



## THE POSITION OF NON-MUSLIMS IN THE IMPLEMENTATION OF ISLAMIC LAW IN ACEH, INDONESIA

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**Abstrak:** Kedudukan non-Muslim yang hidup berdampingan dengan umat Islam sejatinya sudah jelas dalam sejarah hukum Islam. Sejak masa Nabi, Sahabat dan pemerintahan sesudah non muslim hidup secara damai dan dilindungi. Namun demikian ketika negara-negara Muslim membentuk sebagai negara bangsa timbul beberapa persoalan, diantaranya kedudukannya sebagai warga negara, termasuk di Indonesia, apalagi di Aceh yang menerapkan hukum Islam secara formal. Kajian ini merupakan studi hukum empiris yakni menelaah implementasi hukum Islam dalam masyarakat dengan menggunakan teori politik hukum. Data yang digunakan adalah studi literature dan menelaah beberapa putusan mahkamah syariat di Aceh; Banda Aceh, Sabang, Meulaboh, Kutacane, Takengon dan Singkil. Penelitian ini menyimpulkan bahwa pasca penerapan qanun syariat Islam, non muslim justru memilih untuk menundukkan diri. Menurut mereka, Qanun Jinayat lebih efisien, terjangkau, efektif, dan cepat dalam menyelesaikan masalah. Terbukti dalam beberapa kasus seperti *maisir*, *khalwat (ikhtilāt)*, *khamar*, dan pelecehan seksual. Karena itu, dalam konteks politik hukum, syariat Islam dan qanun jinayat yang lahir dari konfigurasi hukum yang demokratis melahirkan hukum yang adil dan setara tidak diskriminatif termasuk kepada non-Muslim. Non-muslim pada sejumlah kasus di atas, memilih untuk menundukkan diri kepada syariat Islam secara sukarela.

**Kata kunci:** Non-Muslim, syariat Islam, qanun jinayat, formalisasi hukum Islam

**Abstract:** The position of non-Muslims living alongside Muslims is evident in the history of Islamic law. Since the time of the Prophet, Companions and governments after non-Muslims lived peacefully and were protected. However, when Muslim countries formed nation-states, several problems arose, including their position as citizens, including in Indonesia, especially in Aceh, which formally applied Islamic law. This study is an empirical legal study that examines the implementation of Islamic law in society by using legal and political theory. The data used is a literature study examining several Sharia courts' decisions in Aceh; Banda Aceh, Sabang, Meulaboh, Kutacane, Takengon, and Singkil. This study concludes that non-Muslims chose to concentrate after implementing the Islamic shari'a qanun. According to them, Qanun Jinayat is more efficient, affordable, effective, and quick in resolving problems. It has been proven in several cases, such as *maysir*, *khalwat (ikhtilāt)*, *khamr*, and sexual harassment. Therefore, in legal politics, Islamic sharia and Qanun Jinayat, born from a democratic legal configuration, give birth to laws that are fair and equal and do not discriminate against non-Muslims. In several cases above, non-Muslims voluntarily chose to devote themselves to Islamic law.

**Keywords:** Non-Muslim, Islamic sharia, qanun jinayat, implementation of Islamic law

## Introduction

Aceh has applied Islamic Sharia by the legal rules stipulated by the government of the Republic of Indonesia. Hence, from a juridical perspective, the formal application of Islamic law no longer encounters a barrier, unlike in the past. Islamic Sharia also supports by historical factors and social and cultural arrangements with deeply rooted Islamic values in the Acehnese society (Salim, 2008; Zada, 2015; Nurdin et al., 2021).

In essence, the primary purpose of implementing Islamic Sharia is to lead humans to attain dignity and status by the guidance of Allah as contained in the Qur'an, hadith, *ijmā'* (scholarly consensus), and *qiyās* (analogy). Therefore, in order to maintain human dignity, human behavior shall be regulated according to the legal rules, including *qanuns* (bylaws) of the Islamic Sharia. The *qanuns* are then transformed into a standard legal form following the legal order in Indonesia (Feener, 2013; Salim, 2015).

The status of non-Muslim citizenship has long been a debate in Islamic politics (*fiqh al-siyāsah*). This problem arose primarily after the change in the new world order in the early 20th century, where the citizenship system was no longer based on religion. In the *fiqh al-siyāsah* literature, the status of non-Muslims is divided into four categories: 1) *kāfir dhimmī*, referring to non-Muslims who receive protection; 2) *kāfir ḥarbī*, referring to infidels who are fought; 3) *kāfir mu'āhad*, referring to infidels who are bound by a peace treaty with Muslims; and 4) *kāfir musta'mān*, referring to infidels who are given asylum in an Islamic state. This division is based on two-state concepts: *dār al-Islām* (Islamic State) and *dār al-kufr* (infidel state), often called *dār al-ḥarb* (war zone) (Ahmad, 2022; Awdah, 1992).

Furthermore, the debate over the status of non-Muslims in the context of the modern state, especially in Muslim-majority areas. For example, in Saudi Arabia, an autocratic country, non-Muslims are not allowed to settle in the Mecca and Medina areas based on what is said to be based on the history of Umar bin Khattab (Munt, 2015; Noth, 2004). Nonetheless, some Islamic thinkers, for example, Ghannūshi (Saeed, 1999), An-Na'im (1987), Schedina (1988), and Madjid (1992), argue that non-Muslim status must be treated equally in the context of citizenship and fulfillment of more rights wide.

Relations between Muslims and non-Muslims are generally quite good in Indonesia. Especially in Aceh, there have been dynamics since the implementation of formal Islamic Sharia. However, non-Muslims' lives as citizens show conditions that can fulfill their broader rights. For example, residents of Chinese descent also strive to 'become part' of the Acehnese society, culturally and socially prominent enough to establish good relations with the community and government (Srimulyani, 2018; Ichwan et al., 2020).

