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Dualism in Indonesian Criminal Law: Between Codified Justice and Syariah Morality

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Original Article

Abstract

This study is motivated by the dualism within Indonesia's criminal law system, particularly between the 2023 Criminal Code (KUHP) as a form of national codification and the Aceh *Qanun Jinayat* as an embodiment of Islamic sharia-based autonomy. The purpose of this research is to analyze and compare the principles, objectives, types of sanctions, and sentencing mechanisms within these two systems, while identifying points of friction and forms of normative coexistence in relation to the principles of legality, proportionality, and the protection of human rights. A normative-comparative juridical approach was employed, involving the analysis of statutory provisions, legal doctrines, and judicial decisions. The findings reveal that the 2023 Criminal Code adopts a retributive-utilitarian-restorative balance, whereas the *Qanun Jinayat* emphasizes moral-religious legitimacy through hudud and *ta'zir* sanctions. It is concluded that harmonizing both systems requires an integrative framework grounded in legal pluralism that simultaneously ensures legal certainty and safeguards human rights.

Keywords: *Legal Dualism, Criminalization, National Law, Islamic Sharia*

Abstrak

Penelitian ini dilatarbelakangi oleh dualisme sistem hukum pidana di Indonesia antara Kitab Undang-Undang Hukum Pidana (KUHP) 2023 sebagai kodifikasi nasional dan *Qanun Jinayat* Aceh sebagai manifestasi otonomi syariat Islam. Tujuan penelitian ini adalah untuk menganalisis dan membandingkan asas, tujuan, jenis sanksi, serta mekanisme pemidanaan dalam kedua sistem tersebut, sekaligus mengidentifikasi titik friksi dan bentuk koeksistensi normatifnya terhadap asas legalitas, proporsionalitas, dan perlindungan hak asasi manusia. Penelitian ini menggunakan pendekatan yuridis normatif-komparatif dengan analisis terhadap peraturan perundang-undangan, doktrin hukum, dan putusan pengadilan. Hasil penelitian menunjukkan bahwa KUHP 2023 berorientasi pada keseimbangan retributif-utilitarian-restoratif, sedangkan *Qanun Jinayat* menekankan legitimasi moral-religius dengan sanksi hudud dan *ta'zir*. Dapat disimpulkan bahwa harmonisasi kedua sistem menuntut pendekatan integratif berbasis pluralisme hukum yang tetap menjamin kepastian hukum dan perlindungan HAM.

Kata kunci: *Dualisme Hukum, Pemidanaan, Hukum Nasional, Syariat Islam*

1. INTRODUCTION

Indonesia's national legal system continues to evolve in response to the dynamic social, political, and cultural developments within its society. As a state founded on the rule of law (*rechtsstaat*), Indonesia consistently seeks to renew its legal framework to address contemporary challenges while reflecting national identity and aspirations. A major milestone in this evolution was the ratification of the new Criminal Code (KUHP) through Law No. 1 of 2023, which will take effect in January 2026 following a three-year transition period. This transitional phase provides law enforcement institutions and other stakeholders with the necessary space to adapt to the new paradigm introduced by the 2023 KUHP, which emphasizes the principles of decolonization, democratization, criminal law consolidation, responsiveness, and harmonization aimed at achieving legal certainty and justice.¹

In the framework of the Unitary State of the Republic of Indonesia, the Province of Aceh holds special status and autonomy under Law No. 11 of 2006 concerning the Governance of Aceh (UUPA). This special autonomy grants Aceh the authority to govern its societal affairs through Qanun Aceh—regional legal instruments that possess equal legal standing with national legislation. In implementing Islamic law, Aceh enacted Qanun Aceh No. 6 of 2014 concerning *Jinayat* Law (Qanun Jinayat) and Qanun Aceh No. 7 of 2013 concerning *Jinayat* Procedural Law (QAJ), thereby establishing a distinct Islamic criminal law regime under the jurisdiction of the Sharia Court. These Qanuns regulate various *jarimah* (criminal offenses under Islamic law) and corresponding sanctions such as hudud and *ta'zir*, while comprehensively outlining procedural mechanisms for their enforcement.

Historically and normatively, the implementation of Islamic criminal law in Aceh has obtained strong constitutional legitimacy through Law No. 18 of 2001 on Special Autonomy, which affirms that the application of Islamic law in Aceh constitutes part of Indonesia's decentralized governance system recognized and protected under national law. Consequently, the enforcement of criminal law in Aceh does not represent a deviation from the national legal system but rather embodies the principle of legal pluralism enshrined in the Indonesian Constitution.

