

Persecution as *Jarīmah Ta'zīr*: Reconstruction of Criminal Policy in the Aceh Jinayah System

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Keywords: Persecution, <i>Jarīmah Ta'zīr</i>, Criminal Policy, Jinayah Aceh, Islamic Criminal Law.	Abstract: Persecution is a criminal act that threatens the safety of life and physical integrity of a person so that it requires a criminal policy that is able to provide legal certainty, justice, and protection for victims. Although Aceh has implemented the Jinayat Law system through the Aceh Qanun Number 6 of 2014, the criminal act of persecution has not been regulated as <i>jarīmah</i> so that the settlement still refers to Law Number 1 of 2023 concerning the Criminal Code. This research uses a normative juridical method with a legislative, conceptual, and comparative approach through an analysis of Islamic criminal law, Law Number 11 of 2006 concerning the Government of Aceh, Qanun Aceh Number 6 of 2014 concerning Jinayat Law, and Law Number 1 of 2023 concerning the Criminal Code. The results of the study show that the unregulated persecution in the Aceh Jinayat Law creates a regulatory vacuum in the perspective of Islamic criminal law. Therefore, the reconstruction of criminal policy needs to be directed at regulating persecution as <i>jarīmah ta'zīr</i> through the classification of criminal acts, the formulation of proportionate sanctions, the protection of victims, and harmonization with the national criminal law system.
Kata Kunci: Penganiayaan, <i>Jarīmah Ta'zīr</i>, Kebijakan Pidanaan, Jinayah Aceh, Hukum Pidana Islam.	Abstrak: Penganiayaan merupakan tindak pidana yang mengancam keselamatan jiwa dan integritas fisik seseorang sehingga memerlukan kebijakan pemidanaan yang mampu memberikan kepastian hukum, keadilan, dan perlindungan terhadap korban. Meskipun Aceh telah menerapkan sistem Hukum Jinayat melalui Qanun Aceh Nomor 6 Tahun 2014, tindak pidana penganiayaan belum diatur sebagai <i>jarīmah</i> sehingga penyelesaiannya masih mengacu pada Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan melalui analisis terhadap hukum pidana Islam, Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh, Qanun Aceh Nomor 6 Tahun 2014 tentang Hukum Jinayat, dan Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Hasil penelitian menunjukkan bahwa belum diaturnya penganiayaan dalam Hukum Jinayat Aceh menimbulkan kekosongan pengaturan dalam perspektif hukum pidana Islam. Oleh karena itu, rekonstruksi kebijakan pemidanaan perlu diarahkan pada pengaturan penganiayaan sebagai <i>jarīmah ta'zīr</i> melalui klasifikasi tindak pidana, formulasi sanksi yang proporsional, perlindungan terhadap korban, serta harmonisasi dengan sistem hukum pidana nasional.

Introduction

Persecution is a form of criminal act against the human body and soul that has serious implications for the protection of human rights, public order, and law

enforcement. In its development, the criminal act of persecution is not only understood as an act that causes physical suffering, but also as an act that disturbs the sense of security of society and threatens human values. In Indonesia, the regulation on persecution has been updated through Law Number 1 of 2023 concerning the Criminal Code (KUHP), which classifies various forms of persecution based on the level of error and consequences caused.¹

Meanwhile, Aceh Province as an area that has obtained special authority based on Law Number 11 of 2006 concerning the Government of Aceh has a legal system that accommodates the application of Islamic sharia through the establishment of the Aceh Qanun,² including Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat³ and Qanun Aceh Number 7 of 2013 concerning the Jinayat Procedural Law.⁴ The existence of these two legal systems creates its own dynamics in the regulation of criminal acts related to the protection of human life and body, including criminal acts of persecution.

From the perspective of Islamic criminal law, the protection of the soul (*hifz al-nafs*) is one of the fundamental principles that is manifested through the regulation of various criminal acts that attack the life and physical integrity of a person.⁵ The Qur'an expressly prohibits any form of action that takes away or injures the human soul without a justified reason. The provisions regarding proportionate retribution for acts of violence are affirmed in QS. Al-Baqarah verses 178–179⁶ are about *qishās*, while QS. Al-Mā'idah verse 45 affirms the principle of equality of punishment for wounds and persecution.⁷

In addition, the Prophet PBUH also prohibited any form of action that causes harm to others through the rules of *lā ḍarar wa lā ḍirār* which is the ethical foundation in the enforcement of Islamic criminal law. Nevertheless, Islamic criminal law not only recognizes the concepts of *qishās* and *diyāt*, but also provides room for the state to impose *ta'zīr* sanctions on acts that are not definitively determined by the nash,

¹ Aulia Parasdika, Andi Najemi, and Dheny Wahyudhi, "Penerapan Keadilan Restoratif Terhadap Tindak Pidana Penganiayaan," *PAMPAS: Journal of Criminal Law* 3, no. 1 (2022): 69–84.

² Debora Sanur, "Implementasi Kebijakan Otonomi Khusus Di Aceh [Implementation of Special Autonomy Policies in Aceh]," *Jurnal Politica Dinamika Masalah Politik Dalam Negeri Dan Hubungan Internasional* 11, no. 1 (2020): 65–83.

