



Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh

Abdul Halim¹

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Abstract

The Aceh Jinayat Qanun, which is often considered violating Human Rights, has become the choice of the non-Muslim minorities as their rational choice. This study aims to analyze non-Muslims' choice of The Aceh Jinayat Qanun implemented by the Sharia Court in Aceh and its underlying motives. This study relies on field research involving observations, in-depth interviews with Sharia Court judges, Head of the Islamic Sharia Service, Acehnese clerical figures, and Non-Muslims involved in criminal cases handled by the Sharia Courts. This study also analyzes Sharia Court decisions on criminal cases involving non-Muslims and various related documents issued by the Sharia Courts, police, and prosecutors. The study was undertaken between July 2017 and March 2020. The study shows that the Acehnese non-Muslims do not select The Aceh Jinayat Qanun because of its religious values but based on practicality, efficiency, and socio-cultural consideration. The Sharia-based sentences, which have often been conceived as inhuman and violate fundamental human rights, are chosen and become the rational choice for non-Muslims in solving their legal issues. This paper concludes that the implementation of the Sharia on non-Muslim has not always been negative. This paper demonstrates non-Muslims' interest to choose Sharia-based criminal justice or The Aceh Jinayat Qanun over the Criminal Code. This can be seen as their rational choice over a more efficient, low-cost, effective, and fast legal process offered by The Aceh Jinayat Qanun sentencing system.

Keywords Aceh · Choice of law · Non-Muslim · Qanun Jinayat · Sharia Courts

✉ Abdul Halim
abdul.halim@uinjkt.ac.id

¹ Universitas Islam Negeri Syarif Hidayatullah Jakarta, Jakarta, Indonesia

Introduction

The implementation of Islamic law, especially when it comes to punishments, is often considered as violating human rights. Religious minority groups and women are among the victims (Rabo 2012). In Aceh, there has been a trend that non-Muslims choose to abide by the shari'a in some criminal cases. Aceh is home to predominant Muslims (98.19%) (BPS RI, 2010). Aceh can be considered peaceful with a meager rate of religious intolerance cases. Non-Muslims' negative attitude towards Islamic law, especially The Aceh Jinayat Qanun (QJA), has gradually decreased after witnessing its implementation by the Acehnese local government (Marzuki 2010), not to mention they become proponents of the sharia exertion in Aceh (Safrihsyah 2012). Consequently, Van Prooijen et al.'s (2018) argument, stating that the minority groups generally face social issues as the result of the sharia implementation, has turned out to be flawed, especially in the context of Acehnese society.

The discussion of sharia implementation for non-Muslims in Muslims countries, such as Turkey, Egypt, Pakistan, Sudan, Tunisia, Morocco, Nigeria, Malaysia, and Indonesia, has become essential, as it often affects non-Muslims and women (Beylunioglu 2015; Maurits Berger 2001; Khel 1984; Lobban and Hillawi 1983; Tessler 1978; Kenny 1996; Abdullah 2006). For example, Christian women were the most affected individuals in Jordan (Alfian 2006; Milallos 2007). Christian minorities also experience difficulties in the Middle East and Persia, especially Iran, when dealing with the Sharia Court (MS) (Rabo 2012; Iskander 2012; Robson 2010). Furthermore, Jews and Christians in Morocco are restricted from becoming witnesses and prohibited to testify in the Sharia Courts against Muslims (Marglin 2017). These earlier discussions primarily show how the implementation of Sharia leads to discrimination against women and minorities. This particular research shows how non-Muslim minorities live in a Sharia-based society and how they could take advantage of it.

This study aims to present different evidence from previous studies that mostly show that the application of Islamic law in the form of the QJA often contradicts state law. This study departs from three main points of study; first, the motives and reasons of non-Muslim minorities embracing the QJA despite its Islamic law origin; second, showcasing the code of conduct from the Sharia Court institution and its officials responding to the court process for non-Muslims. This is to guarantee that non-Muslims rights' to just, equal, and fair trials at the Sharia Court be fulfilled; third, demonstrating public responses towards the choice of non-Muslim societies over the Sharia Court transformation path, lessons learned from the QJA, and the Sharia Court as the justice system in Indonesia.

This paper argues that although the National Criminal Code (KUHP) is one of the options, non-Muslim minorities in Aceh tend to accept the QJA when dealing with criminal cases. This selection is driven by the effectiveness, efficiency, and inexpensiveness of the QJA. Subsequently, the QJA becomes a rational choice of non-Muslims. Notwithstanding, it is challenged by many, arguing that the Sharia, through the QJA, should not be implemented to non-Muslims. They are supposed to be tried and punished under Indonesian law instead.

Previous Studies

The implementation of Islamic law in Muslim countries and its relation to non-Muslim minorities have been a serious concern of many researchers of Islamic studies since the last decade. Annika Rabo's study shows that sharia implementation in Syria has prompted gender and religious discrimination (Rabo 2012). The Islamic law's negative outcome can also be seen in the relationship between Muslim and Christian Jordanian women in their social classification. The downside of Sharia in those countries is similar to the Sharia in Aceh, which is sought to be way too political, and poses severe challenges to gender issues, primarily related to women's interests (Alfian 2006; Milallos 2007). The discrimination has also occurred in the Court, where Jews and Christians are prohibited from becoming witnesses and have limitations in presenting evidence (Marglin 2017). Muslims experience a similar phenomenon in some Middle East countries (Rabo 2012; Iskander 2012; Robson 2010). Fortunately, Morocco has a better Sharia Court proceeding, where Jews have equal access to notary documents and are treated impartially with their Muslim counterparts (Marglin 2017).

However, Nigeria has been compromised. Although there are efforts from the grassroots to advance cooperation between conflicts and co-existence, tensions and clashes are inevitable. On the co-existence side, both conservative Nigerian Muslims and Christians share a standard view on the prohibition of social crimes, such as alcohol consumption, gambling, and homosexuality, as opposed to the Western legal system. Non-Muslims in Nigeria have welcomed the adoption of Islamic law to eliminate the high trend of social crimes. Interestingly, supports of the sharia implementation seems to be genuine and non-political. It is stated that, for moderate Christians, "although there is the existence of what so-called the selective resistance, not all aspects of the Islamic Sharia should be challenged by Nigerian Christians." The Governor of Zamfara, Ahmed Sani, stated that the Christians in that province are not all worried about the implementation of Sharia because its goal is not to create an Islamic state (Ludwig 2008).

