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Dear,

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After selection mechanism and peer-review manuscript, we glad to inform you that research manuscript entitled "**Custom Versus Qanun: The Problem of Applying the Criminal Code for Adultery in the Alas Tribe of Southeast Aceh**" has been **accepted** for publication in *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* Volume 24, Issue 2, December 2027 (**Scopus indexed**).

This letter is official confirmation of acceptance of your research paper.

Yours Sincerely,

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Custom Versus Qanun: The Problem of Applying the Criminal Code for Adultery in the Alas Tribe of Southeast Aceh, Indonesia

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Abstract: This study analyzes the problem of adultery enforcement in the Alas Tribe community in Southeast Aceh Regency by highlighting the dominance of customary law mechanisms compared to formal law enforcement based on Aceh Qanun Number 6 of 2014 concerning *Jinayat* Law. Although the qanun normatively regulates criminal sanctions for adultery, its implementation at the local level has not been effective. This study uses a normative-empirical approach by combining analysis of legislation, case studies, and in-depth interviews with traditional leaders, *Wilayatul Hisbah* officials, and Sharia Court judges. The results show a dualism in the mechanisms for resolving adultery cases, characterized by a strong community preference for customary law. Customary-based resolution is seen as more capable of maintaining family honor and restoring social harmony, but at the same time weakens legal certainty and the effectiveness of criminal punishment. This article argues that the dominance of customary mechanisms reflects the failure of normative integration between jinayat law and customary law, which results in the failure to achieve the objectives of Islamic criminal punishment (*maqāṣid al-'uqūbāt*), particularly the deterrent effect, justice, and equality before the law. Thus, this research contributes to the development of Islamic legal pluralism studies by

emphasizing the importance of functional integration between customary law and Islamic criminal law in the context of indigenous Muslim communities.

Keywords: Custom; Qanun; adultery; Southeast Aceh.

Abstrak: Penelitian ini menganalisis problem penegakan jarimah zina pada masyarakat Suku Alas di Kabupaten Aceh Tenggara dengan menyoroti dominasi penyelesaian melalui mekanisme adat dibandingkan dengan penegakan hukum formal berdasarkan Qanun Aceh Nomor 6 Tahun 2014 tentang Hukum Jinayat. Meskipun qanun tersebut secara normatif telah mengatur sanksi pidana terhadap zina, implementasinya di tingkat lokal belum berjalan efektif. Penelitian ini menggunakan pendekatan normatif-empiris dengan mengombinasikan analisis peraturan perundang-undangan, studi kasus, serta wawancara mendalam dengan tokoh adat, aparat Wilayatul Hisbah, dan hakim Mahkamah Syar'iyah. Hasil penelitian menunjukkan adanya dualisme mekanisme penyelesaian perkara zina yang ditandai dengan kuatnya preferensi masyarakat terhadap hukum adat. Penyelesaian berbasis adat dipandang lebih mampu menjaga kehormatan keluarga dan memulihkan harmoni sosial, namun pada saat yang sama melemahkan kepastian hukum dan efektivitas pemidanaan. Artikel ini berargumen bahwa dominasi mekanisme adat tersebut mencerminkan kegagalan integrasi normatif antara hukum jinayat dan hukum adat, yang berdampak pada tidak tercapainya tujuan pemidanaan Islam (*maqāsid al-'uqūbāt*), khususnya efek jera, keadilan, dan kesetaraan di hadapan hukum. Dengan demikian, penelitian ini berkontribusi pada pengembangan kajian pluralisme hukum Islam dengan menegaskan pentingnya integrasi fungsional antara hukum adat dan hukum pidana Islam dalam konteks masyarakat Muslim adat.

Kata Kunci: Adat; Qanun; zina; Aceh Tenggara.

Introduction

Aceh is a province that has received special authority from the central government through special autonomy status as stipulated in Law Number 11 of 2006 concerning the Government of Aceh. This regulation is a follow-up to the peace agreement between the Government of the Republic of Indonesia and the Free Aceh Movement (GAM) signed in Helsinki on August 15, 2005. Through this legal framework, Aceh has the constitutional authority to

implement Islamic law in social, cultural, and legal life, including in the field of criminal law through the formation of qanun.¹

The 1945 Constitution of the Republic of Indonesia recognizes the existence of customary law communities and their traditional rights as long as they are alive, developing, and in line with the principles of the Unitary State of the Republic of Indonesia. In Aceh, this constitutional recognition is reinforced through Aceh Qanun Number 10 of 2008 concerning Acehnese Customary Institutions, which emphasizes that customary institutions function to resolve disputes, maintain social order, and uphold customary norms within society. Thus, the resolution of criminal and moral cases through customary mechanisms in Aceh not only has sociological legitimacy but also a formal legal basis..²

Islamic law in Indonesia is inseparable from the history and development of its society. The majority of the population is Muslim, making Islamic values naturally integrated into daily life, allowing religion and Muslim social culture to mutually shape one another. In line with this historical development, Islamic law was later incorporated into the national legal system, including through the process of qanunization in Aceh. The government also granted Aceh special authority to implement Islamic legal norms in social life.³

History records that Islam in Aceh reached its peak during the reign of Sultan Iskandar Muda, when the influence of Islamic law spread to the Malay Peninsula and many kingdoms submitted to it. This development gave rise to a lingering Acehnese proverb: "Adat is like Po Teumeureuhom, Hukom is like Syiah Kuala, Qanun is like Putroe Phang, Reusam is like Admiral."⁴ This expression means that customs are established by the king, laws are determined by the ulama, regulations are formulated by the princess, and customs are regulated by the commander. This expression demonstrates the harmony between the power structure, the ulama, the authority of the royal family, and the commander in building Aceh's social order.

