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Legitimacy of Aceh's *qanun jinayat* in Indonesia's legal system: Prospects for regional adoption

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Abstract

This article examines the constitutional validity of Aceh's *Qanun Jinayat* within Indonesia's plural legal order and assesses its feasibility as a reference point for criminal-law development beyond Aceh. Drawing on normative legal research informed by socio-legal insights, the study integrates constitutional analysis with Third World Approaches to International Law (TWAIL) to critically engage universalist human-rights objections. The findings confirm that the *Qanun Jinayat* operates as a valid lex specialis rooted in Aceh's special autonomy, yet its institutional replication elsewhere is constitutionally constrained. Rather than framing diffusion as normative imitation, the article identifies three constitutional pathways for broader adoption: asymmetric decentralisation, which offers strong authority but requires high political capital; national codification, which absorbs substantive Jinayat-related norms through national legislation; and the living-law mechanism under the 2023 Criminal Code (Law Number 1 of 2023), which provides a pragmatic yet bounded route for normative accommodation. Feasibility depends on selecting the appropriate pathway and embedding strict safeguards, particularly accountable enforcement and *maqasid*-oriented criminal policy. These findings reposition Aceh as a constitutional laboratory for managing legal pluralism in a modern nation-state.

Keywords: legal pluralism; Islamic criminal law; *Qanun Jinayat* Aceh; Indonesia's legal system; regional adoption

Introduction

The Indonesian legal system is grounded in the *Rechtsstaat* tradition and the supremacy of law, while simultaneously recognising legal pluralism through the coexistence of state law, customary law, and religious law (Wardhani et al., 2022). In practice, the interaction among these normative orders can generate friction, particularly when religious and moral commitments are translated into binding regional legislation, as illustrated by Aceh's *Qanun Jinayat* (Djawas et al., 2024). Within Indonesia's national legal architecture, the *Qanun Jinayat* constitutes a distinctive legal phenomenon, reflecting state-recognised normative diversity enabled by Aceh's special autonomy framework under Law Number 11 of 2006 (Fadli et al., 2025). At the sociological level,

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the *Qanun Jinayat* also expresses Acehnese aspirations to institutionalise Islamic legal principles in a predominantly Muslim legal culture (Bastiar et al., 2025). This configuration raises a core doctrinal and policy question: under what conditions, if any, could *Jinayat*-inspired criminal regulation be contemplated beyond Aceh in regions with different demographic and socio-political compositions?

Recent scholarship has increasingly examined the implementation of *Qanun Jinayat* and its relationship with national criminal justice governance. Maylisandi et al. (2024), for instance, analyse caning within the Islamic penal system and compare it with national sentencing principles. However, their focus remains confined to the nature of punishment rather than the feasibility of regulatory diffusion beyond Aceh. Assaidi (2025) highlights possible complementarities between Islamic and modern criminal law through regulatory compatibilities, but does not address whether *Jinayat*-based regional legislation could be extended to other provinces. Amelia et al. (2025), meanwhile, examine a zina case adjudicated by the *Mahkamah Syar'iyah* in Kutacane and underscore deficiencies in the alignment between Aceh's *Qanun* and national child-protection legislation. These studies prioritise internal doctrinal, procedural, and technical issues within Aceh, leaving the broader question of regional adoption comparatively under-theorised in Indonesia's multi-layered legal landscape.

According to Nur Aziz et al. (2023), debates over *Qanun Jinayat* have primarily focused on its doctrinal foundations, enforcement practices, and human rights contestation in Aceh, while paying less attention to its institutional adaptability and diffusion potential within the national legal framework. However, as a form of Islamic criminal-law normativity embedded in positive law, the *Qanun Jinayat* invites a broader inquiry into how Sharia-informed legal values may be institutionalised within a pluralist constitutional order (Zada, 2023). Accordingly, this study treats *Qanun Jinayat* not merely as a localized *Sharia* experiment, but as a constitutional and policy prototype through which the prospects of *Sharia*-stat integration in criminal law can be assessed across sociological, political, and public acceptance dimensions.

This article aims to analyse the constitutional and normative status of Aceh's *Qanun Jinayat* within Indonesia's legal system and to identify the prospects and conditions for adopting analogous *Jinayat*-inspired regulations in other regions. The central research question is whether, and through what legally plausible routes, *Qanun Jinayat* can inform the development of criminal law without undermining the principles of legal unity, coherence, and constitutional governance. The article argues that feasibility should not be approached as normative imitation; rather, it depends on selecting an appropriate constitutional pathway, supported by strong social legitimacy, careful juridical harmonisation with national law, and sensitivity to human rights standards. In doing so, the article seeks to contribute to the discourse on legal pluralism in Islamic criminal law and to offer policy-relevant guidance for assessing the responsible accommodation of *Sharia*-informed criminal norms in Muslim-majority settings.

Literature Review

The Aceh *Qanun Jinayat* shows the integration of Islamic criminal law with Indonesia's national legal framework. Legally, the *Qanun* is anchored in Aceh's special autonomy framework, granting it the authority to enforce Islamic criminal norms in criminal affairs (Harahap et al., 2023). This *Qanun* delineates offences including adultery, proximity (*khalwat*), alcohol use, gambling, and sexual harassment, instituting distinct penalties such as caning, fines, and imprisonment. The *Qanun* serves as a direct extension of the Aceh Government Law, further reinforced by *Qanun* Number 8 of 2014, which concerns the principles of Islamic law. Consequently, the *Qanun Jinayat* is deemed to possess a more substantial status than ordinary regional rules. Its abrogation can only occur through judicial review by the Supreme Court, in contrast to conventional regional regulations, which can be annulled through governmental directives (Din & Abubakar, 2021).

