



## Legal Harmonization: Adultery in the Indonesian Criminal Code and Aceh Qanun No. 6/2014 on Jinayat Law

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### **Abstract**

*This paper discusses the complexity of the application of adultery laws in Indonesia, particularly in a comparison between the Criminal Code and the Aceh Qanun. The transformation of adultery regulations reflects the evolution of society's views and responses to social change. This research aims to understand the essence and implications of this regulatory transformation. In the context of legal harmonization, this research reveals the challenges and opportunities of harmonizing universal values with local and religious values, especially in the aspect of Islamic law in Aceh. The research conclusion provides a nuanced view of the dynamics of legal harmonization in Indonesia, emphasizing the need to create harmony in the legal system.*

**Keyword:** Adultery, Qanun, Jinayat Law

### **Abstrak**

Tulisan ini membahas kompleksitas penerapan hukum perzinahan di Indonesia, terutama dalam perbandingan antara KUHPidana dan Qanun Aceh. Transformasi regulasi perzinahan mencerminkan evolusi pandangan masyarakat dan respons terhadap perubahan sosial. Penelitian ini bertujuan memahami esensi dan implikasi transformasi regulasi tersebut. Dalam konteks harmonisasi hukum, penelitian ini mengungkap tantangan dan peluang menyelaraskan nilai-nilai universal dengan lokal dan agama, terutama dalam aspek hukum Islam di Aceh. Kesimpulan penelitian memberikan pandangan nuansatif tentang dinamika harmonisasi hukum di Indonesia, menekankan perlunya menciptakan keselarasan dalam sistem hukum.

**Kata Kunci:** Perzinahan, Qanun Aceh, Hukum Jinayat

## Introduction

The application of law in a country not only includes formal juridical aspects, but also reflects the identity, values and culture of its society. Indonesia, as a country that adheres to the principle of the rule of law, faces legal complexities, especially in the context of adultery. The debate on adultery regulation becomes the main focus, especially when comparing the implementation of adultery law in the Criminal Code with the regulation in Aceh Province, namely Qanun Aceh Number 6 Year 2014 on Jinayat Law. In the context of Indonesia's cultural and religious diversity, adultery regulations reflect the dynamics of values and norms that are rooted in society. Challenges arise in harmonizing views and regulations related to adultery given the diversity of religions and beliefs. The Criminal Code tries to cover aspects of universal positive law, while the Aceh Qanun incorporates the dimensions of Aceh's unique Islamic law.

This difference in approach between national and regional laws creates a complex legal landscape that requires in-depth investigation. The transformation of adultery regulations reflects the evolution of society's views, changes in social order, and responses to the dynamics of the times. Research was initiated to understand the essence and implications of the regulatory transformation. Zina, or adultery, is seen as a heinous and improper act, especially in the context of Islamic law. It is defined as sexual relations outside the bonds of marriage that are forbidden and prohibited because they involve *shahwa* (lust) and are contrary to religious norms. The implementation of adultery rules is not only a repressive response, but also a preventive tool with the threat of sanctions to prevent norm violations (Faruk, 2009).

It is important to pay attention to changes in the regulation of adultery because the law cannot be separated from the social reality and cultural values of society. The Criminal Code, as a national legal product, has undergone revisions and updates in line with the development of society. On the other hand, Qanun Aceh, as a representation of Aceh's specialty in implementing Islamic law, creates a distinctive legal framework that is in line with the Islamic values of Acehnese society. This paper aims to explore the extent to which changes and transformations have occurred in the application of adultery regulations in Indonesia, particularly in two different legal frameworks. Exploring the essence of these transformations allows for a better understanding of the dynamics of the law in responding to society's demands and evolving social needs.

Involving aspects of Islamic law in the context of adultery regulation in Aceh opens an understanding of the role of religion in shaping regional legal foundations. The Aceh Qanun not only reflects efforts to maintain cultural and religious identity, but is also part of a legal experiment that shows the integration of Islamic values in the context of positive law. In an increasingly open and globally connected society, the transformation of adultery regulations is not only a local issue, but also has national and international repercussions. This study will detail not only the textual differences in the regulations, but also involve an in-depth analysis of the effect of the regulations on people's behavior, the relationship between legal and religious norms, and the implications for human rights.

