

The Existence of Qanun Jinayat: Legislative Efforts to Integrate Islamic Law into National Law

 Muhamad Rusydan Fauzi¹,  Putra Arya Wijaya²  Rina Isti Yuniarsih^{3*}  Deden Najmudin⁴

^{1,2,3,4}Fakultas Syari'ah dan Hukum Universitas Islam Negeri Sunan Gunung Djati, Bandung

*Corresponding Author, *Email*: isti83534@gmail.com

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Abstract

Islamic law, derived from the teachings of the Qur'an and Hadith, plays a significant role in various countries with a majority Muslim population. Indonesia, the country with the largest Muslim population in the world, has experienced fluctuations in the integration of Islamic law within its national legal system. This dynamic has led to the legislative incorporation of Islamic law into the national legal framework as an expression of religious obedience in fulfilling the principles of Sharia. This legislative effort is manifested in Aceh's Qanun Jinayat, implemented in the Nanggroe Aceh Darussalam Province. This study aims to examine the existence of Aceh's Qanun Jinayat within the national legal system following the legislative integration of Islamic law. This research employs a normative legal approach, utilizing juridical-normative methods, with data collection based on the study of primary, secondary, and tertiary legal materials. The findings of this study indicate that the existence and implementation of the Qanun Jinayat in Aceh aim to preserve security and welfare as stipulated in the Aceh Qanun Jinayat. This is mainly due to the Islamic law legislation framework, which grants the Nanggroe Aceh Darussalam Province the authority to apply Islamic legal principles through regional autonomy.

Keywords: Existence legislation; Islamic Law; Qanun Jinayat Aceh;



Introduction

Within Indonesia's national legal system, three distinct legal traditions coexist and evolve within society: Western law, customary law, and religious law.¹ Islamic law, commonly referred to as Sharia, is one of the critical pillars of Muslim life.² It plays a significant role in the national legislative framework of many countries with majority Muslim populations.³ This role extends beyond religious considerations to encompass critical social, political, and economic dimensions of life in Muslim communities. The prospects for Islamic law within the context of Indonesia's national legal system are both positive and essential. Socio-cultural and socio-juridical foundations provide a strong basis for implementing Islamic law, which offers a clear and universal legal framework grounded in fundamental human values. Muslims serve as God's stewards (*khalifatullah*) on earth.⁴

The implementation of Islamic law in the Province of Nanggroe Aceh Darussalam has drawn the attention of legal scholars, as Aceh is the first region in Indonesia with a predominantly Muslim population that has sought to formalize Islamic law as a positive law to govern modern societal life. This is particularly significant within the broader context of Indonesian society, which is still primarily influenced by Dutch colonial legal traditions. The Islamic law applied in Aceh is codified in the Aceh *Qanun*, which includes provisions on criminal law, particularly the regulation of *jinayat* or criminal offences.⁵

¹ M. Yasin al Arif, Gandhi Liyorba Indra, dan Is Susanto, "Internalization of Islamic Law in the Formation of Regional Regulations in Lampung Province," *Analisis: Jurnal Studi Keislaman* 23, no. 2 (2023): 259–86.

² M. Yasin al Arif, "Internalization of Maqasid Al-Syari'ah in Judge's Decision" (1st Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019), Atlantis Press, 2020), 206–10, <https://doi.org/10.2991/assehr.k.201113.039>.

³ Edi Rosman, "Legislasi Hukum Islam Di Indonesia (Sejarah Dan Relevansi Praktis Pembaharuan Hukum Nasional)," *Al Hurriyah: Jurnal Hukum Islam* 1, no. 1 (25 Januari 2017): 27–44, <https://doi.org/10.30983/alhurriyah.v1i1.478>.

⁴ M. Amin Suma, *Himpunan Undang-undang Perdata Pelaksanaan lainnya di Negara Hukum Indonesia* (Jakarta: PT Grafindo Persada, 2004)44.

