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Hudud Adultery and Sexual Crimes: A Comparison of Qanun Jinayat and the National Criminal Code

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Abstract

The regulation of the crime of adultery in Indonesian law shows that there is a fundamental difference between Qanun Aceh Number 6 of 2014 concerning the Jinayat Law and Law Number 1 of 2023 concerning the Criminal Code. These differences are not only related to the formulation of delicacies, but also reflect the difference in legal paradigm between Islamic criminal law which emphasizes the protection of public morals and national criminal law which is oriented towards the protection of private rights and human rights. This condition raises juridical problems related to consistency, legal certainty, and limits of state authority in regulating the sexual behavior of citizens. This study aims to analyze and compare the conception of adultery, the nature of delicacy, the mechanism of proof, and the orientation of punishment in Qanun Jinayat and the National Criminal Code. This study uses normative legal research methods with legislative, conceptual, and comparative approaches. Legal materials are obtained through literature studies of laws and regulations, Islamic legal sources, and relevant legal literature, then analyzed qualitatively and prescriptively. The results of the discussion show that Qanun Jinayat views adultery as a hudud jarimah with theological and social dimensions, so that it can be processed without complaints and applies very strict evidentiary standards as a form of prudence. The National Criminal Code places adultery as an absolute complaint with a modern evidentiary system, which emphasizes the orientation to the protection of family privacy and honor. This study concludes that the difference in the regulation of adultery reflects the plurality of Indonesian criminal law and demands the harmonization of criminal law policies to be in harmony with religious values, human rights, and the principles of the modern state of law.

I. INTRODUCTION

Sexual crimes are complex legal issues because they touch on the dimensions of morality, religion, human rights, and social order. Adultery, sexual harassment, and rape are not only seen as violations of legal norms, but also as acts that undermine human dignity and the stability of society (Agustini et al., 2021). Islam places adultery as a serious act that threatens the common good, as affirmed in the Qur'an: *"And ye shall not approach adultery; Indeed, adultery is an abominable deed and a bad way."* (QS. Al-Isra': 32). This prohibition shows that adultery is positioned as a social crime with a broad impact, not just an individual offense.

Islamic criminal law responds to the jarimah of zina through the hudud mechanism, which is a sanction that has been definitively determined by the nash (Tarigan, 2017). The application of hudud zina is accompanied by very strict evidentiary requirements, especially the need to present four witnesses who witnessed the act of adultery in real life, as emphasized in QS. An-Nur verses 4 and 13. This provision reflects the principle of extreme prudence in imposing sentences, while at the same time aiming to protect the honor of individuals from baseless accusations. The hadith of the Prophet Muhammad PBUH states: *"Avoid hudud from Muslims as much as you can"* (HR. Tirmidhi), which is understood by scholars as a principle of preventing the application of hudud when there is syubhat, so that substantive justice takes precedence over the formality of punishment.

Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat adopts the concept of hudud zina as part of the positive regional law based on the specificity of Aceh. This Qanun places

zina as hudud jarimah with the sanction of whipping and establishes a mechanism of proof that refers to the principles of Islamic criminal law. The application of these provisions has given rise to academic and practical debates, especially when dealing with sexual crimes such as rape which generally occur without the presence of direct witnesses. This condition raises concerns about the potential difficulties of proving for victims and the risk of reduced legal protection for those who experience sexual violence (Irfan, 2013).

Law Number 1 of 2023 concerning the Criminal Code presents a different approach in regulating adultery and sexual crimes. The National Criminal Code expressly separates adultery as a moral offense and rape as a crime against the human body and dignity. This approach focuses on victim protection through the expansion of evidence, recognition of power relations, and emphasis on the element of coercion. The paradigm shows a shift in national criminal law towards the protection of human rights and restorative justice, which in many respects is conceptually different from the hudud approach in Qanun Jinayat (Amsori, 2022).

