

# Navigating Legal Boundaries: A Cross-Jurisdictional Comparison of Qanun Jinayat on Non-Muslims in Aceh and Brunei Darussalam

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## ARTICLE INFO

### Article history

Received: May 24, 2023

Revised: November 08, 2023

Accepted: November 25, 2023

Published: December 16, 2023

## ABSTRACT

*Qanun Jinayah, being a legal framework based on Islamic principles, must prioritize justice and be focused on safeguarding the rights of all citizens, especially the minority non-Muslims in Aceh. The objective of the essay was to conduct a comparative analysis of the criminal laws applicable to non-Muslims in Aceh Province and Brunei Darussalam. This paper's research employs the perspective of doctrinal law, which means that the law is formulated. The author employs legal hermeneutics through the application of grammatical interpretation, which involves analyzing the words in a law in accordance with the principles of language and grammar. The research indicates that application of criminal law is more extensive for non-Muslims in Aceh compared to Brunei. Non-Muslims in Brunei are subject to only two criminal statutes, namely adultery and khalwat. Meanwhile, in Aceh, crimes committed by non-Muslims encompass seven specific offenses, namely khamar (consumption of alcohol), maisir (gambling), khalwat (close proximity between unmarried individuals of opposite genders), ikhtilat (mixing of genders in public spaces), liwath (homosexual acts), musahaqoh (lesbian acts), and qadzaf (false accusation of illicit sexual relations). It is important to note that these seven offenses are not governed by the Criminal Code. However, the procedural legislation of Aceh Qonun Jinayat still requires more regulation to establish a process. The procedural law of Qanun Jinayat does not*



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Available online at: <https://ejurnal.iainpare.ac.id/index.php/diktum/article/view/5339>



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**Keywords**Aceh  
Brunai Darussalam  
Qanun Jinayah

*impose any limitations on the means by which non-Muslims might express their voluntary submission, nor does it specify the stage at which such a statement must be made. For non-Muslims, this criterion becomes a question of legal certainty.*

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## 1. Introduction

Law Number 39 of 1999 on Human Rights is based on Article 28I Paragraph (5) of the 1945 Constitution, which aims to ensure and safeguard Human Rights (HAM) in line with the principles of a democratic state. (Indriyani and Fitria 2022) This law serves as a legal framework for the realization of these rights. The protection of vulnerable groups is further specified in Article 5 paragraph (3) of Law Number 39 of 1999. This article indicates that individuals belonging to vulnerable groups have the right to receive enhanced treatment and protection based on their special needs and characteristics. The implementation of Islamic law in Aceh for non-Muslims can be analyzed in terms of the vulnerability experienced by these minority groups. The ratification of the International Covenant on Civil and Political Rights has ensured the safeguarding of civil and political rights, as stipulated in Law No. 12 of 2005. Article 27 of this legislation governs measures taken to safeguard the rights of ethnic, religious, or linguistic minorities present in a certain country. As a ratified country, Indonesia is obligated to implement this safeguard. Law plays a dual role in safeguarding human rights. On one hand, it serves as a tool to implement and enforce human rights. On the other hand, it can also be utilized to restrict the exercise of human rights and freedoms, but only in a proportional manner as specified by restriction clauses. (Citrawan 2017) The presence of these two laws becomes evident only when marginalized groups are protected from the violation of their constitutionally guaranteed rights.

Qanun Number 6 of 2014 on Criminal Law, which is in effect in Aceh, is based on Islamic law. Qanun Jinayah, being a collection of laws based on Islamic principles, is obligated to uphold the concepts of justice, welfare, and legal clarity. Furthermore, it is imperative that the focus is directed towards safeguarding the rights of all residents, encompassing the minority non-Muslim population in Aceh. Ibn al-Qayyim's perspective aligns with the notion that genuine shari'ah encompasses principles of justice, kindness, benefits, and wisdom. When justice is transformed into tyranny, mercy into disaster, blessing into harm, and wisdom into lie, it deviates from the principles of sharia. (Al-Qaradhawi 2017) The framework devised by Ibn al-Qayyim is crucial for establishing policies and laws grounded in sharia principles. To prevent the occurrence of a regulation that leads to financial losses, it is imperative to avoid it, since it fundamentally contradicts the principles of sharia law. Ensuring human rights is one of the purposes of the Criminal Code in Aceh, as it aims to safeguard the rights of minorities.