¹ Ikrar Nusa Bakti, *Ikrar Nusa Bakti, Beranda Perdamaian Tiga Tahun Pasca MoU Helsinki*, 1st Ed. (Yogyakarta: Pustaka Pelajar, 2018)., p. 30.

² Ramadani Shohiro Hasibuan and others, 'Hak Anak Tiri Dalam Mewarisi Menurut Hukum Islam', *Cendekia : Jurnal Hukum, Sosial Dan Humaniora*, 2.1 (2024), pp. 387–395, doi:10.70193/cendekia.v2i1.52.

³ Mohammad Yasir Fauzi, 'Legislasi Hukum Kewarisan DI Indonesia', *Jurnal Pengembangan Masyarakat Islam*, 9.2 (2016), p. 54.

⁴ M. Isa Sulaiman, *Historis Tentang Peradilan Adat Di Aceh, Dalam Pedoman Adat Aceh, Peradilan Dan Hukum Adat* (Lembaga Adat dan Kebudayaan Aceh (LAKA), 2002).

For the Acehese people, the relationship between Islamic law and customary law in Aceh is built on a framework of complementarity, not mutual negation. Acehese legal philosophy reflects this synthesis through the popular expression "*syari'at ngon adat lagee zat ngon sifeut*," which illustrates that sharia and custom are two inseparable elements in community life. This historical construction positions custom not merely as a cultural practice, but as a normative system that lives and works side by side with the principles of Islamic law in regulating social behavior.⁵

The formal implementation of Islamic law in Aceh began in 2002 and was subsequently reinforced through various qanuns (religious laws) governing moral and criminal behavior, such as prohibitions on gambling (*maisir*), alcohol (alcohol), seclusion (*khalwat*), and adultery (*zina*). These regulations are codified in Aceh Qanun Number 6 of 2014 concerning Jinayat Law, the primary framework for Islamic criminal law in Aceh. Normatively, this qanun defines *zina* as a serious crime with the threat of hudud or ta'zir sanctions, enforced through formal institutions such as the Wilayatul Hisbah (Islamic Court) and the Sharia Court.⁶

The initial regulations included Aceh Qanun No. 11 of 2002 concerning faith and worship, Qanun No. 12 of 2003 concerning the prohibition of alcohol, Qanun No. 13 of 2003 concerning the crime of gambling, and Qanun No. 14 of 2003 concerning *khalwat*.⁷ All of these regulations were then updated and combined in Aceh Qanun Number 6 of 2014 concerning *Jinayat* Law as a more comprehensive legal umbrella for enforcing sharia in Aceh. Aceh Qanun No. 6 of 2014 concerning *Jinayat* Law serves as a guideline for the implementation of Islamic Sharia, including the punishment of flogging for adultery. However, its effectiveness has been suboptimal after more than a decade, as evidenced by the high number of adultery cases in Southeast Aceh.

In the Alas Tribe, complexity increases because customary resolution is more often chosen than formal channels, so that *jinayat* law is not fully

⁵ Zainuddin, *Tarich Atheh Dan Nusantara* (Pustaka Iskandar Muda, 1996).

⁶ Bahri, *Pelaksanaan Syari'at Islam Di Aceh Bagian Wilayah Negara Kesatuan Republik Indonesia (NKRI)*. (n.d.).

⁷ Fauzah Nur Aksa, T Saifullah, and Al Farabi, 'The Implementation of Qanun Jinayat in Aceh', *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, 8.1 (2023), pp. 16–33, doi:10.22515/alahkam.v8i1.5896.

implemented.⁸ The Qanun Jinayat is enforced through a formal process with the Public Order Agency (Satpol PP-WH) as investigators, the Sharia Prosecutor's Office as prosecutors, and the Sharia Court as adjudicator. Although authorities conduct investigations, arrests, and evidence collection in accordance with regulations, its implementation is often hampered by customary settlement traditions. Research shows that the implementation of the qanun often adapts to social conditions, including allowing perpetrators to resolve cases through customary law if the family wishes to avoid dishonor.

Furthermore, the Sharia Court, as a sharia judicial institution, also faces structural obstacles in processing adultery cases. High standards of proof, such as four male witnesses directly witnessing the crime or four confessions from the perpetrator, prevent most cases from proceeding to trial.⁹ This makes the role of custom increasingly dominant in dealing with adultery issues, because custom does not require formal standards of proof and is more flexible in adapting to the social needs of society.

This finding aligns with a number of previous studies that highlighted the problematic enforcement of the Qanun Jinayat in Aceh. Aksa (2023)¹⁰ and Afandi & Bagaskoro (2024)¹¹, for example, shows that the strict standards of proof in criminal law are a major factor in the low number of adultery cases processed through the Sharia Courts. Research by Makhrus Munajat (2022) also confirms that the structural limitations of Sharia law enforcement officers often result in the resolving of moral cases being diverted to more socially acceptable informal mechanisms.

However, the existence of this normative framework does not always translate directly into law enforcement practices at the local level. In Southeast Aceh Regency, particularly among the Alas Tribe, adultery cases are more often resolved through customary mechanisms than through formal justice. Although the initial process often involves officials from the *Wilayatul Hisbah* (Islamic Court), in practice, many cases are ultimately returned to

⁸ A Amsori, 'Legislasi Qanun Jinayat Aceh Dalam Sistem Hukum Nasional', *Ar-Raniry, International Journal of Islamic Studies*, 4.2 (2020), pp. 221–56.

⁹ Mustafa and others, 'Penerapan Hukuman Adat Terhadap Pelaku Jarimah Khalwat Di Aceh Tamiang', *Cendekia: Jurnal Hukum, Sosial Dan Humaniora*, 1.1 (2023), pp. 52–64, doi:10.70193/cendekia.v1i1.10.

