


Pluralism of Islamic Law in Aceh: *Qanun Jinayat* in the Framework of the Indonesian New Criminal Code

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Mukhlis^{1*}, Kamarusdiana², Utang Rosidin³, Muhammad Iqbal⁴, and Nur Hidayatul Nabihah Manas⁵
^{1,4}Universitas Malikussaleh, ²UIN Syarif Hidayatullah Jakarta, ³UIN Sunan Gunung Djati Bandung, ⁵Tuanku Abdul Rahman University of Management and Technology, Malaysia

 Author Corresponding: mukhlis78@unimal.ac.id*

Abstract

This study analyzes normative conflicts between Aceh's *Qanun Jinayat* and the new Criminal Code through a legal pluralism framework. The focus centers on significant differences in criminal act formulations, juridical elements, and sanctions—particularly for *khamr*, adultery, and *khalwat* violations. Using a qualitative case study approach, this research draws on analysis of relevant legislation and in-depth interviews with Sharia Court judges and *jinayat* law practitioners in Aceh. The study reveals that legal pluralism in Aceh is dynamic, reflecting political tensions between central and regional authorities. *Qanun Jinayat*, rooted in *fiqh al-jināyāt*, now faces normative opposition from Article 613 of the new Criminal Code — a condition that requires systematic legal harmonization while risking the erosion of Aceh's long-held special autonomy. As an original contribution, this study proposes a "dual law enforcement" model to accommodate Aceh's religious and cultural specificities without sacrificing national legal unity. Sanctions such as caning should be replaced with rehabilitative alternatives better aligned with contemporary human rights principles. This research contributes meaningfully to the asymmetric decentralization discourse and to the understanding of the complex socio-political implications within special autonomous regions.

Abstrak

Penelitian ini menganalisis konflik normatif antara Qanun Jinayat Aceh dan KUHP baru melalui kerangka teoritis pluralisme hukum. Fokus kajian tertuju pada perbedaan signifikan dalam rumusan tindak pidana, unsur-unsur yuridis, dan jenis sanksi, khususnya untuk pelanggaran *khamr*, zina, dan *khalwat*. Menggunakan metode kualitatif dengan pendekatan studi kasus, penelitian ini didukung analisis peraturan perundang-undangan relevan serta wawancara mendalam dengan hakim Mahkamah Syar'iyah dan praktisi hukum *jinayat* di Aceh. Studi ini mengungkapkan bahwa pluralisme hukum di Aceh bersifat dinamis, mencerminkan tarik-ulur politik antara pusat dan daerah. Qanun Jinayat yang berakar pada fikih *jinayat* kini menghadapi pertentangan normatif dari Pasal 613 KUHP baru — kondisi yang menuntut harmonisasi hukum sistematis sekaligus berpotensi mengikis otonomi khusus Aceh. Sebagai kontribusi orisinal, penelitian ini menawarkan model "penegakan hukum jalur ganda" untuk mengakomodasi kekhususan agama dan budaya Aceh tanpa mengorbankan persatuan dan kepastian hukum nasional. Sanksi cambuk direkomendasikan untuk dimodifikasi menjadi alternatif sanksi rehabilitatif yang lebih selaras dengan prinsip hak asasi manusia kontemporer. Penelitian ini berkontribusi penting bagi wacana desentralisasi asimetris dan pemahaman implikasi sosial-politik dalam harmonisasi hukum di daerah otonom khusus.

Keywords:

Legal pluralism; Qanun jinayat; New criminal code; Asymmetric decentralization; Legal harmonization

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Introduction

The Indonesian legal system has entered a new chapter with the passage of the New Criminal Code (KUHP) through Law Number 1 of 2023. This ratification marks the government's efforts to codify national criminal law that better aligns with the times and Indonesian values (Duff, 1998; Zajac, 2024). However, behind these good intentions, several articles have sparked controversy, including Article 613, paragraph (1). This Article requires all regional regulations, including the *Qanun* in Aceh, to adjust their criminal provisions to conform with Book I of the Criminal Code within 2 years of the promulgation of this law. This obligation is not only administrative, but also has complex philosophical, political, and socio-cultural implications, especially for a region with legal specificities such as Aceh (Asmara et al., 2024; Listriani et al., 2020).

Aceh, the only province in Indonesia with special privileges in the application of Islamic law, faces a serious challenge with this provision (Gani et al., 2024; Alfitri, 2022; Sopyan et al., 2022; Syahrin, 2018). Aceh's *Qanun Jinayat*, the main instrument of sharia law enforcement in the region, is now at a crossroads between maintaining its Islamic identity and submitting to national law unification (Halim, 2022a, 2022b; Maslijar, 2020; Thu, 2022; Weni & Hartini Jatmikowati, 2024). This conflict is not only a technical-juridical issue but also touches on the historical, sociological, and political aspects of Aceh's relationship with the central government. Since the enactment of Law Number 11 of 2006 concerning the Government of Aceh (PA Law), this province has the constitutional legitimacy to develop its own legal system, including in the realm of Islamic criminal law.

