Islamic Studies and Civilization Journal (ISCJ)
Magister Ilmu Agama Islam, Pascasarjana UIN Ar-Raniry Banda Aceh
OPEN ACCESS
Volume 2 Issue 1, January-June 2026
https://arraniry.pasca-iai.com/index.php/iscj
DOI: 10.22373/iscj.v2i1.8

The Construction of LGBT Criminalization in Qanun Jinayat Aceh: A Human Right and Islamic Sharia Perspective

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Abstract

The Qanun Jinayat of Aceh, a regional criminal law rooted in Islamic Sharia, regulates same-sex acts through the categories of *jarīmah liwāṭh* and *musāḥaqah*. However, this legal construction raises critical issues, particularly in terms of normative Islamic law and human rights (HR). The main criticism targets its repressive and legalistic approach, which overlooks the sociological context and the identity dynamics of perpetrators. This neglects the principles of justice (*al-'adl*) and compassion (*al-raḥmah*) in *maqāṣid al-sharī'ah*, and fails to consider the legal capacity (*ahliyyah al-wujūb*) of offenders. Moreover, it does not cover the complexity of sexual identities such as transgender and bisexual, leading to potential legal inequality. This study aims to analyse the construction of LGBT criminalization in Qanun Jinayat Aceh, examine the foundations of critique, and propose a reformulation grounded in Sharia justice and human rights. The research employs a normative legal method with statutory, conceptual, and *maqāṣid al-sharī'ah* approaches, along with critical analysis of Islamic legal doctrines and HR principles. Data were collected through literature review of primary, secondary, and tertiary legal materials. The findings reveal that the criminalization framework is based on classical *fiqh* with a *ta'zīr*-based orientation to *ḥifẓal-'irḍ* (protection of dignity). Despite its repressive nature, there are signs of adaptation to *maqāṣid al-sharī'ah*, especially in protection and justice. The proposed reform includes: re-evaluation of *ahliyyah al-wujūb* for more proportional accountability; application of a double track system combining penal sanctions and rehabilitation; and development of contextual legal norms through a reconciliatory approach between Sharia and human rights.

Keywords: *Qanun Jinayat, LGBT, Human Rights, Islamic Sharia*

A. Introduction

The phenomenon of Lesbian, Gay, Bisexual, and Transgender (LGBT) identities has increasingly emerged as a complex legal, social, and moral issue within contemporary Indonesian society. While globally the discourse surrounding LGBT is often framed through the lens of universal human rights, in Indonesia—particularly in Aceh—this issue intersects with religious norms, local cultural values, and regional autonomy in law-making. Aceh, as the only province granted special autonomy to implement Islamic law, represents a unique legal landscape in which the regulation of sexual conduct is formally codified through Qanun Jinayat No. 6 of 2014. This legal

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framework positions Aceh as a critical site for examining the tension between Islamic criminal law, national legal norms, and international human rights standards (Qanun Aceh, 2014a).

Within Qanun Jinayat, same-sex sexual relations are criminalized under the categories of *liwāṭh* (male same-sex relations) and *musāḥaqah* (female same-sex relations), carrying sanctions in the form of flogging, fines, or imprisonment. The formulation of these provisions reflects an effort to institutionalize Islamic moral values within a modern legal system. However, their implementation has generated sustained debate regarding proportionality, justice, and compatibility with constitutional guarantees of human rights. International human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are frequently invoked to criticize such criminalization, particularly on grounds of non-discrimination and the right to privacy (Prima & Liyus, 2020). At the same time, proponents of Qanun Jinayat argue that Islamic law possesses its own conception of human rights grounded in *maqāṣid al-sharīʿah*, emphasizing the protection of religion, life, intellect, lineage, and human dignity.

Empirically, the enforcement of Qanun Jinayat has produced significant social repercussions. Reports from local courts and government institutions indicate that cases involving same-sex relations have increased in public visibility, often accompanied by strong social stigma and international scrutiny. Data released by health authorities in Aceh show a notable rise in HIV/AIDS cases, with a significant proportion linked to same-sex sexual behaviour, particularly among men who have sex with men (MSM)(Aceh Journal National Network, n.d.). These developments have reinforced public narratives that associate homosexuality with moral deviance and social risk, further intensifying debates over whether criminal law should function as a moral corrective or as a mechanism for social protection and public health intervention.