³ Pemerintah Aceh, "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," *Google My Maps*, 2014.

⁴ Qanun Aceh Nomor, "Tahun 2013 Tentang Hukum Acara Jinayat" (Idris, 7AD).

⁵ Irfan Nurhakim, Aden Rosadi, and Nanang Naisabur, "Sejarah Sosial Hukum Pidana Islam Dan Konsep Pembelaan Diri (Self-Defense) Dalam Perspektif Maqasid Al-Syari 'Ah," *Jurnal Al-Jina'i Al-Islami* 3, no. 1 (2025): 43–56.

⁶ Akhmad Sulaiman, "Reinterpretation of the Verse of Al-Qiṣās QS. Al-Baqarah: 178-179," *MAGHZA: Journal of the Science of the Qur'an and Tafsir* 3, no. 2 (2018): 242–52.

⁷ Berlian Puji Pangastuti, "Contextualizing Justice in Times of Crisis: A Study of QS. Al-Mā'idah 5: 38 and Its Application in Criminal Theft Cases," *Jurnal Studi Ilmu-Ilmu Al-Qur'an Dan Hadis* 24, no. 1 (2023): 161–80.

including various forms of persecution that require adjustment to social conditions and law enforcement needs.⁸

The Aceh Jinayah system adopts the concept of *ta'zir* as one of the criminal instruments that gives the government the authority to determine the type and size of sanctions based on the interests of law enforcement. However, the regulation of persecution in the Aceh legal system still faces various normative and practical challenges. On the one hand, the Criminal Code has regulated in detail the classification of persecution based on the level of injury, the consequences caused, and the form of criminal liability.⁹

On the other hand, Islamic criminal law provides flexibility in imposing *sanctions ta'zir* so as to allow the birth of a criminal policy that is more adaptive to the needs of society. The difference in the characteristics of the two systems raises the need to build a criminal formulation that not only has legal certainty, but is also able to provide balanced protection for victims while creating a deterrent effect on perpetrators.¹⁰

The academic problem in this study departs from the fact that the study of persecution from the perspective of Islamic criminal law has so far focused more on conceptual discussions of *qisās* and *diyāt*, while the discussion of persecution as *jarimah ta'zir* It is still relatively limited. Most of the previous research focused on the implementation of whipping *uqubat*, the effectiveness of the enforcement of Qanun Jinayat, or the study of criminal acts that are explicitly regulated in the Aceh Qanun such as *khalwat*, *maisir*, *khamar*, and adultery. Studies that specifically construct persecution as *jarimah ta'zir* in the context of criminal policy reform are still largely unfounded. As a result, there is no conceptual model that can explain how *the principles of ta'zir* can be used as a basis in formulating a criminal policy against persecution that is in accordance with the needs of the Acehnese legal system while remaining in harmony with the development of national criminal law.

In addition, the development of criminal policy in Indonesia shows a tendency towards a more proportionate penal system, oriented towards community protection, and paying attention to the rights of victims and the effectiveness of offender coaching. This paradigm change requires harmonization between national criminal law and Islamic criminal law so that there is no dualism in the application of criminal norms and disparities. In the context of Aceh, the harmonization is important because the authority to implement Islamic sharia must remain within the framework of the national legal system as stipulated in Law Number 11 of 2006. Therefore, a

⁸ Tahmid Nur, "Hukum Pidana Islam Dalam Perspektif Hukum Pidana Positif" (Lembaga Penerbit Kampus (LPK), 2012).

⁹ Yuni Roslaili, *Pola Penalaran Qanun Jinayat Di Aceh* (Penerbit Adab, n.d.).

¹⁰ Anita Putri Aningsih et al., "Relevansi Ta'zir Sebagai Alternatif Pemidanaan Dalam Sistem Hukum Pidana Modern," *Jurnal Tahqiq: Jurnal Pemikiran Hukum Islam* 20, no. 1 (2026): 64–81.

reconstruction of criminal policy is needed that is able to bridge the principles of Islamic criminal law with the need for reform of Indonesian criminal law so as to produce a formulation of sanctions that has juridical legitimacy, legal certainty, and usefulness in judicial practice.

The novelty of this research lies in the effort to reconstruct the criminal policy against the crime of persecution by making the concept of *jarimah ta'zir* as the main paradigm in the Aceh Jinayah system. In contrast to previous research that focused more on normative analysis of the provisions of Qanun Jinayat or the discussion of whipping sanctions, this study offers a formulation of penal policies that integrate the principles of *flexibility ta'zir*, classification of the level of persecution, proportionality of sanctions, protection of victims, and harmonization with the provisions of the National Criminal Code. Thus, this study not only explains the construction of the applicable law, but also provides a conceptual model regarding the direction of criminal policy reform against persecution in the Aceh Jinayah system which can be used as a reference for the development of Islamic criminal law and the formation of regulations in the future. This research is expected to make a theoretical contribution to the development of Islamic criminal law studies, as well as provide practical contributions for policy makers, law enforcement officials, and judicial institutions in formulating a more adaptive, proportional, and effective penal system in handling criminal acts of persecution in Aceh.

