

RESEARCH ARTICLE

# The Existence of Customary Law Communities and Citizenship Rights: Implementation of Sociological Laws and Customs in Aceh in the era of Globalization

Satryo Sasono ✉ and Isharyanto

Magister Sebelas Maret University, Surakarta, Jawa Tengah, Indonesia.

✉ satryo\_sasono@student.uns.ac.id

## ABSTRACT

*Aceh is a province located at the western tip of Indonesia, namely Sumatra Island. Aceh was given special autonomy authority in running the government and self-regulating the local community's interests by the laws and regulations in the system and the Unitary State of the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia. The existence of geographical differences and patterns of interaction caused the tribes in Aceh different. This privilege is related to regulations concerning the fields of religion, custom, education, and clergy as stipulated in Law no. 44 of 1999. This research discusses one of Aceh's customary laws, namely qonun and jinayat, and how Aceh's history was formed up to the challenges that will be faced by the people of Aceh in the era of globalization. The purpose of this research is to explore and find out more about the diversity of tribes in Aceh and find out how the tribes in Aceh maintain their customary law from the shocks of social change in the development of the globalization era.*

**Keywords:** Aceh Province, Customary Law, Globalization.

## INTRODUCTION

Indonesia is known as a country that has many tribes and cultures. These diverse cultural tribes make Indonesia special and each region in Indonesia has its characteristics. The diversity in Indonesia means that the central government must be able to make policies that can be accepted and implemented by all regions, from the province to even between tribes. Making regulations or policies sometimes must be based on the culture and customary laws that apply in the area. The government provides a special autonomy rights policy that functions so that the regions can regulate the allocation of funds to develop their regions. This special autonomy right was granted to several regions such as DKI Jakarta, the special region of Yogyakarta, Papua, and West Papua, and the Special Region (DI) of Nanggroe Aceh Darussalam. The autonomy right policy is contained in Law Number 11 of 2006 concerning the Government of Aceh which is based on special autonomy law in Aceh. Aceh is a Provincial Region, a legal community unit that is special and given special

authority to regulate and manage its government affairs and interests. local communities follow the system's laws and regulations and the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia. Indigenous peoples are a society consisting of a group of people who are related to each other to the invisible nature, to the outside world, and towards the material nature, they behave in such a way that, to get the clearest picture possible, this group can be called a customary law community. The authority of the Government of Aceh in managing and regulating the interests of the community, one of which is in customs which has an institution to regulate customary issues in the Aceh region. Where Aceh enforces positive law and customary law in everyday life.

Adat (Custom) is an Arabic word that means repeated actions or habits. Custom represents the personality of a nation, this is because every nation in the world has its characteristics, and this is what makes a nation have self-identity. Indonesia has many tribes, which makes there are many differences in customs between tribes, but it remains intact because they hold the same foundation, namely *Bhinneka Tunggal Ika* (different but still one). Customary law in Indonesia is always growing and developing, this is a privilege of our country.

Adat (Custom) has an important role in society because custom can describe a person's existence. Customary law is a part of the custom, customary law itself is made from habits that exist in society or the noble values of the Indonesian nation. The customary law system originates from a law that can be taken from unwritten regulations, adapt to legal awareness, and maintained by the community itself.

The law that forms the basis of the social life of the Acehnese people is customary law. Customary law in Aceh is taken from the customary behavior of the sultans during the sultanate period which was carried out continuously to create a balance in people's lives. Aceh is an area that strongly adheres to Islamic teachings, this makes the customary law that applies in Aceh a mixture of Islamic law<sup>1</sup>.

The Acehnese people make the teachings of customary law the foundation and guideline in their lives, this makes customary law in Aceh a part of the soul of the Acehnese people. Indigenous peoples have provided a constitutional legal basis that makes customary law inalienable in the national legal system. Customary law is a source of national law that leads to the ideals of Pancasila law.

As a region that has an autonomous and independent nature, customary institutions in Aceh are regulated in the Aceh Qanun. Aceh institutions also have a role in formulating local government policies using each customary institution's authority. In the implementation of customary justice, it is handed over to the *Keuchik*, *Imeum Meunasah*, *Tuha Peuet*, and *Ulee Jurong*. *Mukim* is the last level in efforts to get justice in customary jurisdiction in Aceh.

## METHODS

This legal research is normative juridical. This legal study uses several approaches, including statutory approaches, conceptual approaches, and case approaches. As a legal

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<sup>1</sup> Fitrah, R. (2017). Efektivitas Penyelesaian Sengketa Warisan Melalui Majelis Adat Aceh (Studi Majelis Adat Aceh di Kecamatan Darussalam, Kabupaten Aceh Besar). Hlm.1-2

study, this research uses secondary data sources (secondary legal materials). Secondary legal materials are materials that provide an explanation of primary legal materials, such as laws, research results, both theses, as well as journals and articles related to research. This research is analytical descriptive in nature, which is intended to provide an overview of the problem as it was at the time the research was conducted, the results of the research were then processed and analyzed to draw conclusions. This research is based on legal symptoms that there is a gap between what should be (*das sollen*) faced with sociological facts (*das sein*)

## RESULTS AND DISCUSSION

### 3.1 The Existence of Aceh Governmential

Aceh is a region in Indonesia. It is located at the western tip of Indonesia, on Sumatra Island. The Aceh tribe is a group of society that occupies Aceh. The origin of the Aceh tribe is still confusing because there are so many sources that tell the story with different versions of hropology source that tells the origin of Aceh society came from the Mantee or Mantir tribe<sup>2</sup>. The Mantee tribe has a relation that relates to the Mon Khmer people in Malaka. The strong evidence that the Mantee tribe is the ancestor of Aceh society is the similarities in culture. One of the cultures in Aceh is Lhee Reutoh born from Mantee culture.

