

## [ ARTICLE ]

**THE DUAL MANDATE OF JUSTICE IN ACEH:  
A Comparative Study of Sanctions under Qanun Jinayat and  
Indonesian Positive Law****Muhammadong Muhammadong<sup>1\*</sup>, Husain Husain<sup>2</sup>  
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**Abstract:** This study aims to compare the application of Islamic law and positive law in handling criminal cases, with a focus in the Sharia Court in Aceh. Aceh, as the only province in Indonesia implementing Islamic law in certain aspects, including criminal law, offers a unique context to analyze the interaction between two legal systems. This research examines the differences and similarities in the imposition of sanctions for criminal offenses, such as *zina*, *khalwat*, and gambling, by comparing the provisions of Islamic law in the Aceh Qanun with Indonesian positive law. This research uses a normative approach with a comparative analysis between Islamic law and positive law, focusing on the handling of criminal cases in the Sharia Court of Aceh. The study examines legal principles, case studies, and the application of both legal systems in resolving criminal matters within the region. This study is expected to contribute to the understanding of the dynamics between Islamic law and positive law within the judicial system in Aceh.

**Keywords:** Islamic Law, Positive Law, Criminal Cases, Aceh, *jarimah*.

**Abstrak:** Penelitian ini bertujuan untuk membandingkan penerapan hukum Islam dan hukum positif dalam menangani kasus pidana, dengan fokus pada Pengadilan Syariah di Aceh. Aceh, satu-satunya provinsi di Indonesia yang menerapkan hukum Islam, termasuk hukum pidana, menawarkan konteks unik untuk menganalisis interaksi antara kedua sistem hukum tersebut. Penelitian ini mengkaji perbedaan dan persamaan penerapan sanksi tindak pidana, seperti *zina*, *khalwat*, dan perjudian, dengan membandingkan ketentuan hukum Islam dalam Qanun Aceh dengan hukum positif. Penelitian ini menggunakan pendekatan normatif dengan analisis komparatif antara Hukum Islam dan Hukum Positif. Penelitian ini mengkaji prinsip-prinsip hukum, studi kasus, dan penerapan kedua sistem hukum dalam menyelesaikan masalah pidana di wilayah tersebut. Penelitian ini diharapkan dapat memberikan kontribusi dalam pemahaman dinamika antara hukum Islam dan hukum positif dalam sistem peradilan di Aceh.

**Kata Kunci:** Hukum Islam, Hukum Positif, Kasus Kriminal, Aceh, *jarimah*.

## A. Introduction

The interplay between Islamic Law (*Sharia*) and Positive Law has been extensively examined in scholarly discourse, especially regarding criminal justice. Islamic Law gets its rules from divine sources like the Quran and Hadith. Positive Law, on the other hand, is made by people to control the rights and obligations of people in a community. Both legal systems seek to promote justice, preserve social order, and safeguard individual rights; yet, they significantly vary in their origins, methodologies, and application in criminal matters. This introduction examines the fundamental principles of Islamic Law and Positive Law, concentrating on their treatment of criminal cases, theoretical foundations, and practical ramifications in contemporary legal systems.<sup>1</sup>

Sharia, or Islamic Law, is a complete legal system that covers not only criminal law but also civil, economic, and familial issues. The Quran, which is the sacred book of Islam, and the Hadith, which are the sayings and acts of the Prophet Muhammad, are where it came from. People believe that Islamic Law came from God, hence they think that its authority is unassailable and unchangeable. Sharia law focuses on moral responsibility, divine justice, and reforming criminals in order to help them get well and bring peace back to society. Islamic Law prescribes penalties, such as hudud (fixed punishments), for crimes including theft, adultery, and apostasy. These punishments are frequently considered as a way to keep people from doing bad things and to keep society's morals strong.<sup>2</sup>

