



## The Dualism of the Arrangement of Jarimah Khamar and Maisir: A Comparison of Uqubat and Witnesses between Qanun Jinayat Aceh and the Criminal Code in 2023

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### Abstract

The dualism of the regulation of jarimah khamar and maisir in Indonesia is a consequence of the recognition of legal pluralism in the national legal system. Qanun Jinayat Aceh as a criminal law based on Islamic sharia coexists with the 2023 Criminal Code as a national criminal law. These fundamental philosophical and normative differences cause differences in the formulation of delik, the type of uqubat, as well as the system of proof and witnesses, which has the potential to give rise to legal uncertainty and differences in legal treatment of legal subjects. This study aims to analyze and compare the arrangement of jarimah khamar and maisir between the Qanun Jinayat Aceh and the 2023 Criminal Code, focusing on the difference in uqubat and witness provisions. This study also aims to examine the normative implications of the regulatory dualism in the context of the national criminal law system. The research method used is normative legal research with legislative, conceptual, and comparative legal approaches. Legal materials consist of primary legal materials in the form of related laws and regulations, as well as secondary legal materials in the form of literature, scientific journals, and the doctrine of criminal law and fiqh jinayah. The analysis is carried out qualitatively through systematic and teleological interpretation. The results of the discussion show that Qanun Jinayat Aceh views khamar and maisir as jarimah that threaten the moral and religious order of society, so that uqubat is formulated in the form of ta'zir sanctions that are symbolic and preventive, with a proof system influenced by the principles of fiqh jinayah. The 2023 Criminal Code regulates similar acts within the framework of modern criminal law that focuses on public order and legal certainty, with criminal sanctions of imprisonment and fines as well as a national evidentiary system. This study concludes that the dualism of regulation reflects the challenge of harmonizing national criminal law in a pluralistic legal state, so that legal policies are needed that are able to bridge religious values, legal certainty, and human rights protection proportionately.

## I. INTRODUCTION

The regulation of khamar and maisir crimes in Indonesia shows a distinctive face of legal pluralism, as well as raises serious problems in the national legal system. The existence of Qanun Jinayat Aceh as a manifestation of special autonomy presents criminal norms based on Islamic law that are alive and positively enforced, while the 2023 Criminal Code carries a national paradigm that is general, secular, and unifying. This difference in philosophical basis has direct implications for the formulation of delicacies, types of uqubat, and the proof mechanisms applied (Gultom, 2019).

Jarimah khamar and maisir in the Qanun Jinayat Aceh are constructed as acts that not

only harm individuals, but also threaten the moral order and social order according to Islamic values. This approach places such violations as a crime against the rights of Allah that demands strict sanctions in the form of uqubat whipping, a gold fine, or imprisonment, accompanied by a standard of proof influenced by the principles of fiqh jinayah, including strict witness requirements and moral-religious nuances (MUHAMMAD TOMI, 2018).

Different arrangements are evident in the 2023 Criminal Code which places acts related to alcoholic beverages and gambling within the framework of modern criminal law. The ban on maisir and the restriction of khamar are formulated with a rational-instrumental approach that focuses on the protection of the

public interest, public order, and socio-economic impact. Criminal sanctions are regulated in the form of imprisonment and fines, with a proof system that follows the principles of national criminal procedural law without religious normative content (Rajamuddin, 2014).

These fundamental differences give birth to the dualism of criminal law regulation which has the potential to cause legal uncertainty, especially for citizens in Aceh's jurisdiction. The same act can be considered as jarimah with certain uqubat consequences according to Qanun Jinayat, but it is understood as a general criminal offense with different sanctions according to the Criminal Code. This condition raises fundamental questions about the principle of equality before the law and the consistency of the national criminal law system (Yusasni & Harahap, 2023).

The aspect of uqubat is a crucial point in this dualism because it reflects the difference in the goals of punishment that are very contrasting. Qanun Jinayat places criminalization as a means of tazkiyah and moral prevention through a symbolic and public deterrent effect, while the 2023 Criminal Code prioritizes a corrective and rehabilitative approach that is oriented towards the perpetrator. This difference has given rise to an academic debate about the legitimacy of physical sanctions in the modern legal state (MUHAMMAD, n.d.).

The issue of evidence and witnesses shows the tension between the national criminal procedure law and the evidentiary principles in Islamic law. Qanun Jinayat opens up space for stricter standards of proof and ethical value, while the Criminal Code relies on a system of proof based on formally recognized evidence. This difference in standards has the potential to affect the effectiveness of law enforcement and the protection of the rights of suspects and defendants.