¹⁰ Fauzah Nur Aksa, Saifullah, and Farabi, 'The Implementation of Qanun Jinayat in Aceh', pp. 22–25.

¹¹ Fachrizal Afandi and Ladito Risang Bagaskoro, 'Islam And State's Legal Pluralism', *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, 19.01 (2024), pp. 1–26, doi:10.21274/epis.2024.19.01.1-26.

customary institutions due to social pressure, limited evidence, and considerations of maintaining family honor. As a result, only a small percentage of adultery cases actually reach trial in the Sharia Court.

This situation demonstrates the real workings of legal pluralism, where state law, Islamic law, and customary law coexist and interact within the same social space. Previous studies on the implementation of the *Qanun Jinayat* in Aceh have generally focused on normative aspects, institutional constraints, or its relationship with the national legal system. However, these studies tend to position customary mechanisms as complementary or secondary alternatives, rather than as dominant legal practices with strong social authority and legitimacy.

Based on these conditions, this article argues that the dominance of customary law in adultery cases among the Alas people is not merely a pragmatic response to the procedural limitations of criminal law, but rather reflects the failure of normative integration between criminal law and customary law. The absence of a clear and functional integration framework has given rise to a dualism of authority, which has weakened legal certainty and failed to achieve the objectives of Islamic criminal law (*maqāṣid al-'uqūbāt*), especially the aspects of deterrent effect, justice and equality before the law.

Thus, this article contributes to the development of Islamic legal pluralism studies by demonstrating that the effectiveness of *jinayat* law enforcement in indigenous Muslim communities cannot be measured solely by normative compliance with formal regulations. Such effectiveness must be understood through the relationship between Islamic law positivized by the state and living customary law that has stronger social legitimacy. Through a case study of the Alas Tribe in Southeast Aceh, this article provides empirical and theoretical contributions to understanding how the failure of normative integration affects the implementation of Islamic criminal law in the context of legal plurality.

Empirical data was obtained through interviews with traditional leaders, qanun enforcement officers, and the Alas community. All data were analyzed descriptively and comparatively to examine the differences between customary and qanun mechanisms and the interaction between the two, whether synergistic or potentially stressful, in handling adultery cases in Southeast Aceh. Based on this framework, this research aims to answer the

main question: how does the dominance of customary mechanisms in resolving adultery cases affect the enforcement of criminal law and the achievement of Islamic criminal penalties in the Alas community? To answer this question, this research uses a normative-empirical approach by combining analysis of legislation, case studies, and field interviews with customary leaders, Wilayatul Hisbah officials, and Sharia Court judges.

Methodological Limitations and Ethical Considerations

This research has several methodological limitations that need to be openly addressed. *First*, the empirical data was obtained primarily through interviews with traditional leaders and relevant officials, so the recorded perspectives largely represent the views of actors with social and institutional authority.¹² This condition has the potential to limit the representation of the experiences of other parties, especially women or individuals who have been directly involved in adultery cases, who in many cases are in a more vulnerable social position.¹³ *Second*, the sensitivity of the issue of adultery as a moral and criminal offense limits access to broader and more in-depth empirical data. Strong social norms regarding family honor and the reputation of indigenous communities make some informants selective in providing information, so the data obtained does not fully represent the full range of practices.

From an ethical research perspective, the authors applied the precautionary principle by maintaining the anonymity of informants and refraining from disclosing individual identities or case details that could cause social stigma or harm to certain parties. Interviews were conducted with the informants' consent and with consideration of cultural sensitivities and local customary norms. These ethical considerations are crucial to ensuring that the research not only meets academic standards but also respects the social and humanitarian values of the communities studied.

Adultery (Zina) in Fiqh Jinayat and the Limits of Customary Settlement

Etymologically, *zina* is defined as *fahIsha*, namely a despicable act that goes beyond the limits. In Islamic jurisprudence terminology, *zina* is sexual intercourse between a man and a woman who are not legally married, so that the woman who is having intercourse is not a wife, not a concubine (*sariyah*),

¹² Burhan Bungin, *Qualitative Research: Communication, Economics, Public Policy, and Other Social Sciences* (Kencana Prenada Media, 2017), pp. 108–10.

¹³ Lexy J. Moleong, *Qualitative Research Methodology*, revised (Remaja Rosdakarya, 2019), pp. 168–170.

and not a slave (*amah*).¹⁴ An act cannot be categorized as adultery if there is an element of doubt, for example, when a husband is unable to distinguish his wife from her identical twin, resulting in sexual intercourse occurring under conditions of doubt about the couple's identity. Similarly, in cases of rape, the coerced party is not considered a perpetrator of adultery because there is no element of consent. Therefore, the elements of intent and certainty of the object of sexual intercourse are crucial components in determining the crime of adultery under Islamic law.¹⁵

In Islamic law, *zina* is sexual intercourse between a man and a woman without a valid marriage, committed consciously and free from doubt. Ibn Rushd emphasized that *zina* includes intercourse without a valid marriage contract, not due to a mistake considered marital, and not related to ownership of the slave. The Syafi'iyyah school defines *zina* as the act of inserting the penis into the *farji* which is unlawful in nature, carried out without any element of *syubhat*, and naturally this act gives rise to lust.¹⁶

From the perspective of Islamic jurisprudence (*fiqh jinayat*), *zina* is categorized as a serious *jarimah* (crime) that not only has a private dimension but also has a strong public dimension. The majority of jurists consider *zina* as a violation of *ḥaqq Allah* because it involves violations of moral and legal provisions established by sharia, as well *aḥaqq al-mujtama'* because of its broad impact on social order, lineage, and the collective honor of society.¹⁷ Therefore, handling adultery crimes cannot be viewed solely as an individual or family matter, but rather as a public matter that requires formal and binding legal intervention.