Method

This research uses a *normative legal research* method that aims to examine the regulation of criminal acts of persecution as *jarimah ta'zir* and reconstruct criminal policies in the Jinayah Aceh system.¹¹ The approaches used include the statute approach, the conceptual approach, and the comparative approach (*comparative approach*).¹² The legislative approach is carried out by examining various provisions related to persecution, including Law Number 1 of 2023 concerning the Criminal Code, Law Number 11 of 2006 concerning the Government of Aceh, Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat, and Qanun Aceh Number 7 of 2013 concerning the Procedural Law of Jinayat.¹³ The conceptual approach is used to analyze the concepts of *jarimah ta'zir*, criminal accountability, and penal policy in Islamic criminal law, while the comparative approach is used to identify similarities, differences, and opportunities for harmonization between the Islamic criminal law system and national

¹¹ Derita Prapti Rahayu, M SH, and Sesi Ke, "Metode Penelitian Hukum," *Yogyakarta: Thafa Media*, 2020.

¹² Jonaedi Efendi and Prasetijo Rijadi, "Metode Penelitian Hukum Normatif Dan Empiris: Edisi Kedua," 2022.

¹³ Ahmad Rosidi, Muhammad Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (2024).

criminal law.¹⁴ The legal materials used consist of primary, secondary, and tertiary legal materials collected through literature studies. All data were analyzed qualitatively using descriptive-analytical analysis techniques and legal interpretation methods to obtain a formulation of criminal policy reconstruction that is more proportionate, adaptive, and in accordance with the development of the legal system in Aceh.¹⁵

Result and Discussion

The Concept of Persecution as *Jarimah Ta'zir* in Islamic Criminal Law

Persecution is a form of criminal act that receives serious attention in Islamic criminal law because it is directly related to the protection of the human soul and physical integrity. In the jurisprudence literature, persecution is known as *al-jarḥ* (wound), *al-jināyah 'alā mā dūna al-nafs* (crimes against the body other than murder), and *al-i'tidā' 'alā al-nafs* which means unlawful acts that result in injury, disability, loss of limb function, or physical suffering to a person. Persecution is different from murder because the object of legal protection is not the loss of life, but the physical safety and limbs of the victim. Therefore, Islamic criminal law places persecution as a form of violation of individual rights (*ḥaqq al-ādami*) that must be restored through a legal mechanism that is fair, proportionate, and provides certainty for both victims and perpetrators.¹⁶

Etymologically, the term *jarḥ* comes from the word *jaraḥa* which means to injure, scratch, or cause damage to a person's body. In fiqh terminology, scholars define *jarḥ* as any action that results in injury to the human body, whether in the form of open wounds, broken bones, loss of organ function, or other forms of injury. The term *al-i'tidā'* comes from the word *i'tadā* which means to go beyond the limits or do actions that are not justified according to the sharia. Thus, persecution in the perspective of Islamic criminal law is not only understood as an act of physical violence, but also as a form of violation of a person's bodily rights that is committed intentionally or due to negligence. The concept shows that Islamic sharia provides broad protection of human dignity by prohibiting any form of action that harms the physical or safety of others.¹⁷

The normative basis regarding the prohibition of persecution can be found in various verses of the Qur'an that affirm the importance of safeguarding human life and prohibiting all forms of actions that harm others. Allah SWT. said in QS. Al-Mā'idah verse 45 which explains the principle of equality of punishment (*al-muqābalah*

¹⁴ S H I Jonaedi Efendi and S H Prasetyo Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris: Edisi Kedua* (Prenada Media, 2022).

¹⁵ Jonaedi Efendi, "Metode Penelitian Hukum Normatif Dan Empiris Edisi 1," 2020.

¹⁶ Alfian Maulidin Ichwanto, "Tindak Pidana Penganiayaan Dalam Hukum Pidana Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 20, no. 1 (2017): 181-206.

¹⁷ Azfa Nurul Ilmi and Firman Solihin, "Metodologi Al-Jarḥ Wa Al-Ta'dil Dalam Tradisi Syiah: Analisis Kritis Perspektif Tradisi Sunni," *Hadisuna: Jurnal Studi Ilmu Hadis* 1, no. 2 (2025): 38-48.

bi al-miṣl), namely the soul is recompensed with the soul, the eyes with the eyes, the nose with the nose, the ears with the ears, the teeth with the teeth, and the wounds also have a balanced provision of retribution. This verse shows that Islamic law recognizes the right of victims to obtain legal protection for every form of injury they experience. This provision is also a philosophical basis that every act of persecution is an act that has legal consequences and cannot be left without accountability from the perpetrator.¹⁸

In addition to QS. Al-Mā'idah verse 45, the principle of protection for victims of persecution is also affirmed in the Qur'an. Al-Baqarah verses 178-179 which govern the *qīṣāṣ*. Although the verse is better known as the legal basis for the crime of murder, the majority of scholars argue that *the principle of qīṣāṣ* also applies to persecution that meets certain conditions. This provision aims to create a balance between the rights of the victim and the obligations of the perpetrator through proportionate retribution without exceeding the limit. In this context, the Qur'an not only emphasizes the aspect of punishment, but also opens up space for settlement through forgiveness and the provision of compensation if the victim or his family is willing to give up the right to retaliation. Thus, Islamic criminal law prioritizes a balance between legal certainty, justice, and peaceful conflict resolution.¹⁹