The *Qanun Jinayat* in Aceh represents a complex integration of religious, social, and legal dimensions, reflecting the predominantly Muslim demographic of the region. It adheres to the notion of personal jurisdiction, indicating that its regulations exclusively pertain to Muslims (Nur Aziz et al., 2023). However, non-Muslims may opt to be governed by it if they engage with Muslims. Additionally, it also adheres to the territorial principle, limiting its applicability solely to the Aceh region (Halim, 2022). The presence of the *Qanun Jinayat* thus serves as a model for implementing Islamic criminal law at the regional level, with implications for the discourse on national criminal law reform. For example, Law Number 1 of 2023 contains prohibitions on abortion, adultery, and blasphemy, which are related to *Qanun Jinayat* (Harahap et al., 2023). However, the application of this *Qanun* is not without criticism, particularly regarding alleged human rights violations resulting from physical punishments (Farkhani et al., 2023). It is also considered potentially discriminatory in the enforcement of specific articles. Therefore, from the perspective of *Maqasid al-Sharia*, sanctions within the *Qanun* are not understood as acts of violence against human dignity, but rather as moral instruments to uphold honour, reason, and social order. With this viewpoint, the *Qanun Jinayat* serves as a safeguard of society's human rights within a moral and civilized framework. This configuration then requires an adequate theoretical framework, one of which is the theory of legal pluralism (Juliansyahzen & Ocktoberrinsyah, 2022).

The theory of legal pluralism starts from the reality that in a plural society, more than one legal system exists simultaneously. John Griffiths rejects the concept of legal centralism, which views a single law originating from the state. He asserts that legal pluralism is a social phenomenon characterised by the coexistence of many legal systems within a community (Sani, 2020). Sally Engle Merry also defines legal pluralism as the existence of two or more legal systems within the same social space (Webber et al., 2020). These systems may take the form of state law, customary law, or religious norms. Griffiths even distinguishes between weak and strong legal pluralism (Tamanaha, 2021). In weak

legal pluralism, state law remains dominant, whereas in strong legal pluralism, different legal systems have relatively equal strength. Thus, legal pluralism does not merely acknowledge the diversity of norms but emphasises ongoing interaction and negotiation between legal systems within a heterogeneous society (Husain et al., 2024). This framework lays the groundwork for a more nuanced understanding of the position of *Qanun Jinayat* within the Indonesian legal framework.

In Indonesia, this theoretical construction finds its relevance both historically and normatively. Since the colonial era, legal pluralism has been clearly evident, as society was classified into different legal systems, namely European, foreign Eastern, and Indigenous groups (Manse, 2024). To this day, customary law, Islamic law, and positive law continue to coexist within the national legal system. Formally, state law is derived from the constitution and legislation. However, Islamic law is also accommodated through the Religious Courts and various national statutes concerning family law, Islamic philanthropy, and *Sharia* economy. Moreover, the special status of Aceh, as outlined in the *Qanun Jinayat*, is evidence of the application of strong legal pluralism, as recognised by the constitution. However, in other regions, Islamic law applies more narrowly (Djawas et al., 2024). Over time, Indonesian legal pluralism has evolved as a compromise between the demands of Islam, customary law, and the principles of nationalism based on *Pancasila*, as well as the need to maintain legal certainty and stability (Hariri & Babussalam, 2024). Thus, this configuration demonstrates that the integration of religious law, including Islamic criminal law, is not contrary to constitutional principles but is part of the dynamic structuring of the national legal system.

The integration of Islamic criminal law into Indonesia's national legal system involves embedding Islamic legal principles within the country's constitutional framework, while adhering to the principles of Pancasila and its multicultural character (Putra & Ahyani, 2022). Indonesia, a nation with a Muslim majority, encounters both obstacles and opportunities in its execution. The main principle of this integration emphasises a preventive and rehabilitative approach, which aims to improve the morals of offenders rather than merely punishing them. These values can be harmonised with the principles of social justice and the protection of individual rights as outlined in *Pancasila* and the 1945 Constitution, so that Islamic law is not viewed as exclusive but rather aligned with the ideals of civilisation (Nashih, 2025). The three-pillar system framework, which unites religious law, customary law, and positive state law, is seen as capable of forming an inclusive modern legal system. Through the snowball system principle, this integration becomes increasingly robust as social development progresses. Historically, Islamic law has long been recognised alongside customary law and Western law since the colonial era, and now some of its principles are incorporated into the Criminal Code Bill, such as the principle of material legality and the balance of divine, human, and social values (Butt, 2023).

The configuration of this integration can be viewed from three aspects: normative, sociological, and practical. From the normative aspect, integration affirms the synergy between the values of *Maqasid al-Sharia* and *Pancasila*, ensuring they do not conflict with the foundational principles of the state (Solikhudin & Rohman, 2023). From the sociological aspect, integration is realised through the collaboration of three legal systems: religion, customary law, and the state, which are capable of addressing Indonesia's pluralism challenges. This amalgamation strengthens the resilience of national law against foreign values that are incompatible with local culture, without dismissing the role of other religions (Isra & Tegnan, 2021). From the practical aspect, integration is already reflected in modern legislation, such as the Criminal Code, which adopts the principle of material legality, as well as the Narcotics Law and Anti-Corruption Law, which embody the *Maqasid al-Sharia*, namely the protection of reason, life, property, and religion. Furthermore, the offence of adultery in the Indonesian Criminal Code draft serves as a concrete example of the internalisation of Islamic values into positive law through national legal language. Thus, this integration is not an alien discourse but a constitutional reality that occurs gradually, with the main challenge being to maintain a balance between religion, the state, and a plural society.