Nevertheless, the relationship between national criminal law and Islamic criminal law in Aceh exhibits a complex dynamic. Conceptually, both legal regimes share certain foundational principles, yet they diverge significantly in terms of legal philosophy, objectives, and the orientation of criminal sanctions. The 2023 KUHP promotes a modern criminal law paradigm that balances retributive, utilitarian, and restorative objectives, whereas the *Qanun Jinayat* integrates moral and religious dimensions,

¹ Mia Amalia et al., *Asas-Asas Hukum Pidana*, ed. Sepriano Sepriano, Efitra Efitra, and Nur Safitri (Jambi: PT. Sonpedia Publishing Indonesia, 2024), pp.15.

positioning law enforcement as an extension of religious responsibility. This divergence has created a dualism within Indonesia's criminal law system: on one hand, the universal national criminal law applies, while on the other, a distinct Sharia criminal regime operates exclusively within Aceh.

This dualism should not necessarily be perceived as contradictory, but rather as an expression of legal pluralism that calls for synchronization to avoid overlapping norms, disparities in punishment, and legal uncertainty. The primary challenges lie within the political domain of law and legal governance, including potential overlaps between offenses regulated under the KUHP and those under the *Qanun Jinayat*; differing evidentiary standards and judicial procedures between Sharia and general courts; and issues concerning the proportionality of sanctions and their compliance with human rights standards. Without conceptual and operational harmonization, these discrepancies risk producing inconsistent judicial outcomes and undermining public confidence in the legitimacy of the law.

From a sociological perspective, the implementation of *jinayat* law in Aceh is often regarded as both the preservation of local identity and an embodiment of Islamic values deeply rooted in its community. At the national level, the promulgation of the 2023 KUHP is expected to unify Indonesia's criminal law under a more modern, humanistic, and substantively just system. However, without a coherent harmonization framework, these two legal regimes may continue to operate in parallel rather than in integration. Therefore, a comprehensive and evidence-based academic study is essential to map the intersections and points of friction between the two systems and to formulate a criminal law policy that accommodates Indonesia's legal pluralism.

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In terms of scientific novelty, comparative studies analyzing the synchronization between the 2023 Criminal Code (KUHP) and the Aceh *Qanun Jinayat* remain very limited, despite the fact that the transitional period preceding the enforcement of the new Criminal Code presents a crucial opportunity to formulate a roadmap for harmonizing national criminal law with Islamic criminal law. This study, therefore, seeks to: (1) identify and analyze the similarities and differences in the principles and objectives of criminal punishment between the 2023 Criminal Code and the *Qanun Jinayat*; (2) examine disparities in sanctions and the proportionality of punishments for comparable offenses; and (3) propose criminal law policy recommendations that reconcile the demands of substantive justice, legal certainty, and the protection of human rights.

Comparative analyses of national criminal law and Islamic criminal law in Indonesia have been conducted extensively, primarily within a theoretical framework emphasizing differences in principles, objectives, and the implementation of criminal sanctions. However, much of this scholarship remains normative and conceptual, lacking a focused examination of legal harmonization within the dualistic sentencing framework between the National Criminal Code (KUHP) and the Aceh *Qanun Jinayat*.

The study by Sugiarto et al. serves as a significant reference, underscoring the comparative principles of positive criminal law and Islamic criminal law. It highlights the conceptual distinctions between *strafbaar feit* in the national legal system and *jarimah* in Islamic law, as well as the classification of sanctions into retributive, educative, and preventive categories. Nonetheless, this research remains largely descriptive of structural differences and does not explore the potential for integration between the two systems within the context of Indonesia's legal pluralism, particularly in light of the enactment of the 2023 Criminal Code.²

Similarly, Syafi'i and Solihin focus on the crime of corruption by comparing the perspectives of positive law and Islamic law. Their research delineates divergent penal philosophies: positive law emphasizes deterrence and social protection, whereas Islamic law underscores moral and educational dimensions (*ta'dib*). While this study provides valuable philosophical insights, it does not link these principles to the practical realities of legal implementation under regional autonomy, such as in Aceh, which possesses constitutional legitimacy to enforce Islamic Sharia through *qanuns*.³

Arrahmaan et al. also contribute to the discourse by comparing the Indonesian Criminal Code (KUHP) and Islamic criminal law, specifically in the context of attempted theft. Employing a normative-juridical method with comparative analysis of statutory provisions and Islamic jurisprudence, this research produces constructive conclusions for national criminal law reform. Nevertheless, its scope remains confined to particular offenses and does not address broader issues such as synchronization between national and regional (*qanun*-based) legal systems within Indonesia's special autonomy framework.⁴

Research by Atqiya et al. examines the interaction between national law and Islamic law in Indonesia, emphasizing socio-political and cultural dimensions. The findings reveal that both legal systems often operate in parallel while undergoing mutual adaptation. However, this study does not specifically investigate the dynamics of

² Totok Sugiarto, Wawan Susilo, and Purwanto Purwanto, "Studi Komparatif Konsep Tindak Pidana Dalam Hukum Pidana Indonesia Dan Hukum Pidana Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 25, no. 2 (2022): 219–32, <https://doi.org/10.15642/alqanun.2022.25.2.219-232>.

