

Examining Qanun in Aceh from a human rights perspective: status, substance and impact on vulnerable groups and minorities

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The Helsinki Agreement between the Aceh Freedom Movement (GAM) and the Indonesian Government aimed to end long-standing conflict and inequality in Aceh. It also legally empowered the Acehnese to govern their own province and protect their citizens from human rights abuses. Regrettably, the implementation of laws and policies in Aceh since the agreement, such as Qanun, has had an adverse effect on human rights, particularly for vulnerable groups and minorities. This

paper analyses the need to align the substance of Qanun with international human rights norms and assesses the feasibility of implementing Qanun without violating human rights. The research method used is the qualitative method. The data collection technique mainly involves in-depth interviews with key informants, including academics, members of Aceh parliament, civil society organisations, representatives of religious organisations, the Aceh Sharia Court, the Acehese government, and practitioners on women and children, as well as victims of human rights violations and literature reviews. This study has found that the implementation of Aceh Qanun has had negative consequences on the protection of human rights, particularly for vulnerable groups and minorities. In addition, it also affects vulnerable groups, Muslim and non-Muslim minorities who have been “forced to conform” with Aceh Qanun. The paper advocates for a harmonious balance between Qanun and human rights, which can be achieved through a more constructive dialogue between the two.

Kesepakatan Helsinki antara Gerakan Aceh Merdeka (GAM) dan Pemerintah Indonesia bertujuan untuk mengakhiri konflik dan ketimpangan yang berkepanjangan di Aceh. Ia juga secara hukum memberdayakan rakyat Aceh untuk memerintah provinsi mereka sendiri dan melindungi warganya dari pelanggaran hak asasi manusia. Sayangnya, implementasi hukum dan kebijakan di Aceh sejak kesepakatan, seperti Qanun, berdampak buruk terhadap hak asasi manusia, terutama bagi kelompok rentan dan minoritas. Tulisan ini menganalisis perlunya menyelaraskan substansi Qanun dengan norma-norma hak asasi manusia internasional dan menilai kelayakan penerapan Qanun tanpa melanggar hak asasi manusia. Metode penelitian yang digunakan adalah metode kualitatif. Teknik pengumpulan data terutama melibatkan wawancara mendalam dengan informan kunci. Wawancara mendalam dengan akademisi, anggota Dewan Perwakilan Rakyat Aceh, perwakilan organisasi masyarakat sipil, perwakilan organisasi keagamaan, Mahkamah Syariah Aceh, pemerintah Aceh, praktisi anak dan perempuan, serta korban pelanggaran HAM dan kajian pustaka terkait tema penelitian digunakan untuk menjawab persoalan penelitian secara detail. Studi ini menyimpulkan bahwa implementasi Qanun Aceh memiliki konsekuensi negatif terhadap perlindungan hak asasi manusia, terutama untuk kelompok rentan dan minoritas. Selain itu juga, mempengaruhi kelompok rentan dan minoritas yang telah “dipaksa untuk menyesuaikan diri” dengan Qanun Aceh. Artikel ini merekomendasikan adanya keseimbangan yang harmonis antara Qanun dan hak asasi manusia, yang dapat dicapai melalui dialog yang lebih konstruktif antara keduanya.

Keywords: *Aceh; human rights; minorities; qanun; vulnerable*

Introduction

The purpose of this article is to evaluate the substantive norms in Aceh’s Qanun, an Islamic Law established by a sovereign Muslim body or nation, local regulations in force in Aceh, especially with regards to criminal law and public morality, from a human rights viewpoint. It also aims to assess the diversity of perspectives amongst Muslim experts and scholars

in Aceh regarding human rights. Additionally, it is important to acknowledge internal perspectives from members of Aceh parliament, judges of the Sharia Court, members of the affected minorities, Muslim scholars, and Muslim human rights activists from Aceh.

One of the main reasons for this study is that the impact of the Qanun against non-Muslims, women, and other minorities has been the subject of significant concern and debate. Qanun No. 6 of 2014 regarding *Jinayat* or Islamic criminal law has drawn particular attention from human rights activists. This Qanun supplements the previously enacted Qanuns in the Aceh region, including Qanun No. 11 of 2002 on *Aqidah*, Worship, and Islamic Symbols, Qanun No. 12 of 2003 on Alcoholic Beverages, Qanun No. 13 of 2003 on Gambling, and Qanun No. 14 of 2003 on Indecent Conduct.

Qanuns are part of Aceh's autonomy agreement with the Indonesian government, meant to reflect the conservative Islamic values of Aceh's majority population. The Qanuns cover a wide range of areas, including criminal law, family law, and public morality, and are enforced by the Aceh government and judiciary. One of the primary concerns is that the Qanuns impose strict Islamic law on the people of Aceh and frequently discriminate against non-Muslim and other minorities, such as Christians, Hindus, Buddhists, and those with indigenous beliefs. This research is significant as, following the 2006 Helsinki Agreement, a growing number of Qanuns were enacted to regulate various aspects of government and public life, having had an impact on the fundamental rights of the Acehnese people. It is significant, therefore, to assess the substance of the Qanuns through a human rights lens, given their comprehensive impact on the daily lives of the Acehnese population.