Positive Law, on the other hand, is the set of rules that people make via courts, legislatures, and other groups. Positive Law is founded on human reason, social standards, and the permission of the people who follow it. Islamic Law, on the other hand, gets its authority from God. Positive Law is more adaptable since it may be changed, repealed, or read in ways that reflect how society's ideals and needs evolve. In criminal trials, Positive Law usually puts more emphasis on fair procedures, protecting people's rights, and keeping public order. The goal of punishments under Positive Law is to keep the peace in society, stop crime, and help criminals become better via a system of incarceration, probation, and occasionally even the death penalty.<sup>3</sup>

There are several important differences between the legal ideas of Islamic Law and Positive Law. Islamic Law is based on the idea of divine justice, which says that the state is God's way of making sure that justice is done in the world. People see crimes as not just breaking the norms of society but also going against God's moral

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<sup>1</sup> M. Saeli, "Comparative Study of the Conceptualization and Evolution of Islamic Criminal Law." *Journal of Legal Studies and Development* (2025). <https://jlsda.com/index.php/lstda/article/view/147>.

<sup>2</sup> Y. Mahil, "Contemporary Mechanisms to Reform Islamic Criminal Law." *Journal of Islamic Law* (2025). <https://journalofislamiclaw.com/current/article/view/mahil>

<sup>3</sup> S. S. Karimullah, "Integration of Maqasid al-Shari'ah in the Criminal Law Reform." *Journal of Islamic Law and Human Rights* (2025). [https://e-journal.uingusdur.ac.id/jhi/article/view/jhi\\_v23i1\\_4](https://e-journal.uingusdur.ac.id/jhi/article/view/jhi_v23i1_4).

laws. This method tries to stress the spiritual side of the law by trying to get the offender to repent and change their ways. Positive Law, on the other hand, is based on the social compact, which says that laws should defend people's rights and keep society stable. People mostly consider offenses as breaking the social contract instead than breaking God's law. The basic purpose of Positive Law is to keep society safe and in order by punishing people in ways that people think are fair.<sup>4</sup>

Both systems of criminal law provide penalties for different crimes, although the kind and harshness of these sanctions might be quite different. In Islamic Law, certain crimes are called hudud, and they have set penalties that are rigidly enforced for crimes including theft, adultery, apostasy, and falsely accusing someone of adultery (*qadhf*). These penalties, which might include flogging, amputation, and stoning, are meant to stop people from doing bad things and make them more virtuous. Many Islamic scholars, on the other hand, say that severe penalties should only be used in a community where the rule of law is strong and people's rights are respected.<sup>5</sup>

Positive Law, on the other hand, doesn't usually set preset penalties. Instead, it emphasizes on proportionality, which means that the punishment should fit the crime and the situation in which it happened. Positive Law criminal justice systems usually let judges choose from a wide variety of punishments, such as jail time, fines, community service, and probation. Judges have the power to decide what penalty to give, and they are responsible for making sure that punishments are fair and reasonable based on the circumstances of each case. This flexibility makes it possible for criminals to get well and become useful members of society again, which is the purpose of minimizing recidivism.<sup>6</sup>

The contrast of these two legal systems in dealing with criminal cases raises important considerations regarding justice, fairness, and the role of the state. Islamic Law tends to put more emphasis on the moral and spiritual side of the law, whereas Positive Law puts more emphasis on protecting people's rights and keeping society stable. Both systems want to protect justice, but they do it in different ways and with distinct sources of authority divine vs human. This difference in approach brings up fundamental considerations regarding whether these two systems can work together, especially in places where both Islamic and Positive Law are in place.<sup>7</sup>

One of the main problems in comparing these two legal systems is how they deal with punishment. Punishments in Islamic Law are typically considered as a way

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<sup>4</sup> F. Afandi, "Negotiating Qanun Jinayat: The Islamic Criminal Law Implemented in Aceh, Indonesia." *QIJIS (Qudus International Journal of Islamic Studies)* 9, no. 1 (2021): 1–19. <https://doi.org/10.21043/qijis.v9i1.44815>.

<sup>5</sup> W. Dari, "Obstacles and Challenges in Implementing Flogging Law in Aceh." *Rechtsidee* (2025). <https://rechtsidee.umsida.ac.id/index.php/rechtsidee/article/view/1080>.