The fundamental difference between Qanun Jinayat and the National Criminal Code raises juridical and philosophical issues related to the consistency of the national criminal law system, legal certainty, and harmonization between Islamic sharia values and modern legal principles. This normative tension shows a dilemma between efforts to maintain public morality through hudud sanctions and the need to provide effective protection for victims of sexual crimes in the contemporary social context. The Qur'an affirms the purpose of Islamic law as a means of safeguarding religion, soul, intellect, descent, and property, which is conceptually known as *maqāṣid al-shari'ah*. This principle demands that the application of the law, including hudud adultery, does not neglect the protection of victims and substantive justice.

A comparative study between Qanun Jinayat and the National Criminal Code is important to assess the extent to which the two legal regimes are able to answer the challenges of tackling sexual crimes in a fair and proportionate manner. This analysis is expected to reveal the fundamental meeting points and differences in the concept of hudud adultery, proof, and victim protection, as well as provide a theoretical contribution to the development of criminal law that is in line with Islamic values, the principles of the state of law, and the demands of social justice.

II. RESEARCH METHODS

The research method used in this study is normative legal research (*Doctrinal Legal Research*) which focuses on the study of legal norms, legal principles, and legal doctrines that govern hudud adultery and sexual crimes in the Qanun Jinayat and the National Criminal Code. This research places law as a written norm and a system of rules that are analyzed logically and systematically to find consistency, rationality, and the purpose of its regulation (Suyanto, 2023).

The research approach used includes a statute approach by analyzing Qanun Aceh Number 6 of 2014 concerning Jinayat Law and Law Number 1 of 2023 concerning the Criminal Code, a conceptual approach to examine the concepts of jarimah zina, hudud, proof, and victim protection from the perspective of Islamic criminal law and modern criminal law, as well as a comparative approach to identify the similarities, differences, and juridical implications of the two legal regimes.

The legal materials used consist of primary legal materials in the form of laws and regulations and Islamic legal sources such as the Qur'an and Hadith, secondary legal materials in the form of legal textbooks, scientific journals, and expert opinions, and tertiary legal materials in the form of legal dictionaries and encyclopedias. The collection of legal materials is carried out through literature studies, while analysis is carried out qualitatively with prescriptive-analytical methods to produce systematic legal arguments and conclusions that can be accounted for academically.

III. RESULTS AND DISCUSSION

A. Jarimah Zina and Its Sanctions in Islamic Criminal Law

Islamic criminal law views adultery as a ritual that has very basic moral, social, and religious dimensions. Adultery is not only understood as a violation of individual moral norms, but as an act that threatens social order, damages human honor, and has the potential to damage the fate and structure of the family

(Kurniawan, 2022). The Qur'an emphasizes the prohibition of adultery strictly through a preventive approach by prohibiting all acts that approach it, as stated in QS. Al-Isra' verse 32 that adultery is an abominable act and a bad way. This prohibition shows that Islamic law places the protection of human morality and dignity as the primary goal of criminal regulation.

Conceptually, zina in Islamic law is defined as a sexual relationship between a man and a woman that is not bound by a valid marriage and is carried out intentionally without the element of syubhat. The fuqaha redacted different definitions, but they had a similar substance. Malikiyah views adultery as deliberate intercourse against human beings who do not belong to her, Hanafiyah emphasizes the element of haram and the absence of property rights, Shafi'iyah defines it as the entry of the penis into the farji that is forbidden because of its substance, while Hanabilah interprets zina more broadly as any vile intercourse either through the qubul or the anus. This editorial difference shows the richness of the methodology of ijtihad, but still leads to one main principle that adultery requires real and perfect intercourse (Supriani & Saputra, 2021).

The limits of adultery in Islamic law are strictly determined so that there is no expansion of punishment that has the potential to harm the honor of individuals. Intercourse is considered adultery only when the male genital head has entered the female farji, even without the release of sperm and despite the fact that there is a thin barrier that does not eliminate pleasure. Other sexual acts that do not meet these criteria, such as kissing, hugging, or touching that provoke sexual arousal, are not qualified as adultery punishable by hudud, but as immoral acts punishable by ta'zīr. This approach emphasizes that Islamic criminal law makes a clear distinction between acts that lead to adultery and adultery as hudud jarimah (Huda, 2015).