At the normative level, the application of Qanun Jinayat has generated polarized responses. Human rights institutions, including Komnas HAM and international advocacy organizations, have criticized corporate punishment and public caning as incompatible with human dignity and due process standards (KOMNAS HAM RI, 2021). Conversely, conservative religious groups view such sanctions as legitimate expressions of divine law and moral discipline as essential for safeguarding social order. Between these poles exists a moderate position that supports the implementation of Islamic law while calling for critical evaluation of its methods, proportionality, and social consequences. This position emphasizes the need for contextual interpretation (*ijtihād*) and alignment with broader objectives of justice and public welfare.

From a legal-theoretical perspective, the criminalization of homosexual conduct under Qanun Jinayat raises fundamental questions concerning the construction of Islamic criminal law in a modern pluralistic state. Classical Islamic jurisprudence itself reflects diversity of opinion regarding the categorization and punishment of same-sex acts, ranging from *ḥadd* to *taʿzīr*, or even discretionary moral sanctions. The Aceh formulation, which adopts *taʿzīr*-based punishment, demonstrates a selective juridical approach, yet its practical application often appears rigid and punitive rather than

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rehabilitative. This gap between normative intention and empirical implementation invites critical inquiry into whether the objectives of Islamic law—particularly justice (*ʿadl*) and public welfare (*maṣlaḥah*)—are being substantively realized (Salsabiela dkk., 2025).

Moreover, the tension between local legal autonomy and global human rights norms situations Aceh within a broader contestation of legal pluralism. While Indonesia constitutionally recognizes regional autonomy and religious values, it is simultaneously bound by international human rights commitments. This dual obligation produces legal friction, particularly when local regulations are perceived to conflict with universally recognized rights. As such, the issue of homosexual criminalization in Aceh cannot be understood solely as a moral or religious debate, but as a complex legal phenomenon shaped by intersecting normative systems.

Despite extensive public debate, scholarly analysis that integratively examines the construction of homosexual criminalization in Qanun Jinayat-through the combined lenses of Islamic jurisprudence, national law, and human rights theory-remains limited. Existing studies often adopt polarized positions, either defending sharia enforcement uncritically or condemning it solely through a human rights framework, without sufficiently exploring the normative intersections and methodological foundations underlying the law.

Therefore, this study seeks to fill that gap by critically analysing the construction of criminal sanctions against homosexual conduct in Qanun Jinayat Aceh. It aims to examine the juridical foundations, normative justifications, and socio-legal implications of such regulations, while also assessing the extent to which they align with the objectives of Islamic law and contemporary human rights principles. By doing so, this research aspires to contribute to a more nuanced and contextualized understanding of Islamic criminal law in plural societies, and to propose a more balanced legal framework that harmonizes moral values, legal certainty, and human dignity.

B. Methods

This research is a normative legal research (legal research) also known as doctrinal legal research. This involves using legal sources in the form of statutory regulations, court decisions/rules, contracts/agreements/contracts, legal theories, and scholarly opinions (Muhaimin, 2020). This study aims to examine, review, and analyse applicable positive legal norms, particularly those stipulated in Aceh Qanun No. 6 of 2014 concerning Jinayat Law. In this context, the primary focus of this research is on the legal construction of LGBT criminalization, as well as how it is understood and critiqued from the perspective of human rights and Islamic law.

To support a comprehensive analysis, this study uses several approaches: Conceptual Approach Used to explain relevant concepts in this research, such as criminalization, Maqashid al-Shariah, human rights, and principles of justice in Islamic law.[1]In order to make this paper more comprehensive, other approaches are used, namely the conceptual approach and the comparative approach (Ibrahim, 2006). The sources of legal materials used come from laws and regulations and literature that are relevant to this research (Soekanto & Mamudji, 2014). The analysis technique used

[1]Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2019), p. 133.