Article 125 of the PA Law explicitly gives Aceh the authority to establish a *Qanun Jinayat* based on sharia principles. This strengthening of legality is further emphasized by the Constitutional Court Decision No. 140/PUU-VII/2009, which emphasizes that the specificity of Aceh must be respected within the framework of the Unitary State of the Republic of Indonesia (NKRI). This decision also confirms Aceh's position as a special region that cannot be equated with ordinary autonomous regions. However, with the New Criminal Code in place, there is a tug-of-war between unifying national law and particularistic local law.

Reality shows that at least 23 articles in *Qanun* Aceh Number 6 of 2014 concerning the *Jinayat* Law have the potential to be contrary to the New Criminal Code, especially in violations of certain Islamic laws, such as *khamr* (alcoholic beverages), adultery, gambling, *khalwat* (proximity between a man and woman), and same-sex relationships (Armanda et al., 2021). For example, the sanction of whipping, a hallmark of law enforcement in Aceh, is not provided for in the penal system of the New Criminal Code, which recognizes only imprisonment, fines, and additional penalties. This fundamental difference raises a fundamental question: How can Aceh maintain its legal specificity while the state encourages harmonization that tends to be centralistic?

On the other hand, there are fundamental differences in the regulation of adultery. *Qanun Jinayat* enforces adultery as a criminal offense for all citizens, regardless of religion or marital status, while the New Criminal Code only criminalizes adultery if committed by a couple who are bound by a legal marriage (Krisna et al., 2021; Muksalmina et al., 2023). Likewise, *khalwat* is regulated as a criminal act in the *Qanun Jinayat* but is not mentioned at all in the New Criminal Code. These differences not only create legal ambiguity but also have the potential to trigger law enforcement conflicts on the ground.

This situation is exacerbated by the absence of technical guidance from the central government regarding the *qanun's* adjustment mechanism. Based on an interview with Khalil (2023b), the Aceh Government is still awaiting a Government Regulation (PP) or a Ministerial Regulation as the operational basis for harmonization. Meanwhile, the two-year deadline continues to create pressure and uncertainty for policymakers in Aceh. If not addressed immediately, this condition can trigger social resistance, considering that 86% of Acehnese

people support the sustainability of *Qanun Jinayat* (ICJR, 2022). The strong support of this community is inseparable from historical and cultural factors, in which sharia has become an integral part of Aceh's identity after the 2004 conflict and tsunami (Chen & Yu, 2023; Din & Abubakar, 2021; Veisi Hasar, 2023; Zada et al., 2018).

The application of sharia in Aceh has long historical roots, starting from the Sultanate of Aceh Darussalam and undergoing revitalization after the 2005 Helsinki MoU as part of the conflict resolution (Ridwan et al., 2023; Chen & Yu, 2023; Al-Afify & Mu'min Firmansyah, 2024; Iqbal et al., 2024; Syamsuar et al., 2023). The process of integrating sharia into the national legal system is reflected in the development of *Qanun Jinayat*, from *Qanun* No. 11 of 2002 to *Qanun* No. 6 of 2014, which further expands the scope of sharia crimes. Juridically, Acehness particularity is protected by the 1945 Constitution and the PA Law, creating a unique legal hierarchy in which the *Qanun* is under the law but above the ordinary local regulations. The principle of *lex specialis derogat legi generali* is supposed to secure the specificity of Aceh. However, the New Criminal Code actually tests the limits of this principle by requiring adjustments to the *Qanun*.

The implementation of *Qanun Jinayat* has shaped its own social reality in Aceh, where the sanction of whipping is accepted by the majority of the community as part of their religious identity, despite criticism from minority groups. The experience of countries such as Malaysia and Nigeria shows that asymmetric federalism can be a solution to similar conflicts. In the policy framework, the government needs to consider instruments such as Government Regulations or Presidential Regulations that accommodate the specificity of Aceh, while utilizing conflict mediation mechanisms through the Supreme Court or the Regional Representative Council.

This research has three main interrelated objectives. *First*, this study aims to analyze in depth the potential normative conflict between the provisions in the New Criminal Code and Aceh's *Qanun Jinayat*. This analysis will focus on articles that exhibit substantive differences, particularly regarding the types of criminal acts, the elements of the offenses, and the forms of sanctions provided for in the two legal instruments. *Second*, this study aims to comprehensively examine the legal and social implications arising from the harmonization policy mandated by Article 613 of the New Criminal Code. This study will not only examine formal juridical aspects but also explore the socio-cultural impact on Acehness people who strongly support the implementation of *Qanun Jinayat* as part of their religious and cultural identity. *Third*, as a practical contribution, this research seeks to formulate and offer compromise-based policy solutions.

The study of the relationship between national law and local law has been widely discussed in various academic perspectives. According to Griffiths, the concept of legal pluralism explains how various legal systems—including state, religious, and customary law—can interact in a single legal space (Griffiths, 1986). This theory is relevant for analyzing the dynamics of Aceh's *Qanun Jinayat*, which coexists with the national legal system (Booth, 2011). It is further strengthened by the concept of asymmetric decentralization, which emphasizes that regions with special characteristics, such as Aceh, require policy approaches distinct from those applied to ordinary autonomous regions (Salim, 2010). Research on the implementation of sharia in Aceh following the Helsinki MoU demonstrates that the integration of Islamic law into the national legal system is not merely juridical, but also political and cultural, with social legitimacy playing a crucial role.