The legacy of orientalism and the strong influence of Islam in Aceh have complicated the interpretation and application of human rights and Islam in the province. Orientalism is a term used to describe Western representation of non-Western culture, which has generally led to misunderstandings of Islam and human rights, especially when the two terms are interpreted from a political perspective (Hussain, 2009). In the context of Aceh, some Acehnese view human rights as a product of Western orientalism, resisting the application of human rights in the province because of their long opposition to Dutch colonialisation. The negative perception of the national and international communities in Aceh can also contribute to the perceived conflict between Islam and human rights. This can make it

more difficult to find common ground and promote dialogue and understanding between different groups.

Islamic values were established by a number of Qanun in Aceh as it is the only province in Indonesia with an exceptionally high degree of autonomy to implement Sharia (Nurrahmi, 2022). Given this reality, evaluating the Qanuns from a human rights perspective is not intended to challenge the legitimacy of all Qanuns in Aceh. Rather, it seeks to assess their normative content, as some may be found to conflict with human rights standards. Some Qanuns, such as Qanun No. 6 of 2014 on *Jinayat*, which has been in effect since October 2015, have been identified as deserving of further review due to concerns about their compatibility with human rights principles (Fadlia & Ramadani, 2018).

This article seeks to address two main questions regarding Aceh's Qanuns and their impact on human dignity and minority and vulnerable groups. Firstly, it explores which norms should be regulated by the Aceh Qanun to reflect the dignity of the Acehnese people and comply with international human rights standards. This includes a comparison of the substance of the Qanun regulations after the Helsinki Agreement with those in the pre-colonial era, to better understand the Aceh government's stance on dignifying all elements of society in the wake of the agreement.

Secondly, the article analyses the substance of the Qanuns which affect minority and vulnerable groups. To examine the challenges faced by these groups in Aceh, the study considers the historical dynamics of minority recognition in other countries and uses a comparative approach to evaluate how Muslim countries and majority Muslim communities apply Islamic law in accordance with democratic principles and human rights. This approach highlights the pluralistic nature of Islamic legal jurisprudence and underscores the importance of respecting human rights, especially for minority and vulnerable groups.

Method

This study was conducted using a qualitative method with a descriptive method of presentation to collect comprehensive data. Primary materials were obtained through in-depth interviews with various stakeholders, including legal drafters of the Qanun 2014, members of the Aceh Parliament who supported the formulation of the Qanun, chief

justice of Sharia Court, community leaders, and representatives from academic and civil society organisations focused on the issues of minority and vulnerable groups. Some victims of human rights violation were also interviewed such as ethnic and religious minorities.

The basis for the establishment of Qanun

The Aceh government, after the Helsinki Agreement, has shown a persistent desire to broaden the scope of Islamic law through the issuance of Qanuns. This desire is in line with the government's understanding of the Helsinki Agreement, which grants Aceh the autonomy to govern its own affairs and protect the well-being of its people, including the enactment of Qanuns that are tailored to meet the specific needs of the province (UN, 2005). A Qanun can be considered as an endorsement by the central government of the special rights accorded to Aceh, granting it the power to implement the Qanun within its legal framework (Kingsbury, 2007).

The Aceh government's drive to implement Qanuns can be interpreted as reflecting its aim to bring about social change and govern the lifestyle of the Acehnese community (Feener, 2013). The Qanuns were introduced in Aceh as part of a broader effort to promote Islamic values and traditions to the Acehnese. Some supporters of Qanuns particularly Qanun *Jinayat*, such as members of the Aceh Parliament, argued that it was necessary to promote a more conservative, religiously oriented society in Aceh, which they saw as being more in line with Islamic teachings and values. They argued that Qanuns are seen as reflecting the will of the Acehnese, who have historically been supportive of greater autonomy and the promotion of Islamic values in the province.

Qanuns came into existence because of the Aceh government's interpretation of the Helsinki Agreement, which was signed between the Indonesian government and the Free Aceh Movement to peacefully resolve the conflict in Aceh. The agreement has since provided the people of Aceh with numerous autonomies, such as the authority to maintain and develop their own lifestyle and improve it across various dimensions, including basic and fundamental rights, gender equality, democracy, and the understanding of Islam (Feener, 2013). It can be noted that Qanuns are the reflection of a legitimate expression of the will of the Acehnese and as a means of promoting their rights to self-determination

and Islamic expression.

The Helsinki Agreement marked the end of the conflict in Aceh and aimed to bring dignity to all members of Acehnese society. However, Qanun with reference to *Jinayat* has since been a source of significant controversy and debate not only in Aceh but also in Indonesia, as it reflects broader tensions between conservative and progressive forces in Indonesian society. To maintain the spirit of dignity, it is important for policymakers in both the Central and Aceh Governments to carefully consider the human rights implications of the Qanun and ensure that it is implemented in a way that respects the rights and freedoms of all individuals in Aceh. These include protecting basic rights, promoting gender equality and justice, advancing democracy, and preserving the cultural understanding of Islam.