By exploring the transformation of adultery regulation in Indonesia, this paper hopes to provide a richer understanding of the dynamic relationship between

law, religion and society in a rapidly evolving context. The conclusions of this study are expected to provide a nuanced view of the role and implications of the transformation of adultery regulations, as well as detail potential policy directions for the future that are more inclusive and in line with the values of Indonesia's diverse society. In the context of legal harmonization, this research reveals that the transformation of adultery regulations creates challenges and opportunities to harmonize universal legal values with local and religious values. Involving aspects of Islamic law in the regulation of adultery in Aceh not only reflects cultural diversity, but also becomes part of efforts to harmonize national law with religious principles held by the local community. The conclusions of this research are expected to provide a nuanced view of the dynamics of legal harmonization in Indonesia, which involves a complex interaction between national law and regional religion-based law.

Legal harmonization is needed where legal harmonization is an effort or process to achieve balance and harmony in a legal system. It involves resolving conflicts, adjusting plans with the aim of forming a unified system, as well as cooperation between different factors to create positive unity. In this context, harmonization also involves addressing differences and conflicts, with an emphasis on reviewing draft legislation for harmony with other laws, conventions, and recognized international agreements. The main purpose of legal harmonization is to create an atmosphere of peace and friendship in the legal community, making it an integral and concurrent part of a complete legal system (Sulistiyawan, 2019).

## **Literature Review**

In this literature review, the three journals discussed take us into an in-depth understanding of the regulation of the crime of adultery in Indonesia. Sahran Hadziq, in his research, evaluates the discrepancy between the Criminal Code (KUHP) and the reality of society. He highlighted the discrepancy through a socio-legal and historical approach, illustrating the importance of alignment between legal norms and social dynamics (Hadziq, 2019). Dhea Sukma Putri, Galuh Pramesti Landia, and Natalie Ayu Pawestri take us through the significant changes that the Draft Criminal Code (RKUHP) brings to adultery. The more inclusive definition of adultery in the RKUHP is a focal point, showing a response to culture and societal developments. However, they also emphasize that the regulation of adultery is still not effective in dealing with the problem (Putri et al., 2022).

Simon Purba, Mustamam, and Adil Akhyar, through the perspective of law enforcement in North Aceh, take us into the dynamics of the implementation of Qanun No. 6/2014 on Jinayat Law. They describe how the principles of Islamic law influence law enforcement in the region. However, the main challenge arises from the misalignment between the principles of Islamic law and the broader Indonesian criminal law (Purba et al., 2021). Overall, this literature opens a window on the complexities of regulating adultery in Indonesia. With an emphasis on discrepancies, significant changes, and law enforcement challenges, it is apparent that harmonization between written law and community practice is an urgent call. This theme becomes even more relevant in the context of the Harmonization of Adultery-Related Regulations in the Indonesian Criminal Code and Aceh Qanun No.

6/2014 on Jinayat Law, leading us to an in-depth reflection on the integration of religious, cultural, and legal values in the regulation of adultery in Indonesia.

### **Research Method**

This paper uses a normative juridical approach or library research with a focus on examining the literature related to the issues raised (Lexy J. Moleong, 2008). The statutory approach was chosen to analyze legal products, especially legislation related to adultery. The data collection method is conducted through documentation review by collecting data from criminal law laws, such as Law No. 1 of 2023 on the Criminal Code, and Aceh Qanun No. 6 of 2014 on Jinayat Law. Secondary data is obtained from various sources such as books, essays, articles, and relevant magazines.

The data analysis process organizes, classifies, and identifies themes contained in the data. The data analysis technique used is the normative juridical qualitative analysis method, which is descriptive in nature. With these steps, this paper aims to provide an in-depth understanding of the transformation of adultery regulations in the Indonesian Criminal Code and Aceh Qanun No. 6/2014 on Jinayat Law. The analysis is not only textual, but also includes an understanding of the influence of regulations on community behavior, the relationship between legal norms and religious norms, and the implications for human rights.