The other source tells that the origin of Aceh society came from Achemenia in the middle of Europe <sup>3</sup>. Denis Lombard, the researcher that investigates Aceh tells that the Achemenian people live around 2500 B.C. The Achemenian people are nomadic and tend to move to other places. The script in Europe between 16th to 18th centuries became strong evidence that shows the Achemenian people is the ancestor or forefathers of Aceh society. In that script, it was written that Aceh society was Achemenian people that built a civilization on the west side of Ruja Island (Sumatra Island); the Achemenian people were spread to many regions in Asia, Africa, and Europe; some of the Achemenian people moved to Persia and became Persian people. The other piece of evidence that guess the origin of Aceh society is the Jamuda and Lilawangsa's writing about the former of Aceh society. In their writing, they tell about the history of the Achemenian people before became Aceh people or society. Jamuda and Lilawangsa said, before the Achemenian people moved to Sumatra, they had lived in Persia (now Iran-Iraq). At that time, Achemenian people move to Ruja Island or Sumatra because of the expansion of the king's authority. They, the Achemenian People named Ruja Island as Nanggroe Aceh.

Aceh is the Islamic study center because Aceh is the first entrance gate to spread Islam in Nusantara or Indonesia. In Aceh, Peurlak or the first Islamic kingdom in Indonesia was born. Peurlak was founded in the 9th century or around 840 AD. The founder and the first king of Peurlak is Allaidin Sayyid Maulana Abdul Aziz Syah. Perulak became the Islam's spread source. A lot of Peurlak society married to Moslem merchant. Peurlak expanded

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<sup>2</sup> Aceh, M. A. (2013). *Sejarah Aceh*. Banda Aceh.

<sup>3</sup> Ilham, A. (2016). *Catatan Singkat tentang Sejarah Asal Mulanya Bangsa Aceh*. Universitas Abulyatama.

become a central business. There is a commercial port in the 8th century. The commercial port then became a shelter for the huge ships. Most of them came from Arab and Persia. Peurlak also produces high quality woods at that time. The woods are used as a material to build a ship because they had a good quality. These high-quality woods became a major commodity because the demand is high enough. The position of Peurlak as a central business and Islamic study center bring the kingdom to the glory era. In the authority of Sultan Mahmud Alaidin Malik Muhammad Amin Shah II Johan, the glory was faded <sup>4</sup>. The disappearance of Peurlak is caused by the mistake of the Sultan. The sultan marries off his daughters to the kings outside Peurlak Kingdom, such as Pasai Kingdom. This condition leads the conflict and strife between the kingdom. The conflict leads the unstable political condition of Peurlak. Shortly, Peurlak was attacked by Pasai. It is a bit difficult for Peurlak to survive, so that Peurlak was defeated.

Aceh is also famous because of the thickness of Islamic vibes. Nevertheless, Aceh could accept all ethnic plurality. The society in Aceh arranges the population system based on their tribe origin <sup>5</sup>. As mentioned by HM. Zainuddin, the society that came from Batak grouped into the Lhee Reutoih people. Then, the society that came from Arabic, Persia, Turkey, Malay, and Bugis joined Tok Batee group and known as Tok Batee people. While the society came from mixed-Hindu and Batak joined Ja Sandang group and known as Ja Sandang people.

### 3.2 Tribes in Aceh

**Aceh Tribe.** Aceh is one of the ethnic groups originating from the province of the special region of Aceh, most Acehnese people live in the Municipality of Banda Aceh, namely in several districts such as Pidie District, North Aceh District, Parts of West Aceh, Parts of South Aceh, and the municipality of Sabang. Where the name Aceh itself comes from is not known, but the Acehnese often call themselves Ureueng Aceh or it means Acehnese, and, in some information, it is stated that this is a fairy tale that tells the journey of a traveler and trader. The people really like to do farming, therefore they like to live in lowland areas that have fertile soil and are usually in the Aceh Besar area <sup>6</sup>.

**Jamee's Aneuk Tribe.** The Aneuk Jamee tribe is said to have come from the Minangkabau people, namely the Rao, Pariaman, Lubuk Sikaping, and Pasaman areas who migrated to the Aceh coast in the 17th century. The name aneuk jamee means guest child, this name was given because during the Padri war or civil war in Minangkabau many people moved to the west coast and they were assimilated with the Acehnese people. The Aneuk Jamee tribe community is very easy to assimilate because of the similarity of the Islamic religion which makes there is no grouping between Minangkabau or Acehnese people but is united

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<sup>4</sup> CNN Indonesia, C. (2020, januari 06). Tepis Menag, Majelis Ulama Aceh Sebut Tak Ada Manfaat Bioskop Baca artikel CNN Indonesia "Tepis Menag, Majelis Ulama Aceh Sebut Tak Ada Manfaat Bioskop" <https://www.cnnindonesia.com/nasional/20200106101333-20-462694/tepis-menag-majelis-ulama-aceh-sebut-tak-ada-manfaat-bioskop>

<sup>5</sup> (Ilham, *Ibid.*, 2016)

<sup>6</sup> Sufi, R. (1998). Keanekaragaman Suku dan Budaya di Aceh. In R. Sufi. Banda Aceh, Indonesia. Retrieved from <https://repositori.kemdikbud.go.id/13642/>

by the name Aneuk Jamee. This tribal community inhabits areas located in small bays along the southern coast of Aceh.<sup>7</sup>

**Bangsa Alas Tribe.** In the 18-20th century, there were many immigrants to Tanah Alas, namely from Gayo Broad, Aceh, Singkil, Fak-Fak, Karo, Toba, Minang, China, Java, and Mandailing. Newcomers make settlements that join other residents and are referred to as *mergo*. The first settlement of the Alas people was in Kute Batu Mbulan, they came from the natural country of Paguruyung, West Sumatra, and from Bambi, Pidie, and Gayo Broad districts. In 1974 the Tanah Alas Kewedanaan had its own district which was called the Southeast Aceh Regency, this made the Tanah Alas Kewedanaan which had previously joined the Gayo Kewedanaan separate and had its own district.<sup>8</sup>

