

FROM NON-PUNISHMENT TO BEING PUNISHED: ISTINBATH TAQNIN ANALYSIS OF ISLAMIC FAMILY LAW IN ACEH

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Abstract: The effort to positivate the Family Law Qanun (Ahwal Al-Syakhshiyah) which has been completed by the Aceh People's Representative Council together with the Aceh Government has become a polemic among academics, human rights activists, and some activists for the protection of women and children, especially when the discourse is in the mass media said Aceh will legalize the provision that husbands can have more than one wife in one of the articles of the Aceh Qanun Number 14 of 2019 concerning Family Law. Qanuns are formulated as the embodiment of the implementation of Islamic syari'at which has a juridical basis, mandate, and order of law Number 11 of 2006 concerning Aceh Governance. However, the pros and cons of issuing qanuns remain polemic. This writing reveals how the method of reasoning used by the parties involved in writing Islamic legal rules becomes a positive law. This writing analysis unit is an academic paper and draft of family law qanuns and Aceh Qanun Number 14 of 2019 concerning Family Law. The Taqnin process is identical to the legislative process as an ijihad activity in compiling family law qanuns into positive law in the Indonesian legal system. The family law qanun reasoning uses ijihad jama'i as the main method which is collaborated with the Istislahy, Sadduz Zari'ah, and 'Urf methods. The stipulation of some articles shall be guided by the principles of shari'a, fiqh mazhab, and adat. Article 181 Paragraph (1) and Paragraph (2) concerning uqubat are articles that occupy a strategic position, differentiating between Aceh Qanun Number 14 concerning Family Law and Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Laws on Marriage especially from non punishment act to be punish.

Key words: Istinbath, Family Law, Punishment, Aceh

Abstrak: Upaya positifikasi Qanun Hukum Keluarga (Ahwal Al-Syakhshiyah) yang telah diparipurnakan oleh Dewan Perwakilan Rakyat Aceh bersama Pemerintah Aceh menjadi polemik di kalangan para akademisi, pegiat hak asasi manusia dan sebagian kalangan aktifis perlindungan perempuan dan anak, terutama ketika wacana di media massa menyebutkan Aceh akan melegalkan ketentuan suami dapat beristeri lebih dari satu dalam salah satu pasal Qanun Aceh Nomor 14 Tahun 2019 Tentang Hukum

Keluarga. Qanun disusun sebagai perwujudan pelaksanaan syari'at Islam yang memiliki landasan yuridis, amanat dan perintah undang-undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh. Namun pro kontra penerbitan qanun tetap menjadi polemik. Penulisan ini mengungkapkan bagaimana metode penalaran yang digunakan oleh para pihak yang terlibat dalam penulisan aturan hukum Islam menjadi hukum positif. Unit Analisis penulisan ini adalah naskah akademik dan draf qanun hukum keluarga serta Qanun Aceh Nomor 14 Tahun 2019 Tentang Hukum Keluarga. Proses Taqnin identik dengan proses legislasi sebagai kegiatan ijtihad dalam menyusun qanun hukum keluarga menjadi hukum positif dalam sistem hukum Indonesia. Penalaran qanun hukum keluarga menggunakan ijtihad jama'i sebagai metode utama yang dikolaborasikan dengan metode Istislahy, Sadduz Zari'ah dan 'Urf. Penetapan sejumlah pasal berpedoman prinsip- prinsip syari'ah, fikih mazhab dan adat. Pasal 181 Ayat (1) dan Ayat (2) tentang 'Uqubat merupakan pasal yang menempati posisi strategis, pembeda antara Qanun Aceh Nomor 14 Tentang Hukum Keluarga dengan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam tentang perkawinan.

Kata Kunci: Istinbath, Hukum Keluarga, Hukuman, Aceh

INTRODUCTION

The attempt to legitimize the Family Law Qanun (*Ahwal Al-Syakhshiyah*), endorsed by the Aceh House of Representatives in conjunction with the Aceh Government, sparked controversy among academics, practitioners of Islamic law, and activists. This ensued when reports surfaced in both print and electronic mass media indicating that Aceh intended to legalize polygamy by incorporating a provision in one of the articles of the Aceh Qanun Number 14 of 2019, allowing husbands to have more than one wife.