This condition cannot be separated from the dynamics of the integration of Islamic law into the post-reform national legal system. Aceh's special autonomy became a legal laboratory that showed how religious values negotiated with national positive legal principles. The emerging normative tensions reflect the great challenge of building an inclusive criminal law system while ensuring legal certainty and justice.

Based on this reality, a comparative study of the regulation of jarimah khamar and maisir between Qanun Jinayat Aceh and the 2023 Criminal Code is relevant and urgent. The analysis of the differences between uqubat and witnesses is expected to be able to make a theoretical and practical contribution in formulating the direction of national criminal law policy that is in line with the principles of the rule of law, respect for living law, and the protection of human rights.

## II. RESEARCH METHODS

This research uses a normative legal research method by placing law as a norm or rule that applies in the legal system. The main focus of the research is directed at the study of the regulation of jarimah khamar and maisir in Qanun Jinayat Aceh as well as the provisions of related criminal acts in the 2023 Criminal Code. This approach was chosen to examine in depth the conceptual, systematic, and philosophical differences in the formulation of norms, types of uqubat, as well as the mechanism of proof and witnesses (Rizkia & Fardiansyah, 2023).

The legislative approach is used to comprehensively examine the legal norms that govern khamar and maisir, both in Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat and in the Criminal Code of 2023. The analysis focused on the suitability, differences, and potential conflicts of norms between the two legal regimes, especially related to the principles of legality, the purpose of punishment, and the criminal proof system.

A conceptual approach is applied to examine the concepts of jarimah, uqubat, and witnesses in the perspective of fiqh jinayah and national criminal law. This study explores the philosophical and theoretical foundations of each concept in order to understand the rationality of lawmakers in formulating criminal norms. This approach is also used to test the coherence of the concepts of criminalization and proof in the context of a modern legal state that recognizes legal pluralism.

The comparative legal approach is used to identify differences and similarities in the regulation of khamar and maisir between the Aceh Qanun Jinayat and the 2023 Criminal Code. Comparisons are carried out horizontally by examining the structure of the offense, the type of sanction, the purpose of the crime, and

the position and requirements of witnesses in the two legal systems. The results of this comparison are the basis for assessing the normative implications of the existing regulatory dualism.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat, the 2023 Criminal Code, the Aceh Government Law, and related laws and regulations. Secondary legal materials include legal literature, scientific journals, fiqh jinayah doctrines, and the opinions of criminal law experts. Tertiary legal materials are used as support in the form of legal dictionaries and encyclopedias.

The technique of collecting legal materials is carried out through literature studies by tracing and inventorying laws and regulations, academic literature, and relevant court decisions. This process aims to obtain accurate and systematic legal materials to support comprehensive normative analysis.

The analysis of legal materials is carried out qualitatively using legal interpretation methods, including grammatical, systematic, and teleological interpretation. The analysis is focused on the consistency of norms, regulatory rationality, and the juridical implications of the difference between uqubat and witnesses between the Aceh Qanun Jinayat and the 2023 Criminal Code. The results of the analysis are then presented in a descriptive-analytical manner to draw logical and argumentative conclusions.

### **III. RESULTS AND DISCUSSION**

#### **A. Conceptual Dualism of Jarimah Khamar and Maisir in the Indonesian Criminal Law System**

The arrangement of jarimah khamar and maisir shows a sharp conceptual difference between the Qanun Jinayat Aceh and the 2023 Criminal Code. Qanun Jinayat positions both acts as jarimah that are inherently contrary to Islamic sharia values and the moral order of society. This approach places khamar and maisir not just as positive violations of law, but as despicable acts that disturb social and spiritual balance (Zurnetti, 2024).

The conception of jarimah in Qanun Jinayat is rooted in the fiqh of jinayah which distinguishes evil based on the rights of Allah

and human rights. Khamar and maisir are qualified as violations of the rights of Allah because their impact is considered widespread and destructive to the general order. This construction shows that criminal norms are not detached from the theological and moral dimensions that live in Acehese society (Rahmawati et al., 2025).

The provisions in the 2023 Criminal Code show a fundamentally different approach. Criminal acts related to alcoholic beverages and gambling are formulated within the framework of national criminal law oriented towards public order and the protection of social interests. The criminal norms in the Criminal Code do not base the prohibition on aspects of sin or religious morality, but on the empirical impact on the security and welfare of the community (Rahmawati et al., 2025).