The legal basis of persecution is also strengthened by various hadiths of the Prophet Muhammad PBUH which affirm the prohibition of violence against fellow humans. The Prophet PBUH said, *lā ḍarar wa lā ḍirār* which means "one should not do deeds that endanger oneself or others." This hadith is one of the fundamental principles in Islamic law that is the basis for the development of various legal provisions, including criminal law. In addition, the Prophet PBUH also prohibits Muslims from beating and torturing and degrading human dignity without a reason justified by the sharia. In several histories, it is stated that the Prophet PBUH strongly emphasized respect for the blood, property, and honor of every Muslim so that any form of violation of these three aspects must be legally accounted for.²⁰

The scholars agree that persecution is a criminal act that can be sanctioned, although there are differences of opinion regarding the form of legal accountability under certain conditions. The Hanafiyah school is of the view that the application of *qīṣāṣ* to persecution can only be done if there is a similarity between the injuries suffered by the victim and the ability to carry out retribution without causing injustice. If such similarity is not possible, then the sanction is transferred to the payment of *diyāt* or other forms of punishment prescribed by the ruler. This approach shows the

¹⁸ Perdana Salsabilla Balqis, "Fenomena Kekerasan Terhadap Anak Dalam Al-Qur'an" (UIN Raden Intan Lampung, 2023).

¹⁹ Hayatun Nisah, "Konsep Kekerasan Dalam Al-Qur'an," N.D.

²⁰ Indri Pratiwi Siregar, *Kajian Dasar-Dasar Hukum Dan Hukum Pidana* (Penerbit P4I, 2022).

prudence of the scholars in ensuring that the implementation of sanctions does not cause greater harm than the actions committed by the perpetrators.²¹

The Malikiyah school pays great attention to the protection of victims through the application of *qishās* and *diyāt* according to the level of injury caused. According to this madhhab, each limb has a different legal value so that the form of accountability of the perpetrator must be adjusted to the consequences caused. Meanwhile, the Shafi'iyah School emphasizes that the application of *qishās* can only be done if the conditions are perfectly met, especially the equality of wounds, the absence of risk of exceeding the injuries suffered by the victim, and the existence of medical certainty regarding the implementation of punishment. If these conditions are not met, the judge can impose other forms of punishment in order to achieve justice.²²

A relatively similar view is also put forward by the Hanabilah School which places *qishās* as the main instrument in the criminal act of persecution, but still gives room for *diyāt* and *ta'zir* if the implementation of *qishās* is not possible. According to this school, the main purpose of punishment is not only to provide retribution to the perpetrators, but to maintain public order, provide protection to the victim, and prevent the recurrence of the same criminal act. Therefore, the judge's authority in determining the form of punishment is very important to ensure that each verdict reflects the value of substantive justice in accordance with the concrete conditions of the case being examined.²³

In the classification of Islamic criminal law, persecution is basically included in the group of *jarimah qishās wa diyāt* if it meets the conditions that have been determined by the sharia. However, not all forms of persecution can be resolved through these mechanisms. Minor mistreatment, attempted persecution, acts of violence that do not cause specific harm, or new forms of violence that develop in modern life often do not have strict sanctions in the nash. This condition then gives birth to the space for the application of *jarimah ta'zir*, which is a type of criminal act whose form and size of punishment are left to the government or judges based on considerations of the benefit, needs of the community, and the purpose of law enforcement.²⁴

²¹ Asiyah Jamilah, "Ketika Anak Melukai: Tinjauan Hukum Islam Tentang Tanggungjawab Pidana Anak Dalam Kasus Kekerasan: When Children Injures: Islamic Law Perspective on the Criminal Responsibility of Children in Violence Case," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 6, no. 1 (2025): 104–19.

²² Aronta Edo, "Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Penganiayaan Yang Dilakukan Secara Bersama-Sama (Studi Putusan Pn No 368/Pid. B/2022/Pn Jkt. Pst)," 2023.

²³ Nickmetin Erbakan Zen, "Penerapan Asas Ultimatum Remedium Pada Sanksi Tindakan Terhadap Anak Pelaku Kekerasan Yang Mengakibatkan Kematian Perspektif," n.d.

²⁴ Sitti Ma'rifah Nisrina, "Perbandingan Hukum Islam Dan Hukum Pidana Indonesia Terhadap Pembelaan Terpaksa (Noodweer) Dalam Tindak Pidana Penganiayaan= Comparison Of Islamic Law And Indonesian Criminal Law Of Forced Defense (Noodweer) In Criminal Actions Of Persecution" (Universitas Hasanuddin, 2023).