Muhaimin argues that the relevance of discussing whether a policy aligns with the fundamentals of Islamic law has diminished. Public policy is permissible as long as it adheres to common sense and the definitive norms outlined in the Qur'an, which are part of the shari'ah al-khaliq. (Muhaimin 2018) Nevertheless, the author of this discourse argues that this subject remains unresolved, as it pertains to the significance of justice, which is undeniably the most highly sought-after legal principle. Islamic law is applicable without any exceptions. According to Sayyid Qutb, fairness is not just an ethical notion but also the foundation of administration in Islam. Aligned with Sayyid Qutb's perspective, Ibn Taymiyah's understanding of justice is rooted in the notion of trust, which entails carrying out actions in accordance with their rightful claims and essentiality. (Rahman 2012) Hence, the existence of Qanun, which embodies the implementation of Islamic law in Aceh, should

be directed towards endeavors to ensure the fulfillment of the rights of all individuals. This aligns with the notion of justice formulated by Islamic jurists, who prioritize justice as a fundamental principle that must be actualized within a government, particularly in accordance with Islamic norms.

The purpose of this study is to present a comprehensive analysis of the implementation of Islamic law in Aceh Province. Aceh is a region that holds a special authority, as stated in Article 18B paragraph (1) of the 1945 Constitution, which acknowledges and respects its unique characteristics as defined by the law. The territorial status of Aceh Province, which includes special autonomy, is justified by the rationale outlined in the dicta of Law No. 18 of 2001, which pertains to the special autonomy granted to the Province of Aceh. The Special Region of Aceh is characterized by its unique historical struggle of its people. A high level of combat effectiveness stems from a particular perspective on life, whereas the societal nature of a community is founded upon a robust Islamic culture. The adoption of Islamic law in Aceh was granted based on this sociological rationale. Sociological factors have a crucial role in the implementation of Islamic law in Aceh. The sociological state of the Aceh population aligns with Von Savigny's concept that law is discovered rather than created. The development of the law primarily takes place through an organic and unrealized process. (Satjipto Rahardjo 2005) Savigny's perspective is highly applicable to the sociological state of the Acehnese population. The implementation of Islamic law in Aceh should be grounded on the principles cherished by the Acehnese people, which embody their distinct identity and deeply rooted cultural heritage.

According to data retrieved from the Banda Aceh City Government website, the population of Aceh consists of 5,015,236 Muslims, 37,620 Protestants, 9,181 Catholics, 236 Hindus, and 7,529 Buddhists. The total number of houses of worship is as follows: 141 mosques, 7,474 meunasahs and musholas, 189 Protestant churches, 19 Catholic churches, 1 Pura, and 21 Viharas. (Badan Pusat Statistik 2021) The data on Muslims in Aceh, which stands at 98.92 percent, indicates a strong sociological connection between the people of Aceh and Islam as their predominant belief system. However, it is important to acknowledge the presence of followers of religions other than Islam in Aceh. The study focuses on the religious diversity within the Aceh community, particularly in regards to the implementation of Islamic law and its consequences for individuals who are not Muslims.

Furthermore, the author endeavors to draw a comparison between the implementation of Islamic law in Aceh Province and Bunei Darussalam. During the transition from the late 19th century to the early 20th century, the local community experienced notable advancements in religious practices, both in terms of institutional growth and the implementation of reformist ideologies. The scripturalization movement in Brunei is primarily marked by the convergence of religious and administrative advancements. Islam serves as a primary guiding principle and a form of defense in Brunei's political system, emphasizing the strict implementation of Islamic principles. These two principles established the foundation for the formation of Islamic concepts of statehood. These concepts encompassed three key ideas: safeguarding the Malay nation-state, upholding the Syafii Islamic State in terms of fiqh (Islamic jurisprudence), and keeping the ahlu sunnah wal jama'ah madhhab (religious school of thought) faith tradition. (Ghofur 2015) Brunei Darussalam has gradually adopted Islamic law as its official religion and as the foundation for its legal and political structure. The Sharia law of Brunei incorporates the Islamic penal code, which includes prescribed punishments for crimes such as adultery and murder. The allocation of an inheritance is also regulated by Islamic law. Islamic law regulates trade, marriage, and other forms of partnerships. The Islamic legal system of Brunei exhibits similarities with the Islamic legal systems of other Southeast Asian countries such as Indonesia, Malaysia, Singapore, and Thailand. (Haqqi 2017) The focus of this research is how the application of Islamic law that has taken place in Aceh Province

compared to Brunei Darussalam seen from the scope, type of punishment used, and criminal law that applies to non-Muslims.

