



## Jarimah Qadzaf and Uqubatnya, Comparison Between Qonun No. 4 of 2014 concerning Jinayat and the Criminal Code

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### Abstract

The phenomenon of accusations of adultery without real evidence and defamation raises serious problems in the moral, social, and legal order of society. In the perspective of Islamic law, this act is known as jarimah qadzaf, which not only damages the reputation of the individual but also interferes with social integrity and the principle of justice. The application of qadzaf in Indonesia shows that there is a fundamental difference between national law and the sharia qanun that applies in Aceh, thus creating challenges in legal harmonization. This study aims to analyze the concept of jarimah qadzaf and its uqubat, as well as compare its application between Qanun Aceh No. 4 of 2014 concerning Jinayat and the Criminal Code (KUHP). The research method used is normative research with a comparative law approach, based on the study of legal documents in the form of the Qur'an, Hadith, Qanun, and the Criminal Code, as well as relevant secondary legal literature. The analysis is carried out qualitatively to understand the substantive, philosophical, and procedural aspects of the existing regulations. The results of the study showed that Qanun Aceh placed qadzaf as a hudud crime with the sanction of eighty lashes, focusing on the protection of individual honor and preventive effects. While the Criminal Code places the accusation of adultery as a defamation complaint with imprisonment or fines, it emphasizes procedural certainty rather than moral and spiritual aspects. This difference reflects the different legal philosophies between the sharia approach and national positive law, but both have the goals of protecting the community and enforcing justice. In conclusion, a deep understanding of qadzaf and its comparison with the Criminal Code is important to integrate moral principles, ethics, and legal procedures, as well as ensure fair protection of individuals and social interests.

## I. INTRODUCTION

The phenomenon of defamation and accusations of adultery without real evidence is a serious problem that affects the moral, social, and legal order in society. This kind of action not only causes psychological and social harm to individuals, but can also damage family harmony and cause conflict between members of society. The negative impact of false accusations or qadzaf penetrates the realms of law, ethics, and religion, so it requires serious attention in regulation and law enforcement (Abdurahman, 2023).

In the perspective of Islamic law, the act of accusing another person of adultery without having four valid witnesses is called jarimah qadzaf. This jarimah is a form of great sin that not only damages the reputation of the individual, but also injures the principles of justice and social integrity. The punishment for

qadzaf perpetrators is clearly regulated in the Qur'an and Hadith, as a form of protection for personal honor, family rights, and public order. This provision emphasizes the moral and spiritual responsibility of each individual in safeguarding the honor of others (Putra primary, 2024).

The application of jarimah qadzaf in Indonesia shows that there is a fundamental difference between national law and sharia law that applies in certain regions, such as Aceh. Qanun No. 4 of 2014 concerning Jinayat provides a special legal basis that emphasizes that the violation of qadzaf is a serious criminal act that must be responded to with certain sanctions. This Qanun stipulates the punishment of caning as a form of uqubat that is strict and has a preventive purpose, as well as educating the community to respect the honor of others (Supriani & Saputra, 2021).

In contrast to the national criminal code, accusations of adultery are categorized as defamation that is a complaint. The Criminal Code emphasizes a legal process that is procedural and open to every citizen, with prison sanctions or fines as a form of punishment. National positive law does not distinguish the level of purity or muhsan status of the accused individual, so it does not emphasize the moral and sacred aspects of the act as in sharia law. These differences pose challenges in the integration of the two legal systems, especially related to the harmonization of the protection of individual rights and the application of fair sanctions (Septia, 2024).

The application of qadzaf punishment in qanun is not only retributive, but also preventive and educational. The deterrent effect of whipping sanctions serves as a moral and spiritual reminder to society, while emphasizing the importance of individual responsibility in disseminating information. The philosophy of Islamic law that underlies the qanun emphasizes the balance between individual rights, family honor, and social interests, thus providing a different perspective than national law which emphasizes the restoration of public order and procedural certainty (Hadi, 2022).