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was qualitative, by qualitatively describing the collected legal materials in orderly, coherent, logical, non-overlapping, and effective sentences, thus facilitating interpretation and understanding of the analysis results. The author then analysed these legal materials using theories relevant to the research (Bungin, 2015, Manan, 2021).

C. Findings and Discussion

1. Legal Construction of LGBT Criminalization in Aceh's Qanun Jinayat

a. Legal Basis for Criminalizing LGBT in the Aceh Qanun Jinayat

Criminal penalties for LGBT perpetrators in Aceh are clearly regulated in Aceh Qanun Number 6 of 2014, which outlines Jinayat law. These provisions are contained in Articles 63 and 64 of the Criminal Code, which regulate sexual relations between men and women, respectively (Qanun Aceh, 2014b).

The Qanun Jinayat is based on the Qur'an, Hadith, Ijma', and Qiyas. Philosophically, the criminalization of LGBT in the Aceh Qanun Jinayat is based on these values. *Maqasid Sharia* namely the main objectives of Islamic law which include the preservation of religion (*hifz al-din*), life (*hifz al-nafs*), reason (*hifz al-'aql*), descendants (*hifz al-nasl*), and property (*hifz al-mal*). According to classical Islamic law, LGBT practices are considered to be acts that damage the social and moral order of the community and are contrary to human nature as outlined in the Qur'an and Hadith (al-Zuhaili, 1985).

The basis of this legal regulation comes from the main sources of Islamic law, namely the Qur'an and Hadith, as well as the views of the *fuqaha'* from the Shafi'i school of thought that apply in Aceh (Rahman, 2011). In the Qanun Jinayat, *liwath* and *musahaqah* behavior is categorized as *jarimah takzir*, where the punishment is not explained in detail in the text, so it is determined by local officials through the Qanun with a maximum penalty of 100 lashes, a fine or imprisonment(Tim Penyusun, 2014).

However, there is no specific definition of "homosexuality" as a sexual identity. The Qanun only highlights the sexual act itself, without considering the sexual orientation or gender identity of the perpetrator. This suggests that legal construction focuses more on the act (law enforcement based on the act) than on the perpetrator or the underlying motive(Khairani, 2021). The Qanun Jinayat does not use the term "homosexuality" in the sense of sexual orientation or gender identity, but bases criminal penalties on same-sex sexual acts. Therefore, criminal penalties are *act-based criminalization*, No *identity-based criminalization* (Nasution, 2020).

The legal basis for this criminalization includes: Law Number 11 of 2006 concerning the Governance of Aceh (UUPA), which gives Aceh the authority to draft Qanun in the field of Islamic criminal law (Dinas Syari'at Islam, 2006c); Articles 63 and 64 of the Qanun Jinayat, which details the forms of punishment for *judimah takzir* such as *liwath* and *musahaqah* (Dinas Syari'at Islam, 2006a), as well as Consideration of Islamic law and local customary values, which is the moral basis for criminal punishment (Ismail, 2015).

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b. Regulation of LGBT Perpetrators as a Criminal Offense (Jarimah) in Aceh Qanun Jinayat Number 6 of 2014

The legal provisions regarding LGBT sexual orientation in Qanun Number 6 of 2014 concerning Jinayat Law demonstrate a firm approach based on Islamic law applicable in Aceh. This Qanun explicitly regulates and sanctions perpetrators of same-sex sexual relations through two forms of *jarimah* (criminal acts): *liwath* and *musahaqah* (misdemeanor). This legal approach not only aims to maintain prevailing social and religious norms in Aceh but also reflects the Acehnese people's desire to uphold morality in accordance with Islamic principles(Gayo, 2017).

Article 63 of the Islamic Criminal Code stipulates that perpetrators of *liwath* (same-sex sexual relations between men) can be subject to '*uqubat ta'zir*' punishment in the form of up to 100 lashes, a fine of up to 1,000 grams of pure gold, or up to 100 months in prison. If the perpetrator repeats the act, the punishment can be increased to a fine of up to 120 grams of pure gold or up to 12 months in prison. This provision also applies to perpetrators of *liwath* against children, where additional punishments can be given according to the level of the offense(Abu Bakar & Lubis, 2019).