## **2. Research Method**

This paper's research employs the perspective of doctrinal law, which means that the law is formulated and advanced based on the doctrine embraced by the conceptualist and/or developer. (Soetandyo Wignjosoebroto, 2013) The concept of law is typically seen as a set of written rules or regulations that serve as the standard for acceptable behavior within a society. Effendi (2020) The statute in question pertains to Qanun Jinayah in Aceh and Brunei Darussalam. The investigation commences without a hypothesis as the author aims to present substantiated arguments for the conducted research. Peter Mahmud Marzuki in 2014. The author's argument is based on the empirical findings derived from observations conducted on the principles, particularly Qanun Jinayah. The employed methodology is a conceptual technique, wherein the researcher adopts the perspective of experts to construct logical arguments. Utilizing expert opinions as a foundation for constructing arguments, and subsequently deriving conclusions that align with the logical progression of ideas. The utilized data consists of secondary data, specifically primary legal sources such as the Aceh Criminal Code, the Brunei Darussalam Criminal Code, and other pertinent legislation. Qualitative data analysis techniques are employed when the data in a study is in the form of verbal content rather than numerical data, in order to derive conclusions.

The data collection process involved several stages, including data collection, data reduction, data presentation, and drawing conclusions. The source of this information is a book written by Lexy J. Moleong in 2015. The author employs legal hermeneutics through the application of grammatical interpretation, which involves analyzing the words in a law in accordance with the principles of language and grammar. In this case, the researcher endeavors to comprehend a text or set of rules based on the literal meaning of the words used. Jazim Hamidi, in the year 2005. The fundamental premise underlying the advancement of legal hermeneutics is that law, as a social construct, is a textual, discursive, or argumentative entity that necessitates continuous observation and interpretation. (Weruin, Andayani B, & Atalim, 2016) The Qanun Jinayah is a text that requires careful examination and thorough exploration in order to be fully comprehended, as it is influenced by societal construction.

## **3. Results and Discussion**

The administration of government in the province of Aceh is governed through the utilization of Qanun or Regional Regulations, which are based on Islamic law. The Islamic Shari'ah in Aceh is established according to Article 125 of Law Number 11 of 2006 on the Government of Aceh. It is additionally regulated by the Aceh Law, which covers matters related to religion, sharia, and morals. Article 2 (1) of Qanun Number 8 of 2014 on the Principles of Islamic Sharia provides additional regulations regarding the scope of Islamic Sharia implementation in Aceh. It states that Islamic Sharia encompasses all aspects of community life and institutions in Aceh, including matters related to religious beliefs (Aqidah), Islamic law (Sharia), and moral values. (2) The application of Islamic Sharia in the domain of Sharia, as mentioned in paragraph (1) letter b, encompasses: a. religious rituals; b. family law; c. civil law; d. criminal law; e. justice; f. education; and g. defense of Islam. The number 3. The inclusion of Islamic Sharia in the realm of morals, as stated in paragraph (1) letter c, encompasses two aspects: a) syiar, and b) preaching.

The development of Qanun Jinayat, which represents the modification of Islamic law, is the result of the interaction between the Islamic political elite (consisting of intellectuals, public figures, religious authorities, and Muslim scholars) and the ruling elite (comprising politicians and local officials). (Yahya 2015) Currently, fourteen (14) Qanun/

Perda have been enacted in Aceh Province. The fourteen qanun that have been in force in Aceh when classified based on their scope have been in accordance with Qanun Number 8 of 2014 on the Principles of Islamic Sharia, especially Article 2 paragraph (1). Meanwhile, the Brunei Code of Law contains 47 articles and an estimated 29 articles, among them, are adopted from the elements of Islamic teachings. The Brunei Code covers a wide range of areas, including criminal law (hudud, qisas and ta'zir), muamalah law, family law (marriage, divorce and fasakh), almost all of which are based on Islamic law. (Muzdhar 2003) When considering the extent to which Islamic Law is applied in Aceh and Brunei, it appears that there are comparable regulations in the areas of criminal law and commercial transactions (muamalat). However, in Aceh, there is currently no particular regulation regarding qanun in the area of family law.