<sup>6</sup> Sumardi, Dedy, Ratno Lukito, and Moch Nur Ichwan. "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–449. <https://doi.org/10.22373/sjhk.v5i1.9303>.

<sup>7</sup> Z. A. Masruri, "Tauhid-Based Sharia Business Law in Indonesia's Disruptive Economy." *Journal of Law and Social Sciences* (2025). <https://ojs.journalsdg.org/jlss/article/view/4527>.

to purify, repent, and keep people from doing bad things. In Positive Law, penalties are mainly meant to keep the peace, help criminals get well, and keep society safe from future damage. The implementation of these principles differs not only between legal systems but also in practice, influenced by the cultural, political, and historical context of the society in which they are applied.<sup>8</sup>

This study seeks to examine the fundamental contrasts and similarities between Islamic Law and Positive Law in their approaches to criminal justice, concentrating on their handling of particular crimes such as theft, murder, and adultery. This research will elucidate the strengths and limits of both systems in combating crime and advancing justice by comparing their theoretical underpinnings, principles, and actual implementations. This comparative investigation will provide significant insights into the feasibility of reconciling Islamic Law and Positive Law within contemporary legal systems, especially in nations where both frameworks are present.

This study introduces a novel approach by comparing Islamic Law and Positive Law in handling criminal cases, specifically focusing on the Sharia Court in Aceh. While previous research has explored Islamic law's application in Indonesia and its intersections with national law, this study delves into the specific context of Aceh, where Sharia law is applied alongside the national legal system. Has been analyzed comparative aspects of criminal law, but none have deeply examined how these two legal systems coexist in Aceh's judicial process. This study builds on works such. to provide a comprehensive view of the challenges and harmonization of Sharia law and positive law in criminal justice. The research fills gaps in understanding legal pluralism in Aceh, offering insights for future legal reform.

The comparison between Islamic law and positive law in handling criminal cases in Indonesia, particularly in Aceh, is an interesting topic to explore. Aceh, as the only province that implements Sharia law in its judicial system, has unique characteristics compared to other regions in Indonesia. Islamic law, as regulated in the Aceh *Qanun*, covers various aspects of life, including criminal law (*jinayah*), which addresses offenses such as zina, *khalwat*, gambling, and forgery. On the other hand, Indonesian positive law, applied in the district courts, regulates similar issues with different procedures and sanctions.

This study aims to analyze how both legal systems are applied in handling criminal cases, focusing on the Sharia Court in Aceh. Through an analysis of the rulings of the Sharia Court, this research will compare the differences and similarities in the application of punishment and legal procedures between Islamic law and positive law. This study is important for understanding the dynamics of law in Aceh and contributes

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<sup>8</sup> D. Setiawan, "Forum-shopping in Criminal Law: Power and Pragmatism in Aceh." *Journal of Comparative Law* (2024). <https://www.tandfonline.com/doi/full/10.1080/27706869.2024.2385233>.

to the development of legal science, particularly concerning the relationship between religious law and state law in the Indonesian judicial system.

## B. Islamic Law in Handling Criminal Cases

In the Indonesian context, Islamic law plays a significant role, particularly in Aceh, where it is applied alongside national law. Indonesia, as a diverse nation with various religious communities, recognizes Islamic law in certain regions, especially for Muslims, as a guideline in personal matters and criminal justice. In Aceh, Sharia law governs aspects of criminal cases such as theft, adultery, and alcohol consumption, with punishments prescribed by Islamic principles. However, the application of Islamic law in criminal cases often intersects with the national positive law system, which is rooted in Pancasila and the Constitution. This dual legal system in Aceh presents challenges in harmonizing the two systems, as there are differences in penalties and judicial procedures. While Islamic law emphasizes repentance and rehabilitation, positive law focuses on punishment and deterrence. This complex interaction raises questions about legal pluralism and the need for integration within Indonesia's diverse legal landscape.<sup>9</sup>