Studies on the sharia application in Aceh were conducted by Ichwan (2007), Feener and Cammack (2007); Aspinall (2008); Buehler (2008). Among the explanations provided by those studies are: first, the sharia implementation in Aceh has been the local leader's political consolidation, especially to explore financial resources and build power. The national elites use Islamic law as a strategy to resolve conflicts and win the election. Furthermore, the sharia implementation cannot be separated from the central government efforts to use a religious approach to solve the prevalent separatism conflict in Aceh. Thus, the Indonesian government has granted special autonomy for Aceh to implement Sharia, including *jinayat* (criminal law) (Kamaruzzaman, 2009; Siregar 2009; Uddin 2010; Surbakti 2010; Safrilsyah 2012; Khamami, 2015; and Salim 2015).

Second, Islamic law implementation can be seen as a social transformation project or reactive steps to the perceived "modernity crisis" and/or political intrigue competing for state power control. Recently, the implementation of the Islamic Sharia is closely related to the configuration of moral authority, law, and states power

in the current global order (Feener 2012). Third, the Islamic law implementation in Aceh has failed to respond to the demands of the Acehnese people over human rights violations (Miller, 2004). The adoption of the Islamic Law cannot be seen as a form of Islamic revivalism or a manifestation of Islamic radicalization. However, Islam has strongly influenced Acehnese politics, with the history of the Darul Islam rebellion. Even further, the QJA is likely to cause intolerance, leading to the violation of fundamental Human Rights and the 1945 Constitution, guaranteeing every citizen the right to embrace and practice his/her religion (Danial 2012). Fourth, the ulama (Islamic scholars) has benefited from the QJA implementation, as it has leveled up their authorities against the secular authorities. Then, the ulama's authority is strengthened by the establishment of the Ulama Consultative Council (MPU) (Shaw 2008).

Fifth, public spheres dominated by the Islamic identity have impacted non-Muslim women in Aceh. Although they remain independent and are not subdued by Islamic values and Muslim majority identities, the Christian women's agencies are still critical. At the individual and collective level, they always have a way of enunciating the agencies as objects, albeit at different levels, of the socio-cultural structure surrounding them. The objectification process of these structures creates multiple agencies: a condition in which one individual expresses more than one variant of agency, such as a combination of obedience and resistance, or capability and powerlessness (Ansor 2019).

Sixth, QJA-related studies tend to ignore non-Muslims' perspectives on the issue. Islamic law is often leading to the disruption of religious freedom and harmonious relationship between Muslims and non-Muslims. Ideally, Sharia should protect both Muslims and non-Muslims (Uddin 2010, Marzuki 2010). A study by Qurtuby reveals Muslim-Christian relations in Aceh. This study sees non-Muslims' negotiations with Muslims as a collective identity in Aceh Singkil and Langsa (Qurtuby, 2013). Srimulyani exposes the response of the Chinese ethnic group facing the reality that they cannot live exclusively with other groups in society, especially with the local Muslim community. However, non-Muslim Chinese people conceive and accept the positivity of the Islamic law applied in Aceh (Srimulyani et al. 2018). The most recent study is citizenship reconstruction based on Islamic law and religious ethno-nationalism and its impact on minority rights. Religious ethnonationalism creates citizenship based on religious affiliation, which in the case of Aceh is Islam. Muslims are considered hosts full of rights, while non-Muslims are merely guests (Ichwan et al. 2020).

Research on Islamic law in Aceh, discussing legal perspectives and their relation to non-Muslims, has not received much attention in the previous studies. In recent days, legal cases found are mainly civil cases, specifically in matters of contract settlement through both national and international civil law (Hafliyah and Mujibus-salim 2020). Therefore, this study focuses on non-Muslims' choice and submission to Islamic law, especially QJA implemented by the Sharia Courts instead of following the KUHP, the District Courts (Pengadilan Negeri). This study presents a unique phenomenon of non-Muslims facing Islamic criminal law, implemented exclusively by Aceh Province, within the framework Civil Law system.

Islamic Law in Aceh

Shari'a is defined as a more superior law than the secular law because the first contains moral and religious values capable of providing justice, welfare, and stability in people's lives (Cardinal 2005). In this regard, Islamic law is characterized as a divine law revealed through the Qur'an and applied by Muslims to achieve the Islamic truth values (Cardinal 2005). Salaymeh (2015) states that Islamic Law refers to scholars' interpretation in the form of fiqh (Islamic jurisprudence) and divine law in the form of shari'a. In line with this, Alsheikh (2011) says that Islamic Law has four sources: The Qur'an, Sunnah, Ijma' (ulama agreement), and Qiyas (reasoning by analogy).

Political, legal, and social aspects of all Islamic countries are deeply rooted in Islamic law as the governing factor. Islamic law is considered the most distinctive manifestation of Muslims' way of life (Badar 2011). The difference between Islamic law and other legal systems is in the aspects regulated by Islamic law but are absent in the others, such as worship, moral beliefs, family issues, financial transaction, criminal law, government, and international relations (Al-Dawoody 2017). According to Ayoub (2016), Islamic law is represented as a pre-modern codification (set of rules, guidelines, and laws) practiced in Muslim societies. Coulson (2017) writes that Islamic law and state law can impose sanctions based on Islamic values. In line with this, Pedrioli (2012) states Sharia and fiqh are Islamic Law branches. Sharia is considered a perfect, universal, eternal, and unchanging divine law.

Meanwhile, fiqh is the scholars' interpretation originating from the Qur'an, Sunnah, and ijti-had, which are dynamic. As a proper regulation for states, Ijti-had has changed into a Qanun form, as in Aceh. In the context of the Acehese experience, the QJA is the product of Acehese ulama, received state legitimacy through the Aceh District Representative Council (DPRA) that then passed by the local government through the Aceh Regional Regulation. The implementation of the Islamic Law in Indonesia through the Qanun is legally based on Law Number 44 of 1999 concerning the Implementation of the Privileges of the Special Region of Aceh, Law Number 18 of 2001 about Special Autonomy of Aceh Darussalam, which was later revoked with the enactment of Law Number 11 of 2006 about the Governance of Aceh. This law stipulates that the Aceh Government has the authority to apply the Sharia through the Qanun *Jinayat*. Nevertheless, this authority should not have conflicted with the Constitution and state regulations. Aceh applies three overlapping legal systems: (1) the Qanun *Jinayat*, (2) the Acehese customary law, and (3) The National Criminal Code.

