



## CRIMINAL LAW AND SOCIAL DEVELOPMENT IN ACEH

**Sumardi Efendi<sup>1</sup> Erha Saufan Hadana<sup>2</sup>**

<sup>1</sup> Islamic Criminal Law, Department of Sharia and Islamic Economics, STAIN Teungku Dirundeng Meulaboh, Aceh, Indonesia

<sup>2</sup> Islamic Family Law, Department of Sharia and Islamic Economics, Iskandar Muda University Banda Aceh, Aceh, Indonesia

### **Abstract**

*Changes in people's lives and social developments will have an impact on legal changes in all aspects of life because these aspects are interconnected. Changes and social developments in society require a change in the concept of crime in criminal law. Therefore, the crime itself is a means of overcoming crime, and the crime itself is the result of social change and development. The existence of criminal law with all its concepts and characteristics is essentially a reaction to various destructive social phenomena that occur in society. If people are not "guarded" by criminal law, they will be in a state of chaos. The aim is to see, through a literature review method, which combines conceptual and historical methods, how the social life of the Acehnese people contributes to changes in the concept of criminal law that has existed so far. faced. changing social reality.*

**Keywords:** *Criminal Law, Social Development, Aceh*

### **A. INTRODUCTION**

A society changes and society develops faster and with all its negative impacts, the existence of criminal law needs to deal with this in a more complex manner. If criminal law only relies on concepts, principles, and theories to overcome various destructive social phenomena in the past, it will be seen as having no significant benefits. Criminal law will also feel left behind from contemporary social changes and developments that require adequate (criminal) legal expectations. (Mahrus Ali, 2012).

Aceh in the course of the government of the Unitary State of the Republic of Indonesia is one of the distinctive or special regional government units with a thick Islamic culture in the history of the struggle of the people in Aceh. Sharia law is a requirement of society because Aceh's population is predominantly Muslim. Dutch anthropologist B.J. Boland said after doing research in Aceh: To be an Acehnese is to be a Muslim (to be an Acehnese is to be a Muslim). Since the Sultanate era in the 17th century, Southern Groacci has adopted Sharia law as the legal basis for its people. Laws are made by Ulama on orders or in collaboration with Umara (i.e. rulers or sultans). Great works were born in the form of books that became a reference for

Judge Nanggroe Aceh and all law enforcement officers at that time. Among these scholars were Nuruddin Ar-Raniry (died 1658 AD), Syamsuddin al-Sumatrani (died 1661 AD), and Abdurrauf al-Singkili (1615-1691 AD). His most recent work is *Safinat al-Hukkam fi Takhlish al-Khashsham* (The Judicial Ark to Settle the Cases of All Fighters) by Jalal al-Din al-Tarusani. This book was specifically written on the orders of Sultan Aledin Chowhanshaw (1735 – 1760 AD/1147 – 1174 H), the contents of this book are the rules of civil and criminal law as well as various interpretations of case settlement and the main points of procedural law. in the court. In addition, *Qanun al-Asyi* (Adat Meukuta Alam) is also well known and contains the laws of *Dusturiyyat* and *'Alaqah Dauliyyah* written in Jawi, which have become royal laws. (Rusjidi Ali Muhammad, 2003).

The application of Islamic law in Aceh is an effort to resolve social conflicts. Various steps have been taken by the government to reconcile Aceh and free it from conflict, but the results have not shown any signs of ending. Social conflicts and the Acehnese people's rebellion against the central government to gain independence through the Free Aceh Movement (GAM) have been going on for quite a long time. In the new order era, the central government has taken repressive measures by treating Aceh as a military operation area, but even though it has been going on for decades and has claimed many lives and property, it has not failed. to resolve social conflicts such as Aceh. In the reform era to overcome these problems, the central government enacted Law no. 18 of 2001 on special autonomy as a political solution (Rasyid Rizani, 2018).

The application of Islamic law in the Province of Nanggroe Aceh Darussalam is a manifestation of the return of the Acehnese people to their cultural roots. According to sociological legal theory, good law is a law that lives in a society. (Lili Rasjidi, 2004). The granting of the right to apply Islamic law is a legal embodiment of Law no. 44 of 1999 concerning the Implementation of Special Privileges or Autonomy for Aceh which includes four main areas, namely:

- a. Implementation of religious life.
- b. Implementation of traditional life.
- c. Implementation of education.
- d. The role of ulama in setting regional policies.