Islamic law has a unique and organized way of dealing with criminal matters that is based on the Qur'an and Hadith. According to Islamic law, there are three basic types of crimes: *hudud*, *qisas*, and *ta'zir*. Each kind has its own regulations and punishments. *Hudud* is the most serious sort of crime. It includes things like adultery, robbery, rape, and apostasy that undermine the moral and social stability of society. *Hudud* breaches come with exceedingly harsh punishments, such as cutting off hands for stealing, stoning for adultery, or whipping for drinking alcohol. *Hudud* law stresses complete justice and is not forgiving. However, there are strict rules that must be followed for these punishments to be carried out, such as having reliable witnesses and strong evidence.<sup>10</sup>

*Qisas*, on the other hand, is about crimes that hurt someone, such as murder or physical injury. *Qisas* means "reciprocal punishment." This means that if someone murders another person, the victim's family has the right to get revenge in the same way, or they may opt to forgive the killer and get recompense, such as *diyat* (blood money). *Qisas* seeks to uphold justice while also allowing the victim's family and the offender to choose for a peaceful conclusion, illustrating the adaptability of Islamic law.<sup>11</sup>

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<sup>9</sup> H. A. Alotaibi, "The Challenges of Execution of Islamic Criminal Law in Developing Muslim States." *International Journal of Islamic Law* (2021). <https://www.tandfonline.com/doi/full/10.1080/23311886.2021.1925413>

<sup>10</sup> Hakim, Hary Abdul, Ming-Hsi Sung, and Chrisna Bagus Edhita Praja. "The Islamic Law within the Indonesian Legal System: A Case Study of Islamic Sharia Law in Aceh." *TSAQAFAH* 17, no. 2 (2022): 349–362. <https://doi.org/10.21111/tsaqafah.v17i2.6213>.

<sup>11</sup> E. Wijatmoko, "Legal Effectiveness in Promoting Development Policies: A Study on the Implementation of Law on the Governing of Aceh." *PMI Journal* 2023. <https://pmc.ncbi.nlm.nih.gov/articles/PMC10637954/>.



*Ta'zir* is the biggest kind of punishment that may be given for crimes that aren't expressly mentioned in Islamic law. This may include things that go against societal or moral standards, and the court can choose the penalty, which can be anything from flogging to jail time to fines. *Ta'zir* law is all on stopping crime and helping people get well. It also lets the court take into account things like the criminal's purpose or their social and economic situation while making a decision. Islamic law also stresses the need of justice and humanity in its implementation. This means that everyone's rights must be protected and no one should be treated unfairly. For instance, in the execution of penalties, it is required that the criminal be mentally competent, and punishments cannot be administered under certain circumstances, such as when the offender is unwell or pregnant.<sup>12</sup>

Islamic law has strong rules for proof, especially in hudud trials, where legitimate evidence must be shown and witnesses must fulfill certain criteria. In reality, Islamic law may be understood and implemented differently based on the madhhab and legal customs of a particular locality. Some Muslim-majority nations, like Saudi Arabia and Iran, exclusively follow Islamic law in their criminal justice systems. Other Muslim-majority countries, like Indonesia, mix Islamic law with national positive law.<sup>13</sup>

Nonetheless, the implementation of Islamic law in criminal matters always aims to fulfill its fundamental objective: justice, which encompasses not only the punishment of the perpetrator but also the safeguarding of the rights of the victim and society at large. The judge's judgment in Islamic law is also very much affected by the community's moral and ethical values. This is done in the hopes of stopping crime and getting the offender back on the straight path. In today's world, using Islamic law to deal with criminals also has problems, such human rights concerns and if it fits with international law.<sup>14</sup>

Some people who don't like the sanctions say they go against human rights, especially when it comes to the death sentence or stoning. However, others who favor Islamic law say that it puts balance between justice, protection of society, and forgiveness first, which are all fundamental parts of social life. So, even if there are problems with putting it into practice, Islamic law is still an essential part of how the law works in many Muslim-majority nations. Its main purpose is to make sure that criminals are treated fairly.