The Special Autonomous Region of Aceh is the most complex experimental area for sharia implementation in the contemporary world. Islamic law in Aceh is accommodated in the form of regional regulations, known as Qanun (Feener 2012). The QJA stipulated that Aceh has to deal with 'uqubat (punishment) for criminal acts offenses related to khamar (liquor), gambling, and khalwat (unlawful proximity between a man and woman) (Chambert-Loir 2017). Ahyar (2017) defines Qanun *Jinayat* as a unit of sharia criminal law applied to the Acehese

people. Qanun *jinayat* also regulates *Jarimah* (actions prohibited by Islamic law), its perpetrators, and uqubat (penalties imposed by a judge). Feener (2012) adds that the Aceh Sharia Service (DSI) coordinates with other essential institutions in the application of Islamic law in Aceh: The Sharia Court (Mahkamah Syar'iyah/MS), the Ulama Consultative Council (Majelis Permusyawaratan Ulama/ MPU), and the Sharia Police (Wilayatul Hisbah/ WH).

Minority/Majority Status

Mahmood (2012) defines minorities as those who accounted for less than 50% of the population. The minority status is generally given to small groups of people who have striking differences compared to larger groups. Meanwhile, according to Yap Thiam Hien, minorities are not determined by numbers but by the treatment of others (Fadhli, 2014). In this regard, societies are divided into sub-groups, resulting in the emergence of majorities and minorities. Groups' status and dominance are closely linked to ethnicity and religious characteristics that define subgroup boundaries (Dahinden and Zittoun 2013; Zeromskyte and Wagner 2017). Minority group members tend to experience social problems in two complementary ways. First, they may experience personal deprivation: discouraging feelings on whether they belong to societies. Second, they may perceive group-based deficiencies: The perception that individuals from minority groups are likely to experience unequal opportunities (Van Prooijen et al. 2018). Nonetheless, in some contexts, minority religions comfortably assimilate and lose their distinctions with majority religions. However, the latter typically retains their control over the civil and political spheres to curb access to the former (May and Smilde 2016).

Sahu et al. (2012) point out that the minority status is commonly determined based on race and ethnicity (white, non-white), religion (Catholic, Non-Catholic, Judaic, Islam), language (English, non-English), and nationality (Irish, Japanese, American). The consequences of embracing such a status vary, including conflicts and discriminations. Similarly, Cesari (2013) states that religious discrimination can occur in ethnic conflicts where ethnic minorities also become religious minorities. Saiya (2019) argues that individuals to whom minority religious communities belong are likely to suffer and oppressed by legal discrimination, laws, or official policies that hinder or prevent them from practicing their beliefs. The majorities have the power to legitimize government authority (Kaiser 2016). Inevitably, the states act as the prominent supporter of the majorities by providing them privileges and the ability to regulate religious or political life, which, in turn, could exacerbate the hardships of religious minorities (Finke and Harris 2012). Evidently, in Aceh, the existing legal crime is the Qanun *Jinayat* (Islamic Law), favoring the majority.

The implementation of the Qanun is experiencing stumbling blocks. Some parties assert that it potentially causes intolerance which then leads to the violation of fundamental Human Rights. The reason is that the Qanun is against the 1945 Constitution, which guarantees every citizen to embrace and practice his/her religious teachings (Danial 2012). In line with that, Fadlia (2018) demonstrates that the QJA, which came into effect on 23rd October 2015 in the Veranda of Mecca (another

name for Aceh), shows a tendency of women discrimination and unable to protect Acehese women from violence. Consequently, such ineffectiveness strengthens Qanun's provision as the driven way of women discrimination and criminalization. Likewise, Ulya (2016) proves that the application of the Qanun *Jinayat* has received criticism from human rights activists who consider that the substance of the Qanun is conflicting with higher regulations and segregating the rights of the citizens.

Rational Choice

Rational choice theory cannot be separated from human nature. Hinnells and Hinnells (2005) stated that humans are creatures who act according to their natural characteristics. Humans always try to pursue what they consider to be the best option. Humans also always try to achieve the goals they want by considering how much loss and gain they will get. For Hinnells and Hinnells (2005), these choices then shape economic thinking and the elements of exchange that exist in Psychology. That rational way of thinking navigates humans always to try to see the best choices for the benefit of their lives. The growth of modern economic thought accompanied the development of this thought after the war and in times of crisis (Foy et al. 2018). It then brought rational choice into a view that was quite logical to understand and be applied in daily life. In a number of studies, this term is seen as a manifestation of a person's behavior and actions (Khalil 2017; Kliemt 2018; Katharina et al. 2019; Blossfeld and Prein 2019), and his/her preferences and representations of socio-cultural groups (Khalil 2017; Abdi 2018), as well as a normative form indicated by the existence of policies or social norms (Khalil 2017; Davis 2018). The rational choice formation is based not only on the nature and thoughts of an individual, but also on the beliefs, social, and cultural environment, shaping the human personality itself (Mutch 2018; Inglehart 2018). In addition, there are also other factors, such as the strength of collective norms and pressures for social conformity, the functional needs of society, and the effect of social tension in society (Foy et al. 2018).

According to Abdi (2018), there are two approaches to rational choice: first, the externalist rational choice, where social identity does not become a preference in the formation of rational thought; second, internalist rational choice, namely, the consideration of social identity in rational thought as vital in explaining social action. The involvement of an actor is essential in determining the approach. According to Abdi (2018), an actor has to consider a limited set of alternatives, look at the consequences (Khalil 2017; Abdi 2018), how it fits with the current interests and values, and whether the decision is the optimal choice from several available options. Therefore, in rational thinking, an actor needs to be aware of the available choices and the ability to achieve goals and determine his logical analysis to achieve the goals of his best choice. This was also conveyed by Herfeld (2020), who explained that rational choice must be carried out by weighing the available options based on the preferences and beliefs that they have and carried out in an axiomatic and theoretical way.

