

Constitutional and Gender Critique of the Implementation of Aceh's Qanun: Between Sharia Regulations and the Restriction of Women's Rights

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Abstract

This study aims to provide a constitutional critique of the implementation of qanun in Aceh from the perspectives of the constitution and gender. During its formulation process, the community expressed a desire for Sharia values to be incorporated into the qanun governing the lives of Acehnese people. However, its implementation has the potential to restrict women's rights. This study also seeks to contribute to the reformulation of laws that are fair for all. A qualitative approach is employed in this study, with data collected from library research to analyze constitutional and gender critiques of the implementation of Aceh's qanun. From a constitutional perspective, the study finds that the implementation of Aceh's qanun is not entirely aligned with the national constitution, human rights, and the principles of a unitary state. Although Aceh has special autonomy to implement Islamic law, its enforcement must not contradict the principles of equality before the law, freedom of religion, and the protection of human rights. From a gender perspective, while the qanun aims to uphold Islamic values and establish a well-ordered social structure, its implementation often fails to align with gender justice principles, as it restricts women's rights. To achieve justice for all members of society, it is essential to reassess the application of Aceh's qanun and ensure women's participation in the decision-making process, so that the resulting policies genuinely reflect the needs and rights of all citizens.

1. Introduction

Aceh is a province with a special status in implementing Islamic law in Indonesia. The constitutional privilege of Aceh in applying Sharia law has

been recognized through Law No. 40 of 1999 and Law No. 11 of 2006, granting special autonomy to the province to regulate and enforce Sharia law in various aspects of community life, including criminal and civil law. The history of Sharia implementation in Aceh dates back long before the modern era and has become an integral part of the cultural identity of its society.

The implementation of Sharia law in Aceh is not only a socio-religious phenomenon but also an integral part of the legal and governmental system in the region. Sumawiharja states that the application of Islamic law, including Qanun, reflects an effort to integrate Islamic values into the lives of the Acehnese people, potentially strengthening their cultural and religious identity. However, the enforcement of Islamic law or Qanun in the context of a modern state has sparked controversy, particularly concerning constitutional and gender critiques. Muhsinah and Sulaiman, in their research, highlight that despite efforts to optimize women's roles in the implementation of Sharia law, significant challenges remain.

As a region with special autonomy, Aceh is permitted to enforce Sharia law in various aspects of social life, including criminal and civil law, as well as social norms. Although intended to preserve the cultural and religious identity of Acehnese society, the implementation of Qanun has often been perceived as posing serious challenges to Indonesia's constitutional principles and gender equality.

Constitutional critiques of Qanun enforcement in Aceh encompass various aspects related to Indonesia's fundamental constitutional principles, such as equality before the law, freedom of religion, division of authority, human rights, and public participation. While Qanun is introduced as a form of special autonomy to preserve Acehnese cultural and religious identity, its implementation frequently creates tensions between regional autonomy and broader constitutional principles. From a constitutional law perspective, critiques of Qanun often focus on its potential conflicts with the 1945 Constitution and the constitutional principles governing human rights and legal equality.

Certain provisions in Qanun, particularly those related to Jinayat law, are perceived as disproportionately targeting and burdening women compared to men and potentially violating individual rights protected by the constitution. Additionally, the enforcement of physical punishments such as caning raises ethical and legal concerns regarding their compliance with broader humanitarian norms. On the other hand, gender critiques focus on how Qanun Aceh may reinforce gender inequality in society. Qanun or Sharia-based

regional regulations govern various aspects of social life, including dress codes, interactions between men and women, and the management of zakat and waqf. The implementation of Qanun in Aceh aims not only to uphold Islamic law but also to reconstruct the moral and social fabric of Acehnese society. However, this enforcement has sparked both support and opposition, particularly concerning human rights and gender equality issues.

The patriarchal nature of Sharia law enforcement, which often regulates women's behavior more strictly than men's, creates social stigma and injustice. This raises questions about women's roles in the legislative process and how their voices are often marginalized in policymaking. In reality, both men and women are dignified human beings capable of cooperating. Men and women hold equal positions before God and are not merely complementary to one another. Furthermore, women's participation in the public sector is not a new phenomenon.