Islamic Sharia is often considered inhumane and prohibits human rights, especially for non-Muslims. Non-Muslims tend to be mistreated in the context of being citizens. A single identity influenced by Islamic Sharia in the public sphere causes minority groups to feel unfair, difficult and creates tension (Anshor, 2016; Febriandi, 2021). However, this conclusion is disputed by Halim (2022: 262-288) and Salma (2022) that the formal application of Islamic law is only sometimes harmful. It is proven that non-Muslims voluntarily choose and submit themselves rationally in solving their legal problems. It is in the interests of non-Muslims to choose criminal justice or Qanun Jinayat Aceh over the Criminal Code. This can be seen from their rational choice of a more efficient, cheap, effective, and fast legal process offered by the Aceh Qanun Jinayat penal system.

The position of non-Muslims in implementing Islamic law can be studied in various laws and *qanuns*. For example, the Aceh Government Law of 2006 emphasizes that "Every Muslim in Aceh is obliged to obey and practice the Islamic law" (paragraph 1) and "Everyone who resides or is in Aceh is obliged to respect the implementation of the Islamic law" (paragraph 2) should no longer exist because the Islamic Sharia applies to all residents of Aceh Province. Likewise, Article 129 paragraph (1) states, "In the case of a jinayat act committed by two or more people together, one of whom is a non-Muslim, the offender who is not a Muslim can choose or voluntarily submit him/herself to the jinayat law," and paragraph (2) states, "Any person who is not a Muslim committing a *jināyah* act that is not regulated in the Criminal Code or criminal provisions outside the Criminal Code complies with the jinayat law" (Abubakar, 2020; Aceh Government Law, 11/2006). This article has become the basis for the consideration of judges in their decisions regarding non-Muslims who commit criminal offenses in Qanun Jinayat.

This research supports the argument that non-Muslims in the context of the nation-state in Indonesia, especially in Aceh, are given a suitable choice of law. Non-Muslims instead choose to submit themselves to Islamic sharia voluntarily, without coercion which has been guaranteed by the Qanun Jinayat. Previous studies, such as Srimulyani, Ichwan, Salma, and Halim, have yet to examine the Sharia Court's decisions in Aceh.

This current study of the decisions of the Sharia Court is quite important empirically to examine the laws in society since Aceh implemented the Sharia in 2001. Thus, it can be seen how Islamic law is applied within the framework of a nation-state such as in Indonesia. On the other hand, the Qanun Jinayat, which regulates non-Muslims on matters as stipulated by the *qanuns* of Islamic law, such as *khamr* (intoxicants), *maysir* (gambling), and *khalwat* (proximity of male and female) in 2003 and 2004, were then strengthened in the 2006 Law of Aceh Governance and revised by Qanun Jinayat in 2014.

This empirical legal study examined the implementation of Islamic law in society using a legal and political theory (Marzuki, 2014: Mahfud MD, 2009; Mannan, 2016). It is undeniable that Islamic sharia is a policy of the Indonesian government to accommodate the socio-political reality developed in Aceh after the conflict that occurred for more than 30 years. However, non-Muslims in Aceh existed for a long time before Indonesia became independent in 1945. They have lived in harmony and peace with the people of Aceh. This study analyzed the materials from the laws, Islamic sharia *qanuns*, and decisions of the Sharia Courts, as well as scientific articles and other relevant references. All of these materials were analyzed using legal and political theories.

### **Non-Muslims in the Context of Islamic Law**

Regarding non-Muslims in Islamic law, they are given religious freedom. Islamic law affirms freedom to choose religion; The boundary between believing in Allah and His Messenger is clear: whoever wants to believe (*mu'min*) must believe, and whoever wants to become a disbeliever (*kāfir*), that is his choice because if God so wills, all human beings on this earth will believe (QS. al-Baqarah, 2: 257; QS. al-Kahf, 18:29; QS. Yunus, 10: 99) (Fuad, 2007: 265).

The minorities are termed *ahl al-dhimmi* in the concept of Islamic law. *Ahl al-dhimmi* lexically means security, agreement, and guarantee, whereas, in the terminology, it refers to all people who are not Muslims but remain obedient and loyal to the rules of the Islamic state where they live, regardless of where they come from or where they were born. For this group of citizens, Islamic teachings provide guarantees to protect them in their life, culture, wealth, beliefs, and honor. The name *ahl al-dhimmi* indicates that they have a guaranteed agreement from Allah and the Messenger SAW, as well as from the whole community of Muslims, to live safely and peacefully under the protection of Islam. Hence, they are guaranteed the security of the Muslims to live based on *al-dhimmah*. This *aqd al-dhimmah* allows them to obtain the same rights and obligations as other citizens (Muhammad, 2003; Nurdin et al., 2011).

Accordingly, non-Muslim is also commonly used as the term *kāfir* (infidel), divided into four (Ensiklopedia Islam, 2005: 38-39). The first is *kāfir dhimmi*, the infidels who pay the *jizya* (tribute) collected each year in return for allowing them to live in Muslim lands. Such infidels cannot be killed if they obey the regulations imposed on them.

The second is *kāfir muā'ahid*, infidels who have agreed between themselves and the Muslims not to fight within the agreed period. Such infidels may also not be killed as long as they carry out the agreement that has been made. “But if they break their oaths after pledging and attack your faith, then fight the champions of disbelief—who never honor their oaths—so perhaps they will desist” (Surah at-Tawba:12).

The third is *kāfir musta'man*, infidels who receive security guarantees from Muslims or some Muslims. Infidels of this type also may not be killed as long as they are still under the guarantee of security. As the Qur'an explains, “If disbelievers or musyrik people ask for protection, they must be given protection and a sense of security. The unbelievers should not be fought” (Surah Tauba: 6).