However, as Abdi (2018) described in his writing, this form of rational thinking seems entirely subjective and has obstacles. In reality, many are limited by the existence of institutions and cultural influences and psychological limitations in

considering the best policies and options. Similarly, Abdellatef (2021) argues that some rational thinking values need to be evaluated, namely, personal interests in the form of money and internal consistency, space for one's values, and goals and motivation decision-making process. In addition, because of the limited power of non-calculative reasoning, individual motives may seem irrational in conventional contexts. In the case of Qanun in Aceh, it is considered an effort to attract public sympathy in the contexts of the elites' political campaigns. This policy, which is considered a rational choice, seems to encourage the populist elites only to attract sympathy (Akmal et al. 2020). The elites seem to pursue their interest rather than public interests. Even with its limitations, a rational choice can generate what James Colemann called a form of micro-mobilization (Foy et al. 2018). As presented by Khalil (2017), social norms can be contextualized to see Qanun Jinayah in Aceh, which becomes a manifestation of rational thinking, impacting Acehnese people's social transformation.

Method

This qualitative research uses a normative-empiric approach (Diantha, 2016; Efendy and Ibrahim, 2016). Fieldwork was conducted in Aceh between 2017 to March 2020 with three visits. Data were taken from observation, interviews, and study of documents, consisting of case files and Sharia Courts' decisions. From 40 cases handled by 14 Sharia Courts in Aceh, 52 non-Muslims committed violations against QJA. There were 12 Muslims who were jointly involved in the acts of *Jarimah* with non-Muslims. Non-Muslims involved in criminal cases included Christians and Buddhists. Hindu people were not included in this study as no cases involved them. Due to time constraints, the focus of this study is on selected cases that received massive national, regional, and international attention.

Data were collected by visiting Sharia Court in Jantho, Sharia Court in Banda Aceh, Sharia Court in Meulaboh, Sharia Court in Lhokseumawe, Sharia Court in Takengon, Central Aceh, Sharia Court in Bireun, and Sharia Court in Kuala Simpang. These visits aimed to seek and examine the documents and verdicts issued by the Sharia Courts and observe the implementation of caning for non-Muslims. The verdicts were classified based on religious groups and the *Jarimah* cases (criminal acts). The in-depth interviews were carried out with non-Muslims who made legal choices and voluntary submission to Sharia. They were AS and AA from Banda Aceh; RS in Takengon; MH in Meulaboh; and DN, A, and F in Lokseumawe. Other individuals came from authorities such as Judge A. Latif from Banda Aceh Sharia Court; Judge Abdullah, and Judge Yusnardi from Jantho Sharia Court; Zuhrah and Munawar from Sharia Service; Muslim Ibrahim, the Chairman of the Ulama Consultative Council; and Syahrizal Abbas, an Acehnese prominent figure. Furthermore, this study analyzes various documents issued by the Sharia Courts, police, and prosecutors.

Jarimah has been regulated in Qanun Number 6 of 2014 about the Law of *Jinayat*. This Qanun consists of 10 (ten) chapters and 75 (seventy-five) Articles. This Qanun contains the principles of Islam, legality, justice, balance, benefit, protection

of human rights, and society education. Qanun *Jinayat* regulates three aspects: criminal offenders, criminal acts (*Jarimah*), and punishments (*'uqubat*). The Sharia Court is the only government agency that is authorized to examine, decide, and settle cases in the field of family law (*al-ahwal al-syakhshiyah*), economic transactions and contracts (*muamalah*), and criminal law (*jinayat*) in Aceh. In the field of *jinayat*, Sharia Court has the authority to examine, decide, and resolve twelve kinds of criminal acts: liquor (*khamar*), gambling (*maisir*), the act of intimacy between unmarried couples (*khalwat*), intermingling of men and women (*ikhtilath*), adultery, sexual harassment, rape, accusing a person of committing adultery (*qadzaf*), homosexuality (*liwath*), lesbianism (*musahaqah*), violations of Aceh Qanun Number 8 of 2015 concerning the Development and Protection of faith (Aqidah), and violations of the Aceh Qanun Number 8 of 2016 regarding the Halal Product Guarantee System.

There are three conditions for non-Muslims to be considered by the QJA: first, a non-Muslim commits *jarimah* side by side with a Muslim; second, non-Muslims choose to submit themselves and abide by Qanun *Jinayat*; third, although the committed *jarimah* is not regulated in the Criminal Code, non-Muslims can still be punished under Sharia Law following the mandate of Law no. 11 of 2006 about the autonomous status of the Aceh Government in determining other types of punishment.

Results

The Motives for Choosing the QJA Laws by Non-Muslim Minorities

The choice of Sharia by non-Muslims has become a new trend in Aceh, especially when they commit *jarimah* regulated by the QJA and tried in the Sharia Court. Non-Muslims are given a choice to follow the Criminal Code applied in District Courts or QJA in the Sharia Courts. With the Criminal Code, the process will be delegated to the Police or the prosecutor's office. With the QJA, the process starts with the investigation by the Police, then continues to the Attorney General's Office before proceeding to the Sharia Courts. Interestingly, many non-Muslims committed *jarimah* to show their conscious submission to QJA. Such practice can be confirmed by Aceh Sharia Court statistical data from 2016 to March 2020, as shown in the following table.

Table 1 shows the general trend of choice of law from 2016 to 2020. This shows that there were 40 cases linked to 52 non-Muslim perpetrators. The details are as follows: Banda Aceh (5 cases), Meulaboh (4 cases), Tapaktuan (1 case), Jantho (1 case), Sabang (2 cases), Sigli (1 case), Bireuen (1 case), Lhokseumawe (2 cases), Takengon (2 cases), Kuala Simpang (1 case), Blangkejeren (1 case), Kutacane (10 cases), Singkil (7 cases), and the City of Subulussalam (2 cases). In terms of religions, the perpetrators of *Jarimah* were Christians, Catholics, and Buddhists, constituted 24, 21, and 7 cases, respectively. Besides, 12 of them jointly committed the *jarimah* with Muslims.