Method

This study employs normative legal research informed by socio-legal insights to examine Aceh's *Qanun Jinayat* and assess the constitutional feasibility of its diffusion beyond Aceh. The analysis is primarily doctrinal, using statutory and conceptual approaches to interpret the legal status, hierarchy, and contestability of the *Qanun* within Indonesia's constitutional framework. Socio-legal insights are employed as an interpretive lens to clarify how legal pluralism, social legitimacy, and governance capacity influence the practical feasibility of regulatory accommodation in a decentralised state.

The research materials comprise primary legal documents and secondary sources. Primary legal materials include the statutory framework governing Aceh's special autonomy and Islamic criminal-law administration, particularly the Aceh Governance Law (2006), the *Qanun Jinayat* (2014), and relevant implementing or technical regulations concerning enforcement procedures. Secondary sources comprise peer-reviewed scholarship on legal pluralism, religion-state relations, decentralisation, Islamic criminal law in Indonesia, and human rights debates, including TWAIL-informed critiques and socio-legal analyses that contextualise universalist claims in postcolonial legal settings.

Data collection was conducted through library research, followed by qualitative content analysis and structured doctrinal reasoning. The analysis proceeded in three steps. *First*, the study mapped the constitutional and statutory bases that structure the *Qanun's* authority, including its position as a regional regulation operating as a *lex*

specialis within Indonesia's plural legal order. *Second*, it examined points of compatibility and potential friction between the *Qanun Jinayat* and national criminal law governance, focusing on harmonisation, procedural guarantees, and the boundaries of delegated authority. *Third*, the study formulated a pathway-based feasibility assessment by comparing three constitutionally plausible routes for broader adoption, asymmetric decentralisation, national codification, and the living-law mechanism under the 2023 Criminal Code, and by identifying the institutional and rights-based safeguards required for any normative accommodation to remain accountable, proportionate, and constitutionally defensible. The study does not claim empirical measurement of public attitudes or enforcement performance outside Aceh. Instead, it offers a policy-relevant legal analysis grounded in authoritative legal materials and the most relevant scholarly debates.

Results and Discussion

Constitutional-Normative Legitimacy and the Religion-State Architecture of Aceh's *Qanun Jinayat*

The Aceh *Qanun* is a regional legal instrument grounded in Law Number 11 of 2006, which provides for special autonomy. It operates as a provincial regulation with an expanded material scope covering Islamic law, customs, and governmental administration. Within this framework, the *Qanun Jinayat* represents the most concrete institutionalisation of Islamic criminal law at the regional level. Its constitutional standing is reinforced by Article 18B (1) of the 1945 Constitution, Law Number 44 of 1999, and Law Number 11 of 2006 on the Governance of Aceh, thereby positioning it within the national legal system with a status formally comparable to other provincial regulations, albeit with distinctive features. In the hierarchy of national legislation, it remains categorised as a Regional Regulation under Law Number 10 of 2004 and Law Number 12 of 2011 on legislation formation. Consequently, the *Qanun Jinayat* occupies a dual position; it is formally subordinate within the national legal hierarchy, yet substantively incorporates criminal norms rooted in Islamic law, and is primarily contestable through judicial review by the Supreme Court.

The emergence and consolidation of *Qanun* Aceh, including the *Qanun Jinayat*, is inseparable from three reinforcing bases: political legitimacy following peace arrangements and the state's recognition of Aceh's special status; sociological legitimacy reflecting the community's aspiration to implement Islamic law formally; and the constitutional logic of asymmetric decentralisation that allows differentiated regulation in specific regions. This configuration not only permits the Acehnese community to articulate historical, cultural, and religious identity through positive law, but also exemplifies legally managed pluralism in which religious norms are channelled through state-authorised legislative mechanisms. In this sense, the *Qanun Jinayat* is a

constitutional product of Indonesia's plural legal architecture and a test case for how national law accommodates normative diversity without eroding legal unity.

This institutional arrangement also highlights Indonesia's distinctive relationship between religion and the state. The presence of *Qanun Jinayat* raises the question of how far a modern state can embed *Sharia*-oriented norms within state institutions while maintaining pluralism and constitutional governance. According to Zahir (2023), the relationship between religion and state can be categorized into three models: integrative, secularist, and symbiotic. Indonesia generally operates within a symbiotic model, where religion is acknowledged as vital to public life yet mediated through constitutional constraints and the normative commitments of *Pancasila*. In this context, the *Qanun Jinayat* demonstrates a form of symbiotic accommodation; *Sharia* norms are institutionalized through special autonomy and legislative procedures, thereby allowing Islamic criminal-law provisions to coexist with national law as part of a state-recognized plural legal order (Fuad et al., 2022). Accordingly, Aceh may be conceptualised as a constitutional laboratory for observing the practical interaction between legal pluralism and religion-state relations, and for assessing, under strict constitutional, institutional, and sociological conditions, the feasibility of designing analogous *Sharia*-influenced regulatory models in other regions with a strong Islamic social base.