These differences reflect the dualism of the criminal law paradigm that coexists in one national legal system. Qanun Jinayat operates as a special law based on local-religious values, while the 2023 Criminal Code functions as a general criminal law that is national and unifying. This condition causes conceptual fragmentation in understanding the meaning of crime and the purpose of punishment (Maulana et al., 2026).

The principle of legality in this context has expanded its meaning. Legality in Qanun Jinayat is not only interpreted as the certainty of written norms, but also as the legitimacy of institutionalized religious norms. Legality in the Criminal Code emphasizes more formal legal certainty sourced from national laws and regulations (Expansion, 2021).

These differences in conception have implications for the way the state views the role of criminal law. Qanun Jinayat places the criminal law as an instrument of collective moral guarding, while the Criminal Code positions the criminal law as a means of rational and measurable social control. This tension shows the difference in orientation between the moral order and the legal order.

Legal pluralism recognized in the Indonesian constitutional system provides space for the enactment of Qanun Jinayat. This recognition does not necessarily eliminate the problem of disharmony of norms with national law. The harmonization of norms becomes a serious challenge when two legal systems

interpret the same act with different consequences (Khairilina & Ali, 2015).

Aceh's position as a region with special autonomy is a determining factor in this dualism. The Aceh Government Law provides normative legitimacy for the application of jinayat law. Its legitimacy is constitutional but remains within the framework of the national legal state (Nurdin, 2018).

This conceptual dualism has the potential to create legal uncertainty for legal subjects. Legal subjects can face different legal consequences for the same act, depending on the jurisdiction and norms applied. This situation challenges the principle of equality before the law in the perspective of national criminal law.

The conceptual construction of jarimah khamar and maisir ultimately shows the attraction between law as an expression of local values and law as a national instrument. This tension is the main foundation for understanding the differences between uqubat and the evidentiary system applied in the two legal regimes (MUHAMMAD, n.d.).

## **B. Comparison of Uqubat Khamar and Maisir: Between Moral Sanctions and Modern Criminalization**

Uqubat in Qanun Jinayat Aceh is designed as a sanction that has moral, symbolic, and preventive dimensions. Whips, gold fines, and imprisonment are positioned as instruments to provide a deterrent effect as well as social purification. The sanctions not only target the perpetrators, but also serve as a collective warning for the community (Usman, 2012).

The normative basis of whipping uqubat comes from fiqh jinayah which recognizes corporal punishment as a form of ta'zir. Ta'zir gives authority to the ruler to determine the type and level of punishment for the sake of benefit. This norm is institutionalized in Qanun Jinayat as a positive law of the region (Yusasni & Harahap, 2023).

Uqubat in the 2023 Criminal Code shows the character of modern criminality that emphasizes rationality and proportionality. Criminal sanctions are formulated in the form of imprisonment and fines that are administrative-economic. This approach avoids corporal punishment that is considered contrary to the principle of universal human rights (Yusasni & Harahap, 2023).

The purpose of punishment in Qanun Jinayat cannot be separated from the concept of moral prevention. Punishment is seen as a means of moral development and the protection of religious values of the community. This goal is different from the Criminal Code which prioritizes rehabilitation, resocialization, and systemic crime control (Zurnetti, 2024).

These differences in goals affect the social legitimacy of uqubat. The people of Aceh tend to accept the whip uqubat as part of their legal and cultural identity. The national community in general is more accepting of prison sanctions and fines as a prevalent form of punishment (Usman, 2012).

The debate over the whip uqubat is often associated with human rights standards. Qanun Jinayat views the punishment as normatively and constitutionally valid because it is applied within the framework of special autonomy. The Criminal Code avoids physical sanctions in order to maintain harmony with the principles of human dignity (Oslami, 2022).

The principle of proportionality is a critical point in this comparison. Uqubat in Qanun Jinayat is considered proportional according to moral and religious measures. The Criminal Code assesses proportionality based on the level of social harm and threats to public order (Fajri, 2019).

The difference in the sanctions model reflects the different paradigm of the state in responding to crime. The state in the Qanun Jinayat appears as the guardian of collective morality. The state in the Criminal Code functions as a social regulator that is neutral to religious values (Fajri, 2019).

The existence of two uqubat regimes poses challenges to harmonize national criminal law. The unification of criminal law faces limits when dealing with a living and constitutionally recognized law. Harmonization requires an approach that does not negate local peculiarities.

The comparison of uqubat khamar and maisir shows that the dualism of criminal law is not just a technical problem, but a philosophical problem about the purpose of criminal law itself. These differences enrich the discourse of Indonesian criminal law while demanding clarity on the direction of legal policy in the future.

