Number 11 of 2006 concerning the Governance of Aceh and its derivative regulations, but in practice it creates serious tensions with the constitutional principle of equality before the law and the guarantee of human rights. The provision regarding "voluntary" submission for non-Muslims is essentially a normative illusion, because in social reality, such choices are often superficial due to environmental pressures and practical

considerations. This raises the fundamental question of whether Indonesia's rule of law merely stops at formal certainty or is capable of answering the demands of non-discriminatory, substantive justice for all its citizens.

Therefore, a bold and decisive reformulation is needed: the mechanism for submission must be more clearly regulated from the investigation stage through to trial, thereby truly guaranteeing the legal freedom of non-Muslims. The central government must also not hide behind the pretext of special autonomy, but must ensure that Aceh's special status does not give rise to hidden discriminatory practices that violate the dignity of the constitution. A healthy state based on the rule of law is not one that allows the law to become a tool for political compromise, but rather one that enforces the law fairly, consistently, and oriented towards protecting the rights of every citizen, without exception.

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