



THE SYSTEM OF PROVING ZINA IN ACEH QANUN FROM THE PERSPECTIVE OF MAQASHID SHARIA



Muhammad Aulia Ramdan Daenuri^{1*}, Dzulkifli Hadi Imawan²

*Correspondence :

Email:
21913027@students.uin.ac.id

Affiliation:

¹ Universitas Islam Indonesia,
Indonesia
² Universitas Islam Indonesia,
Indonesia

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Abstract

The provisions on proving zina in the Aceh Qanun have drawn pros and cons in society, particularly regarding the confession of adultery as stated in the MS Idi decisions Number 3/JN/2021/MS.Idi and Number 4/JN/2021/MS.Idi. According to the Aceh Qanun, a defendant's confession in proving adultery applies only to the defendant and cannot implicate their partner. The purpose of this study is to compare the system of proving adultery in the Aceh Qanun with the provisions of Islamic jurisprudence, and to analyze and evaluate these provisions from the perspective of maqashid sharia. This research is a normative legal research, referring to legal norms contained in legislation, judges' decisions, and doctrines obtained through literature. The findings indicate that the system of proving adultery in the Aceh Qanun is consistent with maqashid sharia, particularly in protecting honor (hifdz al-'ird) and lineage (hifdz al-nasl). Adultery is considered a serious offense that can severely damage an individual's social standing. Therefore, strict evidentiary standards are essential to prevent false accusations and social harm. If the requirements for proving adultery were loosened, it would increase the risk of abuse and defamation. Accordingly, the Aceh Qanun provision that imposes hadd qadzaf—eighty lashes—on those who accuse others of adultery without presenting four witnesses is justified and necessary. The author hopes that this research can contribute academically in the development of Islamic law and its application in Indonesia, especially in the maqashidi approach to the system of proving adultery in the Aceh Qanun.

Abstrak

Ketentuan pembuktian zina dalam Qanun Aceh menuai pro dan kontra di kalangan masyarakat khususnya tentang pengakuan zina sebagaimana dalam putusan MS Idi Nomor 3/JN/2021/MS.Idi dan Nomor 4/JN/2021/MS.Idi. Menurut Qanun Aceh, pengakuan terdakwa dalam pembuktian zina hanya berlaku untuk terdakwa tersebut saja dan tidak dapat menjerat pasangannya. Tujuan penelitian ini adalah membandingkan sistem pembuktian zina dalam Qanun Aceh dengan ketentuan fiqh, menganalisis dan mengevaluasi ketentuan tersebut dengan perspektif maqashid syariah. Penelitian ini merupakan penelitian hukum normatif, merujuk pada norma-norma hukum yang terdapat dalam peraturan perundang-undangan, putusan hakim serta doktrin-doktrin yang diperoleh melalui bahan-bahan kepustakaan. Temuan penelitian menunjukkan bahwa sistem pembuktian zina dalam Qanun Aceh telah sesuai dengan maqashid syariah terutama dalam memelihara kehormatan (hifdzul irdh) dan memelihara keturunan (hifdzul nasl) manusia, Zina adalah perbuatan yang sangat keji, orang yang dituduh melakukan zina akan jatuh ke dalam status keji di hadapan masyarakat. Apabila pembuktian zina dilonggarkan, niscaya akan memudahkan orang untuk menjatuhkan orang yang tidak disukainya. Maka telah tepat ketentuan dalam Qanun Aceh yang mengatur bahwasanya menuduh orang lain melakukan zina tetapi tidak dapat menghadirkan empat orang saksi, maka dikenakan had qadzaf dengan cambuk sebanyak delapan puluh kali. Penulis berharap penelitian ini dapat berkontribusi secara akademik dalam pengembangan hukum Islam dan penerapannya di Indonesia khususnya dalam pendekatan maqashidi terhadap sistem pembuktian zina dalam Qanun Aceh.



