



COMPARATIVE STUDY OF THE CRIMINAL ACTION OF ADDICTION IN ACEH QANUN AND BOOK OF CRIMINAL LAW

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Abstract

This study examines a comparative study of the crime of adultery in Aceh Qanun Number 6 of 2014 concerning the Jinayat Law and Article 284 of the Criminal Code which applies as positive law in the territory of the Indonesian state. This is as enshrined in Chapter VI of the 1945 Constitution of the Republic of Indonesia concerning Regional Government, Article 18 paragraph 5 which states that regional governments exercise the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the central government. From the results of the study, it was found that the comparison between the two laws lies in the elements of the crime of adultery, sanctions and procedures for applying the law to the perpetrators of the crime of adultery. In Aceh Qanun Number 6 of 2014 concerning the Jinayat Law, the adulterer was handed down 'Uqubat Hudud lashes one hundred times for married (muhsan) and unmarried (ghairu muhsan) adulterers. Meanwhile, in Article 284 of the Criminal Code, a maximum prison sentence of nine months is imposed on adulterers who are already bound in marriage.

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I. INTRODUCTION

The government system of the Unitary State of the Republic of Indonesia (NKRI) according to the 1945 Constitution of the Republic of Indonesia has recognized special or special regional government units, namely by granting regional autonomy. Regional autonomy aims to give the government in an area more flexibility to regulate and run the wheels of its own government in order to accelerate the realization of community welfare. (Purba, 2012, p. 652). This is as stated in Chapter VI of the 1945 Constitution of the Republic of Indonesia concerning Regional Government, Article 18 paragraph 5 which states that regional governments exercise the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the central government. Moreover in paragraph 6 is also stated that the regional government has the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks. (UUD 1945).

Aceh Province is one part of the Unitary State of the Republic of Indonesia which was given regional autonomy by the central government as the Special Region of Aceh through Law Number 44

of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh. (Rosyadi, 2014, p. 72).

This was followed by the enactment of Law Number 18 of 2001 concerning the Special Autonomy of Nanggroe Aceh Darussalam which reaffirmed the institution of Islamic law. (Al-Farugy, 2011, p. 3). This law states that it provides wider opportunities for the province of Aceh to manage its own household including economic resources, natural resources, human resources and applying Islamic law in social life. Furthermore, the presence of Law Number 11 of 2006 concerning the Government of Aceh (UUPA) which regulates Aceh's authority in carrying out its privileges in the field of sharia, including Jinayat (Islamic criminal law). This is the juridical basis for the birth of Islamic criminal regulations in Aceh which is commonly referred to as Qanun Jinayat. (Al-Yasa and Marahalim, 2006, p. 5).

Finally, some of the laws above have legitimized Islamic law in Aceh as the basis for various aspects of community life in a kaffah manner. This condition makes Aceh different from other provinces in Indonesia in implementing laws and regulations based on Islamic law. (Rosyadi, p. 73). The implementation of Islamic law in Aceh is a special thing in this modern era, where the state is allowed to implement its own legal subsystem. This is a reality that shows that empirically Islamic law in Aceh has become a living and developing value in Acehnese society (existing values) for centuries. (Nurdin, 2018, p. 357).

Therefore, studying Aceh, especially in terms of criminal law, is important. One of the arguments about the urgency of the study is because criminal law in Aceh is based on the ideological perspective of the religious community, namely Islam. However, in the application of Islamic criminal law in Aceh the scope is a province, not a country like Saudi Arabia, Iran and other Islamic countries that apply Islamic criminal law as a positive law. (Danial, 2015, p. 7).

Herein lies the uniqueness of Aceh as a province that is different from other provinces in Indonesia and in its implementation has spawned various qanuns.