**Gayo Ethnic Group.** In the 18-20th century, there were many immigrants to Tanah Alas, namely from Gayo Broad, Aceh, Singkil, Fak-Fak, Karo, Toba, Minang, China, Java, and Mandailing. Newcomers make settlements that join other residents and are referred to as *mergo*. The first settlement of the Alas people was in Kute Batu Mbulan, they came from the natural country of Paguruyung, West Sumatra, and from Bambi, Pidie, and Gayo Broad districts. In 1974 the Tanah Alas Kewedanaan had its own district which was called the Southeast Aceh Regency, this made the Tanah Alas Kewedanaan which had previously joined the Gayo Kewedanaan separate and had its own district.<sup>9</sup>

**Kluet Ethnic Group.** The Kluet tribe is a tribe that lives in a special area of Aceh, the Kluet tribe inhabits four settlements located in the North Kluet and South Kluet sub-districts. The four settlements are the Meunggamat and Prosperous settlements in the North Kluet District, and Prosperous and Peaceful settlements in South Kluet District.<sup>10</sup>

**The Simeulu Ethnic Group.** Simeulu used to be a sub-district but in 1996 it became part of the West Aceh district. This makes it an autonomous region with a *simelue* administrative status. In book sources, many historical sources are obtained through interviews with regional elders. Before the entry of Islam, Simeulu was divided into five namely Banno Teupah, Simeulu, Lekon, Along, and Banno Sigulai, the Sultan of Aceh sent a cleric to Islamize the population on Simeulu Island and divided it again into the Teupah Kingdom, Simeulu Kingdom, Along, Lekon Kingdom, and the Sigulai Kingdom. During the Dutch colonial period, the island was further divided into 5, namely Landschap Sinabang and its first lady Sinabang, Landschap Simeulu and its mother island of Aie, Landschap Salang and its motherland Nasrehe, Landschap Lekon and its motherland Lekon and Landschap Sigulai and the motherland were Lumamek. At the time of Japanese rule, there was no change in government in this area, but there was a name from *landschap* to son. When Indonesia was proclaimed, the island of Simeulu turned into a *kewedanaan* and the five regions turned into three states. Over time, it changed to three sub-districts with their respective capitals, in Presidential Decree number 22 of 1963 on October 25, 1963, and the letter of the Minister of Home Affairs no. Pem 7/6/18 dated 20 May 1963

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<sup>7</sup> Sufi, R. *Ibid.*, (1998).

<sup>8</sup> Sufi, R. *Ibid.*, (1998).

<sup>9</sup> Sufi, R. *Ibid.*, (1998).

<sup>10</sup> Sufi, R. *Ibid.*, (1998).

changed the kewedanaan to represent the West Aceh Regency, Simeulu Region in Sinabang.<sup>11</sup>

**Singkil Ethnic Group.** Singkil people live in four sub-districts, namely the Singkil sub-district, left intersection, right intersection, and many islands. The culture of Minangkabau, Mandailing, and Nias has been mixed with the traditional culture of Aceh, this is because these ethnic groups moved to Aceh during the Sultanate of Aceh. Their migration took place at a time when the pepper trade was booming in the world, at a time when it required a lot of cheap labor. In 1969, the Singkil area had the status of a representative area for the South Aceh Regency. This moves people to the Aceh area so fast and is accompanied by regional growth, they get jobs as employees in government offices or as laborers.<sup>12</sup>

**Tamiang Ethnic Group.** There are many myths about the origin of the word tamiang. The first opinion is that because the crossing of the right and left crossing rivers was conquered by the Pasai people, this makes the Pasai people call the conquered area a Tamiang. Second, at that time the area was ruled by a viceroy who had a characteristic black waran on his cheeks, in their language black is itam and his cheeks are mieng when combined into tamiang. The third is because of their beliefs about their ancestors who lived in the Riau area. The Tamiang community once took the form of a workshop organized based on four tribes or four clans, this work had foreign relations with the Chinese emperor during the Ming dynasty in the XIV century AD. When the Dutch arrived, the kingdom was divided into 5, but they still used the rules based on the first four tribes. Currently, the 5 divisions have become sub-district and apply regulations set by the government, namely at the district level.<sup>13</sup>

### 3.3 Aceh's Special Characteristics of Social, Political, and Educational Life

The privileges of the Province of Nanggroe Aceh Darussalam (NAD) certainly have an impact on the pattern of life of the local community which is different from the people of other provinces in Indonesia. In contrast to other special provinces in Indonesia such as the Special Region of Yogyakarta, Papua, and West Papua, the existence of the Aceh Province has its privileges in the form of implementing a social order of religious life, customs, education, and the clergy in establishing regional policies with Islamic Syariah. This is based on the legalization of Law (UU) No. 44 of 1999 concerning the Privileges of the Province of the Special Region of Aceh and Law (UU) Number 11 of 2006 concerning the Governance of Aceh. Of course, this specificity can be seen from its history which is so long and colored by tension to obtain regional privileges.

The specialties and privileges possessed by the Province of Aceh certainly include regional autonomy, regulations, politics, economic management, tarbiyah (education), worship, ahwal alsyakhshiyah (family law), muamalah (civil law), jinayah (criminal law), qadha' (judiciary), da'wah, syiar, and the defense of Islam. Fulfillment of the Rights and

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<sup>11</sup> Sufi, R. *Ibid.*, (1998)

<sup>12</sup> Sufi, R. *Ibid.*, (1998)

<sup>13</sup> Sufi, R. *Ibid.*, (1998)

Obligations inherent in every Acehnese is of course a separate topic of discussion compared to communities in other provinces. We need to know that the Province of Aceh has always been known by the nickname "Serambi Mecca" so the implementation of the obligations of the Islamic community in Aceh must be following the Regional Regulations/Aceh Qanun which is based on Islamic Syariah values. Uniqueness such as Aqidah, Worship, and Syi'ar Islam, whose essence is the private space of everyone to his God, is even regulated in the regulations of the Qanun of the Province of Nanggroe Aceh Darussalam Number 11 of 2002. This has an impact on the freedom of the rights of the Acehnese people who are Muslim as an example of the necessity to use headscarves for women, which is different from Islamic communities in other provinces where women have the freedom to wear the headscarf.