Regarding this verse, Shihab explains that the verse is evidence that even if someone is a polytheist—as long as he/she does not intend to harm the Muslims—they are also human beings who have the right to receive protection, not only regarding their lives and property but also regarding their beliefs. The verse suggests how Islam gives freedom of thought, opens the most comprehensive opportunity for everyone

to find the truth, and simultaneously provides protection to those with different beliefs (non-Muslims) as long as they do not interfere with other parties' freedom of thought and religion. This verse also proves that killing, captivating, and lurking what is commanded by the previous verse applies to those hostile to Muslims (Shihab, 2006: 534; Nurdin et al. 2011: 136).

The fourth is *kāfir ḥarbī*, infidels other than the previous three who are against Islam. They always want to divide the believers and cooperate with people who have fought against Allah SWT and the Messenger of Allah since long ago. Their country is called *dār al-ḥarb*, which often fights with countries under the rule of Islamic government (*dār al-Islam*) (Editorial Team, 2005: 37). It is this type of infidel that is lawful to be fought with the provisions stipulated in the Islamic Sharia. However, it should be noted that the three infidels, such as *kāfir dhimmī*, *mu'āhid*, and *musta'man*, are included in the souls forbidden to be killed as before, as affirmed in the Qur'an. *Kāfir ḥarbī* are infidels who always want to divide the believers and work with people who fought Allah SWT and His Messenger long ago. This is due to their unique nature, which always creates riots on this earth, especially the most severe violations of the majesty and perfection of God (Fitriani and Aisyah, 2019: 35).

The word *dhimmah* means agreement or assurance and security. They are called *dhimmī* because they have a guarantee of the agreement (*ahd*) of Allah and His Messenger, as well as the Muslim community, to live safely under the protection of Islam and in an Islamic society. They are guaranteed the security of the Muslims based on the *Dhimmah* contract. *Kāfir dhimmī* is infidels who make peace with the Muslims; they live in Islamic State and have the same rights and obligations as other religions in matters of state. They do not threaten and endanger the faith of Muslims so that they can live safely in the territory of Islamic rule; it is just that they have to pay taxes or *jizyah* to the Islamic government (Fitriani and Aisyah, 2019: 35).

The implication is that the *dhimmī* belongs to *dār al-Islām* citizens. The *dhimmah* contract contains provisions to allow non-Muslims to remain in their beliefs or religions, in addition to enjoying the rights to obtain security guarantees and the attention of Muslims. The condition is that they pay the *jizyah* and adhere to Islamic laws in public matters.

The basis for the payment of *jizyah* from *ahl al-dhimmī* is mentioned in the Qur'an, "Those who disbelieve or *ahl al-kitāb* who do not want to pay the *jizyah* (tax) then they can be fought because they are categorized as people who do not believe in Allah and the Last Day, those who do not forbid what Allah and His Messenger have forbidden and deny the teachings Islam (al-Tawbah; 29).

The elements of a person said to be *ahl al-dhimmī* are as follows: non-Muslim, *balīgh* (mature), sane, male, not a slave, living in *dār al-Islām*, and able to pay *jizyah* (Djazuli, 2009; 231; Iqbal, 2001; 233-235). In this case, those who are called non-Muslims are *ahl al-Kitāb* (people of the Book), *murtad* (apostates), and *mushrik* (polytheists). This is the opinion of Abu Bakr ibn Ali al-Jashshash that *ahl al-Kitāb*, who belong to *Ahl al-dhimmī*, are Jews and Christians, as well as Zoroastrians. Still, some scholars differentiate between *ahl al-Kitāb* and the *mushrik* regarding *jizyah*. Imam Shafii includes the Zoroastrians in the group of *ahl al-Kitāb* in the context of *jizyah*. At the same time, Imam Ahmad, Abu Hanifah, al-Auza'i, and Abu Thaur argue that the *jizyah* is collected from all idol worshipers, or fire, and those who belied religion. This view is reasonable because they all get and enjoy the state's facilities (Shihab, 2006: 574).

The majority of Muslim scholars agree that it is not permissible for apostates to enter into a *dhimmah* contract with the Islamic government based on the word of Allah in Surah al-Fath verse 16 which reads, "Say to the Bedouins who stayed behind: "You will be called (to fight) against a people of great might, whom you will fight unless they submit (convert to Islam). If you then obey, surely Allah will grant you a fine reward. But if you turn away as you did before, surely He will inflict upon you a painful punishment."

More specifically, it can be said that the minorities or *ahl al-dhimmī* are non-Muslim people in an Islamic state, not individuals separate from the Muslim community. They are not second-class citizens, as was the view of several *fuqahā'* (Islamic jurists) in the past. Current Muslim scholars believe that all citizens, including non-Muslims, are citizens of the state, and more importantly, these non-Muslims are committed to the legal system in the Islamic State (Khaliq, 1998: 163).

In addition to the verses above, Rasulullah PBUH revealed several hadiths about *dhimmi*. In addition, Rasulullah PBUH said, "Who



wrongs a *mu'āhid* (*ahl al-dhimmah*), or reduces his rights, or burdens him beyond his ability, or takes from him something beyond his rights, then I will be his opponent on the Day of Resurrection” (Narrated by Abu Dawud). One of them is from Abdullah ibn Amr; he said: that the Prophet PBUH said: whoever kills *ahl al-dhimma* will not be able to inhale the smell of heaven, and in fact, the smell of heaven can be inhaled from a distance of forty years (Narrated by Bukhari and Nasa'i).

So thus, it can be concluded that infidel *ḥarbī* are infidels (non-Muslims) who fight against Muslims. *Dzimmi* is a non-Muslim who has received safety and security guarantees from the government and Muslims. They get security by paying tribute (*jizyah*) to the government. Meanwhile, *musta'man* are infidels brought in by countries with Muslim populations for certain purposes, such as diplomatic representatives and ambassadors (Rahman, 2016; Yaqub, 2000).