⁵ Amsori Amsori dan Jailani Jailani, "Legislasi Qanun Jinayat Aceh Dalam Sistem Hukum Nasional," *Ar-Raniry: International Journal of Islamic Studies* 4, no. 2 (28 Juli 2020): 221–56, <https://doi.org/10.22373/jar.v4i2.7549>.

The Aceh Qanun legal framework is established under Law No. 11 of 2006 on the Governance of Aceh.⁶ In the implementation of Sharia law in Aceh, criminal law *jinayat* has been developed within the scope of criminal justice, which includes a) Qanun of Nanggroe Aceh Darussalam Province No. 12 of 2003 on Alcoholic Beverages and Similar Substances; b) *Qanun* of Nanggroe Aceh Darussalam Province No. 13 of 2003 on Gambling (*Maisir*); c) *Qanun* of Nanggroe Aceh Darussalam Province No. 14 of 2003 on Seclusion (*Khalwat*); and d) Qanun of Aceh Province No. 9 of 2014 on Criminal Law (*Jinayat*). The enactment of these Aceh *qanuns* provides the foundation for implementing Islamic law in Aceh. The Aceh government, including regional and municipal governments, is tasked with enforcing Islamic law and promoting Islamic values by ensuring order in places prone to violations as stipulated in the Aceh *Qanun*.⁷

Several previous studies are relevant to this research, including one conducted by Mursyidin, which discusses the conception and implementation of *jinayat* law in Aceh within the framework of national legislation. Mursyidin concludes that the formulation of the *Qanun Jinayat* in Aceh has been officially enacted by the authorities or legislative institutions, thus allowing its formal implementation.⁸ Another study, authored by Hudzaifah Achmad Qotadah, Ali Abdul Wakhid, and Is Susanto, explores issues related to implementing the *Qanun Jinayat* in Aceh Province.⁹ Furthermore, research by Yahya Nasrullah examines the background of the debates that emerged during the drafting of the *Qanun Jinayat*, particularly between religious scholars and civil groups.¹⁰

⁶ Yulia Susantri dan Roni Hidayat, "Perda, Qanun, dan Perdasi Dalam Sistem Hukum Nasional," *Syah Kuala Law Journal* 4, no. 1 (28 April 2020): 33–44, <https://doi.org/10.24815/sklj.v4i1.16595>.

⁷ Mursyidin AR Apridaryanti, "Penerapan Syariat Islam Di Perbatasan Aceh Sumatera Utara (Straegi Dinas Syariat Islam Aceh Tamiang)," *Politica: Jurnal Hukum Tata Negara Dan Politik Islam* 7, no. 2 (30 Desember 2020): 153–74, <https://doi.org/10.32505/politica.v7i2.2040>.

⁸ Mursyidin Ar, "Konsepsi Dan Implementasi Hukum Jinayat di Aceh Dalam Legislasi Hukum Nasional," *Journal of Innovation Research and Knowledge* 1, no. 3 (25 Agustus 2021): 441–54, <https://doi.org/10.53625/jirk.v1i3.218>.

⁹ Hudzaifah Achmad Qotadah, Ali Abdul Wakhid, dan Is Susanto, "Problems with the Implementation of Qanun Aceh Number 6 of 2014 Concerning Jinayat Law," *Analisis: Jurnal Studi Keislaman* 22, no. 1 (2022): 111–32.

¹⁰ Nasrullah Yahya, "Legislasi Hukum Positif (Fikih) Aceh: Tinjauan Pergumulan Qanun Hukum Jinayah," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 2 (31 Desember 2014): 149–66, <https://doi.org/10.18326/ijtihad.v14i2.149-166>.

Unlike previous studies, this research focuses on enacting the *Qanun Jinayat* in Aceh by authorities and legislative bodies through a process known as Islamic Law Legislation, ensuring the effective and smooth implementation of the *Qanun Jinayat* in Aceh. This study examines the legislative efforts surrounding the *Qanun Jinayat* in Aceh that led to its approval and implementation in the Province of Nanggroe Aceh Darussalam. The novelty of this research lies in its focus on the legislative efforts behind the existence of the *Qanun Jinayat*, which serves as the foundation for applying *jinayat* law in Aceh. It highlights that the *jinayat* law in Aceh did not emerge independently but through the legislative process of Islamic law within the national legal system.