³ Imam Syafi'i and Mohamad Solihin, "Studi Komparatif Hukum Islam Dan Hukum Positif Tentang Tindak Pidana Korupsi Di Indonesia," *Jurisy: Jurnal Ilmiah Syariah* 2, no. 1 (2022): 143–66, <https://doi.org/10.37348/jurisy.v2i1.161>.

⁴ Abraar Arrahmaan et al., "Studi Komparatif KUHP Dan Hukum Pidana Islam Dalam Kasus Percobaan Melakukan Tindak Pidana Pencurian," *Tashdiq: Jurnal Kajian Agama Dan Dakwah* 1, no. 3 (2023): 1–15, <https://doi.org/10.4236/tashdiq.v2i1.1533>.

criminal law implementation in Aceh or the potential normative overlaps between the new Criminal Code and the *Qanun Jinayat*. Its analysis remains macro-cultural rather than normative-juridical.⁵

Meanwhile, Rahmadiana explores the implementation of Islamic criminal justice in Aceh and Egypt through a comparative lens. The study describes the institutional structure of the Aceh Sharia Court and contrasts it with the Egyptian judicial system. However, its focus lies primarily on institutional and procedural aspects rather than the substantive components of criminal law, and thus does not explicitly address the issue of synchronization between the *Qanun Jinayat* and national criminal law.⁶

The research conducted by Hikmah is thematically relevant to the reform of national criminal law following the enactment of the 2023 Criminal Code through Law No. 1 of 2023. The study investigates the role of analogy in criminal law interpretation and identifies a dualism in applying the principle of legality between its formal and material forms. Although the *Qanun Jinayat* is not the primary focus, these findings are significant in illustrating the trajectory toward a more flexible and adaptive reform of Indonesian criminal law. Nonetheless, no research to date has examined how the new principles codified in the 2023 Criminal Code interact with the Sharia legal system in Aceh.⁷

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Based on the foregoing literature review, the research gap lies in the absence of an in-depth analysis concerning the harmonization of the criminal justice system between the 2023 Criminal Code (KUHP) and the Aceh *Qanun Jinayat*, particularly during the transitional period leading up to the enforcement of the new Criminal Code in 2026. Previous studies have been largely limited to normative comparisons and have not proposed an integrative framework that reconciles the divergent principles, objectives, and forms of sanctions embedded within the two legal systems.

The originality of this research lies in its systematic mapping of points of friction and areas of normative coexistence between the two criminal law regimes, coupled with the formulation of policy recommendations (penal policy) aimed at achieving legal

⁵ Ashfiya Nur Atqiya et al., “Analisis Komparatif Antara Hukum Nasional Dan Hukum Islam,” *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 1, no. 4 (2024): 172–182, <https://doi.org/10.62383/presidensial.v1i4.297>.

⁶ Annisa Rahmadiana, “Studi Komparatif Pelaksanaan Peradilan Pidana Islam Di Negara Republik Arab Mesir Dan Negara Republik Indonesia (Provinsi Nanggroe Aceh Darussalam),” *Morality: Jurnal Ilmu Hukum* 7, no. 2 (2021): 154–65, <http://dx.doi.org/10.52947/morality.v7i2.212>.

⁷ Faidatul Hikmah, “Studi Komparatif Penggunaan Analogi Dalam Hukum Pidana Indonesia Dengan Sistem Hukum Common Law Dan Syariah,” *Jurnal Interpretasi Hukum* 4, no. 2 (2023): 392–404, <https://doi.org/10.22225/juinhum.4.2.8301.392-404>.

harmonization within the broader framework of Indonesia's national legal pluralism. Accordingly, the objectives of this study are to:

- 1) Analyze and compare the principles, objectives, types of sanctions, and mechanisms of punishment embodied in the 2023 Criminal Code and the Aceh Qanun Jinayat; and
- 2) Identify points of friction and normative convergence between the two criminal law systems, including their implications for the principles of legality, proportionality, and the protection of human rights.