The purpose of punishment in *jinayat fiqh*, either through *ḥudūd* and *ta'zīr*, are not only directed at imposing sanctions, but also at achieving the goals of deterrence, protecting public morals, and maintaining *maqāsid al-shari'ah*. In the context of adultery, this goal is closely related to the protection of offspring (*ḥifz al-nasl*) and honor guard (*ḥifz al-'ird*).¹⁸ The application of criminal sanctions in criminal law is intended to emphasize clear moral boundaries and prevent the normalization of behavior that damages the social order.¹⁹

¹⁴ Abu al-Husayn Ahmad ibn Faris, *M'jam Maqāyīs al-Lughah* (Beirut: Dar al-Fikr, 1979), IV, p. 234.

¹⁵ Wahbah al-Zuhaili, *Al-Fiqh al-Islāmī Wa Adillatuhu* (Damascus: Dār al-Fikr, 1985), VII, pp. 24–25.

¹⁶ Ibn Rushd, *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtasid* (Beirut: Dār al-Fikr, n.d.), II, p. 348.

¹⁷ Ibn Qudāmah, *Al-Mughnī, Juz 9* (Beirut: Dār al-Fikr, n.d.), pp. 38–41.

¹⁸ Abu Ishāq al-Shaṭībī, *Al-Muwāfaqāt Fī Uṣūl al-Sharī'ah, Juz 2* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2004), pp. 21–48.

¹⁹ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī Wa Adillatuh, Juz 6* (Damascus: Dār al-Fikr, 1989), pp. 50–52.

In this framework, adultery cases are resolved through mechanisms *ṣulḥ* or customs that completely replace the criminal law process raise serious normative issues. Although *ṣulḥ* recognized in Islamic law as a dispute resolution mechanism, the fuqaha limit its application to cases of a legal dimension *ḥaqq al-'abd*. In cases of pregnancy *ḥaqq Allah* and has an impact on public interests, such as adultery, a peaceful resolution that eliminates the criminal aspect is seen as inadequate because it has the potential to eliminate the preventive and symbolic function of Islamic criminal law.²⁰

According to Al-Jurjani, an act can be categorized as adultery if it fulfills two main elements, namely the occurrence of sexual intercourse between a man and a woman and the absence of any element of error or skepticism in the relationship.²¹ In the context of positive law in Aceh, the crime of adultery is explicitly regulated in Aceh Qanun Number 6 of 2014 concerning Criminal Law. Article 33 states that adultery is sexual intercourse between a man and a woman without a valid marriage bond. This Qanun does not differentiate the concept of adultery into *muhsan* and *ghairu muhsan*, as in classical fiqh, but rather establishes a single classification of adultery within the Acehnese criminal law system.²²

Furthermore, Article 34 states that anyone who intentionally commits adultery is threatened with hudud punishment in the form of a maximum of 100 lashes or ta'zir punishment in the form of a maximum fine of 1,000 grams of pure gold or a maximum of 100 months in prison.²³ This provision demonstrates that the qanun not only adopts the concept of zina in classical Islamic law but also adapts it to the modern criminal justice system through alternative sanctions. Thus, the understanding of zina according to the jurists, as described, finds direct relevance in the Acehnese legal system through the normative provisions in the Qanun on *Jinayat Law*, which serves as a form of positivization of Islamic law in the context of the Indonesian rule of law.²⁴

A conceptual description of the crime of zina from the perspective of jurists shows that jinayat law positions zina as a serious act with strict legal consequences, both in terms of the standard of proof and the sanctions imposed. This normative construction is essentially intended to maintain moral order, individual honor, and social stability. However, in the context of

²⁰ 'Abd al-Qādir 'Awdah, *Al-Tashrī' al-Jinā'ī al-Islāmī, Juz 1* (Beirut: Dār al-Kitāb al-'Arabī, 1994), pp. 127–30.

²¹ Al-Jurjānī, *At-Ta'rīfāt* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1985), p. 120.

²² Abdul Manan and Cut Intan Salasiyah, 'Evaluating the Implementation of Sharia in Aceh, Indonesia', *Jurnal Ilmiah Peuradeun*, 9.3 (2021), p. 549, doi:10.26811/peuradeun.v9i3.593.

²³ 'Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat, Lembaran Daerah Aceh Nomor 6, Pasal 34.', 2014.

²⁴ Afandi and Bagaskoro, 'Islam And State's Legal Pluralism'. p. 1-26

the Alas Tribe, this *jinayat* legal construction confronts the customary legal system, which has a different logic of proof, criminal purposes, and resolution orientation. The encounter between these two legal systems demonstrates from the outset the problem of normative integration between *jinayat* law and customary law, which is the primary background for the problem of enforcing zina crimes at the local level.

This section of the discussion aims to demonstrate that the primary problem in enforcing adultery in the Alas community is not solely due to technical constraints in law enforcement or limited apparatus, but rather stems from the lack of functional normative integration between criminal law and customary law. The interaction of these two legal systems demonstrates a vibrant and dynamic practice of legal pluralism, but it has not yet been managed within a framework capable of ensuring legal certainty and achieving the full objectives of Islamic criminal law.