## **B. METODE**

Qualitative research methods can be interpreted as research methods based on the philosophy of postpositivism, used to examine the state of natural objects, where the researcher is the key tool, data collection techniques are carried out through triangulation (combined), data analysis is inductive/qualitative and qualitative research results. focus on meaning rather than generalization.



## C. DISCUSSION

### 1. The Qanunization Process of Jinayah Law

#### a. Philosophical Foundation

The philosophical basis for the application of Islamic law in Aceh is the way of life of the Acehnese people who believe that their existence in this land cannot be separated from the rules that have been set by Aceh. Allah SWT. In the Indonesian Constitution, this vision of life is embodied in the first principle of Pancasila: "Belief in One God". In the MPRS/XX/1966 Decree, it is explained that Pancasila is the main source of law, that an independent nation and state cannot be separated from the goodness and struggle of the people. man, but God decides. Pancasila consists of the first commandment of Tawhid and the other four social commands and is used as the source of all things according to Islamic law (Bismar Siregar, 1991).

In the concept of criminal law, Pancasila must also pay attention to religious values, where Pancasila must be guided by the principle of recognizing that humans are God's creations. Establishing a sentence must not conflict with any religious beliefs of the Indonesian people. Punishment should be directed at the conviction of the convict to repent and be a faithful and obedient person. So the punishment must succeed in changing the psychological development of the convict and turning him into a better person (J.E., Sahetapy, 1982).

From this point of view, criminal sanctions in the laws that live in society, including fiqh, are more in line with the Indonesian view of life, compared to criminal law (KUHP) as known by legal experts, as a legacy of the Dutch colonial era. For example, in general, the definition of adultery in criminal law is sexual relations outside of marriage but carried out by a partner, one of the parties, or both are married to another person. Therefore, according to criminal law, the relationship between the two Sexual relations outside of marriage between two unmarried persons-for examples, cohabiting partners-is not adultery. This definition is very clearly Influenced by the Law of the Catholic Church. This seems inconsistent with the awareness Indonesian law generally recognizes an extramarital relationship, even if you are not bound by marriage, it is called adultery (Ali Abubakar, 2014).

#### b. Sociological Foundation

Sociologically, before independence, many regions in the archipelago had even implemented Sharia law legally. The reason is that several legal texts of the Islamic kingdoms in the archipelago were found which were adopted from fiqh. The oldest is the law of Malacca that applies in the Sultanate of Malacca. According to Jameel Mukmin, the law of Malacca influenced the Islamic Kingdom in the archipelago in the 16th, 17th, and 18th centuries and spread widely to the conquered areas of Malacca in Indonesia today. The Simbu Light Law of the Palembang Sultanate (1639-1650M), Riau Law (1722-1730) from the Sultan Suleiman, Papakem Cirebon (Cirebon Code), and Surya Alam Law are believed to have originated in the 16th-century Sultanate of Demark. Influenced by Malacca law. Like Riau, Pattani. During the Sultanate of Aceh, Aceh Customs, Mahkota Alam Customs, Kanun Mahkota Alam, or Kanun al-Asyi were held during the reign of Iskandar Muda (1607-1636) were strongly influenced by Malacca law. As a large kingdom, Aceh has a legal order that regulates people's lives, namely the Islamic Shari'a. Many terms are implied messages, for example, "Adat

ngon hukom lage zat ngon sifeut” implies that the daily social life of the Acehnese, as a norm and subsequently as a custom, cannot be separated from the values of Islamic Shari’a. Another saying is: “Adat is like Po Teumereuhom, Hukom is like Syiah Kuala, Kanun is like Putro Phang, Reusam is like Laksamana”, the application of Islamic Sharia in Aceh has existed to the point of making it a positive rule, then as a rule that is lived and lived by the community. There is even a written document of the Qanun Syarak of the Kingdom of Aceh during the reign of Sultan Alauddin Mansur Syah in 1270 H & Qanun Al-Asyi Ahlul Sunnah wal Jamaah (Qanun Meukuta Alam. Sultan Iskandar Muda) written in 1310 H. (Ali Abubakar, 2014)

Thus, Islamic Shari’a is a living law for the people of Aceh since the time of the Aceh Sultanate. Before the arrival of the Dutch to the archipelago, the people of Aceh had ruled using the Shari’a rules, after arrival of the Dutch some of these rules could not be implemented. The obstacle to the implementation of Islamic Sharia in Aceh continued after the struggle for Indonesia’s independence. Where the turmoil in Aceh is due to the demands of the Acehnese people for the implementation of Islamic Sharia. Crucial documents regarding this show that the effort had begun in 1948 when the Maklumat along with the Ulama of all Aceh, religious leaders, religious judges, and leaders of the Aceh residency Islamic school emerged. (Mohd. Din, 2015).