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<sup>12</sup> Manihuruk, Erick Jeremi, Mahmud Mulyadi, and Wessy Trisna. "Dualism in the Settlement of Jinayat Cases in Sabang City." *Jurnal Hukum dan Peradilan* 13, no. 2 (2024): 311–336. <https://doi.org/10.25216/jhp.13.2.2024.311-336>.

<sup>13</sup> Nasrullah, Carissa Shifa Novendra, and M. Farel Reyhan. "The Challenges of Islamic Criminal Law Implementation in Aceh Shariah Court." *Diponegoro Law Review* 9, no. 1 (2024): 121–135. <https://doi.org/10.14710/dlr.v9i1.27574>.

<sup>14</sup> A. M. Khoshnood. "The Islamic Republic of Iran's Use of Criminal Outsourcing." *International Journal of Comparative Law* (2025). <https://www.tandfonline.com/doi/full/10.1080/09592318.2025.2555583>.

### C. Positive Law in Handling Criminal Cases

In Indonesia, positive law serves as the foundation for the country's criminal justice system, grounded in the principles of Pancasila and the 1945 Constitution. The application of positive law is seen through the Indonesian Penal Code (KUHP), which governs criminal cases such as theft, murder, corruption, and drug-related offenses. Positive law aims to maintain public order and justice by prescribing specific punishments for criminal acts, with a focus on deterrence and retribution. In contrast to Islamic law, positive law is secular and applies universally to all Indonesian citizens, regardless of religious background. While Islamic law may be applied in regions like Aceh for specific cases, positive law remains dominant in handling most criminal matters. The challenge in Indonesia lies in balancing these two systems, ensuring that positive law respects local customs and religions, while also maintaining national unity and consistency in the justice system.<sup>15</sup>

Positive law, which is often called state or civil law, is very important for dealing with criminal matters, especially in contemporary legal systems. The state makes and enforces positive law via its legislative and judicial branches. Positive law seeks to uphold justice in criminal cases by governing behavior, deterring crime, and safeguarding society. Positive law has several different parts, one of which is criminal law, which defines crimes and sets consequences for those who commit them.<sup>16</sup>

One of the main purposes of positive law is to provide clear and explicit rules for how people should act and ways to make sure they follow them. Positive law delineates an extensive array of transgressions in criminal proceedings, from petty infractions to grave crimes, including murder, assault, theft, and corruption. Positive law classifies misdeeds into categories, including felonies and misdemeanors, each with varying levels of punishment. For example, small crimes might result in fines, probation, or community service, while more serious crimes, like murder or rape, can lead to long jail terms or even the death penalty, depending on where the incident happened.

There are conventional steps that must be followed when dealing with criminal charges under positive law. These steps include investigation, prosecution, defense, trial, and sentence. The presumption of innocence until proved guilty is a common premise in criminal law in many places. This implies that the prosecution has to prove the accused's guilt beyond a reasonable doubt in order to win. The legal system also protects the right to a fair trial, which includes the right to an attorney, the right to

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<sup>15</sup> Masri, R. "Analysis of Islamic Law Sources on Positive Law in Domestic Violence Cases." *Majapahit: Journal of Islamic Law* (2025). <https://www.syariah.jurnalikhac.ac.id/index.php/majapahit/article/download/381/82>.

<sup>16</sup> M. E. Badar,. "Legal Pluralism, Cultural Defenses, and the Islamic Legal System." *Texas International Law Journal* (2023). [https://tilj.org/s/TILJ\\_59n3\\_text\\_BADAR-jbkk.pdf](https://tilj.org/s/TILJ_59n3_text_BADAR-jbkk.pdf).

stay quiet, and the right to an unbiased judge or jury. Deterrence is one of the most important ideas in positive law.<sup>17</sup>

The theory is that punishing somebody for breaking the law sends a message to others that they shouldn't do the same thing. This deterrent effect is what positive law uses to maintain social order and keep people safe. The deterrence hypothesis is based on the concept that people would think about what could happen if they commit a crime before they do it. This notion is seen in the harshness of punishments for various acts, with the assumption that harsher penalties would deter more severe crimes. Rehabilitation is another important part of positive legislation in criminal situations. The idea of rehabilitation is to change the person who did the crime and help them fit back into society.<sup>18</sup>