The qanun draft prepared as a manifestation of the sharia implementation has a juridical basis, mandate, and order of Law Number 11 of 2006, concerning the Aceh Government and Aceh Qanun Number 8 of 2006, concerning the Islamic Sharia Principles (Aceh Qanun Number 8, Paragraph 2 (b). However, the pros and cons of issuing the Qanun remain a polemic from various parties, although the discussion was through the mechanism of Aceh's laws, regulations, and qanun formation. Consequently, the Ministry of Home Affairs has yet to issue the registration number through the Director General of Regional Autonomy even though the Aceh Government has sent three editions of the official letter.¹

The Family Law Qanun polemic was raised by Acehnese women activists who thought the polygamy Qanun draft designed by the Aceh People's Representative Council (DPRA) was not urgent. They claimed that polygamy had been regulated in Islamic and marriage law in Indonesia. In addition, many other issues in Aceh are crucial, such as high inflation, poverty rates, and environmental issues, like high temperatures due to prolonged droughts (Kompas, July 07, 2019).²

- 1 Berdasarkan Dokumen Pemerintah Aceh, 'Dokumen Surat Pemerintah Aceh Nomor 180/7754 Tentang Fasilitasi Dan Noreg Qanun Aceh Tentang Hukum Keluarga (Susulan III)' (2020).
- 2 Kompas Cyber Media, 'Aktivis Perempuan Aceh: Qanun Poligami Tidak Penting' *Kompas* (Jakarta, 7 July 2019); Iman Jauhari and others, 'Legal Analysis Of Unregistered Marriage Viewed From Ulama's Perspective In Aceh Province' (2023) 8 PETITA: Jurnal Kajian Ilmu Hukum dan Syari'ah <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/196>>; Al Khanif, 'Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia' (2019) Vol.4 Petita: Jurnal Kajian Ilmu Hukum dan Syariah <<http://www.petita.ar-raniry.ac.id/index.php/petita/article/view/24>>.

Several women activists who are members of the *Balai Syura Ureung Inong Aceh* (Women's NGO) requested that the ratification of the qanun draft be postponed because several points must be reviewed. Based on the studies, many problems can place women in new vulnerabilities and disrupt women's welfare. The draft of family law Qanun focuses on the issue of child custody, *jinayat* in marriage, guardianship, and abuse of guardianship authority (Kumparan, September 04, 2019).³

The Head of the Aceh Provincial Legal Bureau explained that the polygamy qanun had only been discussed three times with the DPRA. In addition, he clarified that it is not a polygamy qanun but a family law qanun because it contains five articles on polygamy, all of which refer to the marriage law. He asserted that the discussion on the Qanun needs to be concluded, and it will undergo public testing upon its completion.⁴

In the context of the legal state (*rechtsstaat*) based on Pancasila, the pros and cons offer room for Muslim communities to engage in certain aspects of Sharia law. Nevertheless, they must adhere to the legal framework established through the governmental recognition achieved in the legislative process. As a constitutional endeavor to uphold sharia, the legislative process involves dialectics and power negotiations between the representatives of society and state authority.

Some researchers have studied Islamic Family Law in Indonesia regarding its history and objects. Eko Setiawan researches the history of Islamic Family Law in Indonesia. He argued that the renewal of Islamic family law can be carried out as needed within the limits set in the sharia. He asserted that there are two methods of reforming Islamic family law: conventional and contemporary. Furthermore, the reform of Islamic family law carried out in Indonesia is an effort to answer the challenges of modernity in family law.⁵

Ahmad Rajafi explained that the history of the formation and reform of Islamic family law in Indonesia has always remained within the debate of legal cultural evolution. The determination of inculturation as the primary model creates Islam's Arabization. The acculturation phase has led to the stagnation of family law renewal. The renewal re-emerged in the 50s with the term "*Fiqh Indonesia*." This spirit continued in the reformation era with the emergence of the Counter Legal Draft Compilation of Islamic Law (CLD-KHI), expected to become the new Marriage Law. However, it is stagnant due to the strength of Indonesia's acculturation-based Islamic family law.⁶ Nurrohman Syarif asserted that the impact of reformation and transformation of family law in Indonesia is that classical *fiqh* books are no longer the primary reference; even the religious justice system is getting closer to civil law.⁷

3 Kumparan, 'DPR Aceh Diminta Tunda Pengesahan Qanun Hukum Keluarga' (Jakarta, 4 September 2019) <<https://kumparan.com/kumparannews/dpr-aceh-diminta-tunda-pengesahan-qanun-hukum-keluarga-1rna4LR2vsS>>.

4 Kompas Cyber Media, 'Jangan Sebut Qanun Poligami, Itu Qanun Hukum Keluarga...' (Jakarta, 10 July 2019).

5 Eko Setiawan, 'Dinamika Pembaharuan Hukum Keluarga Islam Di Indonesia' (2014) 6 De Jure: Jurnal Hukum dan Syariah <<https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/3207>>.