On the other hand, the long history of the Acehnese people's struggle to implement Sharia law has undergone various phases, from the colonial era to the reform era. Aspirations for Sharia implementation in Aceh emerged in the early days of Indonesia's independence but were formally realized only in the early 21st century. The implementation of Sharia law in Aceh is inseparable from national and local political dynamics, as well as prolonged negotiations between the central government and Acehnese political elites. This phenomenon uniquely illustrates how a region in Indonesia can implement a legal system different from other regions while demonstrating the flexibility of the national legal system in accommodating regional specificities. This article aims to explore in depth the constitutional and gender critiques of Qanun implementation in Aceh and the resulting implications of these policies. Understanding these two critical perspectives is crucial in seeking fair and inclusive solutions that respect Aceh's autonomy while upholding constitutional principles and gender justice in Indonesia.

Several studies are relevant to this discussion. For instance, Muhammad Al Faruq's article, "The Implementation of Islamic Sharia in the Nation-State of Indonesia," reveals that the enforcement of Islamic law at the regional level is often influenced by local political factors and power dynamics. However, the article does not offer critiques or solutions for an ideal legal implementation in the region. Another study by Mursyid Djawas, titled "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," found that following the implementation of Qanun Sharia, non-Muslims preferred to submit to it. They considered Qanun Jinayat more efficient, affordable,

effective, and faster in resolving legal matters. Meanwhile, this article focuses on constitutional and gender critiques.

Another study by Jailani, titled "The Application of Ijtihad Al-Maqasidy Al-Jama'iy in the Legislation of Jinayat Law in Aceh," emphasizes the importance of balancing the implementation of Sharia law with the principles of pluralism guaranteed by the national constitution. This article explicitly suggests that the law should be applied equally to all religions.

Another study by Firdaus M. Yunus, titled "Implementation and Challenges of Sharia Law Enforcement in Aceh," provides significant insights into how religion and the state interact within Indonesia's pluralistic context. However, this study primarily discusses constitutional and gender critiques of Qanun Aceh.

Furthermore, Andi Miswar's study, "Qur'anic Narratives of Women's Competencies and the Consequences of Islamic Law on Their Involvement in Society," reveals that the Qur'an proclaims women's competencies in the public sector according to social realities. Similarly, Anisah Dwi Latri P's study, "Qiraah Mubādalāh and the Direction of Progressive Gender-Just Tafsir: The Application of the Principle of Reciprocity to Q.S. Ali 'Imran: 14," critiques how classical interpretations have traditionally positioned women as mere objects.

The studies mentioned above have yet to comprehensively discuss constitutional and gender critiques of the long-standing implementation of Qanun in Aceh. Thus, it is crucial for the author to conduct further in-depth research to contribute to national legal development. Through a thorough analysis of the criticisms surrounding Qanun implementation in Aceh, this study aims to provide a significant contribution to a better understanding of the dynamics and complexities of Sharia law enforcement in the context of a modern, pluralistic, and democratic state.

2. Research Method

This research employs a qualitative approach by collecting data from literature and scholarly journals to analyze constitutional and gender critiques of the implementation of Qanun in Aceh. Data is obtained through a literature review, including books, articles, and relevant academic publications, while identifying key themes emerging in the discourse on legal implementation in Aceh. This approach is expected to provide a deeper understanding of the issues faced by Acehnese society regarding the enforcement of Qanun.

3. Results and Discussion

Formation and Implementation of Qanun Aceh

The implementation of Sharia law in Aceh through Qanun (regional regulations) has a complex historical background, closely related to the cultural, political, and religious identity of the Acehnese people. Aceh is known for its strong Islamic traditions. Since the arrival of Islam in the 13th century, the people of Aceh have adopted Islamic teachings as an integral part of their social, cultural, and political life. The Sultanate of Aceh Darussalam, established in the 16th century, became a center of Islamic civilization in Southeast Asia, promoting Islamic education and culture. However, after Indonesia gained independence in 1945, the central government began regulating various aspects of life, including law. This led to the dominance of national law, which reduced regional autonomy, including the implementation of Sharia law.

After a prolonged conflict between the Indonesian government and the Free Aceh Movement (GAM), peace was achieved through the Helsinki MoU in 2005. One of the outcomes of this peace agreement was the granting of special autonomy to Aceh, as stipulated in Law No. 11 of 2006 concerning Aceh Governance (UUPA). The UUPA provides the legal foundation for Aceh to implement Sharia law in various aspects of life, including education, economy, and social affairs. Article 1 of the UUPA states that Aceh is a region that applies Islamic law and affirms that the Aceh government has the authority to regulate and manage governance affairs in accordance with Islamic law.

Following the enactment of the UUPA, the Aceh government began drafting and enacting several Qanuns related to the implementation of Sharia law. In 2003, the first Qanun enacted was Qanun No. 3 of 2003 on the Implementation of Sharia in the Education Sector. Over time, various other Qanuns were enacted, including Qanun No. 11 of 2002, which regulates the implementation of Sharia law in religious practices; Qanun No. 12 of 2003, which governs the implementation of Sharia law in the field of jinayat (criminal law), including penalties for Sharia violations such as whipping; and Qanun No. 13 of 2003, which regulates the implementation of Sharia law in economic aspects such as zakat and infaq.

