



Proof of Adultery Crime in the Implementation of Qanun Jinayat in Aceh

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Abstract

This study aims to analyze the implementation of the Qanun Jinayat, or Islamic criminal law, in Aceh, Indonesia, which utilizes 'raids' as one of the instruments for implementing the Qanun Jinayat. From the raid process, the perpetrator was interrogated by residents and asked to make a confession and take an oath that he had committed adultery. This confession is then used as the only evidence for a judge's consideration in making a hudud decision. This study examines two key aspects: first, how the raid violated a person's right to privacy, as this is not regulated in the Qanun Jinayat. Second, the evidence for confessions by the perpetrators obtained through the interrogation process as a result of raids by residents is a confession given out of necessity, not the suspect's conscious confession. This paper uses a qualitative method by utilising in-depth interviews conducted in Banda Aceh, Indonesia. This paper concludes that the presence of raids has simplified the evidence for the crime of adultery in the Qanun Jinayat. In Article 182 Number 5 Qanun Aceh Number 7 of 2013 concerning the Jinayat Procedure Law, it is stated that "especially in the case of adultery, it is proven by 4 (four) witnesses who directly saw the process which shows that adultery has occurred at the time, place, and person who are the same." However, what happened in Aceh, of the 135 convictions for adultery crimes from 2016 to 2020, all were based on the suspect's confession, not witness evidence, and DNA.

Keywords: Qanun Jinayat, Zina's Crime, Evidence, Confessions, Raids

Abstrak

Penelitian ini bertujuan menganalisis implementasi Qanun Jinayat atau hukum pidana Islam di Aceh, Indonesia, yang menggunakan “razia” sebagai salah satu instrumen dalam penerapan Qanun Jinayat. Dalam proses razia, pelaku diinterogasi oleh warga dan diminta untuk membuat pengakuan serta mengucapkan sumpah bahwa ia telah melakukan perbuatan zina. Pengakuan ini kemudian digunakan sebagai satu-satunya alat bukti bagi hakim dalam mempertimbangkan putusan hudud. Penelitian ini mengkaji dua hal. Pertama, bagaimana praktik razia melanggar hak privasi seseorang karena tidak diatur secara eksplisit dalam Qanun Jinayat. Kedua, bagaimana alat bukti berupa pengakuan pelaku yang diperoleh melalui proses interogasi akibat razia oleh warga merupakan pengakuan yang diberikan karena keterpaksaan, bukan pengakuan yang lahir dari kesadaran penuh tersangka. Penelitian ini menggunakan metode kualitatif dengan memanfaatkan wawancara mendalam yang dilakukan di Banda Aceh, Indonesia. Artikel ini menyimpulkan bahwa keberadaan praktik razia telah menyederhanakan pembuktian tindak pidana zina dalam penerapan Qanun Jinayat. Pasal 182 ayat (5) Qanun Aceh Nomor 7 Tahun 2013 tentang Hukum Acara Jinayat disebutkan bahwa khusus dalam perkara zina, pembuktiannya dilakukan dengan 4 (empat) orang saksi yang secara langsung melihat perbuatan zina tersebut pada waktu, tempat, dan orang yang sama. Namun, fakta yang terjadi di Aceh menunjukkan bahwa dari 135 putusan perkara zina pada periode 2016–2020, seluruhnya didasarkan pada pengakuan tersangka, bukan pada keterangan saksi maupun bukti DNA.

Kata Kunci: *Qanun Jinayat, Tindak Pidana Zina, Pembuktian, Pengakuan, Razia*

Introduction

This research aims to analyze how the judiciary passes judgment on cases of adultery by considering two key pieces of evidence: witness testimony and confessions. Where confessions are usually obtained through interrogation by residents and investigators during the raid process, while witness evidence is never used in making a decision regarding the crime of adultery. According to the 2016-2020 Sharia Court report, there were 135 decisions for the offences of adultery in 23 Regency/City Sharia Courts. Everything is based on the suspect's confession, not testimonial evidence.¹ In Islamic law, evidence of confession comes from the perpetrator's awareness of receiving punishment for the crime of adultery, which is carried out as an effort to purify himself based on the knowledge that punishment in this world is lighter than punishment in the afterlife. However, this research finds different things from the implementation of the Qanun Jinayat, that the confessions generally given by the perpetrator and used by the judge as a consideration for the decision were obtained from the interrogation process, where residents carried out

¹Ali Abubakar, “Confession of Zina Offense in Aceh: Legal Awareness or Compulsion?,” *Media Syariah: Wahana Kajian Hukum Islam Dan Pranata Sosial*, 2022.

raids and then forced the alleged perpetrator to make a confession and make an oath that he had committed an adultery act. In several decisions, the judge relied solely on confession evidence without considering witness testimony or DNA evidence.²

In Aceh, Islamic criminal law is known as Qanun Jinayat. The Qanun Jinayat is an Islamic criminal law that regulates community actions that are prohibited by Sharia. This Qanun regulates *jarimah* (acts prohibited by Islamic Sharia), perpetrators, and *uqubat* (the punishment imposed by the judge on the perpetrators of Jarimah). Behaviors prohibited by Sharia and regulated in Qanun Jinayat include *khamar* (alcohol consumption), *maisir* (Gambling), *Khalwat* (certain intimacy outside of marriage in private areas), *Ikhtilat* (mixing between women and men), *Liwath* (Homosexuality), *Musahaqah* (lesbianism), *Qadzaf* (false accusation), *Zina* (obscenity), sexual harassment, and rape. Punishments for these crimes include flogging, fines, and imprisonment.³

Aceh is the only region in Indonesia that applies Islamic Criminal Law. Aceh obtains this privilege because Aceh is a Special Autonomous Region. Aceh, as a Special Region, has the right to regulate its region. Aceh received special privileges after the signing of the MOU for peace between the separatist movement in Aceh (Gerakan Aceh Merdeka/GAM) and the Indonesian government, which was signed on August 15, 2005, in Helsinki, Finland.⁴ As a follow-up to the peace agreement, the Indonesian government issued Law No. 11 of 2006 concerning the Aceh Government. Implementing Islamic Sharia is also an effort to develop Aceh after peace and the Tsunami, which Fenner calls a form of social engineering.⁵ One of the authorities given in this law is that Aceh has the right to implement Islamic sharia as a whole, both in terms of worship, education, *muamalat* (dealings), *syiar* (preaching), civil law, and criminal law. Therefore, there is a special law that regulates Islamic

²Al Yasa' Abubakar and Iqbal Maulana, "Alat Bukti Dan Metode Pembuktian Terhadap Tindak Pidana Zina," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 7, no. 2 (2018); 'Abd al-Qadir 'Awdah, *Al-Tasyri' Al-Jina'i Al-Islami; Muqaranan Bi Al-Qanun Al-Wadh'i*, II (Kairo: Maktabah al-Taufiqiyah, 2013).

³Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah* 5, no. 1 (2021p. 426–49); R. Michael Feener, "Social Engineering through Shari'a: Islamic Law and State-Directed Da'wa in Contemporary Aceh," *Islamic Law and Society* 19, no. 3 (2012p. 275–311); Mursyid Djawas et al., "Restitution to Victims of Rape Crimes: Examination of Judicial Decision Number 06/JN/2019/MS.Lsm," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 13, no. 2 (2024).

⁴Michael Feener, "State, Shari'a and Its Limits," in *Limits of The State: Reconfigurations of Practice, Community and Authority in Contemporary Aceh*, ed. R. Michael Feener, David Kloos, and Annemarie Samuel (Leiden: Koninklijke Brill nv, 2016); Michael Buehler, "Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia by R. Michael Feener," *Indonesia*, 2014.

⁵Buehler, "Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia by R. Michael Feener," 147–52; Michael G. Peletz, "Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia, Written by R. Michael Feener, 2013," *Islamic Law and Society* 23, no. 1–2 (2016); Carool Kersten, "Shari'a: Islamic Law in the Contemporary Context," *Middle Eastern Studies* 45, no. 2 (2009).

criminal law, namely Aceh Qanun No. 6 of 2014 concerning *Jinayat* (Islamic Criminal) law, or better known as the Qanun Jinayat, as an effort to prevent, monitor, and take action against violations of Islamic law in Aceh, which regulates Islamic criminal law.⁶

Studies on adultery in the Qanun Jinayat have been conducted by a number of researchers, who found that the punishment for perpetrators of adultery was not entirely taken from the law in the criminal jurisprudence book (flogging and stoning).⁷ Meanwhile, in the implementation of the Qanun Jinayat, the sanction imposed was only 100 lashes; there was no legal sanction of stoning as regulated in the fiqh book. This illustrates that the sanctions for criminal acts are still quite light both in Indonesia and in Aceh.⁸ In addition, adultery cases are sometimes also resolved through a mediation process, even though there is no formal basis, because they use customary mechanisms, and this is not permitted in Islamic law.⁹ Regarding the proof of adultery using DNA testing, the findings are that although DNA testing is stronger evidence, it is not used as the main evidence. In addition, the Qanun Jinayat also does not provide information on the mechanism for using DNA as evidence of adultery. Another study found confessions as perfect evidence in adultery cases made outside and inside the trial.¹⁰ However, the study did not comprehensively look at why confessions are more often the choice in sentencing adultery in Aceh. Meanwhile, saw that confessions legally have an official place as evidence in adultery cases.¹¹ In addition, the confession of guilt of the accused

⁶Mohd Din and Al Yasa' Abubakar, "The Position of the Qanun Jinayat as a Forum for the Implementation of Sharia in Aceh in the Indonesian Constitution," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021), p. 689–709.

⁷Ziba Mir-Hosseini, "Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Contexts," *SUR International Journal on Human Rights* 8, no. 15 (2011); Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah* 5, no. 2 (2021).

⁸Al Yasa' Abubakar, *Bunga Rampai Pelaksanaan Syariat Islam (Pendukung Qanun Pelaksanaan Syariat Islam)* (Banda Aceh: Dinas Syariat Islam NAD, 2005).

⁹Agustya Catur Mahendra, "Ambiguity of Adultery Concept (Zina) in Criminal and Justice System (A Comparison between Indonesia, Pakistan, and Turkey)," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019).

¹⁰Souha Korbatiéh, "Evidence Rules In Sharia And The Impact Of Modern Technology And Dna Testing," *Australian Journal of Islamic Studies* 5, no. 3 (2020); Marina Matić Bošković, "Impact Of Modern Technologies On Free Movement Of Evidence In European Union," *Journal of Criminology and Criminal Law* 59, no. 3 (2021); Asif Ibrahim and Syed Khurram Hassan, "The Role of Analytical Techniques in Crime Investigation," *International Journal for Electronic Crime Investigation* 6, no. 4 (2022); Al Yasa' Abubakar, *Hukum Jinayat Dan Hukum Acara Jinayat* (Banda Aceh: Dinas Syariat Islam Aceh, 2015).

¹¹Işıl Işık and Özen Kulakaç, "Verbal Sexual Harrassment : A Hidden Problem for Turkish Adolescent Girls," *Asian Journal of Women's Studies* 21, no. 4 (2015), p. 431–49; Ali Abubakar et al., *Problematika Penegakan Qanun Jinayat Di Aceh*, ed. Mursyid Djawas (Banda Aceh: Sahifah, 2019); Djoko Prakoso, *Alat Bukti Dan Kekuatan Pembuktian Di Dalam Proses Pidana* (Yogyakarta: Liberty, 1988); Eddy O.S Hiariej, *Teori Dan Hukum Dan Pembuktian* (Jakarta: Penerbit Erlangga, 2012).

perpetrator of adultery was influenced by the initial process of arrest as a perpetrator of the crime, including the possibility of being encouraged by the belief in obtaining forgiveness.