Qanun or Aceh Provincial Regulation is a product of legislation that has binding power for all government administrators and the people of Aceh who are Muslim. After the issuance of Law Number 11 of 2006 concerning the Government of Aceh, the Aceh government has issued various qanuns relating to education, economics, justice, politics, and social affairs. In addition, qanuns related to the implementation of Islamic law in Aceh and qanuns related to Islamic criminal law were also issued. (Rosyadi, p. 73). The Islamic criminal law that applies in Aceh Province is the Jinayat law which is partly regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law which includes 10 main crimes (jarimah) namely khamr, maisir, khalwat, ikhtilath, adultery, sexual harassment, rape, qadzaf, liwath and musahaqah and 46 new types of criminal acts that provide a threat of caning for the perpetrators. This Qanun regulates the behavior of criminal acts of morality in accordance with

Islamic law in Aceh. This qanun is a consolidation of the three previous qanuns that were passed in Aceh in 2012 with the addition of more criminal offenses. (Purba, 2012, p. 654).

The implementation of the Islamic criminal law in the field of Jinayat in Aceh has been implemented and strengthened through the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia regarding the delegation of some authority from the General Court to the Syar'iyah Court in Aceh Province which was stipulated on October 6, 2004. (Djalil, 2010, p. 450).

Whatever the criminal law currently in force in Indonesia is the criminal law inherited from the Netherlands which has been codified in a law book or what is called the Criminal Code (KUHP). (Sudarsono, 2003, p. 106).

This Criminal Code was confirmed in 1946 through Law Number 1 of 1946 concerning Criminal Law Regulations and was last revised in 2001 through Law Number 20 of 2001. (Dewi and Firganefi, 2014, p. 73) . In criminal law, it is regulated about crimes and violations of the public interest and criminal threats for those who commit such acts. Criminal law has a privilege, namely the existence of coercive power that can force prospective criminals to obey and obey it with criminal threats that ensnare. (Sudarsono, p. 102).

Legal dualism makes Aceh a province that runs two criminal law systems, namely the Aceh Qanun and the Criminal Code legally and legally. These two legal systems, of course, have their respective domains. However, in practice there are conflicts in the legal settlement process. For example, in the area of the Qanun Jinayat and the Criminal Code in cases of adultery that often occur among the people of Aceh today. The criminal law contained in the Criminal Code does not prohibit adultery that occurs to people of the opposite sex and are not bound in a marriage. The crime of adultery is classified as a complaint offense that can only be processed if there are parties who complain about the case. (Merpaung, 1996, p. 43). While in the Qanun Jinayat there is no known term for a complaint in the finger of adultery. Whoever commits adultery, then it must still be punished in accordance with the provisions of Islamic law even though it does not begin with an element of complaint as stated in the Criminal Code. Qanun Jinayat is based on hudud, which is a punishment that has been determined in form and level by Allah SWT. Penalties for adulterers have also been regulated in the law with their respective sanctions. (Abubakar, 2018, p. 176).

The enactment of the Jinayat law itself is a new development in the life of the Acehnese people. However, the problem that arises is that the Qanun in Aceh has established principles that are not entirely the same as the principles of criminal law in Indonesia, and are not completely different from these principles. This difference causes incompatibility on the one hand, but also fills the vacuum of national criminal law on the other. (Ancient, p. 654).

In addition, there is a sentencing orientation that is not static, but can also be said to be in the opposite direction. For example, the caning sentence in Aceh which is often considered as a retaliation, this assumption seems so simple when faced with imprisonment which has the function of

rehabilitation and resocialization. Because, when caning does not have these two functions, it will only be a useless punishment and must be abandoned. (Akbar, 2014, p. 53). However, if studied more deeply, the caning punishment actually has a determination goal, namely to improve the human condition psychologically and otherwise. The rules for the punishment of caning include five things including; as a preventive measure to prevent others from imitating and committing criminal acts; the limit of punishment is for the benefit of society; if in order to maintain the benefit of society from the perpetrators of the crime and to eliminate the crime it is required to impose the death penalty on the perpetrator, then it is a necessity to do so because the crime will disappear with the disappearance of the perpetrator; if the individual and social benefits have been maintained, then the punishment is in accordance with what is prescribed. (Zainuddin, 2011, pp. 89-90).