According to Article 3 of Qanun 6 of 2014 on Criminal Law, intoxicants, maisir, khalwat, ikhtilath, zina, sexual harassment, rape, qadzaf, liwath, and musahaqah are all considered offenses that are regulated by the Criminal Code. Practitioners of positive criminal law may find some of the jarimah activities regulated by Qanun Jinayah to be strange. Consequently, the Syar'iyah Court has the authority to make decisions about issues that are not addressed by existing criminal legislation.

The categorization of offenses governed in Qanun Number 6 of 2014 on Criminal Law can be divided into two types: jarimah hudud and jarimah ta'zir. Hudud is the plural form of hadd, which refers to the boundary or demarcation between two entities. According to Abdul Qadir Audah, hudud refers to a penalty that has been established by syara' and is considered the prerogative of Allah. (Achmad Wardi Muslich 2005) According to Article 3 of Qanun 6 of 2014 on Criminal Law, the following offenses are considered jarimah and are regulated by the Criminal Code: intoxication, gambling, seclusion, mingling of sexes, adultery, sexual harassment, rape, false accusation of adultery, sodomy, and lesbianism. Practitioners of positive criminal law may find some of the jarimah activities regulated by Qanun Jinayah to be strange. Consequently, the Syar'iyah Court has the authority to make decisions about issues that are not addressed by existing criminal legislation. (Sayid Sabiq 2008) According to Qanun Number 6 of 2014, the hudud jarimah category includes the offenses of drunkenness (intoxication), adultery, and making false accusations of adultery (qadzaf).

Ta'zir, in contrast, denotes the penalty imposed for a transgression that cannot be atoned for by means of hudud. Ta'zir is a type of governmental punishment (al-hakim) for crimes and immoral actions that are not specifically defined in Islamic law. (Sayid Sabiq 2008) The government bears sole responsibility for determining the sentence for jarimah ta'zir. Within the framework of Qanun Jinayah, there are many offenses categorized as jarimah ta'zir, which encompass acts like as khalwat (unlawful seclusion), ikhtilat (mixing of genders), sexual harassment, rape, musahaqah (lesbianism), and liwath (homosexuality).

The Brunei Criminal Code is categorized into five distinct sections. The initial section governs the overarching provisions pertaining to the Criminal Code, encompassing the interpretation, definition, and aims of law enforcement, as well as the criteria for ascertaining an individual's culpability and any exemptions. The second section of the code pertains to exemptions, encompassing 24 categories of actions that are deemed non-criminal (jarimah) due to specific justifications. These justifications include actions carried out by judges in the implementation of Sharia law or by the court (Articles 7 and 8 of the Code), unintentional acts (Article 10 of the Code), acts committed by individuals with impaired mental capacity (Article 14), and acts committed by individuals who have not yet reached puberty or are minors (Article 18). The third section discusses shubhshubhat-at, which refers to activities that fall under criminal acts categorized as shubhat. These actions are not solely committed by an individual and are not explicitly outlined in the Code. Examples include one person encouraging another to engage in

criminal behavior. The fourth section of the Brunei Criminal Code elucidates the offenses using the terminology of law. This section of jarimah is categorized into four main parts, namely: 1) sariqah (theft), hirabah (robbery), adultery, zina bi 'ijabar (adultery by coercion), sodomy (homosexuality), qadhaf (accusing people of adultery without witnesses), drinking intoxicating liquor, and irtidad (apostasy from the religion of Islam); 2) Qatl (murder) and injury; 3) Revoking an oath; and 4) Miscellaneous offenses ('am). The crime rates in Aceh and Brunei can be compared using the table provided below.

According to Article 24 paragraph 5 of the Job Creation Law, business licenses, which include permits, certifications, or Business Identification Numbers, can only be granted once an environmental approval has been acquired. This indicates that obtaining an environmental approval is a must before receiving a business license. The incorporation of environmental permits into business permits is driven by the implementation of government regulation 24/2018, which focuses on the integration of company licensing services through a centralized online platform called online single submission (OSS).