Comparative analysis between qanun and the Criminal Code is important to understand the legal, social, and cultural implications of the enforcement of jarimah qadzaf. This study can explain the effectiveness of sanctions in suppressing the practice of qadzaf, the relevance of punishment to social norms, and its impact on the moral integrity of society. A deep understanding of jarimah qadzaf also opens up space for reflection on the protection of human rights, restorative justice, and law enforcement that is in harmony with moral and ethical values (Septia, 2024).

This research is expected to contribute to the comparative legal literature, especially in understanding the dualism of law in Indonesia. This analysis emphasizes that the integration between sharia principles and national law requires not only precision in procedural aspects, but also an understanding of ethical, moral, and social values. This multidimensional approach allows for the strengthening of legal protection for

individuals, while upholding a harmonious and just social order in society.

## II. RESEARCH METHODS

This research method uses a juridical normative approach with comparative analysis (Rizkia & Fardiansyah, 2023). Data was collected through literature studies in the form of qanun, the Criminal Code (KUHP), Islamic legal literature, journals, and other related legal documents. The analysis is focused on comparing the provisions of jarimah qadzaf and its uqubat in Qonun No. 4 of 2014 with the rules contained in the Criminal Code, emphasizing substantive legal aspects, the purpose of sanctions, and their social impact. This approach allows researchers to understand differences and similarities, evaluate the effectiveness of the application of punishments, and assess the relevance of positive law to sharia principles in the context of enforcing jarimah qadzaf in society.

## III. RESULTS AND DISCUSSION

### A. Conceptualization of Jarimah Qadzaf in the Perspective of Islamic Law and Indonesian Positive Law

Jarimah qadzaf is one of the serious crimes in Islamic law, which emphasizes the protection of individual honor and maintaining the moral order of society. Substantially, qadzaf is an accusation of adultery or rejection of the nasab against a person who is muhsan, carried out without valid evidence or witnesses, thus violating the principles of justice and individual rights. This concept emphasizes that human honor, chastity, and reputation are fundamental values that must be safeguarded, and violations against them not only harm the accused but also have an impact on the social order as a whole (Nur & Sa'i, 2025).

The terminology of qadzaf in the Quran and hadith emphasizes the legal consequences for the perpetrator, with hudud punishment being physical and symbolic. The sanction of eighty lashes and the abolition of the right to testimony for perpetrators aims to uphold justice, provide a deterrent effect, and prevent moral damage in society. Scholars of various sects differ in establishing the elements of muhsan and the requirements of proof, but their consensus emphasizes the seriousness of the baseless accusation of adultery, marking a

fundamental difference between Islamic law and secular law regarding acts of defamation or insult (Dermawan & Harisudin, 2020).

In the context of positive Indonesian law, qadzaf is not explicitly mentioned. Accusations of adultery are included in the category of defamation or defamation regulated in the Criminal Code articles 310-311 (old Criminal Code) and articles 433-434 (new Criminal Code). The Criminal Code emphasizes the element of complaint, meaning that the legal process only takes place when the victim submits a report, in contrast to the principle of hudud which requires strict legal action to maintain the morals and integrity of the community (Abdi, 2014).

Positive law provides prison sanctions or fines, which are rehabilitative and preventive in general. In the Criminal Code, unproven accusations of adultery can be considered in cases of contempt, but do not cause physical sanctions for the perpetrator. This shows a fundamental difference between an approach to Islamic law that emphasizes moral and theological certainty, and a national law that is oriented towards public order and the protection of individual rights within a secular framework (Sirjon, 2023).

Elements of qadzaf such as the accusation of adultery, the victim's muhsan status, and unlawful intent confirm that Islamic law requires the perpetrator's full awareness and very strict evidence before imposing a sentence. This difference emphasizes the need for a deep understanding for the community and the legal apparatus in implementing the Aceh qanun, so that the goal of hudud can be achieved without violating the principles of social justice (Irfan, 2013).