The enactment of Aceh Qanun Number 6 of 2014 concerning Jinayat Law has led to legal polemics related to the implementation of criminal law regulated in the Criminal Code which applies as national law in Indonesia. As part of the application of Islamic law, the application of this qanun has also generated mixed responses among Indonesians and the international community. (Ancient, p. 654). The problem of punishment in Indonesia with the existence of a special region such as Aceh must be understood in its entirety and thoroughly. Therefore, Indonesia and Aceh must be understood as one unit, not dualistic things. This means that when Aceh applies a principle that produces new norms, which are very different from the Criminal Code and other criminal laws, they must be interpreted as filling the legal vacuum.

II. RESEARCH METHODS

This study applies qualitative legal methods by using legal approach. Data required for this study were mainly obtained from library research by analyzing primary and secondary resources. Primary resources were collected by scrutinizing current national laws, local regulations (Aceh Qanun) and government documents. Secondary resources were obtained by reviewing current literatures, journal articles, research reports, and case studies related to this study. Then, all collected data were classified and mapped based on the issues discussed in this study. After classifying and mapping process were completed then all data were analyzed by using qualitative analysis.

III. RESULT AND DISCUSSION

3.1. Elements of Zina in Islamic Law

The elements of adultery are divided into two as follows:

a. Forbidden Intercourse

Sexual intercourse which is considered adultery is the entry of the male genitalia into the female genitalia even though only slightly or with a barrier between the male and female

genitals as long as the barrier is thin and does not hinder the feeling and pleasure of intercourse.

The rule for determining intercourse as the finger of adultery is intercourse that occurs not on his own, if intercourse occurs in the environment of own property rights because of the marriage bond, then it is not considered adultery even though the intercourse is forbidden for a reason. Because the law of unlawful intercourse that comes later due to a cause not because of the substance.

If intercourse does not meet these rules, then it is not considered adultery subject to hadd punishment, but an immoral act that is threatened with ta'zir punishment, even though the act leads to the introduction of adultery such as kissing, hugging and so on. (Marsaid, p. 121).

b. Intentional or unlawful intention

This element is fulfilled if the perpetrator has sexual intercourse even though he knows that the woman he has intercourse with is a woman who is forbidden to him. Thus, if a person commits sexual intercourse on purpose but does not know that the act he is doing is unlawful then he does not get a hadd punishment. For example, a man who marries a woman who has a husband but is kept secret from him. So, if intercourse occurs after the marriage is carried out, then the husband is not charged as long as he really does not know the status of his wife who is married. This unlawful element must go hand in hand with carrying out prohibited acts, then the perpetrator is not held accountable for the actions committed. (Marsaid, pp. 123-124).

3.2. Adultery in The Criminal Code

3.2.1. Meaning of Adultery

The crime of adultery in Indonesia is regulated in Article 284 of the Criminal Code which reads (Moelyanto, 2008, p. 104):

1. Threatened with imprisonment for a maximum of one month:
 - a. A married man who performs overspel, even though it is known that Article 27 BW applies to him;
 - b. A married woman who commits overspel, even though it is known that Article 27 BW applies to her.
 - c. A man who participated in the act, even though it was known that the guilty person had married.
 - d. A married woman who participates in the act, even though she knows that the guilty person has married and Article 27 BW applies to her.

2. No prosecution shall be carried out except on the complaint of a husband/wife that has been tainted, and if Article 27 BW applies to them, within a period of three months followed by a request for divorce or separation from table and bed for that reason as well;
3. For this complaint, articles 72, 73, and 75 do not apply;
4. Complaints can be withdrawn as long as the examination in a court session has not yet started;
5. If article 27 BW applies to husband and wife, the complaint is not heeded as long as the marriage has not been decided due to divorce or before the decision stating the separation of the table and bed has become permanent.

Referring to the provisions of the Criminal Code, there are three essential conditions for a person to be declared committing adultery as follows:

1. Having intercourse with a man or woman who is not their husband/wife.
2. For them, article 27 BW applies
3. He/She is in a marriage.