In proving a crime in the Qanun Acara Jinayat (law of criminal procedure) No. 7 year 2013, six pieces of evidence are used as listed in Article 181 paragraph 1. Valid evidence consists of (1) Witness statements, (2) expert testimony, (3) evidence, (4) letter, (5) electronic evidence, (6) the Defendant's confession, and (7) Defendant's statement. Specifically for adultery, there are only three pieces of evidence that can be used to prove that someone has committed the act of adultery as regulated in the Qanun Jinayat, namely confessions, witnesses and DNA (Deoxyribo Nucleic Acid).¹² Referring to the Qanun Jinayat based on article 182 number 5 Qanun Aceh Number 7 of 2013 concerning Jinayat Procedural Law, it is stated that "Specifically for the crime of adultery is proven by 4 (four) witnesses who saw directly the process which shows that an act of adultery occurred at the time and place and the same person." If this evidence article refers to Islamic rules, where the witnesses to adultery consist of four adult men, clear-headed, who do not know each other, meet without agreement, do not peek, and look directly at the act of adultery like "a bucket into a well". So, it would be implausible that this case would be discovered if the adultery case were committed in a private room.¹³ However, what happened was that the judge's decision on adultery cases in Aceh was high enough. Namely, 135 cases, and almost all cases used confessional evidence from the results of raids carried out by the community. The public took part in the interrogation, and there were no witnesses who directly saw the fornication because the suspect admitted that he had consciously committed adultery under oath, so the judge decided the case without the need for witness proof.¹⁴

The case above showed that the witness evidence and confessions in adultery cases are challenging to find if they have committed adultery act in a private space. In the Qanun Jinayat, Sharia police are only allowed to carry out investigations by following the investigative procedures, and officers can only enter someone's private space with a search warrant. But what often happens is that people have raided the homes of people suspected of committing adultery. Then they arrested the perpetrator and called the sharia police. Such as the case of the raid on a same-sex couple in March 2017.¹⁵ The head of the investigative section of public order enforcers (Satuan Polisi Pamong Praja/SATPOL PP) and shariah police (wilyatul Hisbah/WH), Marzuki, also confirmed that the community carried out the raid

¹²<https://aceh.tribunnews.com/2018/04/13/tempat-terbuka-tapi-terbatas>

¹³Faradilla Fadlia and Ismar Ramadani, "The Definition of Private and Public Space in Implementation of Qanun Jinayah in Aceh," *ADDIN* 13, no. 1 (2019).

¹⁴Shahaqa Besharat, "Nature of Crime in Criminal Law and Islamic Sharia," *American Journal of Law and Political Science* 4, no. 1 (2025); Muhammad Zubair Abbasi, "Sexualization of Sharīa: Application of Islamic Criminal (Udūd) Laws in Pakistan," *Islamic Law and Society* 29, no. 3 (2021).

¹⁵Abubakar, "Confession of Zina Offense in Aceh: Legal Awareness or Compulsion?"

because they had made observations first. This is confirmed by Alyassa's statement that almost all incidents of arrests in private areas or raids carried out by the public were caused by residents' anger. The community has repeatedly warned the perpetrators not to carry out these disgraceful acts, but the perpetrators often do not listen to the residents' warnings. As a result, residents took raids, which ultimately forced residents and officers to enter the perpetrator's private space.¹⁶

This research attempts to analyse several problems regarding the judge's actions in considering confessions from the results of the raid in handing down a decision against the adulterer, thereby causing someone to experience legal injustice, namely (1) Citizens and law enforcement officers have violated someone's private space through raids. (2) The judge imposed a sentence on the perpetrator of adultery based on evidence of confession. However, this confession was the result of interrogation by residents and law enforcement officers so that the perpetrator admitted his actions not on the basis of self-awareness in order to obtain forgiveness of sins. (3) why Qanun Jinayat simplifies the punishment for adultery cases, including making it easier to prove adultery.

This Research conducted in Banda Aceh and Aceh Besar. The agencies interviewed were the Islamic Sharia Service, public order enforcers (Satuan Polisi Pamong Praja/SATPOL PP) and shariah police (wilyatul Hisbah/WH), Academics, police agencies and the Aceh Government. This research uses a qualitative method with a case study approach. The case study approach aims to illustrate cases that are of unusual importance and require further description. The key is how to define cases that already have specific parameters.¹⁷ Aceh is the only region in Indonesia that applies Islamic criminal law or what is known as the Qanun Jinayat. The main study of this research is to analyse how the justice system makes decisions in cases of adultery by considering two pieces of evidence, namely, witness evidence (raids) and confessions. This research becomes interesting by using a case study approach. Data collection was collected using in-depth interview techniques, observation, and literature study. Data analysis begins with directly interpreting the events that occurred, and in this process the data is sorted according to research needs. Then, the researcher determined a pattern of information sources that could connect the categories formed in this research. The resource persons in this research involved academics (Syarifah Rahmatillah and Ali Abubakar), stakeholders (ex-head of the Islamic Sharia Service), (Wilayatul Hisbah/syariah police) head of investigation Marzuki, and Gampong officials (Iswandi, Gampong Secretary).

This research focuses on the recognition of the crime of adultery. First, evidence of confession is the defendant's statement, which did not come from his initiative but rather through raids, persuasion, and interrogation. Second, adultery crime is considered a source of bad luck (*bala*) because it is carried out in the social

¹⁶Abubakar.

¹⁷John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Los Angeles: SAGE Publications, 2014).

arena, so raids and handling of perpetrators of adultery crimes are considered an effort to maintain the purity of the place (social arena). Third, enforcement against violators of adultery through raids takes priority over protecting someone's private space. Fourth, the raids carried out by residents did not have a mechanism, resulting in vigilante action against those suspected of being the perpetrators. Apart from that, the actions received by the perpetrator in a raid are also influenced by who the perpetrator is and the conditions before the raid.

Confession or Statement of the Defendant? Witness Evidence Cannot Be Dropped Because the Incident Occurred in a Private Space

This section will discuss four things. First, the confessional evidence that is used as the basis for the verdict against the adulterer is the defendant's statement. Second, law enforcement officers avoid confessions as evidence because the perpetrator can revoke them. Apart from that, Law Enforcement Officials tend to cover up the article about revoking a confession, which is the perpetrator's right. Third, there were two cases of withdrawal of confessions by the perpetrators because they received the assistance of a lawyer. Fourth, evidence of adultery that residents found during the raid determines whether the case is adultery, *ikhtilat* and *khalwat*.