Therefore, the position of non-Muslims in Islamic law based on the Qur'an and the traditions of the Prophet are not all in conflict and war with Muslims. The only non-Muslim category that must be fought is infidel *ḥarbī*, groups fighting Muslims who do not want to live in peace.

### **Non-Muslims in the History of Islamic Law**

Islamic law views all human beings with respect and dignity, including non-Muslims. This is not only in concept but practiced by the Prophet and their companions (*al-ṣaḥābah*). Not more than two years after the arrival of the Prophet Muhammad PBUH in Medina, the foundations of freedom in carrying out religious life had been firmly instilled, as evidenced by the signing of a monumental agreement known as the Medina Charter. Medina was an area with a pluralistic society, as the Muslim community from Muhajirin and Ansar and the Jewish and Christian communities inhabited the area. Islamic political experts believe that the Medina Charter, which consists of 47 articles, is the first constitution for an Islamic state in the world (Sjadzali, 1993; Nurdin, 2011; 141).

The minorities, in this case, the Jews, received the same position as the Muslims from Muhajirin and Anshar. The Jews were not allowed to

be harassed or abused by Medina residents from Muslims or other groups or residents outside the city of Medina. One of the Medina Charter articles reads, “And the Jews of Banu' Awf shall be considered as one community along with the believers—for the Jews their religion, and the Muslims theirs, be one client or patron. But whoever does wrong or commits treachery brings evil only on himself and his household” (Ahmad, 2014).

So that at the time of the Prophet, interactions with non-Muslims were harmonious, for example, with the Christian groups in Abyssinia (Habasyah) and Najran. As many as 16 Muslims departed for Abyssinia and stayed there during Sha'ban and Ramadan. In the third month, Shawwal, received news that the situation in Mecca was safe and conducive. They then returned to Mecca. However, the news turned out to be untrue; Mecca was still not safe, so they fled for the second time to Abyssinia, and this time their number increased to 102 people. This second group lived in Abessenia for 14 years, from 7 (Before Hijrah) to 7 (Hijrah). Likewise, the Christians from Najran who had visited the Prophet, numbering sixty people led by Bishop Abu al-Haritsah bin' Alqamah to discuss not long after they converted to Islam (Yakub, 2000: 34-35; Rahim, 2016: 217-228; Mufiani, 2016).

Regarding the position of non-Muslims in the Medina State, the Medina Charter defines freedom of religion, intergroup relations, and the obligation of every citizen to defend the Medina State. Regarding the position of Jews it is explicitly stated in Articles 16, 24, 25-35, 37-38. Article 16 states that Jews who follow and join forces with the Muslims are entitled to support. Articles 25-35 clearly state the names of the Jewish tribes/bani, namely Auf, Najjar, Saidah, Hars, Sa'labah, Jafnah, and Syuthaibah. In Article 25, it is stated explicitly that the Jews are one people with the Muslims; they have the freedom to practice their religion. In Article 46, it is stated that the rights and obligations of the Jews are the same as those of the Muslims (Ahmad, 2014; 11-24; Abubakar, 2020: 19).

The four caliphs later continued the Prophet's policy of treating non-Muslims well. For example, when Umar ibn Khattab entered the City of Baitul Maqdis, which had just been conquered from the hands of the Roman army, he stood up. Then he spoke: “This is Umar, Amirul Mukminin, giving the people of Ilaya' safety. Giving

security to souls, property, churches, crosses, which have been damaged or are still good, and all religious affairs. Truly their churches must not be stopped from activity, must not be torn down, must not be reduced in number and wealth, as well as their crosses and possessions” (Muhammad, 2003: 62).

At the time of Umar bin Khattab, he advised a friend who was appointed as a Judge, namely Abu Musa Al-Ash'ari, "Equalize the people before you, in trials in your court so that people who have high positions do not expect anything (bad) from you while weak people do not despair of your justice. Likewise, Caliph Usman bin Affan instructed the governor to fulfill the rights of the people, both Muslims and non-Muslims. Likewise, Ali bin Abi Talib practiced high tolerance and did not discriminate against non-Muslims (Azhary, 2007; 179; Abubakar, 2020; 21).

During the Abbasid period, minority groups gained freedom of religion, maintained their cultures and languages, and lived a free religious life. In the cities, Christians and Jews held many important positions, such as finance, administration, and other professional positions. Christians, especially, received relatively huge religious freedom, some of whom were appointed *Wazīr* (a position similar to Prime Minister), and Caliph al-Muttaqi (940-944) had a Christian *wazīr*. During the Bani Buwaihi period, Caliph Al-Mu'tadid (892-902) appointed a Christian as head of the defense agency. Most of the Christian population during the Abbasid period were followers of the Syrian Church, which was considered a Heterodox Christian group commonly called the sect of James and Nestor; they mostly settled in Iraq which were scattered in several areas such as Basra, Mosul, Tikrit, Nisibis and Antioch (Hitti, 2006: 444-445; Nurdin, 2011; 143).

Then the Jewish minority group also enjoyed freedom. Jews generally work as bankers and currency exchange owners. Several Jews held important positions in government. Likewise, the Sabine religion, both the followers of St. Yahya and the Mandeans, as well as the Babylonian and Harran Sabians who worshiped the stars. Additionally, Zoroastrians (majusi) also received freedom when Islam became the majority religion in Persia, Iraq, and India (Hitti, 2006: 446-449; Nurdin, 2011; 143).

During the time when Islam entered mainland Europe, precisely in Spain, the life of non-Muslims who were minorities in the region was also not much different from during the Abbasid period. In fact, according to Western historians, the Islamic conquest of Spain had provided benefits. The Islamic conquest destroyed the hegemony of the privileged class, including the nobility and clergy, improved the condition of the lower classes, and restored the property rights of the Christian property owners previously disowned by the Western Gothic powers. The Christian minority group in Spain was free to practice their beliefs by following Christian law and native judges, whose jurisdiction did not cover cases involving Muslims and did not intersect with Islamic religious affairs. Therefore, the arrival of Islam in Spain did not cause suffering for the natives, who were mostly Christians (Hitti, 649; Nurdin, 2011: 143).