Prospects for Regional Adoption: Pathways, Preconditions, and Feasibility

The prospect of adopting *Jinayat*-inspired criminal regulations beyond Aceh should not be framed as a project of normative replication. Instead, it is a question of constitutional pathways and institutional design within Indonesia's legally plural and decentralised order. Aceh's experience demonstrates that Sharia-informed criminal norms can be translated into positive law through state-authorised mechanisms, but it also shows that legality, legitimacy, and enforceability depend on the specific configuration of authority, social acceptance, and governance capacity (Feener, 2021; Fuad et al., 2022). Accordingly, regional adoption must be evaluated as a conditional feasibility problem, under what legal routes could such regulations be authorised, and under what safeguards could they operate without undermining national legal coherence?

To assess feasibility in a disciplined way, this section employs a readiness-oriented framework built on four interdependent variables: an explicit legal basis allocating legislative competence; sociological legitimacy as sustained community support and historically embedded normative expectations; institutional capacity, including enforcement professionalism and oversight architecture; and human-rights safeguards, particularly due process, proportionality, and minority protection (Sumardi et al., 2021; Hidayat et al., 2023). These variables provide a consistent lens for mapping three plausible routes by which *Jinayat*-type norms may diffuse beyond Aceh: asymmetric decentralisation via special autonomy, national codification or partial incorporation into

national penal policy, and reliance on the living law recognition in the new Criminal Code.

First, asymmetric decentralisation through special autonomy is the most legally analogous route to the Aceh model. Under this pathway, the adoption of *Jinayat*-style regional criminal regulation would require a constitutionally grounded delegation of authority, typically justified by distinctive historical, cultural, and sociopolitical characteristics, and then operationalised through a special autonomy framework that authorises regional legislation with expanded material scope (Fuad et al., 2022; Lele, 2023). The strength of this route lies in its clarity of competence and its stronger protection against challenges based on ultra vires claims. However, it is also the most demanding pathway politically, because it presupposes national-level recognition that a region's distinct identity and governance needs warrant asymmetrical treatment within the unitary state. In practice, this route is viable only where the political conditions for special recognition are present and where institutional commitments exist to harmonise the regional framework with national penal policy.

Second, national codification and partial incorporation offer a second route that does not require provinces to acquire Aceh-like autonomy. Here, the substantive values associated with *Jinayat*, particularly norms aimed at protecting public morality and social order, may be translated into national legislation through codification or sectoral statutes, thereby reducing the need for region-specific criminal codes (Putra and Ahyani, 2022; Butt, 2023). The current trajectory of penal reform suggests that national criminal law can incorporate moral norms that align with prevailing social values, while maintaining a unified legal framework. This pathway is, therefore, institutionally more straightforward and less contentious from the standpoint of legal hierarchy, because it shifts the centre of norm production to the national legislature. Its limitation, however, is conceptual: national codification produces a general norm that applies across jurisdictions, which may not reflect the specific institutional arrangements and local normative ecosystems that made the Aceh model workable in the first place (Feener, 2021).

Third, the recognition of living law under the new Criminal Code provides a more limited and carefully bounded route. Articles 2 and 5 of Law Number 1 of 2023 recognise law that lives within society as a potential normative reference, subject to constraints of justice and humane values. This recognition may support the contextual application of local norms in certain circumstances. Still, it does not automatically confer legislative competence to create a comprehensive regional criminal code resembling *Qanun Jinayat* (Afandi & Bagaskoro, 2024). In other words, living law may facilitate culturally informed adjudication or limited normative accommodation. However, it remains vulnerable to constitutional and statutory challenges if employed to justify regional criminal legislation that exceeds delegated authority or conflicts with national procedural guarantees. As a

feasibility route, it is best understood as supplementary rather than foundational: it can strengthen sociological legitimacy claims but cannot replace explicit legal authorisation.

Table 1.

Three Constitutional Pathways for Diffusing Jinayat-Related Norms Beyond Aceh: Preconditions, Strengths, and Consequences

Pathway	Key Legal Preconditions	Primary Strength	Key Consequences / Limitations
Asymmetric decentralisation (special autonomy)	A clear constitutional and statutory delegation (special-autonomy legislation); a defined allocation of legislative competence; institutional arrangements for harmonisation with national criminal law and procedure	The strongest and clearest jurisdictional authority; comparatively stronger protection against *ultra vires* challenges	The most politically demanding route; requires national-level recognition and high political capital; entails significant institutional investment to avoid regulatory disharmony
National codification/ partial incorporation	Legislative commitment at the national level; norm formulation compatible with constitutional commitments and existing penal governance	High national coherence and administrative simplicity; minimises hierarchy conflicts by locating norm production at the national legislature	Reduced regional specificity; produces general norms that may not reproduce the distinctive local normative ecosystem and institutional architecture that made the Aceh model workable
Living-law recognition	Compliance with statutory constraints under Law Number 1 of 2023; non-exceedance of delegated authority; compatibility with procedural guarantees and national criminal-law governance	Pragmatic and context-sensitive; can strengthen sociological legitimacy claims and justify limited normative accommodation	Legally the least stable when used as a substitute for explicit legislative competence; vulnerable to constitutional/statutory challenge if invoked to justify comprehensive regional criminal codes resembling *Qanun Jinayat*

Note. This table synthesises three constitutionally plausible routes for extending *Jinayat*-related norms beyond Aceh within Indonesia's decentralised and legally plural order.