The goal of positive legislation is not just to penalize those who break the law, but also to provide them a chance to go through rehabilitation programs like counseling, education, or job training. This method is especially useful for those who have been found guilty of less serious crimes since it helps them deal with the reasons for their actions and makes it less likely that they will do it again. In positive law, the sentence is typically affected by things like the kind and severity of the crime, the offender's purpose, and any extenuating circumstances, including the offender's past or mental condition. Judges have some leeway when it comes to deciding penalties, but they usually follow sentencing rules and standards that assist make sure the justice system is fair and consistent.<sup>19</sup>

One of the main problems with positive law is that it doesn't treat everyone equally and fairly in the criminal justice system. Positive law tries to make sure that everyone gets justice, but occasionally it is affected by things like race, gender, social class, and economic standing, which may make the system treat people differently. For instance, research indicates that persons from disadvantaged groups are at a higher risk of arrest, prosecution, and conviction for criminal offenses compared to those from more affluent backgrounds. To deal with these concerns, many legal systems are making changes to fix systematic prejudice and make sure everyone is treated the same under the law.<sup>20</sup>

Also, positive law is based on the rule of law, which means that everyone, no matter who they are, has to follow the law. This concept makes sure that those in authority can't break the law and must be held responsible for whatever crimes they

<sup>17</sup> H. Sadia, "A Comparative Study of Muslim Divorce: Legal Implications." *Pakistan Journal of Law, Analysis and Wisdom* (2025). <https://pjlw.com.pk/index.php/Journal/article/view/v4i7-09-15>.

<sup>18</sup> Q. Behbudov, "Characteristic Features of Muslim Criminal Law." *Journal of Islamic Legal Studies* (2025). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5371898](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5371898)

<sup>19</sup> Halim, Abdul. "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh." *Human Rights Review* 22, no. 4 (2021): 521–537. <https://doi.org/10.1007/s12142-021-00645-x>.

<sup>20</sup> S. Efendi, "Islamic Criminal Law and Its Application in Indonesia." *FUQAHA: Journal of Islamic Law* (2025). <https://fuqaha.ibnusantara.com/index.php/fqh/article/download/2/2>.



commit. In this sense, positive law tries to make sure that justice is the same for everyone and that no one gets preferential treatment because of their social status. In conclusion, positive law is very important for dealing with criminal matters since it defines crimes, sets punishments, and gives a framework for treating criminals fairly and justly. It seeks to maintain social order via deterrent, safeguard individual rights, and rehabilitate criminals. But it does have its problems, such as prejudice and inequity. Even with these problems, positive law is still a key part of contemporary legal systems. It keeps changing to fit the demands of society and make sure that justice is done.

#### D. A Comparison of Legal Approaches to Jarimah in Aceh

This study aims to compare the application of Islamic law and positive law in handling criminal cases, with a particular focus on the Sharia Court in Aceh. Aceh, as the only province in Indonesia implementing Islamic law in certain areas, offers a unique perspective on the interaction between religious and state laws, especially in the realm of criminal justice. The comparison reveals key differences and similarities in how both systems approach criminal offenses, evidence, procedures, and penalties.<sup>21</sup>

Under Islamic law, as applied in the Aceh Qanun (Sharia law), certain offenses such as *zina* (adultery), *khalwat* (close proximity between non-married individuals), and consumption of alcohol are considered serious crimes. The punishment for these offenses is often corporal, such as flogging (*uqubat*), with public flogging being a key method of deterrence for acts deemed morally inappropriate according to Islamic principles. In contrast, Indonesian positive law, which is derived from the Dutch colonial legal system, approaches these offenses through a more secular lens, focusing on rehabilitation, societal protection, and non-physical penalties such as fines, imprisonment, or rehabilitation programs.