Research Method

This research is a normative legal study which focuses exclusively on written regulations. Another term for normative legal research is doctrinal legal research, also referred to as library research or document study. It is considered library or document research because it predominantly relies on secondary data in the literature. Therefore, this study is categorized as juridical-normative research, utilizing both a statute and conceptual approach. The data collection technique employed in this study involves gathering library materials by collecting and analyzing primary, secondary, and tertiary legal sources. The purpose of the literature review is to find, study, and critically examine various documents and other literature related to the focus of this research, namely the legislation of Islamic law and the implementation of the *Qanun Jinayat* Aceh within the national legal system.

Islamic Law Legislation in Indonesia

From a juridical-constitutional perspective, Indonesia is neither a religious state nor a secular state. According to Mahfud MD, Indonesia is a "religious nation-state," meaning it integrates religious teachings as a moral foundation

while also using them as a material legal source in the governance of national and state life. This is clearly reflected in the fact that one of Indonesia's founding principles is Belief in One God.¹¹ However, this also implies that it is not possible for Muslims to fully formalize the principles of Islam institutionally.

Nevertheless, the foundation of Indonesia's national legal system is rooted in the country's long historical journey. National law reflects harmony, balance, and continuity between individual interests, society, and the state, as expressed through the principles of Pancasila. Implementing these principles requires complete self-discipline.¹² Islamic law, characterized not only by its commands and prohibitions but also by teachings that shape the character of a true Muslim with noble morals and high moral responsibility, allows for the accommodation of local customs and wisdom that align with the essential values of Islamic teachings.¹³ Islamic law has gained constitutional recognition in Indonesia for three key reasons:¹⁴

- a. The philosophical reason is that Islamic teachings serve as a way of life, a moral ideal, and a legal aspiration for the majority of Muslims in Indonesia, playing a significant role in creating the fundamental norms of the Pancasila state.
- b. The sociological reason is that the historical development of Indonesia's Muslim society demonstrates that legal ideals and legal awareness rooted in Islamic teachings have consistently remained relevant and continuous.
- c. The juridical reason is reflected in Articles 24, 25, and 29 of the 1945 Constitution (UUD 1945), which provide a formal legal basis for applying Islamic law.

¹¹ Mahfud M.D, "Perjuangan Politik Hukum Islam di Indonesia" (yogyakarta, 2006).

¹² Saleh, *Pembinaan Cita Hukum dan Penerapan Asas-asas Hukum Nasional Sejak Orde Baru* (Badan Pembinaan Hukum Nasional, 1995).

¹³ Ainun Najib, "Legislasi Hukum Islam Dalam Sistem Hukum Nasional," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 4, no. 2 (15 Oktober 2020): 116–26, <https://doi.org/10.35316/istidlal.v4i2.267>.

¹⁴ Al Arif, Indra, dan Susanto, "Internalization of Islamic Law in the Formation of Regional Regulations in Lampung Province."

In the national legal system, Islamic law remains urgent as a form of actualization and is distinguished into two forms: efforts to implement Islamic law through the creation of specific legal regulations applicable exclusively to Muslims and efforts to make Islamic law a source of law for the development of national law.¹⁵ The procedure for legislating Islamic law must adhere to the legal policies adopted by state authorities collectively. A law can be established as codified written regulation once it has undergone a political process within the state authorities, including both the legislative and executive branches, and has met the necessary requirements and standards for legislation.¹⁶

Efforts in the Implementation of *Jinayat* Law in Aceh Province

Joseph W. Eaton's theory on implementing *jinayat* law in Aceh suggests it should be an institution. Saul M. Katz, who supports Eaton's theory, argues that the purpose of such an institution is to establish planned organizations to serve objectives deemed by those in power as requiring autonomous administrative intervention and specifically related to a more extensive social system, distinct from what can be provided by existing administrative units.¹⁷

Legislation began with the conceptual planning of regulations and their connection to the Prolegnas (National Legislation Program). This planning for Prolegnas started in 1976 during a symposium on legal and legislative planning in the Special Region of Aceh.¹⁸ The legislation and formation of laws in the Aceh context received positive responses from the community from various perspectives. The establishment of *qanun* and local regulations (*Perda*) is closely tied to the 1945 Constitution, including the scope, definitions, and the DPR's

¹⁵ Warnoto., "Politik Hukum Islam di Indonesia" (Fakultas Syariah Press, UIN Sunan Kalijaga, 2008).