The special characteristics of Aceh can also be seen in the field of governance and practical politics. Practical political dynamics can be seen from various Acehnese community groups in the form of Acehnese local parties. The origin of the existence of local political parties in Aceh is based on an agreement between the Republic of Indonesia (RI) and the Free Aceh Movement (GAM) contained in the Helsinki MoU on August 15, 2005<sup>14</sup>. The existence and legitimacy of the existence of local parties in Aceh are then strengthened through Government Regulations (PP) No.20 of 2007 regarding Aceh Local Political Parties. The existence of local parties can also take part in the legislative elections for the Aceh People's Representative Council (DPRA) with an administrative verification process and factual verification through the Aceh Province Independent Electoral Commission (KIP)<sup>15</sup>. Regarding the governance structure in Aceh, there are special institutions in Aceh that do not exist in other provinces. The existence of institutions such as the Ulama Consultative Council and the Syari'ah Court are efforts to regulate and uphold Islamic Syariah values and fulfill the privileges and specificities that exist in the Province of Nanggroe Aceh Darussalam. The uniqueness of governance in Aceh also lies under the district/city administrative area, namely the existence of Mukim and Gampong. Administratively, the existence of Mukim is considered a legal community unit under the district which consists of a combination of several gampongs, while gampongs are administratively on the same level as urban village /village. The district is led by an Imum Mukim who is appointed through a district meeting, while the gampong is led by the Keuchik. This specialty is only owned by the Province of Aceh which is different from other provinces.

The presence of an education system called tarbiyah also colors Aceh's specialties. Education is a deep-rooted foundation in shaping the character of personality and human scientific development. Every community in Aceh also has the right to get a good education, but the implementation of the tarbiyah system there goes hand in hand with the foundation of Islamic Syariah values. The existence of educational institutions that are characteristic in Aceh such as Meunasah (elementary school level), Rangkang (junior high school level), Dayah (high school level), dayah tngk Chik (university/academic level), Jami'ah Baiturrahman (faculty)<sup>16</sup>. Educational institutions such as Dayah adhere to a system of class

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<sup>14</sup> Mukhlis. (2014). Keistimewaan dan Kekhususan Aceh dalam Perspektif Negara Kesatuan Republik Indonesia. Ilmu Hukum 4(1), Hlm. 76-99.

<sup>15</sup> [acehprov.go.id:kip.acehprov.go.id](http://acehprov.go.id:kip.acehprov.go.id)

<sup>16</sup> Hadi, A. (2014). Dinamika Sistem Institusi Pendidikan di Aceh. Jurnal Ilmiah Peuradeun, Hlm. 179-194.

separation between male and female students (co-educational class)<sup>17</sup>. The establishment of Dayah has existed since the Dutch colonial period. The existing curriculum system in Education at Dayah generally uses the Al-Quran and Sunnah as the basis of belief and knowledge and has the goal of producing people who are truly tafakkuh fi al-din (mastering the science of religion with its various branches in depth). In historical records, the development of Dayah has become an educational institution that protects all problems that occur in society. Unlike the case with madrasas and schools, even though madrasas were originally institutions founded by the community when these madrasas were nationalized and became a sub-system in national education, they made their existence a bit far from the social life of the community and tended to be more exclusive as educational spaces. Even though Dayah tends to dominate, after the tsunami, the existence of public schools began to emerge with different systems in the institutional ideology system, curriculum system, spirit of nationalism, student placement education system, and social interaction system.

### 3.4 Aceh's Special Characteristics of Social, Political, and Educational Life

Qanun itself is the meaning of custom, which is used as a separator between laws originating from fiqh and laws originating from custom. Qanuns are used in Aceh as statutory regulations that have similarities with regional regulations to regulate all activities in the form of the governance of Aceh or the lives of its people<sup>18</sup>. Jinayah is taken from the word jana which means sin or wrong, Jinayah legally means a criminal act or terminologically means everything that is prohibited by syara' and is threatened by Allah SWT by getting punishment in the form of had or ta'zir.<sup>19</sup>

Aceh has the privilege of managing its own regional authority which is regulated through Law No. 11 of 2006. As a region that has strong Islamic Syariah, Aceh has the authority in its own privileges to use Islamic Syariah values based on Qanun. Aceh Qanun No. 6 of 2014 regulates criminal law or jinayat. This law regulates and prosecutes crimes such as murder, adultery, accusing of adultery, theft, drunkenness, and everything that is based on Islamic principles<sup>20</sup>. Qanun Jinayat in Aceh has the meaning of being a law that contains Islamic law, according to Syahrizal, qanuns can be divided into two, namely from the divine side with the hudud rules and from a humanitarian point of view with the ta'zir rules. Qanun is not only a regional regulation but also part of Islamic law which has been legalized by the DPRA and the governor of Aceh has approved it<sup>21</sup>.

In terms of Qanun's position in legislation is equal to other regional regulations. In article 1 point 21 of law No. 11 of 2006 there are two categories regarding the use of the

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<sup>17</sup> Hadi,A., *Ibid.*, (2014)

<sup>18</sup> Nurdin, R. (2018). Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia. Retrieved from <https://media.neliti.com/media/publications/279970-none-1fed55ec.pdf>

<sup>19</sup> Qotadah, H. A., & Achmad, A. D. (2020). Undang-Undang Jinayat Syariat Islam di Aceh antara Implentasi, Isu dan Tantangan. *Jurnal Hukum dan Kemanusiaan*, Hlm. 171-194. Retrieved from <https://journal.uinsgd.ac.id/index.php/adliya/article/download/9246/pdf>.