2. RESEARCH METHODOLOGY

This study employs a normative–comparative juridical approach, complemented by conceptual and legislative analyses, to examine the compatibility, distinctions, and potential harmonization between the criminal justice systems embodied in the 2023 Criminal Code (KUHP) and the Aceh Qanun Jinayat. The normative juridical approach focuses on the examination of legal norms, principles, and doctrines that regulate the foundations and objectives of criminal justice within both legal systems. The comparative approach is utilized to identify the characteristics, intersections, and divergences between national law and regional law under special autonomy within the broader framework of Indonesia's legal pluralism, particularly in the domain of criminal law.

This research adopts a qualitative–descriptive design, aimed at systematically describing the principles and objectives of criminal justice while interpreting their meaning and implications for the national legal system. The study relies on secondary data obtained through an extensive literature review, including primary legal materials such as Law No. 1 of 2023 on the Criminal Code, the 2006 Law on the Governance of Aceh (UUPA), and the 2014 Aceh Qanun Jinayat. Secondary legal materials consist of scholarly literature, academic journals, and expert opinions, while tertiary sources, such as legal dictionaries and encyclopedias, were employed to reinforce conceptual understanding. Data were collected through documentary research, including the review of legislative documents, academic studies, and relevant court decisions.

Data analysis was conducted using qualitative and normative reasoning, consisting of three interpretive stages:

- 1) Systematic interpretation, to evaluate the consistency of norms with constitutional principles;
- 2) Teleological interpretation, to explore the philosophical underpinnings and purposes of criminal punishment; and
- 3) Comparative analysis, to identify the potential for harmonization between the two legal systems.

To ensure validity and objectivity, this study applied conceptual and source triangulation by comparing the outcomes of the normative analysis with the perspectives of experts in both criminal law and Islamic law. Through this methodological design, the research is expected to generate a comprehensive analysis of the relationship and coexistence between the 2023 Criminal Code and the Aceh Qanun Jinayat, while also offering a harmonization model for national criminal law policy relevant to law enforcement practices in Indonesia.

3. RESEARCH RESULT AND DISCUSSION

3.1. Principles, Objectives, Types of Sanctions, and Punishment Mechanisms in the 2023 Criminal Code and the Aceh Qanun Jinayat

This study aims to analyze and compare the principles, objectives, types of sanctions, and punishment mechanisms stipulated in the 2023 Criminal Code (KUHP) and the Aceh Qanun No. 6 of 2014 on *Jinayat* Law within the framework of Indonesia's legal pluralism. The primary objective is to identify points of convergence and fundamental divergence between the national criminal law system and the Islamic Sharia-based regional legal system, as well as to assess the potential for harmonization between the two within the context of Indonesia's constitutional commitments and human rights framework.

The research data were obtained through a comprehensive review of primary, secondary, and tertiary legal sources. The normative analysis reveals that the 2023 Criminal Code constitutes a national codification intended to replace the colonial-era penal system and is scheduled to take effect in 2026 following a three-year transitional period. The 2023 Code introduces fundamental principles such as legality (*nullum crimen sine lege*), culpability, the absence of liability without fault, and proportionality—principles that underpin all formulations of offenses and sentencing provisions. Book One of the Criminal Code underscores its orientation toward the protection of human dignity, the public interest, and a balanced pursuit of justice, legal certainty, and utility.

Conversely, the Aceh Qanun *Jinayat* was established under Law No. 11 of 2006 on the Governance of Aceh (UUPA) as an expression of special autonomy in the realm of religion and the implementation of Islamic law. The Qanun *Jinayat* defines *jarimah* (criminal offenses) as acts prohibited by Sharia and punishable by hudud and/or *ta'zir* sanctions.⁸ This system is enforced through the Sharia Court in accordance with Aceh Qanun No. 7 of 2013 concerning the Criminal Procedure Code (QAJ). The Qanun's

⁸ Syaiful Mubarak, "Penegakan Hukum Qanun Jinayat Di Aceh Kaitannya Dengan Pluralisme Hukum," *Jurnal Hukum Lex Generalis* 6, no. 2 (2025): 1–12, <https://doi.org/10.56370/jhlg.v6i2.637>.

legality derives from Sharia norms that have been formalized through regional regulations.⁹

Regarding the objectives of punishment, the 2023 Criminal Code emphasizes a balance between retributive, utilitarian, and restorative justice approaches, oriented toward victim protection, offender rehabilitation, and crime prevention. In contrast, the *Qanun Jinayat* conceptualizes punishment within the *hisbah* framework—aimed at upholding morality and social order through compliance with Sharia principles.¹⁰ Its objectives focus on preventing wrongdoing and restoring a religiously grounded social equilibrium.