6 Ahmad Rajafi, 'Sejarah Pembentukan Dan Pembaruan Hukum Keluarga Islam Di Nusantara' (2018) 2 Aqlam: Journal of Islam and Plurality <<http://journal.iain-manado.ac.id/index.php/AJIP/article/view/507>>.

7 Nurrohman Syarif, 'The Discourse and Practice of Islamic Family Law in Indonesia' (2021) 58 Psychology and Education Journal 5201 <<http://psychologyandeducation.net/pae/index.php/pae/article/view/1774>>; A Hamid Sarong

In addition, family law in Indonesia's history is influenced by those applied in other Islamic countries such as Egypt and Turkey. Ahmad Zayyadi mentioned that Turkey and Egypt are the basic foundations of family law reform in the Islamic world and greatly influence the development of family law in other countries, including Indonesia.⁸

The study of Islamic family law in Indonesia concerned sensitive issues such as polygamy, children's rights, inheritance rights, and others. Khoiruddin Nasution studied women's rights in Islamic family law in Indonesia.⁹ In another article, he discussed the status of polygamy in Islamic family law in Indonesia as well as Marriage Law Number 1 Year 1974, Law Number 9 Year 1975, and Law Number 10 Year 1983 at the request of the Dharma Wanita group.¹⁰ The discussion of Islamic family law in Indonesia concerns more than polygamy. However, it discusses child protection, as explained by Syamruddin Nasution and Khoiruddin Nasution, that the state has indeed regulated children's protection through several laws and regulations. However, the protection rights is difficult for children, both in the form of decisions and execution, due to the resolution of cases in religious courts, which tend to be administrative rather than substantive.¹¹

Euis Nurlaelawati's discussion examined the position of adopted children in inheritance. She explained that in customary law, the position of adopted children and parents is considered as children and original parents so that they are entitled to inherit from each other, while Islamic law opposes this practice. Euis considered this customary rule excessive because it has no firm basis in the Quran and deviates from Islamic inheritance. Therefore, her article discussed the debate between the two rules and found a common ground¹². In addition, the research conducted by Asni Zubair and Hamzah Latif investigated the construction of inheritance law in transferring assets through mandatory wills on non-Muslim heirs.

Several other researchers conducted studies about family law qanun in the context of Aceh, such as Muhammad Ridwansyah, who highlighted the family law qanun through gender justice theory. He claimed that gender justice theory was not accommodated at all in the draft of Family Law Qanun, and the gender justice theory was not discussed at all by the Family Law Qanun Formulation Team.¹³ Fadli and Muammar's research related to the legality of the draft of family law qanun with the construction of state administration law is reviewed from two points of view: the formality of the formation of legislation and the concept of a unitary state. The study indicated that the position of Qanun in the legal system is different from the existing local regulations in Indonesia

& Nur A Fadhil Lubis, 'The Child Rights In Islamic Law With A Special Focus On Aceh' (2019) Volume 4 Petita : Jurnal Kajian Ilmu Hukum dan Syariah.

8 Ahmad Zayyadi, 'Kontribusi Turki Dan Mesir Terhadap Sejarah Pembaruan Hukum Keluarga Islam Di Indonesia' (2020) 2 Al-Manhaj: Journal of Indonesian Islamic Family Law 47 <<https://ejournal.iainmadura.ac.id/index.php/almanhaj/article/view/3115>>.

9 Khoiruddin Nasution, 'Women's Rights In The Islamic Family Law Of Indonesia' (2006) 12 Jurnal Hukum IUS QUIA IUSTUM 147 <<https://journal.uui.ac.id/IUSTUM/article/view/4745>>.

10 Khoiruddin Nasution, 'Polygamy In Indonesian Islamic Family Law' (2008) 16 Jurnal Syariah 25 <<https://ejournal.um.edu.my/index.php/JS/article/view/22762>>.

11 Khoiruddin Nasution and Syamruddin Nasution, 'Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights' (2021) 59 Al-Jami'ah: Journal of Islamic Studies.

12 Euis Nurlaelawati, 'The Debate on Muslim Family Law Reforms in Indonesia: The Case of Representation of Heirs and Obligatory Bequest' (2022) 41 Al-Jami'ah: Journal of Islamic Studies.