On the other hand, Vedi R. Hadiz (2010) criticized that legal unification through the New Criminal Code has the potential to ignore local diversity, especially when adequate accommodation mechanisms do not accompany the policy. A comparative study by Peletz (2002) on Malaysia and by Oba (2011) on Nigeria shows that conflicts between religious law and national law often lead to social tensions if not managed inclusively. In the Indonesian

context, Lindsey & Steiner (2012) emphasized that the principle of *lex specialis derogat legi generali* should serve as the basis for resolving normative conflicts. However, the politicization of law often constrains its implementation. Ichwan's (2013) findings on the Acehese people's resistance to central legal intervention strengthen the argument that policy solutions must consider historical and sociological dimensions. Thus, the existing literature highlights the need for a legal compromise-based approach that recognizes Aceh's specificity without sacrificing national integration.

Method

This study uses a qualitative case study approach to comprehensively analyze the normative conflict between the New Criminal Code and *Qanun Jinayat Aceh* (Creswell, 2014; Suci, 2023). This approach was chosen because it can reveal the complexity of problems from legal, social, and political perspectives in depth. Data was collected through document studies of relevant laws and regulations (New Criminal Code, PA Law, *Qanun Jinayat*, Constitutional Court decisions, and other policy documents) as well as semi-structured interviews with key sources, including Aceh Sharia Court judges, sharia prosecutors, Wilayatul Hisbah (sharia police) officials, legal academics, sharia practitioners, officials of the Aceh Sharia Office, and civil society representatives (Din & Abubakar, 2021; Halim, 2022a; Shadiqin & Srimulyani, 2022; Syamsuar et al., 2023; Weni & Hartini Jatmikowati, 2024). The selection of resource persons was conducted through purposive sampling to ensure representation from diverse relevant perspectives, especially from key actors directly involved in the enforcement of the two legal systems.

Data analysis was conducted in a triangulation manner, combining findings from document studies, interviews, and field observations to validate data accuracy. The analysis techniques used are content analysis to identify normative conflicts between the two legal systems and comparative analysis to examine similar practices in other countries, such as Malaysia and Nigeria. The legal hermeneutic approach is also applied to interpret the philosophical meaning of conflicting articles, considering Aceh's socio-cultural context.

To ensure internal validity, the study adopted the frameworks of legal pluralism (Griffiths, 1986) and asymmetric decentralization (Booth, 2011) as theoretical lenses. This framework helps identify patterns of interaction between national and local laws and evaluate the implications of harmonization policies. The analysis stage consists of: (1) identification of normative conflicts through an inventory of conflicting articles; (2) evaluation of the implications for the specificity of Aceh based on the principle of *lex specialis derogat legi generali*; and (3) the formulation of policy solutions by considering best practices from other countries and stakeholder input.

Normative Conflict Analysis Between the New Criminal Code and *Qanun Jinayat*

The normative conflict between the New Criminal Code and *Qanun Jinayat* is a manifestation of the tension between the principle of unification of national law and the specificity of sharia-based regional law. This conflict is not merely regulatory but stems from fundamental philosophical differences between secular-positive legal systems and Islamic criminal law (*fiqh al-jināyāt*). From an Islamic legal perspective, *Qanun Jinayat* is grounded in the classical categorization of crimes in *fiqh al-jināyāt*, namely *hudūd* (fixed crimes against God's rights), *qiṣāṣ* (retaliatory crimes), and *ta'zīr* (discretionary crimes). This differs

fundamentally from the New Criminal Code's classification based on the object of legal protection and severity of punishment.

Furthermore, several provisions in *Qanun Aceh* No 6 of 2014 on *Jinayat* Law have the potential to conflict with the new Criminal Code, including Articles 410 on adultery, 422 on *khamr*, 419 on *maysir*, 23 on *khalwat*, and articles related to same-sex relations. In *fiqh al-jināyāt*, offenses such as adultery (*zinā*) and consumption of *khamr* are classified as *hudūd* crimes that carry fixed punishments based on clear textual evidence (*naṣṣ*). At the same time, *khalwat* is considered a *ta'zīr* offense, allowing for judicial discretion in determining sanctions. In the New Criminal Code, the offense of adultery is only punished if it is committed by a spouse, one of whom is bound by a valid marriage, while in *Qanun Jinayat*, adultery includes all sexual relations outside of marriage, regardless of the perpetrator's marital status or religion. Similarly, *khalwat* and same-sex relationships are not included in the criminal realm of the New Criminal Code, while in *Qanun Jinayat*, both are seen as violations of sharia norms and threatened with criminal sanctions.