Meanwhile, Article 64 regulates the punishment for perpetrators of *musahaqah* (same-sex sexual relations between women). The punishment for perpetrators of *musahaqah* is the same as for perpetrators of *liwath*, namely, whipping, a fine, or imprisonment, depending on the circumstances and severity of the offense. Repeated acts are also subject to additional penalties as stipulated in Article 63.

Unlike the Indonesian Criminal Code, which is more universal and only regulates homosexual behavior involving minors or acts committed with violence, the Qanun on Criminal Law specifically criminalizes same-sex sexual relations, whether voluntary or forced, regardless of the age of the perpetrator. This demonstrates the difference in approach between national positive law and the Sharia law applied in Aceh, where Aceh has the autonomy to implement religious-based laws.

This Qanun also clarifies that violations of these provisions are not only considered criminal acts but also serious moral violations. The penalties imposed reflect the Qanun's goal of providing a deterrent effect and maintaining a social order in accordance with Islamic values. Furthermore, the penalties in this Qanun are cumulative and alternative, providing flexibility in their application while still demonstrating the firmness of the law against violators. Overall, Qanun Number 6 of 2014 concerning Jinayat Law reflects the Aceh Government's efforts to enforce Sharia law, which firmly rejects the existence and behavior of LGBT people. This approach is based on the strong religious and customary values of the Acehnese people, although in practice it has sparked debate, both nationally and internationally, regarding human rights and individual freedoms.

c. History and background of the implementation of Aceh Jinayat Qanun Number 6 of 2014

From a formal legal perspective, the existence of the Qanun on Islamic Criminal Law is mandated by higher-level legislation. The explanation of Aceh Qanun Number 6 of 2014 concerning Islamic Criminal Law states that the implementation of Islamic law in Aceh is mandated and mandated by at least three laws:

1) Law Number 44 of 1999 concerning the Implementation of the Special Status of the Special Region of Aceh Province;
2) Law Number 11 of 2006 concerning the Government of Aceh; and

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3) Law Number 48 of 2007 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2007 concerning the Handling of Legal Problems in the Context of Implementing Rehabilitation and Reconstruction of Regions and Community Life in the Province of Nanggroe Aceh Darussalam and the Nias Islands, North Sumatra Province.

In addition, the writing of Qanuns in the field of *jinayat* is also part of the derivative of Law Number 18 of 2001 concerning the Implementation of Aceh's Special Status (before it was revoked and declared invalid by Law Number 11 of 2006). After the issuance of Law Number 18 of 2001, the Aceh Government formed a committee to collect materials, determine the fields and work steps and write the draft Aceh Qanun on the implementation of Islamic law as positive law in Aceh. The field of *jinayat* (material and formal) is a priority for the Qanun which will be written in addition to two other fields, namely (1) Islamic sharia courts (Al-Qada') and Qanun in the field of faith, worship (prayer, fasting, zakat, and houses of worship/mosques) and Islamic propagation; (2) the field of *muamalat* (civil property) material and formal. In order, the field of *jinayat* occupies the second priority.

Based on the mandate of the law, and also to fill the non-conflict legal vacuum, in 2003 the Aceh Government issued three Qanun, namely:

1) Qanun of Nanggroe Aceh Darussalam Province Number 12 of 2003 concerning Alcoholic Beverages and Similar Beverages.
2) Qanun of Nanggroe Aceh Darussalam Province Number 13 of 2003 concerning Maisir (Gambling) and
3) Qanun of Nanggroe Aceh Darussalam Province Number 14 of 2003 concerning Khalwat (Indecent Acts)

These three Qanuns were issued in 2003 as the initial stage of introducing a more comprehensive criminal law system, which began to be implemented in 2005. As mentioned above, the initial draft envisioned three stages of implementation of the criminal law in Aceh. The first stage dealt with the then-ongoing social problems of immorality. Therefore, the initial Qanun contained regulations on alcohol (*khamr*), gambling (*maisir*), and lewdness (*khalwat*). This stage introduced the punishment of flogging. The second stage planned to regulate crimes related to the soul and introduce the death penalty. The third stage planned to introduce regulations regarding property and implement amputation. Therefore, the type of punishment would depend on the type of crime.