Sociologically, the existence of the existing Islamic Shari’a qanuns applied to Aceh is not something new but reaffirms values that have long been found in the Acehnese people. All of this is reaffirmed in Law No. 44 of 1999, it is explained that the people of Aceh have made Islamic law a part of their lives.

#### c. Juridical Foundation

In formal juridical terms, the State of Indonesia justifies a community carrying out its religious rules. This can be seen in Article 29 of the 1945 Constitution paragraph (2) the state guarantees the independence of each resident to embrace their religion and to worship according to their religion and belief. The word “guarantee” in this article has an imperative meaning, namely that the state is obliged to make efforts so that every citizen embraces beliefs and worships based on that belief. This is a constitutional acknowledgment of the 1945 Constitution of the regional government units that are specific or special (Syahrizal Abbas, 2007). Article 18 paragraph (6) of the 1945 Constitution stipulates: “Regional governments have the right to decide regional regulations and other regulations to carry out autonomy and assistance tasks.

The implementation of Islamic Sharia in Aceh is based on Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh and Law Number 11 of 2006 concerning the Government of Aceh. Furthermore, Law no. 44/1999 states, there are four privileges given to Aceh, namely religious life, customary life, education, and the role of ulama in determining regional policies. Article 4 paragraph 1: Privileges in the field of religious life are manifested in the form of the implementation of Islamic Shari’a for adherents in social life. Article 1 number 10: Islamic Shari’a is the guidance of Islamic teachings in all aspects of life.

The existence of Law Number 44 of 1999, the privilege of Aceh, which was granted in 1959 through the Decree of Deputy Prime Minister Hardi, popularly

known as the 1959 Hardi Mission Agreement (Mohd. Din, 2015), is realized in more depth. Based on this law, Aceh is allowed to implement Islamic Sharia in all aspects of life, where the Law governing the implementation of the Privileges of the Province of the Special Region of Aceh is intended to lay the foundation for the Province of the Special Region of Aceh in regulating people's lives as a privilege through regional policies. With the enactment of Law Number 11 of 2006, the position of Islamic Sharia in Aceh has become even stronger. Article 125 states that the implementation of Islamic Shari'a is regulated by Aceh Qanun and, consequently, every Muslim in Aceh is obliged to obey and practice Islamic Shari'a and Everyone who resides or is in Aceh is obliged to respect the implementation of Islamic Shari'a (Article 126). The Islamic Shari'a in question covers all fields in Islam as stated in Article 125: The Islamic Shari'a implemented in Aceh includes aqidah, syar'iyah and morals (Article 1), and Islamic Shari'at as referred to in paragraph (1) includes worship, ahwal al-syakshiyah (family law), muamalah (civil law), jinayah (criminal law), qadha' (judicial), tarbiyah (education), da'wah, syiar, and defense of Islam (Article 2).

## **2. Society and Social Development**

### **a. Qanun Jinayah**

Qanun in this sense is generally only about rules related to using muammalah, not worship, and has strong rules in its implementation in a country (A. Qadri Azizy, 2004). If it is related to using Indonesian National Law, then the qanun is identical to state regulations in the form of laws and regulations originating and culminating in the 1945 Constitution. The main source is all customs developed and developed by fiqh science and must not conflict with religious beliefs. the life of the Indonesian people who are the subject of the rules regulated by the state. In accordance with the principle of One Godhead, there must be no national law that conflicts with religious norms adhered to by Indonesian citizens.

In the process of forming laws in Aceh, the Qur'an and Hadith must be used as the main reference and source, besides that in the draft qanun jinayat, the Qur'an and Hadith are the main basis (Amsori and Jailani, 2017). The formulation of Aceh's fiqh cannot be separated from the role of ijtihad of scholars and intellectuals to form Islamic sharia qanuns in the field of jinayat, which are based on three main principles (Al Yasa' Abubakar, 2007):

- 1) methodologically make the Qur'an, Sunnah, interpretation, and various rules of fiqh that exist as the main source;
- 2) meet the local needs of the Acehnese in particular or the Malay community;
- 3) is forward-looking and meets the needs of modernity, including consideration of human rights and gender equality issues.