Law Enforcement of Adultery (Adultery) among the Alas Tribe: Between Customary Practices and Qanun Jinayat

Law enforcement against adultery among the Alas Tribe in Southeast Aceh Regency occurs through the interaction between formal legal structures and local legal culture. Lawrence M. Friedman states that the legal system consists of three main elements: legal substance, legal structure, and legal culture. In the context of Southeast Aceh, the legal structure is reflected in the role of the Civil Service Police Unit and the *Wilayahul Hisbah* (Satpol PP-WH) as qanun enforcement officers, the Syar'iyah Court as a judicial institution, and correctional institutions as decision implementers. However, the effectiveness of this legal structure cannot be separated from the strong customary values of the Alas Tribe, which still influence the resolution of moral issues, including adultery.

Structurally, qanun enforcement officers in Southeast Aceh still face several obstacles. The number of civil servant investigators (PPNS) within the Public Order Agency (Satpol PP-WH) handling criminal cases is relatively limited, so adultery investigations often require police support. This situation results in slow case handling and an increased workload for officers. Nevertheless, the Satpol PP-WH continues to strive to enforce sharia law by balancing the demands of formal legal procedures with the socio-cultural realities of the Alas Tribe.

Article 127 of Law Number 11 of 2006 concerning the Governance of Aceh stipulates that the Aceh government and district/city governments are responsible for implementing Islamic Sharia. This provision demonstrates that the effectiveness of Sharia law enforcement depends heavily on the

commitment and political will of local governments. In Southeast Aceh, local political will determines the extent to which the Public Order Agency (Satpol PP-WH) and the Sharia Court can enforce qanun amidst the dominance of customary values.²⁵

The *Wilayatul Hisbah*, as stipulated in Aceh Governor's Decree Number 1 of 2004, has the authority to supervise, provide guidance, and advocate for the implementation of Islamic Sharia. The *Wilayatul Hisbah* is tasked with conducting direct field supervision, providing guidance to the community, and supporting enforcement against various Sharia violations. In the Alas community, this provision positions the *Wilayatul Hisbah* as a key actor in handling adultery (*zina*) cases. However, the limited number of PPNS investigators has resulted in less than optimal effectiveness of supervision and enforcement, particularly in cases requiring strict evidence under the *Qanun Jinayat*.²⁶ The statement of the Southeast Aceh Sharia Court Judge shows that adultery cases are very difficult to process if they do not fulfill the elements of proof required by sharia, namely a confession from the perpetrator or testimony from four witnesses who directly witnessed the act.²⁷ As a result, even though the *Wilayatul Hisbah* carries out routine patrols, surveillance, and receives public reports, many cases ultimately cannot proceed to the prosecution stage.

Data from the Southeast Aceh Sharia Court shows that in 2024 there were only two adultery cases processed through the courts.²⁸ This figure is disproportionate to empirical findings in the field, which show that the majority of adultery cases are resolved through customary mechanisms. The Alas Tribe prefers customary procedures because they are considered faster, more effective in restoring family dignity, and less likely to trigger broader social conflict. In many cases, the couples are married through customary procedures under specific terms and conditions agreed upon by the families and customary leaders.²⁹

The dominance of customary law resolutions leaves the *Wilayatul Hisbah* (Islamic Religious Court) relatively weak in the formal legal process. Although this institution has clear authority, communities often first bring cases to traditional leaders or the Village Customary Council (MAK). Data shows that in

²⁵ 'Undang-Undang Nomor 11 Tentang Pemerintahan Aceh, Pasal 127.', 2006.

²⁶ 'Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat, Bab II Pembuktian, Pasal 37–44.', n.d.

²⁷ 'Interview with MS (Judge of the Southeast Aceh Sharia Court), Southeast Aceh, Tuesday, November 18, 2025'.

²⁸ 'Southeast Aceh Syar'iyah Court Case Data for 2023, Jinayat Sector.', n.d.

²⁹ 'Interview with the Village Customary Leader, Kumbang Jaya Village, Badar Sub-District, Wednesday, November 12, 2025.'

2024, two adultery cases were resolved through customary mechanisms in Badar District, while in 2025, that number increased to five.³⁰

This phenomenon reflects the tension between formal legal structures and societal legal culture. According to Lawrence M. Friedman's legal systems theory, legal structures cannot function optimally without the support of societal legal culture.³¹ In the context of Southeast Aceh, the legal culture that prioritizes customary mechanisms limits the effectiveness of the role of the Wilayatul Hisbah, although this institution continues to strive to carry out its supervisory, educational and coordination functions with village officials and customary leaders.

Aceh Qanun Number 10 of 2008 provides legitimacy to the Aceh Customary Council (MAA) to resolve customary disputes and maintain social order.³² In Southeast Aceh, the MAA plays a role in fostering customary law at the district level, while dispute resolution is handled at the village and sub-district levels through the Village Customary Council. The MAA serves to provide guidelines for dispute resolution, coordinate customary institutions, mediate social conflicts, and provide customary advice to the local government.³³

In the practice of resolving adultery, MAA facilitates customary deliberation (*pakat*) and determines sanctions in the form of an obligation to marry, payment of a customary fine of IDR 3,200,000, and provision of livestock for customary purposes.³⁴ MAA data from Badar District shows that in 2024 there were two cases of adultery that were resolved according to customary law,³⁵ Meanwhile, in 2025, five cases were recorded and none of them were reported to the Sharia Court.³⁶ This data confirms the dominance of customary mechanisms in the Alas community. This situation demonstrates strong legal pluralism, where customary law and sharia law coexist but do not always work in harmony. The community's legal culture, which prioritizes

³⁰ *Village Customary Council (MAK) of Badar District, Recapitulation of Customary Case Resolution for 2024–2025.*, n.d.

³¹ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975), pp. 15–16.

³² 'Aceh Government, Aceh Qanun Number 10 of 2008 Concerning Aceh Traditional Institutions, Articles 3–7.', n.d.