The formulation and implementation process of Qanun in Aceh is a complex phenomenon involving interactions among various stakeholders. The Aceh Regional House of Representatives (DPRA) serves as the primary initiator, with significant contributions from the Aceh Ulama Consultative Assembly (MPU). This process reflects a dynamic interaction between top-down and bottom-up approaches in policy formulation.

In its implementation, Qanun in Aceh faces several major challenges. First, there

are coordination issues between institutions, particularly between Wilayatul Hisbah (WH), the police, and the Public Order Agency (Satpol PP). Second, variations in legal interpretations across different regions within Aceh lead to inconsistencies in enforcement. Third, although there has been an increase in cases of Sharia regulation violations, most of them are resolved through informal mediation rather than formal legal channels, indicating a societal preference for a more lenient approach to law enforcement.

The implementation of Qanun has brought significant changes to the social and religious life of the Acehnese people. Visually, there has been a shift towards more conservative dress codes in public spaces. Additionally, there has been a decline in criminal cases related to alcohol consumption and gambling. However, it is worth noting that some members of the community perceive these changes more as external conformity rather than a deep transformation of values.

In religious aspects, Qanun has increased the visibility of worship practices in public spaces. Mosque attendance for congregational prayers has risen, and most public institutions are now equipped with adequate prayer facilities. Increased participation in religious preaching and study sessions has also been observed, indicating a positive impact of Sharia-based regulations on the spiritual life of the community.

Public responses to the implementation of Qanun vary. Conservative groups generally welcome it, seeing it as the fulfillment of long-awaited religious aspirations. They argue that Qanun has successfully created a more Islamic and moral environment. On the other hand, moderate and progressive groups express concerns about potential discrimination and restrictions on individual freedoms. They highlight cases where the enforcement of Sharia-based regulations has been deemed too harsh or insensitive to local contexts. Some minority communities, including non-Muslims, report feelings of alienation and pressure to conform to dominant norms.

The adaptation of society to Qanun is also reflected in changes in business practices and social interactions. Many businesses, particularly in the tourism and entertainment sectors, have modified their services to comply with Sharia regulations. While this has created economic challenges for some sectors, it has also opened new opportunities in industries that align with Sharia principles.

Impact and Challenges of Implementing Qanun Aceh

The Aceh Provincial Government faces several key challenges in implementing qanun, or Sharia-based regional regulations. First, maintaining a balance between effective law enforcement and respect for individual rights. Second, overcoming

resistance from certain groups within society. Third, aligning Sharia-based regulations with the national legal framework and international human rights standards while adhering to principles of good governance. The implementation of qanun has impacted the tourism sector, leading to a decline in the number of non-Muslim and international tourists. Investment patterns have also shifted due to difficulties in attracting conventional investments, given perceptions of strict regulations. Nevertheless, the local government continues striving to balance the demand to strengthen Islamic identity with the need to prepare the younger generation for global challenges. The government also identifies best practices in implementing elements of Islamic law in governance.

Although the implementation of Qanun Aceh has negative impacts on one hand, it is undeniable that there are significant positive effects. The preservation of Islamic values, the strengthening of cultural identity, and the enhancement of social awareness are some of the benefits derived from implementing these regulations. To optimize these positive impacts, it is crucial for all parties to continuously evaluate and improve the implementation of qanun so that it aligns with principles of justice and human rights. Constructive dialogue between the government, society, and other stakeholders is essential in achieving a balance between law enforcement and respect for individual rights in a broader context. In addressing these challenges, the local government has developed several strategies. They have intensified socialization and education programs to enhance public understanding of Sharia-based regulations.

The government also strives to improve dialogue with various community groups to accommodate their aspirations and concerns. Additionally, cultural and religious sensitivity training for law enforcement officers must be consistently conducted to ensure fairer and more humane implementation. The implementation of Sharia-based regulations in Aceh has brought significant changes to the region's social, legal, and religious landscape. Despite the challenges and mixed impacts, Qanun Aceh has become an integral part of Aceh's identity and governance. Its long-term success will depend on the government's and society's ability to continuously balance religious aspirations, diverse social realities, and universal human rights principles.