However, this situation differed when Islam was no longer a role model in the Iberian Peninsula. Freedom and independence in worship became a mirage when Islam was forced to leave Europe. The Muslims who surrendered initially agreed to be protected, but King Ferdinand and Queen Isabella later violated the agreement. With the blessing of Isabella, Cardinal Ximenez de Cisneros held a campaign to force conversions in 1499. The Cardinal removed Arabic books from circulation, namely books on Islam, by burning them. Granada became a sea of bonfires where Arabic manuscripts were burned. The Inquisition (massacre by sadistic killing) was then instituted and continued (Hitti, 2006: 706).

Thus it can be emphasized that as long as Islam reigns in the peninsula of Andalusia or Spain and Portugal, peace and security are realized in European society. So that famous cities such as Cordoba, Granada, Seville, and Toledo emerged, the region became the center of science, civilization, and economy. At the same time, the non-Muslim community provides them with the peaceful atmosphere they need for their progress and inspires them to contribute to the development of world science and civilization (Mortada, 1373; Kettani, 1997).

Jews and Christians are called *ahl al-kitab* because they receive revelations from God. While the second group, namely the Sabiian religion, Majuzi, then in a wider context, Hinduism, Budha, Sintho, Confucianism, and adherents of religious beliefs can be categorized as a pagan group (*al-mushrikūn*) (Rahman, 2006).

Referring to the historical evidence above, it can be emphasized that in the history of Islamic law, non-Muslims were treated fairly and with dignity. This is not only in theory and concept, but in practice, in reality, the Prophet, Sahabah, and the government that followed protected non-Muslims.

### **The Position of Non-Muslims in the Nation-State**

When the world order entered the modern era, it was marked by the birth of the concept of the nation-state. The issue of non-Muslims in the context of the nation-state has not changed much; they are still respected and treated with dignity, and their rights are protected. After the collapse of the Ottoman Empire in 1924 in Turkey, the concept of citizenship underwent changes, including status and rights. According to Saeed (1999: 208-209), the model of the relationship between the Islamic state and the rights of citizens has at least four categories, namely traditionalist, neo-revivalist (Islamist), modernist and secular. According to traditionalists, represented by conservative Muslim scholars, an Islamic state is when Islamic law developed by Islamic jurists is enforced through the state legal system. Non-Muslims living in Islamic countries are protected as minorities or *dhimmī*. Some Muslim scholars require the *dhimmī* to pay the *jizyah* as a form of compensation protection. In this case, if non-Muslim minorities do not pay the *jizyah*, the Muslim rulers hold no responsibility to protect them. However, some scholars argue that non-Muslims are not "subjugating" people or groups in the modern state model- the nation-state. According to this opinion, they should be treated as *mu'āhid*, i.e., people who promise to submit to the Islamic state peacefully and be recognized as citizens (Ahmad, 2022; 738).

In the current context of the nation-state, all laws refer to the Universal Declaration of Human Rights (UDHR) by the United Nations. Article 6 of the UDHR states, "Everyone has the right to recognition everywhere as a person before the law." Article 7 of the UDHR then reinforces with the sentence, "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against incitement to such discrimination." The spirit of equal rights before the law gave rise to

“Equality before the Law.” This term does not indicate that it is only monopolized by the British Commonwealth of Nations’ legal system. The term applies universally, including in the Islamic legal system (Abubakar, 2020; 99).

Equality before the law is emphasized in the Qur’an Surah an-Nisa (4: 135), which reads, “Muslims should be upholders of justice, including as witnesses, even if the litigants are close relatives. Then he must tell the truth and may not lie or follow his desires because doing justice will benefit all human beings.

When compared between the concept of equality before the law and the nature of Islamic law as *rahmatan lil ‘alamīn* (a mercy to all creation), the concept of Islamic law is more universal. Qanun Jinayat, which is specifically applicable in Aceh, can abandon the principle of personality towards the principle of territoriality. The initiators of changes to the Qanun Jinayat can apply this by looking at several internal and external potentials. The internal potential is the goal of Islamic law itself which is *rahmatan lil ‘alamīn*: aiming not only for the good of Muslims but also for non-Muslims, even the whole universe. The Qur’an contains universal values that should suit all human beings, regardless of nationality, skin color, and religion (Abubakar, 2020: 99).

Therefore, based on Islamic law, the position of non-Muslims is highly respected and given protection. Especially in the context of a nation-state, the concept of human rights emerges, which emphasizes equality, justice in the law context, and protection of citizens. Despite the emergence of a variety of Muslim views on human rights then offer the importance of the reconstruction of Islamic theological-legal discourse to facilitate a more genuine harmony between Islam and the global discourse on human rights. So, in principle, the philosophical harmonization between Islamic law and human rights is quite possible to be carried out through the reconstruction of classical Islamic traditions so that a dialectic occurs that builds and complements one another in the future (Fuad, 2007; Mukharrom and Abdi, 2023; Zada, 2022).

According to Lopa, freedom of thought, expression, and opinion in Islamic law is the freedom God gives to humans from birth. This freedom in human development has given rise to many intellectuals and even statesmen responsible for their fellow citizens’ safety and

welfare. Consequently, they must be careful to respect the right to freedom of expression of these citizens, thus implying a readiness to be criticized and challenged (Lopa, 1996: 45; Fuad, 2006: 263).

In line with that, Nahdlatul Ulama (NU) finished holding the Alim Ulama National Conference and the Nahdlatul Ulama Grand Conference (Munas Alim Ulama and NU Konbes), West Java, in 2019. The important discussions discussed in the forum are related to problems of society, nation, and society country. The National Conference of Alim Ulama and the NU Konbes is the second highest forum after the NU Mukhtar, which is the highest meeting or deliberation held by the central leadership of NU. In the *bahtsul masail* forum, NU decided that in the context of a nation-state, material from the concept of infidels was no longer relevant and replaced them with non-Muslims (Ahmad, 2022: 734-756; Firiani and Aisyah, 2019: 36).