The concept of *ta'zīr* provides flexibility for the state to formulate penal policies that are able to respond to the development of forms of crime without abandoning the basic principles of Islamic criminal law. In contrast to *ḥudūd* and *qisās* which have certain provisions, *sanctions ta'zīr* can be in the form of imprisonment, fines, rehabilitation, coaching, supervision, social work, or other forms of sanctions set by the ruler in accordance with the public interest. This flexibility shows that Islamic criminal law has a dynamic character and is able to adapt to social changes. In the context of persecution, the concept of *ta'zīr* allows the state to impose more proportionate sanctions on acts that do not meet the requirements for the application of *qisās* but still cause harm to the victim and disturb public order.²⁵

The placement of persecution as *jarimah ta'zīr* is also based on the consideration that not all forms of violence can be resolved through individual mechanisms of retribution. The development of modern society shows the emergence of various forms of persecution that involve technology, are carried out in groups, or result in psychological impacts that cannot be fully measured by the classical concept of physical injury. In such circumstances, the state has an obligation to present a penal policy that is able to provide effective legal protection through the authority of *ta'zīr*. This authority is not intended to replace the provisions of sharia, but rather to be a complementary instrument so that Islamic criminal law remains relevant in facing the dynamics of contemporary life.²⁶

Thus, the concept of persecution as *jarimah ta'zīr* shows that Islamic criminal law has a penal system that is not rigid, but is able to adapt to the development of society and the needs of law enforcement. The Qur'an, hadith, and the views of the jurists provide a normative basis that every act that attacks the human body is a prohibited act and must be accounted for through a fair legal mechanism. When the application of *qisās* or *diyāt* cannot be done for juridical or factual reasons, the concept of *ta'zīr* becomes a legitimate alternative to guarantee legal certainty, protect victims, and prevent the recurrence of criminal acts. Therefore, the development of a penal policy based on *ta'zīr* is one of the important instruments in the reform of Islamic criminal law, especially in building a penal system that is responsive to the development of society while remaining based on the principles of Islamic law.

Regulation and Implementation of Criminal Prosecution for Crimes of Persecution in the Aceh Jinayah System

The existence of the Aceh Jinayah system is a juridical consequence of granting special autonomy to the Province of Aceh as stipulated in Law Number 44 of 1999

²⁵ Maulida Hasanah, Muna Hasanah, and Noormala Santi, "Hukuman Pidana Dalam Islam: Analisis Konseptual, Maqāṣid Asy-Syarī'ah, Dan Relevansi Kontemporer," *Ahsan: Jurnal Ilmiah Keislaman Dan Kemasyarakatan*, 2025, 221–32.

²⁶ Wahyudi Wahyudi, "Analisis Jarimah Qishās Terhadap Tindak Pidana Penganiayaan Yang Menyebabkan Kematian (Putusan Nomor 210/Pid. B/2020/Pn. Parepare)" (IAIN Parepare, 2023).

concerning the Implementation of Provincial Privileges of the Special Region of Aceh and strengthened through Law Number 11 of 2006 concerning the Government of Aceh. The two regulations give the authority to the Aceh Government to implement Islamic sharia comprehensively, including in the field of Islamic criminal law (*jinayah*). This authority is manifested through the establishment of Qanun Aceh Number 6 of 2014 concerning Jinayat Law and Qanun Aceh Number 7 of 2013 concerning Jinayat Procedural Law which is the basis of material and formal law in the settlement of jinayat cases. Thus, the Jinayah Aceh system is part of the national legal system that obtains constitutional legitimacy through an asymmetric decentralization mechanism, so that its implementation remains within the framework of the Unitary State of the Republic of Indonesia.²⁷

Qanun Aceh Number 6 of 2014 regulates a number of acts that qualify as *jarimah*, namely *khamar*, *maisir*, *khalwat*, *ikhtilāf*, adultery, sexual harassment, rape, *qadzaf*, *liwāt*, and *musāḥaqah*. These types of criminal acts are subject to *uqubat* in the form of whipping, fines in the form of pure gold, imprisonment, or a combination of them in accordance with the provisions of qanun. The regulation shows that the scope of the Aceh Jinayat Law still focuses on criminal acts that are explicitly regulated in the qanun and do not cover all forms of crime as known in the national criminal law. As a result, the criminal act of persecution has not been classified as a *separate jarimah* in Qanun Aceh Number 6 of 2014 so that its settlement in judicial practice still refers to the provisions of the national criminal law.²⁸

In the national legal system, persecution is a criminal act against the body that has been comprehensively regulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP). The regulation distinguishes persecution based on the degree of wrongdoing, the form of the act, and the consequences inflicted on the victim, such as ordinary persecution, minor persecution, severe persecution, persecution that results in death, and persecution that is carried out under aggravating circumstances. The classification aims to provide legal certainty and proportionality of punishment in accordance with the level of losses experienced by the victim. Therefore, if there is a criminal act of persecution in Aceh that is not included in the scope of *jarimah* in Qanun Jinayat, then the settlement is still carried out based on the Criminal Code through the general criminal justice mechanism.²⁹

This condition shows the existence of regulatory dualism that is characteristic of the legal system in Aceh. On the one hand, Aceh has the authority to apply Islamic

²⁷ Dahlan A Rahman, Muhammad Bin Abubakar, and Muhammad Rizwan, "Memahami Desentralisasi Dan Otonomi Khusus Di Aceh," *JPP Jurnal Politik Dan Pemerintahan* 8, no. 1 (2023): 26–40.

²⁸ Dicky Armanda, Yusrizal Yusrizal, and Nurzamli Nurzamli, "Implementasi Qanun Aceh No 6 Tahun 2014 Tentang Hukum Jinayah," *Asia-Pacific Journal of Public Policy* 6, no. 2 (2020): 59–105.