The Qanun has been studied by researchers from a human rights perspective. One of the commonly studied topics is the caning punishment prescribed in Qanun *Jinayat*. The discussion of the Qanun *Jinayat* has been marked by debates over the types of punishment that should be included. The removal of stoning, the death penalty, and the amputation of hands was ultimately enacted due to a variety of factors, including the lack of readiness among both the government and the public to implement them, their incompatibility with Indonesia's legal system, differences of opinion among Islamic jurists, and the belief that the application of Islamic criminal law must occur in stages (*tadarruj*) (Salma, *et al.*, 2022) the provisions of *ḥudūd* have been agreeable in terms of the actions and punishments. However, some of them are not mentioned in Aceh Qanun No. 6/2014 on *Jinayat* (Criminal. Butt (Butt, 2018) shows that the Qanun *Jinayat* clearly violates human rights norms as reflected in international and Indonesian law, and its existence does not bode well for the future of Indonesian pluralism.

This highlights the important role that legal pluralism plays in accommodating the needs and preferences of different communities within Aceh's diverse social fabric. Arskal Salim's research (Salim, 2010) delves into the study of Qanun in the dynamic context of legal pluralism in Aceh. Following the fall of the New Order regime, the central government recognised the need for more legal pluralism in Aceh as a first step towards achieving political peace. Abdullah Saeed (Saeed, 2006) looks at the various interpretations of Islamic law applied in Indonesia, Muslim countries and majority Muslim countries.

A study on the convergence of Islamic law and other religious norms shows that Aceh tends to produce regional regulations that are religious in nature, such as Qanun Aceh No. 6 of 2014 regarding *Jinayat*. Although its formation and dissemination only involve followers of Islam, the Qanun accommodates teachings from other religions. According to Halim's research (Halim, 2022), non-Muslim residents in Aceh are afforded the option to choose between the national criminal code (KUHP) and the Islamic criminal code (Qanun *Jinayat*). In practice, it has been found that non-Muslim residents tend to make a rational choice based on factors such as efficiency, affordability, effectiveness, and speed, and thus often opt to be charged under the Qanun *Jinayat*.

Several studies have also investigated the implementation of the Qanun *Jinayat* provision. The Aceh government has established the Wilayatul Hisbah (Maifizar, 2022), an institution responsible for overseeing the adherence to Islamic Sharia in Aceh Province. Qanun is considered to have had a contribution to violations of Islamic values, such as sexual behavior among Muslim youths (Muhibbuthabry, *et al.*, 2023). The prevalence of news content pertaining to Sharia violations demonstrates the significance being placed on enforcing Islamic principles and regulations (Nurrahmi, 2022). Acts of violence, such as being bathed in dirty water or physical assault against the accused before being tried in court, are considered a violation of the criminal legal procedure under Qanun *Jinayat* (Ismail, *et al.*, 2022).

Legality and the substance of Qanun

The implementation of human rights norms in Aceh is a complex issue that involves balancing the protection of individual rights and freedoms with the cultural and religious values of the local community. This conflict has been used by the Aceh government to prioritise religious (Islamic) values when formulating criteria for rights and freedoms. Some believe that Islam in Aceh is an integral part of society and should be used as a legal basis for determining rights and freedoms. They argue that the Acehnese should have the freedom to determine their own legal status and developments through the enactment of Qanuns, as part of the central government's commitment to resolving conflict in the region. Both of these arguments assert that the reality of Islam in Aceh highlights a long

tension between the implementation of human rights and the prioritisation of Islam. The Aceh Government must understand that using religious values (Islamic criteria) as the sole basis for determining rights and freedoms can lead to discrimination and violations of human rights.

It is important to note that the implementation of human rights should not be seen as a threat to Islamic Sharia. While it is true that Islam is an integral part of Aceh, it is important to recognise that human rights are universal and apply to all individuals, regardless of their religion or cultural background. Some Islamic countries have adopted laws and policies that uphold human rights whilst also respecting religious tradition. For example, after the Arab Spring, Tunisia revoked Islamic inheritance and interfaith marriage bans because the two laws discriminate against women (Khanif, 2019). Based on this example, the Aceh government should ensure that the enactment of Qanuns considers the protection of human rights, especially for vulnerable and minority groups. The substantive norms in Qanuns should engage a balanced approach that respects the diverse cultural groups in Aceh, as well as Islamic Sharia in the province, whilst still protecting individual rights of the Acehnese.

The signing of the Helsinki Agreement was an important milestone, not only in resolving the long-standing conflict in Aceh but also in reconciling cultural Islam and international human rights. The Indonesian Government must realise that ending the conflict will also necessitate accommodating some parties involved in the conflict in order to advance their interests. While there were some ideological differences about the application of Islam within the Free Aceh Movement (GAM), most of its members were strident supporters of the implementation of Sharia in an attempt to assert their identity and resist what they perceived as foreign influence (Kingsbury, 2007). The GAM believed that the decline of Islam in Aceh was a form of foreign occupation, creating a hostile attitude towards human rights, which is seen as an arm of western imperialism. It can be said that some Acehnese have used Islam as an ideology, placing the political power of Islam at the forefront of Acehnese politics and using Sharia to filter certain rights and freedoms for the Acehnese.