Following the above argument, Indonesia, as a nation-state where the majority of its adherents are Muslims, is no different from non-Muslims who are Muslims. Even in certain cases, non-Muslims who are legally liable are still given their rights, such as giving inheritance from Muslim relatives, which is called an obligatory will, as well as non-Muslims providing waqf assistance to Muslims (Zubair, 2022; Sulistiani, 2021). So, life between religions in Indonesia takes place in harmony and is in peace.

Furthermore, it should be emphasized that the concept of *rahmatan lil 'ālamīn* not only focuses on human rights as living beings in this universe but also on the rights of other creatures, such as animals, plants, the environment, and other creatures. Indeed, Islamic law regulates and gives attention to all creatures in the universe. Hence, logically Islamic law pays attention to living things such as animals, plants, and the environment, especially humans, including the non-Muslims, as beings with the noblest position compared to other creations of Allah.

### **Non-Muslims, Qanun Jinayat, and Responsive Legal Politics**

The Aceh government stipulated Qanun Jinayat amid a democratic political atmosphere in Indonesia. The political change from authoritarian to democratic gave Aceh wide space to apply Islamic law by adjusting Indonesian law and the international legal order.

The democratic legal configuration during the reform era continues to encourage improvements in the human rights index, including the rights of non-Muslims in Indonesia in general, especially in Aceh in the context of the Qanun Jinayat.

Therefore, the following will describe the decision of the Syar'iyah court in Aceh regarding non-Muslims who voluntarily submit themselves to Islamic law. Five cases were eliminated, namely, *maysir*, *khalwat*, *ikhtilāf*, *khamr*, and sexual harassment, which occurred in six regions with eight decisions:

### **Cases of *Maysir***

The case of *maysir* or gambling is an act that can be found in all regions of Aceh. According to Qanun Jinayat, *maysir* is an act that contains an element of betting and/or an element of luck carried out between two (2) or more parties, accompanied by an agreement that the winner will receive certain payments/benefits from the losing party, either directly or indirectly (Qanun Jinayat, 6/2014).

On March 6, 2016, three people committed a *maysir* case. One was male, non-Muslim (Christian), 46 years old, born in Medan, working as a parking attendant, and having an elementary school education. The other two people were Muslim, one was a 39-year-old woman, born in Medan, a housewife with a junior high school education, and another was a 44-year-old woman, born in Rantau (Tamiang), a housewife with a primary school education (Kualasimpang Syar'iyah Court Decision, 3/JN/2016/MS.Ksg).

In this case, the judge's consideration referred to the Qur'an Surah al-Maidah (5:90), which reads, "O believers! Intoxicants, gambling, idols, and drawing lots for decisions are all evil of Satan's handiwork. So shun them so you may be successful." Another reference was the Qanun Jinayat Article 18, which states, "Any person who intentionally commits *jarimah al-maysir* with a bet value and/or profit of a maximum of 2 (two) grams of pure gold is threatened with 'uqubat al-ta'zir caning for a maximum of 12 (twelve) times or a maximum fine of 120 (one hundred twenty) grams of pure gold or imprisonment for a maximum of 12 (twelve) months." The judges also considered that there would be many negative impacts arising from the criminal act



of *maysir*, and thus, the defendants should be punished with the aim of punishment, not retaliation, made as a preventive and repressive effort. In other words, the law shall be imposed to be constructive and motivating so that people do not commit these acts again and to be prevention for other communities. Further, the Panel of Judges considered the juridical, psychological/psychological, environmental, and social/values, as well as the religious aspects of the place where the defendants lived and grew up (Decision of the Kuala Simpang Syar'iyah Court, 3/JN/2016/MS.Ksg).

Some points aggrieved the defendants, such as the Defendant's actions did not support the Aceh government's program in implementing the Islamic law in a *kāffah* (comprehensive) manner, and these actions disturbed the community. On the other hand, the mitigating actions were that the defendants were polite during the trial, they regretted their actions and promised not to repeat them, and they had never been punished for any crime. The evidence that was secured and deposited for the state was IDR. 101,000,000, while two sets of red joker cards were destroyed. The three defendants were sentenced to nine lashes each (Decision of the Kuala Simpang Syar'iyah Court, 3/JN/2016/MS.Ksg).

On July 5, 2020, a criminal case involving gambling involved five perpetrators, four non-Muslims, and one Muslim. Defendant I was a 75-year-old female, Buddhist, housewife, with primary school education (did not graduate); Defendant II was a 67-year-old woman, Muslim, housewife, with elementary school education (did not graduate); Defendant III was a 47-year-old woman, Christian, housewife, with high school education; Defendant IV was a 57-year-old woman, Buddhist, housewife, with elementary school education; and, Defendant V was a 59-year-old woman, Christian, housewife, with elementary school education. The evidence submitted included money in the amount of IDR. 1,165,000, - (one million one hundred and sixty-five thousand rupiah), 3 (three) sets of Full Hoese brand Joker cards, 1 (one) round table unit, and 5 (five) chairs (Banda Aceh Syar'iyah Court Decision, 2/JN/2020/MS.Bna).

Thus, the public prosecutor's indictment was supported by at least two valid pieces of evidence by the provisions of Article 180 and Article 181 of Qanun Number 7 of 2013 Concerning Jinayat Procedural

Law. It was proven legally and convincingly that the defendants were adults (*mukallaf*) who could be burdened with legal responsibility and Muslims. In contrast, the two Buddhists and two Christians had declared their submission to the Jinayah Law in force in Aceh. Thus, the element of “everyone” here refers to the Defendants, who are Muslim, as well as two Buddhists and two Christians who have committed a crime (*jarimah al- maysir*) in Aceh. The defendants' actions were prosecuted using Article 18 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law (Banda Aceh Syar'iyah Court Decision, 2/JN/2020/MS.Bna).