Table 1 Non-Muslims to stand up in the Sharia Court based on religion 2016–2020

The Sharia Court	Year	Number of cases	Religions					Number of convicted
			Catholic	Protestant	Buddhist	Hindu	Islam	
Banda Aceh	2017	1	1					1
	2018	3	3					3
	2019	1			1			1
Meulaboh	2017	1			1			1
	2018	3	1		2			3
Tapaktuan	2018	1		5				5
Jantho	2017	1			2		3	5
Sabang	2017	2		2				2
Sigli	2018	1		1				1
Bireuen	2020	1	1				1	2
Lhokseumawe	2018	1	1					1
	2020	1			1			1
Takengon	2016	1		1				1
	2020	1	1					1
Kuala Simpang	2016	1	1				2	3
Blangkejeren	2019	1		1				1
Kuta Cane	2016	3	2	6				8
	2017	1		1				1
	2018	5	1	4			1	6
	2020	1	1				1	2
Singkil	2018	4	3	3			3	9
	2019	2	1				1	2
	2020	1	2					2
Subulussalam	2020	2	2					2
	Total	40	21	24	7		12	64

In terms of educational background, 46% of them are Senior High School graduates; 25% are Junior High School graduates; and 19% are Elementary School graduates. With regard to their professions, the perpetrators are dominated by farmers (38%), self-employers/entrepreneurs/traders (27%), employees/security (10%), housewives (9%), driver/labors (8%), civil servants/the government officials (4%), students (2%), and those who have not worked yet (2%).

These non-Muslims prefer to embrace the QJA because of its efficient and low-cost process, cultural and communal consideration, and high trust in the Sharia Courts in Aceh.

First, the legal process upheld by the Sharia Courts tends to be efficient and low-cost. Non-Muslims litigating at the Sharia Court perceive that the legal process from the case acceptance, examination, to a final decision only takes a short period, with a simple process. For example, RS, a 60-year-old Christian woman

(Case No. 1/JN/2016/MS), reveals her reasons for choosing the Sharia Court. She maintained:

“I chose to settle my case using the Qanun *Jinayat* at the Sharia Court because I believe in its effective and efficient legal processes since it did not take much time. Another factor is that I could return to my routine as a trader as soon as I completed the caning punishment. It would not have happened if my case was proceeded under the Criminal Code at the public Court, because I would experience prevailing violence treatments through imprisonment” (RS, Interview, 2017).

Similar testimony acknowledging the conscious submission to the QJA comes from DN, a 56-year-old Catholic woman. She explained that:

“Nobody has forced me to choose a caning sentence. For me, with the caning sentence, my case will be quickly resolved. It would not be the case if I were proceeded by the general Court since prolonged imprisonment is awaiting” (DN, Interview, 2019).

Following those two individuals, AS, a 56-year-old Buddhist and Chinese descent and living in Peunayong, Banda Aceh, revealed a similar story. He points out that:

“For non-Muslims like us, litigating at the Sharia Court is way too effective and efficient. It takes an abridged period, allowing us to leave the Court as soon as all processes are over. Conversely, if we go through the District Court with imprisonment, it will take much time and cost all at once” (AS, Interview, 2017, 2019).

With AS, who also committed the QJA violation, AA, a 60-year-old Chinese and Buddhist, prefers to stand trial in Sharia Court. AS and AA signed a statement that both of them were ready to be prosecuted under QJA at Sharia Court. In the trial, as both stated, the defendants were given a choice to resolve their cases based on QJA or the Criminal Code. AS and AA even volunteered to make the following statements:

“In connection with *maisir* or gambling type of cockfighting violation, on Sunday 1st January 2017 at around 17.00 WIB, to be precise in a garden at Mata Ie village, Montasik sub-district, Aceh Besar district;

In connection with the preceding and accordance with Article 5 of the Aceh Qanun (law) Number 6 of 2014 concerning the Law of *Jinayat*, I hereby declare that the cases that I was suspected of were gambling, cockfighting, which were included in the *Maisir* (Qanun) violation as referred to in article 18 of the Aceh Qanun Number 6 of 2014 concerning the Law of *Jinayat*, which I am currently a Buddhist so that I shall be processed in accordance with the Qanun in force in Aceh.

Thus, I made this statement with consciousness and, in fact, without any coercion from any party, and to strengthen this statement; I also signed below” (Case File Number: BP/02/II/2017/Reskrim) (Fig. 1).

Second, another reason for non-Muslims' preference of QJA over the Criminal Code is economic motives. AS stated: “I chose Qanun *jinayat* and the Sharia



Penganut Kristen dihukum cambuk di Aceh: 'Saya pilih dicambuk ketimbang dipenjara'

7 Agustus 2018



Fig. 1 Non-Muslims in Aceh prefer caning, Source: BBC News Indonesia, 7th August 2018. Christians caned in Aceh: “I’d rather be whipped than jailed” BBC News Indonesia, 7th August 2018 edition

Court because I saw the impact (of the trial process) on my family’s economy. Just imagine if I was in prison, for example, for one year, during that time, I could not work, my business closed, and my family income became an issue. Moreover, there are costs to be spent during the case processing. For example, I need to pay for a lawyer service, and other expenses known to the public” (AS, Interview, 2017, 2018).

RS also acknowledged the same consideration: “They might compare it with an imprisonment sentence imposed by the District Court. For example, for one-year imprisonment, how much losses and suffering do they experience? The social costs are higher, added with the disruption in running my shop in this village” (RS, Interview, 2017, 2018).

DN also sees the efficiency side of solving the case in the Sharia Court compared to the general Court:

“I don’t know what will happen if my legal problem is resolved under the Criminal Code through a public court. I am free from this and that money, free from bribery, levies, and even paying cases. Besides, I have no longer need to find a lawyer to defend me in Court if I choose to resolve it through Sharia Court. Furthermore, my family incomes and my work will not be disturbed for

a long time with the legal process at a Sharia Court” (DN, Interview, 2017, 2018).

Third, an additional reason is the ignorance of the litigants regarding the role of advocates in the criminal justice process. The explanations for these defendants’ preference of not using lawyers are the perpetrators of *jinayat* feel ashamed if their family and other people know about their cases. Even the defendants refused to send a letter to their family and signed a statement refusing an advocate companion during the initial and further investigations. Furthermore, in the Qanun, *Jinayat* Procedural Law does not clearly explain whether the legal aid is available free of charge as the Criminal Procedure Code. Apart from that, there are differences among the legal enforcers regarding the status of legal advisory assistance, whether it is a right or obligation; and whether it is compulsory or not. They feel more confident to be tried without advocate assistance, as they believe that the service will cost a lot. Even if some know the available free service, they perceived that free services would not be optimal.