The difference is even sharper when comparing the Article's structure and the delicacy of the two regulations. In *Qanun Jinayat*, perpetrators are not discriminated against based on citizenship or religious status, making all those living in Aceh subject to sharia law. This approach reflects the concept of territorial application of Islamic law as implemented in Aceh, contrasting with the personal law approach applied in many other Muslim-majority countries. Meanwhile, the New Criminal Code prioritizes the principles of legality and universal human rights protection, paying attention to the elements of intention, legal capacity, and the principle of equality before the law. In this context, there is a discrepancy between the *Qanun*, which is particularistic, and the New Criminal Code, which is oriented towards universal and secular values.

One of the most fundamental differences lies in the form of sanctions. The New Criminal Code only recognizes basic crimes in the form of imprisonment, fines, and social work, as well as additional crimes such as revocation of rights and supervision. On the contrary, *Qanun Jinayat* stipulates sharia crimes that include whipping, money laundering, and exile. The punishment of caning, for example, finds its legitimacy in classical Islamic jurisprudence, particularly for *hudūd* crimes such as adultery and consumption of alcohol. Contemporary Islamic jurists argue that caning, when implemented in accordance with sharia procedural requirements—including strict evidence standards and consideration of mitigating circumstances—serves as both a deterrent and a rehabilitative measure.

The punishment of caning is not recognized in the New Criminal Code system because it is considered a violation of the principles of human dignity and potential violations of the principle of non-derogable rights, such as protection against torture and cruel, inhuman, or degrading treatment, as stipulated in the ICCPR (International Covenant on Civil and Political Rights), which Indonesia has ratified through Law No. 12 of 2005. However, from a *fiqh* perspective, Muslim scholars contend that Islamic punishments, including caning, are divinely prescribed and intended to preserve fundamental human interests (*maqāṣid al-sharī'ah*), particularly the protection of religion, life, intellect, lineage, and property. Thus, the question arises whether *Qanun Jinayat* violates Indonesia's commitment to universal human rights principles.

In the context of the national legal hierarchy, the principle of *lex specialis derogat legi generali* should provide space for *Qanun Jinayat* as a special law that applies in the Aceh region, considering that the basis of its legality comes from Law No. 11 of 2006 concerning the Government of Aceh. This special status is further reinforced by the philosophical foundation that Islamic law in Aceh is not merely positive law but represents a living law that reflects the religious and cultural identity of the Acehnese people. However, Article 613 of the New Criminal Code challenges this principle by requiring all regional criminal regulations to

refer to Book I of the Criminal Code. Thus, the position of *Qanun Jinayat* as a *lex specialis* is threatened by the encouragement of harmonization oriented towards the centralization of law. Without clarity of principles and technical guidance, this legal dualism risks creating legal uncertainty, enforcement conflicts, and social resistance, especially among Acehese people who view sharia as their historical and cultural identity. Confusion among law enforcement officials has begun to emerge. An Aceh Sharia Court judge revealed the dilemma he faced when he started receiving case files after the New Criminal Code was promulgated:

"We are faced with a difficult situation. Procedurally, we are subject to the PA and Qanun Law. But when we read the New Criminal Code, we find an article that requires adjustment. Will the decision we make based on Qanun later be annulled at the cassation level because it is considered contrary to the Criminal Code? This creates uncertainty, not only for us, but also for the justice-seeking community" (Khalil, 2023a).

This statement asserts that normative conflict is not only in the textual realm, but has entered the realm of judicial practice, creating what Griffiths (1986) calls "tension in a plural legal space."

Juridical and Socio-Cultural Implications of Harmonization of the New Criminal Code

The harmonization of the New Criminal Code with *Qanun Jinayat* in Aceh has profound juridical and socio-cultural implications that extend beyond mere legal formalism into the realm of religious conviction and *fiqh al-jināyāt*. Normatively, Article 613 of the New Criminal Code, which mandates the adjustment of all regional regulations, including Aceh's *Qanun*, to conform to Book I of the Criminal Code within two years, threatens the very foundation of *Qanun Jinayat*. This is not merely a legislative conflict; it is a clash between two distinct legal philosophies: one derived from secular-positive law and the other rooted in *fiqh al-jināyāt* (Islamic criminal law).

Many provisions in *Qanun Jinayat*, such as those governing *khamr*, *zinā*, *khalwat*, and LGBT conduct, are grounded in classical Islamic legal doctrines, particularly under the categories of *hudūd* and *ta'zīr*. For example, the punishment of caning (*jaldah*), although absent from the national penal system, is justified in Islamic jurisprudence as a prescribed (*muqaddar*) sanction for certain offenses, intended to serve as a deterrent (*zajr*) and to promote spiritual purification (*tathīr*). Thus, the potential revocation or revision of these articles is perceived not only as a legal setback but also as an erosion of divinely ordained injunctions that form the core of Aceh's Islamic identity.

From a socio-cultural perspective, the resistance to harmonization is deeply intertwined with the Acehese community's religious adherence to *fiqh* principles. The overwhelming public support for *Qanun Jinayat*, evidenced by the 86% approval rate in the 2022 ICJR survey, stems not only from cultural identity but from a profound belief in the sanctity of sharia as a comprehensive way of life (*al-dīn*). For the Acehese, the implementation of *Qanun Jinayat* is a tangible manifestation of their commitment to enforcing *maqāṣid al-sharī'ah* (the higher objectives of Islamic law), such as the preservation of religion (*hifz al-dīn*), life (*hifz al-nafs*), and lineage (*hifz al-nasl*). The strong opposition from ulama, the Ulama Consultative Assembly (MPU), and the Aceh Sharia Office further underscores the religious significance of the *Qanun*, which they regard not merely as a legal product but as a covenant (*mīthāq*) between the people and God, as well as a fruit of their historical struggle for Islamic governance.