Aceh's status as a special autonomous region allows it to regulate and manage its own affairs and create its own laws through Qanuns. Subject to democratic process, the drafting

of Qanuns and other local laws must be done through a democratic and transparent process and must not be used to discriminate against certain groups or violate human rights. Aceh is a local democracy, which includes the enactment of legal policies. The presence of local Aceh parties, sharia courts, and Qanuns as regional laws highlights the difference between Aceh and other Indonesian regions or provinces. Despite its special authority granted by laws such as Law no. 44 of 1999 and Law no. 11 of 2006, Aceh remains a part of Indonesia, and Qanuns should be considered as part of the Indonesian national legal system.

Overseeing a region with asymmetric decentralisation, the Aceh government holds unique privileges when creating its own regulations (Din & Abubakar, 2021), though it must still align with fundamental norms as its primary point of reference. Even though Aceh has a unique legal system different from other regions in Indonesia, Qanuns must be considered as part of the national legal system. This means that Qanuns must be consistent with the Indonesian Constitution and other national laws.

It is not uncommon for judges in Aceh to apply Indonesian national laws, including Supreme Court circulars, in cases where they believe that the national law provides greater protection for victims or stricter penalties for perpetrators. In cases where national laws offer greater protection or stricter penalties, judges in Aceh have the discretion to apply those laws rather than the Qanuns.

The decision of Rosmawardani, the Chief Judge of the Aceh Sharia Court (2020-2021) to apply the Indonesian supreme court circular ruling in the case of sexual violence against children, was based on her belief that the circular letter of the Supreme Court has tougher penalties for perpetrators compared to Qanuns (Interview, June 8, 2021). However, the judge's decision started from the results of an investigation and the prosecutor's demands. In an interview, Rosmawardhani said:

In my opinion, prosecutors in Aceh should be equipped with knowledge of Islamic Sharia before assuming their duties. Investigators assigned here (Aceh) should be Muslims so that they can more easily learn Sharia. They should understand the position of criminal law and how the process or flow of criminal law examination works. (Interview, June 8, 2021).

There are notable inconsistencies in the enforcement of the law for similar cases, particularly regarding child sexual violence. Law enforcement officials have yet to demonstrate

a consistent approach in addressing such cases, and disagreements among them further compound the issue. As a result, there is a pressing need to establish a clear and uniform legal framework to address this critical matter (Aprilianda, Farikhah & Krisna, 2022).

Discretion in the legal system is very common. However, in the context of Aceh, Sharia is unique because most judges believe that Qanun is derived from the interpretation of Islamic jurists regarding Sharia. The term Sharia, in Arabic, refers to “the way” and encompasses broad moral and ethical principles gleaned from the Qur’an and the teachings and sayings of the Prophet Muhammad. It is not necessarily a legal term (Afsaruddin, 2017). The definitions and explanations of Sharia indicate that it encompasses more than just the legal dimension, also including ethics, morality, and way of life. As a result, the legal interpretations of Sharia by legal experts, which result in jurisprudence (*fiqh*), only convey one small part of the Sharia.

It is important to distinguish between Sharia and *fiqh*, as *fiqh* is a discipline derived from the Qur’an, *Sunnah* (prophetic traditions), and other sources of evidence by jurists (Siregar, 2008) effected in 2001 when the national government decided to give a special status and wide autonomy to this region. However, certain problems have arisen. One of these is whether the Islamic courts of justice have been conferred competence to deal with Islamic criminal law and if so, which judicial institution should deal with the matter. Another is the meaning and scope of mu’amalat law (the law dealing with human relationships). The results of Islamic juristic thought, also known as *fiqh*, can be flawed and subject to change based on human progress and evolution. Muslim intellectuals hold that laws derived from Sharia must always uphold human dignity, which is considered the cornerstone of pre-modern Islamic human rights (Afsaruddin, 2017). Many Islamic jurists agree on the distinction between Sharia and *fiqh*. Asifa Quraishi-Landes states:

Sharia is not a code of law or court decisions enforced by the government, and it is not a set of rules that are decided in court. In contrast, Sharia is a Qur’an-based guideline that directs Muslims to lead an Islamic life. Sharia did not originate in the state and did not even originate in a single book or set of rules. Sharia is divine and philosophical (Quraishi-Landes, 2016).

The Qanun is a component of Islamic jurisprudence (*fiqh*) that incorporates Sharia principles. Some see it as having a divine aspect capable of addressing human issues.

However, the substance of the Qanun can change, influenced by social conditions in Aceh. The Qanun must prioritise the protection and respect of human dignity, being a product of Muslim thought. As an interpretation of Sharia, the Qanun is open to revision and must adapt to changing circumstances. To align with Indonesia's national legal system, the substance of the Qanun should be consistent with the 1945 Constitution of the Republic of Indonesia and ratified by human rights instruments.