²⁹ Mia Amalia, Frans Reumi, and Kiki Kristanto, *Kitab Undang Undang Hukum Pidana Tahun 2023* (PT. Sonpedia Publishing Indonesia, 2025).

criminal law through qanun, while on the other hand, national criminal law still applies to criminal acts that have not been regulated in the Jinayat Law. Juridically, dualism is not a form of conflict of norms, but a consequence of the principle of legality and division of authority that has been established by laws and regulations. However, from the perspective of the development of Islamic criminal law, this condition raises a space for discussion about the possibility of regulating persecution as part of *jarimah ta'zīr* that can be accommodated in the Aceh Jinayah system without ignoring the principles of national law.³⁰

Conceptually, Islamic criminal law distinguishes criminal acts against the body into the categories of *jarimah qiṣāṣ wa diyāt* and *jarimah ta'zīr*. If a form of persecution meets the requirements for the application of *qiṣāṣ*, then the victim has the right to demand balanced retribution or to choose a settlement through the payment of *diyāt*. However, in modern law enforcement practice, the application of *qiṣāṣ* faces various obstacles, both due to the limitations of the evidence, the complexity of the consequences caused, and the development of forms of crime that cannot be fully resolved through classical mechanisms. Therefore, the concept of *ta'zīr* provides space for the state to establish forms of punishment based on legal policies that consider the interests of public protection, legal certainty, and the effectiveness of law enforcement.³¹

The implementation of punishment in Aceh has so far been more directed towards the implementation of *uqubat* against criminal acts that have been expressly regulated in Qanun Jinayat. The implementation of caning in public is one of the main characteristics of the Jinayah Aceh system that distinguishes it from the national penal system. In addition to the crime of whipping, the qanun also recognizes imprisonment and fines in the form of pure gold as an alternative or cumulative according to the type of *jarimah*. However, because persecution has not yet become the object of qanun's regulation, law enforcement officials do not have a normative basis to apply *uqubat ta'zīr* to perpetrators of persecution through the mechanism of the Syar'iyah Court. As a result, persecution cases are still examined by the general court based on the provisions of the Criminal Code.³²

This condition shows that there is a gap between the concept of fiqh jinayah and the positive law that applies in Aceh. In jurisprudence literature, persecution is an act that has clear legal consequences, either through *qiṣāṣ*, *diyāt*, or *ta'zīr*. On the other

³⁰ Isri Al Iqna Saputri and Hana Faridah, "Penegakan Hukum Tindak Pidana Kekerasan Fisik: Studi Kasus Leon Dazon Dalam Perspektif Undang-Undang No. 1 Tahun 2023," *Jurnal Hukum Lex Generalis* 6, no. 7 (2025).

³¹ M Iqbal, Khadijatul Musanna, and Zaifal Bariq, "Sinkronisasi Qanun Jinayah Dengan Kuhp Nasional: Studi Kasus Penanganan Tindak Pidana Di Kabupaten Bireuen," *Indonesian Journal of Islamic and Social Science* 4, no. 1 (2026): 1-16.

³² Indra Suhardi, "Perlindungan Keluarga Terpidana Hukuman Cambuk Dalam Qanun Aceh," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 21, no. 1 (2019): 1-24.

hand, in the Aceh Jinayah system, the regulation of persecution has not received an explicit normative formulation so that the space for the application of *the concept of ta'zir* to the crime has not developed optimally. This gap has implications for the lack of integration of Islamic criminal law values into the handling of violent crimes which actually have a close relationship with the protection of the body and human safety.³³

From the perspective of criminal law policy, the unregulated persecution in Qanun Jinayat does not mean that Islamic law neglects the protection of victims of violence. On the contrary, this condition shows that the scope of qanun is still limited to certain types of *jarimah* that are prioritized by the makers of regional regulations. Therefore, the development of community needs and the increasing complexity of violent crimes are important reasons to evaluate the substance of the Aceh Jinayat Law. The evaluation does not have to be interpreted as an excessive expansion of criminalization, but as an effort to adapt the legal system to social developments and the increasingly complex needs of legal protection.³⁴

In practice, the implementation of punishment against perpetrators of persecution in Aceh still prioritizes the principle of due process of law through the investigation mechanism by the National Police of the Republic of Indonesia, prosecution by the Prosecutor's Office, and examinations in the general court. Thus, the people of Aceh continue to receive legal protection against criminal acts of persecution even though the settlement is carried out outside the mechanism of the Syar'iyah Court. However, this separation of powers often leads to the perception that the Aceh Jinayah system has not fully accommodated all the values of Islamic criminal law related to the protection of human bodies and souls. This perception is one of the interesting academic issues to be studied in the context of Islamic criminal law reform in Indonesia.³⁵

Based on these conditions, it is necessary to formulate a legal policy that is able to build harmonization between the Aceh Jinayah system and the national criminal law without causing a conflict of authority. The harmonization can be carried out through strengthening the concept of *jarimah ta'zir* as the basis for regulating the crime of persecution that has not received a special regulation in Qanun Aceh Number 6 of 2014. This approach is not intended to replace the applicability of the Criminal Code, but as part of the development of Islamic criminal law that remains guided by the principles of constitutionality, the principle of legality, and the national system of laws

³³ Nasrullah Yahya, "Legislasi Hukum Positif (Fikih) Aceh: Tinjauan Pergumulan Qanun Hukum Jinayah," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 2 (2014): 149-66.