13 Muhammad Ridwansyah, 'Keadilan Gender Dalam Rancangan Qanun Hukum Keluarga' (2019) 14 Jurnal Hukum Samudra Keadilan 168.

for several reasons. First, juridically, the position of Qanun in Aceh has a more robust legal force than other local regulations in Indonesia. Second, sociologically, the majority of Indonesia's population is Muslim, especially in Aceh, who practice Islamic teachings in their daily lives. Third, philosophically, Islamic law contains the theme of justice.¹⁴

The studies of Islamic family law are identical to the history of its formation and reform, the study object of polygamy, child protection, and inheritance. In the context of Aceh, Islamic family law studies focused on the theory of gender justice and the position of the Islamic family law qanun with the construction of constitutional law.

The article explicitly examined the reasoning method used in drafting the qanun on family law in Aceh and the parties involved in writing Islamic legal principles into positive law. Several articles in the qanun produce new norms of punishment that do not exist in the Quran, Hadith, and *Fiqh Mazhab* (a school of thought within Islamic Jurisprudence). In addition, the analysis unit of this article is the academic paper and draft qanun on family law and Aceh qanun Number 14 Year 2019 on Family Law, whose numbering was proposed by the Aceh Government. Thus, this study aimed to investigate the reasoning method for determining the punishment in the Family Law Qanun.

Methods

The process of formulating Aceh qanun in Indonesia can be examined through legislation and *Fiqh Al-Qanuni*. This research can be approached through *fiqh* and *ushul fiqh* as *Taqnin* activities involve *ijtihadi* issues, which fall within the purview of *fiqh* and *ushul fiqh*. The *Taqnin* of family law represents an initiative to address family-related issues, necessitating the establishment of a distinct family law qanun separate from the existing marriage laws in Indonesia. The unit of analysis in this research comprised academic papers on the family law qanun and the outcomes of the family law legislative process endorsed and enacted by the Aceh People's Representative Council (DPRA) during the 2014-2019 period.

The theory of law formation and regulations in the Indonesian context is sourced primarily from books related to *fiqh al-Qanuni* and various studies related to Islamic law legislation. Books related to the science of legislation will undoubtedly be used to assist researchers in understanding the legislative process in Indonesia. Second, several studies were conducted on various references on the process of family law formation in several countries that follow the civil law system. Third, an attempt was made to find the *Taqnin* or family law legislation process in Aceh within the corridors of national law. This study aims to investigate the standard rules guiding the process of legislating family law in Indonesia to determine whether Aceh's legal process aligns with this legislative pattern or follows a unique Acehese model.

Results And Discussion

The *Taqnin* process in the Indonesian context is identical to legislative activities. The *Taqnin* process of family law is to make the rules of sharia and *fiqh* into positive law in the national legal system. However, sharia has significant differences from *fiqh*; first,

14 Fadli Fadli and Muammar Muammar, 'Rancangan Qanun Hukum Keluarga Aceh Dalam Hirarki Perundang-Undangan Indonesia' (2019) 5 Jurnal Al-Ijtima'iyah 75. See also, Muhammad Siddiq et al Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 JILS 525; Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' [2018] Intellectual Discourse.

sharia is God's provisions (including family) that cannot change because these provisions are determined based on revelation through the mediation of the Messenger in the Quran and al-Sunnah. *Fiqh* contains several provisions derived from the Quran and al-Sunnah. However, some are determined based on thought and *ijtihad*. Sharia is never wrong, while the *fiqh* provisions may be wrong due to the variety of thoughts of *fiqh* scholars, and the thoughts are not sharia but an understanding of sharia texts.¹⁵

Second, the perfect, general, and eternal provisions of the sharia contain general rules and principles guiding the law determination. It differs from *fiqh*, the product of *mujtahid* thought from sharia texts, which can sometimes solve specific societal problems at a particular time. However, it is not necessarily suitable for solving societal problems at other times and places.

Third, all Muslims are obligated to adhere to sharia provisions; however, it is not mandatory to follow the *fiqh* provisions and qanun, as they represent the perspectives of scholars and are not obligatory for adherence by other scholars or specific followers of a scholar. Moreover, alternative thoughts from different *fiqh* scholars may also be considered correct and suitable. The distinctiveness of the family law qanun in Aceh lies in the drafter's audacity in stipulating criminal penalties for violations of specific articles not explicitly mentioned in the Quran, Hadith, and *fiqh mazhab*. This includes establishing new penalties, as elucidated in the subsequent narrative.

Uqubat Violation of Article 37 Verse (2) of Qanun Aceh Number 14 of 2019 concerning Family Law states that a husband can have more than one wife and is prohibited from having more than four. If this article is violated, he will receive the punishment stipulated in Article 181 Verse (2).