In the trial implementation of the Qanun, from investigation to execution, deficiencies were identified that needed to be revised. This situation then strengthened the plan to improve and develop the Qanun on *jinayat* in Aceh. In the initial 2007 draft, the three Qanun were developed into six criminal acts: alcohol, gambling, *khalwat*, *ikhtilath*, adultery, and rape. This draft Qanun was named "Aceh Qanun on the Compilation of Jinayat Law 2008 (Abubakar, 2008)." This draft, like the first three Qanun, still combines material and formal law. In the same year, 2007, the draft was submitted to the Aceh Government Legal Bureau. Later, in 2008 (discussed in 2009), after the draft was submitted to the Aceh Regional People's Representative Council (DPRA), an agreement was reached with the DPRA to separate the draft Qanun on criminal law into two: a draft Qanun on criminal law and a draft Qanun on criminal procedure. Similarly, three more criminal acts were added: *liwath*, *musahaqah*, and *kadzaf*, bringing the total to nine. During the legislative process, one more act was

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added: sexual harassment. These ten crimes were discussed until they were ultimately rejected by the executive.

d. The Position of Aceh's Qanun Jinayat in the National Legal System and Regional Autonomy

The position of Qanun Jinayat in Aceh Province is based on Law Number 18 of 2001 as the basis for the implementation of Islamic Sharia in Aceh Province, currently followed by Law Number 11 of 2006 concerning the Government of Aceh(Dinas Syariat Islam Aceh, 2013). In the general provisions of numbers 21 and 22 of Law Number 11 of 2006 it is stated that:

> *Aceh Qanun is a type of statutory regulation in the form of provincial, district/city regulations that regulate the administration of government and the lives of the Acehnese people or the lives of the district/city communities that regulate the administration of government and the lives of the Acehnese people or the lives of the district/city communities in Aceh.*

Law Number 11 of 2006 again explains the position of Qanun in Article 233 paragraph (1) which states, "Qanun is formed in the context of organizing the government of Aceh, district/city government and the implementation of assistance tasks." Furthermore, Qanun Number 3 of 2007 states, "Qanun is formed in the context of organizing the government of Aceh and district/city, regulating matters related to special regional conditions, implementing assistance tasks, and further elaboration of statutory regulations."

The clause "for the purpose of administering Aceh and its districts/cities" as one of the functions of establishing Qanun distinguishes Qanun in Aceh Province from regional regulations in other regions in Indonesia. This is because the function of establishing regional regulations in other regions, in accordance with the provisions of Law Number 32 of 2004 concerning Regional Government, states, "Regional regulations are established for the purpose of administering provincial/district/city regional autonomy and assistance tasks."

The function of establishing the Qanun is for the administration of Aceh or district/city government, therefore the Qanun can regulate anything that is included in the form of administration of Aceh or district/city government. Government affairs that are the authority of the Aceh or district/city government, therefore the Qanun can regulate anything that is included in the form of administration of Aceh or district/city government. And this government affair is related to the implementation of Islamic Sharia for the Acehnese people directly in accordance with Article 16 paragraph (2) letter a, Law Number 11 of 2006 (Dinas Syari'at Islam, 2006b).

2. Critical Analysis of LGBT Criminalization Provisions in the Aceh Qanun Jinayat

Aceh Qanun Number 6 of 2014 concerning Jinayat Law is one form of implementation of Aceh's special nature in implementing Islamic law. One of its articles, namely Article 63, regulates the punishment for perpetrators of *liwath* (relations between men) and *musahaqah* (relations between women) with three choices of sanctions: *uqubat* lashes up to 100 times, or a fine of up to 1,000 grams of pure gold, or a maximum of 100 months in prison. This provision is classified as *jarimah ta'zir*, namely a type of crime in Islamic law whose form and level of punishment are determined by the authorities (*ulil amri*) according to the public interest.