¹⁶ Hasyim Nawawie, "Hukum Islam Dalam Perspektif Sosial-Budaya Di Era Reformasi," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 8, no. 1 (3 Juni 2013): 1–28, <https://doi.org/10.21274/epis.2013.8.1.1-28>.

¹⁷ Siswanto Sunarno, *Hukum Pemerintah Daerah di Indonesia* (Jakarta: Sinar Grafika, 2008)85.

¹⁸ Marzuki Marzuki, Husni Djalil, dan Mujibussalim Mujibussalim, "Kedudukan Badan Pembinaan Hukum Nasional Dalam Menjalankan Fungsi Legislasi," *Syah Kuala Law Journal* 1, no. 3 (14 Desember 2017): 65–83, <https://doi.org/10.24815/sklj.v1i3.9639>.

(People's Consultative Assembly) authority to enact laws with mutual approval from the government.¹⁹

In examining and analyzing the formation and application of the *Qanun Jinayat*, both in its establishment and its socialization to the community—particularly to a populace that may be unfamiliar with government decisions regarding the *Qanun Jinayat* in Aceh—it is essential to conduct socialization and implementation by *Mashlahah* (public interest), *al-Ishtishlah* (consideration of public benefit), and *urf* (customary practices). *Al-Mashlahat al-Mursalah* refers to the general public interest, which encompasses everything that brings benefits and avoids harm. The objectives of Islamic law are aimed at achieving broad public interest.²⁰

Thus, the establishment of the *Qanun* in Aceh, particularly the *Qanun Jinayat*, aims to uphold and promote the goals of Islamic law within the Acehnese community in a religiously proper and harmonious manner. This ensures that Aceh becomes a “*baldatun thayyibatun wa rabbun ghafur*” (a good land with a forgiving Lord), as decreed by Allah, the lawgiver.²¹

Criminal law punishments, referred to as *Uqubat* in Islamic law, differ from the Penal Codes in countries such as Pakistan, Sudan, and some states in Nigeria, among others. In the case of Aceh, Islamic criminal law is as stipulated by several *Qanuns* (regional laws) in Aceh. *Uqubat* is imposed for acts committed by individuals that are considered violations or crimes against others, whether these offences are physical or non-physical.²² The *Qanun Jinayah* follows the procedures and types of *Uqubat* as outlined in the Qur'an, including the following:²³

¹⁹ Jimly Asshiddiqie, *Perihal Undang-undang* (Jakarta: Rajawali Press, 2010)21.

²⁰ Mustafa Ahmad Al Zarqa', *Al Istishlah wa al Mashalih al Mursalah fi al Syari'at al Islamiyah wa Ushul Fiqh*, Trj. Ade Dedi Rohayana, *Hukum Islam dan Perubahan Sosial*, (Jakarta: Riora Cipa, 2000), 35.

²¹ Retno Galuh Sapitri dkk., “Pelaksanaan Hukum Adat Aceh Dalam Menyelesaikan Permasalahan Masyarakat Di Aceh,” *Action Research Literate* 7, no. 10 (2023): 89–93.

²² Nurhadi Nurhadi, “Sanksi Dalam Perspektif Hukum Pidana Islam Dalam Al Qur'an,” *Mandalika: Jurnal Ilmu Pendidikan dan Bahasa* 1, no. 1 (25 Juli 2023): 8–20, <https://doi.org/10.59613/jipb.v1i1.22>.