### **Adultery in Islam**

Adultery in Islam is a very crucial discourse and is often discussed in various contexts. This is in accordance with the instructions of the Qur'an, where adultery is forbidden and even approaching it is forbidden. Islam's reasons for forbidding 'approaching' adultery are quite rational. This is closely related to the difficulty of a pair of humans guarding themselves from adultery when they are lulled into a situation that leads to adultery. Therefore, being alone in a quiet place, being in an embroidery house, dating, and so on, is the path to adultery (Basyir, 2019). Consciously, a normal man can still avoid the entrance to adultery, but in practice, when he is lulled with lust (while at that door), then his lust will cover the mind so that he falls into the practice of haram.

Adultery is a great sin, so it is not surprising that the sanctions given are also very harsh, namely stoning for married adulterers. Likewise, for adulterers before marriage, they will be whipped about 100 dera and expelled from their hometown. The sanction of adultery does not show that Islam is a cruel teaching, but behind that, there is no other solution that can minimize the practice of adultery except what is prescribed by Islam. For example, an adulterer would be planted in the ground, leaving only his head, then planted at a crossroads and thrown by every Muslim who passed through that intersection (Ahyar, 2017). At first glance, this looks like a barbarian law, but this is what will create a deterrent effect for the perpetrators and the community in the zoning.

Likewise, young people who commit adultery will be whipped and expelled from their villages. Imagine if they are a pair of humans who are still young, still in education, for example, or have not been able to make money on their own. Expulsion from the village is a severe sanction, even for one's own family members.

Nonetheless, the sanctions have far-reaching repercussions if implemented. When adulterers are expelled from their villages, it will increase the vigilance of other young people to commit the same act (adultery). In addition, the social aspect is also very important in this expulsion. An adulterer who is married will become a byword of the community if he is still in his village (Ismanto, 2021). Especially if they are not married, more fatal things will happen, especially when information is spread. Therefore, leaving one's hometown is the most ideal sanction in both spiritual and social contexts.

The problem these days is that often Islamic law, especially regarding the sanction of adultery, is not implemented properly. Many are found in modern times, where adults are free to roam in the village and the surrounding environment. In fact, in Islamic studies, 40 houses around adulterers will be harmed. It is imperative for Muslim individuals to take care of each other and advise each other with kindness. Especially if the phenomenon is clearly visible (blatantly) (Rokhmadi, 2017). Not only that, often parents are too loose in guarding their children or too loose in giving proper sanctions. Children who commit adultery, for example, are even married off well and even hold a festive party. Indirectly, this is a phenomenon that breeds fearlessness towards adultery.

Likewise, with stoning sanctions, parents or even village leaders dare not take this path. In fact, adultery committed after marriage damages all social order. Whether it's family relationships or relationships with the surrounding community, Not to mention if it becomes a stepping stone to the next act of adultery (addiction). Religious leaders themselves also considered that such adulterers were handed sanctions in the afterlife. If so, what about social conditions? Isn't stoning not only an individual sanction but also a social sanction deliberately carried out in order to cause a deterrent effect even for those who see it? History has become evidence of how Umar bin Khattab stoned his own biological son. Likewise with Iskandar Muda, who was willing to behead his own son who committed adultery with women in the Kingdom (Nasir et al., 2022). All of this indicates that Umar and Iskandar Muda were very firm and implementative in the implementation of Islamic law.

Over time, of course, legal conditions have changed. Especially in Indonesia, it is known as the Compilation of Islamic Law (KHI). Likewise, Indonesia, as a country of law, certainly has different legal procedures and a mutual agreement. Nevertheless, the condition of Aceh brought the enforcement of Islamic law closer to classical times. Aceh has Qanun Jinayat, which is legally recognized as an extension of the Helsinki MoU. Therefore, it is not impossible for Aceh to re-implement the zina sanctions in accordance with the rules outlined in Islam. Nevertheless, the implementation still encountered controversy and obstacles (Din & Abubakar, 2021). One of them is how the law (in Aceh) is still sharp downward and blunt upward. That is, caning or stoning, often given to the middle community, while the elite often escapes and even whips in closed zoning. This is a challenge in itself: how does Aceh promote Qanun Jinayat kaffah, or just.