Although it is undeniable that the state provides lawyers for free, the perception of non-Muslim defendants is that assistance through unpaid lawyers will not be optimal in defending their interests. In general, the Indonesian Islamic Courts are identical to Islamic civil courts. Only in Aceh they are given authority to handle Islamic law-based criminal cases. This is stipulated by Qanun of the Nanggroe Aceh Darussalam Province (KMA/070/SK/X/2004). Of the ten criminal acts (*Jarimah*) regulated in the Qanun, all are related to a person’s moral life. There are only two *Jarimah* that cause victims in these acts, namely, rape and sexual harassment. The rest are acts that are carried out voluntarily by the suspect or defendant. Because the case is more related to morality, the process usually begins with surveillance and raids. As far as possible, the suspect or defendant avoids lying, and the case is resolved quickly and at a low cost.

Fourth, the reason for choosing QJA by non-Muslims is related to the influence of cultural and community environment. This is because non-Muslim minorities culturally recognize, accept, and adapt to socio-religious values in Aceh. AS who lives in the Peunayong area, Banda Aceh revealed that:

“For me, the choice of law is related to my respect for the culture and custom of the Acehnese people. My parents, grandparents, and I have lived and interacted with the people of Aceh and their culture peacefully. This choice of law is also proof of my respect for the law applied in Acehnese society. For me, the Qanun is not a problem, and I can accept it in my daily life.”

AS even supports the application of Islamic law in Aceh openly, and he is not bothered by the implementation of QJA. “If possible, the Qanun should also be applied in the form of regulations on bribery, collusion, corruption and other crimes, so that the society is more orderly and freer from community social problems” (US, Interview, 2017). This opinion was also acknowledged by AA (AA, Interview, 2017).

Fifth, there has been a high level of trust in the Sharia Court institution. For non-Muslim minorities, Sharia Court is the hope of justice seekers to get justice

in solving their cases when they commit violations against QJA. For non-Muslim minorities, Sharia Court is one of the legal choices because it has a good record and a high level of community trust. According to AA:

“Amid people’s apathy towards the justice system and law enforcement, I would rather choose Sharia Court as my choice because even though I am a Buddhist, I feel that the Sharia Court can provide justice for me as a Buddhist” (US, Interview, 2017, 2018).

This is in accordance with the opinion of the Chief Judge who handles non-Muslims at Sharia Court. During the trial, the Sharia Court’s judge always asks non-Muslim litigants, “Do you want to submit to the Qanun of the Criminal Code? They chose the Sharia Court and Aceh Qanun.” They have more trust in the Sharia Court (Qanun *Jinayat*) than the Criminal Code due to the less complexity of the legal process at the Sharia Courts and their reputation of being clean from corruption, collusion, and nepotism (Abdullah, Interview, 2017).

This is confirmed by the community satisfaction index towards the Sharia Courts, which is “very good” with high public trust (Sharia Court Survey, 2018–2021). The perception index of the Sharia Courts in Aceh in 2020 reaching 95.76 or in the “outstanding” category from the scale of 81–100. This implies that Sharia Courts as a judicial institution are relatively free from corruption. Meanwhile, in 2021 the Sharia Courts of Aceh received the index value of 97.50 or 3.90, implying its corruption-free status (Sharia Courts Corruption Perception Index Report for 2020–2021).

These four motives reflect the high level of public trust, including non-Muslims, in Aceh in Sharia Court. In turn, this makes non-Muslim citizens choose QJA over the Criminal Code and leave the legal process entirely to Sharia Courts. This is in line with the study by Sumner and Lindsey (2010), showing that the Islamic Court in Indonesia has played a more significant role in providing easier access to justice than other Courts, especially for the vulnerable groups.

Justice Process and Legal Certainty for Non-Muslim Minorities in the Sharia Court

The judicial process for the QJA violators is regulated by Qanun Number 6 of 2014 concerning *Jinayat* Law and Qanun Number 7 of 2013 concerning *Jinayat* Procedural Law (Mannan 2018). Case settlements in both Sharia and District Courts involve similar law enforcers, such as Police, prosecutors, and courts. The difference is the Civil Service Police Unit (Satuan Polisi Pamong Praja) or Wilayatul Hisbah. The processes are as follows. First, WH interferes with the case based on community reports or direct findings. Second, WH arrests the perpetrators. Third, if the WH finds out that the perpetrators are non-Muslims during the investigation, WH official will ask them to declare submission to the QJA. Fourth, the investigation is continued by seeking a minimum of two pieces of evidence, and after that, the perpetrator is given the status of the suspect. Fifth, the Satpol PP/WH (the Civil Service Police Unit) investigator delegates the case to the public prosecutor. Sixth, the public prosecutor conducts a further investigation. If it is found that the previous investigation is not complete yet, the file will be returned to the investigator. Seventh,

the police submit evidence and the defendant. Eighth, the prosecutor draws up an indictment. Ninth, the prosecutor delegates the case to MS (Sharia Court). Tenth, the court examines the case evidence in the trial and decides the case. Eleventh, the prosecutor executes the decision; if the punishment is in the form of whipping, then it is carried out in public (Yudha, Prosecutor, Interview, 2021).

In principle, the case settlement process between the Sharia Court and the District Court is almost the same, especially in formal law. The *Jinayat* procedural law primarily refers to the Criminal Procedure Code, with a slight difference. The difference is only in the case of adultery, where the Sharia Court requires four direct witnesses. An oath before the judges, confessions, and evidence of instructions are not applicable at the Sharia Courts.

The following table shows the comparison of sentences for criminal acts imposed by QJA and the Criminal Code. It can be seen that sentences determined by QJA are proven to be lighter and efficient.

The principle of fair trial, equality before the law, and justice are well maintained by the Sharia Courts. Moreover, the trial process for Muslims and non-Muslims at the Sharia Courts is equal. The following table shows the comparison of sentences received by Muslims and non-Muslims offenders.

Suppose there are differences in the types and numbers of sentences in a similar case. In that case, it is because of the different levels and numbers of offenses committed by non-Muslims (see Table 2). The equality between Muslims and non-Muslims can be seen in Case Number 1/JN/2017/MS-Jth in the Maisir (gambling) case. The perpetrators are two Buddhists and two Muslims. The Muslim perpetrators received a harsher sentence because they had escaped from the legal process. AS and AA, Buddhists and Chinese, received nine whips, while RZ and RR were sentenced to 11 months of imprisonment. The number of whips has been reduced with their period of incarceration.