Qanun Aceh has the potential to create a better social order and preserve religious values within society. However, a major challenge lies in the lack of community participation. To achieve the desired goals, it is crucial to collaborate in evaluating and improving the implementation of Qanun Aceh to create a legal system that is fairer, more inclusive, and more responsive to societal needs.

Constitutional Criticism of Qanun Aceh Implementation

One of the main criticisms of Qanun Aceh is the potential conflict with the national constitution, namely the 1945 Constitution of Indonesia (UUD 1945). Although Aceh has special autonomy, it must remain within a legal framework that does not contradict Indonesia's constitutional principles. Article 27(1) of the 1945 Constitution states that "all citizens are equal before the law and government." Meanwhile, Article 28D (1) asserts that "everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law."

Certain provisions in Qanun Aceh, particularly those related to the implementation of Sharia law, have been criticized for potentially causing discrimination against specific groups, such as women and non-Muslim minorities. Although Sharia law in Aceh is officially applicable only to Muslims, in practice, non-Muslims living in Aceh may also be affected, especially concerning criminal laws such as *khalwat* (close proximity between unmarried individuals), gambling, and alcohol consumption. This inconsistency between the application of Sharia law and the principle of equality in the 1945 Constitution remains a key concern in constitutional law discussions.

Qanun Aceh has also faced criticism regarding religious freedom, which is guaranteed under Article 29(2) of the 1945 Constitution: "The state guarantees the freedom of each inhabitant to embrace their own religion and to worship according to their religion and beliefs." The implementation of Islamic law through Qanun Aceh raises concerns that the religious freedom rights of non-Muslim minorities in Aceh are not fully protected. Although Qanun Aceh is legally not applicable to non-Muslims, there have been cases where religious minorities have faced discriminatory treatment in its enforcement. Criticism from a constitutional law perspective highlights how Qanun Aceh may conflict with the constitutional guarantee of religious freedom and minority rights, as well as with international human rights instruments ratified by Indonesia, such as the International Covenant on Civil and Political Rights (ICCPR).

As a unitary state, Indonesia adheres to a national and integrated legal system. Although Aceh has been granted special autonomy, the implementation of a significantly different legal system from other regions raises questions about the integration of the national legal framework. In constitutional law, legal unity is a fundamental principle underpinning the state governance system, where all regions of Indonesia should adhere to the same constitution.

Criticism arises from the perspective that implementing Sharia law through Qanun Aceh could weaken the principle of national legal unity, as Aceh operates under a legal system distinct from other regions. This legal disparity may lead to

imbalances in law enforcement across different areas, potentially threatening national legal integrity. Additionally, these differences could escalate social tensions at the national level if not managed properly. According to the Law on Aceh Government (UUPA) and Law No. 23 of 2014 on Regional Government, regions, including Aceh, have limited authority in creating regional regulations (qanun). Within this framework, regional regulations should not contradict higher laws, such as national laws and the constitution. However, some critics argue that certain provisions within Qanun Aceh, particularly those concerning criminal law (jinayat), exceed the legislative authority of regional governments.

Criminal law is under the jurisdiction of the central government according to the Regional Government Law and should not be legislated at the regional level. However, the Qanun Jinayat implemented in Aceh represents a form of regional criminal law that regulates offenses prohibited under Islamic law. This critique questions whether the enforcement of Qanun Jinayat aligns with the principle of division of authority between central and regional governments as outlined in Indonesia's constitutional law. The authority granted to Aceh in creating qanun should not exceed the legislative powers provided by the constitution and national laws.

Another criticism of Qanun Aceh is the implementation of public caning punishments for violations of Islamic law, particularly for offenses such as adultery, alcohol consumption, and gambling. Many legal and human rights observers consider this form of punishment inhumane and degrading to human dignity, conflicting with internationally recognized human rights principles. Such physical punishments may also violate Article 28G of the 1945 Constitution, which guarantees every individual's right to protection over their body and life from torture or treatment that degrades human dignity. Constitutional law critiques focus on how the enforcement of punishments that contradict human rights norms poses a dilemma for Indonesia, which is constitutionally and internationally committed to protecting human rights.

Gender Perspective on the Implementation of Qanun Aceh

The implementation of Qanun Aceh has generated new dynamics concerning gender issues and women's rights. While there has been an increase in women's participation in religious and social activities, concerns have also arisen regarding the restriction of women's mobility in public spaces. Some regulations, such as the obligation to wear syar'i attire and restrictions on interactions between non-mahram men and women, have sparked debates on gender equality. On one hand, proponents of the Qanun see it as an effort to protect women's dignity, while critics view it as a form of discrimination, reflecting contemporary societal perspectives.