Support for *Qanun Jinayat* is not solely due to legal compliance, but also because it has been integrated into post-conflict Islamic identity. A Teungku Dayah in North Aceh explained:

"The ordinary government does not make this Qanun. This is part of the struggle (jihad) of the Acehnese people to return to sharia. The law of whipping cleanses sins in this world, so there is no need to be taken to the hereafter" (Fahmi, 2023).

This view strengthens Salim's (2010) argument that the social legitimacy of law in Aceh is largely determined by the role of the ulama. Furthermore, this statement of 'cleansing sin' opens up a new theological dimension in the discussion of human rights, where physical punishment is seen as a spiritual catharsis, not as a violation of human dignity.

The tension between national legal unification and Aceh's particularity, therefore, transcends political discourse and enters the domain of *al-fiqh al-siyāsī* (political jurisprudence), where, in the view of many scholars, the obligation to obey divine law (*al-ḥukm al-shar'ī*) may take precedence over state-enacted regulations when the two are in conflict. A harmonization process that disregards this deeply ingrained religious conviction risks not only social unrest but also spiritual alienation among the Acehnese, for whom the cancellation of sharia-based sanctions would symbolize a regression from their Islamic commitments. Hence, any workable solution must be responsive not only to Aceh's cultural distinctiveness but also to the centrality of sharia in the lives of its people, ensuring that the spirit of *fiqh al-jināyāt* is preserved even amidst necessary legal adaptation.

Legal Pluralism and Asymmetric Decentralization in Islamic Criminal Law Arrangements in Aceh

Legal pluralism refers to the existence of multiple legal systems operating in parallel within the same society. In the Indonesian context, legal pluralism includes the interaction between state law, religious law, and customary law. The state law that applies throughout Indonesia is a product of the national positive legal system, which is based on national criminal law, including the New Criminal Code (KUHP) promulgated in 2023. Meanwhile, religious law in Indonesia, represented by Islamic law, has a strong influence in Aceh, especially after the implementation of sharia through *Qanun Jinayat*. In addition, customary law that applies across various regions of Indonesia is also an inseparable part of the community's social and cultural life, as is the case in Bali, Minangkabau, and Papua.

In Aceh, religious law plays a very dominant role in daily life, including in regulating criminal acts that are considered to violate the teachings of Islam. Aceh's *Qanun Jinayat* is a legal product that specifically regulates criminal acts related to Islamic teachings and is treated by the sharia legal system. From the perspective of *al-siyāsah al-shar'īyyah* (Islamic political jurisprudence), the implementation of *Qanun Jinayat* is a manifestation of the authority of the regional government (*ulī al-amr*) to establish laws that are in line with sharia principles for the benefit (*maṣlahah*) of the people, as long as they do not conflict with the higher principles of the Quran and Sunnah. However, in the context of legal pluralism in Indonesia, this poses a major challenge, especially when the provisions in the *Qanun Jinayat* have to be adjusted to the provisions in the New Criminal Code that have been passed by the central government, which seeks to harmonize national laws to better suit the social and legal needs of Indonesia as a whole.

In the face of this kind of legal pluralism, various theoretical approaches interpret the interaction between the legal system. One of them is the theory of legal pluralism, which holds

that in a multicultural society, various legal systems are recognized and capable of interacting with one another. However, they may overlap to some degree. This legal pluralism emphasizes that not all legal norms in Indonesia need to be uniform. State, religious, and customary laws often go hand in hand, shaping the governance of social life across regions.

However, legal pluralism is not free from challenges. One of the main challenges is conflict of laws, which arises when different legal norms collide or contradict one another. For example, in criminal law enforcement, state law may criminalize an act in a certain way, while religious or customary law may govern it differently, with heavier or lighter sanctions. Conflicts like this often occur in Aceh, where sanctions under *Qanun Jinayat*, such as whipping, are not recognized by the new national legal system. In addition, *Qanun Jinayat* regulates the crime of adultery more strictly, not only for married couples, but also for those who are not legally bound, a provision that is different from the provisions of the New Criminal Code, which only criminalizes adultery in the context of a valid marriage.

The application of legal pluralism in Aceh has its own characteristics, namely asymmetric decentralization. This asymmetric decentralization refers to regional arrangements that have specific rights to operate a legal system distinct from other regions, tailored to local conditions and the needs of the local community. Aceh, as a region with special autonomy, is authorized by the central government to implement Islamic law, including through *Qanun* that regulates sharia crimes. This authority can be traced to the concept of *al-siyāsah al-shar‘iyyah*, which provides Muslim rulers with flexibility to regulate governance and law in accordance with the context and needs of the people, if it remains within the framework of sharia. The concept of asymmetric decentralization gives Aceh the flexibility to maintain Islamic law as part of its long-developed local identity and culture, particularly post-conflict and the signing of the Helsinki MoU in 2005 (Alfitri et al., 2025; Rubaidi et al., 2025).