³³ MAA Aceh Tenggara, 'Pedoman Penyelesaian Sengketa Adat Di Kabupaten Aceh Tenggara', MAA Aceh Tenggara, 2023.

³⁴ 'Interview with the Chairman of the Aceh Traditional Council (MAA) of Southeast Aceh, Wednesday, November 12, 2025.'

³⁵ *Badar District Village Customary Council, Recapitulation of Customary Case Settlement in 2024, Badar, 2024.*, n.d.

³⁶ *Southeast Aceh Syar'iyah Court Case Data 2024–2025, Jinayat Sector*, n.d.

customary law, results in the formal legal structure not functioning optimally even though legal substance is in place.³⁷

The Southeast Aceh Sharia Court as an Islamic sharia judicial institution has the authority to adjudicate criminal cases based on Law Number 11 of 2006 concerning the Government of Aceh.³⁸ This court upholds Aceh Qanun No. 6 of 2014 as the substantive and procedural basis. According to Azhari Akmal Tarigan, the existence of the Sharia Court reflects the institutionalization of Islamic law within the national judicial system, which must uphold the principles of legality, legal certainty, and justice.³⁹

Operationally, the Southeast Aceh Sharia Court examines criminal cases filed by investigators after the prosecutor has declared the case complete. Judges assess the sufficient evidence in accordance with criminal procedural law and have the authority to impose hudud and ta'zir penalties, including flogging, fines, or imprisonment.⁴⁰ However, in practice, the quality of case files is often an obstacle because witness statements and evidence are incomplete, so the files must be returned for completion.⁴¹ This condition is in line with the findings of M. Atho Mudzhar who highlighted the continued existence of technical obstacles in enforcing sharia law in Aceh at the investigation and prosecution stages.⁴²

In addition to administrative constraints, low public participation in formally reporting adultery cases also poses a barrier. The majority of people choose to resolve the matter through customary law to maintain family honor. However, once the case has been referred to the Sharia Court, the legal process continues according to the qanun, even if the family wishes for reconciliation.⁴³

Table 1. Number of Adultery Cases Settled in 2024-2025

Year	Sharia Court	Customary Settlement	Number of Cases
2024	2 things	2 things	4 things
2025	0 cases	5 things	5 things

³⁷ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*.

³⁸ 'Law Number 11 of 2006 Concerning the Government of Aceh, Articles 128–130.', n.d.

³⁹ Azhari Akmal Tarigan, *Azhari Akmal Tarigan, Islamic Law and Justice in Indonesia* (Kencana, 2020).

⁴⁰ 'Aceh Government, Aceh Qanun Number 6 of 2014 Concerning Jinayat Law, Articles 22–33.', n.d.

⁴¹ 'Interview with MS (Judge of the Southeast Aceh Sharia Court), Southeast Aceh, Tuesday, November 18, 2025.'

⁴² M. Atho Mudzhar, *Development of Islamic Law in Indonesia* (Kencana, 2017), pp. 55–58.

⁴³ 'Interview with MS (Judge of the Southeast Aceh Sharia Court), Southeast Aceh, Tuesday, November 18, 2025.'

Year	Sharia Court	Customary Settlement	Number of Cases
Total	2 things	7 things	9 things

Based on 2024–2025 data, the resolution of adultery cases in Southeast Aceh shows a shift from formal to customary channels. In 2024, the Southeast Aceh Sharia Court handled two cases, Number 1/JN/2024/MS.KC and Number 2/JN/2024/MS.KC, and two cases were resolved through customary mechanisms. Meanwhile, in 2025, not a single case was processed through the Sharia Court, while all detected cases (five cases) were resolved through customary means. This condition indicates a tendency among the Alas Tribe to prefer customary resolution because it is considered to better protect family honor and social harmony than formal legal processes.

Data shows a shift in case resolution from formal to customary channels. Normatively, this situation demonstrates the gap between the ideal goals of the *Qanun Jinayat*, namely legal certainty and a deterrent effect, and the reality of its implementation at the local level. When the majority of cases are resolved through customary mechanisms, jinayat law tends to function as a normative symbol, rather than an effective enforcement instrument. This phenomenon emphasizes that the success of law enforcement depends heavily on the level of social acceptance and the alignment of legal norms with local values within the community.⁴⁴

In the Alas community, custom serves as the primary legal system with strong social legitimacy. Adultery cases generally begin with family deliberation and end with compensatory customary sanctions.⁴⁵ Customary sanctions not only impact the individual perpetrator, but can also have implications across generations, especially regarding the maintenance of family honor and lineage.⁴⁶ The prohibition on marrying within the same clan is a fundamental principle of Alas tradition which aims to maintain the clarity of

⁴⁴ Siti Sahara, *Legal Protection Against Victims Of Domestic Violence: Critical Study On Cultural Legitimacy In Aceh*, n.d.

⁴⁵ 'Interview with the Chairman of the Aceh Traditional Council (MAA) of Southeast Aceh, Wednesday, November 12, 2025.'