Table 1. Comparison of Punishment Between the Aceh Criminal Code and the Brunei Darussalam Criminal Code

Jarimah	Penalties	
	Aceh	Brunei
Sariqah	None	<ul style="list-style-type: none"> <li>Deleted on right wrist joint;</li> <li>Cut the left leg to the ankle.</li> <li>Maximum imprisonment of 15 years.</li> </ul>
Hirabah Khamar	None 40 lashes	to 40 lashes first offense, second offense is 80 lashes, 80 lashes and imprisonment up to 2 years for a third offense.
Maysir	12 times whipping/ 120 grams of pure gold/ 12 months imprisonment	None
Khalwat	10 times whipping/ 100 grams of gold/ 10 months imprisonment	Fine 4000 USD, maximum imprisonment of 1 year, or both (applies to Muslims and non-Muslims )
Ikhtilat	30 times whipping/ fine 450 grams of gold/ 45 months	
Accusing Of Committing Ikhtilath Adultery	30 times whipping/ 300 grams of gold/ 30 months 100 times whipping	If <i>muḥṣan</i> , punished by stoning to death; <i>ghayr muḥṣan</i> whipped 100 times. (to Muslims and non-Muslims)
Applieosexual Harassment	45 times whipping/ 540 grams of gold/ 45 months imprisonment	None
Rape	125 times whipping/ 1250 grams of gold/ 175 months	When <i>muḥṣan</i> , stoned to death; when <i>ghayr muḥṣan</i> , 100 times whipping.
Qadhaf Sodomy	80 times whipping 100 times whipping/1000 grams of gold/100 months imprisonment	80 times whipping Equated with the punishment of adultery (stoning or 100 times whipping)
Musahaqah	100 times whipping/1000 grams of gold/100 months imprisonment	Fine 40,000 USD; sentenced to a maximum of 10 years; whipped 40 times; a combination of the two punishments.

The Criminal Code of Aceh regulates the form of punishment in Article 4 paragraph (4), which includes the implementation of whipping, fines, imprisonment, and restitution.

Meanwhile, in Brunei, besides flogging, there are various other forms of punishment that are practiced, such as amputation of hands and feet, incarceration, and stoning.

From a human rights standpoint, the utilization of corporal punishment is frequently regarded as harsh and in violation of anti-torture treaties that have been legally ratified. The execution procedure for whipping in Aceh Province is governed by Qanun Number 7 of 2013 on Criminal Procedure Law, specifically in Article 252. According to paragraph (1), prosecutors carry out the act of whipping by arranging the location for the whipping, deciding the timing, and selecting the specific area to be whipped. (2) In order to establish the location and timing of the whipping, as mentioned in paragraph (1), the Prosecutor must collaborate with the Chairman of the Syar'iyah Court, the Head of the Health Department, and the relevant Agency responsible for the Wilayatul Hisbah Regency or local city. Moreover, according to Article 253 (1), the prosecutor might urge the local district/city's Wilayatul Hisbah office to prepare a whip. (2) The Director of the Agency responsible for Wilayatul Hisbah, as mentioned in paragraph (1), must inform the prosecutor in advance of the preparedness of the whipping officer prior to the scheduled flogging. Section 254 (1) Upon the Prosecutor's request, the Chief of the Regency/city Health Office is responsible for selecting a doctor to assess the convict's health both before and after the whipping is carried out; (2) The Chief of the Health Department mentioned in paragraph (1) must provide the name of the designated doctor prior to the scheduled examination.

Regarding the whipping process outlined in the Criminal Procedure Code, it seems that the execution of whipping takes into consideration humanitarian factors, such as guaranteeing the well-being of the individual before and after the punishment. This is achieved by having a doctor appointed by the local health department, as stated in Article 254 of the Criminal Procedure Code. According to Article 259, paragraph (1), the criminal must undergo a health examination by a designated doctor prior to the implementation of the whipping punishment. (2) If the medical condition of an individual, as determined by a doctor's examination, prevents them from undergoing corporal punishment in the form of whipping, then the implementation of the punishment is delayed until the person is deemed healthy enough to endure the flogging. This suggests that the convict's health condition plays a significant role in determining whether or not whipping can be carried out. According to Article 266, the act of whipping can be temporarily halted if the doctor on duty deems it necessary for medical reasons and the convict is sent back to the detention facility. In such cases, the Prosecutor will decide on a new time for the whipping once the convict has been declared fit and after consulting with all relevant parties. Regarding the specific body region subject to whipping, Article 264, paragraph (1) stipulates that "whipping administered on the back (from shoulder to hip) is subject to punishment." Therefore, any form of whipping outside the designated areas, namely the back extending to the hips, is strictly prohibited.