INTRDUCTION

Aceh is one of Indonesia's special regions, having the right to implement Islamic law in its governance. This implementation of Islamic law has resulted in the establishment of Qanun (Regional Regulations) in Aceh. Qanun is an element of the Indonesian legislative system that holds a position equivalent to Regional Regulations (Perda).¹ The state's recognition of Aceh's uniqueness and character is determined through the implementation of Law No. 11 of 2006 concerning the Governance of Aceh (UUPA). This law is a balanced combination of Law No. 44/1999 concerning the Management of the Special Status of the Special Region of Aceh Province and Law No. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as Aceh Province. This law is known for being quite lengthy, consisting of 273 articles. This law does not provide a new definition of Aceh's special status. However, it does directly address matters within the authority of the Aceh Government as the implementation of Aceh's special status.²

The privileges stipulated in Law Number 11 of 2006 concerning the Government of Aceh include granting the Province of Aceh the authority to implement Islamic law in daily life.³ Islamic law, as defined in Law Number 11 of 2006 concerning the Government of Aceh, encompasses faith, sharia, and morals, as stipulated in Article 125 paragraph (1) of the law. Article 125 paragraph (2) of the law further details these faith, sharia, and morals in the areas of worship, ahwal al-syakhshiyah (family law), muamalah (civil law), jinayah (criminal law), qadha' (judicial rulings), tarbiyah (education), da'wah (preaching), propagation, and defense of Islam.⁴

The implementation of Islamic law in the criminal sector in Aceh Province is fully regulated in Aceh Qanun Number 6 of 2014 concerning Criminal Law and Aceh Qanun Number 7 of 2013 concerning Criminal Procedure. One of the crimes regulated in Article 3 paragraph (2) of Aceh Qanun Number 6 of 2014 concerning Criminal Law is adultery. In Article 1, paragraph 26 of Aceh Qanun Number 6 of 2014 concerning Criminal Law, adultery is defined as sexual intercourse between one or more men and one or more women without the bonds of marriage, with the consent of both parties.⁵

The procedure for proving the crime of adultery as regulated in Aceh Qanun Number 7 of 2013 concerning Criminal Procedure differs from the procedure for proving other crimes. Article 180 of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law stipulates that the Judge is prohibited from imposing 'Uqubat on the defendant, unless the Judge obtains a conviction with at least 2 (two) valid pieces of evidence, that a crime has actually occurred and the Defendant is guilty of committing it, except for the crime of adultery. Then in Article 182 paragraph (5) of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law it is stipulated that specifically for the crime of adultery, it is proven by 4 (four) witnesses who directly witnessed the process that shows that the act of adultery has occurred at the same time, place, and person. However, on

¹ Rya Elita Br Sembiring et al., "Analisis Tindak Pidana Perzinaan Dalam Pembaharuan Hukum Pidana Dan Qanun Jinayat Di Aceh," *IBLAM LAW REVIEW* 4, no. 2 (2024): 62–68, <https://doi.org/10.52249/ilr.v4i2.408>.

² Dahlan A. Rahman et al., "Otonomi Daerah Khusus Aceh: Jembatan Menuju Rekonsiliasi Atau Sumber Ketegangan Baru," *Jurnal Pemerintahan Dan Politik* 9, no. 3 (2024): 3, <https://doi.org/10.36982/jpg.v9i3.4459>.

³ "UU No. 11 Tahun 2006," Database Peraturan | JDIH BPK, accessed June 11, 2025, <http://peraturan.bpk.go.id/Details/40174/uu-no-11-tahun-2006>.

⁴ Database Peraturan | JDIH BPK, "UU No. 11 Tahun 2006."