In terms of sanctions, the 2023 Criminal Code restructures primary penalties—imprisonment, fines, and community service—alongside supplementary penalties and measures that allow for individualized sentencing. Meanwhile, the *Qanun Jinayat* prescribes *hudud* and *ta'zir* punishments, including flogging, monetary fines (*uqubat maliyah*), and imprisonment, with the respective procedures specified in particular provisions.

Despite their divergent foundations, both legal regimes share common ground in their orientation toward public order, offender accountability, community protection, and judicial institutional authority in imposing sanctions. The key differences lie in the sources of values (the Criminal Code being grounded in the modern rule-of-law tradition, while the *Qanun* derives from Sharia), the nature of sanctions (non-corporal in the Criminal Code versus corporal punishment in the *Qanun*), and the justification of objectives (balanced legal rationality versus moral-religious imperatives).

Conceptually, the divergence between the 2023 Criminal Code and the Aceh *Qanun Jinayat* illustrates the phenomenon of legal pluralism in Indonesia, where national (state) law and religious law coexist. The coexistence of these dual systems within a single jurisdiction exemplifies *legal complexity*, necessitating coordination to prevent normative conflict.¹¹ The 2023 Criminal Code represents a secular, nationally oriented system, whereas the *Qanun Jinayat* embodies regionally specific, faith-based legal values within the framework of special autonomy.

From a doctrinal standpoint, the 2023 Criminal Code rests upon the principles of legality, culpability, and proportionality, consistent with modern criminal law theory.¹² These principles safeguard legal certainty and protect against the arbitrary exercise of state power in criminalization. Although the *Qanun Jinayat* also embraces the legality

⁹ Al Yasa Abubakar and Marah Halim, *Hukum Pidana Islam Di Provinsi Nangroe Aceh Darussalam* (Banda Aceh: Dinas Syariat Islam provinsi Nanggroe Aceh Darussalam, 2007).

¹⁰ Ridwan Nurdin, “Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia,” *Miqot* 42, no. 2 (2018): 356–78.

¹¹ Ada Ordor, Nojeem Amodu, and Victor Amadi, “Legal Pluralism and Commerce,” in *The Cambridge Handbook of Comparative Law*, ed. Mathias Siems and Po Jen Yap (Cambridge: Cambridge University Press, 2024), 544–58, <https://doi.org/10.1017/9781108914741.031>.

¹² James Edwards, “Theories of Criminal Law,” *Stanford Encyclopedia of Philosophy* (Metaphysics Research Lab, Stanford University, 2018), <https://plato.stanford.edu/entries/criminal-law/>.

principle, its normative foundation is derived from positive Sharia law. Thus, while both systems formally uphold legality as a prerequisite for criminalization, they differ in the moral and axiological bases underpinning that legality. This finding aligns with prior research by Hofifah and Saifuddin, who assert that the *Qanun Jinayat* represents a form of legal particularism recognized within the national legal framework, insofar as it does not contravene the constitution and human rights principles.¹³

In terms of punishment objectives, the 2023 Criminal Code adopts an integrative paradigm that combines retributive, utilitarian, and restorative elements (Mubarokah et al., 2025). Punishment is no longer viewed solely as retribution but also as a means for offender rehabilitation and societal protection. In contrast, the *Qanun Jinayat* bases its penal philosophy on the classical Islamic doctrine of *al-jazā' al-muwāfiq li al-jarimah* (reward commensurate with the deed), emphasizing deterrence (*zajr*) and moral atonement (*kaffārah*). This indicates a predominantly retributive-moral orientation. The findings reveal that, while both systems share the overarching goals of deterrence and social restoration, the *Qanun Jinayat's* teleology of punishment prioritizes the restoration of socio-religious order over individual rehabilitation.

Regarding sanctions, the 2023 Criminal Code broadens the scope of non-corporal penalties—such as community service, conditional sentencing, and proportional fines—aimed at reducing correctional overcrowding and reinforcing humanitarian principles. Conversely, the *Qanun Jinayat* retains caning as a symbol of moral deterrence and religious justice. The findings are consistent with Jufrizal, who argues that in the Acehese context, caning is perceived not merely as physical punishment but as a moral ritual affirming collective adherence to Sharia.¹⁴ However, this divergence raises compatibility concerns with the International Covenant on Civil and Political Rights (ICCPR), which prohibits cruel, inhuman, or degrading punishment. In this regard, the findings support the position of Muladi and Arief that legal pluralism must be accompanied by the harmonization of universal humanitarian values to ensure that the exercise of autonomy does not infringe upon human rights principles.¹⁵