The formulation of the notion of Islamic law inside the national state of the Republic of Indonesia can be traced back to the Jakarta charter of 1959. This charter explicitly said that the State is founded on the Supreme Deity and has the responsibility to enforce Islamic law for its followers. The implementation of Islamic law in the regional administration of Aceh, as a component of the unitary state of the Republic of Indonesia, is predicated on the principle that it applies exclusively to individuals who adhere to the Islamic faith. Given that Islamic law governs all facets of existence, it follows that the government of Aceh aspires to be founded upon Islamic law in all parts of life. Not only in the domain of law, but also in other domains such as political education, economics, social sciences, and government. Qanun Aceh Number 8 of 2014 on the Principles of Islamic Sharia confirms this. (Burhanudin Harahap 2018) According to Article 7, paragraph (1), it is mandated that all individuals who identify as Muslims in Aceh must adhere to and implement Islamic law. This article contends that the Aceh regional administration has a legal mandate to enforce

Islamic law among the Muslim population of Aceh. According to the article, the local government body known as Wilayatul Hizbah in Aceh has the authority to enforce and uphold Islamic law among the Muslim population. They can do so by taking actions such as monitoring the people's prayers and ensuring compliance with Ramadan fasting.

The Aceh Regional Government mandates that Muslim residents of Aceh adhere to and enforce Islamic law, since it is granted the constitutional authority to do so, based on the collective consciousness of the Aceh population in implementing Islamic law. The Constitution grants the right for the people in a specific territory to have awareness and execute Islamic Shariah. The idea of freedom of religion entails the inherent right of individuals to hold and practice their chosen religious beliefs and engage in religious ceremonies, in accordance with legally established regulations, without infringing upon the rights of others. (Suhail Hussein Al-Fatlawi 2015) Article 29, paragraph (2) of the 1945 Constitution explicitly affirms that the State ensures the autonomy of all individuals to adopt and practice their own religious views. Implementing the Islamic Shariah in the teachings of Islam is synonymous with implementing the religion of Islam. Hence, the state not only ensures its capabilities, but it is also obligated to acknowledge the consciousness of the Muslim population in adhering to Islamic sharia. Islamic sharia is the implementation of principles and laws specified by Islam.

The recognition of implementing Islamic Sharia was also acknowledged, stating that the local government of Aceh is not an independent entity, but rather an integral element of the unitary state of the Republic of Indonesia. Therefore, the execution of Islamic law is carried out in a manner that is commensurate with the circumstances. According to Article 9 of Aceh Qanun No. 8 of 2014, it is stated that the Government of Aceh and the local government ensure the freedom, promote harmony, show respect for religious values that are common to all religions, and protect individuals who practice their religion in their daily lives and during worship.

The article cautions against the imposition of Islamic law by local governments on individuals who do not adhere to the Muslim faith. Will Kymlicka refers to this notion as religious tolerance. An idea that highlights the significance of personal autonomy in matters of faith. (Will Kymlika 2003) Therefore, the implementation of Islamic regulations in Aceh is limited to Indonesian nationals who adhere to the Islamic faith, in accordance with territorial principles. Subsequently, this serves as the foundation for the enforcement of Islamic criminal law in Aceh, as stipulated in Article 2 of Qanun Number 6 of 2014 on criminal law, which mandates that the application of Criminal Law must adhere to Islamic principles.

In Islamic law, the concept of zimmi or zimma refers to a state of being protected or safeguarded. According to Wehr (1976), it can be defined as a "covenant of protection" or a "guarantor" that ensures the security of life and property. According to Islamic law, non-Muslims, referred to as Ahl al-zimmah, are granted the opportunity to reside in and participate in the economies of Muslim countries in return for paying a capital tax. Hans Wehr, English Arabic Language Dictionary, 1976. Abdul Kadir Zaidan defines a zimmi as a non-Muslim group that receives protection and safety from Muslims as long as they reside in a legally recognized Muslim community. (Madjid 2004) Abdullahi Ahmed An-Na'im defines the term "zimmi" as the agreement between the Muslim government and the ahlu al-kitab to safeguard the ahlu al-safety, kitab's possessions, and religious autonomy within the confines of the private domain. (Annaim 2007)

According to Yusuf Al-Qaradhawi, there are several rights owned by the zimmi including:(Al-Qaradhawi 1994)

- a. Guaranteed freedom of religion, the *zimmi* (non -Muslims) should not be forced to embrace Islam, Houses of worship belonging to those who practice religions other than Islam must be respected and kept in good repair by Muslims..