²³ Syaifullah Noor, “Penerapan Hukum Terhadap Jarimah Liwath (Homo Seksual) Menurut Qanun Aceh Nomor 6 Tahun 2014 Tentang Jinayah: Studi Putusan Nomor

- a. Imprisonment or confinement for women who engage in *musahaqahah* (lesbianism).
- b. Flogging for individuals who commit *zina* (adultery) or falsely accuse someone of committing *zina* (*Qadhf*).
- c. Death penalty for robbers who kill and for rebels or subversives.
- d. Amputation for thieves.
- e. Death penalty for premeditated murder, unless forgiven by the victim's family.
- f. *Diya* (blood money) for unintentional homicide and injuries (wounding).

Implementing criminal or *jinayat* law in Aceh is now effectively in place. However, those who violate the law receive penalties as stipulated in the *Qanun*. It is also important to note that any criminal penalty imposed on an individual may be mitigated (*rukhsah*) according to specific provisions that align with the individual's behaviour. In line with Ibrahim Husen's view, there are two categories of law: *azimat* (original law) and *rukhsah* (concessional law). The first category represents inherently prohibited laws that may be permitted under hardship circumstances (*idhtirar*). Thus, the law can serve as a basis for interpreting and applying *qath'i* (definitive) legal principles.²⁴

Legal Basis of *Jinayat* in the Implementation of Islamic Law in Aceh

The term *qanun* is not unfamiliar to Islamic countries. The Malay states have used this term since establishing the Malacca Sultanate in the 15th Century.²⁵ The Sultanate of Aceh also adopted the term *qanun* during the height of the Aceh Darussalam Islamic Sultanate, with a set of laws known as *Qanun*

18/JN/2017/Ms. Bna," *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiiyyah* 5, no. 2 (2022): 122–47.

²⁴ Mursyidin Ar, "Konsepsi Dan Implementasi Hukum Jinayat Di Aceh Dalam Legislasi Hukum Nasional," *Journal of Innovation Research and Knowledge* 1, no. 3 (25 Agustus 2021): 441–54, <https://doi.org/10.53625/jirk.v1i3.218>.

²⁵ Abd Ghofur, "Islam Dan Politik Di Brunei Darussalam (Suatu Tinjauan Sosio-Historis)," *TOLERANSI: Media Ilmiah Komunikasi Umat Beragama* 7, no. 1 (8 Februari 2016): 53–69, <https://doi.org/10.24014/trs.v7i1.1421>.

Meukuta Alam. The term *qanun* has been known in Acehnese literature since the 13th Century and was used in regulations based on Islamic law, eventually becoming integrated into local customs and culture. During the reign of Sultan Ali Mughayat Syah (919-937 H / 1514-1530 AD), this Qanun was introduced in a manuscript titled *Tazkirat al-Tabqat al-Qanun al-Syar'i Kerajaan Aceh*.²⁶ This manuscript represents the first Constitution of the Aceh Sultanate. Its status, existence, and applicability are similar to those of the *Qanun* of the Malacca Sultanate.

The *Qanun* of Malacca differs from the *Qanun* of Aceh Darussalam's content, which includes Islamic law but also incorporates elements that are not traditionally part of Islam. Some issues are intertwined with local wisdom, such as the punishment of tooth extraction for slaves who mock others. Such practices indicate that efforts at *taqnin* (legal codification) have been undertaken.²⁷

The process of drafting the *Qanun Jinayat* (Criminal Code) was developed during the tenure of Governor Abdullah Puteh. It was discussed by the Aceh Regional People's Assembly (DPRA) along with the relevant stakeholders. The initial draft of this *Qanun* was primarily spearheaded by the Aceh Ulama Consultative Assembly (MPU) and was subsequently submitted to the DPRA for further discussion. The DPRA reviewed the Qanun and, after proper procedures, was enacted by the governor. From the perspective of *al-Fiqh al-Jina'i al-Islami* (Islamic Criminal Law), it can be observed that these *qanuns* are not yet complete. However, revisions can be made to align them with Aceh's legal needs and societal expectations. Therefore, cooperation with the DPRA and the Aceh Government should focus on completing and implementing these *qanuns*, as part of a joint commitment to the comprehensive application of Islamic law through legislation (prolegislation) in the DPRA.²⁸

²⁶ Jeje Jaenudin, "Asas Gradualitas Hukum Islam Dan Aplikasinya Dalam Legislasi Hukum Islam Di Indonesia (1974-2011)," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 8, no. 01 (26 Mei 2020): 172–99, <https://doi.org/10.30868/am.v8i1.732>.