⁴⁶ 'Interview with the Chairman of the Aceh Traditional Council (MAA) of Southeast Aceh, Wednesday, November 12, 2025.'

lineage.⁴⁷ In addition, symbolic economic sanctions in the form of monetary fines and livestock serve to restore family dignity and end social disgrace.⁴⁸

As Taufik Abdullah points out, custom works as an instrument of social stability, not merely a means of punishment.⁴⁹ From the perspective of legal pluralism, conditions in Southeast Aceh reflect the coexistence between state law and customary law as explained by John Griffiths.⁵⁰ The relationship between custom and Islamic law is negotiative and contextual, where each system seeks to maintain its social legitimacy.⁵¹ Thus, Alas custom is not only an alternative, but also the primary reference for the community in responding to sexual violations. The existence of the Qanun Jinayat does not automatically replace customary law; it must negotiate with local laws to be accepted and implemented effectively within the community.⁵²

Conflict between Custom and Qanun: An Analysis of Legal Pluralism in the Alas Tribe Society

The conflict between custom and *qanun* in adultery cases in the Alas community of Southeast Aceh reflects the intersection of two legal systems, both living and legitimate, competing as the primary reference point in moral issues. In the context of legal pluralism, this is normal, but the question is how the two systems interact: complementing, affirming, or negating each other.⁵³ In the Alas community, custom served as the primary legal institution before the *Qanun Jinayat*, regulating social relations and family honor. Moral cases, including adultery, were typically resolved through custom because they were considered fairer, more humane, and maintained inter-family relations. According to the Southeast Aceh Customary Council, customary resolution

⁴⁷ 'Interview with the Chairman of the Aceh Traditional Council (MAA) of Southeast Aceh, Wednesday, November 12, 2025.'

⁴⁸ 'Interview with the Chairman of the Aceh Traditional Council (MAA) of Southeast Aceh, Wednesday, November 12, 2025.'

⁴⁹ Taufik Abdullah, *Custom and Islam: Local Wisdom in Historical Perspective* (Jakarta: LP3ES, 1995), p. 42.

⁵⁰ John Griffiths, 'What Is Legal Pluralism?', *The Journal of Legal Pluralism and Unofficial Law*, 18.24 (1986), pp. 1–55, doi:10.1080/07329113.1986.10756387.

⁵¹ Toni, et al., 'Saro-Saro Marriage: Legal Pluralism between Customary Law and Islamic Law in Alas Society', *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial*, 21.1 (2024), pp. 1–22.

⁵² Jimly Asshiddiqie, *Jimly Asshiddiqie, Introduction to Constitutional Law*, (Jakarta: Rajawali Pers, 2014). Pp. 134–136.

⁵³ Otje Salman and Anthon F Susanto, *Legal Theory: Remembering, Collecting, and Reopening* (Bandung: Refika Aditama, 2013). Pp.112-118.

also aims to protect descendants and prevent hostilities, while major cases not resolved through custom were brought to formal institutions.⁵⁴

Meanwhile, the *qanun* (Islamic law) exists as a form of sharia legislation with political and religious legitimacy. It stipulates that adultery is a serious crime that must be prosecuted through formal mechanisms, with sanctions of flogging, fines, or imprisonment.⁵⁵ However, *qanun* enforcement cannot be separated from the social structure of society. The Public Order Agency (Satpol PP-WH), as *qanun* enforcers, acknowledges that in many cases they tolerate and return to customary law if both parties agree.⁵⁶ This practice demonstrates that even formal regulations cannot stand alone without accommodating local values. Instead, state officials must adapt to customary mechanisms, not the other way around.

This phenomenon demonstrates what John Griffiths calls strong legal pluralism, namely a situation in which many legal systems coexist and none absolutely dominates.⁵⁷ In this context, *qanun* has not succeeded in becoming an exclusive legal order, but rather has become merely one of several available legal systems. Custom, while lacking the coercive power of the state, possesses far more dominant cultural power. The dominance of custom does not mean eliminating *qanun*, but rather regulating the extent to which *qanun* can be implemented in practice. In other words, in Alas society, custom acts as a filter, determining whether a case is worthy of being brought to court or sufficiently resolved through local mechanisms.

The findings of this study align with previous studies that demonstrated a dialogical and complementary relationship between Islamic law and customary law in the practice of resolving moral issues at the local level. The study emphasized that although customary law serves the function of social sanctions, its processes and normative legitimacy still refer to Islamic legal principles, thus establishing a complementary relationship between the two

⁵⁴ 'Interview with the Chairman of the Aceh Traditional Council (MAA) of Southeast Aceh, Wednesday, November 12, 2025.'

⁵⁵ Tarigan, *Azhari Akmal Tarigan, Islamic Law and Justice in Indonesia*, pp. 141–45.

⁵⁶ 'Interview with Satpol PP Officers–Wilayatul Hisbah Southeast Aceh, Tuesday, November 11, 2025.'

⁵⁷ Griffiths, 'What Is Legal Pluralism?', pp. 5–6.

legal systems.⁵⁸ However, in contrast to this context, this study found a stronger normative tension between customary law and the *Qanun Jinayat* in Southeast Aceh, particularly regarding the standards of proof and the mechanisms for handling adultery. This difference suggests that the relationship between customary law and Islamic law is largely determined by the formal legal configuration and law enforcement policies in each region.

The mechanism for proving adultery in the qanun is very strict, so many cases cannot be processed formally. Customary law, on the other hand, relies solely on oral confessions, family testimony, or social facts, making resolutions quicker and more realistic. According to Eugen Ehrlich's theory of living law, the laws that truly govern societal behavior are those that live within the community; in the case of Southeast Aceh, Alas custom plays a more active role in maintaining social order than qanun. The conflict between custom and qanun also concerns legitimacy.⁵⁹ Alas customs have historical, cultural, and social legitimacy as ancestral heritage, while qanuns have formal and religious legitimacy as state-instituted Islamic law. In conflict, communities assess the extent to which qanuns align with customary values rather than prioritizing them as the primary option.