The determination of *uqubat* for the violation of Article 37, Verse (2), in the form of threats, involves imprisonment for a maximum of two years and one month or a minimum of ten months. Alternatively, *uqubat ta'zir* canning may be imposed for a maximum of 25 times and a minimum of 10 times, or a fine ranging from 100 to 250 grams of pure gold. This determination is based on the results of *ijtihad*, utilizing a *jama'ai* method due to the opinions of the Acehnese qanun formulators (*Muqannin*). These provisions are not explicitly mentioned in the Quran, Hadith, or *fiqh mazhab*. The *uqubat* serves as an alternative punishment that judges can decide upon for violations of the specified article.

The violation of Article 37, Paragraph (7) of Qanun Aceh Number 14 of 2019, known as *uqubat*, stipulates that a husband who fails to meet the essential criteria outlined in Paragraph (3) is prohibited from having more than one wife. The determination of *uqubat* for the violation of Article 37, Paragraph (7), applies to a husband with multiple wives unable to fulfill the requirements specified in Article 37, Paragraph (3). These prerequisites include possessing physical and mental capacity and ensuring fairness to wives and children. The potential consequences involve imprisonment for a maximum

15 Imran Ahsan Khan Nyazee, *Islamic Jurisprudence: Usūl Al-Fiqh* (The Other Press 2003); Khaled Abou El Fadl, *Atas Nama Tuhan: Dari Fikih Otoriter Ke Fikih Otoritatif* (Serambi 2004); See also, Zandy Wulan Ayu Widhi Prameswari and Erni Agustin, 'Indonesian Marriage Law Reform: The Way To Strengthen The Protection of Children's Rights Against Child Marriage' (2018) 2 Journal of Southeast Asian Human Rights 286; Ratno Lukito, 'Shariah and the Politics of Pluralism in Indonesia: Understanding State's Rational Approach to Adat and Islamic Law' (2019) 4 Petita: Jurnal Kajian Ilmu Hukum dan Syariah 14 <<http://petita.ar-raniry.ac.id/index.php/petita/article/view/8>>.

of two years and one month, with a minimum of ten months. Alternatively, *uqubat ta'zir* canning may be applied, ranging from a maximum of 25 times to a minimum of 10 times, or a fine ranging from 100 to 250 grams of pure gold. These determinations are made based on the results of *ijtihad*, utilizing the *jama'ai* method and considering the opinions of the Acehnese qanun drafters (*Muqannin*). Notably, these provisions are not explicitly found in the Quran and Hadith or within the *fiqh mazhab*.

The determination of *uqubat* for violators of Article 37 Paragraph (3) is the *ijtihad* of the Qanun Makers (*Muqannin*). The *Muqannins* use reasoning called *Ijtihad Al-Maqasidy*. It is defined as the operationalization of *maqashid* as a method and theory in determining the law of a particular issue, rationality in thinking, and measurability in observing contemporary issues.¹⁶ The basic principle of *Ijtihad Al-Maqasidy* reasoning is *Maqashid Al-Syari'ah* itself. Law-finding efforts in legal studies are called common law or *istimbat al-Ahkam* in the context of *Ushul Fiqh*.¹⁷

This finding is certainly different from the process of legislating Islamic law. Islamic countries, such as Pakistan, Malaysia, and Brunei Darussalam use the *Takhayyur* method (selection) between the most suitable opinions of the law drafter in formulating their modern legislation.¹⁸ The qanun drafters have developed this *uqubat* based on the *Maqashid Shari'ah*, considering the *mafsadah* that can disrupt the stability of individual and family life when a husband marries more than one wife but cannot fulfill the primary requirement. The stipulation can be stated as a *Fiqh Al-Maqasid* formulation based on the general principles of sharia and used the principles to understand the specific text.¹⁹

The punishment for violating Article 38 Paragraph (1) of Qanun Aceh Number 14 of 2019 concerning Family Law is that husbands who wish to have more than one wife must obtain permission from the Sharia Court. He will be punished if he violates the provision, as stipulated in Article 181 Paragraph (2).

The *muqannins* applied *Saddu Zari'ah* (closing the opportunity for harm) for husbands who marry more than one wife without written permission from the Sharia Court. The qanun drafters considered the formal requirement of written permission from the court. The requirement is not mentioned in the texts of the *nash* and the *fiqh mazhab*. A

16 Nyak Fadhlullah, 'Metode Perumusan Qanun Jinayah Aceh : Kajian Terhadap Pasal 33 Tentang Zina' (2017) 7 in *Right* (Jurnal Agama dan Hak Azazi Manusia) 16 <<http://ejournal.uin-suka.ac.id/syariah/inright/article/view/1456/1262>>; Nyak Fadhlullah, 'Positivisasi Hukum Islam Dan Persinggungannya Dengan Kelompok Etnonasionalis Di Aceh' (2020) 54 *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* <<http://asy-syirah.uin-suka.com/index.php/AS/article/view/734>>.