³⁴ Makhrus Munajat, "Dinamika Penegakan Hukum Jinayat Di Aceh: Harmonisasi Antara Kearifan Lokal, Syariat Islam, Dan Hak Asasi Manusia," *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia* 14, no. 1 (2025): 85-109.

³⁵ Muhammad Audrey, "Penerapan Asas Pembinaan Dan Pembimbingan Kepada Amak Yang Berhadapan Dengan Hukum Dalam Tindak Pidana Penganiayaan (Suatu Penelitian Di Wilayah Hukum Pengadilan Negeri Banda Aceh)" (Universitas Muhammadiyah Aceh, 2026).

and regulations. Thus, the implementation of criminalization of criminal acts of persecution in Aceh can develop towards a more comprehensive, adaptive, and harmonious system with the purpose of establishing the Jinayat Law as an instrument for community protection as well as the realization of Islamic sharia values within the framework of national law.

Reconstruction of Criminal Policy on Persecution as *Jarimah Ta'zir* in the Aceh Jinayah System

The reconstruction of the criminal policy against the crime of persecution as *jarimah ta'zir* is an effort to reform the law that aims to build a penal system that is more responsive to the development of society without ignoring the principles of Islamic criminal law and the national legal system. Reconstruction is not interpreted as replacing all legal norms that have been in force, but rather as an improvement of the substance of regulations that have not accommodated various forms of violent crimes against the human body. In the context of Aceh, this need is increasingly relevant considering that Qanun Aceh Number 6 of 2014 concerning the Jinayat Law has not explicitly regulated the criminal act of persecution as one of the *jarimah*, so the settlement still fully uses the provisions of Law Number 1 of 2023 concerning the Criminal Code. This condition shows that there is space for the development of Islamic criminal law through the use of the concept of *ta'zir* as an instrument for criminal policy reform.³⁶

The concept of *ta'zir* in Islamic criminal law gives the authority to *ulil amri* or the government to determine the form and size of sanctions for acts that do not have definite punishment provisions in the Qur'an or hadith. This flexibility is the main character of *ta'zir* so that it is able to answer the development of types of crime that continue to change along with social dynamics. In contrast to *hudud* and *qisas* which have a specific form of punishment, *ta'zir* provides space for policymakers to determine proportionate sanctions based on the level of wrongdoing, the consequences caused, the condition of the victim, and the interest of community protection. Therefore, persecution that does not meet the requirements for the application of *qisas* or *diyāt* can be qualified as *jarimah ta'zir* while remaining guided by the principles of legality, justice, proportionality, and legal certainty.³⁷

The reconstruction of the penal policy against persecution in Aceh needs to begin with the reformulation of norms in Qanun Aceh Number 6 of 2014 through the addition of provisions that regulate the classification of criminal acts of persecution. The arrangement is important to provide legal certainty regarding the boundaries

³⁶ Miharni Hanapi and Edi Saputra Hasibuan, "Ransomware Sebagai Kejahatan Siber: Rekonstruksi Kebijakan Pemidanaan Dan Strategi Pemulihan Kerugian Korban," *Journal of Law and Security Studies* 3, no. 1 (2026): 73–88.

³⁷ Ahmad Syarbaini, "Konsep Ta'zir Menurut Perspektif Hukum Pidana Islam," *Jurnal Tahqiq: Jurnal Pemikiran Hukum Islam* 17, no. 2 (2023): 37–48.

between minor mistreatment, moderate mistreatment, severe mistreatment, and mistreatment resulting in death or permanent disability. The classification must be prepared systematically by considering the elements of intentionality, the degree of injury, the use of tools, the relationship between the perpetrator and the victim, and the legal consequences caused. With a clear classification, judges have normative guidelines in imposing *uqubat ta'zīr* so as to minimize disparities in punishment and improve the consistency of the verdict.³⁸

In addition to the reformulation of norms, the reconstruction of criminal policies must also pay attention to the proportionality of the type of sanctions imposed on the perpetrators. So far, Qanun Jinayat is better known through the application of *whipping uqubat* as the main form of punishment against several *jarimah*. However, for the crime of persecution, the application of one type of crime alone does not always reflect substantive justice because the level of error and the impact caused are very diverse. Therefore, *the formulation of ta'zīr* needs to be designed more flexibly through a combination of imprisonment, fines, compensation to victims, religious guidance, social work, behavioral rehabilitation, and other forms of sanctions that have educational and preventive purposes. The diversification of sanctions reflects the character of *ta'zīr* as a criminal instrument that is adaptive to the needs of modern society.

The aspect of victim protection must also be an important part of the reconstruction of criminal policy. So far, the orientation of punishment has often focused more on punishing the perpetrators, while the restoration of victims' rights has not received adequate attention. In the criminal act of persecution, the victim not only suffers physical injuries, but also economic losses, psychological disorders, loss of productivity, and even social stigma. Therefore, a penal policy based on *ta'zīr* needs to accommodate the mechanism of providing compensation or restitution imposed on the perpetrator as part of the judge's decision. This approach is in line with the principle of responsibility in Islamic criminal law which is not only oriented towards the provision of punishment, but also on the recovery of losses suffered by victims due to criminal acts.