A comparative reading of these three routes clarifies the consequences that are present within them. The special-autonomy route offers the strongest jurisdictional authority but requires substantial political negotiation and institutional investment to prevent regulatory disharmony (Fuad et al., 2022; Lele, 2023). National codification offers higher coherence and administrative simplicity, but at the cost of regional specificity and the distinctive governance logic embedded in Aceh's institutional design (Putra & Ahyani, 2022; Feener, 2021). The living law route offers rhetorical and sociological

support for the integration of moral norms. However, it is the least stable legally when used as a substitute for explicit legislative competence (Afandi & Bagaskoro, 2024). These consequences suggest that adoption is not a binary question of possible or impossible, but a matter of selecting the legally appropriate pathway and matching it with credible institutional safeguards.

For any pathway to be normatively defensible and practically sustainable, several safeguards must be treated as non-negotiable. *First*, the legal basis must be explicit, both to protect the regulation from competence-based challenges and to ensure harmonisation with national criminal law and procedure (Fuad et al., 2022). *Second*, institutional design must prioritise accountability: competent enforcement bodies, transparent oversight mechanisms, and coordination arrangements that prevent arbitrariness and selective enforcement (Hidayat et al., 2023). *Third*, the adoption process must incorporate human rights-sensitive safeguards, due process, evidentiary rigour, proportionality, and protections for minorities and vulnerable groups, so that the regulatory project is framed as a constitutional criminal policy instrument rather than an identity symbol (Jubaidi & Khoirunnisa, 2025; Sumardi et al., 2021). Under these conditions, Aceh may be treated as a constitutional laboratory whose experience can inform the design of *Sharia*-influenced criminal regulation elsewhere, while making clear that diffusion is conditional, pathway-dependent, and institutionally mediated (Feener, 2021; Fuad et al., 2022).

Critical Issues and Risks in Replicating *Qanun Jinayat*

The study regarding the opportunities for the adoption of the *Qanun Jinayat* outside Aceh cannot be separated from various criticisms directed at the administrative, constitutional, political, and human rights aspects. Without a critical review, these issues have the potential to undermine the legitimacy of Islamic criminal law both at the regional and national levels. Therefore, this section compiles the main criticisms directed at the *Qanun Jinayat*, along with their rebuttals and conceptual clarifications, as part of a risk assessment that must be anticipated when the Aceh model is used as a reference for other regions.

The first critique concerns the constitutional legitimacy of the Aceh *Qanun Jinayat*. Several parties question whether the status of the *Qanun Jinayat*, which contains Islamic criminal norms, aligns with the 1945 Constitution and the design of Indonesia's legal state (Butt, 2023). Constitutionally, as demonstrated in the preceding analysis, the recognition of Aceh's status under Article 18B is not an anomaly but a manifestation of asymmetric decentralisation. This means that recognising Aceh's special status is not a permanent exception standing alone, but a realisation of the principle of asymmetric decentralisation, which theoretically could also be granted to other regions if they meet similar historical, cultural, and social conditions (Lele, 2023). Legally, the application of Islamic criminal law in various areas can be understood through the principles of *lex specialis derogat legi generali* and the concept of living law, as acknowledged in the new

Criminal Code. This framework validates local norms as a source of criminal liability, provided they align with justice and human values. This optimism becomes more evident when examining the Criminal Code, which has reduced the spirit of Islamic criminal law into national norms, such as regulations on adultery (Articles 411–413), bans on cohabitation, homosexuality, and lewd acts (Articles 412–417), prohibition of alcohol (Articles 424–426), gambling (Articles 303, 427), and blasphemy (Articles 302, 304) (Putra & Ahyani, 2022). These articles demonstrate that the principles of *Sharia*, which aim to safeguard religion, reason, honour, and public morality, have been integrated into Indonesia's positive legal system.

The second criticism is the polemic that the Aceh *Qanun Jinayat* potentially violates the national Criminal Code, as well as the claim that other regions lack the legal authority to implement a similar model (Nurdin & Ridwansyah, 2020). Essentially, this criticism stems from a misunderstanding of Indonesia's pluralistic and layered legal structure. Aceh is granted constitutional authority to enforce Islamic law within its territory. Moreover, suppose there is an overlap with higher regulations. In that case, this does not automatically invalidate the *Qanun*, because national legislative hierarchy principles strictly mandate the harmonisation of legislative content between central and regional levels. Therefore, before *Qanun* or similar regulations are enacted in other regions, a study process on legislation and normative synchronisation becomes a constitutional mechanism to ensure alignment with national criminal law and to maintain legal certainty (Fuad et al., 2022). Thus, the accusation that the *Qanun Jinayat* contravenes the Indonesian Criminal Code is more accurately understood as a technical harmonisation challenge, rather than a constitutional reason to reject the potential regional adoption a priori (Afandi & Bagaskoro, 2024).

The third critique is based on the argument that Indonesia is not a religious state, so the implementation of Islamic criminal law is considered detrimental to the nation-state's character. This critique overlooks the fact that Indonesia is a constitutional religious country, where the value of Godliness serves as the moral and spiritual foundation in every legal system (Hefner, 2021). The diverse character of the Indonesian nation actually becomes the main strength in maintaining social harmony and legal diversity. According to Mazya et al. (2024), the Indonesian people possess a high level of tolerance for differences in religion, ethnicity, and culture. Their society upholds tolerance, accepts differences, remains loyal to its political institutions, and is committed to maintaining a pluralistic life within the framework of a united nation. These values render legal pluralism in Indonesia not a form of discrimination, but rather a reflection of the nation's social and spiritual realities (Hariri & Babussalam, 2024).