Table 2 Comparison of sentences through Mahkamah Syariah (Sharia Court) or Pengadilan Negeri (District Court)

No.	Criminal offense	Type of punishment	
		Qanun	KUHP
1.	Khamar (an intoxicating drink)	40 whips	15 years in prison
2.	Maisir (gambling or betting)	12 whips	10 years maximum
3.	Khalwat (the act of intimacy between unmarried couples)	10 whips	Not Regulated
4.	Ikhtilat (intermingling of men and women)	30 whips	Not Regulated
5.	Adultery	100 whips	9 months in prison
6.	Sexual Harassment	45 whips	9 years maximum
7.	Rape	125 whips	12 years in prison
8.	Qadzaf (accusing people of adultery)	80 whips	Not Regulated
9.	Liwath (Homosexuality)	100 whips	Not Regulated
10.	Musahaqah (Lesbianism)	100 whips	Not Regulated

Source: Data processed from the QJA and KUHP

Munir, a Sharia Court judge, assessed that non-Muslim minorities tend to seek justice and legal certainty at Sharia Courts. He pointed out:

“... So far, I have not received a complaint or a pre-trial request, indicating that a defendant objected to stand trial in Sharia Court. If I may judge, the problem of justice is relative. This means that the non-Muslim parties do not object to the trial process. We can say that they are fair, but they are still making legal efforts. However, we cannot confirm that they made legal remedies whether the punishment they received was severe or low or based on whether they believe it or not. Yet from several cases, I may describe that, apart from Meulaboh, many chose to be tried by Sharia Court based on Qanun. So, it seems that these non-Muslims believe more in Qanun and feels its fairness” (Munir, Interview, 2017 and 2019).

The table above shows that most cases handled by the Sharia Courts involving non-Muslims were gambling. The reason why two other cases are very limited is that drinking alcoholic beverages from non-Muslims is not prohibited. The alcoholic beverage offense in that table is the selling of the products to Muslims, in which alcoholic beverage is prohibited for Muslims. As for the case of adultery, the social sanction for this case is more serious than other offenses. In the Sharia Court, the punishment is by whipping in public. This public exposure might be hard for the offender (Table 3).

The objection to the court decision can also be seen through an appeal. Judges are obliged to read out the possibility of appeal as the rights of every defendant. This appeal can be submitted within 14 days after the pronouncement of the verdict. Of the 40 cases involving non-Muslim minorities, all of them accept the decisions and have no appeal. This indicates the degree of satisfaction of the parties in accepting

Table 3 Comparison of Sentencing Verdict among Non-Muslims and Muslims at the Sharia Court

Years	Initial/Gender/Age	Religion	Case	Punishment	
2020	MM/M/22 years old	Christian	<i>Ikhtilat/adultery</i>	Whip	30
	NAF/FM/18 years old	Islam	<i>Ikhtilat/adultery</i>	Whip	30
	DE/M/25 years old	Christian	<i>Maisir/gambling</i>	Whip	25
	ES/M/23 years old	Islam	<i>Maisir/gambling</i>	Whip	25
2019	BP/M/24 years old	Christian	Adultery	Whip	100
2018	DI/FM/22 years old	Islam	Adultery	Whip	100
	AM/M/37years old	Islam	<i>Maisir/gambling</i>	Whip	11
	TH/M/41 years old	Christian	<i>Maisir/gambling</i>	Whip	12
2017	AS/M/57 years old	Buddhist	<i>Maisir/gambling</i>	Whip	10
	AA/M/60 years old	Buddhist	<i>Maisir/gambling</i>	Whip	10
	MA/M/35 years old	Islam	<i>Maisir/gambling</i>	Whip	10
	RR/M/26 years old	Islam	<i>Maisir/gambling</i>	Prison	11 months
	RZ/M/26 years old	Islam	<i>Maisir/gambling</i>	Prison	11 months
2016	RS/M/60 years old	Protestant	<i>Khamar/wine</i>	Whip	30

Source: Data is processed from Case Statistics at the Sharia Courts of Aceh from 2016–2020

the final court decisions (Hidayatullah, Sarong, Ali, 2017). This choice can also be considered non-Muslims' rational choice over the QJA as they consider it more efficient, low-cost, fairer, and relatively free from corruption.

Public Resistance to the Choice of Legal Process (Qanun Jinayat Aceh) by Muslim Minorities

Public resistance to the choice of law and the application of QJA to non-Muslim minorities can be seen from the response such implementation and the punishment of non-Muslim defendants by caning. Such response can be classified into two:

First, pros and cons regarding the choice of law and caning sentences for non-Muslims also emerge among the Acehnese people. Christian leaders encourage their congregation to remain obedient to the state laws. However, the legal choice decisions and submission to QJA are left to the individual choice (David, Interview, 2018). The Buddhist community chooses the Aceh Qanun. The reason is that the sanctions will "immediately end" compared to several-month imprisonment imposed by the Criminal Code. For Buddhists, QJA does not evoke any problems. They think that QJA contains moral values in Buddhist teachings (Hasan, Interview, 2018). A similar opinion is also conveyed by Hindus in Aceh, stating that QJA is acceptable because it teaches good things (Sinaga, Interview, 2018).

The refusal came from the Muslims community. Otto Syamsudin Ishak, a resident of Aceh, stated that the punishment imposed on non-Muslims deviates from the original purpose of Islamic Sharia. "This shows that state law does not apply in [Aceh], so this is a shift in the application of Islamic law" (BBC News Indonesia, 14/4/2016). The same response also came from Woman Solidarity (Solidaritas Perempuan), Institute of Criminal Justice Reform (ICJR), Legal Entity Institutions (LBH) Jakarta, Indonesian Legal Aid Foundation (YLBHI), Kontras, Journalists Union for Diversity (SEJUK), the National Alliance for Unity in Diversity (ANBTI) Women Solidarity of Bungoeng Jeumpa Aceh (Solidaritas Perempuan Bungoeng Jeumpa Aceh), Alliance of Independent Journalists (AJI) Aceh, and LBH Aceh (Kompas.com, 23rd October 2016).

Second, responses come from outsiders: from the domestic and international community. The first external response is from non-Acehnese people in Indonesia. Several parties from outside Aceh protested against the implementation of Islamic law through the Aceh Qanun (Munawar, Interview, 2017). Human rights activists, women activists, and other community groups believe that the uqubat (punishment) of caning, carried out against non-Muslims is inappropriate and does not comply with the provisions of the articles in the Qanun (Latif, Interview, 2017).