Furthermore, to be determined as participating in adultery, the following four conditions are required:

1. Having intercourse with a man or woman who is not their husband/wife.
2. He is not subject to Article 27 of the Civil Code.
3. The spouse is subject to Article 27 of the Civil Code.
4. It is known that the partner committing adultery is already married and the provisions of Article 27 of the Civil Code apply to couples who commit adultery.

3.2.2. Elements of Adultery in the Criminal Code

The elements of a criminal act are the conditions for determining the extent to which a person's actions can be sentenced/criminalized. The elements of the criminal act of adultery in the Criminal Code are as follows (Soesilo, p. 209):

1. The act is done consciously and intentionally
Adultery must be done consciously and intentionally, not in an unconscious state. The element of intent must be proven to the perpetrator, if the perpetrator's intention cannot be proven, then the judge must decide to be free from legal charges for the perpetrator.
2. Done like you like
Arthe act was carried out without any element of coercion.
3. Done by married people
4. Not same-sex relationships
Adonly sex that has been completed by a man and a woman. It's not gay sex.

5. No consent from husband or wife

Adultery can be said to be an adultery offense if there is no agreement between husband and wife. On the other hand, if there is an agreement between husband and wife, it cannot be said to be an adultery offense.

6. There is a complaint from the aggrieved party

Furthermore, in order for a prosecution to be carried out, a complaint must be made from the person who feels aggrieved. If there is no complaint, then the perpetrator cannot be legally processed. This crime is called *kalcht delichten*.

3.2.3. The Crime of Adultery in Aceh Qanun Number 6 of 2014 Regarding Jinayat Law

Adultery is an act that provides a great opportunity for the emergence of other despicable acts that will destroy a very crucial family foundation and result in disputes, killings, and spreading various kinds of diseases, both physical and spiritual diseases. (Ancient, p. 658).

Zina belongs to the scope of *fiqh jinayah*. The offense against adultery has been confirmed in the Qur'an and Hadith. (Ancient, p. 657). There are two types of *jarimah* (criminal act) adultery, namely adultery *muhsan* and *ghairu muhsan*. Zina *muhsan* is adultery whose perpetrators are husband, wife, widower and widow, meaning someone who is still in marital status or has been legally married. Meanwhile, adultery *ghairu muhsan* is adultery in which the perpetrator is not married or has never been legally married. (Abubakar, p. 177).

Syari'at Islam imposes different sanctions on the two types of adultery crimes above. First, the punishment for unmarried adulterers (*ghairu muhsan*), then the punishment is lashing of one hundred lashes, which has been explicitly stated in Qur'an Surat An-Nur: 2.

Second, the punishment for adulterers who have been legally married (*ghairu muhsan*) is stoning, that is, being buried up to the neck and stoning to death, applies to both male and female adulterers. (Abubakar, pp. 177-178).

In this case, the adulterer *ghairu muhsan* gets a heavier punishment. This is done to fulfill justice because someone who is married should be able to better maintain his honor, maintain the feelings of a legitimate partner, and maintain the good name of his family and society. So on the basis of justice and common sense, the punishment is heavier than that of adulteress *muhsan*. (Magfiroh and Az-Zafi, 2020, p. 110).

The realization of this punishment has been adopted and regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law in Article 33 concerning adultery law which reads:

- 1) Everyone who intentionally commits Zina Jarimah, is threatened with 'Uqubat Hudud lashes 100 (one hundred) times."
- 2) Anyone who repeats the act as referred to in paragraph (1) is threatened with 'Uqubat Hudud lashes 100 (one hundred) times and can be added with 'Uqubat

Ta'zir a maximum fine of 120 (one hundred and twenty) grams of pure gold or 'Uqubat Ta'zir imprisonment for a maximum of 12 (twelve) months.