- b. A security mechanism for the elderly who, due to age, are unable to work and provide for themselves. Therefore, they and their families became reliant on Baitul Maal (state treasury).
- c. Guaranteed freedom of endeavor and work, non-Muslim minorities have the same freedom to manage various economic activities as Muslims. They have the right to work and strive, and to choose work freely as they wish.
- d. Guaranteed positions in government, Minorities, like Muslims, have the right to hold positions in government. Religious positions such as imam, supreme leader of the state, army commander, Muslim judge, person in charge of zakat and alms, and the like are excluded. Because this position is related to the teachings of Islam that must be truly guarded and maintained by Muslims.

Abul A'la Al-Maududi asserts that Islam unequivocally ensures the rights of non-Muslims and prohibits their involvement in parliamentary matters. Nevertheless, non-Muslims can potentially join the government if they embrace Islam as the fundamental basis of the state. At now, the parliament in Aceh Province does not have any lawmakers who are not Muslim. This topic is significant due to the apprehensions surrounding the ambitions of the underrepresented minority community. Hence, it is imperative to establish a framework that enables non-Muslim residents of Aceh to express their desires to the parliament. This is a mechanism by which local governments can ensure the safeguarding of rights, particularly those pertaining to religious freedoms, for minority groups. Hence, even in the implementation of Islamic law, the legislation ensures the preservation of religious freedom for non-Muslims. Due to the Islamic state's lack of legal authority to violate the rights of non-Muslims, none dares to do so. Islam should offer supplementary directives as long as they do not contradict state legislation. (AlMaududi 2000) Islamic law respects and values adherents of religions other than Islam. MI Patwari formulates in general terms about human rights in Islam; (1) Right to equality; (2) Right to Life, Property & honor; (3) Right to personal freedom; (5) Rights of religious minorities; (6) Rights to Economic security; (7) Enforcement of Rights. (MI Patwari 1993)

According to the statements of Islamic jurists, it is evident that Islam offers safeguard to individuals who are not followers of the Muslim faith. These rights are granted on the condition that people acknowledge and embrace the presence of Islamic governance, which establishes Islamic law as the fundamental basis. The state provides compensation as a means of fulfilling this entitlement for non-Muslim citizens who are subjected to a government that operates based on Islamic beliefs.

Regarding the implementation of Islamic Sharia in Aceh, the treatment of non-Muslims in criminal law is regulated in Article 129 of the Aceh Government Law. This article stipulates that if a criminal act is committed by a group of individuals, some of whom are non-Muslims, the non-Muslim perpetrators have the option to voluntarily subject themselves to criminal law. In paragraph (2), it states that any individual who is not a Muslim is engaging in an unlawful activity that is not governed by the Book of Criminal Law or other criminal regulations outside of it.

Both non-Muslim Acehese and Muslim Acehese may be subject to criminal prosecution if they engage in criminal activities together, as stipulated by this article. The Criminal Code broadens the extent of the offense. Additionally, incorporate behaviors that are specifically governed by the Indonesian Criminal Code, such as the crime of rape. (Ahyar 2017) Non-Muslim individuals are provided with the choice to select either the Qanun or the Criminal Code in cases where the type of offense they have committed falls under the jurisdiction of both legal systems. Non-Muslims are subject to the criminal legislation outlined in the Criminal Code, unless the Criminal Code does not cover the specific criminal offense that has been committed. According to Hasnul Arifin, non-Muslims can be obligated to follow the rules of qanun jinayah in some situations. He suggests that

these norms are based on the concept of pseudo personality. (Melayu, Abubakar, and MohammadNasir 2021)

Discussions over the use of penal punishment for non-Muslim adulterers are indeed present in Islamic law. There are differing perspectives regarding whether non-Muslims should be allowed to commit crimes, with some advocating for it and others holding the opposite stance. According to Shafi'i, individuals who are shown to have committed adultery, as well as dzimmi infidels and apostates, should be subject to hudud punishment. This is because dzimmi infidels are willing to comply with all the regulations that are applicable to Muslims. Prophet Muhammad saw the stoning of two Jewish individuals who were found guilty of committing adultery. The apostate is nonetheless subject to the laws of Islam. Apostasy remains subject to the enforcement of Islamic law. Imam Malik asserts that a kafir dzimmi is exempt from receiving hudud punishment. (Sayid Sabiq 2008)