These debates also encompass human rights issues and women's rights, balancing Sharia principles with global human rights norms. Another significant phenomenon is how Sharia is integrated into the modern legal system.

The implementation of Qanun Aceh, which serves as regional regulations to enforce Sharia law in Aceh Province, has drawn sharp attention from various circles, particularly in the context of gender. Although the Qanun aims to create a life more aligned with Islamic values, many criticisms have emerged regarding how its implementation often reinforces gender inequality. Below are some of the gender-based criticisms frequently raised concerning the implementation of Qanun Aceh.

First, discrimination against women. One of the most fundamental criticisms of Qanun Aceh is that many of its rules tend to target women more than men. For instance, in cases of violations such as adultery (zina) and close proximity (khalwat), women often become the primary subjects of law enforcement, whereas men involved frequently do not receive equal sanctions. This creates a more severe social stigma for women and results in significant psychological impacts.

Second, control over women's bodies and behavior. The implementation of Sharia law in Aceh often involves strict regulations on women's behavior and appearance. Rules regarding wearing "syar'i" clothing and restrictions on social activities, such as prohibiting women from going out at night without a mahram, impose excessive control over women's freedoms. This control is often seen as a violation of individual rights to make life choices and can lead to a sense of helplessness among women.

Third, unequal physical punishment. One of the most controversial aspects of Qanun Aceh's implementation is the application of public caning for Sharia violators. Although this punishment applies to both genders, women are often more visible and more likely to be publicly punished. Public caning is deemed degrading to human dignity and contradicts human rights principles. In the gender context, women subjected to this punishment experience far greater social stigma than men, creating a stark injustice.

Fourth, minimal female participation in the legislative process. The formulation process of Qanun Aceh often does not adequately involve women. The lack of female representation in decision-making and legislation results in policies that do not reflect women's needs and experiences. This raises concerns that women's perspectives are not considered in policymaking that directly affects their lives.

Fifth, patriarchal social norms. The implementation of Qanun Aceh often

reflects and reinforces existing patriarchal norms in society. Emphasis on strict morality and restrictions on women's freedom frequently stem from traditional views that undermine women's positions. In this context, women are positioned as subjects who need protection and control rather than individuals with the right to make their own life decisions.

The strict implementation of Qanun and high social control can have negative impacts on women's mental health. Fear of stigma, punishment, and constant surveillance can lead to anxiety, depression, and feelings of isolation. This legal and social uncertainty can hinder women from actively participating in social and economic life. The enforcement of Qanun Aceh is often perceived as unfair, with women more frequently becoming victims compared to men. There are many cases where women who report violence or sexual harassment are instead blamed or threatened with sanctions under Sharia norms. This creates a cycle of injustice where women feel unprotected by the law.

Qanun Aceh also restricts women's freedom to engage in public activities. For example, regulations prohibiting women from being outside at night without a mahram (male family member) limit their opportunities to participate in social, educational, and economic activities, thereby narrowing their daily mobility. Moreover, women's involvement in the legislative and decision-making processes related to Qanun Aceh remains minimal. The lack of women's empowerment in policymaking causes their perspectives to be often overlooked. Without adequate representation, the enacted Qanun tends not to reflect women's needs and aspirations, thereby reinforcing gender inequality. Strict regulations on appearance, behavior, and social activities, as well as the application of physical punishment and injustices in law enforcement, create an environment that restricts women's freedom and rights. To achieve true gender justice and equality, it is crucial to reevaluate Qanun Aceh and actively involve women in policymaking so that the resulting policies can be more inclusive, responsive, and gender-neutral.

4. Conclusion

The implementation of Qanun Aceh presents significant challenges regarding its alignment with the national constitution, human rights, and the principles of a unitary state. Although Aceh has special autonomy to enforce Islamic law, the implementation of Qanun must not contradict Indonesia's fundamental constitutional values, such as the principle of equality before the law, religious freedom, and the protection of human rights. Continuous dialogue between the central government and Aceh's local authorities is necessary, along with a careful evaluation of Qanun Aceh's implementation to ensure it does not violate citizens' constitutional rights and respects Indonesia's legal diversity. Gender-based

criticisms of Qanun Aceh highlight issues that have the potential to reinforce inequality and discrimination against women. Although the Qanun aims to uphold Islamic values and create a well-ordered society, its implementation often does not align with gender justice principles. To achieve justice for all members of society, it is essential to reassess Qanun Aceh's implementation and involve women in decision-making processes so that the resulting policies truly reflect the needs and rights of all citizens. Dialogue and collaboration between the government, society, and women's organizations are also crucial to promoting fair legal development for all.

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