- 3) Any Person and/or Business Entity who intentionally provides facilities or promotes Zina Jarimah, shall be threatened with 'Uqubat Ta'zir whipping for a maximum of 100 (one hundred) times and/or a fine of a maximum of 1000 (one thousand) grams of pure gold and/or or imprisonment for a maximum of 100 (one hundred) months. (Aceh Qanun Number 6 of 2014).

In the Qanun above, in Article 33 paragraph (1) it is not separated between adulterers muhsan and ghairu muhsan as in the provisions of Islamic law which separate adulterers muhsan with 100 lashes and adulterers ghairu muhsan by stoning to death. This means that people who commit adultery in Aceh are sentenced to the same severe punishment, namely 100 lashes. Article 33 paragraph (2) emphasizes the double punishment imposed on adulterers who have been sentenced to lashes, but commit adultery again, then the ta'zir punishment is added in the form of a fine of 120 grams of pure gold or imprisonment for 12 months. Furthermore, Article 33 paragraph (3) a heavier sentence is imposed on a person or business entity who intentionally provides facilities or promotes adultery (Abubakar, Munir & Harahap, 2014, p. 192):

- 1) The "everyone" element

In accordance with the provisions of article 1 number 38 of Qanun Number 6 of 2014 that what is meant by the element "everyone" is an individual, or every person who is Muslim who commits a crime (jarimah) in Aceh (article 5), so that the person can be held accountable for what has been done.

- 2) The element of the work carried out is "deliberately committing adultery"

What is meant by intentional is the evil intention of someone who deliberately does this, even though the perpetrator knows that the act is forbidden. The element of "deliberately committing adultery" is knowingly, intentionally, of their own volition and without coercion from others to commit adultery.

- 3) The element of the object that does

In accordance with the provisions of Article 1 point 26 that what is meant by adultery is intercourse between a man or more and a woman or more without marriage ties with the willingness of both parties.

The formulation of this qanun is based on the local culture and customs of the Indonesian people, especially Aceh, as well as collaborating with the legal system in force in the Republic of Indonesia. Therefore, the philosophy, principles, goals and principles contained in the jinayat law indicate a new paradigm of law in Aceh.

3.3. Adultery in The Criminal Code Article 284

R. Sugandhi mentions adultery in two senses. According to the general understanding, adultery is defined as intercourse carried out by a man and a woman on the basis of consensual consent who are not yet bound by marriage. However, according to article 284 b of the Criminal Code, it is defined as intercourse carried out by a man and a woman who is married to a woman or a man who is not her wife or husband. (Sugandhi, 2001, p. 300).

Based on this understanding, it can be seen that sexual intercourse outside of marriage that can be categorized as a criminal act includes:

1. Sexual intercourse outside of marriage by a man and a woman who both or one of the perpetrators are in a legal marriage with another person (article 284).
2. Sexual intercourse outside of marriage by a man against a woman using violence or threats of violence (article 285).
3. Sersexual intercourse outside of marriage by a man against a woman in a state of unconsciousness or helplessness (article 286).
4. Sexual intercourse outside of marriage by a man against a woman who he knows or should or suspect is not yet 15 years old (article 287).
5. Sexual intercourse outside of marriage by a man against women who he knows or should or suspect is not yet ripe for marriage (article 288).

According to Article 284 of the Criminal Code paragraph (1) there are four kinds of prohibitions in the crime of adultery, including:

1. A married man commits adultery, even though Article 27 BW (monogamy principle) applies to him.
2. A married woman commits adultery, even though it is known that Article 27 BW (monogamy principle) applies to her.
3. A man commits adultery with a woman he knows to be married.
4. A woman who has committed adultery with a man who she knows that Article 27 BW applies to her. So, a woman or a man is called committing adultery, if it fulfills three conditions:
 - a. Having intercourse with a man or a woman who is not his wife or husband.
 - b. For him, article 27 BW applies.
 - c. He is in a marriage.