The review of Aceh's Qanuns is important because it has stronger binding power than regional regulations outside of Aceh. This is specified in Article 269, paragraph two of Law No. 11 of 2006 on the Government of Aceh, which mandates that all national regulations for Aceh must conform to the law (Bagir, *et al.*, 2011). The provisions of the article suggest that various Qanuns may emerge in terms of substance, regulating not only public policies but also private spaces. In Aceh, as a region with special authority, the Qanuns may reflect the majority vote and be heavily influenced by religious values to regulate community morality.

The creation of Qanuns that could protect the basic rights of the Acehnese people is not an uncommon precedent in Muslim-majority countries. National laws in many Islamic and majority Muslim countries are shaped by their interpretations of Islamic teachings. Over fifty countries, including members of the Organisation of Islamic Cooperation, still apply Sharia or incorporate regulations influenced by Islamic values (Esmacili, 2011). This emphasises the integral relationship between Sharia and the advancement of law in Muslim and predominantly Muslim countries, including Indonesia. Disregarding or abstaining Islamic law from the progression of human rights would negate the factual legal development, making it challenging to enforce human rights in these nations.

The implication of Qanun in the context of human rights

Since the 17th century, the implementation of Islamic law has been a common practice among governments in Muslim-majority countries and provinces, including in Aceh, where Sharia was blended with local legal customs leading to various forms of Islamic legal pluralism. However, during the colonial era, the influence of Sharia and the authority of Islamic judges (*qadhi*) declined as the Dutch imposed their version of colonial law (International Crisis Group, 2006). The decline in the authority and influence of Sharia in Aceh was still ongoing at

the beginning of Indonesia's independence, later becoming the basis used by some Acehnese people to demand individual treatment, especially when aiming to re-enforce Islamic law. In early 1948, Daud Beureueh, an influential community figure during the structuring of Aceh in early Indonesian independence, asked President Sukarno to ensure the implementation of Islamic law in Aceh and make post-colonial Indonesia an Islamic state (International Crisis Group, 2006) The push for implementing Islamic law in Aceh has been intertwined with political interests both at the regional and national level.

The Aceh government has interpreted their authority to regulate the interests and needs of the Acehnese people through Law No. 11 of 2006 concerning the Aceh Government. The Qanuns, which have content related to morality, are in line with Islamic legal standards and reflect this interpretation. Article 125 of the Law specifically outlines that:

- (1) Islamic Sharia implemented in Aceh includes *aqidah*, *sharia*, and morals.
- (2) Islamic Sharia as referred to in paragraph (1) includes worship, *ahwal al-syakhsbiyah* (family law), *muamalah* (civil law), *jinayat* (criminal law), *qadha'* (judicial), *tarbiyah* (education), *da'wah*, *syiar*, and the defense of Islam.
- (3) Further provisions regarding the implementation of Islamic Sharia as referred to in paragraph (1) shall be regulated by Aceh Qanun.

The article provides a general overview of the areas covered by the implementation of Sharia in Aceh, which includes not only criminal law but also other aspects of life. While it is true that Qanuns contain legal instruments that regulate the implementation of Sharia in Aceh, it is worth noting that Qanuns have been controversial because of their negative impact on human rights.

The implementation of Aceh Qanuns must align with human rights standards, as stated in the Helsinki Agreement. The agreement demands that both the Aceh and central government base their Qanuns on human rights principles, as outlined in point 1.4.2. It is important to ensure that the implementation of Aceh's Qanuns aligns with human rights norms for the protection and promotion of the rights of the people of Aceh.

The Aceh Legislature will reformulate the legal provisions for Aceh based on the universal principles of human rights as enshrined in the United Nations International Covenants on civil and political rights and on economic, social, and cultural rights (UN, 2005).

By using human rights principles in setting regulations in Aceh, the Helsinki Agreement aimed to bring positive changes and improve the fulfilment of the rights of marginalised communities affected by the conflict in the region. However, over a decade since the Helsinki Agreement was implemented, there has been a growing number of Qanuns that are inconsistent with universal human rights and the provisions of the Helsinki Agreement. Furthermore, there have also been discriminatory government policies, such as the Bireuen Regency Ministry of Religious Affairs' refusal to grant recommendations for the establishment of a Muhammadiyah mosque in July 2016. The rejection was based on the two previous letters written by the District Police Office of Bireuen and the Head of Sub-district Juli which recommended ceasing construction of the mosque due to community resistance. This kind of restriction was often based on considerations by the government in an effort to restrict a certain right to avoid conflict within society.

The community's resistance to the construction of the mosque was a new barrier for minorities to enjoy their rights where previously these rights were prohibited by Qanun. The incident in Bireuen asserts that even though Qanun has been implemented to promote Islamic values and principles, its application depends on the local context of interpretation and preference. The rejection of the mosque construction also shows that the Qanun Aceh's enforcement can lead to discrimination and human rights abuses, particularly for marginalised and minority groups. The 2014 Qanun *Jinayat* is one of the discriminatory norms in Aceh that remain a subject of ongoing debate and discussion. Despite its history, it has become a prominent part of the emergence of regulations with Islamic legal nuances in Indonesia in recent years, reflecting the ideal perspective of the Muslim community on justice and social order as expected by policy makers (Feener, 2013).