The legal procedures also differ significantly between the two systems. In the Sharia Court, establishing guilt for crimes like *zina* requires strict evidence standards, such as the testimony of four adult male witnesses or the accused's confession. This high burden of proof is designed to protect individuals from unjust punishment and reflects the moral emphasis in Islamic law. On the other hand, Indonesian criminal law is more flexible in terms of evidence, relying on various types of testimony, forensic evidence, and circumstantial evidence, reflecting a more pragmatic approach to justice.<sup>22</sup>

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<sup>21</sup> Fadhilah, Nurul, and Samsidar. "Public Whipping Punishment for Adultery Offenders in Aceh: A Study on the Application of Islamic Criminal Law and International Human Rights." *Journal of Strafvordering* 2, no. 4 (2025): 48–65. <https://doi.org/10.62872/380s8p35>.

<sup>22</sup> A. C. Irawati, "KUHAP Reform, Human Rights, and Islamic Law." *Al-Ahkam* (2025). <https://journal.walisongo.ac.id/index.php/ahkam/article/view/28399>.

Furthermore, the penalties for similar offenses vary widely. For example, in the case of zina, Islamic law mandates severe corporal punishment, while Indonesian law typically imposes imprisonment. This reflects the differing moral foundations of each legal system, with Islamic law emphasizing retribution and deterrence based on religious teachings, while positive law prioritizes rehabilitation and the protection of individual rights. The difference in sentencing practices highlights the tension between moral and secular considerations in Aceh's legal landscape.

The dual application of both legal systems in Aceh also raises concerns about the impact on human rights. While Islamic law is seen as a way to uphold public morals and protect religious values, its physical punishments, such as flogging, are criticized for violating human dignity and conflicting with Indonesia's constitutional guarantee of human rights. Critics argue that the application of Islamic law can lead to discriminatory practices, particularly toward women and minority groups, who may be disproportionately affected by the enforcement of strict moral codes.<sup>23</sup>

However, supporters of Sharia law in Aceh argue that the system promotes moral integrity and aligns with the values of the local community, which is predominantly Muslim. They believe that Islamic law serves as an essential tool in maintaining social order and upholding religious principles in the region. This tension between upholding moral values and protecting individual freedoms is a key feature of the ongoing debate about the role of Sharia in Aceh.

In conclusion, the comparison between Islamic law and positive law in handling criminal cases in Aceh reveals important differences in legal theory, procedure, and practice. While both systems aim to ensure justice, they operate with different principles and priorities. The dual legal system in Aceh raises important questions about the compatibility of religious laws with state law, particularly in a democratic and pluralistic society. Further research is necessary to explore the long-term effects of this dual system on human rights, social justice, and the relationship between religious and state law in Indonesia.<sup>24</sup>

The Sharia Court in Aceh has a unique role in Indonesia's legal system, where Islamic law is applied alongside national positive law. As the only province in Indonesia with full implementation of Sharia law, Aceh's Sharia Court handles various criminal cases, such as adultery, gambling, and alcohol consumption, which are considered offenses under Islamic law. One notable case involved the public flogging of a couple found guilty of adultery in 2018, a punishment prescribed under Sharia law. This case attracted significant attention, highlighting the tension between Islamic

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<sup>23</sup> H. Iskandar, "Function and Position of Aceh Syar'iyah Court in the Legal System in Indonesia." *Journal of Law and Social Sciences* 9, no. 1 (2023): 45–59. <https://doi.org/10.22373/jlss.v9i1.1366>.

<sup>24</sup> D. K. Mohsin, "Emerging Technologies and Islamic Laws: A Comparative Analysis." *International Journal of Islamic Jurisprudence* (2025). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5386264](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5386264).

and national legal systems, as such punishments do not align with Indonesia's positive law, which prohibits corporal punishment. Another example is the enforcement of laws prohibiting the consumption of alcohol, with people caught violating the law facing penalties such as imprisonment or public whipping. These cases demonstrate the distinct role of the Sharia Court in Aceh, reflecting a legal system shaped by Islamic principles in a modern nation-state.