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a. Human rights perspectives regarding criminalization of LGBT perpetrators in the Aceh Qanun Jinayat

Criminalization of LGBT individuals, as stipulated in Articles 63 and 64 concerning homosexuality in Qanun Number 6 of 2014, has the potential to violate the rights to privacy, freedom of expression, and equal treatment without discrimination. International human rights instruments ratified by Indonesia, such as the ICCPR (International Covenant on Civil and Political Rights), affirm that every individual has the right not to be discriminated against on the basis of sexual orientation(Havas, 2021).

The Qanun Jinayat is also considered to violate the right to privacy as stipulated in Article 17 of the ICCPR. The UN Human Rights Committee, in its Toonen v. Australia (1994) ruling, stated that laws criminalizing consensual homosexual relations between adults violate the right to privacy (Australia, 1994). Thus, Acehnese law is considered to intervene in the private sphere of citizens that does not directly threaten public security.

The practice of enforcing the Qanun by Wilayatul Hisbah officers through raids on private residences has added to criticism of this violation of privacy. Often, the perpetrators arrested are then publicly identified in local media, worsening the psychosocial well-being of them and their families.

b. Implementation of Caning Punishment for Crimes

The sanctions for homosexuals in the Qanun Jinayat are not only in the form of imprisonment and fines, but also include punishments *uqubat hudud* in the form of public flogging, as regulated in Article 25 and Article 63 of the Qanun Jinayat (Pemerintah Aceh, 2014). The implementation of caning punishment has drawn criticism from national and international organizations because it is considered to contain elements of violence that are contrary to human dignity (Human Rights Watch, 2018).

Caning in public spaces has the potential to violate Article 28G paragraph (1) of the 1945 Constitution, which guarantees the right to protection from torture and degrading treatment. The UN Human Rights Committee, in various statements, has also assessed that the practice of corporal punishment (physical punishment) such as caning is a form of inhumane and degrading treatment(UN Human Rights Committee, 1992).

In practice, canings in Aceh are often witnessed by the general public and are often broadcast by the mass media. This creates a stigmatizing effect on perpetrators and reinforces the marginalization of LGBT groups. On the other hand, the argument used by some policymakers is that caning is based on Sharia law, which Acehnese people believe in and accept as part of their religious identity.

This needs to be correlated with the human rights violations cited in the criticism. There's a perception that torture is incompatible with human dignity. Meanwhile, based on our review of legal materials, we can see how the criminal procedure applied is very precise in protecting human dignity.

c. Review from the perspective of critical Islamic Law and Maqasid Syari'ah

The criminalization of LGBT perpetrators in the Aceh Qanun Jinayat needs to be analyzed not only from a normative dogmatic perspective, but also through an evaluative approach based on Maqasid Syari'ah and a critical Islamic legal paradigm. The objectives of Islamic law (Maqasid Syari'ah) emphasize the protection of five main

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aspects: religion (al-din), soul (*al-nafs*), reason (*al-'aql*), descendants (*al-nasl*), and property (*al-mal*). In the development of contemporary *ushul fiqh*, several thinkers have added *al-'ird* (human dignity) and *law of the insan* (human rights) as part of maintaining Maqasid Syari'ah at the *daruriyyat* and *hajiyyat* levels, adapting to the social context of modern society(al-Raysuni, 2006).

In terms of protection against *al-nafs* (soul) and *al-'ird* (honor), overly repressive criminalization of LGBT groups, without considering psychosocial conditions and rehabilitative aspects, risks violating the principles of *maqasid* itself. Criminalization that does not differentiate between sexual orientation and sexual behavior, and lacks a restorative approach, opens up the opportunity for stigma, violence, and even systemic social discrimination. This is inconsistent with the principle of substantive justice that is part of the Maqasid, namely *iqamat al-'adl* (enforcement of justice) in all aspects of Islamic law (Kamali, 2020).

The critical Islamic legal approach, as developed by reformist thinkers such as Jasser Auda and Tariq Ramadan, calls for sharia not to be understood as a merely rigid and textual legal system, but rather as an ethical and value framework that must respond to the context of the times. The construction of criminalization of LGBT in the Qanun Jinayat, when examined from this approach, appears to still be legalistic and textual, without considering the dimensions of *ta'lil al-ahkam* (legal rationality) and *benefit of the poor* (public welfare) comprehensively (Auda, 2008a).