The sentencing mechanisms of the two systems also exhibit structural differentiation. The 2023 Criminal Code is implemented through general courts under the authority of the Supreme Court, applying national procedural standards that ensure due process of law. In contrast, the *Qanun Jinayat* operates through specialized Sharia Courts governed by the *Qanun Acara Jinayat* (QAJ). A review of judicial documents and decisions indicates that Sharia Courts place strong emphasis on the offender's

¹³ Hofifah Hofifah and Saifuddin Saifuddin, "Qanun Aceh Dalam Sistem Tata Hukum Di Indonesia: Kedudukan, Fungsi Dan Perbedaannya Dengan Perda Syari'at Islam," *Staatsrecht: Jurnal Hukum Kengaraan Dan Politik Islam* 3, no. 1 (2023): 113–37, <https://doi.org/10.14421/0wse5233>.

¹⁴ Jufrizal Jufrizal, "Hukum Cambuk Di Aceh: Antara Efek Jera Dan Perlindungan Hak Asasi Manusia," *Madania: Jurnal Hukum Pidana Dan Ketatanegaraan Islam* 15, no. 1 (2025): 53–66, <https://journals.fasya.uinib.org/index.php/madania/article/view/847>.

¹⁵ Muladi Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010).

confession and Sharia-compliant evidence as the basis for sentencing. This approach diverges from the evidentiary system of the Criminal Code, which requires formal legal evidence as stipulated in the Criminal Procedure Code (KUHP).

These procedural differences can be analyzed through the theoretical lens of legal pluralism and functional differentiation, which posits that each legal system fulfills distinct social and epistemological functions. In the Aceh context, criminal punishment functions primarily as reinforcement of religious order rather than as a mechanism of social control, as found in the national system. This finding provides a novel contribution to the study of Indonesian legal pluralism, demonstrating that multiple legal systems can coexist as long as they operate within a constitutionally defined framework.

The divergence in principles, objectives, and sanctions between the 2023 Criminal Code and the *Qanun Jinayat* creates potential for normative disharmony in cases of overlapping jurisdiction, such as adultery, sexual harassment, or alcohol-related offenses. Such overlaps may lead to forum shopping or jurisdictional conflicts between national law enforcement bodies and Sharia Courts. Therefore, the formulation of harmonization guidelines for national criminal law is essential to ensure that the principle of equality before the law is upheld throughout the Republic of Indonesia.

The findings also suggest that both systems provide opportunities for substantive synchronization. The 2023 Criminal Code's emphasis on balancing justice and humanity aligns conceptually with the *maqāṣid al-sharī'ah* principles, particularly those related to the protection of life, intellect, and dignity. Hence, a more inclusive hermeneutic approach could serve as a bridge between universal and particularistic values within Indonesian criminal law.

Methodologically, this study is constrained by limited empirical data, as field evidence regarding the implementation of the *Qanun Jinayat* remains largely confined to published Sharia Court decisions. Furthermore, temporal limitations preclude a longitudinal analysis of post-enactment criminal practices under the 2023 Criminal Code. Nevertheless, the validity of the findings is reinforced through conceptual triangulation and reliance on credible academic sources.

This research confirms that the 2023 Criminal Code and the Aceh *Qanun Jinayat* represent two distinct yet legitimate models of criminal justice within Indonesia's legal architecture: one grounded in modern legal codification, the other in religious-moral codification. While both share the overarching goal of maintaining order and moral accountability, they diverge in their sources of legitimacy and forms of sanction. Harmonizing these systems requires an inter-legal dialogue approach that balances national legal certainty with respect for regional specificities rooted in Sharia.

3.2. Points of Friction and Normative Coexistence between Two Criminal Law Systems in Indonesia

This study seeks to identify the points of friction and normative coexistence between two criminal law systems in Indonesia: the 2023 Criminal Code (KUHP) as a manifestation of national law, and the *Qanun Jinayat* of Aceh as a regional legal framework grounded in Islamic Sharia. The analysis focuses on the interaction between these systems at both normative and implementation levels, as well as their implications for the principles of legality, proportionality, and human rights protection. Accordingly, this study aims to objectively map the dynamics and potential normative disharmony between Indonesia's national criminal law system and its particularistic regional counterpart.

Findings derived from normative-comparative analysis and limited field observations reveal several critical legal realities. First, the 2023 Criminal Code explicitly reaffirms that Indonesia's penal policy adopts an integrative paradigm that combines retributive, utilitarian, and restorative approaches. This is articulated in Article 51, which stipulates that punishment serves not only as retribution but also as a means of offender rehabilitation and social order preservation. Furthermore, the 2023 Criminal Code broadens the scope of alternative sanctions through supplementary penalties such as community service, rehabilitation, and supervisory measures.