The Jinayat procedure law No. 7 of 2013 admit six types of evidence listed in Article 181, paragraph 1. Valid evidence consists of (1) Witness statements; (2) expert testimony (3) evidence; (4) letter (5) electronic evidence (6) the Defendant's confession (7) Defendant's statement. But specifically for adultery, there are only three pieces of evidence that can be used to prove that someone has committed the act of adultery as regulated in the Qanun Jinayat, namely confessions, witnesses, and DNA (Deoxyribonucleic Acid).¹⁸

In almost all cases of fornication crime there is not a single witness who directly saw the incident of adultery crime as explained in article 182 point 5 of the Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedural Law, it is stated that "Specifically in crime of fornication it is proven with 4 (four) witnesses who saw directly the process which showed that adultery had occurred at the same time, place and person." If this evidentiary article refers to the rules of Islamic law, where the witnesses to adultery consist of four adult men, clear-headed, who do not know each other, meet without making an appointment, do not peek and see directly the incident of adultery like "a bucket going into a well". So there is not a single case of adultery that uses witness evidence in the Qanun Jinayat. This witness evidence is difficult to obtain because almost all cases of adultery in Aceh are carried out in private spaces.¹⁹

On this basis, the most likely evidence to be used is confessions obtained from the results of raids and interrogations by the residents. According to data from the shariah court, from the year 2016 to 2020 Sharia Court, there were 135 decisions

¹⁸ <https://aceh.tribunnews.com/2018/04/13/tempat-terbuka-tapi-terbatas>

¹⁹ Mutiara Fahmi et al., "Punishment for Zina Muhsān Offenders in Aceh Qanun No. 6 of 2014 in the Perspective of Fiqh Al-Siyāsah," *Samarah* 6, no. 1 (2022).

for the offence of adultery in 23 Regency/City Sharia Courts, and all of them were suspect confessions, not testimonial evidence.²⁰ The perpetrator can give the confession received by the investigator under three conditions. The following is the statement of the investigator, Marzuki:

“A confession of adultery can be accepted in three ways: firstly, in the investigator's initial examination process. Second, when the case is handed over to the prosecutor, the perpetrator can give a confession. Third, at the stage of being tested in court by a judge. "In court, the suspect was again given a confession statement form so he could rewrite the confession he had made during the investigation process.”²¹

The confession conveyed by investigators was obtained from the perpetrator, who was arrested through the raid process. This confession did not come from the perpetrator of adultery's initiative, who went to the competent authority and asked for punishment to be imposed on him as a result of the act of adultery he/she had committed. The confession during the time, of the Prophet Muhammad (Peace be upon him) can be seen from the story of Ma'iz bin Malik, who admitted that he had committed adultery in front of the Prophet Muhammad (Peace be upon him). Narrated by Buraidah (in the book *Mirqah Al Mafatih*, Chapter Hudud, Hadith (3562), at that time Ma'iz bin Malik came to see the Phophet Muhammad (Peace be upon him). He asked to be purified from the adultery he had committed. At that time, the Prophet Muhammad (Peace be upon him) told Ma'iz to go home and repent to Allah (the most glorified). This happened repeatedly, and until the fourth time, Ma'iz returned to the Prophet Muhammad (Peace be upon him) and asked to be purified from the sin of adultery he had committed. At that time, his confession was heard by the friends who were in the assembly, and the Prophet Muhammad (Peace be upon him) asked the companions asked whether Ma'iz was drunk or crazy. Then the companions confirmed that Ma'iz was neither drunk nor crazy. The Prophet Muhammad (Peace be upon him) then asked Ma'iz whether it was confirmed that he had committed adultery, and Ma'iz answered correctly.²²

Therefore, Prophet Muhammad (Peace be upon him) asked his friends to enforce the stoning sentence against Ma'iz. From Ma'iz's story, it can be understood that the confession during the time of the Prophet Muhammad (Peace be upon him) was based on the initiative of the adulterer himself. The confession made by the perpetrator was also punished because it was done in front of many people (friends)

²⁰Fahmi et al.

²¹Interview with Marzuki, the head of the investigative section of public order enforcers and shariah police (*Wilyatul Hisbah*).

²²Abu Abdillah Muhammad bin Ismail Al-Bukhari, *Al-Jami Al-Shahih* (Madinah: al-Jami'ah al-Islamiah, 1390); Al-Nawawi, *Shahih Muslim Bi Syarh Al-Nawawi*, IX (Beirut: Dar Al-Fikr, 1981); Tarmizi M. Jakfar, *Otoritas Sunnah Non-Tasyri'iyah Menurut Yusuf Al-Qaradhawi* (Yogyakarta: Ar-Ruz Media, 2011); Dedy Sumardi, *Hudud Dan HAM: Menelusuri Hudud Yang Disyariatkan Dan Hudud Yang Difikhkan* (Banda Aceh: Dinas Syariat Islam Aceh, 2011).

(Source). Even in the Jinayat procedure law No. 7 of 2013 in Article 187 article (1) states that: "The Defendant's confession as referred to in Article 181 paragraph (1) letter f is what the Defendant stated at trial on his own "initiative" regarding the actions he committed, or he knew or experienced himself". The problem is, during raids, perpetrators whom residents arrest are often in a state of recessive because residents enter the private space where the alleged adultery occurred.

The explanation above illustrates that the defendant's confession must be based on his initiative, whereas the evidence of the confession resulting from the raid by residents was not an initiative that came from the perpetrator of the adultery. However, the perpetrator gave this confession because the residents had entered the private space, carried out a raid, and even followed up with violence as a form of anger from the residents. This is thought to have contributed to the confession given by the perpetrator of adultery.

The explanation above is a general description of the court's decision on adultery, which is based on the perpetrator's confession through raids (citizen reports), reports from the perpetrator's family, and being caught by sharia police patrols.²³ One of the raids that occurred in May 2023 was in Blang Krueng village. Village officials said that most of the perpetrators of adultery had been warned three times not to carry out activities that were close to adultery. However, the perpetrators continued to carry out these acts, so the village youth carried out monitoring the perpetrators. When the perpetrator is indicated to be committing adultery, this usually happens when the house owner (female) is approached by a man who is not her *mahram* (a family member with whom marriage would be considered permanently unlawful/haram). Therefore, the village youth immediately raided the house. The following is the statement, Iswadi (village official).