The mismatch in the application of foreign laws adopted from the colonial era is one of the strongest reasons for emphasizing the importance of strengthening laws based on local and religious values (Anas et al., 2025). In the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held every five years, it was

concluded that foreign laws brought to colonised countries have become obsolete and unjust, outmoded and unreal, and can even be a criminogenic factor if legal policies ignore the moral and cultural values of the local community. It is this principle of international law that should support and encourage the formation of *Qanun* in other regions, as it is more adaptable to the culture and moral principles of religion that develop within Indonesian society.

Criticism of the application of Islamic criminal law as something foreign or discriminatory is also not in line with the history of the acceptance of Islamic law. Islamic law has been accepted and applied in various regions since the era of Islamic kingdoms until the early arrival of the colonialists, as explained in the theory of *receptio in complexu* by van den Berg (Ilyas & Padiatra, 2024). This acceptance was gradually limited by the theory of *receptie* from Snouck Hurgronje, which marginalised the role of Islamic law within the Dutch colonial system, even though the moral strength of Indonesian society was rooted in religious teachings. The fluctuating enforcement of Islamic law was primarily caused by colonial political intervention. In contrast, Islamic law had previously been alive and socially practiced, even becoming part of sacred customs, as evidenced by the existence of *serambi* courts in Java, *Sharia* courts in Sumatra, and the *Qadhi* councils in Banjar and Pontianak (Hamzani & Idayanti, 2024).

Therefore, the accusation that the implementation of Islamic criminal law is discriminatory in terms of religious norms is incorrect, because, before the emergence of modern positive law, Islamic law had already functioned as a living law recognized by society (Alotaibi, 2021). Moreover, the synergy between religious law and customary law has long existed, as the principle of *al-'adah muhakkamah* affirms that customs can become a source of law, provided they do not conflict with the principles of *Sharia* (Anggraeni, 2023). Thus, the integration of *Qanun Jinayat* into the national legal system is a manifestation of the nation's original values rooted in religious morality and Indonesian culture (Farkhani et al., 2022).

Furthermore, the legitimacy of *Qanun Jinayat* also gains judicial recognition within the national legal system. According to Afandi and Bagaskoro (2024), the Supreme Court often acknowledges the existence of *Qanun* within the context of local criminal law, even when its legal norms potentially surpass the sanctions of the National Criminal Code. This practice demonstrates that the validity of *Qanun* embodies legal pluralism accommodated within Indonesia's judicial structure. As long as regional regulations are drafted in accordance with the principles of legality, proportionality, and respect for fundamental rights, other regions can also develop regulations with a sharia nuance. This aligns with the *Receptie Exit* Theory and the *Receptie A Contrario*, which emphasises that Islamic law no longer needs to go through customary law, but stands as a normative partner within the national legal system. This theory repositions Islamic law on an equal

footing with customary law within the framework of a religious and pluralistic national legal system.

The fourth critique is directed at the human rights dimension, particularly concerning the caning punishment, which is often regarded as conflicting with the principles of universal humanity. This criticism primarily originates from the Western liberal-secular paradigm, which rejects all forms of physical punishment without understanding the social and theological context of Aceh society. In fact, in Islamic law, punishments such as caning are not seen as acts of violence, but rather as moral-preventive measures that are strictly regulated in terms of evidence and judicial procedures. The aim is to preserve the honour, intellect, soul, and morality of the community in accordance with *Maqasid al-Sharia*, which fundamentally aligns with the objectives of human rights itself. Therefore, describing the *Qanun Jinayat* as a violation of human rights is a reductive view, as it fails to understand the pluralism of Indonesian law, which recognises the coexistence of religious, customary, and state laws simultaneously (Din, 2021).

Conceptually, human rights are multi-interpretative and cannot be separated from the cultural context in which they are applied. In the study of Third World Approaches to International Law (TWAIL), Third World scholars emphasise that human rights universalism often serves as an instrument of Western dominance over non-Western societies (Anghie, 2023). The principle of cultural relativism recognised by the UN Human Rights Commission indicates that the implementation of human rights must be adapted to local values and community beliefs. In the context of Indonesia, the first principle of Pancasila places belief in one God as the moral foundation of the state, so that laws based on *sharia* are not a violation but an embodiment of the nation's values of justice and religiosity. Therefore, the accusation that the *Qanun Jinayat* violates human rights actually overlooks the true identity of national law, which is rooted in the balanced values of divinity and humanity. Thus, the mistake lies not in the *Qanun* itself, but in the interpretation of human rights that has exceeded its boundaries as a foreign ideology not rooted in the cultural and spiritual heritage of the Indonesian community.

The fifth critique concerns the political resistance to the presence of Islamic law. The integration of *Qanun Jinayat* or Islamic criminal law is often associated with the rejection by some political parties of the application of *Sharia* values within the national legal system. This critique arises because it is considered to potentially cause horizontal conflicts between pro-*Sharia* groups and secular nationalist groups. However, political resistance is not merely a reflection of ideological rejection of Islamic law, but also a matter of the political will of elites in responding to the community's aspirations. Objectively, the history of legal development in Indonesia reveals a trend of legislation incorporating Islamic nuances, spanning from family and economic law to regional governance. This fact demonstrates the community's need for Islamic law, so the

existence of *Qanun Jinayat* as regional law is not an anomaly, but a logical continuation of the integration of Islamic law into Indonesia's legal system.