Even so, Aceh's fiqh was chosen to fill the deadlock in the legislation of Islamic sharia qanuns, especially in the field of jinayat, it is very likely that its reach only touches the area of ta'zir punishment and will not be able to touch the hudud penalty in the qanun.

Historically and the sociological conditions of the Acehnese people towards Islamic law have been ingrained in their lives, so it can automatically become a force of law. This is the main key in the application of law in society, considering that the existence of the law must consider aspects of the community's needs as

legal subjects. So the implementation of the qanun on jinayat law in Aceh has the support of the majority of the people because the majority of the people who live are Muslims.

The success of jinayat law legislation is determined by the legal awareness of the community and or the legal politics of a country. Public legal awareness will place Islamic law as a living law in society (living law). If Islamic law has become living law, then the state will provide guarantees for this jinayat law.

b. Social Control

In social life, the law has a very important role in maintaining social order and peace. This is because the law regulates that the interests of each individual do not conflict with the public interest, arrangements regarding the implementation of the rights and obligations of the community or parties in a legal relationship and other as it should be (Muhammad Daud Ali, 2011). It is expected that the law will work in accordance with the function of the law itself. With the proper functioning of the law, law enforcement can be realized. Why has the law been so weak? Because the legal function does not work well, stagnation is caused by many factors which then often become the subject of debate or discussion by legal experts and experts in the mass media (Noel J. Coulson, 1987).

Law functions as a means to bring order to the community and regulate the social life of the community, as well as a means to resolve disputes or disputes in society. As a tool to carry out order and peace in social life and a means to realize social justice, both physically and mentally and to drive development for the community. (Soerjono Soekanto, 2002). Law as a tool of social control is something that can control people's behavior. This behavior can be defined as something that deviates from the rule of law. As a result, the law can impose sanctions or actions on the violator. Therefore, the law also stipulates the sanctions that must be accepted by the perpetrators. This means that the law directs people to act correctly according to the rules so that peace is realized (Satjipto Rahardjo, 1983).

In general, legal awareness can be related to legal compliance or legal effectiveness. In other words, legal awareness concerns the issue of whether the provisions and objectives of caning function or not in society. Furthermore, according to Atang Hermawan in his writings, he stated that the level of legal awareness of the community and the government itself was still very low and could be the reason why the principles of the rule of law were not enforced in Indonesia. The reasons include (AW. Widjaja, 1982):

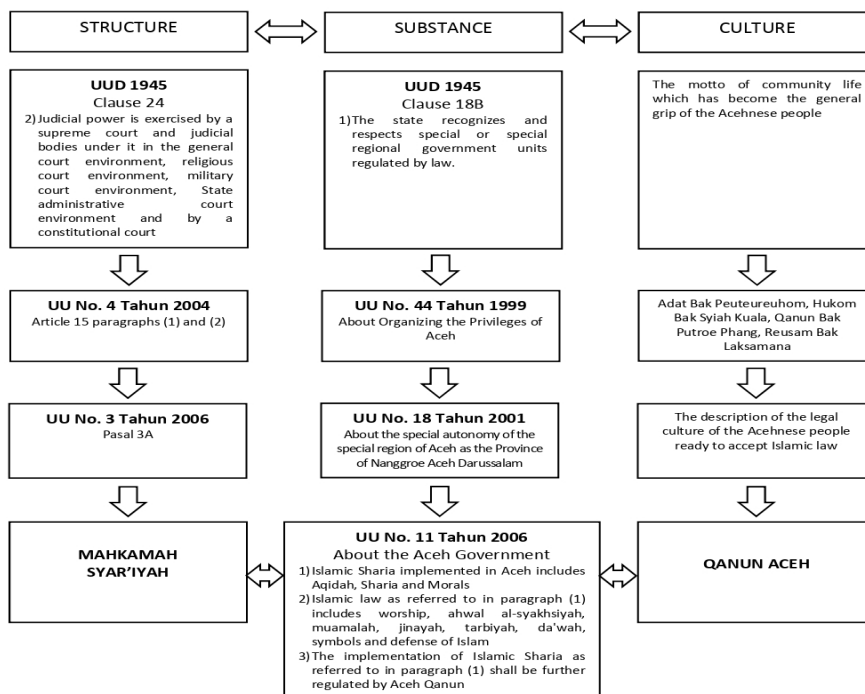
- 1) Lack of knowledge of legal provisions and lack of understanding of the law itself;
- 2) Tend to lack respect and trust in the ongoing law enforcement process;
- 3) Low integrity and moral factors;
- 4) Factors of inadequate facilities and infrastructure

c. National Legal System

With the enactment of Law Number 11 of 2006 concerning the Government of Aceh (UUPA), it reaffirmed Aceh's authority in carrying out its privileges in the field of Sharia-including jinayat (Islamic criminal law). Article 125 of the Logga, has been regulated in more detail, namely covering the substance of Islamic teachings