### **Adultery in Indonesian Law**

The regulation of adultery in Indonesia underwent a significant transformation with the changes in Law No. 1 of 2023 on the Criminal Code

(KUHP). Previously, Law No. 1/1946 also regulated adultery, but the changes reflected the evolution of norms and values in Indonesian society (KUHP, 2023). In the latest Criminal Code, Law No. 1 of 2023, adultery is regulated in Chapter XV of the Crime of Decency, specifically Articles 411 to 413. Article 411 states that adultery occurs when a person has sexual intercourse with someone other than his/her spouse who is bound in a legal marital relationship. The maximum penalty is 1 year in prison and a fine of 10 million rupiah. It is important to note that adultery cases in this regulation are complaint offenses, where either spouse who commits adultery can report.

Article 412 of the Penal Code goes into more detail regarding adultery, especially for those who live together as husband and wife outside of marriage. Penalties include a maximum of six months' imprisonment and a fine of 10 million rupiah. This article also emphasizes that prosecution is only carried out upon a complaint from the party involved, either the husband or wife for those bound by marriage or parents/children for those not bound by marriage. The offense of complaint, as described in Article 413, has a significant impact on the handling of adultery cases. This article authorizes a spouse, parent/child, or blood relative in a straight or sideways line to report adultery. However, Article 413 also sets an age limit for the reporting victim, and complaints can be withdrawn within three months of being filed.

This regulation not only reflects legal norms at the national level but also takes into account the cultural and religious values of Indonesian society. In addition, Article 413 shows an awareness of time limits in complaints, providing clarity in the handling of adultery cases. The importance of regulation on adultery is also evident in Aceh Qanun No. 6/2014 on Jinayat Law. Although it has some differences with national regulations, the Aceh Qanun reflects the implementation of Islamic law within the autonomous region of Aceh. It confirms that adultery is a serious criminal offense, punishable by flogging and fines (Qanun Aceh, 2014).

Thus, the transformation of adultery-related regulations reflects an attempt to integrate legal, cultural and religious norms in response to societal changes and needs. However, it needs to be recognized that handling adultery cases remains a challenge, especially in Indonesia's diverse cultural and social context.

### **Comparison of Adultery in the Criminal Code and Qanun Jinayat Law in Aceh**

Province, as an integral part of Indonesia, was granted regional autonomy as a positive response to the demands of its people to implement Islamic law. This move was recognized through a series of laws, including Law No. 44/1999, Law No. 18/2001, and Law No. 11/2006. The main focus of implementing Islamic law in Aceh is to achieve social justice and harmony, becoming an integral part of the region's legal system (Isa, 2013, nn. 340–341). In the context of the implementation of Islamic law, especially in relation to adultery, Aceh has the privilege of issuing local regulations (Qanun) to regulate various offenses prohibited in the Qur'an. One of the Qanuns that is the main focus is the Qanun Jinayah, which covers various offenses such as Khamar, Maisir, Khalwat, Ikhtilath, Zina, Sexual Harassment, Rape, Qadzaf,

Homo, and Lesbian.

In the view of Islamic criminal law, adultery, or zina, is defined as the act of having sex outside the bonds of marriage (Faruk, 2009, n. 24), (Halim, 2011, n. 3). The importance of addressing adultery in Islamic law is not only as a violation of societal norms, but also as a grave sin condemned in religious teachings. The Qur'an prohibits adultery, emphasizing that this act leads to a bad path and should be avoided. The Aceh government, in response to adultery, issued Qanun No. 6/2014 on Jinayat Law. This Qanun details the offense of adultery and prescribes a punishment of 100 lashes for the offender, with additional punishment for repeat offenders. In addition, there are special provisions regarding adultery with children, showing concern for the protection of children in the context of Islamic law (Manan, 1996).

However, a comparison between the Indonesian Criminal Code and Aceh Qanun No. 6/2014 on Jinayat Law shows significant differences, especially related to the age limit of puberty and the protection of human rights. In Islamic law, young children who commit forbidden acts such as adultery cannot be punished primarily, but through *ta'zir* punishment which is coaching in nature (Al-Faqih, 2008, n. 126). In the implementation of Jinayat law, the process of proving adultery is a very important aspect. The Qur'an stipulates that adultery can only be proven by the presence of four witnesses who directly saw the act at the same time, place, and person. This shows the caution and justice upheld in handling adultery cases in the realm of Islamic law.