Table 2.

Risk Assessment for Replicating Qanun Jinayat: Critiques, Legal Stakes, and Mitigation

No	Critique/ Risk domain	Core claim	Legal stakes	Minimum Mitigation
1	Constitutional competence	Provinces beyond Aceh lack authority to enact *Jinayat*-style criminal regulation	*Ultra vires* exposure; vulnerable to judicial review/invalidity	Explicit delegation of legislative competence; clear subject-matter limits; defined harmonisation and review mechanisms
2	Hierarchy and harmonisation	Regional norms may conflict with national criminal law and criminal procedure	Normative inconsistency; legal uncertainty; procedural defects	Alignment with criminal procedure; evidentiary standards; coordination between enforcement agencies and courts
3	Religion-state identity	*Sharia*-inflected regulation threatens pluralism/constitutionalism	Legitimacy deficit; polarisation; minority insecurity	Non-discrimination baseline; minority protections; framing as constitutional criminal policy (not identity symbolism)
4	Human rights and non-discrimination	Sanctions/ enforcement risk human-rights violations and discriminatory application	Human-rights challenges; selective enforcement; dignity concerns	Due-process baseline; proportionality; accessible complaint mechanisms; transparent oversight
5	Political resistance and governance	Political instrumentalisation and social conflict risks	Policy instability; abuse of authority	Participatory lawmaking; independent oversight; periodic evaluation; enforcement accountability

Note. This table summarises the main critique domains raised in debates on replicating Aceh's *Qanun Jinayat* beyond Aceh and synthesises the corresponding legal stakes and minimum safeguards required to maintain constitutional defensibility, coherence with national criminal governance, and rights-sensitive enforcement.

Furthermore, Indonesia has recognised the diversity of legal norms as a social and political reality. This means that Islamic law holds the same legitimacy as state law and customary law, provided it is regulated within the framework of the constitution. Political debates in parliament regarding the integration of Islamic law are more accurately understood as a dynamic of democracy, rather than a form of resistance to religious values. Moreover, within the framework of a nation-state religion, Indonesia is neither a purely religious nor a purely secular state, but a theocratic state that allows for moral religious participation in positive law. Therefore, the political resistance that emerges should not be interpreted as an ideological failure, but rather as a test of the nation's political maturity in gradually and inclusively integrating Islamic values. As long as there

is strong political will, consistent social support, and academic commitment to strengthening its legal foundation, the integration of Islamic criminal law into the national legal system is not a utopia, but a historical and constitutional inevitability.

Towards a Model of *Sharia*-Based Regional Criminal Law in Indonesia

Optimism regarding the integration of Islamic criminal law outside Aceh does not arise from a vacuum, but rather from Aceh's experience over more than two decades as a laboratory for national law (Feener, 2021). During this period, Aceh has demonstrated that Islamic law can be implemented within the framework of a modern nation-state without causing national disintegration or systematic human rights violations (Zada, 2023). The *Qanun Jinayat* actually functions as an internal mechanism to uphold public morality and social order, based on theological, sociological, and juridical legitimacy that mutually reinforce each other (Fuad et al., 2022). This experience shows that concerns about the fragmentation of national unity due to the application of Islamic criminal law are unfounded, as long as the regulation is placed within the constitutional framework and managed through an accountable judicial mechanism.

From a political-legal perspective, Aceh's success in implementing the *Qanun Jinayat* demonstrates that Islamic criminal law does not have to be understood as an antithesis to national law, but rather as one variant within the recognized legal pluralism enshrined in the constitution (Sumardi et al., 2021). The integration of *Jinayat* norms into the *Qanun* does not eliminate the applicability of the Indonesian Criminal Code. However, it introduces a layer of *lex specialis* within a social space that is historically and culturally prepared to accept it (Afandi & Bagaskoro, 2024). This affirms that an asymmetrical decentralisation model can serve as an effective instrument for accommodating normative diversity, whilst also testing the capacity of the national legal system to respond to demands for substantive justice rooted in local and religious values. Consequently, Aceh can be positioned as a constitutional laboratory that provides empirical experience for the design of Islamic criminal law in other regions (Razi & Mokhtar, 2020).

The experience of Aceh offers a lesson that the adoption of *Jinayat* outside Aceh cannot be carried out through normative imitation; instead, it must meet several strict prerequisites (Roslaili et al., 2021). *First*, an explicit constitutional and legal basis is required, either through strengthening the national legislative framework (for example, revisions or additions to norms in the Local Government Law, the Criminal Code, or sectoral laws) or through special recognition of the historical and cultural character of the relevant region (Muhtar et al., 2024). Without this foundation, local-level *Jinayat* regulations are vulnerable to being challenged as exceeding authority or deviating from the hierarchy of legislation.

Second, the adoption of criminal law requires a strong sociological legitimacy, namely the existence of a Muslim community with an active religious tradition and a historical connection between *Sharia* and social governance (Sumardi et al., 2021). This

legitimacy is not only measured by demographic majority but also by the extent to which society genuinely makes religious values a normative reference in daily life (Alotaibi, 2021). Without this foundation, criminal law risks becoming an elitist project imposed from above, thereby provoking resistance and undermining the authority of the law.