If a man or woman who commits adultery does not apply Article 27 BW, while the woman or man who is her friend is subject to Article 27 BW and it is known that the man or woman who commits adultery is subject to BW, it is not called committing a crime. adultery, but participates in committing adultery with the same responsibility as the adulterer. Participating in committing adultery

according to article 55 paragraph (1) of the Criminal Code is referred to as *mede pleger*. (Purba, p. 656).

Whereas if both men and women are not subject to Article 27 BW, both men and women do not commit the crime of adultery, then none of them has the status of making participants. Likewise, if a man or a woman is not bound by marriage even though it is subject to Article 27 BW, then both of them who have intercourse have neither committed adultery nor participated in committing adultery. (Ancient, p. 656). Today, the notion of having intercourse is still maintained in legal practice. If the male genitals do not enter the female genitals even though they have released semen, or enter but do not release sperm, then intercourse has not occurred.

3.4. Comparasion of the Crime of Adultery in Aceh Qanun Number 6 of 2014 Regarding Jinayat Law and the Criminal Code Article 284

Based on the discussion above, Aceh Qanun Number 6 of 2014 concerning Jinayat Law and the Criminal Code Article 284 has a comparison that can be described as follows:

3.4.1. Seen from the aspect of an intentional

a. Aceh Qanun Number 6 of 2014 concerning Jinayat Law

In Aceh Qanun Number 6 of 2014 concerning Jinayat Law article 33 paragraphs (1-3) it has been clearly stated that anyone who intentionally commits adultery is threatened with 'Uqubat Hudud' 100 lashes. Anyone who deliberately repeats the act of adultery is threatened with 'Uqubat Hudud' 100 lashes plus 'Uqubat Ta'zir a maximum fine of 120 grams of pure gold or a maximum imprisonment of 12 months. Likewise, for people/business entities that intentionally provide facilities to promote adultery, they are threatened with Uqubat Ta'zir lashes of a maximum of 100 (one hundred) times and/or a fine of a maximum of 1000 (one thousand) grams of pure gold and/or imprisonment for a maximum of 100 (one hundred) times. one hundred) months. (Ancient, p. 662)

b. Article 284 of the Criminal Code

The crime of adultery (*overspel*) as referred to in Article 284 of the Criminal Code paragraph (1) adultery is an *opzettelijk delict* or a criminal act that must be done intentionally. This element of intent must be proven to the perpetrator so that he can be proven to have intentionally committed one of the crimes of adultery. However, the Criminal Code does not clearly define this element of intent. The instructions for knowing the definition of intentionality are taken from *Memorie van Toelichting* who defines intentional as wanting or knowing (*willens en wettens*) so that it can be said that intentional means wanting and knowing what he is doing. If this intentional element cannot be proven, then the perpetrator is not proven to want or know the

adultery committed. so that the judge must decide to be free from lawsuits (onslag van rechtsvervolging) for the perpetrators. (Ancient, p. 662).

3.4.2. Seen from the aspect of the perpetrator of the crime of adultery

a. Aceh Qanun Number 6 of 2014 concerning Jinayat Law

In Aceh Qanun Number 6 of 2014 concerning Jinayat Law, both men and women, adulterers of muhsan and ghairu muhsan who are not bound by marriage intentionally and voluntarily commit adultery, they are subject to 'Uqubat Hudud whipping as stated in article 33 paragraph (1). (Aceh Qanun Number 6 of 2014). This caning sentence should not be fatal for the perpetrator.

b. Article 284 of the Criminal Code

In the Criminal Code, not all adulterers are threatened with criminal penalties, for example, Article 284 paragraphs 1 and 2 stipulate a maximum imprisonment of 9 months for men and women who commit adultery, even though one or both of them are married and in Article 27 of the Civil Code (BW) applies to him. This can be interpreted that men and women who commit adultery are not married, then they are not subject to sanctions. Neither is penalized for either of them as long as they are adults and consensual and there is no element of coercion. However, if the woman is not yet an adult, she can be subject to sanctions as stipulated in articles 285 and 287 paragraph 1. (Purba, p. 663).