<sup>20</sup> Qotadah, H. A., & Achmad, A. D., *Ibid.*, (2020). Hlm. 193

<sup>21</sup> Nurdin, R. (2018). Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia. Retrieved from <https://media.neliti.com/media/publications/279970-none-1fed55ec.pdf> . Hlm. 175



term Qanun in making regulations in Aceh, the two categories are "(i) Qanun which regulates the administration of government and (ii) Qanun which regulates the administration of life the people of Aceh based on Islamic law"<sup>22</sup>. There are four basic Qanuns stipulated by the Aceh government, namely Qanun Number 11 of 2002 concerning the implementation of Islamic Syariah in the fields of Aqidah, Worship, and Islamic Syariah itself; then in Qanun Number 12 of 2003 it discusses Khamr drinks and the like; then Qanun Number 13 of 2003 namely regarding Maisir or gambling the last one is Qanun Number 14 of 2003 regarding Khalwat or immorality. Qanuns are the same as other regulations because they can change according to the laws needed by the people of Aceh, the culture of society is developing, technology and science are developing, and cannot be separated from legal politics<sup>23</sup>. In article 269 paragraph 2 of Law Number 11 of 2006, it states that "Legal regulations under the law which are directly related to special autonomy for the Province of Aceh and districts/cities are adjusted to this Law". In this article, it can be interpreted that all regulations under the law, namely Government Regulations, Presidential Decrees, and Ministerial regulations must comply with Law Number 11 of 2006 which is the reference for the Qanun<sup>24</sup>.

Aceh's Jinayat Qanun can complement deficiencies that are not regulated in the national criminal law. The point of view of Islamic law in Aceh can make a different meaning to the national criminal law regulations and the sanctions given can also be heavier when compared to the Criminal Code. Aceh's jirayat law qanun contains the jarimah or criminal act and uqubat or sanctions. Jinayat procedural law is an act to enforce the Jinayat law or Qanun Jinayat in a Jinayat case. Aceh Governor Regulation Number 5 of 2018 was made so that there are norms in the implementation of the Jinayat procedural law. In the Jinayat procedural law, there are three very important groupings in the Jinayat field, namely the Jinayat Qanun as a material law, the Jinayat Procedure Qanun as a formal law, and the Governor's Regulation on the implementation of the Jinayat event as its implementing law.<sup>25</sup>

When we violate a rule, we will get sanctions, this is also applied to someone who violates the Jinayat law. Sanction in Jinayat law is referred to as 'uqubat', uqubat itself is set into two hudud and ta'zir. Hudud is a fixed principal law, meaning that judges can only take one opportunity to make decisions and can refer to existing decisions. In this case, only the case of consuming alcohol has just been determined by the Aceh government with a sanction of 40 lashes. This decision was taken from the nas Syariah which the Aceh government only took, determined, and implemented. Ta'zir is a punishment where judges have the freedom to determine sanctions, judges are allowed to conduct trials make decisions, and imposing the right punishment for the perpetrators and how to implement it. Judges may take procedural law decisions originating from Law No. 8 of 1981 concerning

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<sup>22</sup> Qotadah.H.A % Achmad.AD., *Op.Cit.*, Hlm. 177

<sup>23</sup> Magfirah, A., Wahyuda, M., Rina, R., & Ahmad, S. (2022). *Dinamika Hukum Pidana Islam di Nanggroe Aceh Darussalam*. Jisyaku, Hlm. 125-136. Retrieved from <https://e-journal.iain-palangkaraya.ac.id/index.php/jisyaku/article/view/4096>

<sup>24</sup> Firdaus, M., Arif, Santoso, D., & Nurjihan, N. (2021). Pengaruh Penerapan Qanun Jinayat Terhadap Angka Kriminalitas Di Aceh. *Borobudur Law Review*, Hlm. 53-63.

<sup>25</sup> Magfirah, A., Wahyuda, M., Rina, R., & Ahmad, S. *Ibid.*,(2022)

criminal procedural law or the book of criminal procedural law as transitional law as long as it is by Islamic law.<sup>26</sup>

Some Jarimah and 'uqubat applied in Aceh are as follows:

- a. When someone drinks khamr with an alcohol level of 2% or more, and they drink it intentionally, they will be given a penalty of 40 lashes and the number of lashes can be doubled if the act is repeated. Not only is the caning law given to those who violate it, but they can choose to pay a fine of 400 grams of pure gold or imprisonment for 40 months. This punishment applies not only to those who consume khamr, but also to sellers, people who store, and who produce. Sellers, storing and producing khamr will be given a maximum penalty of 60 lashes or a fine of 600 grams of pure gold or a minimum of 60 months imprisonment. People who only buy without consuming khamr are given a sanction in the form of a maximum of 20 lashes or 200 grams of pure gold or a minimum of 20 months imprisonment.
- b. *Maisir* or activities in the form of gambling are carried out between 2 or more parties and are profitable. Punishments are given to those who gamble and who facilitate or organize such gambling. Those who gamble and get a profit of 2 grams of pure gold, they get a penalty in the form of 12 lashes or a fine of 120 grams of pure gold or 12 months in prison, and if the profit is more than 2 grams, whichever punishment is heavier. Those who organize it will receive a maximum penalty of 15 lashes or a fine of 150 grams of pure gold or 15 months in prison.<sup>27</sup>
- c. *Jarimah* is divided into two, namely *khalwat* (dating) and *ikhtilab* (filthy), both things are not following Islamic law because people of the opposite gender who agree to do sex and they are not *mahram* or not married. The difference between these two things is that *khalwat* leads to adultery in a closed or hidden place, while *ikhtilab* is making out in a closed and open place such as making out, touching each other, hugging, and kissing between men and women. A person who commits *khalwat* gets a punishment in the form of a maximum of 10 lashes or a fine of 100 grams of pure gold or imprisonment for 10 months, and those who provide facilities are given a punishment in the form of a maximum of 15 lashes or a fine of 15 grams of pure gold or a maximum imprisonment of 15 months. For *ikhtilab*, they get a sanction in the form of a maximum of 30 lashes or a fine in the form of 300 grams of pure gold or a maximum of 30 years in prison, and for those who facilitate or promote they are sentenced to a maximum of 45 lashes or a fine of 450 grams of pure gold or imprisonment for a maximum of 45 months.
- d. In *Qanun Jinayat Aceh No.6 of 2014* sexual harassment is an immoral or obscene act by coercion against another person, either male or female, in public. Articles 46-47 of *Qanun No. 4 of 2014* contain provisions regarding sexual harassment, that is, people who commit sexual harassment on purpose will be threatened with a maximum of 45 lashes or a fine of 450 grams of pure gold or imprisonment for a maximum of 45 months. For sexually abusing children contained in article 46, the perpetrator must