An act can be qualified as a jarimah of adultery if it meets certain elements. General elements include the existence of nash that prohibits adultery, the existence of real acts in the form of intercourse outside of marriage, and the perpetrator is a mukallaf person who is legally responsible. Special elements include intentionality, the absence of coercive elements according to a number of scholars, the object of adultery in the form of a human being, and the absence of syubhat. The concept of syubhat has a central role in Islamic criminal law because it functions as a protection mechanism against criminal errors. Sexual relations that contain syubhat, whether due to mistakes in acts, objects, or perpetrators, cannot be subject to hudud. This principle is in line with the rules of fiqh *Al-Ḥudūd Tudra'u bi al-Shubuhāt* and the hadith of the Prophet PBUH which commands to avoid the application of hudud as long as there is still doubt (Hadi, 2022).

Proof in the case of adultery occupies a very crucial position because it is directly related to the application of hudud sanctions. Islamic law sets very strict standards of proof as a form of protection for human honor and dignity. Testimony is the main evidence in an adultery case on the condition that four male witnesses are fair and witness the act of adultery clearly, as affirmed in the Qur'an. An-Nur verse 4. This provision shows that Islamic criminal law prioritizes the prevention of defamation and the protection of individual reputations over the ease of punishment.

Confession (iqrār) is also recognized as valid evidence as long as it is done voluntarily, clearly, detailed, and without coercion. The normative basis of recognition as evidence can be found in the Qur'an, Sunnah, and ijma' scholars, including the hadith of Ma'iz and the story of Al-'Asif which show that personal recognition can be the basis for the application of hudud. The validity of the confession requires that the perpetrator has full consciousness and freedom of choice, so that confession from a coerced or unreasonable person is unacceptable (Zama et al., 2020).

Qasamah and qarinah are evidence whose use is debated by scholars. Some of the fuqaha limit qasamah to murder, while other scholars such as Ibn al-Qayyim open the space for the use of qarinah to prevent the loss of rights and the occurrence of tyranny. This difference of view shows that Islamic criminal law has interpretive flexibility within the framework of maintaining substantive justice, without compromising the principle of prudence in the application of hudud. (Izaturahmi et al., 2024)

The overall construction of Islamic criminal law regarding adultery shows that hudud is not a repressive instrument of punishment, but a

normative mechanism aimed at maintaining the benefit, honor, and justice. The strict definition, elements, and proof of adultery confirm that the application of hudud sanctions is only possible under very limited and definite conditions. This framework is an important foundation in understanding the fundamental differences between Islamic criminal law and modern criminal law, particularly in responding to sexual crimes, which will then be analyzed in the context of comparisons with Qanun Jinayat and the National Criminal Code (Danial, 2023).

B. Conception and Regime of Adultery in Qanun Jinayat and the National Criminal Code

The comparison between Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat and Law Number 1 of 2023 concerning the Criminal Code shows fundamental differences in the way the law views adultery, both in terms of conceptual, delicate, evidentiary mechanism, and orientation of legal protection that is to be realized. This difference is not purely juridical technical, but reflects the difference in philosophical paradigm between Islamic criminal law and modern national criminal law (Ethics, 2024).

The Qanun of the Jinayat Law defines adultery broadly as sexual intercourse between a man and a woman without a legal marriage bond, either by those who have the status of muhsan or ghairu muhsan. This conception departs from the doctrine of Islamic sharia which places adultery as jarimah hudud, which is a serious violation of the rights of Allah (ḥaqq Allāh) and the moral order of society. The normative foundation is directly sourced from the Qur'an, especially QS. Al-Isrā' verse 32 which expressly prohibits the act of approaching adultery, as well as QS. An-Nūr verse 2 which establishes sanctions for the perpetrators. The prohibition shows that adultery is seen as a threat to the public good (ḥifẓ al-nasl and ḥifẓ al-'irḍ), not simply a violation of private relations between individuals (Pertiwi & Herianingrum, 2024).