⁵ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," accessed June 11, 2025, <https://www.regulasip.id/book/8964/read>.

the other hand, the crime of adultery can be proven only by the Defendant's confession as regulated in Article 187 paragraph (4) of Aceh Qanun Number 7 of 2013 which states that the Defendant's confession alone is not enough to prove that he is guilty of committing the act charged to him, but must be accompanied by other pieces of evidence, except for adultery. However, even though the defendant's confession is sufficient to prove that the defendant has committed adultery, the defendant's confession can only be used against himself and cannot be used to ensnare his partner as regulated in Article 187 paragraph (3) of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law, which states that the Defendant's confession can only be used against himself.⁶

The implementation of the provisions regarding proof of adultery in Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law can be seen in the considerations of the Panel of Judges at first instance in the decision on adultery case with case number 4/JN/2021/MS.Idi. The defendant in this case was charged with alternative charges by the Public Prosecutor, namely the first charge of committing adultery based on a confession as regulated in Article 37 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, the second of committing an act of ikhtilath based on a confession as regulated in Article 28 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, the third of committing an act of ikhtilath as regulated in Article 25 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, and the fourth of committing an act of khalwat as regulated in Article 23 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law.⁷

The Panel of Judges of the Idi Sharia Court is of the opinion that the Defendant in this case has been legally and convincingly proven to have committed the crime of adultery.⁸ The public's reaction to the verdict was varied, the majority of the public felt that the verdict was unfair because at the same time as the verdict against the female defendant, there was another male defendant who was examined separately with case number 3/JN/2021/MS.Idi and was not sentenced and sentenced for adultery because the defendant did not admit to his adultery and was only found guilty of committing ikhtilath based on the facts revealed in court, even though the male defendant was suspected of being the adulterous partner of the female defendant as in the verdict number 4/JN/2021/MS.Idi.

Based on the above phenomenon, the author in this study is interested in researching the system of proving adultery as regulated in Qanun Number 7 of 2013 concerning Jinayat Law by comparing these provisions with the provisions of fiqh, then reviewing these provisions with the perspective of maqashid sharia Asyatibi, so that the answer can be found whether the system of proving adultery is truly in accordance with the values of justice and maqashid sharia or is no longer appropriate as the reaction of the majority of people who are dissatisfied with the decision of the Panel of Judges of the Idi Sharia Court number 4 / JN / 2021 / MS.Idi. The author hopes that this research can contribute academically in the development of Islamic law and its application in Indonesia, especially in the maqashidi approach to the system of proving adultery in the Aceh Qanun.

The author found several previous studies on the topic that the author will research, the author grouped these previous studies into 3 research groups as follows: Research on the maqashid sharia of the prohibition of adultery, namely: *first*, the article entitled Islamic

⁶ *Qanun Aceh Nomor 7 Tahun 2013 - Paralegal.id*, n.d., accessed June 11, 2025, <https://paralegal.id/peraturan/qanun-aceh-nomor-7-tahun-2013/>.

⁷ *Putusan Mahkamah Syar'iyah Idi Nomor 4/JN/MS.Idi/2021* (Mahkamah Syar'iyah Idi, 2021).

⁸ *Putusan Mahkamah Syar'iyah Idi Nomor 4/JN/MS.Idi/2021*.

Criminal Law On Jarimah Zina's Testimony: Uncovering the Conflicts Between Sharia Doctrine and Reality written by Islamul Haq and friends⁹, *second*, the article entitled Tindak Pidana Zina dan Penuduhan Zina: Kajian Hukum Pidana Islam written by Noor Izzati Amelia and friends¹⁰, *third*, article entitled Penerapan Qanun Jinayat di Aceh written by Hudhaif Zuhdi Al–afify. The three articles discuss that the provisions prohibiting adultery are in accordance with the maqashid sharia, namely *hifz al – ird* and *hifz al – nasl*, namely maintaining morals, honor, and lineage.

Research on the system of proving adultery, namely: *first*, the article entitled Alat Bukti dan Metode Pembuktian Terhadap Tindak Pidana Zina written by Al Yasa' Abubakar dan Iqbal Maulana¹¹, dan *second*, the article entitled Juridical Review of Adultery Cases at the Sigli Syar'iyah Court (Case Study of Decision Number 12/JN/2024/MS.Sgi) written by M Fathir Rizky¹². Both articles discuss that adultery can only be proven by one of the four witnesses and a confession from the person committing adultery.