17 Jasir 'Auda, *Ijtihad Al-Maqasidy, Min Al-Tashawwur Al-Ushuly Ila At-Tanzil Al-'Ilmy* (Al-Syabakah Al-'Arabiyyah li Al-Abhas wa Al-Nasyar 2013); Muhammad 'Aly and Muhammad 'Abdu Al-'Athy, *Al-Maqashid Al-Syar'iyyah Wa Atsaruh Fi Al-Fiqh Al-Islamy* (Dar Al-Hadits 2007). See also, Muhammad Siddiq Armia and others, 'Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice' (2022) 17 *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 113; Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)' [2019] *Qudus International Journal of Islamic Studies*.

18 Noel Coulson, *A History of Islamic Law* (Edinburgh University Press 2019); Erika Rackley and Rosemary Auchmuty, 'The Case for Feminist Legal History' (2020) 40 *Oxford Journal of Legal Studies* 878 <<https://academic.oup.com/ojls/article/40/4/878/6043252>>.

19 Al-'Athy (n 16); Taha Jabir Al-'Alawy, *Qadaya Islamiyyah Mua'sirah Maqasid Al-Syari'ah* (Dar Al-Hady 2000).

husband marrying more than one wife without permission has a punishment stipulation. The family law qanun allows the polygamy provision to protect women.²⁰

The provision of punishment in Article 47 Paragraph (2) states that the marriage is referred to in Paragraph (1), and the prospective husband and wife are prohibited from marrying. The couple is subject to sanctions if they keep doing it because they know the Islamic law and regulations prohibit the marriage. Determining the punishment for violators of Article 47 Paragraph (2) is the *ijtihad* of the *muqannin*. They used the reasoning of *Saddu Zari'ah* (closing the opportunity for harm) for husbands marrying more than one wife without written permission from the Sharia Court. The *muqannins* considered the formal requirement of written permission from the court so that a man could marry more than one wife.

Uqubat in Article 89 Paragraph (2) of the Family Law states that guardians are prohibited from binding agreements, burdening and alienating the property of the person under their guardianship, except such actions are beneficial to the person under their guardianship. The punishment stipulation for violators of Article 89 Paragraph (2) is the *ijtihad* of the *muqannins* using the *Saddu Zari'ah* for the assets of children controlled by guardians. This *ijtihad* provides an opportunity for the *muqannins* to use *Maqasid Al-Shari'ah* with considerations of public benefit.

The *uqubat* stipulated in Article 181 Paragraph (2) for violators of Article 113 Paragraph (1) is an *ijtihad* of *muqannin* using the *Istishlahy* method (determining a law based on consideration of the benefits and *mafsadat* from a violated act). Irresponsible ex-husbands will face legal consequences if proven to neglect their duties and obligations, such as providing proper *mut'ah* to their ex-wives in the form of money or objects, unless the former wife is remarried before consummation (*Qabladdukhul*); providing financial support, housing, and clothing to the ex-wife during the waiting period (*Iddah*), unless the former wife has been pronounced with irrevocable divorce (*Talak ba'in*) or persistent disobedience (*nusyuz*) and is not pregnant; settling the outstanding dowry in full, and partially if *Qabladdukhul* occurred; and covering *Hadhanah* expenses for children under 21 years of age. The age determination is different from the opinions of the *fiqh mazhab*, which do not determine age as the only characteristic of adulthood.²¹

The *uqubat* stipulated in Article 181 Paragraph (2) is intended for violators of Article 173 Paragraph (1) of Aceh Qanun Number 14 of 2019 concerning Family Law: Everyone is prohibited from performing marriage outside the supervision of the *penghulu* or *qadhi* (wedding officiant). The *uqubat* based on Article 181 Paragraph (2) for violators of Article 137 Paragraph (1) is a *Muqannin's* *ijtihad* using the *Saddu Zari'ah* method (closing the opportunity for harm) due to the actions of someone who marries outside the supervision of the *penghulu*.

20 'Interview with Agustin Hanafi, "Wawancara Terkait Qanun Hukum Keluarga" (20 September 2020).'