3.4.3. Judging from the complaint of husband / wife

a. Aceh Qanun Number 6 of 2014 concerning Jinayat Law

In Aceh Qanun Number 6 of 2014 concerning Jinayat Law, adultery is not seen as kalcht delichten (can only be prosecuted on the complaint in question). If the suspect swears that he has committed adultery, the judge will sentence 'Uqubat Hudud to be lashed 100 times. As stated in article 42, anyone who claims to have committed adultery in the open or openly, orally or in writing, is considered to have submitted an application to be sentenced to 'Uqubat Hudud. (Aceh Qanun Number 6 of 2014). However, if the adulterous partner denies the confession, then the person who accuses his partner must present four witnesses who see that the adultery actually occurred. (M. Yunus, 2020, p. 101).

b. Article 284 of the Criminal Code

According to the Criminal Code, adultery can only be prosecuted on a tainted husband/wife complaint as stipulated in Article 284 paragraph (2) or the entry into force of kalcht delichten (can only be prosecuted on the complaint in question). If there is no complaint, the perpetrator cannot be legally processed.

3.4.4. From the point of view of punishment

a. Aceh Qanun Number 6 of 2014 concerning Jinayat Law

Aceh Qanun Number 6 of 2014 concerning Jinayat Law imposes a commensurate and definite punishment, namely the punishment of 100 lashes cannot be less and cannot be more so that there is no bargaining, so that it can have a deterrent effect for the perpetrators. (M. Yunus, 2020, p. 101).

b. Article 284 of the Criminal Code

The Criminal Code does not set a minimum penalty limit so that there is a chance of bargaining between the perpetrators and law enforcement. This causes law enforcement to be blunt and adulterers are increasingly daring to commit adultery. (M. Yunus, 2020, p. 102). On the other hand, the prison sentence that has been set has not yet become a shock therapy for the perpetrators, this can be seen from the number of criminals who have served prison sentences and then repeat their actions, even many are in and out of prison because the coaching system has not been able to change the behavior of inmates. to be better. (Abubakar, Munir & Harahap, 2014, p. 185).

IV. CONCLUSION

The crime of adultery (jarimah) in Aceh province is regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law. In this Qanun it is stated that adultery is intercourse between a man or more with a woman or more without marriage ties with the willingness of both parties. In the Aceh Qanun, the zina finger does not only apply to married people, but also applies to anyone who has intercourse while they are not husband and wife, whether they are married (muhsan) or unmarried (ghairu muhsan). As regulated in Article 33 paragraphs 1-3, it has been explained that anyone who intentionally commits adultery is threatened with 'Uqubat Hudud' 100 lashes. Anyone who deliberately repeats the act of adultery is threatened with 'Uqubat Hudud' 100 lashes plus 'Uqubat Ta'zir a maximum fine of 120 grams of pure gold or a maximum imprisonment of 12 months. Likewise, for people/business entities that intentionally provide facilities to promote adultery, they are threatened with Uqubat Ta'zir lashes of a maximum of 100 (one hundred) times and/or a fine of a maximum of 1000 (one thousand) grams of pure gold and/or imprisonment for a maximum of 100 (one hundred) times. one hundred) months.

While the crime of adultery in Indonesia is regulated in the Criminal Code article 284. In the Criminal Code, adultery (overspel) is intercourse committed by a man or woman who is married to a woman or a man who is not his wife or husband. In order to be included in this Article, intercourse must be done on a consensual basis, there must not be an element of coercion from either party. In the Criminal Code, the concept of adultery is more emphasized on the location of the marriage, if the

person who commits adultery is not in a marriage bond and is carried out on a consensual basis, the perpetrator is not subject to this article. Meanwhile, what is referred to as an adulteress in this article is a person who is already married, if both perpetrators are married then both are called adulterers. However, if only one of them is married, then those who are not bound are referred to as adulterers only. If they are not married, then they are not called adulterers. The adulterer who is proven to have committed the crime of adultery in the Criminal Code is sentenced to a maximum of nine months in prison.

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