The second is the response of the international community. The sentences handed down to two Buddhist people, AS and AA, and a Muslim defendant, RS, attracted international media attention. For example, Amnesty International condemned this decision because the Aceh Qanun was applied to non-Muslims and was considered violating human rights. The organization called for all local laws and regulations to

be repealed to ensure the compliance of these local regulations with international human rights law and principles.

The causes of these controversies are the consideration that the caning sentence violates human rights. Second, the implementation of caning reflects the non-enforcement of state law in Aceh. In other words, Aceh is not integrated with a national legal system, particularly in terms of the Criminal Code. In the context of the human rights debate, particularly concerning QJA and its advocacy for non-Muslims, some people are based on subjective judgments with the negligence of factual data (matamatapolitik.com, 31st July 2020). Among the reasons behind the rejection and opposition of QJA (Qanun *Jinayat* Aceh) is the limited understanding regarding the nature of jinayah law, which is to uphold public order and realize the primary goal of punishment. For Syarizal Abbas, jinayah law is the primary way to protect the Acehnese people from various immoral acts (Abbas 2015, xii).

Discussion

The non-Muslim choice of the QJA through the MS is the rational choice of non-Muslim minorities. Hinnells and Hinnells (2005) proposed that people always try to follow what they think is the best option. People also always try to achieve their desired goals by measuring what they will lose and gain. Hinnells and Hinnells (2005) argue that the choice then shapes economic thinking and the elements of exchange that exist in Psychology. This rational thinking leads people to choose what benefits their lives.

From the above explanations, at least four motives are underlying such rational choice of non-Muslims facing QJA. The first is related to the legal process considered fast, concise, and straightforward. The second is related to the economic motives where the defendants found the low-cost process, and they can immediately make a living after the “fast” sentencing process. The third is related to the belief that their submission to QJA is equal to the submission to the local culture and community. The last is the high degree of trust in the Sharia Court as one of the legal institutions in Indonesia. Responding to these beliefs, the Sharia Courts maintain their commitment to treating non-Muslims fairly and justly by upholding the principle of equality before the law.

The findings of this research seem to refute the argument that the application of Islamic law in Aceh violates human rights and discriminate against non-Muslims.

This article also proves that the choice of QJA by non-Muslims in Aceh is because of its trustworthiness, being less prone to bribery and corruption. Furthermore, the court process tends to be faster, cheaper, and more straightforward. The caning punishment emphasizes the educational aspects of sentencing (Mannan 2018). As argued by Suominen (2014), substantive legal certainty includes good judicial practice ethically and morally. This finding implies that, in the future, the legislative, judiciary, and executive should realize the importance of particular rules and application of choice of law and the state’s obligation to increase the capacity of Aceh’s Sharia Court.

Lyttle et al. (2011) maintain that cultural differences require active awareness of the parties between two different cultures through four sub-processes: combination, acculturation, deculturation, and assimilation. The circulation stage occurs when a new individual or group enters the environment with the primary association. This requires a process of socialization and compromise. The next stage, acculturation, occurs with the communication between individuals or two different groups. The third stage, deculturation, namely, the unification stage, occurs when two cultures unite into one.

During the observation of the caning process, the author found that if the convicted person is moaning in pain, the prosecutor gives a break, accompanied by an examination by a team of doctors. If the convicted person is injured, then, as part of the management of caning in Aceh, the process of caning is stopped (Zainuddin 2011). This is a benefit for Acehnese, both Muslim and non-Muslim. Saiya (2019) argues that religious minority communities suffer and are oppressed by legal discrimination. This study shows that the choice of Sharia Court by non-Muslims seems to refute the accusation of the QJA being discriminatory.

This paper is different from previous writings, which tend to see the negative side of the Sharia Regional Regulations implementation by the Sharia Court, placing non-Muslims as second-class guests, or dormant citizenship (Ichwan et al. 2020). Mohamoud (2021) stated that dominant culture is a product of the globalization process through inter-ethnic relations in the context of the structure of a place. This is clearly explained through the pattern of relationships between ethnic groups. It can be seen through some elements that mutually determine the relationship and the existence of social demographics. In addition, due to the dominance of local ethnic culture, the minority groups must form relationships with local dominant ethnic groups and adapt to the articulation of their respective cultures.

This paper looks at the positive side of non-Muslims dealing with legal issues in Aceh. As also pointed out by Ansor et al. (2016), the implementation of Sharia in Aceh in one area creates difficulties for non-Muslim minorities. Still, they do not face significant difficulties in other areas, such as in the Southeast Aceh part. This shows that there are still gaps in the relationship between Islam and other religions in implementing Islamic law in Aceh.

The search for a dynamic relationship pattern between Muslims and non-Muslims in the context of social interaction and equal rights in the area of law in Aceh needs to be continuously explored. This can be done in two ways: first, by prioritizing points of similarity and not differences in religion; second, by considering the locality of Aceh's identity in QJA to create a more just and locally applicable law. As Nurdin and Teganan (2019) emphasize, legal certainty is a principle that guarantees that the law will not be used carelessly and in a discriminatory way especially in the context of non-Muslim minority groups.

Conclusion

So far, the national and international communities have seen that the implementation of Sharia in Aceh discriminates against non-Muslim communities living in Aceh. However, a careful study on the implementation of QJA on non-Muslims shows that it has not always been negative. Non-Muslims involved in criminal cases and tried by the Sharia Courts show conscious submission to QJA. The reasons are related to their rational choice as the legal process offered by the Sharia Courts tends to be efficient, effective, and low cost. Moreover, the caning offers a faster sentencing process, which the perpetrators consider more effective

As a scientific paper that only addresses one dimension of Islamic Sharia in Aceh, this paper has many limitations. It offers an opportunity for future researchers, academics, and practitioners to continue this research. Research on the daily lives of non-Muslim minorities in Aceh is still open to various perspectives. The issue of comparability regarding Qanun Jinayah between regions and even countries is a research theme that can also be carried out. In addition, the search for a model that combines an Islamic legal point of view with the locality of Acehnese identity and siding with minorities is still an important issue in any attempt to create a dynamic and harmonious Aceh life that accommodates common interests regardless of religion, ethnicity, or tribe.

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Declarations

Conflict of Interest The author declares no competing interests.

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