21 Ali Abubakar, *Undang-Undang Melaka; Kodifikasi Hukum Islam Abad XV Di Asia Tenggara* (Studia Press 2005); Ali Abubakar, 'The Chance on Islamic Family Law in Indonesia' (2019) 4 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah* 42. See also, Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Maintaining the Constitutional Rights to Create a Better Society' (2023) 8 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah* 69; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Form Over Substance, Achieving Objectives While Preserving Values' (2023) 8 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah* i.

Uqubat Article 173 Paragraph (2) of the Family Law stipulates criminal provisions for a married person. *Uqubat* Violation of Article 173 Paragraph (2) of Qanun Aceh Number 14 of 2019 concerning Family Law states that unauthorized persons, such as illegal *qadhi*, prohibit the implementation of marriage and its recording.

The *uqubat* specified in Article 181, Paragraph (1), for violators of Article 173, Paragraph (1), represents the *ijtihad* of the *muqannins* utilizing the *Saddu Zari'ah*. This is prompted by individuals engaging in marriage without proper registration and conducting marriages with unauthorized individuals, including unauthorized *qadhi*. In our view, this determination reflects the formulation of the Qanun. Article 177 of Aceh Qanun Number 14 of 2019 on Family Law states that a man who has four wives, all of whom are bound by marriage or are in the *Iddah* period of *Talak raj'i* or one of them is bound by marriage while the other is in the *Iddah* period of *Talak raj'i*, is prohibited from marrying another woman. The provisions this Article 177 are based on *fiqh mazhab*.

The criminal penalty for violating Article 177, as stipulated in Article 181, Paragraph (2), involves a maximum imprisonment of two years and one month, and a minimum of ten months, *uqubat ta'zir* canning ranging from a maximum of 25 times to a minimum of ten times, and a fine ranging from a maximum of 250 grams of pure gold to a minimum of 100 grams of pure gold. This determination reflects the *ijtihad* of the Aceh *muqannins* using the *jama'ai ijtihad* method. This is deemed reasonable as several articles are solely the result of the Aceh *muqannins'* deliberations, incorporating the principles of Sharia, synergizing with various materials and legal provisions within society, and conducting *ijtihad* using the disciplines of *fiqh* and *ushul fiqh* alongside various cross-disciplinary perspectives.

Article 178 paragraph (1) of Aceh Qanun Number 14 of 2019 concerning Family Law states that a man is prohibited from marrying: a) a woman whose ex-wife has been divorced three times; b) a woman whose ex-wife has been *li'an*. The provisions of Article 178 Paragraph (1) are based on *fiqh mazhab*. However, the criminal provision for violating Article 178 Paragraph (1) is the *ijtihad* of the Aceh *muqannins* using the *ijtihad jama'ai* method.

Article 178, Paragraph (3) of Aceh Qanun Number 14 of 2019 concerning Family Law states that a Muslim woman is prohibited from marrying a non-Muslim man. The criminal provisions for violating Article 178 are stipulated in Article 181 Paragraph (2), namely imprisonment imprisonment of two years and one month, and a minimum of ten months, *uqubat ta'zir* canning ranging from a maximum of 25 times to a minimum of ten times, and a fine ranging from a maximum of 250 grams of pure gold to a minimum of 100 grams of pure gold. This determination is based on the *ijtihad* of the Aceh *muqannins* using the *jama'ai ijtihad* method. The provision in Article 178 Paragraph (3) is a provision of sharia. However, the criminal provisions are the *ijtihad* of the Aceh *muqannins* using the *ijtihad jama'ai* method.

The data shows that the stipulation of punishment in the form of *uqubat* in Islamic Family Law in Aceh is purely based on *Muqannins' ijtihad*. The punishment stipulated in Islamic Family Law in Aceh has no basis in the Quran, Hadith, and *Fiqh Mazhab*. For clarity, this will be presented in Table 1.

Table 1. Violations and Penalties in the Islamic Family Law Qanun in Aceh

Number	Law Provisions	Quran	Hadith	<i>Fiqh Mazhab</i>	Aceh Family Law Qanun
1	A husband with more than four wives	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.
2	Husband who does not fulfill the main requirements as referred to in Paragraph (3)	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.
3	Husband who wants to have more than one wife without permission from the Sharia Court.	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.
4	The prospective husband and wife are not allowed to carry out the marriage or do not get permission to carry out the marriage.	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.
5	guardians are prohibited from entering into agreements, encumbering and alienating the property of the person under their guardianship, except when such actions benefit the person under their guardianship.	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.
6	Violating Article 113 Paragraph 1	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.
7	Violating Article 173 Paragraphs 1 and 2	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or

					can be paid in gold.
8	Violating Article 177	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.
9	Violating Article 178 Paragraphs 1 and 3	No Punishment	No Punishment	No Punishment	Sentences of imprisonment and canning or can be paid in gold.