Furthermore, the existence of the *Wilayahul Hisbah* as the sharia police in Aceh is a concrete implementation of the classical Islamic concept of *hisbah*, which is an institution tasked with *al-amr bi-al-ma‘rūf wa-al-nahy ‘an al-munkar* (enjoining good and forbidding evil) in public life. In classical *fiqh*, *al-muhtasib* (the *hisbah* officer) has the duty to supervise public order and morality, including ensuring the implementation of sharia law. The *Wilayahul Hisbah* in Aceh is a modern manifestation of this concept, with the authority to conduct surveillance, investigate, and prosecute violations of sharia as regulated by the *Qanun Jinayat*. This asymmetric decentralization can also be seen in countries with federal or multilevel systems, such as Malaysia, Nigeria, and India. In these countries, legal pluralism is not only theoretically recognized but also legally regulated, with a legal system that permits the application of customary, religious, or other local laws alongside state law. For example, in Malaysia, the state legal system recognizes sharia law that is applied specifically to Muslims at the state level, while state law still governs all citizens. Nigeria also has a federal system that allows each state to apply sharia, though it remains subject to certain limits set by national law. Meanwhile, India adheres to a legal system that accommodates religious pluralism, allowing Hindus, Muslims, and other communities to follow their own personal laws on certain issues, such as marriage, divorce, and inheritance.

In the context of Aceh, asymmetric decentralization, regulated by the Aceh Government Law and strengthened by the Constitutional Court's decision, recognizes Aceh's specificity as a region with the right to develop its own legal system, including in the Islamic criminal realm. However, this does not mean Aceh can be completely free of the obligation to comply with national law. Instead, here is the challenge: how to balance Aceh's right to defend sharia with the obligation to follow a new Criminal Code that is more uniform and nationwide in application.

The theory of conflict of laws, or the theory of legal conflict, is relevant in this context because of differences between the laws that apply in Aceh and those that apply nationwide.

This conflict highlights the tension between the particularistic law (Aceh sharia) and the unifying law (the New Criminal Code). Therefore, to create a solution that accommodates both interests, an approach is needed that combines the principle of *lex specialis derogat legi generali* (a law that specifically overrides a more general law) with the principle of legal harmonization, which allows for constructive interaction between national and local laws. From an Islamic legal perspective, this harmonization effort can be guided by the principles of fiqh that prioritize achieving *maṣlahah* (public benefit) and avoiding *mafsadah* (harm), as well as the principle of *tadarruj* (gradualness) in law enforcement.

Political Law and Central-Regional Relations

After the signing of the Helsinki MoU in 2005, Aceh obtained special autonomy status, granting greater authority to regulate regional affairs, including the implementation of Islamic law. The Helsinki MoU, the result of a post-conflict peace agreement between the Free Aceh Movement (GAM) and the Government of Indonesia, serves as the constitutional basis for the implementation of special autonomy in Aceh. One aspect regulated in this agreement is Aceh's right to apply sharia law, as reflected in the *Qanun Jinayat*, which forms part of the region's legal system. Politically, this agreement recognizes Aceh's distinctiveness within the framework of the Unitary State of the Republic of Indonesia (Zada, 2023).

However, although Aceh has special autonomy, the vertical relationship between Aceh and the central government remains in a centralized state system. The central government still retains significant authority over national law that applies nationwide in Indonesia. One of the proofs of this relationship is the passage of the New Criminal Code through Law Number 1 of 2023, which requires all regional regulations, including the *Qanun* in Aceh, to be aligned with its provisions within 2 years. This provision shows the central government's encouragement of harmonization, which in turn creates tension between the autonomy authority granted to Aceh and the obligation to follow national legal policies.

The ratification of the New Criminal Code, which requires Aceh to adjust the *Qanun Jinayat* to the provisions of Book I of the Criminal Code, can be seen as a new attempt at centralization, albeit on the grounds of legal harmonization. Centralization in this context refers to the central government's efforts to unify the legal system across Indonesia, including Aceh, which has a specialization in the application of Islamic law. This is clearly contrary to the overwhelming public principle of regional autonomy given to Aceh, one of which is the freedom to design local laws in accordance with sharia principles (Zada et al., 2022).

The ratification of the New Criminal Code, with provisions requiring adjustment of the *Qanun*, can be seen as a form of intervention by the central government against Aceh's legal authority. This illustrates the centralist spirit that seeks to equalize the entire legal system in Indonesia without providing greater space for the diversity of local laws, including sharia law applied in Aceh. The provisions of the New Criminal Code also ignore the strong social, cultural, and religious context in Aceh, where the application of sharia law is integral to the region's identity.

The political position of national law vis-à-vis local sharia in Aceh is evident in the tension between the national interest in unifying Indonesia's criminal law and Aceh's need to maintain a legal system grounded in Islamic principles. In this case, the national law stipulated in the New Criminal Code emphasizes unification, while Aceh struggles to maintain the specificity of the existing law through *Qanun Jinayat*.