(aqidah, Sharia, and morals). It is very important to realize the new development of Islamic law in the lives of the Acehnese people because only the state has the right to apply it, otherwise, chaos will occur. This is the juridical basis for the birth of Islamic criminal regulations in Aceh, known as the Qanun Jinayat. Of course, there are pros and cons to Qanun Jinayat. However, Aceh's Jinayat Qanun remains a legal product and is recognized in the State (Al Yasa Abubakar and Marahalim, 2006). When Aceh applies a principle that creates new norms, where the norms are completely different from the Criminal Code and other criminal laws in Indonesia, it should be interpreted as filling a legal vacuum, not something foreign and can be disputed.

When described in tabular form, the legal umbrella regarding legislation on the implementation of Islamic law in the form of qanuns in Aceh can be seen as follows:



### 3. The Criminal System in Indonesia

#### a. Criminal Code

Indonesian criminal law experts also have the same view in understanding and giving reasons for the concept of criminal. According to Prof. Sudarto, traditionally, crime can be defined as misery imposed by the state on someone who violates the provisions of the law, deliberately to feel it as misery (Sudarto, 1996). In another sense, the crime is a reaction to the offense, and this is in the form of a penance that the state has intentionally imposed on the perpetrator of the offense (Roeslan Saleh, 1987).

In providing an understanding of the concept of crime, after putting forward various definitions, a conclusion about the elements or characteristics contained in the criminal, namely (Muladi and Barda Nawawi Arief, 1992):

- 1) The punishment is essentially an imposition of suffering or misery or other unpleasant consequences;
- 2) The punishment is given intentionally by a person or body who has the power (by the authorities);
- 3) The punishment is imposed on someone who has committed a crime according to the law.

In the Criminal Code, when it is known the importance of structural punishment, it is appropriate to think about the appropriate formulation to meet the needs of positive law. We can move on from a comparison of structural punishments imposed in other countries, related to the philosophical basis or basis of regulation, positive legal rules, and models of criminal responsibility. The philosophical basis for the Criminal Code for the application of structural punishment is to hold that criminal responsibility sometimes involves parties other than the perpetrator, criminal acts, or negligence in carrying out policies so that undesirable criminal acts occur. In the concept of reforming the Criminal Code in Indonesia, this idea is reflected in the “balance/monodualistic idea”. So far, we have only adhered to the existence of errors in criminal acts, often called “no crime without error” (culpability principle), although in the old Criminal Code (WvS) this has not been regulated. But in the current development, that principle is not enough. Currently, criminal law demands a balance because the purpose of the law is justice, expediency, and legal certainty. If so far we only see the law as something to achieve legal certainty, this is what needs to be addressed (Failin, 2017).

Indonesian criminal law determines the types of criminal sanctions for basic and additional penalties. This is explicitly formulated in Article 10 of the Criminal Code which reads (Barda Nawawi Arief, 1996):

Crime consists of:

**a. Basic Criminal:**

- 1) Death penalty
  - 2) Imprisonment
  - 3) Confinement
  - 4) Criminal fines
  - 5) Additional Criminal
  - 6) Revocation of certain rights
- b. Deprivation of certain items;

**b. Announcement of judge’s decision.**

Criminal law reform requires research and thought on a very fundamental and very strategic central problem. Included in the problem of policy in determining criminal sanctions, is the policy of determining the criminal in the legislation. Legislative policy is the most strategic stage seen from the entire policy process, to operationalize criminal law. It is at this stage that the policy lines of the criminal and sentencing system are formulated, which at the same time are the legal basis for the following stages, namely the stage of criminal application by the judiciary and the stage of implementing the crime by the criminal implementing apparatus (Syaiful Bakhri, 2009).