Research on sentencing of adulterers in Aceh, namely: *first*, the article entitled Punishment for Zina Muhsan Offenders in Aceh Qanun No. 6 of 2014 in the Perspective of Fiqh al – Siyasa written by Mutiara Fahmi and friends¹³, *second*, the article entitled Fiqh dan Negara: Dinamika Penerapan Sanksi Hukuman Zina di Aceh written by Nairazi and friends¹⁴, *third*, the article entitled Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis written by Syarifah Mudrika¹⁵. The three studies discuss that the application of punishment for adultery perpetrators in Aceh does not differentiate between muhsan and ghoir muhsan adultery, all of which are sentenced to 100 lashes.

The research conducted by this author has differences from previous studies as mentioned above, namely, this research focuses on the comparison between the proof of adultery in the Aceh Qanun and the provisions of fiqh jinayah, as well as conducting analysis and evaluation from the perspective of maqashid sharia, with the hope that the results of this research can contribute academically in the development of Islamic law and

⁹ Islamul Haq et al., "ISLAMIC CRIMINAL LAW ON JARIMAH ZINA'S TESTIMONY: UNCOVERING THE CONFLICTS BETWEEN SHARIA DOCTRINE AND REALITY," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, May 28, 2022, 52–62, <https://doi.org/10.24252/al-risalah.vi.26792>.

¹⁰ Noor Izzati Amelia et al., "Tindak Pidana Zina Dan Penuduhan Zina: Kajian Hukum Pidana Islam," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 2 (2024): 140–50, <https://doi.org/10.62383/humif.v1i2.172>.

¹¹ Al Yasa' Abubakar and Iqbal Maulana, "Alat Bukti Dan Metode Pembuktian Terhadap Tindak Pidana Zina," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 7, no. 2 (2018): 2, <https://doi.org/10.22373/legitimasi.v7i2.3970>.

¹² M. Fathir Rizky, "Juridical Review of Adultery Cases at the Sigli Syar'iyah Court (Case Study of Decision Number 12/JN/2024/MS.Sgi): Tinjauan Yuridis Terhadap Perkara Zina Di Mahkamah Syar'iyah Sigli (Studi Putusan Nomor 12/JN/2024/MS.Sgi)," *El-Hadhanah : Indonesian Journal Of Family Law And Islamic Law* 4, no. 2 (2024): 2, <https://doi.org/10.22373/hadhanah.v4i2.5497>.

¹³ Mutiara Fahmi et al., "Punishment for Zina Muhsan Offenders in Aceh Qanun No. 6 of 2014 in the Perspective of Fiqh al – Siyasa," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 1, <https://doi.org/10.22373/sjhk.v6i1.13363>.

¹⁴ Nairazi Nairazi et al., "Fiqh Dan Negara: Dinamika Penerapan Sanksi Hukuman Zina Di Aceh," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 9, no. 1 (2024): 72–83, <https://doi.org/10.32505/legalite.v9i1.8929>.

¹⁵ Syarifah Mudrika, "Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis," *Legalite : Jurnal Perundang Undangan dan Hukum Pidana Islam* 8, no. 1 (2023): 1–19, <https://doi.org/10.32505/legalite.v8i1.5918>.

its application in Indonesia, especially in the maqashidi approach to the system of proof of adultery in the Aceh Qanun.

METHODS

The research method used by the author is normative legal research, namely this research refers to legal norms contained in legislation, judges' decisions and doctrines obtained through library materials. The type of research used is library research (literature research related to the research object), which includes books, journals, and so on that contain related materials discussed as data sources.¹⁶ The approach used by the author in this research is a normative juridical approach¹⁷ This is a way of approaching a problem being researched based on doctrines or principles in legal science. This is done by examining theories, concepts, legal principles, and laws and regulations related to this research.¹⁸ This approach is also called a library approach, namely by studying books, laws and regulations or other sources related to this research. The primary data materials used consist of the Qur'an, Hadith, Aceh Qanun Number 6 of 2014 concerning Jinayat Law, and Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law, while secondary data materials consist of ushul fiqh books, legal research books, research journals, and research articles discussing adultery. Data analysis in this study uses qualitative analysis, meaning describing the processed data in detail into sentences (descriptive).¹⁹ Specifically, in this study the author uses maqashid sharia, including *hifz al-'ird* and *hifz al-nasl* as analytical tools to analyze the harmony of the system of proving adultery in the Aceh Qanun with the objectives of sharia.