Politically, sharia in Aceh is a complex issue. Although Aceh is granted special autonomy under the Helsinki MoU and the Aceh Government Law, the central government retains the right to regulate national policies, including the implementation of criminal law.

This has created tensions between the central government, which seeks to maintain legal unity throughout Indonesia, and Aceh, which seeks to maintain its religious and cultural identity through the application of Islamic law.

This tension is also felt at the bureaucratic level of the Aceh Government. A legal practitioner expressed his confusion:

"I see this as a potential clash of regulations related to principles in the formation of legislation, especially new regulations that override the old regulations (lex posterior derogat legi priori) and lower regulations with higher regulations (lex superior derogat legi inferiori), including the qanun with this new Criminal Code" (Armia, 2023).

This situation confirms the concern in this study that Article 613 of the Criminal Code creates pressure without adequate legal infrastructure for its implementation, potentially creating a legal vacuum in Aceh. The central government's position on sharia in Aceh can also be seen in the context of regulations issued by the central government, such as Law No. 1 of 2023 concerning the Criminal Code. The ratification of the New Criminal Code can be seen as an effort to strengthen central control over the legal system in regions, including Aceh, which has so far applied sharia through the *Qanun Jinayat*. Although the central government allows for local regulations, the provisions of the New Criminal Code indicate that Aceh's specificity regarding sharia must be subject to a more unifying national law.

Discourse on nationalism and regional specificity, especially in the context of Aceh, has become a topic of constant debate. On the one hand, one perspective emphasizes the importance of national unity, as reflected in the central government's efforts to harmonize Indonesia's legal system. On the other hand, another perspective highlights the importance of recognizing regional particularities, exemplified by Aceh's special autonomy and its authority to implement Islamic law.

In this framework, nationalism is often interpreted as an effort to unite Indonesia as a nation under a single legal system that applies throughout the region. The central government argues that unifying national law will strengthen the unitary state and prevent legal fragmentation that could be detrimental to the state. However, regional specificity, such as Aceh's, is part of Indonesia's diversity that should be valued and maintained. The specificity of Aceh, including the application of sharia, is part of the cultural and religious identity that has been accepted by most Acehnese people, especially after the implementation of post-conflict laws and the 2004 tsunami disaster.

In this context, the discourse of nationalism vs. regional specificity is not only a political issue, but also a question of identity and legal diversity in Indonesia. Aceh, with its own right of autonomy, has an interest in maintaining the existing legal system as part of cultural and religious preservation efforts. At the same time, the central government tends to impose a unified legal system that can be seen as reducing such specificity. This discourse, in turn, raises fundamental questions about how a unitary state accommodates the diversity of local laws without threatening its unity.

Impact on Law Enforcement Practices in Aceh

In addressing the challenge of legal harmonization between Aceh's *Qanun Jinayat* and the New Criminal Code (KUHP), several compromise solutions can be proposed to maintain a balance between the application of sharia in Aceh and the obligation to comply with the national legal system. Here are some options to address existing regulatory conflicts, especially

in the context of legal pluralism in Indonesia, which respects the specificity of regions such as Aceh.

From the perspective of Islamic legal philosophy (*maqāṣid al-sharī'ah*), any harmonization effort must prioritize the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). The *Qanun Jinayat*'s provisions on *khamr*, adultery, and gambling directly align with these objectives by seeking to protect faith, mind, and family integrity. Therefore, a harmonization model should not negate these core protections but rather refine their implementation to be more contextual and humane.

Gradual harmonization is one solution that can be applied in this context. This means that Aceh can still maintain most of the articles in the *Qanun Jinayat* that do not conflict with the basic principles of national law and universal human rights. For example, articles that regulate offenses such as adultery that only involve legal married couples, or offenses related to the morality of society that are more inclined to customary and religious values, can be maintained with certain adjustments. This means there is room to maintain relevant sanctions or criminal laws in a local context without contradicting human rights principles, such as reconsidering the application of corporal punishment (*ḥudūd*) in favor of discretionary sanctions that are more rehabilitative and educational, yet still within the spirit of sharia (Desnata et al., 2026). On the other hand, articles that are clearly contrary to international provisions or the constitution, such as caning punishments involving human rights violations, can be amended or adjusted to create a fairer legal balance for the people of Aceh and remain in line with the principle of a unitary state.

Symbolic integration can also be a good middle ground for preserving *Qanun Jinayat* within Aceh's legal system. In this option, *Qanun Jinayat* is no longer applied as the sole law, but can serve as a subsidiary or complementary law that applies specifically in the Aceh region. In other words, *Qanun Jinayat* will remain valid in Aceh for issues considered integral to the local community's culture and identity but will not completely replace the broader provisions of the Criminal Code that apply throughout Indonesia (Fadlia et al., 2025). For example, in cases related to moral or customary violations, such as *khalwat* or other sharia crimes, *Qanun Jinayat* is still enforced to reflect Aceh's specificities in the field of religion (Jamaludin et al., 2024). This approach allows Aceh to maintain the Islamic legal tradition that is part of the Acehnese people's cultural and religious identity, while operating within a more inclusive national legal framework.