The impact of Qanun on vulnerable and minority groups

The implementation of Qanuns in Aceh must be executed in line with the purpose of dignifying the Acehnese people, as stated in the Helsinki Agreement. Before the peace agreement between the GAM and the Indonesian government, the people of Aceh faced atrocities during the prolonged conflict. It is crucial for the Aceh government to view the Helsinki Agreement as a vital document, like the Universal Declaration of Human Rights,

one which aims to restore the human dignity that was lost during the war. The Qanun should strive to improve the social conditions of the Acehnese people, as envisioned by the parties when the Helsinki agreement was signed.

Aceh has a long history of enacting Qanuns, even before the colonial era. The Indonesian government's recognition of the Qanun is a sign of respect for the Acehnese people. For example, John Braithwaite (Braithwaite, *et al.*, 2010) notes that punishments for theft and drunkenness, such as cutting off hands and pouring hot tin down the throat, were imposed in Aceh in the pre-colonial era to enforce Islamic law (Uddin, 2010); punishments more severe than in other Muslim countries, including Saudi Arabia (Uddin, 2010). Therefore, the Qanun enacted in Aceh after the Helsinki Agreement is not a new concept for the people of Aceh.

The implementation of Qanun *Jinayat* in Aceh, which is based on an interpretation of Islamic law, highlights the privileged status of the majority religion in both political and legal realms. This law complements and benefits the majority religion, providing ease of building places of worship, while minority religions face resistance in establishing their places of worship (Khanif, 2015). This creates a complex relationship between human rights protection standards and the state, as the existence of regulations based on religious interpretations can perpetuate discriminatory policies towards minorities and vulnerable groups.

The position of religious minorities is often at risk due to the dynamic relationship between religion and the state, especially in situations where the government prioritises maintaining social harmony or religious unity over individual rights and freedoms. In some cases, governments often discriminate against religious minorities as a means of appeasing the majority or resolving conflicts between different religious groups. This can take many forms, such as limiting access to employment, political participation, or restricting the practice or expression of minority religion. The enactment of Qanuns may lead to human rights violations and can create a climate of intolerance and discrimination, having long-lasting impacts on religious minorities as well as undermining the equality and fairness principle of Aceh's democratic governance.

It is true that opinions of Qanun *jinayat* (Islamic criminal law) in Aceh vary among different groups, including religious minorities. While some Acehnese people prefer caning

as a punishment for certain crimes, others are opposed to this form of punishment, as well as the entire system of Sharia-based criminal law. The proponents of caning argue that this type of punishment allows the accused to return quickly to work or be reunited with his or her family. For example, one anonymous Chinese interviewee agreed with the application of Qanun *Jinayat* which bans gambling and drinking alcohol because most of the Chinese diaspora in Aceh gambled before the enactment of the Qanun. Even though there is a voluntary submission and compliance from some minority groups, the caning punishment constitutes torture and is cruel, inhuman, and degrading treatment which is not in line with international human rights standards or the Indonesian constitution.

The unequal treatment of women is deeply rooted in tradition, history, culture, and religious attitudes, making it crucial for states to ensure that no religious teachings or social and cultural values harm women (UN Secretariat, 2006). It is important for Indonesia as a state party to the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) to take proactive steps to address any discriminatory laws or practices that harm women. This requires a sustained commitment from the government, civil society, and religious leaders to challenge discriminatory laws and practices and to provide opportunities for greater participation for women in all aspects of society.

The implementation of Islamic law has shaped the character and culture of Aceh, affecting not just the social aspect but also the legal norms in the form of Aceh Qanuns. Islamic values are formalised by legislation, with Islamic principles acting as a governing principle in Aceh. According to Article 20 of Law No. 11 of 2006, the administration of Aceh and district/city governments is guided by the following general principles of governance: a) Islamic principles, b) legal certainty, c) public interest, d) orderly administration, e) openness, f) proportionality, g) professionalism, h) accountability, i) efficiency, j) effectiveness, and k) equality.

Principally, non-Muslim minorities in Aceh are free to practice their religion as guaranteed by the Law on Governing Aceh. The Aceh government and district/city governments are responsible for fostering harmony, respecting religious values, and protecting religious communities' freedom to worship according to their religion (article 127 of the Law No 11

of 2006). This law principally recognises the diversity of religious beliefs in Aceh, including the presence of non-Muslim minorities, and provides legal protections for their religious freedoms. However, some incidents of persecution and violence against non-Muslim minorities demonstrates that the situation for minorities in Aceh remains perilous. For example, an attack on a church in Singkil and Banda Aceh in 2015 and 2016 respectively asserted that the enactment of discriminatory laws may lead to the loss of religious pluralism (Khanif, 2015).

Tensions between religious majorities and religious minorities have been a longstanding issue in Aceh. Religious minorities such as Christians, Buddhists, Hindus, and religious minorities within Islam faced discrimination and harassment from the majority Muslim. When the relationship between a majority and a minority remains tense, the government generally will follow the will of the majority when validating the rights of religious minorities. For example, the Government of Aceh simply follows a fatwa of the Ulama Consultative Council (MPU) No. 9/2014 which prohibits a certain interpretation of Islamic principles. For example, the Fatwa asserts that forbidding *qunut* in the Fajr prayer is wrong. The Fatwa then influenced prosecution and discrimination against minorities within Islam in Aceh.