The reconstruction of criminal policy also requires harmonization with the national criminal law system so as not to cause a conflict of authority between the general judiciary and the Sharia Court. The harmonization can be carried out through the affirmation of the absolute competence limits of each judicial institution, the preparation of norms that do not conflict with Law Number 11 of 2006 concerning the Government of Aceh, and adjustments to the principles stipulated in Law Number 1 of 2023 concerning the Criminal Code. Thus, the development of *jarimah ta'zīr* against

³⁸ Haspita Zoya, "Formulasi Integrated Restorative Justice System Dalam Penegakan Hukum Pidana Di Indonesia," 2025.

persecution is not positioned as a stand-alone legal system, but as part of a national legal reform that still respects Aceh's specificity in the implementation of Islamic law.

From an institutional perspective, the implementation of the policy requires strengthening the capacity of law enforcement officials, both investigators, public prosecutors, judges of the Syar'iyah Court, and coaching institutions. A comprehensive understanding of the concept of *ta'zīr*, evidentiary techniques, classification of persecution, and the purpose of punishment is an important factor in ensuring consistency in the application of the law. In addition, coordination between the Sharia Court, the Police, the Prosecutor's Office, the Aceh Government, and the institution that formed the qanun needs to be strengthened so that the law enforcement process takes place effectively, transparently, and accountably. Without adequate institutional support, the reformulation of legal norms has the potential to have no significant impact on law enforcement practices.

The reconstruction of the penal policy against persecution as *jarimah ta'zīr* must also take into account the development of emerging forms of violence in modern society. Today's persecution is not only carried out directly through physical violence, but it can also involve the use of technology, group acts, or violence that results in prolonged suffering for victims. These developments demand a more adaptive legal policy so that every form of persecution can be reached by the penal system without having to wait too long for legal changes. The flexible character of *ta'zīr* allows policymakers to formulate norms that are able to anticipate the development of crime while providing more effective legal protection to the community.

In terms of the purpose of punishment, the reconstruction of this policy is directed to realize a balance between the interests of the state, society, victims, and perpetrators. Criminalization is no longer understood solely as an instrument of retribution, but also as a means of preventing crimes, protecting the community, fostering perpetrators, and restoring social relations that are disrupted by crime. This approach is in line with the development of contemporary criminal law policies that place criminalization as part of the social protection system (*social defence*) and social reform (*social welfare*). Thus, the application of *ta'zīr* to persecution has a broader function than just the provision of punishment, namely to build legal order and create a sense of security in community life.³⁹

Based on this analysis, the reconstruction of the criminal policy against persecution as *jarimah ta'zīr* in the Aceh Jinayah system needs to be directed at five main aspects, namely the reformulation of persecution norms in Qanun Jinayat, the classification of criminal acts based on the level of injuries and consequences caused, the diversification of the types of *uqubat ta'zīr* more proportionate, strengthening

³⁹ Muchlas Rastra Samara Muksin, "Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Indonesia," *Sapientia Et Virtus* 8, no. 1 (2023): 225-47.

victim protection through restitution or compensation mechanisms, as well as harmonization with the national criminal law system. These five aspects are a complementary unit in building a penal system that has legal certainty, enforcement effectiveness, and constitutional legitimacy.

Thus, the development of persecution as *jarimah ta'zir* is not just an expansion of the scope of the Aceh Jinayat Law, but is part of the reform of Islamic criminal law oriented to the needs of contemporary society. This reconstruction provides a conceptual basis for the formation of the qanun to fill the regulatory void regarding the criminal act of persecution while strengthening the integration between the values of Islamic criminal law and the national legal system. If implemented consistently, the policy will result in a more adaptive, proportionate penal system, provide legal certainty, and be able to increase the effectiveness of protection for the community from various forms of criminal acts of persecution.

Conclusion

Persecution is an act that is prohibited in Islamic criminal law because it attacks physical integrity and human safety. In *jiayah fiqh*, persecution is basically included in the category of *jarimah qisās* and *diyāt*, but for acts that do not meet the requirements for the application of both sanctions, the state has the authority to impose *uqubat ta'zir* based on legal policies that aim to maintain order and provide protection to the community. Although Aceh has implemented the Jinayah system through the Aceh Qanun Number 6 of 2014 concerning the Jinayat Law, persecution has not been regulated as a separate *jarimah* so that the settlement still refers to Law Number 1 of 2023 concerning the Criminal Code. This condition shows the need to improve the substance of the Jinayat Law in order to be able to accommodate the development of violent crimes against the human body. The reconstruction of penal policies through the regulation of persecution as *jarimah ta'zir* can be done by formulating a classification of criminal acts, establishing proportionate sanctions, strengthening protection of victims through restitution mechanisms, and harmonizing them with the national criminal law system. Thus, the Jinayah Aceh system is expected to be able to realize legal certainty, law enforcement effectiveness, and more comprehensive protection of the community in accordance with the principles of Islamic criminal law and the national legal framework.

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