Qanun No. 6/2014 also pays special attention to the confession of adultery perpetrators. A person's confession is only binding on himself and must be voluntary. Article 33 of the Qanun stipulates that offenders who retract their confession or maintain their confession without taking an oath will face further examination of the original incident, such as Jarimah Khalwat or Ikhtilath. However, the Qanun also provides an opportunity for adulterers to apply for forgiveness under certain conditions. This process involves a judge, a public prosecutor, and an oath as a form of corroboration for the application. This shows an attempt in the Islamic legal system to integrate elements of rehabilitation and prevention in dealing with adultery.

It is important to note that in the context of comparative law, the Indonesian Criminal Code and the Aceh Qanun differ not only in their approach to adultery but also in their protection of human rights. The Aceh Qanun emphasizes more on aspects of Islamic legal values and norms, while the Criminal Code is more open to neutral and universal interpretations in the protection of human rights. In the specific case of adultery with a mahram relationship, Qanun No. 6/2014 provides for 'Uqubat Hudud punishment, including flogging and *ta'zir* punishment in the form of fines or imprisonment. This shows that violations of the prohibition of mahram relations are strictly punished in accordance with the principles of Islamic law.

In addition, the Qanun also takes into account the case of women who become pregnant outside of marriage. Article 36 stipulates that pregnant women cannot be accused of adultery without sufficient evidence. This article reflects caution in

dealing with adultery charges, especially when pregnant women are involved. The process of open confession of adultery in the open also receives special attention in the Qanun. Article 42 stipulates that this confession cannot be revoked, and investigators will examine it to prove its veracity. This shows the seriousness in dealing with adultery cases committed openly in the community.

The importance of the integrity and honesty of witnesses, as well as the compatibility between witness testimony with one another, is also recognized in the jinayat procedural law. In assessing the veracity of witness testimony, judges must pay attention to the integrity, way of life, decency, and quality of honesty of witnesses, as well as the compatibility between witness testimony and other evidence. This shows the importance of integrity and fairness in handling adultery cases in the realm of Islamic law.

In terms of proving adultery in Islamic law, there is also attention to special circumstances such as pregnancy outside marriage. Article 44 provides for the postponement of the execution of 'Uqubat until after childbirth, and the recognition of the name of the spouse during pregnancy can be tested through a DNA test of the baby. In addition, Article 45 gives the person accused of adultery the right to present a defense. The overall process of jinayat law in Qanun No. 6/2014 reflects the implementation of adultery punishment within a legal framework based on religious values. Although it has a focus on the principles of Islamic sharia, it also tries to achieve a balance between prevention, rehabilitation, and justice. People who see adultery as a threat to morals and community life find in this Qanun a legal foundation based on religious values to mitigate the adverse impacts that may arise. In this comparison, it can be seen that the Aceh Qanun emphasizes the implementation of Islamic law in its legal regulation, while the Indonesian Criminal Code is more neutral and universal in its approach. While both have the ultimate goal of achieving social justice and harmony, the differences in approach reflect the diversity and complexity of combining religious values with diverse aspects of social life. This comparison raises important questions regarding the harmonization between local Islamic law and the more neutral national law in Indonesia.

In concluding this comparison, it is important to remember that laws are a reflection of the values and norms of the society that produces them. While Aceh's Qanun reflects the Acehnese people's efforts to build a legal system in accordance with their Islamic values, Indonesia's Criminal Code attempts to create a neutral legal foundation that can be applied across this pluralistic country. These differences should be understood and respected as part of Indonesia's cultural and religious diversity, while reminding us to constantly strive for a balance that is in keeping with the spirit of justice and human rights.

### **Harmonization of Criminal Code and Jinayat**

In the context of the constitution, which is processed based on the Pancasila paradigm and recognized in the 1945 Constitution, the national legal system is considered as legal certainty that produces unity and integrality. Consistency in

legislation, both internally and externally, is considered a key element in maintaining the integrity and continuity of the national legal system. Therefore, legal norms are considered as a whole system that should not override the principle of consistency with other laws and regulations so that legal harmonization must be maintained (Slamet, 2004).