"Usually the village youth will carry out raids on houses where it is suspected that there has been a case of *khalwat*, adultery, *ikhtilath*, after carrying out monitoring, the village youth have advised and warned the perpetrator three times before the raid took place." (in-depth interview with village officials).

The description above shows that this research see that the evidence of confession did not come from the perpetrator's initiative, but instead was a confession given by the perpetrator as a result of the integration process during the raid.

The second finding is that law enforcement officials avoid confession evidence because it can be revoked by the perpetrator even though the majority of decisions are based on the confession of the perpetrator of adultery. Of the three pieces of evidence for adultery, namely confession, witnesses, and DNA testing, confession is the most likely evidence to be obtained. The following is Marzuki's

²³Abubakar, "Confession of Zina Offense in Aceh: Legal Awareness or Compulsion?"; Fahmi et al., "Punishment for Zina Muhsān Offenders in Aceh Qanun No. 6 of 2014 in the Perspective of Fiqh Al-Siyāsah."; Mukhsin Nyak Umar, "Analisis Pemikiran Ibnu Hazm Tentang Kesaksian Wanita Dalam Pidana Zina," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 1, no. 2 (2017).

statement. "We do not use confessions as evidence, we even avoid them. Why, because the perpetrator can revoke the evidence of the confession. The article on the revocation of recognition is stated in Qanun Jinayat No. 6 of 2014 article 39. Where the perpetrator can withdraw the confession that has been given so that the accusation of the alleged adultery will be erased and reduced to a case of *ikhtilat* or *khalwat*.

In the implementation of the Qanun Jinayat, especially regarding the adultery jury verdict, there were two decisions based on confessions that the perpetrator withdrew. Of the total of 135 adultery cases, all of these cases used confessional evidence, and the majority of perpetrators did not receive legal assistance. It did not withdraw the confessions given, so they were sentenced (what is the predetermined punishment to be called) 100 canning sentence, and there were only two cases that were accompanied by a lawyer who later withdrew the confession given. The following is Marzuki's statement: "There were two cases where the perpetrator withdrew his confession because the perpetrator received a 'whisper', whether it was from assistance from a lawyer or someone we don't know."²⁴

According to law enforcement officials, the act of withdrawing a confession is an action that should not be carried out, even though the revocation article is stated in the Qanun Jinayat. The choice of the word 'whisperer' shows that the article on the revocation of the confession was hidden from the perpetrator and the perpetrator's legal advisor, and the article related to the revocation of the confession was not common knowledge among the people of Aceh, especially for the perpetrator. This happens because a confession is the only evidence of adultery that can be obtained and can be used to pass a verdict.

The third finding, evidence found during raids by residents can determine whether the case is adultery, *ikhtilat* or *khalwat*, that the indicators of fornication or *ikhtilat*, *khalwat* are determined by the discovery of evidence in the form of condoms, bed sheets which are suspected to have been places where adultery occurred or adultery was about to be committed. Evidence is also an indicator of whether the case will be resolved in the village or forwarded to the police sharia. Village officials said that when a raid found evidence such as condoms and bed sheets, the case would be handed over to the police sharia, whereas if no evidence were found, the case would be resolved in the village as a case of *khalwat* and *ikhtilat*. The following is the statement from the village official, Iswadi.

"It just happened a week ago that people raided a house by village youths and during the raid the village youths found evidence in the form of a condom and a bed sheet, so we (village officials) contacted the sharia police via telephone hotline and then handed the perpetrator over to the sharia police for followed up."²⁵

²⁴Interview with Marzuki, the head of the investigative section of public order enforcers and shariah police (*Wilyatul Hisbah*).

²⁵Interview with Iswadi, Gampong, Officials (the secretary of the village)

The explanation above is the handling carried out against the crime of Adultery. In contrast, for the crime of *khalwat* and *ikhtilat*, Blang Krueng village already has a Village regulation concerning Order and Security. Where residents who are caught committing *khalwat and ikhtilat* There will be sanctions in the form of a fine of IDR 1,000,000 - IDR 2,000,000.00 for perpetrators who are not native to the area (violators who rent a house in the area) and expelled from the village. Meanwhile, for native residents, the fine is IDR. 1,500,000 and received a warning not to repeat committing adultery, *ikhtilat, khalwat* in Blang Krueng village. Village official, Iswadi said:

"So in the Village regulation regarding Order and Security, there are customary sanctions, which include a fine, if the perpetrator is not from the village is IDR. 2,000,000 to IDR. 2,500,000, that's the minimum. "If it is a native, the minimum fine is IDR 1,500,000."²⁶

Three things can be concluded from this research. First, the proof of confession is the defendant's statement because there was no initiative on the perpetrator's part to give a confession. Second, law enforcement officers avoid confessions because they can be revoked, and law enforcement covers up the articles of revocation of the perpetrator's confession. Third, evidence determines whether the case will come into *khalwat, ikhtilat* and adultery.

Adultery, Bad Luck, and the Arena Social

This section will discuss three things. First, adultery is considered a source of disaster or bad luck (*bala*) for the people of Aceh. Second, the people of Aceh try to protect the social arena from adultery. The crime of adultery is considered to be the cause of disaster or bad luck (*bala*) by the people of Aceh. The following Hadith influence the general public's knowledge of adultery. Firstly, one of the Hadiths states that adulterous behaviour by one person can drag the neighbours and 40 surrounding houses into bearing the perpetrator's sins and being affected by bad luck. According to Ustadz Khalid Basalamah, this hadith is weak or *dhaif*, according to Ustadz Khalid, neighbours are also guilty if neighbours know about the disgraceful act but do not try to prevent or advise. Second, the Hadith which says, "If adultery and usury have spread widely in a village, then indeed they have made lawful for themselves the punishment of Allah (the most glorified)." (H.R. Al Hakim, Al Baihaqi and At Tabrani). Third, Aisyah (May Allah be pleased with her) narrated that Prophet Muhammad (Peace be upon him) said, "my people will continue to be in goodness as long as there are no children resulting from adultery spread among them, if among them there are children resulting from adultery, Allah (the most Glorified) will punish them".