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<sup>26</sup> Walidain, M., & Astuti, L. (2021). Implementasi Qanun Jinayat dalam Penegakan Hukum Pidana di Aceh. *Indonesia Journal of Criminal Law and Criminology (IJCLC)*, Hlm. 184-193. Retrieved from <https://journal.umy.ac.id/index.php/ijclc/article/download/13790/7072>

<sup>27</sup> Qotadah, H.A & Achmad., *Ibid.*, Hlm. 177

- be punished in the form of 90 lashes or a fine of 900 grams of pure gold or imprisonment for a maximum of 90 months.
- e. *Jarimah Zina* is a punishment for the perpetrators of adultery, the punishment they get is 100 lashes which will double if they repeat their actions or they will get a fine in the form of pure gold in the amount of 120 grams or 12 months in prison. Punishment for the person or party who facilitates will get *uqubat ta'zir* in the form of 100 lashes or a fine of 1000 grams of gold or a maximum imprisonment of 100 months. The punishment will be severe if the perpetrator commits adultery with a child because there is a hudud uqubat, namely 100 lashes and the same *uqubat ta'zir* as the facilitating parties.<sup>28</sup>
- f. *Liwath* or homosexual or now referred to as LGBT is a grave sin that is contrary to religious norms and decency. This is a deviation and out of their *qadrat*. *Liwath* perpetrators can receive punishment by *Qanun* Number 6 of 2014 in article 63 which states that a person who intentionally commits jarimah liwath will be threatened with *uqubat ta'zir* at most 100 lashes or a fine in the form of 1000 grams of gold or imprisonment for a maximum of 100 years, and if they repeat the action, there will be an additional fine in the form of pure gold of a maximum of 120 grams and/or imprisonment for a maximum of 12 months. Perpetrators who do this to children will receive the threat of *uqubat ta'zir* in paragraph (1) and coupled with a maximum of 100 lashes or a fine of 1000 grams of pure gold or 100 months in prison.<sup>29</sup>

### 3.5 Aceh's Government Policy

The government implemented an Islamic Syariah policy in the Province of Aceh Darussalam (NAD) on December 19, 2000, so that Aceh would not choose to separate from the Unitary State of the Republic of Indonesia. At that time the Free Aceh Movement (GAM) was out of control and the implementation of this policy was a preventive measure from the Central government's territorial political strategy so that Aceh would not separate from Indonesia. When Law Number 44 of 1999 was passed regarding the implementation of privileges for the province of the special region of Aceh on October 4, 1999, it was the end of the Acehnese people's struggle for decades to enforce Islamic law in the Province of Nanggroe Aceh Darussalam.<sup>30</sup>

From a sociocultural point of view, Aceh has its way of representing Islamic customs and religion in controlling its people. Since the beginning of the spread of Islam from the Arabian Peninsula, Islam has become the identity of the people of Aceh. The Acehnese people view life as having to coexist with Islam, this makes the legal values and customary norms of Aceh blend with Islamic teachings. The opinion Dutch anthropologist, B.J Bolla, said that "Being an Acehnese is equivalent to being a Muslim" (being an Acehnese is synonymous with being a Muslim). All areas of law in customary law in Aceh influence Islamic law, this makes Islamic law and customary law become a legal entity. The proverb

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<sup>28</sup> Maghfirah, A., Wahyuda, dkk., *Ibid.*, Hlm. 127

<sup>29</sup> Maghfirah, A., Wahyuda, dkk., *op.cit.*, Hlm. 128

<sup>30</sup> Armia Ibrahim, S. (2020). PERATURAN PERUNDANG-UNDANGAN TENTANG PELAKSANAAN SYARIAT ISLAM DI ACEH. Retrieved oktober 22, 2022, from <https://www.ms-aceh.go.id/berita-artikel-galeri/artikel/183-peraturan-perundang-undangan-tentang-pelaksanaan-syariat-islam-di-aceh.html>

or adage that the people of Aceh adhere to, "Adat bak po teummeurehum, law bak Syah Kuala, qanun bak Putro Pahang, reusum bak Laksamana".<sup>31</sup>

Several of Aceh's policies are based on Islamic law, this is because most of Aceh's population adheres to Islam. The following are the policies in Nanggroe Aceh Darussalam:

#### 1. Whip Law

The province of Aceh can apply for caning after obtaining constitutional permission to apply Islamic law. The permit is contained in three laws, namely Law Number 44/1999 concerning the privileges of Aceh, Law 18/2001 concerning special autonomy in Aceh, and Law Number 11 of 2006 concerning the Aceh government. There was a change between Law 18/1999 concerning the privileges of Aceh and Aceh Law Number 11 of 2006, this new law originates from the Helsinki MoU on August 15, 2005. One of the things regulated in Aceh Law Number 11 of 2006 is the traditions and norms in Aceh which are implemented under the application of Islamic law.

The enactment of the caning law in Aceh is the influence of Islamic teachings because many Acehnese people adhere to Islam. Since the 17th century AD, Islamic law has been implemented in Aceh, which has made Islamic law the basis of legislation in Aceh. The Islamic Syariah that was implemented made Aceh's Islamic culture, but in the 20th century, the Syariah in Aceh was abandoned because of choices in living as a nation and having an Indonesian homeland.