Qadzaf is not only related to worldly sanctions, but also has a spiritual and moral dimension. This concept emphasizes that the sin of baseless accusations will have an impact on the self-honor of the perpetrator, which indicates that the act of qadzaf involves serious moral responsibility. In national law, this spiritual dimension is not explicitly accommodated, so secular law emphasizes on social effects and the restoration of public order (Agustini et al., 2021).

These terminological and conceptual differences pose challenges in the implementation of dual law in Aceh. Law enforcement officials must be able to

understand sharia principles and positive legal limits, especially in terms of proving and applying sanctions. Discrepancies in interpretation can create legal conflicts and harm individual rights, so this comparative study is important (Putra primary, 2024).

The conceptual analysis of qadzaf provides a strong theoretical foundation to understand the position of this jarimah in the Indonesian legal system, both from the perspective of sharia and national law. This understanding is the basis for assessing the relevance of the Aceh qanun in the modern context, as well as providing insight for legal harmonization to balance positive moral, social, and legal values (Supriani & Saputra, 2021).

## **B. Elements and Evidence in the Determination of Qadzaf: A Comparative Analysis of Aceh Qanun and the Criminal Code**

Proving qadzaf in Islamic law has very strict requirements. Four male witnesses who see the act of adultery as an absolute requirement to prove the accusation, so that any accusation that is not accompanied by a legitimate witness will cause sanctions for the accuser. This principle emphasizes the balance between the rights of the victim and the responsibility of the perpetrator, and emphasizes the need for caution in spreading accusations. Insufficient evidence not only acquitted the defendant, but also punished the perpetrator through hudud punishment (Magfiroh & Zafi, 2020).

The element of muhsan is an important aspect in determining qadzaf. The accused person must be puberty, reasonable, independent, and maintain his honor (iffah). This distinguishes qadzaf from general accusations that are slanderous or defamation. Thus, Islamic law explicitly filters the target law so that sanctions are applied only to cases that meet strict criteria, prevent abuse of the law and protect vulnerable individuals (Septia, 2024).

Unlawful intent is another crucial element. The accusation must be made with the awareness that the accusation is not true. The element of intent ensures that hudud law is not applied to accusations made erroneously or unintentionally. In practice, this requires careful interpretation by the judge to assess whether the perpetrator really knew the

falsehood of his accusations (RAJIV TURNER, 2022).

In the Criminal Code, the element of proof is much looser. An accusation of adultery is identified as a defamation complaint, which can be proven through witnesses, letters, or other clues. There are no special witness requirements or moral judgments for victims, so the legal process is more flexible but less emphasizes the moral and spiritual effects. This difference shows the different legal philosophies between the secular and sharia systems (Talebe, 2019).

Qanun Aceh emphasizes the legal consequences for witnesses or accusers who fail to prove their accusations, with the sanction of whipping or ta'zir punishment. In the Criminal Code, the failure of evidence for the accuser does not automatically trigger sanctions unless proven to have committed perjury. This approach reflects the focus of Islamic law on preventing the spread of accusations that undermine the morals and honor of society (Septia, 2024).

This comparative analysis shows that the sharia legal system pays greater attention to the protection of victims' honor and the prevention of social sins. The Criminal Code emphasizes the protection of public order and the right of individuals to complain about defamation. These two approaches have the same goal of protecting society but through different mechanisms and perspectives.

Focusing on elements, evidence, and unlawful intent is the key to understanding the effectiveness of qadzaf sanctions. This study is important to assess whether the Aceh qanun is successful in preventing false accusations and protecting victims, as well as how national legal mechanisms can complement each other without creating legal contradictions in areas with legal dualism (Hadi, 2022).

Awareness of the differences between legal elements and proof is the basis for law enforcement and society in applying qanun fairly. The harmonization between moral principles, objective evidence, and subjective intentions is a strategic step to minimize legal conflicts and ensure that the protection of individual rights is maintained.