A key consideration from *fiqh al-jināyāt* is the classical distinction between *ḥudūd* (fixed punishments) and *ta'zīr* (discretionary punishments). While *ḥudūd* punishments, such as flogging, are explicitly defined in the Quran and Sunnah, their application in the modern context—especially within a pluralistic national legal system—requires careful *ijtihād* (juridical reasoning). The principle of *sadd al-dharā'i'* (blocking the means to evil) and the overarching objectives of sharia (*maqāṣid al-sharī'ah*) support the modification of physical punishments into alternative sanctions—such as community service, compulsory rehabilitation, or restorative justice—that still serve the goals of deterrence and moral education without violating human dignity or international law.

In the face of regulatory conflicts arising from the incompatibility between *Qanun Jinayat* and the New Criminal Code, the role of the Supreme Court or the Regional Representative Council (DPD) is very crucial. The Supreme Court can serve as the final supervisor and interpreter, ensuring that harmonization between these two legal systems does not violate the basic principles of state law and human rights, and that the rights of the people of Aceh are protected. The Supreme Court can act as a mediator between national and local interests by prioritizing the principles of justice, equality, and respect for Aceh's uniqueness. On the other hand, the DPD, as a regional representative, plays an important role in advocating for the needs and aspirations of the people of Aceh regarding the long-running implementation

of sharia law in the province. The DPD can facilitate dialogue between the central government and local governments to find a middle ground that accommodates Aceh's interests while maintaining the integrity of the national legal system.

One of the technocratic recommendations that can be implemented is the issuance of a Special Government Regulation (PP) or Presidential Regulation (Perpres) that details the harmonization between *Qanun Jinayat* and the New Criminal Code. This regulation will serve as an operational guideline for the local government of Aceh to adjust its *Qanun* to the provisions of the Criminal Code without sacrificing the basic principles of sharia, which have become an integral part of the life of the people of Aceh. The PP, or Presidential Regulation, can provide clarity on the limits on the implementation of sharia in Aceh, as well as mechanisms to address potential legal conflicts between *Qanun* and national law. For example, this regulation can include provisions on the types of crimes that can still be maintained in *Qanun*, as well as sanctions that are more human-friendly, such as reducing physical punishment and replacing it with a more rehabilitative sanction or restorative justice.

The "dual track law enforcement" approach, or the application of two distinct law enforcement pathways in specific areas such as Aceh, can be a solution that allows the two legal systems to coexist harmoniously. In this mechanism, law enforcement can be carried out by accommodating both legal systems—the national criminal law system that generally applies in Indonesia and the sharia law that specifically applies in Aceh. For example, for crimes under Islamic law, such as adultery or *khalwat*, law enforcement officials in Aceh can continue to use *Qanun Jinayat* as a reference, whereas for general criminal acts, such as corruption or theft, the applicable national law, namely the New Criminal Code, will apply. However, for sharia crimes, the sanctions could be modified—replacing *jildah* (caning) with alternative *ta'zīr* punishments like public service, fines directed to social funds, or mandatory counseling—that align with both the spirit of Islamic deterrence and modern human rights standards. Dual-track law enforcement will also require additional training and capacity for law enforcement officials to understand and operate these two legal systems effectively. This mechanism requires close cooperation between the central government and local governments, as well as careful attention to potential legal conflicts that may arise in its implementation.

Conclusion

This study reveals that at least 23 articles in Aceh's *Qanun Jinayat*—particularly those regulating *khamr*, *zinā*, and *khalwat*—are in normative conflict with the New Criminal Code, both in terms of criminal offenses and the sanction system. These findings enrich the theory of critical legal pluralism by demonstrating that legal interactions in Aceh are dynamic and conflictual, reflecting central-regional political contestation in which religious identity serves as symbolic capital for maintaining local autonomy. The study also revises the conventional understanding of asymmetric decentralization by showing that special autonomy does not automatically guarantee the survival of local law in the face of centralistic national codification. By integrating the perspective of *fiqh al-siyāsah* into the legal pluralism discourse, this research explains that the 86% public support for the *Qanun* is rooted in theological conviction rather than mere sociological preference. As a practical contribution, the "Dual Track Law Enforcement" model is proposed as a form of managed pluralism, wherein the two legal systems are consciously coordinated through a panel of mixed judges and a Special Government Regulation, in line with the principles of *maqāṣid al-sharī'ah* and the gradualization of law (*tadarruj*).

Harmonization cannot be pursued coercively. An immediate policy response is required, including a Special Government Regulation, the establishment of an independent

monitoring team, and a transition period (2025–2026) to pilot the dual-track mechanism and train the law enforcement apparatus, followed by a comprehensive evaluation in 2027 to ensure sustainability. Legal pluralism in special autonomous regions is an inevitable reality that must be managed wisely; asymmetric decentralization should be understood as a philosophical commitment to recognizing legal diversity as a national asset. If managed inclusively, the dialectic between national law and sharia can yield a just legal system deeply rooted in the community's cultural and religious identity. Further research is necessary to examine the long-term impacts of legal harmonization and to conduct comparative studies with other special autonomous regions.

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