The MPU fatwa also regulates the differences in worship practices in Islam, affecting religious groups with distinct beliefs compared to mainstream Aceh. On June 13, 2019, a group of individuals rejected a lecture by speaker Firanda Andirja at the Al Fitrah Mosque in Banda Aceh, as Firanda is associated with the Wahhabi sect. However, according to Muslim Ibrahim, the Chairman of the Aceh Ulama Consultative Council (MPU), most people in Aceh follow the *Ablus Sunnah Wal Jamaah* teachings (BBC News Indonesia, 2019). “*Ablus Sunnah Wal Jamaah*” means “people who follow the Prophet’s traditions (sunnah) and the Islamic community (jamaah)” which refers to the followers of Prophet Muhammad’s traditions and the consensus of the Muslim community

Differences in religious understanding have led to tensions amongst community groups. In response, thousands of Islamic boarding school students and protester organised a demonstration called the *Aswaja* Parade on September 10, 2015, claiming to represent the *Ablussunnah Wal Jamaah (Aswaja)* group. The demonstrators gathered at the Aceh Governor’s Office in Lampineung, then marched upon several locations in Banda Aceh to

express their demands. They called for the Aceh government to regulate worship practices based on the Syafii school of thought and requested the revocation of permits for Islamic schools and institutions that deviated from the Syafii school and *Ahlussunnah* (*Ashariyah* and *Maturidiyah*) belief. They also demanded that those appointed to the Aceh Government Work Unit (SKPA) or other public agency positions in Aceh align with the Ahlussunnah teachings (acehkita.com, 2015).

The Aswaja parade highlights what can be perceived as a lack of tolerance for minority groups in Aceh. Minority groups have the right to hold different views and practices and the government must protect their rights to create an equal footing with the majority. While the state can encourage tolerance, it cannot arbitrarily limit minority groups. The existence of minority groups brings diversity to society and must be respected, not suppressed.

The demands voiced in the *Aswaja* Parade demonstrate a severe level of discrimination and restrictions on the expression of religious belief, including worship and teaching activities. This has direct and indirect impacts on forum internum. The government must engage in affirmative protection policies to ensure the rights of minority groups are respected, not suppressed by the majority's aspirations.

Conclusion

This study suggests that the Aceh Qanun reflects the rights held by the Acehnese people with the goal of dignifying them, as per the Helsinki Peace Agreement. However, its implementation has had negative consequences on human rights protection, especially for vulnerable groups and minorities. The Qanun's policies in Aceh are inconsistent with the principles of universal human rights and the Helsinki Agreement, which require compliance with international human rights covenants. The Sharia regulation in Aceh encompasses not only religious expression, but also religious freedom.

The implementation of the Qanun affects vulnerable groups and minorities who have been "forced to conform" since the Qanun's enforcement. To align the Qanun with human rights standards, it is crucial to offer recommendations for improvement. The objective is to implement the Qanun without compromising human rights, which can be achieved through a productive dialogue between Qanun and human rights actors.

Bibliography

- acehkita.com (2015) Parade Ahlussunnah, Ini 12 Tuntutannya. *ACEHKITA.COM*. [Online]. Available from: <https://acehkita.com/parade-ahlussunnah-ini-12-tuntutannya/> [Accessed: 27 March 2023].
- Afsaruddin, A. (2017) *What Sharia means: 5 questions answered*. [Online]. 16 June 2017. The Conversation. Available from: <http://theconversation.com/what-sharia-means-5-questions-answered-79325> [Accessed: 26 March 2023].
- Aprilianda, N., Farikhah, M. & Krisna, L.A. (2022) Critical Review Selecting a Proper Law to Resolve Sexual Violence Against Children in Indonesia. *Samarah*. [Online] 6 (2), 954–974. Available from: doi:10.22373/sjkh.v6i2.9050.
- BBC News Indonesia (2019) Ustaz Firanda ditolak di Aceh karena ‘lebih cenderung ke Wahabi’. *BBC News Indonesia*. [Online] 14 June. Available from: <https://www.bbc.com/indonesia/indonesia-48617536> [Accessed: 27 March 2023].
- Braithwaite, J., Braithwaite, V., Cookson, M. & Dunn, L. (2010) *Anomie and Violence*. [Online]. ANU Press. Available from: <http://remote-lib.ui.ac.id:2063/stable/j.ctt24hf62> [Accessed: 12 April 2023].
- Butt, S. (2018) Religious conservatism, Islamic criminal law and the judiciary in Indonesia: a tale of three courts. *Journal of Legal Pluralism and Unofficial Law*. [Online] 50 (3), 402–434. Available from: doi:10.1080/07329113.2018.1532025.
- Din, M. & Abubakar, A.Y. (2021) The Position of the Qanun Jinayat as a Forum for the Implementation of Sharia in Aceh in the Indonesian Constitution. *Samarah*. [Online] 5 (2), 689–708. Available from: doi:10.22373/sjkh.v5i2.10881.
- Esmacili, H. (2011) The Nature and Development of Law in Islam and the Rule of Law Challenge in the Middle East and the Muslim World. *Connecticut Journal of International Law*. 26 (2), 329–366.
- Fadlia, F. & Ramadani, I. (2018) The Qanun Jinayat Discriminates Against Women (Victims of Rape) in Aceh, Indonesia. *Journal of Southeast Asian Human Rights*. [Online] 2 (2), 448–470. Available from: doi:10.19184/jseahr.v2i2.8358.
- Feener, R. (2013) Social Engineering Through Shari’a: Islamic Law and State-Directed Da’wa in Contemporary Aceh. *Indonesia Law Review*. [Online] 3 (3). Available from:

doi:10.15742/ilrev.v3n3.42.

- Halim, A. (2022) Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh. *Human Rights Review*. [Online] 23 (2), 265–288. Available from: doi:10.1007/s12142-021-00645-x.
- International Crisis Group (2006) *Islamic Law and Criminal Justice in Aceh*. [Online]. Available from: <https://icg-prod.s3.amazonaws.com/117-islamic-law-and-criminal-justice-in-aceh.pdf> [Accessed: 27 March 2023].
- Ismail, F.H., Sulong, J., Muzana, Z., Sabirin, et al. (2022) Vigilantism among the Community in Aceh Against the Accused of Violating the Shariah Criminal Law. *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*. [Online] 17 (2), 531–553. Available from: doi:10.19105/al-Ihkam.v17i2.6751.
- Khanif, A. (2015) *The paradox of religious (in)tolerance in Indonesia*. [Online]. 16 October 2015. The Jakarta Post. Available from: <https://www.thejakartapost.com/news/2015/10/16/the-paradox-religious-intolerance-indonesia.html> [Accessed: 27 March 2023].
- Khanif, A. (2019) Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*. [Online] 4 (2), 141–151. Available from: doi:10.22373/petita.v4i2.24.
- Kingsbury, D. (2007) The Free Aceh Movement: Islam and democratisation. *Journal of Contemporary Asia*. [Online] 37 (2), 166–189. Available from: doi:10.1080/00472330701253759.
- Maifizar, A. (2022) Wilayatul Hisbah's (WH) strategy to enforce the law against Khalwat case in Ujung Karang West Aceh Regency. *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*. [Online] 22 (1), 37–52. Available from: doi:10.18326/ijtihad.v22i1.37-52.
- Muhibbuthabry, M., Jailani, J., Siregar, P.A. & Hutasoit, E.F. (2023) Qanun, religious education, religiosity and sexual activity among Muslim youth. *HTS Teologiese Studies / Theological Studies*. [Online] 79 (1). Available from: doi:10.4102/hts.v79i1.8020.
- Nurrahmi, F. (2022) Mediated Representation of Sharia in Aceh: A Hybrid Approach to Media Frames. *Religions*. [Online] 13 (9). Available from: doi:10.3390/rel13090857.
- Quraishi-Landes, A. (2016) Five myths about sharia. *Washington Post*. [Online] 24 June. Available from: <https://www.washingtonpost.com/opinions/five-myths-about->

sharia/2016/06/24/7e3efb7a-31ef-11e6-8758-d58e76e11b12_story.html [Accessed: 27 March 2023].

- Saeed, A. (2006) *Approaches to the Qur'an in Contemporary Indonesia*. 1st edition. Oxford ; New York : London, Published in association with the Institute of Ismaili Studies.
- Salim, A. (2010) Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh. *The Journal of Legal Pluralism and Unofficial Law*. [Online] 42 (61), 1–29. Available from: doi:10.1080/07329113.2010.10756640.
- Salma, Fajri, A., Hidayat, T. & Safri, E. (2022) The Other Side of the History of the Formulation of Aceh Jinayat Qanun. *Abkam: Jurnal Ilmu Syariah*. [Online] 22 (1), 83–110. Available from: doi:10.15408/ajis.v22i1.21000.
- Siregar, H.B. (2008) Islamic Law in a National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia. *Asian Journal of Comparative Law*. [Online] 31–26. Available from: doi:10.1017/S2194607800000156.
- Uddin, A.T. (2010) Religious Freedom Implications of Sharia Implementation in Aceh, Indonesia Islamic Law and Constitutional Liberty. *University of St. Thomas Law Journal* 603.
- UN (2005) *Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement | UN Peacemaker*. [Online]. Available from: <https://peacemaker.un.org/indonesia-memorandumaceh2005> [Accessed: 26 March 2023].
- UN Secretariat (2006) *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies :: note /: by the Secretariat*. [Online] Available from: <https://digitallibrary.un.org/record/576098> [Accessed: 27 March 2023].
- Zainal Abidin Bagir, Adzkar Ahsinin, Afridal Dami, Roichatul Aswidah, et al. (2011) *Analisis Qanun-Qanun Aceh Berbasis Hak Asasi Manusia*. Indonesian Centre for Democracy and Human Rights. AA Sudirman (ed.). Jakarta, Indonesian Centre for Democracy and Human Rights.