Flogging is given according to the violation committed by the offender. The purpose of giving caning law is divided into two, namely physically and psychologically. The physical administration of caning has the aim of causing pain which makes the perpetrators afraid and refrain from breaking the rules, fear is also felt by the people who witness the process of caning. The purpose of whipping is psychologically to make the victim feel ashamed because he was punished in front of many people. The provision of caning provides a deterrent effect so that people are more obedient to the rules and do not commit acts that violate the law.<sup>32</sup>

#### 2. Women are Required to Wear the Hijab

In *Qanun* Number 11 of 2022 which regulates the use of the headscarf, the *Qanun* explains the implementation of Islamic law in three areas, namely *Aqidah*, Worship, and Symbols of Islam. The use of the headscarf is part of Islamic symbols, Islamic law itself requires all Muslim women to wear the headscarf to cover their private parts. In the Al-Quran and Al-Hadith Muslim women are not required to wear the veil. The use of the headscarf has the goal of preventing a woman from the evil and lust of men. *Jumbur* scholars say that the parts of a woman's body that are not included in the genitals are her hands and face. The application of the *Qanun* in Aceh has followed Islamic law originating from the Al-Quran and Al-Hadits.

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<sup>31</sup> Berutu, A. G. (2020). Penerapan Syariat Islam Aceh dalam Lintas Sejarah. Penerapan Syariat Islam Aceh dalam Lintas Sejarah, Hlm. 2.

<sup>32</sup> Kompas.com. (2022, februari 02). Hukuman Cambuk di Aceh: Dasar Hukum, Sejarah, dan Tujuannya Artikel ini telah tayang di Kompas.com dengan judul "Hukuman Cambuk di Aceh: Dasar Hukum, Sejarah, dan Tujuannya", <https://regional.kompas.com/read/2022/02/20/142000778/hukuman-cambuk-di-aceh--dasar-hukum-sejarah-dantujuannya?page=all#:~:text=Dasar%20Hukum%20Hukuman%20Cambuk%20di%20Aceh&text=Izin%20tersebut%20tertulis%20dalam%20tiga,tentang%20otonomi%20khusus%20di%20>

### 3. Cinema Prohibition in Aceh

Aceh once had a cinema and experienced its glory, but when Aceh was declared a martial law area, the glory of the cinema ended. Over time many cinemas were closed and in 2004 all cinemas were closed due to the Aceh tsunami. Aceh has a unique policy, namely banning cinemas. According to the deputy chairman of the Aceh Ulama Consultative Assembly (MPU), namely Teungku Faisal Ali, the people of Aceh do not yet need cinemas for entertainment reasons. "We in Aceh see that there is no use for cinemas, so I do not think a cinema needs to be built. If you say it's for entertainment, the people of Aceh have many other forms of entertainment," he said when confirmed.<sup>33</sup>

The Mayor of Banda Aceh said that his party did not mention that a cinema could not be built in Banda Aceh unless it obtained permission and approval from the Aceh MPU. The mayor also stated that the Local Government of Banda Aceh would not refuse if there was a plan to build a cinema in the city of Aceh. The construction of cinemas in Aceh also requires permission and approval from the Aceh MPU, this has prevented the mayor of Banda Aceh from building a cinema. The plan to build a cinema in the city of Aceh will not be rejected by the Local Government of Banda Aceh if it is allowed by the MPU.<sup>34</sup>

## 3.6 Application of Legal Policies in Aceh in The Era of Globalization

One of the implementations of legal policies in Aceh is customary justice. Customary justice is Aceh's local wisdom that has existed since the Dutch colonial era. In its existence, customary justice has experienced ups and downs. Acehnese people often solve problems traditionally or use customary courts. Customary justice is one of the means to get justice for women and marginalized people. However, there is still a bias against women and marginalized people in the customary justice process. This can happen because of factors such as traditional instruments in Gampong which have not involved women in carrying out customary justice, not involving women in case resolution and the judicial process. Women are generally represented by their representatives. Women are only involved when they are used as witnesses.

The customary court in Aceh needs to improve justice for women so that the existence of the customary court is maintained. This is due to strong support from the community, strong cultural and traditional values that have Islamic nuances, support from qanuns, and laws such as laws governing the governance of Aceh, namely Law No. 11 of 2006. In addition, the customary court in Aceh needs to improve justice for women and marginalized people due to the waning of public trust which encourages people to use other laws as an alternative solution to their problems.

Strategic steps are needed to maintain the existence of customary justice in Aceh so that customary justice continues to exist during this globalization era. Strategic steps are needed not only to maintain the existence of customary justice but also to improve justice

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<sup>33</sup> CNN Indonesia, C. (2020, januari 06). Tepis Menag, Majelis Ulama Aceh Sebut Tak Ada Manfaat Bioskop Baca artikel CNN Indonesia "Tepis Menag, Majelis Ulama Aceh Sebut Tak Ada Manfaat Bioskop" <https://www.cnnindonesia.com/nasional/20200106101333-20-462694/tepis-menag-majelis-ulama-aceh-sebut-tak-ada-manfaat-bioskop>

<sup>34</sup> Surry, K. (2020, januari 06). Walikota: Ijin bioskop di Banda Aceh tunggu restu MPU. Retrieved November 2022, from <https://www.antaraneews.com/berita/1236871/walikota-ijin-bioskop-di-banda-aceh-tunggu-restu-mpu>

for women and marginalized people. These strategic steps include organizing socialization regarding customary justice, increasing the capacity of customary justice personnel and institutions, strengthening inter-agency cooperation, increasing the commitment and seriousness of the central and regional governments in supporting customary justice by providing allocations of funds, developing the commitment to the central and regional governments in protecting customary justice through the provision of means to provide justice for women and marginalized people (Juniarti, 2012) .

In addition to customary justice, there is the Qanun Jinayat law or caning law as a manifestation of law enforcement in Aceh. This Qanun Jinayat law is a flogging law that is given to people who violate Islamic values or rules. This law can work effectively in Aceh because most Acehnese people support the implementation of the Syariah law made by the Aceh regional people's representative council.

The mechanism for implementing the flogging carried out in an open or closed space raises debates in the modern era or the era of globalization. This debate is related to the perspective of human rights or human rights which considers caning to be quite controversial. As is well known, Indonesia has laws that regulate human rights as stated in article 28 of the 1945 Constitution and Law number 39 of 1999 which prohibits torture and cruel treatment because it is contrary to human rights not to be tortured. The two articles also prohibit inhumane and degrading actions because after all the dignity of a human being cannot be reduced. Indonesia has also ratified international humanitarian organizations such as the ICCPR, ICSCR, CAT, CEDAW, CRC, CERD, and CMW. The Indonesian government agreed to draw up regulations or laws governing human rights to fulfill human rights according to those stipulated by these international humanitarian organizations. Therefore, caning is considered as a violation of human rights.