²⁷ Ali Abubakar, *Undang-Undangan Malaka: kodifikasi Hukum Islam Abad XV di Asia Tenggara* (Jakarta: Studia Press, 2005)111.

²⁸ Ar, "Konsepsi Dan Implementasi Hukum Jinayat Di Aceh Dalam Legislasi Hukum Nasional," 25 Agustus 2021.

The legal basis for Jinayat in the legislative system has been established since the central government granted special authority to the Aceh government to manage and handle its own administrative and community affairs according to the laws and principles of the Unitary State of the Republic of Indonesia, as stipulated in the 1945 Constitution of the Republic of Indonesia, specifically in Law No. 11 of 2006 on the Government of Aceh.²⁹

Article 249 of Law No. 11 of 2006 on the Government of Aceh, along with Law No. 12 of 2008 on the Second Amendment to Law No. 32 of 2004 on Regional Government, provides the framework for the governance of Aceh. Additionally, the central government retains the authority to prevent or annul existing laws. Law No. 18 of 2001, Article 31, paragraph (2) states, "The implementation provisions of this Law regarding the authority of the Government of Aceh shall be established by *Qanun Aceh*." *Qanun* is defined in Article 1, number 8, as "*Qanun Aceh* is a Regional Regulation for implementing laws in the Aceh region in the context of special autonomy."

The formal constitutional basis serves as the legal foundation (yuridische gelding) for the authority (bevoegdheid or competentie) to create legislation.³⁰ Legally, the Aceh *Qanun Jinayat* is supported by a strong legal foundation as a formal constitutional basis. The Quran and Hadith are used as the primary sources of Islamic law, in line with the philosophical principles of Pancasila as outlined in Article 29 of the 1945 Constitution, which addresses religion. Furthermore, the authority granted by law to Aceh to regulate and manage its affairs is also considered.

The material constitutional basis, as outlined in *Qanun* No. 6 of 2014 on *Jinayat* law, aims to apply Islamic Sharia in the community to achieve a prosperous, secure, peaceful, just, and orderly society, thereby attaining the pleasure of Allah. Additionally, violations of the offences defined in the *Qanun*

²⁹ Nashihul Abror, "Eksistensi Dan Kewenangan Mahkamah Syar'iyah Dalam Mengadili Tindak Jinayah Di Provinsi Nanggroe Aceh Darussalam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 1 (12 September 2020): 229–56, <https://doi.org/10.15642/aj.2020.6.1.229-256>.

³⁰ Iwan Haryanto dkk., "Hearing Publik Naskah Akademik Dan Draf Ranperda Tentang Pembudayaan Gemar Membaca Di Kabupaten Sumbawa," *KARYA: Jurnal Pengabdian Kepada Masyarakat* 2, no. 2 (24 Agustus 2022): 146–50.

Jinayat are considered breaches of Islamic Sharia. Committing one offence may lead to other transgressions, such as consuming alcoholic beverages or *Khamar*.

Jinayat Law in National Legislation

The legislation of *Jinayat* law in Aceh is based on the 1945 Constitution, specifically Article 29, paragraph 1, and its amendments. Islamic law serves as a source for the formation of national law in Indonesia, indicating that in the Republic of Indonesia, enacting laws and regulations contradicting Islamic law is not permitted. Similarly, laws and regulations should not conflict with the laws of other religions practised in Indonesia. The MPR RI Decree No supports this statement. IV/MPR-RI/1999 on the State Policy Guidelines (GBHN), Chapter IV, Policy Direction, A. Law, point 2, which states that Islamic law, customary law, and Western law are sources of national law formation.