Article 129 of the Aceh Government Law is deemed justifiable under Islamic law, as per the interpretation of Imam Shafi'i. According to his perspective, dzimmi unbelievers can be subjected to hudud punishment if they engage in adultery. Article 284 of the Criminal Code provides a definition of adultery as "engaging in sexual intercourse between a married individual and someone who is not their spouse." However, this term gives rise to several uncertainties. Due to their enduring love for each other, they indulge in a passionate consensual sexual encounter. According to Article 284 of the Criminal Code, adultery is defined as a situation where one of the persons involved is legally married. However, it cannot be considered adultery if both parties are not legally married. Adultery, as stipulated in Article 284 of the Criminal Code, refers to sexual intercourse between a man and a woman who are not married to each other. This offense is punishable for both the married individuals involved and those who are not married. This term sharply contrasts with the Islamic interpretation of adultery. Unmarried individuals who commit adultery are subject to a punishment of 100 lashes and solitary confinement as part of their sentence. Conversely, individuals who are married and engage in adultery are subject to capital punishment if apprehended.

Given the divergent definitions of adultery in the Criminal Code and Islamic law, it is necessary for the Qanun Jinayah to effectively limit the extent of adultery as stipulated in the Qanun Jinayah. Alternatively, according to Article 129 paragraph (1) of the Aceh Government Law, non-Muslim individuals who engage in adultery might choose to willingly subject themselves to the authority of the Criminal Code.

Non-Muslims in Brunei Darussalam are subject to the same sanctions for adultery as Muslims. If one dies, they are sent to death by stoning; if one is not chaste, they are whipped 100 times. In contrast, the application of punishment for adultery among non-Muslims in Aceh is governed by the Criminal Code Article 284. According to Article 129 paragraph (1) of the Aceh Government Law, individuals who are not Muslims have the option to decide whether to adhere to Qanun Jinayah or to follow the Criminal Code. Aside from adultery, there exists another form of offense, known as khalwat, which imposes penalties on non-Muslims in Brunei. The penalty for individuals, regardless of their religious affiliation, engaging in khalwat is a fine of \$4000, a maximum incarceration period of 1 year, or both. Meanwhile, in Aceh, individuals who engage in khalwat are subject to a punishment of either 10 lashes, a fine of 100 grams of gold, or a prison sentence of 10 months. As khalwat is not specifically addressed in the Criminal Code, the punishment for khalwat is applicable to individuals of all religious backgrounds, including non-Muslims. Therefore, it can be inferred that the criminal legislation that is applicable to non-Muslims in Aceh is more extensive compared to that in Brunei. Non-Muslims in Brunei are subject to two specific criminal laws, notably adultery and khalwat. Meanwhile, in Aceh, non-Muslims are subject to seven specific offenses, known as jarimah, which include khamar (consuming alcohol), maisir (gambling), khalwat (close proximity between unmarried individuals of opposite sex), ikhtilat (mixing of genders in public spaces), liwath (homosexual acts), musahaqoh (lesbian acts), and qadzaf (false accusation of adultery).

#### 4. Conclusion

The jurisdiction of Islamic Law in Aceh Province encompasses aqeedah, sharia, and morals, which are specifically governed by the Aceh Code. On the other hand, the legal jurisdiction of the Brunei Code focuses on criminal law (*ḥudud*, *qīṣās*, and *ta'zīr*), law muamalah, and family law (marriage, divorce, and *fasakh*). The criminal punishments employed in Aceh Province, in contrast to Brunei Darussalam, encompass several forms such as corporal punishment (whipping), monetary fines, incarceration, and restitution. Meanwhile, in Brunei, besides flogging, various other forms of punishment are prevalent, such as amputation of hands and feet, incarceration, and stoning. The application of criminal law is more extensive for non-Muslims in Aceh compared to Brunei. Non-Muslims in Brunei are subject to two specific criminal laws, notably adultery and *khalwat*. Meanwhile, in Aceh, non-Muslims are subject to seven specific crimes known as *jarimah*, which include *khamar* (consumption of alcohol), *maisir* (gambling), *khalwat* (close proximity between unmarried couples), *ikhtilat* (mixing of genders in private), *liwath* (homosexual acts), *musahaqoh* (lesbian acts), and *qadzaf* (false accusation of adultery). It is important to note that these seven crimes are not governed by the Criminal Code (KUHP).

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