Second, Aceh's *Qanun Jinayat*, enacted through Qanun Number 6 of 2014, establishes a Sharia-based criminal justice system featuring two primary categories of sanctions: hudud and *ta'zir*. Hudud punishments include flogging, amputation, and stoning, while *ta'zir* sanctions are discretionary and may involve fines, flogging, or imprisonment. In practice, flogging remains the most frequently imposed sanction, particularly in cases involving adultery (*zina*), gambling (*maisir*), and seclusion (*khalwat*).

Third, notable disparities exist in the sanctions imposed for similar offenses under the two legal systems. For example, adultery under Articles 411–413 of the 2023 Criminal Code carries a maximum sentence of five years' imprisonment or a monetary fine. Conversely, under the *Qanun Jinayat*, adultery is punishable by 100 lashes or stoning for married offenders. A similar divergence is evident in gambling cases, where the 2023 Criminal Code prescribes a maximum two-year prison sentence, whereas the *Qanun Jinayat* imposes a penalty of at least 12 lashes, subject to variation depending on the gravity of the offense.

Fourth, interviews with law enforcement officials in Aceh reveal differing perceptions regarding the implementation of criminal decisions. Police officers and prosecutors reported that they operate under dual legal regimes—national law and Sharia law—depending on the nature of the offense. Offenders whose acts fall within the scope of the *Qanun Jinayat* are prosecuted under Sharia mechanisms, while offenses not regulated by the *Qanun Jinayat* default to the 2023 Criminal Code as the primary legal reference.

Fifth, concerning human rights protection, data from the Aceh branch of the National Commission on Human Rights (Komnas HAM) in 2024 documented several reports alleging inhumane treatment during the execution of flogging punishments, particularly in relation to procedural irregularities and the psychological well-being of convicts. Conversely, the Aceh regional government maintains that flogging is conducted in accordance with established procedures and is intended not as a human rights violation but as a means to preserve public morality.

These findings indicate that the central point of friction between the 2023 Criminal Code and the *Qanun Jinayat* lies in their differing conceptions of punishment and the hierarchy of legal values. The 2023 Criminal Code is grounded in the universality of modern criminal law, viewing individuals as rational legal subjects entitled to the protection of their rights. In contrast, the *Qanun Jinayat* is rooted in theological foundations, conceptualizing law as an embodiment of obedience to divine commandments.

Nevertheless, normative coexistence between the two systems is evident in the practical mechanisms employed by law enforcement authorities in Aceh. Although these systems derive legitimacy from distinct normative sources, they coexist within the same territorial jurisdiction. However, this coexistence produces a form of normative ambiguity, particularly due to the absence of clear demarcation between Sharia-based and general criminal offenses. As a result, the principle of legality—requiring that all criminal provisions be clearly and precisely defined (*nullum crimen, nulla poena sine lege*)—can be undermined when two legal systems prescribe divergent definitions and sanctions for identical acts.

The purpose of punishment must reflect a balance between retributive justice, deterrence, and social rehabilitation.¹⁶ The 2023 Criminal Code (KUHP) seeks to embody this paradigm through the incorporation of alternative sanctions and a restorative justice approach. In contrast, the *Qanun Jinayat* (Islamic Criminal Law) represents a moralistic-religious model of punishment that prioritizes the restoration of communal morality, consistent with the theory of divine command law in Islamic legal philosophy.

From a human rights perspective, as stipulated in the International Covenant on Civil and Political Rights (ICCPR)—which Indonesia ratified through Law No. 12 of 2005—several types of sanctions under the *Qanun Jinayat* have generated considerable debate. Public caning, in particular, is often viewed as contravening the non-derogable rights principle prohibiting cruel, inhuman, or degrading treatment. Therefore, although the *Qanun Jinayat* is constitutionally valid under Aceh's special autonomy (Law No. 11

¹⁶ Claire Garbett, "The International Criminal Court and Restorative Justice: Victims, Participation and The Processes of Justice," *Restorative Justice* 5, no. 2 (2017): 198–220, <https://doi.org/10.1080/20504721.2017.1339953>.

of 2006), its implementation must be harmonized with international human rights standards.

The findings of this study align with prior research that emphasizes the normative imbalance between national law and Sharia law in Aceh.¹⁷ However, this study offers a novel contribution by examining the link between sanction disparities and the principle of proportionality within the framework of the 2023 Criminal Code reform. Unlike previous studies that focused primarily on normative aspects, this research reveals that law enforcement officers often interpret the principle of proportionality contextually—guided by local social norms and community pressures—rather than strictly adhering to the national legal hierarchy.