Tensions arise in the sanction mechanisms: customary law uses expulsion, forced marriage, or shame compensation to restore social relations, while the qanun provides retributive sanctions such as flogging or fines. According to the Southeast Aceh Customary Council, customary mechanisms are prioritized in resolving adultery cases because they are considered more effective in restoring social harmony and maintaining family honor than formal punishment.⁶⁰

In certain situations, custom even acts as a social safeguard to avoid formal sanctions deemed too severe or embarrassing to the family. Indigenous informants confirmed that the families of victims or perpetrators usually

⁵⁸ Dinda Difia Madina, Zezen Zainul Ali, and Mega Puspita, 'Aligning Islamic Law and Customary Law: Legal Dialectics in the Tradition of Forced Marriage in Jambi', *Justicia Islamica*, 20.1 (2023), pp. 1–16, doi:10.21154/justicia.v20i1.4720.

⁵⁹ Marc Galanter, 'Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law', *Journal of Legal Pluralism*, 1981, pp. 1–14.

⁶⁰ M.Isa Sulaiman, *History of Customary Justice in Aceh*, " in *Guidelines on Aceh Customs, Courts and Customary Law* (LAKA NAD, 2002), pp. 67–72.

hesitate to bring cases to the Sharia Court for fear of causing lasting shame.⁶¹ This attitude demonstrates that society prioritizes the concept of *izzah* (honor) over formal legal demands. Similar findings from other research in Aceh indicate that society often avoids formal channels to maintain family honor and social relationships.⁶²

The resolution of adultery cases through the qanun and Alas customary law each has advantages and limitations. The qanun provides legal certainty, uniform sanctions, and procedural guarantees through formal justice, but is often seen as insensitive to the social conditions of the perpetrator and his family, thus generating resistance at the community level. Conversely, customary resolution is more acceptable to the community because it emphasizes deliberation, restoring social relations, and protecting family honor, but it has weaknesses in the form of inconsistent sanctions and limited guarantees of procedural justice and protection of individual rights. Therefore, the effectiveness of handling adultery cases in Southeast Aceh depends heavily on the state's ability to integrate legal certainty through the qanun with the local wisdom that exists within the Alas customary system.

From the perspective of legal pluralism theory, this condition reflects the practice of legal pluralism that has not been functionally managed, where various legal systems coexist without a clear integration mechanism. *Jinayat* law positivized by the state and customary law existing within society operate within their own normative logic, thus giving rise to a dualism of authority in resolving adultery cases. This finding confirms that the effectiveness of Islamic criminal law enforcement depends not only on the normative strength of the regulations but also on the state's ability to build contextual normative integration with customary law, which enjoys strong social legitimacy.

Thus, this discussion demonstrates that the issue of enforcing adultery in the Alas community cannot be understood narrowly as a matter of compliance with the qanun alone. This issue is a manifestation of the problem of normative integration within the context of Islamic legal pluralism. If not systematically managed, it has the potential to undermine legal certainty and hinder the achievement of the substantive goals of Islamic criminal law. The tension

⁶¹ 'Interview with the Chairman of the Aceh Traditional Council (MAA) of Southeast Aceh, Wednesday, November 12, 2025.'

⁶² Manan and Salasyah, 'Evaluating the Implementation of Sharia in Aceh, Indonesia'.

between legal certainty, the effectiveness of punishment, family honor, and customary legitimacy need not be resolved by sacrificing one or the other. This article asserts that customary law and criminal law must be placed in a limited and functionally integrated relationship, where qanun remains the primary reference for punishment, while custom serves as a supporting social mechanism that does not negate formal legal authority.

Conclusion

This research shows that law enforcement against adultery in the Alas Tribe of Southeast Aceh takes place within a context of strong legal pluralism, where customary law and the *Qanun Jinayat* operate parallelly, but not always harmoniously. Empirical findings show that customary mechanisms are predominantly used in resolving adultery cases, while the formal route through the Sharia Court only handles a small proportion of cases. This situation confirms that the *Qanun Jinayat* has not fully functioned as a primary legal reference in the practice of enforcing jinayat law at the local level.

Normatively, this research confirms that, from an Islamic criminal law perspective, customary law must be strictly limited in handling adultery. Custom can be recognized as a social instrument for restoring community relations and protecting family honor, but it cannot replace or eliminate the application of criminal law institutionalized through the Aceh Qanun. Within the framework of *maqāṣid al-syarī'ah*, the dominance of customary settlements that eliminate formal legal processes has the potential to sacrifice the goals of legal certainty, justice, and deterrent effects, although to a certain extent it is able to maintain social harmony and clarity of lineage.

Therefore, the *Qanun Jinayat* must be emphasized as the primary legal reference in handling adultery crimes, while customary law is positioned as a limited and functional supporting mechanism. The integration of customary law and qanun should not be understood as a normative compromise that equates the two, but rather as an administrative and procedural integration that ensures inter-institutional coordination without blurring the hierarchy of legal norms. In this context, the role of customary institutions should be limited to the initial mediation and social recovery stages, with reporting and coordination obligations to qanun enforcement officials to ensure legal accountability.

This research is limited by its regional scope, which only covers Southeast Aceh, so the findings cannot be generalized to all of Aceh. Furthermore, the empirical data is largely sourced from interviews with customary institutions, so the potential for subjectivity cannot be completely avoided. This research

also does not fully examine the experiences of victims and perpetrators, particularly regarding the psychological and social impacts of the application of customary sanctions and qanuns. Time constraints also prevented longitudinal observations of changes in case resolution patterns.

Based on these limitations, further research is recommended to expand the study area in order to obtain a comparison of the application of Qanun Jinayat in other indigenous communities in Aceh. This study recommends the need to formulate a normative integration model between criminal law and customary law in Aceh, particularly in handling moral cases such as adultery. This integration is crucial to ensure the achievement of Islamic criminal law objectives without neglecting the social values inherent in indigenous communities. Therefore, the enforcement of criminal law in Aceh is expected to not only fulfill the aspect of legal certainty but also achieve substantive justice in the context of legal plurality.

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