On the contrary, the National Criminal Code through Article 411 of Law No. 1 of 2023 defines adultery as intercourse with a person who is not a legal husband or wife. Although there is a significant expansion compared to the old Criminal Code because now unmarried couples can be convicted of adultery, the Criminal Code still places adultery as an absolute complaint. Law enforcement can only be carried out if there is a complaint from a party who directly has a family relationship, namely the husband or wife for the perpetrator who is married, and the parents or children for the perpetrator who is not married. The nature of this complaint shows that the Criminal Code views adultery as more of a violation of private interests and family honor, rather than a direct violation of public morals (Septia, 2024).

These paradigm differences have a direct impact on law enforcement mechanisms. Qanun Jinayat allows law enforcement officials to process adultery cases without waiting for complaints, especially in the event of being caught. The state, in the context of Aceh, is present as the guardian of public morals and the implementer of sharia values. This approach is consistent with the principle of amar ma'ruf nahi munkar which places the prevention of disobedience as a collective responsibility. The National Criminal Code strictly restricts state intervention in order to protect citizens' privacy rights and prevent excessive criminalization of the personal domain (Hadi, 2022).

The evidentiary aspect further emphasizes the difference in orientation. Qanun Jinayat applies very strict evidentiary standards, in the form of the testimony of four fair male witnesses, the confession of the perpetrator, or certain indications such as pregnancy that cannot be legally explained. This high standard is actually intended as a precautionary mechanism so that hudud is not imposed haphazardly, as the rules of fiqh which state "avoid hudud with the existence of syubhat". The criminal threat of qadzaf for the accuser of adultery who cannot prove his accusation strengthens the protection of the honor of the individual from fitnah (Abdurahman, 2023).

The National Criminal Code relies on a system of proof according to the Criminal Code that focuses on modern evidence such as witness statements, expert testimony including visum et repertum, letters, instructions, and statements of the defendant. This approach emphasizes the rationality of proof and victim protection, especially in the context of sexual crimes, but at the same time lowers the moral-religious standards on which Islamic criminal law is based. (Septia, 2024).

Overall, this comparison shows that Qanun Jinayat places adultery as a moral-religious crime with a public and theological dimension, with an orientation of prevention and safeguarding sharia values. The National Criminal Code positions adultery as a limited offense that is private and contextual, with an emphasis on human rights, privacy, and the state's prudence in criminalizing. This difference is not just a conflict of norms, but a reflection of the plurality of the Indonesian legal system that seeks to balance religious values, local wisdom, and modern criminal law principles within the framework of the state of law.

CONCLUSION AND SUGGESTIONS

A. Conclusion

The comparison between Qanun Aceh Number 6 of 2014 concerning the Jinayat Law and Law Number 1 of 2023 concerning the Criminal Code shows that there are paradigmatic differences in viewing and regulating the crime of adultery. Qanun Jinayat places adultery as a hudud jarimah with a theological and social dimension, so it is understood as a violation of the rights of Allah and public order that can be acted upon without complaints. This approach is oriented towards the protection of public morals and the safeguarding of the goals of the shari'a (maqāṣid al-syarī'ah), in particular the protection of posterity and honor. On the contrary, the National Criminal Code views adultery as an absolute complaint offense rooted in private interests and family honor, even though it has broadened the subject of the perpetrator compared to the previous Criminal Code. This difference is also reflected in the evidentiary mechanism, where Qanun Jinayat applies very strict evidentiary standards as a form of prudence in imposing hudud, while the Criminal Code relies on a modern evidentiary system based on the national criminal procedure law. These regime differences affirm the plurality of criminal law in Indonesia which reflects the tug-of-war between religious values, the protection of human rights, and the principles of the modern state of law.

B. Suggestions

Efforts are needed to harmonize national criminal law policies with criminal law based on religious and local values without ignoring the principle of human rights protection. Lawmakers need to clarify the limits of state intervention in regulating adultery so as not to cause legal uncertainty and disparities in law enforcement. Local governments, especially Aceh, are advised to continue to strengthen procedural aspects and the protection of the rights of suspects and victims in the implementation of Qanun Jinayat. Further research needs to be conducted to examine the sociological implications and effectiveness of adultery law enforcement in both legal regimes to support more comprehensive and contextual criminal law reform.

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