RESULT AND DISCUSSION

RESULT

Adultery and Its Proof According to Fiqh

In terms of language, the term *zina* comes from the word *zana*—*yazni* which is mentioned in the Qur'an nine times, which means having intimate relations with a woman without a legal marriage.²⁰ *Zina*, according to *fiqh* (Islamic jurisprudence), refers to sexual intercourse between a man and a woman without the bonds of marriage, through the process of inserting the male genitals into the female genitals, at least up to the head of the penis. There are several definitions of *zina* with almost similar wording according to the four schools of thought. The Maliki school explains *zina* as sexual intercourse between a *mukallaf* man and a woman's vagina that is not his, done voluntarily. Meanwhile, the Hanafiah school defines *zina* as sexual intercourse with a living woman's vagina that is not his, done without coercion, in areas that apply Islamic law. The Shafi'iyah school interprets *zina* as the act of inserting the penis into the vagina that is forbidden without doubt and arouses lust according to its nature. Finally, the Hanabillah school describes *zina* as a (reprehensible) sexual act with either the vagina or the anus. From these four definitions, it can be concluded that *zina* is an immoral act in the form of sexual

¹⁶ Sutrisno Hadi, *Metodologi Research* (Andi Offset, 1990), 6.

¹⁷ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: CV. Rajawali, 1986), 15.

¹⁸ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2009), 34.

¹⁹ Sumadi Suryabrata, *Metodologi Penelitian* (PT. Raja Grafindo Persada, 2003).hlm. 75–76

²⁰ Ridho Riyadi, "Zina Menurut Ali Ash-Shabuni Dalam Tafsir Shafwatu Tafasir," *Studia Quranika* 5, no. 2 (2021): 192–218.h.203

intercourse involving two different genitals carried out by a man and a woman who are not bound by a legal marriage.²¹

Meanwhile, according to Quraish Shihab, the definition of adultery refers to contact between two sexual organs of different types which are not bound by official marriage or ownership, and is not the result of doubt or uncertainty.²² The verses of the Quran that explain adultery include the following: First, Allah says in Surah Al-Isra' (17): 32-22 which means: "And do not come near adultery, indeed adultery is an abomination and an evil way".²³ This verse was revealed regarding a young man who asked the Prophet for permission to commit adultery, but the Prophet gave an argument that made the young man realize that adultery is a very reprehensible and forbidden act.²⁴ Ash-Shabuni stated that the meaning of "Do not approach adultery" is more explicit and clear than "Do not commit adultery," because the prohibition in the verse indicates the consequences of prohibiting opportunities for adultery, such as touching, kissing, looking, and other actions that can lead someone to fall into adultery. Meanwhile, the prohibition against approaching in the verse is stronger than simply prohibiting against committing adultery.²⁵ Secondly, Allah says in Surah An-Nur verse 2 which means as follows: "The adulterous woman and the adulterous man, flog each of them with a hundred stripes, and let not pity for them prevent you from (practicing) the religion of Allah, if you believe in Allah and the Last Day, and let (their) punishment be witnessed by a group of believers"²⁶

The scope of adultery described in this verse is broad, encompassing both unmarried and married individuals. This means that the punishment outlined in this verse applies to both unmarried and married individuals. However, if the perpetrator of adultery is a married person, whether male or female, who has experienced marital life, then there is an additional punishment. These married individuals are referred to as muhsan, and the punishment imposed on muhsan who commit adultery is stoning.²⁷