Furthermore, the function of the rules/laws is to tackle every crime, so that the



perpetrators of crimes can be punished and given a deterrent effect. Punishment is a punishment imposed in retaliation against the perpetrator for committing a crime that causes misery to other people or members of the community. The purposes of providing witnesses are:

- 1) Deterrence, by imposing a sentence, the perpetrator is expected to be a deterrent and not repeat his actions again (special preventive) and the general public knows that if he commits an act as committed by the convict, they will experience a similar punishment (general preventive).
- 2) Improving the convict's personality, based on the treatment and education provided during his sentence, the convict feels sorry so that he will not repeat his actions and return to society as a good and useful person.
- 3) Destroying or rendering the convict helpless, destroying means imposing the death penalty, while making the convict helpless is done by imposing a life sentence.

#### b. Qanun Jinayah

Qanun comes from the Greek (kanun) and was absorbed into Arabic through the Syriac language which means rules, norms, laws, regulations, or laws (Abdul Aziz Dahlan, 2003). Qanun is also mentioned as a collection of legal material that is systematically arranged in a single state sheet known as a law, in the history of Islamic legislation this qanun was compiled as legal material in one field, both civil law and criminal law (Syahrizal Abbas, 2009). Furthermore, in the settlement of criminal law in Aceh, it is known as qanun jinayat (Islamic criminal law).

In the jinayat qanun, the sanction is 'uqubat whip, where this sanction is also carried out to give a more social deterrent effect to the perpetrators of the crime where the implementation of the uqubat whip is witnessed by the public. Thus the community can take lessons and reconsider if they will commit the crime. However, if criminal law is chosen as a means of crime prevention, it must be made in a planned and systematic manner. This means that choosing and determining punishment must take into account the factors that can support the functioning and working of criminal law in reality.

In addition, in the qanun jinayah, there is also a gold diyat (fine), as an additional sanction in the form of uqubat ta'zir. This is what makes the difference more interesting wherein in the Criminal Code the fine is calculated in Indonesian currency, namely the rupiah where at any time the currency will lose its price/low exchange rate. However, in the qanun jinayat, the gold diyat is considered more effective because the exchange rate will not change or decrease, instead the exchange rate will continue to normal, so the exchange rate will increase according to market developments. The most important thing of all is how the sanctions are given to the perpetrators of crimes and how they can be overcome in the future in the sense that it is not only sanctions that we must impose. In practice there are two methods used to reduce the frequency of crime, namely:

- 1) The method to reduce the repetition of crimes, is a method aimed at reducing the number of recidivists (repetition of crimes) with conceptual development.
- 2) The method to prevent (the first crime), is a method aimed at preventing

the occurrence of the first crime (the first crime) that will be committed by someone and this method is also known as the prevention (preventive) method.

In addition, we must maintain morality and Islamic values that are comprehensive, unified, and integrated and not divided into parts that stand on their own. A unanimity of values and morality contains normative (rules/guidelines) and operative aspects (to be the basis of deeds). The values and morals included in the Islamic value system according to al-Maududi have perfect characteristics. These characteristics lie in the following three things:

- 1) The pleasure of Allah SWT is the goal of Muslim life, and this pleasure of Allah SWT becomes a high moral standard as a way for the moral evolution of humanity.
- 2) All spheres of human life are upheld on Islamic morals, so that Islamic morality has full power over all affairs of human life, while lust is not allowed to dominate human life.
- 3) Islam requires humans to carry out a life system that is based on the norms of virtue and is far from evil.

Thus, all of this can maintain security for every community because on the impulse of the heart, humans and their nature feel obliged to do good, so that it leads human life to become social and civilized beings.

#### **D. CONCLUSION**

Changes and social developments in a society with all its positive and negative sides necessitate the presence of criminal law. Criminal law is present as an effort to overcome the negative side of these social changes and developments. Criminal law is considered not to have significant significance if it faces changes and social developments in a society that is still struggling with a framework of thought that is built based on the conditions of society that have not changed so much.

Aceh's Jinayat Law Legislation did not appear out of anywhere, but through the process and basis used to form it, one of the foundations is a philosophical foundation. The philosophical values used are religious values, for example, justice, the justice in question is of course the values of justice in Islam. Aceh Qanun is a statutory regulation similar to a provincial regional regulation that regulates the administration and life of the Acehnese people. Perda can only contain rules delegated by law. So, local regulations do not regulate matters relating to people's lives. Thus, local regulations and qanuns are not identical. Apart from the fact that the law states the qanun as "a type of regional regulation," it is also because its material content can be understood to be related to people's lives. In other words, Islamic Sharia qanuns can regulate people's lives that cannot be regulated by ordinary regional regulations.

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