A comparison between the Indonesian Criminal Code and Aceh's Qanun No. 6/2014 on Jinayat Law shows particular attention to Islamic values, developmental punishments, and the protection of children. Despite Aceh's privilege in implementing Islamic law, this harmonization needs to ensure alignment with Indonesian national legal values and norms. The understanding that Islamic law is a guide to life must be integrated with the national legal framework, prioritizing aspects of justice and humanity to achieve optimal harmonization goals. As a province that implements Islamic law, Aceh is expected to strike a good balance between religious values and national law, provide strong protection of human rights, and ensure that punishments are constructive and do not violate humanitarian principles. Regulatory harmonization is key to maintaining this balance, respecting Indonesia's cultural and religious diversity, while still achieving the common goals of social justice and harmony.

In facing the challenges of harmonization, it is necessary to examine how the implementation of Islamic law in Aceh can be an inspiration for creating more inclusive regulations nationally. This is important to avoid imbalances and conflicts between national and local laws. A deep understanding of the values and principles underpinning Islamic law can be intelligently integrated into the national legal framework. The harmony between Islamic law and national law will create a solid foundation to achieve the common goal of social justice and harmony. It is important to note that Islamic law, when implemented, must still respect and protect human rights (Ansor, 2014). Therefore, the harmonization process needs to accommodate universal human rights principles. In the context of adultery, human rights protection includes the right to privacy, freedom from inhuman or degrading treatment, and the right to justice in the criminal justice system.

This harmonization requires open and inclusive dialogue between the central government, local governments, religious leaders and civil society. The involvement of all parties involved will create regulations that are more comprehensive and acceptable to the community at large. In this context, policies produced through a participatory process are more likely to be accepted by the community, creating a solid foundation for fair and inclusive application of the law. In addition, there needs to be more intensive education and socialization efforts related to the values and principles of Islamic law in the community. A better understanding of Islamic law can help reduce uncertainty and tension, creating public awareness of the importance of harmonization and protection of human rights. This education can be integrated into formal and informal education curricula, ensuring that communities have a deeper understanding of the values and goals of Islamic law implementation.

In developing more inclusive regulations, it is important to understand that Acehese society has a diversity of views and interpretations related to Islamic law (Ansor, 2016). Therefore, the harmonization process should create a space for open dialogue and discussion, allowing various perspectives to be put forward and heard.

The involvement of civil society, human rights groups, and academics in this process will enrich the discussion and result in a more balanced regulation. As part of the harmonization process, periodic evaluations of the implementation of Islamic law in Aceh should be conducted. This evaluation could involve various parties, including the government, religious leaders, civil society and human rights groups. The aim is to ensure that the law remains in line with the values of justice, protecting human rights and creating social harmony.

In addition, cooperation between the central government and local governments, particularly Aceh, needs to be strengthened. Good coordination between the two levels of government will create an enabling environment for effective legal harmonization and implementation. In this context, the role of the Indonesian Legislation Harmonization Board (BHP) could be strengthened to facilitate dialogue and cooperation between local governments. In the face of dynamic social change, community values, and global demands, Aceh needs to consider flexibility in the implementation of Islamic law. The dynamic nature of the law should allow for adaptation to contextual changes and societal needs. This flexibility can be realized through a mechanism of periodic evaluation and revision of regulations, ensuring that the applied law remains relevant and effective.

Regulatory harmonization between Islamic law in Aceh and Indonesian national law is a strategic step towards achieving social justice and harmony. By strengthening coordination, listening to the voices of the people, and prioritizing human rights values, Aceh can serve as an example for other parts of Indonesia in integrating Islamic law within an inclusive national legal framework that supports freedom and human rights. In this view, harmonization is not only about unifying legal norms, but also about creating the foundations for an inclusive and just society, in accordance with the spirit of Indonesian unity.

## **Conclusion**

The harmonization of adultery regulations between the Indonesian Criminal Code and Aceh Qanun No. 6/2014 on Jinayat Law is an important step towards justice and balance. Despite the differences, both regulations show efforts to tackle adultery based on religious and legal values. The Criminal Code focuses on general punishment, while the Aceh Qanun accommodates more Islamic sharia principles. Harmonization involves attention to individual rights, careful evidence, and women's empowerment. This alignment is essential to maintaining justice, understanding cultural context, and creating inclusive laws.

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