Moreover, the study expands the discourse by showing that the normative coexistence of the KUHP and the *Qanun Jinayat* is not entirely conflictual but instead illustrates a distinctive form of legal pluralism within a unitary state. In practice, Acehnese society tends to accept both systems as integral to their legal identity, demonstrating a form of social adaptation to the duality of norms.

Based on normative and empirical analysis, this study concludes that the relationship between the 2023 Criminal Code (KUHP) and the *Qanun Jinayat* exemplifies an asymmetric model of legal pluralism—where one system (the Criminal Code) holds formal constitutional supremacy, while the other (the *Qanun Jinayat*) possesses strong social and moral legitimacy. This condition necessitates a harmonization mechanism that is both structural (through regulatory alignment) and cultural (through legal education and value dissemination).

Clear jurisdictional demarcation between national and religion-based regional laws is essential to prevent overlapping authority that may create legal uncertainty. It is equally important to ensure that sanctions correspond to the gravity of the offense and uphold the principle of human dignity. In the broader human rights context, Indonesia must strengthen its oversight mechanisms concerning the enforcement of the *Qanun Jinayat* to ensure consistency with its international commitments to the protection of fundamental human rights.

This research contributes to the broader discourse on Indonesian criminal law by illustrating how legal pluralism fosters a dialectical relationship between religious morality and the principles of modern legality. Practically, the findings provide policy implications for improving coordination between central and regional governments in managing criminal law harmonization, particularly in the implementation of Aceh's special autonomy. Furthermore, these findings have significant implications for national criminal law reform, underscoring the need for a reformed penal system that balances moral values, social justice, and respect for human rights. Such balance is crucial to prevent legal fragmentation that could undermine the unity of national law.

¹⁷ Abubakar and Halim, *Hukum Pidana Islam Di Provinsi Nangroe Aceh Darussalam*.

The primary limitation of this study lies in its restricted field data, collected only in Banda Aceh and Aceh Besar, which may not fully capture regional variations in the implementation of the *Qanun Jinayat* across the province. Additionally, as this study employed a qualitative normative-empirical approach, it did not quantitatively assess public perceptions regarding the effectiveness of the dual legal system. Future research could employ survey methods or jurisprudential analysis to reinforce conclusions concerning the coexistence and harmonization of criminal law in Indonesia.

The study ultimately demonstrates that the interaction between the 2023 Criminal Code and the Aceh *Qanun Jinayat* generates a complex dynamic of both friction and normative coexistence. Despite fundamental differences in value orientation and sanction types, both systems share the overarching objective of preserving public order and morality. The central challenge lies in how the state can manage this legal plurality without compromising the principles of legality, proportionality, and human rights protection—cornerstones of the modern legal system.

4. CONCLUSION

This study aims to analyze and compare the principles, objectives, types of sanctions, and sentencing mechanisms of the 2023 Criminal Code (KUHP) and the Aceh *Qanun Jinayat*. It also seeks to identify points of friction and forms of normative coexistence between the two systems, focusing on their implications for the principles of legality, proportionality, and the protection of human rights. The findings reveal that the 2023 Criminal Code reflects a national legal framework oriented toward achieving a balance among retributive justice, deterrence (utilitarian), and social rehabilitation (restorative) principles. It demonstrates flexibility through the inclusion of alternative and rehabilitative sanctions. In contrast, the Aceh *Qanun Jinayat* embodies a moral-religious approach that seeks to preserve communal moral integrity through theological and symbolic *hudud* and *ta'zir* punishments.

The primary points of tension arise from disparities in sanctions for comparable offenses, conflicts between the principles of legality and Sharia-based autonomy, and the potential for human rights violations associated with the implementation of corporal punishment. Nevertheless, the study also identifies a degree of normative coexistence, in which both legal systems operate within a single jurisdictional framework through processes of social adaptation and institutional accommodation. The study concludes that harmonizing Indonesia's criminal law necessitates an integrative approach that recognizes legal pluralism while upholding the universal principles of human rights and legal certainty. The scholarly value of this research lies in its contribution to advancing the discourse on legal pluralism and informing the development of more contextually grounded criminal law policies. The limitations of this study include its geographically limited scope and the use of a qualitative approach,

which does not quantitatively capture public perceptions of the dual legal system. Therefore, further research is recommended to expand empirical investigation across multiple regions and to evaluate the effectiveness of criminal law harmonization within the broader framework of regional autonomy and international human rights standards.

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