Third, political will and adequate institutional design are necessary to ensure that the implementation of the law does not merely serve as a form of political symbolism. The formation of competent law enforcement agencies, coordination between the general judiciary and religious institutions, as well as transparent oversight mechanisms, are essential conditions for criminal law to function as an instrument of justice rather than a tool of repression (Hidayat et al., 2023). *Fourth*, the entire adoption process must uphold the principles of human rights respect and minority protection, utilizing the *Maqasid al-Sharia* approach and the concept of cultural relativism to ensure that the design of sanctions and judicial procedures aligns with human dignity and international standards, interpreted in a contextual manner (Jubaidi & Khoirunnisa, 2025).

Based on the principles and prerequisites outlined above, the Aceh *Qanun Jinayat* can be articulated as a conceptual model for the development of Islamic criminal law in other regions with a strong Islamic social basis. This model, broadly speaking, revolves around several pillars: (1) constitutionality, meaning that every *Jinayat* regulation must be founded on constitutional and legal legitimacy; (2) managed legal pluralism, where Islamic law, customary law, and state law are positioned as three normative sources that complement each other; (3) *maqasid*-oriented criminal policy, which involves designing sanctions and judicial mechanisms aimed at protecting religion, life, intellect, property, and honour; and (4) human-rights-sensitive enforcement, which refers to law enforcement that is sensitive to human dignity, protects vulnerable groups, and prevents abuse of power.

Optimism regarding the integration of Islamic criminal law outside Aceh can also be observed in the trend of national legislation that increasingly incorporates norms with Islamic nuances, as well as in the fact that Aceh can implement the *Qanun Jinayat* without disrupting the fabric of Indonesian identity (Feener, 2021). In this context, the integration of Islamic criminal law is not merely an ideological project, but a manifestation of social justice based on local and religious values recognised by the constitution. By strengthening the legal foundation, gaining community support, and political will, the opportunities for integrating Islamic criminal law in other regions will become increasingly open, making Aceh not an exception but an inspiration for strengthening a pluralistic, just, and Indonesia-spirited national legal character. This opens up space within the law for regions with a strong Islamic social basis to develop regional regulations based on *Sharia* within the framework of the constitution and respect for human rights.

Conclusion

This article begins with questions regarding the legitimacy of the Aceh *Qanun Jinayat* within the Indonesian legal system and the extent to which it can be positioned as a model for the development of Islamic criminal law in other regions. The main findings indicate that the *Qanun Jinayat* possesses dual legitimacy. Constitutionally and normatively, it is based on Article 18B of the 1945 Constitution, Law No. 44 of 1999, and the UUPA of 2006. It is operationalised through the law on the formation of legislation, thus holding the status of a *lex specialis* within the framework of national legal pluralism. Sociologically and historically, it is rooted in the long tradition of Islamisation in Aceh and the community's acceptance of *sharia* as living law. The analysis also shows that concerns about potential conflicts between the *Qanun Jinayat* and the Indonesian Criminal Code, accusations that Indonesia is not a religious state, and criticisms of possible discrimination and human rights violations are more accurately understood as challenges to harmonisation, constitutional interpretation, and differing paradigms of human rights, rather than as constitutional reasons to reject the *Qanun* a priori. In this context, Aceh's experience demonstrates that Islamic criminal law can be integrated into the national legal system without undermining the unity of the state or damaging the structure of positive law, provided it is placed within the framework of a God-fearing state that recognises legal pluralism.

Conceptually, this article contributes to enriching the discourse on legal pluralism, the relationship between religion and state, and the integration of Islamic criminal law within the Indonesian context. *First*, by shifting the focus from studies that tend to be Aceh-centric towards viewing Aceh as a 'constitutional laboratory', this article offers an analytical framework that combines philosophical, constitutional, sociological, political, and human rights dimensions to assess the prospects of adopting *Qanun Jinayat* in other regions. *Second*, the article formulates a set of prerequisites and principles for the development of region-based Islamic criminal law, which include an explicit constitutional basis, strong sociological legitimacy, adequate institutional design and political will, as well as law enforcement that is sensitive to human rights and oriented towards *Maqasid al-Sharia*, so that the *Qanun Jinayat* is not understood as a local anomaly but as a conceptual model for the reconstruction of national criminal legal politics. *Thirdly*, through a normative legal approach enriched by socio-legal readings and references to TWAIL and cultural relativism, this article demonstrates that criticism of the *Qanun Jinayat* can only be fairly assessed if placed within the epistemic horizon of the postcolonial state, which seeks to correct the colonial legal legacy that no longer aligns with the moral and cultural values of society.

Nevertheless, this article has several limitations that need to be acknowledged. Methodologically, this study still relies on normative-conceptual analysis and secondary data, and has not empirically tested how communities in other regions perceive the

potential implementation of *Qanun Jinayat*, the local political dynamics involved, or the extent to which law enforcement agencies are prepared to implement a similar model. Furthermore, this article does not detail specific legislative designs for other provinces, such as scenarios for legal amendments, formulation of articles, or the institutional architecture required to support regional adoption. Therefore, further research is necessary in the form of socio-legal studies in areas with a strong Islamic social basis, comparative studies with other countries or regions that implement Islamic criminal law within the framework of a modern nation-state, as well as more detailed dogmatic research on harmonising *Jinayat* sanctions with human rights standards and national penal policies. In this way, the discourse on *Qanun Jinayat* should not stop at pro-contra debates, but move towards the formulation of a more mature, just, and constitutional model of integrating Islamic criminal law into the Indonesian legal system.

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