### **C. Evidentiary and Witness Systems: The Tension Between Jinayah Fiqh and the National Criminal Procedure Law**

The proof system in the Aceh Qanun Jinayat shows a strong influence on the principles of fiqh jinayah. Proof is not only understood as a technical process, but also as a moral process that demands the honesty and integrity of witnesses. The requirements of witnesses in certain jarimah emphasize moral qualities and personal justice (Siah & Nursiti, 2017).

The concept of witnesses in jiyah fiqh contains a strong ethical dimension. A witness is not just a person who sees events, but an individual who has a good moral reputation. This norm aims to prevent misjudgments and maintain the sanctity of the judicial process (Zurnetti, 2024).

Qanun Jinayat adopts this principle within the framework of Aceh's positive law. The proof of jarimah khamar and maisir still opens up space for modern evidence, but the normative nuances of fiqh still influence judicial practice. This integration reflects the adaptation of Islamic law in the modern justice system (Zurnetti, 2024).

The evidentiary system in the 2023 Criminal Code follows the national criminal procedure law which emphasizes evidence that is valid according to the law. Witnesses are seen as one of the pieces of evidence without religious moral judgment. The credibility of witnesses is assessed based on the consistency and relevance of the testimony (Firdaus & Maerani, 2020).

The difference in evidentiary standards has implications for the protection of suspects' rights. Qanun Jinayat with strict moral standards can narrow the possibilities of proof. The Criminal Code with formal standards provides greater flexibility for law enforcement.

The principle of due process of law is an important parameter in assessing the two systems. Qanun Jinayat interprets due process in the framework of substantive justice based on religious values. The Criminal Code interprets due process as procedural compliance with procedural law (Sutrisno, 2025).

The tension between the two evidentiary systems shows the difference in legal epistemology. Fiqh jinayah places moral truth as the main goal. The national criminal

procedure law places formal and material truth as the target of proof (Putra primary, 2024).

The existence of two evidentiary standards poses challenges in judicial practice. Law enforcers are required to understand and apply norms appropriately according to their jurisdiction. Misapplication of norms can have implications for human rights violations.

Harmonization of the evidentiary system requires a normative dialogue between Islamic law and national law. The dialogue does not aim to standardize, but rather to find a common ground between legal certainty and substantive justice. This approach is relevant in a pluralistic legal state.

The comparison of the witness and evidentiary system confirms that the dualism of criminal law in Indonesia is not just a normative phenomenon, but a reflection of the diversity of values accommodated by the constitution. This diversity is a strength as well as a challenge in the development of a fair national criminal law.

## **CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

The dualism of the regulation of jarimah khamar and maisir between the Aceh Qanun Jinayat and the 2023 Criminal Code reflects the reality of criminal law pluralism in the Indonesian legal system. Qanun Jinayat constructs khamar and maisir as jarimah that are oriented towards the protection of the moral and religious values of the community, with uqubat that is symbolic, preventive, and nuanced in ta'zir, as well as a proof system influenced by the principles of fiqh jinayah. The 2023 Criminal Code positions similar acts within the framework of general criminal acts that are oriented towards social order, legal certainty, and a modern criminal approach without a religious moral dimension.

These paradigm differences have significant juridical implications, especially related to the principles of legality, equality before the law, and legal certainty. Uqubat and different witness standards for the same act indicate a normative fragmentation that has not been fully harmonized. This condition shows that the unification of national criminal law faces limits when dealing with a living and constitutionally recognized law through Aceh's special autonomy.

This dualism on the one hand enriches the treasures of national criminal law through the recognition of local and religious values. On the other hand, it shows the urgent need for a normative harmonization framework so as not to cause legal uncertainty and excessive legal treatment of legal subjects. Thus, the comparison of uqubat and witnesses between Qanun Jinayat Aceh and the 2023 Criminal Code emphasizes the importance of formulating criminal law policies that are able to bridge religious values, the principle of the rule of law, and the protection of human rights in a proportionate manner.

## B. Suggestions

Lawmakers need to formulate a clearer policy of harmonization of criminal law between national criminal law and criminal law based on special autonomy so that regulatory dualism does not cause legal uncertainty. Strengthening the normative dialogue between the principles of fiqh jinayah and modern criminal law is important to find a just common ground. Law enforcement officials in Aceh also need to be equipped with a comprehensive understanding of the differences in the uqubat paradigm and the proof system so that the application of the law runs proportionately. Further research is recommended to examine the empirical implications of this dualism on the protection of human rights and the legitimacy of criminal justice at the local and national levels.

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