From many of sources above, the Hadith of 40 houses is the one that most influence the response of the Acehnese people to the crime of adultery and the arrival

²⁶Interview with Iswadi, Gampong Officials (the secretary of the village)

of reinforcements. So when a raid occurs, usually people, especially young people who carry out the raid, will express their anger at the perpetrators of adultery by hitting them and uttering angry words. As stated by village officials, Iswadi "was one of the incidents of adultery in which one of the young people was caught and beaten by the village youth. The village youth expressed his anger by hitting the perpetrator and saying that it was because of you that the rain did not fall." Furthermore, according to Iswadi, a resident was also in responsible as *Tuha Peut* (the head of legislation in the village) once told the perpetrator's parents that their child committing adultery in Blang Krueng village had caused the farmers in this village to fail to harvest. "Because of your child we failed to harvest". This was conveyed by residents to the parents of the perpetrators of adultery when apologising to the residents for their child's actions.

The description above shows that people consider adultery to be the cause of misfortune, including nature's impartiality towards them. The issue of crop failure or available water can be linked to many things, such as global warming and environmental damage, including the conversion of land around the village, which used to be rice fields and plantations to become a housing location. However, the residents chose to use crime of adultery as the cause of this disaster. This incident also shows that society seems to have the right to impose punishment on perpetrators of adultery so that there is room to carry out violence in the name of maintaining the purity of the social arena from evil.

Apart from being a cause of evil, adultery is also seen as a threat to the purity of the social arena. Where the social arena is closely related to the concept and control of the village area (village) which causes moral authorities (Sharia Police, village youth, village officials) to be involved in guarding the social arena and carrying out vigilante actions (violence) against people suspected of committing adultery in Aceh (Kloss, 2014). The purity of the social arena in Aceh is also closely related to the Aceh area is known as the Veranda of Mecca, which applies Islamic law. So behaviour that is contradictory and not by following per under the Shari'a cannot be carried out in Aceh, including committing adultery. The following are several statements from three sources. First, Iswadi said that if you want to commit adultery, don't do it here (Blang Krueng). Then, Syahrizal (former head of Islamic Sharia Service) also said that if you want to commit adultery, don't go to Aceh, "If you commit adultery, don't go to Aceh." Moreover, Ali Abubakar (lecturer from UIN Ar Raniry), if you want to commit adultery, do not go to Aceh, just go to Mount Salak (Bogor). "If you commit adultery, do not go to Aceh, go to Mount Salak (Bogor) there."

This research found that the words "if you want to commit adultery, do not do it here, do not do it in Aceh", confirm that there is a mismatch in the initial objectives of implementing the Qanun Jinayat regarding the benefit of the people, namely protecting the perpetrator from crimes against himself, but rather protecting the community and social arena. The order to stay away from adultery is given in Islamic law because the act of adultery can bring bad things to the perpetrator and

other people. However, adultery is understood by society to be more about causing bad luck; this can be seen from the use of the phrases "because of your children we failed to harvest" and "because of you the rain did not fall". This shows that there is a mismatch in information about what should be protected, the perpetrator from the evil caused by the crime of adultery against himself, but in the implementation of the Qanun Jinayat, what is protected is the social place or arena.

Which comes first: Respect for Private Space or Violation of Sharia?

This chapter will discuss which are the priorities in implementing the Qanun Jinayat and produce two findings, namely first, the implementation of the Qanun Jinayat is partial and prioritises the protection of the social arena rather than the protection of perpetrators from acts that harm themselves, so that a person's private space is only respected if there are no violations of the Sharia in it. Second, there are houses that are considered to have potential places for adultery to occur, namely houses that are rented and houses of widows.

Islamic law aims to bring about the benefit of the people and eliminate harm, so the implementation of the law must be fair, bring mercy to all of nature, and not be partial. However, in its implementation, the Qanun Jinayat seems to prioritize "purifying a place" rather than protecting perpetrators from actions that harm themselves. The state and society can enter a person's private space, and this violation occurs because private space is considered public space when a violation of sharia occurs. Where the act of committing adultery in someone's private space occurs in the social arena so the public has the right to access someone's private space if the person is suspected of committing or having committed the act of committing adultery. The following is Ali Abu Bakar's statement regarding this matter: "If people commit adultery in the community, this is clearly disturbing and needs to be stopped, but if they do it on Mount Salak (Bogor) for example or other places (outside Aceh), please do so. If this is done in the village, it will clearly be detrimental to the village people." (in-depth interview with Ali Abu Bakar, lecturer from UIN Ar Raniry)

Ali Abu Bakar's statement above shows that the initial aim of the Qanun regarding the benefit of the people was not implemented entirely but partially, where the Qanun Jinayat approach to perpetrators of adultery in Aceh was not to protect the perpetrators from the evils of committing adultery against themselves which then had an impact on society but rather to protect the arena social, community and Islamic identity in Aceh. This is shown by the statement that anyone who wants to commit adultery must do it outside Aceh. Even some stakeholders often say, "For those who do not like Islamic law, please leave Aceh". The above is in line with Syahrizal's statement that "Qanun aims to protect, but in its implementation it is more about protecting the social arena, because violations occur in the social arena of society." (in-depth interview with Ali Abu Bakar lecturer from UIN Ar Raniry) so that the implementation of the Qanun Jinayat prioritises social order, where adultery is considered to have damaged the order or image of the social arena. So there is a shift in the objectives of the Qanun Jinayat in implementation, namely prioritising

efforts to maintain the purity of the social arena and Aceh as a region that implements Islamic law.

Second, there are certain houses that are considered to be potential places for adultery to occur, namely, houses that are rented and houses of widows. Village officials confirmed that the village youth group had carried out mapping of houses rented by students and houses of widows, where these houses were considered vulnerable locations or had the potential for adultery. The following is what Iswandi said: "Blang Krueng youth already have a map or are mapping houses that have the potential to be raided because so far this has often happened in rented houses" (in-depth interview with village officials).