Therefore, the reformulation of the Qanun Jinayat is not an attempt to legalize the practice of homosexuality or ignore sharia norms, but rather to strengthen sharia legal instruments so that they are in line with the *maqāṣid* and human rights standards. This reformulation must at least cover three important things:

1. Ensuring procedural fairness, to ensure that LGBT criminalization is not carried out in a discriminatory, arbitrary, or without valid and transparent evidence. This is in line with the principle *al-'adalah fī al-tatbiq* (justice in the application of law)(Ramadan, 2009).
2. Avoiding blind criminalization without rehabilitation, by adopting the principle *double track system*, namely the separation between criminal sanctions and rehabilitative measures. This is important to ensure that perpetrators have the opportunity to improve themselves and are not trapped in a cycle of repeated criminalization (Nasution, 2019).
3. Integrating human rights without sacrificing sharia principles, through the approach *modesty* (balance) between individual rights and collective norms. This approach allows Islamic law to function progressively and transformatively in a pluralistic society like Indonesia(Na'im, 1996).

Thus, the Maqasid Syari'ah approach and critical Islamic law provide a strong foundation for reviewing the effectiveness of the Aceh Qanun Jinayat in regulating LGBT issues. Reformulation does not mean compromising on sharia, but rather affirming its noble goals: preserving dignity, protecting lives, and upholding substantive justice.

3. Reformulation of Criminal Procedure for LGBT in Aceh's Criminal Code

a. Legal Competence (Ahliyyah al-Wujūb) of Homosexual Perpetrators from the Perspective of Islamic Law

Discussing criminal law issues is inextricably linked to the subject matter of criminal law. The subject of criminal law is humans as members of society. As legal

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objects, humans, who support rights and obligations in carrying out activities related to society, often deviate from existing norms. These deviations take the form of behavior that can be classified as violations and crimes, which can essentially endanger personal safety, cause unrest in society, disrupt interpersonal relationships, and lead to a loss of order and peace in society.

Through legal subjects, it is explained that among legal subjects is the capacity to bear the law, namely the ability to accept or be burdened by the law and the ability to enforce the law. This capacity applies to humans from the time they are a fetus in their mother's womb, through birth and growth into adulthood, and finally, at death.

In Islamic law, legal capacity is a special element of *jarimah* that is very important to pay attention to in addition to the elements of *nash* (stipulations) and the act was actually done, besides the most important thing is that the person who did it is an adult and of sound mind (*mukallaf*). In a person's personal status, legal capacity is an important prerequisite because it is related to his ability to become a person who is legally competent. Legal capacity is the arrival of a person at a certain age, then a child under the age of adulthood does not have the right or cannot perform legal acts. Therefore, there is no responsibility for children, mad people, fools, and people who have lost their will.

b. The idea of a Double Track system for perpetrators of LGBT crimes in the Aceh Qanun Jinayat

In modern criminal law literature, the idea emerged *Double Track System*, namely a criminal justice system that not only emphasizes punishment, but also action (treatment or *maatregel*)(Hamzah, 2014). This model aims to balance two interests: protecting society from crime while simultaneously providing a path to rehabilitation for perpetrators so they can return to social functioning. If applied to the LGBT crime case in Aceh, this idea could be realized in the form of a combination of *hudud/ta'zīr* punishment with rehabilitative measures. Reformulation of criminal law can be directed at the following patterns:

1) Principal criminal offense in the form of *uqubat ta'zir* (e.g. fines or imprisonment with certain limits) to provide a deterrent effect. The controversial caning punishment can be reconsidered by emphasizing the principle *Maqasid Sharia* in maintaining human dignity (*hifz al-nafs wa al-'ird*)(Auda, 2008b).
2) Rehabilitative measures, for example, in the form of psychological guidance, religious counseling, and social rehabilitation, to address aspects of sexual orientation or deviant behavior that are the root of the problem. This pattern is in line with the approach *al-siyasah al-shar'iyyah*, where the ruler can establish legal policies for the benefit of the people(Az-Zuhaili, 1985).