Islam, the religion embraced by the Indonesian people, significantly influences the lifestyle of the nation. Muslims' behaviour is inherently tied to the Sharia contained in their religion. Adhering to these laws serves as a measure of one's obedience in practising their faith. Therefore, *Jinayat* law, based on the principles of Pancasila, is protected by the state and the followers of the religion, and efforts are made to incorporate Islamic law into the life of the nation and state.³¹

Through the autonomy rights, the potential of the Muslim population becomes the primary foundation for implementing Islamic law in Aceh. This forms the basis for applying Islamic law in Aceh, particularly concerning special acts of worship, which are an absolute obligation for every Muslim and guaranteed by the state. From a quantitative perspective, the majority of Indonesia's population is Muslim. As such, Islamic law, especially in family law, has been positivized.³²

³¹ Bustanul Arifin, *Transformasi Syariat ke dalam Hukum Syariat (Bertenun dengan benang-benang kusut)* (Jakarta: Yayasan Al-Hikmah, t.t.)5-11.

³² Masruhan Masruhan, "Positivisasi Hukum Islam Di Indonesia Era Reformasi," *Islamica: Jurnal Studi Keislaman* 6, no. 1 (1 September 2011): 119–33, <https://doi.org/10.15642/islamica.2011.6.1.119-133>.

The positivization of Islamic Sharia as an effort to legalize it into positive law is then applied concretely in practice. Legalizing Sharia in the form of draft legislation can be initiated by the executive, legislative, or other designated parties, including academic circles. The draft legislation is then processed into law or other regulations, thus having binding force and fulfilling the elements of justice and legal certainty for the community. The formalization of Sharia law naturally requires support from the government, which holds authority in this area. With the political and legal system in place, the government can create policies to establish Sharia law as positive law.³³

Conclusion

Based on the discussion above, it can be concluded that Islamic law in Indonesia has gained constitutional recognition for three reasons: philosophical, sociological, and juridical. Islamic law remains crucial as a manifestation and effort to enforce Islamic law, as well as an attempt to make Islamic law a source of national law. The legislative process for Islamic law must adhere to the legal policies adopted collectively by the state's power bodies. Implementing the *Jinayat* Law in Aceh can be considered effective in maintaining the preservation and security outlined in the *Qanun Jinayat*, along with the penalties imposed for violations. Violations will incur 'Uqubat, which differs from the Islamic Penal Code in Pakistan, Sudan, some states in Nigeria, and others. In the case of Aceh, Islamic criminal law is stipulated by several *Qanun* in Aceh.

The foundation of *Qanun Jinayat* within the National Law framework is divided into formal constitutional foundations, which serve as the legal basis (yuridische gelding) for the authority (bevoegdheid or competentie) to create legislation, and material constitutional foundations. Based on *Qanun* No. 6 of 2014 concerning *Jinayat* Law, the goal is to implement Sharia in the community to achieve a prosperous, safe, peaceful, just, and orderly society to attain Allah's pleasure. This is also regulated under Law No. 11 of 2006 concerning the Government of Aceh. In national legislation, *Jinayat* law in Aceh is derived from

³³ Ar, "Konsepsi Dan Implementasi Hukum Jinayat Di Aceh Dalam Legislasi Hukum Nasional," 25 Agustus 2021.

the 1945 Constitution, as stated in Article 29, paragraph 1, and its amendments. The practical application in society emerges from the positivization of Sharia as an effort to legalize Sharia into positive law. With the existing political and legal system, the government can formulate policies to establish Sharia as a positive law.

Authors' Contributions

As the main author of this article, MRF was responsible for the research activities, such as the data collection, presentation, and writing of the report and manuscript. P.A.W. is a co-author of this article. They contributed to this research by collecting data and writing the report with the main author. R.I.Y. is a co-author of this article. They contributed to this research by collecting data and writing the report with the main author. D.N. is a co-author of this article. They contributed to this research by collecting data and writing the report with the main author.

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