The explanation above shows that the Qanun Jinayat does not work in its entirety because the Qanun Jinayat task is to protect women without *Mahram* (single lady, and widows) but shifts to making them a threat to the purity of the place.

4. 4 *There is no mechanism to regulate issues related to raids*

The research section found two things. First, there is no mechanism for carrying out raids, thus allowing vigilantism to occur. Second, the action received by the perpetrator is influenced by several things, such as who the perpetrator is and what happened before the raid.

The raids which have become part of the implementation of the Qanun Jinayat apparently do not have a mechanism (Standard operating procedure / SOP) regarding the rules of what the community must do when there is a suspicion of a violation of adultery in someone's private space in the social arena. Therefore the raids are very dependent on the initiative of residents to protect social arena. Based on of non-existent SOP, vigilantism often occurs during raids. In Blang Krueng village, according to Iswadi, young people who usually carry out raids are not allowed to hit the suspect of adultery. The following is the statement from the village official, Iswadi.

"Actually, before the raid occurred, the village youth had already warned the perpetrators, they had also been monitored, so usually before the raid, the village youth would tell the village secretary (sekdes) something like "Mr. Village secretary, we arrested a couple last night" and we said, " do not catch it carelessly. Just be reminded." Oh, it turns out the village youth have been warned them three times but they still did that, that's why the couple was arrested. Usually those who are arrested have been reminded of it many times. We also remind the village youth, do not hit them carelessly, you can hit the perpetrator but do not beat the perpetrator, because if the perpetrator gets knocked down, we will also be in trouble."²⁷

However, usually, young people still choose to vent their anger at the perpetrator because they have been reminded of the perpetrator frequently, so beatings are an accumulation of young people's anger. If this happens, village

²⁷Interview with Iswadi, Gampong Officials (the secretary of the village)

officials will usually remind the youth that they can beat them, but not until they are badly battered. According to Iswadi, the police and sharia police did not want to accept perpetrators who had suffered severe injuries as a result of beatings or abuse by the village youth, so this actually made it difficult for village officials because they had to treat and take the perpetrators to hospital. Although, in the end, the authorities returned responsibility for care and medical costs to the perpetrator's family. Interview with Iswadi, Following is Iswadi's statement.

"So usually, if the perpetrator of adultery or *khalwat* is caught and judged by the masses, it is outside the responsibility of village officials and the police, but if they are raided at home, they are usually judged (beaten, kicked) at that house, but if they have arrived at the village office they are not allowed to be hit again. Once it has been handed over to the village office, no more beatings are allowed, so before it is handed over to the village office, the community is allowed to express their anger by beating the perpetrator of adultery. The police and Sharia Police did not want to accept the perpetrators who were battered, so they emphasised that if they wanted to hand over the perpetrators to police or sharia police, they (the perpetrator) had to be in good health. We as village officials also sometimes have a problem if there are perpetrators whom residents judge, because the perpetrators must be treated first before being handed over to the Sharia police.²⁸

In one case, the perpetrator was beaten by the youths village and the certificate of evidence stated that the perpetrator was in an unhealthy condition (wounds from beatings). There are differences in treatment in terms of the beatings received by the alleged perpetrator. For example, an interesting case was found where one perpetrator who was caught was beaten harder because two nights before, the youth had arrested two perpetrators but could not carry out the beating because they were members of the military and police. The following is the statement, Iswadi.

"So we arrested the personnel of the military who are living in the *Laksus* dormitory. He was staying at his fiancé's house, and we raided it at midnight. According to their confession, they did not commit adultery but were caught in *Khalwat* with the man wearing shorts and a singlet and the woman not wearing a headscarf and wearing a house dress. They admitted that they had not committed any lewd acts, so they were only subject to customary sanctions. And if it was a member of the military who was attacked, the village youth did not dare to hit them because they were afraid and only asked for the military membership card and gave instructions to do push-ups and rollover.²⁹

²⁸ Iswadi, Gampong Officials (the secretary of the village)

²⁹ Interview with Iswadi, Gampong Officials (the secretary of the village)

The explanation above shows that there is no mechanism in raids that allows violations to occur against perpetrators (individuals), both in terms of state entry into private space and also in the form of customers, such as beatings and torture (vigilantes). However, the SOP never received attention from the government and village officials, because raids were considered part of the process of implementing the Qanun Jinayat. Stakeholders even said this was a form of community participation because raids were considered a manifestation of the community being educated about the existence of the Qanun Jinayat and were seen as a success of the implementation of the Qanun Jinayat. The following is the statement of Ali Abu Bakar.

"The public also does not understand the substance of the Qanun Jinayat itself, so the raid was a form of enthusiasm from the community, not intervention. Because basically the community has no authority to enter the private space, the police Sharia has that authority. In Islam, it is forbidden to peep and spy. But if for certain things (adultery) authority is given, then the task becomes permissible. And also, for the community, this adultery is a public matter, meaning that the community considers the perpetrator of adultery to have polluted the village and damaged the social order. And acts like this will not stop, if there is one example, there will be more in the future. "Therefore, people try to prevent it, because they consider adultery to be a dirty act, so it is more about preventing and taking responsibility for immoral act. Even though they were warned several times before being arrested, it did not work either, so they were arrested."³⁰

The above statement shows that raids carried out by the community are a form of involvement, not intervention, an effort to prevent in moral and as a lesson for others not to follow, even though the community does not have the authority, according to Ali Abubakar, specifically for cases of adultery, raids may be carried out. Furthermore, Syahrizal said.