Allah SWT does not describe the type of stoning punishment in the Quran, but the Prophet Muhammad SAW carried out this stoning punishment for the perpetrators of muhsan adultery. This can be observed in the following hadith narrated by the Prophet Muhammad SAW: "From Ubadah bin Shamit said, the Messenger of Allah SAW said: "Take (that law) from me, take (that law) from me, indeed Allah SWT has made a way for them (women), namely a virgin who commits adultery with a man (ghairu muhsan) both be flogged a hundred times and exiled for a year; while a widow with (muhsan), both be flogged a hundred times and stoned". (Hadith of the Jamaah History except al-Bukhari and an-Nasa'i).²⁸

Hasbi argues, as quoted by Budi Kisworo in his article, that the stoning punishment applied here is not a rigid provision. Not every married offender should be stoned; it is left to the judge's discretion. The reason is that the Quran does not explicitly outline the stoning provisions. When he enforced the stoning punishment for married offenders, the Prophet's role was as a judge, not as a messenger of revelation or law-maker.²⁹

²¹ Heru Susetyo and N. Oneng Nurul Bariyah, "Pembuktian Terhadap Kejahatan Kesusilaan Dalam Qanun Tentang Jinayat Dan Hukum Acara Jinayat," *Jurnal Hukum PRIORIS* 9, no. 2 (2021): 2, <https://doi.org/10.25105/prio.v19i2.16647>.

²² Riyadi, "Zina Menurut Ali Ash-Shabuni Dalam Tafsir Shafwatu Tafasir."

²³ QS. Al-Isra (17): 32

²⁴ Riyadi, "Zina Menurut Ali Ash-Shabuni Dalam Tafsir Shafwatu Tafasir." h.205

²⁵ Riyadi, "Zina Menurut Ali Ash-Shabuni Dalam Tafsir Shafwatu Tafasir."

²⁶ Q.S. An-Nur ayat 2

²⁷ Budi Kisworo, *Zina Dalam Kajian Teologis Dan Sosiologis*, n.d., 17.

²⁸ Mu'ammal Hamidy, *Terjemah Nailul Authar*, VI (Bina Ilmu, 1993), 2579.

²⁹ Kisworo, *Zina Dalam Kajian Teologis Dan Sosiologis*, 19.

An unlawful act can only be punished if there is sufficient evidence to support it. In the context of Islamic procedural law, one of the sources of which is the practices (hadith) of the Prophet Muhammad (peace be upon him), there are two methods for proving adultery: the first is through a confession, and the second is by presenting four witnesses.³⁰

The requirements that need to be met to admit adultery so that the confession can be valid evidence are; (1) The individual confessing must be mentally competent and an adult; (2) The confession must come from a person who has the ability to engage in sexual activity; (3) The confession must be made firmly before a judge; and (4) The confession must be made with full awareness, not under duress.³¹

In this situation, there are differing views among legal scholars. Imam Shafi'i and Imam Malik argue that if a Muslim confesses to adultery consciously and sanely with just one statement, he or she is eligible for punishment. On the other hand, Imam Hanafi argues that a person's confession of adultery can only be used as a basis for punishment if it is uttered up to four times in different locations. This affirmation aims to ensure that the accused is truly conscious and sane and not under duress.³²

According to Islamic legal experts, the testimony that can be accepted as valid evidence of adultery is: (1) The witnesses presented must be adults and of sound mind; (2) The number of witnesses required is four men. Female witnesses are not permitted; (3) The four witnesses must have seen the incident directly at a specific location; (4) The witnesses must be Muslims who meet the criteria of justice; and (5) The witnesses must not have any Islamic obstacles, such as family relations and not have any enmity with the perpetrator of adultery.³³

Adultery and its Proof according to Aceh Qanun

Adultery in Article 1 number 26 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law is defined as sexual intercourse between one or more men and one or more women without the bonds of marriage with the consent of both parties.³⁴ The definition of zina in the Aceh Qanun is almost the same as that in Islamic jurisprudence, with the addition that in the Aceh Qanun, the provisions of zina are expanded, meaning that it is not only committed by a man or a woman but can also be committed by more than one man or woman.