### **C. Uqubat Qadzaf: The Effect of Punishment in the Aceh Qanun and the Criminal Code**

Uqubat qadzaf in the Aceh qanun emphasizes a double effect: deterrence and moral cleansing. The eighty lashes confirmed the seriousness of the offense and gave the public a stern warning to respect the honor of others. This approach is not only physical, but also symbolic, showing that violations of honor are serious violations of God's laws and social norms (Syarbaini, 2023).

In the Criminal Code, punishment for false accusations in the form of imprisonment or fines emphasizes social effects and the restoration of public order. This punishment aims to enforce the law, but it does not have a moral and spiritual dimension as contained in sharia law. This difference shows how the Aceh qanun integrates theological values with legal sanctions, while the Criminal Code emphasizes formal and procedural legality (Syuhada & Zulkiram, 2021).

The application of sanctions in the qanun contains a strong preventive mechanism. The threat of physical punishment and additional denial of testimony for perpetrators aims to minimize the risk of spreading false accusations and maintain public honor. The effectiveness of this punishment depends on the public's understanding of the principles of Islamic law and awareness of the moral consequences of qadzaf (Abdurahman, 2023).

The Criminal Code emphasizes more on rehabilitation and law enforcement based on complaints. Sanctions are only imposed if the victim reports, so punishment is not always preventive to the wider community. The deterrent effect produced is general and procedural, in contrast to the qanun which provides psychological, social, and spiritual effects simultaneously (Riza et al., 2022).

Comparative analysis shows that the Aceh qanun emphasizes harmony between law, morals, and community ethics, while the Criminal Code focuses more on legal and procedural certainty. This distinction becomes relevant when examining the integration of national law with the sharia qanun in Aceh, especially related to victim protection and the provision of justice for accusers who are not proven guilty (Septia, 2024).

Uqubat qadzaf in qanun also has a social dimension, because physical punishment is carried out in front of society to affirm moral and legal norms. This strengthens collective awareness and fosters social responsibility. In the Criminal Code, the legal process tends to be more

private and formal, so it does not have the same symbolic impact on public morals (Hadi, 2022).

The difference in the purpose of uqubat between the qanun and the Criminal Code can also be seen from the additional sanctions given in the qanun, such as the non-acceptance of the testimony of the perpetrator who acted against the law. This sanction emphasizes that the act of qadzaf has an impact not only on the victim, but also on the perpetrator as a form of moral responsibility (Huda, 2015).

Evaluation of the effectiveness of uqubat qadzaf shows that the application of sharia law in the Aceh qanun is able to have a double effect: protection of victims and prevention of similar acts in the future. Meanwhile, the Criminal Code emphasizes the restoration of public order and individual rights, so that the two legal systems can complement each other if implemented with an integrative and social-context-based approach.

## CONCLUSION AND SUGGESTIONS

### A. Conclusion

Qadzaf is a serious crime in Islamic law that emphasizes the protection of individual honor and public morality, with the main elements of accusations of adultery or disappearance, the status of the victim's muhsan, and the intention to violate the law. Qanun Aceh No. 4 of 2014 affirms the principle of hudud with the sanction of eighty lashes and the prohibition of testimony for perpetrators, thus emphasizing moral, social, and spiritual effects. In contrast to the Criminal Code, accusations of adultery are categorized as defamation that is a complaint with prison sanctions or fines, oriented towards legal certainty and the restoration of public order. This comparison shows the difference in legal philosophy between the theological approach of sharia and the procedural positive law. The application of qanun provides strong protection for victims and prevention of qadzaf behavior, while the Criminal Code emphasizes legal procedures and the right of complainants. This study emphasizes the importance of an integrative understanding between the Aceh qanun and national law in maintaining justice, morals, and social order.

### B. Suggestions

There is a need for intensive socialization and legal education about qadzaf for the community and law enforcement to ensure the

implementation of Aceh's qañun in accordance with sharia principles. Harmonization between national law and qanun is necessary so that legal dualism does not cause conflict, while maintaining individual rights and procedural justice. The government and legal institutions should develop a monitoring and evaluation mechanism for the implementation of uqubat qadzaf so that preventive, moral, and social effects can be achieved optimally.

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