Referring to the decision of the Sharia Court, the sentences handed down to gambling convicts were relatively light, in which Defendants I, II, IV, and V received three times lashes each. However, Defendant III was flogged five times in public and was required to pay a court fee of IDR. 5,000. Defendant III was sentenced to five lashes because he had committed the same crime twice, and therefore the panel of judges increased it from three to five lashes. The evidence in the form of money was handed over to Baitul Mal, while other evidence was destroyed (Banda Aceh Syar'iyah Court Decision, 2/JN/2020/MS.Bna).

### **Cases of *Khalwat* and *Ikhtilāf***

*Khalwat* crime in the Aceh Qanun is defined as the act of being in a closed or hidden place between 2 (two) people of different sex who are not *mahrams* (family members unlawful to marry) and without marital ties with the consent of both parties which leads to an Act of *Zinā* (fornication) (Qanun Jinayat, 6/2014).

Defendant I was a 50-year-old man who worked as an entrepreneur with a high school education, and Defendant II was a 44-year-old woman who worked as a civil servant with a high school education. Both were non-Muslims. They were charged with committing the *khalwat* crime committed on December 20, 2020, at the Aceh Singkil General Hospital Housing.

The decision of the Singkil Sharia Court was a sentence of whipping 8 (eight) times each of the defendants and paying the case fee of IDR. 3,000. The points that incriminated Defendant I were he did not uphold the values of Islamic Sharia applied in Aceh. In addition, Defendant

I had married even though the wife had died and with a child, and Defendant II already had a husband and children. Their action was very disturbing to the community. The mitigating considerations of the judges included the defendants being polite during the trial, forthright in giving statements and regretting their actions, and have never committed a criminal act (Decision of the Singkil Sharia Court, Number 3/JN/2020/MS.Skl).

The second case involved the crime of *ikhṭilāṭ* in Qanun Jinayat, which is defined as acts of affection such as making out, touching, hugging, and kissing between men and women who are not husband and wife with the consent of both parties, either in closed or open places. The *ikhṭilāṭ* criminal case occurred on May 26, 2019, at the Hermes Palace Hotel Banda Aceh. Defendant, I was a non-Muslim (Buddhist), 31 years old, a private employee, born in Medan, and had Diploma I education. At the same time, Defendant II was a Muslim woman, 26 years old, born in North Aceh, a housewife, and had Diploma III.

The judges' consideration consisted of the Aceh Qanun Number 6 of 2014 concerning Jinayat Law. Thus, the Panel of Judges, taking into account the sense of justice in society, balancing the weight of the crime, considering a deterrent effect for the offenders and the surrounding community to prevent any occurrence of other immoral acts, and encouraging the offenders to repent, made very reasonable reasons for imposing *'uqūbāt* on the Defendants to be greater than the demands of the Public Prosecutor (Decision of the Banda Aceh Sharia Court, Number 57/JN/2019/MS-Bna).

### **Cases of *Khamr***

The first case was in Kutacane, Aceh Tenggara. Four defendants committed *maysir* (gambling) violations, all Christians. The average age is 29-40; there is one person aged 70 years with elementary to high school education. From the Defendant's hands, evidence was found of 42 black Joker Cards (gambling tools), IDR. 430,000. Gambling is carried out at a stall in a village in Lawe Beringin Horan, Semadam, Southeast Aceh. In the facts of the trial, it was revealed that in a bet in one game, the value is IDR. 2,000,000 to 3,000,000, so that if someone wins the

game, they will get IDR. 6,000,000 to IDR. 9,000,000 (Decision of the Kutacane Syar'iyah Court, 11/JN/2022/MS.Kc).

Based on these facts, the Panel of Judges considered that the profits obtained exceeded the provisions stipulated in the qanun, namely a maximum of 2 (two) grams of pure gold. The facts of the trial also revealed that even though the four people were non-Muslims, they chose and voluntarily submitted themselves to the jinayat law. Based on the facts of the trial, the testimony of witnesses, and the confessions of the perpetrators, the Panel of Judges imposed 8 (eight) lashes for each perpetrator (Decision of the Kutacane Syar'iyah Court, 11/JN/2022/MS.Kc).

The second case is a 45-year-old man, Christian, who works as a farmer and has a junior high school education. According to the witness and some evidence, this man has legally and convincingly sold and produced goods with a minimum of khamr. The incident occurred on January 7, 2018, in a village in Nagan Raya, Aceh. The Panel of Judges based their considerations on the 2014 Qanun Jinayat, which fulfills three elements: the element of every person, the element on purpose, and the element of producing, storing/stockpiling, and selling khamr (liquor). The evidence presented at trial was, first, 1 (one) large aqua bottle that still contained a type of palm wine; secondly, 3 (three) empty 35-liter white jerry cans reeking of palm wine; fourth, 1 (one) sack of used plastic beverage bottles. The evidence was destroyed. Then Defendant paid court costs of IDR. 2,000. (Decision of the Meulaboh Syariyyah Court Number 8/JN/2018/MS.Mbo).

The consideration of the panel of judges on the things that aggravated Defendant was that Defendant's actions disturbed the community, and Defendant's actions did not support the Aceh government's program in enforcing Islamic law in Aceh. While the mitigating factors were the Defendant being polite in court, the Defendant frankly admitting his actions to expedite the trial process, regretting and promised not to repeat his actions, and the Defendant has never been punished. The accused was punished with 50 lashes of the cane (Decision of the Meulaboh Syariyyah Court Number 8/JN/2018/MS.Mbo).