In addition to the issues, the stipulations of punishment in the qanun of Islamic Family Law in Aceh are excessive and severe compared to the Family Law in Indonesia, especially in the case of polygamy (for more details, see Table 2).

Table 2.

Sanctions for Polygamy in Indonesian Law and Qanun of Islamic Family Law in Aceh

Number	Legal Provisions According to	Legal Sanctions
1	Compilation of Islamic Law	Does not have legal force
2	Government Regulation Number 09 of 1975	Imprisonment up to three months or a fine of up to Rp. 7500,- (seven thousand and five hundred rupiah)
3	Government Regulation Number 10 of 1985	Shall be punished with severe disciplinary punishment in the form of: 1. Demotion to a lower level for not more than one year; 2. Exemption from position; 3. Dismissal with honor as a civil servant, but without the request of the person concerned himself or Dismissal with dishonor as a civil servant
4	Family Law Qanun Number 14 of 2019	It has been regulated in Family Law Qanun Number 14 of 2019 in Article 181 Paragraphs 1, 2, and 3, which states as follows: "Violation of articles related to polygamy shall be punished with imprisonment for a maximum of two years and one month and a minimum of ten months or <i>uqubat ta'zir</i> canning for a maximum of 25 (times and a minimum of ten times or a fine of a maximum of 250 grams and a minimum of 100 grams of pure gold."

The stipulation of punishment in Family Law Qanun Number 14 of 2019 also has differences with other Islamic countries such as Malaysia and Brunei Darussalam, especially in the case of polygamy. It can be seen from the table below:

Table 3

Comparison of Types of Punishment between Aceh, Malaysia and Brunei Darussalam

Number	Region	Punishment
1	Malaysia	1. Polygamy without permission is fined up to RM 1000 or imprisonment up to 6 months or both. 2. An unfair husband in polygamy is fined a maximum of

		<p>RM 1000 or imprisonment a maximum of 6 months or both.</p> <p>3. Polygamy without permission is fined a maximum of RM 3000 or imprisonment for a maximum of 2 years or both (Serawak only)</p> <p>An unfair husband in polygamy is fined a maximum of RM 1000 or imprisonment maximum of 6 months or both (Serawak only)</p>
2	Brunei Darussalam	A man who does polygamy without the written consent of a judge will be punished with a fine of up to 2000 Dollars or imprisonment.
3	Aceh	<p>The Family Law Qanun Number 14 of 2019 explained that polygamists who violate the Qanun will be subject to the following penalties:</p> <p>"Threatened with imprisonment for a maximum of 2 (two) years 1 (one) month and a minimum of 10 (ten) months or 'uqubat ta'zir whipping a maximum of 25 (twenty-five) times and a minimum of 10 (ten) times or a fine of a maximum of 250 (two hundred and fifty) grams of pure gold and a minimum of 100 (one hundred) grams of pure gold."</p>

Based on the Table 3, the Family Law Qanun in Aceh is unique and significantly different from the Quran, Hadith, and *Fiqh Mazhab* provisions. The punishments stipulated in the qanun are not bound by *fiqh mazhab*. It stipulates punishments not mentioned in the *Nash* (Quran and Hadith) into new punishment provisions (*uqubat*) that differ from those in Islamic countries.

Conclusion

Family Law Qanun Number 14 of 2019, known as Islamic Family Law in Aceh, establishes its legal provisions in the form of *uqubat* based on the *ijtihad* method employed by the Muqannin. The determination of these legal provisions in the form of *uqubat* is not derived from the Quran, Hadith, and *Fiqh Mazhab* texts. The qanun on Islamic Family Law in Aceh extends the scope of punishment beyond the provisions outlined in the Marriage Law, as seen in Government Regulation Number 09 of 1975 and Government Regulation Number 10 of 1985.

The qanun on Islamic Family Law in Aceh surpasses the stipulations of the Marriage Law, including Government Regulation No. 09 of 1975 and Government Regulation No. 10 of 1985. The establishment of the Family Law qanun positions Aceh as the sole province that has undertaken a professional and constitutional effort to formulate a framework for transforming and integrating Family Law into the state system based on legal principles. Aceh serves as a role model within Indonesia and the Islamic world, representing a constitutional endeavor within the Indonesian legal system. This enactment holds significance in the history of Islamic law as it marks a continuation of its evolution into positive law in the broader context of the development of Islamic jurisprudence.

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