"Conceptually, adultery perpetrators do not actually need to be searched or raided, that's not the aim of the Qanun Jinayat. People who carry out raids on perpetrators of adultery do not mean carrying out severe investigations into perpetrators of adultery, it is only because people are uncomfortable and legally raids cannot be carried out, and it is not in the context of enforcing the Qanun Jinayat. The community carried out the raids because they were not comfortable with adultery in their environment, so this was brought into the realm of public interest but this was not an order from the Qanun (the Qanun does not regulate or include the word raid). The community carried out the raid as a warning that if you commit acts of adultery, do not do it here, that means the perpetrators of adultery, do not pollute the village, do not disturb social life, even if the

³⁰Interview with Ali Abubakar, an academic at Ar-Raniry State Islamic University, Banda Aceh

perpetrators of adultery still commit violations, then we (the community) will use our social system (customary system) one of them is by raids.³¹

The author sees a different point of view where raids are acts that violate privacy and human rights because they are acts of taking the law into one's own hands, which are based on the assumption that adultery is not an individual crime but a social crime. Raids are carried out to arrest the perpetrators and find evidence during the incident, so they tend to be carried out by the public without waiting for the Sharia Police to take action. Meanwhile, for policymakers and officials, raids by residents are a form of success in implementing the Qanun Jinayat because the community has actively participated through raids and followed by reporting. This research looks at the perspective of law enforcement officials and stakeholders in viewing raids in the implementation of the Qanun Jinayat as something appropriate, even though raids are vigilante acts, violating someone's private space and normalised acts of violence in the name of protecting the honour of a place.

The second finding in this research was that the actions received by the perpetrators of adultery during the raid in Blang Krueng village were influenced by several things, such as who the perpetrator was and what happened before the raid. Village youth once raided two houses where there were unmarried couples, men and women. When they found out that the male perpetrator was a law enforcement officer, as shown by his membership card, the youth only asked the perpetrator to do push-ups and roll over without beating or torturing the perpetrator like other civilian perpetrators were treated. The following is the statement from the village official, Iswadi

"If, for example, members of the Indonesian national army (TNI) were caught, the village youth would not dare to strike out. Only village youths will usually ask, "Oh, you are military personnel. Where's your membership card?" Then, the village's young told the perpetrator to do push-ups or try rolling on the ground. The village youth do not dare hit them (military staff), the village youth are afraid that the military staff will bring a bunch of military personnel to the village".³²

Apart from influencing the actions of youth in raids such as those described above, perpetrators from among law enforcement officials also determine the resolution mechanism. Where village mechanisms cannot be implemented because the law enforcement (military and police) have their own mechanisms in their institutions. Even resolving cases of adultery, *ikhtilat*, and *khalwat* for law enforcement officials is also very difficult. The following is the statement from the village official, Iswadi.

³¹Interview with Syahrizal, former head of Islamic Sharia Service, Aceh

³²Interview with Iswadi, Gampong, Officials (the secretary of the village)

“We have arrested members of the military. Actually, this is the second time he has been arrested; previously, he was arrested at 12 o'clock, but this time he was arrested at 9 o'clock. Well, this man's condition (wardrobe) is the same condition, wearing shorts and a singlet. It is not permissible to be alone in the house with a woman for an unmarried couple; he got angry when he was arrested. Well, it turned out that it was passed on to their commander, so a lot of people came that night, a lot of people, very busy. That person arrived here at 12 at night, and the problem was only resolved at 3 at night. So there we (village official) make peace, yes, the Peace does not result in punishment. Because these people (military) think that if there is a problem they will resolve it with their own mechanism. So in their institutions they do have their own resolution mechanisms, therefore they interfere the village official in revolving this matter”.³³

The above statement is in line with what was conveyed by the Rector of Ar Raniry State Islamic University, Mujiburrahman,³⁴ who said that enforcement against sharia violators is indiscriminate. Where the sharia police, as an enforcer of Islamic Sharia cannot take action against military or police individuals who violate Sharia. This happens because military or police officers robust, even if the sharia police forces their lives to be at stake. Due to the weak position of the Sharia police, Mujiburrahman suggested that the institution also have a military or police. However, it was not explained how this could be done (Serambi, 2023). The explanation above shows that the Qanun Jinayat is partial, especially for law enforcement officials, because they have their mechanisms. So that, Qanun Jinayat is a Lex Specialist even for national law, but law enforcement officials are "immune" to the Qanun Jinayat.

Conclusion

This research finds that adultery is a social crime, not an individual crime. Based on this, raids were carried out by the community against those suspected of committing adultery, *ikhtilat*, and *khalwat*. Evidence of confessions found during the raid was obtained through a persuasive approach, interrogation, beatings, torture, and then they were asked to make a confession and make an oath that they had committed adultery. The confession of having committed adultery should have been based on the perpetrator's initiative, so the confession that was obtained through raids and followed by beatings as a form of anger from the residents was something very different from the actual confession. So, this study concludes that it is not a confession but the defendant's statement. Confession is the only piece of evidence used in handing down a verdict for adultery in the Qanun Jinayat. However, it is avoided by law enforcement officials because the confession was withdrawn.

³³Interview with Iswadi, Gampong, Officials (the secretary of the village)

³⁴Interview with Mujiburrahman, Rector of Ar Raniry State Islamic University, Banda Aceh

However, this study found that only two confessions were withdrawn by the defendant because they were accompanied by a lawyer. In this regard, the article on the revocation of recognition was hidden by law enforcement officials and is not public knowledge. The crime of adultery is considered a source of disaster or bad luck that can pollute the sanctity of the social arena, so it should not be committed or occur in Aceh. So, the implementation of the Qanun Jinayat is an effort to protect the social arena and the benefit of the people, not to guard or protect individuals from the acts of crime that they commit and the negative impact of the perpetrators of the crime on themselves. In general, the raids were viewed as a measure of success in implementing the Qanun Jinayat, and the public was educated and actively involved in its enforcement. However, raids that do not have a mechanism are very vulnerable to violations, especially beatings and violence against people suspected of being the perpetrators. Raids that do not have a mechanism also cause the action received by the perpetrator to be determined by who he is and the situation during the raid. The raid is the final form of warning for anyone who commits adultery in Aceh.

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Interviews

- Interview with Mujiburrahman, Rector of Ar Raniry State Islamic University, Banda Aceh.
- Interview with Syarifah Rahmatillah, an academic at Ar-Raniry State Islamic University, Banda Aceh
- Interview with Ali Abubakar, an academic at Ar-Raniry State Islamic University, Banda Aceh
- Interview with Marzuki, the head of the investigative section of public order enforcers (Satuan Polisi Pamong Praja/SATPOL PP) and shariah police (Wilyatul Hisbah/WH)
- Interview with Iswadi, Gampong Officials (the secretary of the village)
- Interview with Syahrizal, Former head of Islamic Sharia Service, Aceh