The Mahkamah Syar'iyah (Sharia Court) of Aceh's ruling against those who drink alcohol (*khamar*) is an example of jinayat law in action, as stated in Qanun Aceh No. 6 of 2014 on *Jinayat* Law. This qanun says that drinking alcohol is a *jarimah* (criminal violation) that may be punished by *uqubat hudud*, which is 40 lashes. The court may impose an extra *uqubat ta'zir* on repeat offenders. This might include more lashes, a fine of up to 400 grams of pure gold, or a jail sentence of up to 40 months. According to Law No. 11 of 2006, the Province of Aceh has particular power to implement Islamic criminal law. This paragraph makes it clear.

In reality, the *Mahkamah Syar'iyah* doesn't only go after those who drink alcohol; it also goes after people who make, sell, give away, or keep alcohol. The kind and intensity of punishment depend on the crime and how serious it is. Flogging punishments are usually carried out in public to stop people from breaking the law and to teach them about Islamic values. The goal is to get people to follow Islamic rules and not do things that are against the law.

In Indonesia, on the other hand, the national criminal code (KUHP) does not consider drinking alcohol a crime unless it violates public order or safety, as stated in Article 492 of the old KUHP and Article 316 of the new KUHP. As a result, it is not against the law to consume alcohol in private places outside of Aceh. So, the implementation of *jinayat* law in Aceh shows how Indonesia's legal system is divided. Aceh has a specific level of autonomy that lets Islamic criminal concepts be used that aren't used in other parts of the nation.

The Village Regulation (Perdes) of Muslim Padang No. 05 of 2006 sets rules for how to punish those who break religious rules such *zina*, *khalwat*, *qadzaf*, and drinking alcohol by beating them. The punishment of flogging in Bulukumba is *ta'zir*, which means that the authorities decide what punishment to give depending on particular factors. This is different from *hudud*, which is required under the *jarimah* system in Aceh. There are some parallels between the two types of punishment, although the way flogging is done in Bulukumba regency in South Sulawesi is not as rigid and official as the *jarimah* system in Aceh, which has more specific rules about breaking Islamic law.

Perda Number 11 of 2001, which deals with the Eradication of Immorality, is the Regional Regulation (Perda) that controls Sharia and punishes anyone who break Islamic rules in Bulukumba Regency, South Sulawesi. This rule explains how to punish those who break the law by drinking alcohol, committing *zina*, or doing other immoral things. The punishments are usually *ta'zir*, which are punishments set by the

government based on the rules in that area. The punishments might include fines, taking away company licenses, or other administrative actions meant to teach people about and enforce religious rules and social order.

## E. Conclusion

This study highlights the empirical findings regarding the application of Islamic law and positive law in handling criminal cases in Aceh, specifically within the Sharia Court. The research reveals that while both systems aim to deliver justice, they do so with differing approaches. Islamic law, through the Aceh Qanun, emphasizes strict moral and religious values, often imposing corporal punishment such as flogging for offenses like *zina* and *khalwat*. In contrast, positive law, grounded in Indonesian national law, focuses more on rehabilitation and non-physical penalties such as imprisonment or fines. Empirically, the study found that Islamic law's rigid standards of evidence, particularly the requirement for four witnesses, contrasts with the more flexible procedural approach of positive law, which allows a wider range of evidence. The dual application of these legal systems in Aceh raises concerns about human rights, especially regarding physical punishments. Further investigation into the long-term impact of this dual system is essential.

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## Ethics Declaration

Each author has their own role, as stated in the table. During the course of this research, no conflicts of interest were found that could affect the data collection process.

## Authors and Contributions

In this research project, the main contributions were provided by three authors from three different institutions. Muhammadong from Universitas Negeri Makassar, Indonesia, led the process by playing a role in conceptualization, investigation, provision of resources, visualization, and writing of the original draft. Meanwhile, Husain from STAIN Majene, Indonesia, and Norakyairee Bin Mohd Raus from University Sains Islam Malaysia, both provided comprehensive contributions, including data curation and validation.

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