According to the doctrine and international customary law, freedom from torture is an absolute right that belongs to the category of its cogens or peremptory norms.<sup>35</sup> Caning is a law that is included in the category of inhumane punishment because it applies cruel, inhumane, and degrading punishments. The caning laws conflict with the ICCPR and CAT which prohibit cruel treatment. Caning is classified as an inhuman and degrading law in this modern era of the globalization era.

**The Challenges of Acehnese in The Era of Globalization.** Globalization is an influence of changes in the nation's socio-cultural behavior of the people which causes the cultures of various countries to unite to form one global culture and make relations between countries closer. Koentjaraningrat also once said about cultural change is "a social process that arises when a group of people who are cultured meet elements of foreign culture in such a way that these cultural elements are gradually accepted and processed into society itself".<sup>36</sup> Technological progress is something that has a major influence on globalization. In today's era of significant technological progress, it is impossible to ignore this cultural effect. Globalization is also a process of expanding global engagement between countries through student exchanges, travel, and other activities. As a result of society's weak

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<sup>35</sup> Wahyu. (2018, 04 26). Hukuman Cambuk di Aceh dalam Perspektif HAM. Retrieved from law.uii.ac.id: <https://law.uii.ac.id/blog/2018/04/26/hukuman-cambuk-di-aceh-dalam-perspektif-ham/>

<sup>36</sup> Suharni. (2015). Westernisasi Sebagai Problema Pendidikan era Modern. Jurnal A;-Ijtimaiyyah, 73-88. Retrieved 10 Oktober , 2022

resistance to cultural currents, they begin to lose their identity as moral people and deviate from religious and cultural norms.

The entry of values, new rules, and even new ideologies into society or indigenous communities is relatively easy in this era of globalization. Impressions are one way of entering globalization, such as television shows, social media, the internet, and others, which are now present in every region of the nation without exception and cannot be stopped. So many factors contribute to changes in society, thinking, identity, and belief in this era of globalization. Conflicts between people who uphold certain ideals, traditions, and cultures are often caused by the effects of globalization. One of the impacts of globalization is the cultural shift that occurs in traditional civilizations, such as the shift from a closed society to an open society, from a homogeneous set of ideals to a plurality of social values and norms.

The influence of globalization is unbearable. Therefore, we as a society must be aware of these globalization changes and be able to prevent the negative impacts of this globalization. This globalization has also brought about several changes in social behavior, culture, and even the way of dressing in the Acehnese. Indirectly, this globalization has entered the people of Aceh and has become a challenge for Aceh People to maintain the existence of customs and culture in Aceh. All people in Aceh also follow the developments of the era such as playing social media, YouTube, and others, this is a big challenge for the people of Aceh because on social media there is a lot of westernized culture that is very different from the culture of Aceh itself.

Acehnese are the same as people in other cities. However, Aceh has become a city that is considered very strong in Islamic religious values. The people of Aceh still refer to Islamic principles or Syariah. Even though times are changing, technology is advancing, and globalization is growing, the people of Aceh still see sophistication from an Islamic point of view. Acehnese people think that their people will find it easier because of Islamic principles or Islamic law.<sup>37</sup> Acehnese also follows Islamic law in their social life, such as the style of dress, most people in Aceh wear loose clothes and do not cause body curves or dress in syar'i following Islamic law. Apart from that, the people of Aceh are also very strict about punishments if someone does something that deviates from Islamic law, such as adultery, and so on. These things are a big challenge in this era of globalization because in this era of globalization people follow a westernized lifestyle like that of social media. Even in clothing, in this era of globalization, it is very different from what the Acehnese usually do, because now many young people are wearing tight pants in other cities, and in Aceh, there are also quite a few children who are wearing these pants. Apart from that, this era of globalization also normalizes indecent and westernized things such as free sex, even in big cities like Jakarta, Bandung, and others, this has been done by not a few young people there, and other things it also violates the religion of Islam. Therefore, in this era of globalization, there are many challenges for Acehnese because there are many behaviors that do not follow Islamic law.

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<sup>37</sup> Pratiwi, A. E., Triyono, S., Rezkiyanto, I., Asad, A. S., & Kholimah, D. A. (2018). Eksistensi masyarakat adat di tengah globalisasi. *Jurnal Civics: Media Kajian Kewarganegaraan*, Hlm.95-102.

## CONCLUSION

Based on the results of research and discussion raised by the author Aceh is a province that has privileges in regional management, making regulations, politics, economic management, education (tarbiyah), worship, family law, civil law, criminal law, justice, preaching, syiar, and defending Islam. The Islamic community in Aceh lives by carrying out obligations following regional regulations or Aceh qanuns which are based on Islamic Syariah. Qanun jinayat in Aceh can complete deficiencies that are not regulated in the national criminal law. Qanun jinayat contains finger (not criminal) and uqubat (sanctions). The policies of the government of Aceh, where most of the population adheres to Islam, include the law on whipping, the law on the mandatory wearing of the hijab for women, and the law on the prohibition of cinemas. Aceh also applies customary justice law, namely local wisdom justice which has existed since the Dutch colonial era. In maintaining its existence, customary law requires strategic steps. Until now the people of Aceh still adhere to the principles of Islam or Syariah. Times have changed, technology has advanced, and globalization has developed, but the people of Aceh still do not abandon their customary law. Even though some of the laws are controversial because they are considered too heinous and violate human rights, the people of Aceh remain unwavering in maintaining their implementation. The people of Aceh think that their customary law which is based on Islamic law makes it easier for their people to live their lives. The people of Aceh adhere to Islamic law in their social life, such as the style of dress that is syar'i and does not show the curves of their bodies. Apart from that, the people of Aceh are also tough on imposing penalties if someone commits an offense or something that deviates from Islamic law, such as adultery and another thing.

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