In the third case, Defendant was a 60-year-old woman born in North Sumatra and a Christian. She committed the crime of selling

alcohol on October 29, 2015. At the time of the incident, the evidence found was a) 48 (forty-eight) small bottles of red wine alcoholic drink of Columbus brand, b) 22 (twenty-two) small bottles of Vigour fruit wine, c) 8 (eight) large bottles of sea horse type alcoholic beverages; and d) 2 (two) large bottles of red wine alcoholic drink of Columbus brand. The evidence was destroyed, and Defendant had to pay a court fee of IDR. 2,000 (Decision of the Takengon Sharia Court, Number 0001/JN/2016/MS-Tkn).

The points that incriminated the Defendant included: first, the Defendant, as a Protestant Christian, knew that storing and selling or importing liquor (*khamr*) is prohibited in the religion and her actions could unsettle the people of Aceh, especially Muslims, and second, the Defendant's activities in storing and selling liquor (*khamr*) had been going on for a long time since 15 years ago. The points that lightened the case were: first, the Defendant was polite and confessed frankly before the trial so as not to complicate the trial; second, the Defendant regretted her actions and promised not to commit similar acts or other crimes; and third, she had never been prosecuted (Decision of the Takengon Sharia Court, Number 0001/JN/2016/MS-Tkn).

In relation to this case, the judges referred to Qanun Jinayat 2015 Article 16 which states that "Anyone who deliberately produces, stores/drinks, sells or imports *khamr*, each of them is threatened with 'uqūbāt al-ta'zīr of whipping for a maximum of 60 (sixty) times or a maximum fine of 600 (six hundred) grams of pure gold or imprisonment for a maximum of 60 (sixty) months". Aside from this, the caning sentence given was based on Article 7 which states "In cases where it is not specified otherwise, the lowest 'uqūbāt al-ta'zīr that a judge can impose is 1/4 (one quarter) of the provisions of the highest 'uqūbāt." The Defendant was sentenced to 30 lashes in front (Decision of the Takengon Sharia Court, Number 0001/JN/2016/MS-Tkn).

## **Sexual Harassment**

Sexual harassment is an immoral act or an obscene act deliberately committed by someone in public or against another person as a victim, either male or female, without the victim's consent (Article 1 number 27) (Qanun Jinayat, 6/2014). A case of sexual harassment committed by a non-Muslim (Christian) aged 56 against four women (religious

Muslim) occurred in Sabang in 2018. During the trial, it was found that the four women admitted that the Defendant, who also admitted to the act, had harassed them. The panel of judges took action against this criminal act with Qanun Jinayat Article 46 (Decision of the Sabang Sharia Court, Number 3/JN/2022/MS-Sab).

In addition to the testimony of the four victims, the four victims presented evidence such as shirts, pants, training clothes (sports), and several underwears in the trial. The points that aggrieved the Defendant were: the Defendant's actions damaged the social order of life, the actions of the Defendant traumatized the victims and damaged the future of the victims, the Defendant's actions did not protect the dignity of women, especially the Defendant as a Civil Servant, and the Defendant's actions were repeated with more than 1 (one) victim. The points that relieved the Defendant were that he was polite in court, regretted his actions, and promised not to repeat them (Decision of the Sabang Sharia Court, Number 3/JN/2022/MS-Sab).

Even though the Defendant was a non-Muslim, the statement of the decision of the Sharia Court Defendant showed that the Defendant was fully willing to submit himself to Qanun Jinayat. The judges' considerations in the decision were based on Article 1 number 38 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law that "every person is an individual" and based on Article 5 letter b that "every non-Muslim person who commits *jarimah* in Aceh together with Muslims and chooses and voluntarily submits himself to the jinayat law." Therefore, due to the criminal act of sexual harassment committed, the Panel of Judges, based on Qanun Jinayat article 46, sentenced him to 39 lashes in public (Decision of the Sabang Sharia Court, Number 3/JN/2022/MS-Sab).

Based on cases related to non-Muslims who violated Qanun Jinayat regarding *maysir*, *khalwat (ikhtilāt)*, *khamr*, and sexual harassment in Sabang, Banda Aceh, Takengon, Kutacane, Meulaboh, and Singkil. This shows that non-Muslims' decision to submit voluntarily without coercion is a scientific fact and a theoretical argument that the qanun jinayat implemented in Aceh makes them fulfilled in justice and humanity and more comfortable with the legal process. If justice and humanity are not obtained, then it is unlikely that they will be processed according to qanun jinayat because there is no coercion and intimidation.

Suppose this study refers to the initial argument that Islamic law in Aceh treats non-Muslims fairly and equally. In that case, the legal facts through the abovementioned decisions show strong evidence. In legal politics, Islamic Sharia and qanun jinayat, born from a democratic legal configuration, can position non-Muslim parties theoretically and practically in a fair and equal manner. This democratic legal configuration gives birth to laws that are responsive to the ideals of just law (Mahfud, 2009; Mannan, 2016).

## Conclusion

The formalization of Islamic law brings a new order of dialectical context between Islamic law and the state in Indonesia. The history of Islamic law proves that theoretically and empirically, non-Muslims have coexisted safely and peacefully since the time of the Prophet, Companions, and the Islamic government afterward. Even entering the phase of a non-Muslim nation-state, they remain equal citizens with other citizens. Including in Indonesia, as a rule of law, every citizen has the same position as in Aceh. In Aceh, Islamic law is implemented formally, and the life of non-Muslims is no different from before. They are still protected, live safely and peacefully, and worship freely. Non-Muslims choose to submit themselves to the Qanun Jinayat. This can be seen in several cases, such as *mayisir*, *khalwat (ikhtilāt)*, *khamr*, and sexual harassment. Therefore, in the context of legal politics, the formalization of Islamic law in the context of the state has been feared by some parties, but the fact is quite the opposite. In several cases above, non-Muslims choose to submit themselves to Islamic law. This also shows that Islamic law is a mercy for everyone, including non-Muslims.

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