Implementation of the Double Track System in the context of the Aceh Qanun Jinayat can be done through reformulation of articles by adding the provision that in addition to being subject to *uqubat hudud* or *ta'zir*, the perpetrator can also be subject to rehabilitative measures according to the judge's discretion. This also opens up space for synergy between Islamic judicial institutions and socio-religious, psychological, and counseling institutions. Thus, the Qanun Jinayat is no longer viewed merely as a repressive instrument, but also as a means of moral and social development.

This approach will present a more humane and contextual paradigm for sentencing. For Acehnese people who adhere to Islamic law, the implementation of the Double Track System can be positioned as an effort to balance the demands of

Islamic Studies and Civilization Journal (ISCJ)
Magister Ilmu Agama Islam, Pascasarjana UIN Ar-Raniry Banda Aceh
OPEN ACCESS
Volume 2 Issue 1, January-June 2026
https://arraniry.pasca-iai.com/index.php/iscj
DOI: 10.22373/iscj.v2i1.8

normative texts (*hudud*) with broader public welfare values, as stated in the principle of *dar' al-mafasid wa jalb al-masalih* (Az-Zuhaili, 1985)

Thus, the reformulation of criminal penalties for LGBT perpetrators in the Aceh Qanun Jinayat must shift from a legalistic-repressive approach to an integrative humanist approach, which takes into account aspects of basic human rights protection, Maqasid Syariah values, the psychosocial dynamics of perpetrators, and long-term effectiveness.

D. Conclusion

This article critically examines the criminalization of LGBT individuals in the Aceh Qanun Jinayat, using an integrative approach between human rights and Islamic law. Through normative analysis, the *maqasid al-shari'ah* approach, and a critical analysis of Islamic law and legal pluralism, the following conclusions are reached: The legal construction of criminal penalties for LGBT perpetrators in the Aceh Qanun Jinayat (Islamic Law) is the result of the politicization of Islamic sharia values within the framework of regional autonomy. The criminal provisions contained in Articles 63 and 64 of the Qanun Jinayat make homosexual acts a crime punishable by caning, fines, or imprisonment. Philosophically, this provision is intended to maintain morality and social purity. However, sociologically, this criminalization demonstrates a shift in the function of law from protecting all citizens to one that has the potential to stigmatize sexual minorities. Legally, although this Qanun has a formal basis through Law No. 11 of 2006 and the authority of Aceh's special autonomy, in substance it still conflicts with the principles of non-discrimination and protection of basic rights as stipulated in the 1945 Constitution and international human rights instruments.

The LGBT criminal provisions in the Qanun Jinayat have faced a number of criticisms, both from the perspective of national law and Islamic law itself. From a human rights perspective, criticism is directed at its discriminatory, disproportionate aspects, and its potential to lead to identity-based violence. Meanwhile, from the perspective of *maqasid al-shari'ah*, criminalization that fails to consider psychosocial factors, the perpetrator's intention (*niyyah*), and legal awareness has the potential to ignore protection of the soul (*hifz al-nafs*), reason (*'aql*), and honor (*'ird).* Furthermore, a critical Islamic legal approach observes that the construction of criminalization still tends to be textualistic, not adaptive to the modern social context, and insufficiently considers *maqasid* as an ethical framework and broader legal objectives.

The reformulation proposed in this study is not intended to legalize LGBT practices, but rather to present a more proportional, just, and humanistic legal approach. This reformulation encompasses three main aspects: First, procedural justice, namely that sentencing must be based on valid evidence, without discrimination, and guarantee the defendant's right to defense. Second, strengthening the rehabilitative approach through a double-track system model, namely separating perpetrators who knowingly commit sexual crimes from those experiencing disorientation or psychosocial stress, and providing space for religious and social rehabilitation. Third, the integration of human rights and *maqasid al-shari'ah*, to build contextual Islamic law that does not lose its values, but still upholds human dignity and avoids greater *mafsadah*.

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Volume 2 Issue 1, January-June 2026
https://arraniry.pasca-iai.com/index.php/iscj
DOI: 10.22373/iscj.v2i1.8

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