The Aceh Qanun does not classify adulterers into muhsan (married) and ghayr muhsan (unmarried). In the Aceh Qanun, there is no distinction between muhsan and ghayr muhsan. This has sparked debate and attracted attention not only from outsiders, such as human rights activists and non-governmental organizations, but also from Muslim scholars and ulama in Aceh. The Qanun Jinayah does not differentiate between muhsan and ghayr muhsan adulterers, unlike Islamic law, which stipulates a hundred lashes for ghayr muhsan adulterers and stoning to death for muhsan adulterers. This indicates that in Aceh, both married and unmarried people who commit adultery receive the same punishment: 100 lashes.³⁵

³⁰ Kisworo, *Zina Dalam Kajian Teologis Dan Sosiologis*, 19.

³¹ *Ensiklopedi Hukum Islam*, II (Ictra Baru van Hoeve, 2000), 2030.

³² Rizky, "Juridical Review of Adultery Cases at the Sigli Syar'iyah Court (Case Study of Decision Number 12/JN/2024/MS.Sgi)."

³³ *Ensiklopedi Hukum Islam*, 2030.

³⁴ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat."

³⁵ Fahmi et al., "Punishment for Zina Muhsan Offenders in Aceh Qanun No. 6 of 2014 in the Perspective of Fiqh al-Siyasah."

From a legal perspective, the implementation of stoning in Aceh is not possible, as Aceh is part of Indonesia, which has its own laws and values regarding law enforcement. Stoning is a painful form of execution for the perpetrator and is considered torture under human rights. In Indonesia's criminal justice system, the death penalty is a very severe punishment that can be imposed on perpetrators if their actions are categorized as serious crimes. According to Islamic law, the death penalty can be applied to those who have taken the life of another person. This indicates that, from a legal and political perspective, the implementation of stoning in Aceh is very difficult. However, stoning could be implemented in a manner similar to castration as a method of law enforcement, or by exiling the perpetrator to a remote location as a deterrent.³⁶ Therefore, Aceh Qanun No. 6 of 2014 concerning Jinayat Law, which is taken from jinayah fiqh, especially discussing had zina, is a syar'iyah siyasa that is applied only in the province of Aceh, Indonesia.³⁷

Proof in the Arabic context is rooted in the term "bayyinah," which means something that provides an explanation. Ibn al-Qayyim al-Jauziyah, in his book al-Thuruq al-Hukmiyah, defines bayyinah as anything that can state and explain information.³⁸

The proof of adultery crime regulated in Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law is different from the proof of other crimes. Article 180 of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law stipulates that the Judge is prohibited from imposing 'Uqubat on the defendant, unless the Judge obtains a conviction with at least 2 (two) valid pieces of evidence, that a crime has actually occurred and the Defendant is guilty of committing it, except for the crime of adultery.³⁹

The sentence "except for the crime of adultery" in the article clearly illustrates that the system of proof of adultery in the Aceh Qanun is different from the system of proof of other crimes contained in the Aceh Qanun, as the author will describe in the following explanation.

Article 182 paragraph (5) of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law stipulates that specifically for the crime of adultery, proof must be provided by 4 (four) witnesses who directly witnessed the process that shows that the act of adultery occurred at the same time, place, and person.⁴⁰

The provision regarding four witnesses contained in the Aceh Qanun is the same as the provision in fiqh, and these four witnesses are the main standard of proof in proving adultery, meaning that if someone accuses another of adultery, he must prove it by presenting four witnesses. If he cannot bring four witnesses, he will be subject to the hadd qadzaf with the threat of 'uqubat hudud whipping 80 times.⁴¹

Article 187 paragraph (4) of Aceh Qanun Number 7 of 2013 stipulates that the Defendant's confession alone is not sufficient to prove that he is guilty of committing the act he is accused of, but must be accompanied by other evidence, except in cases of adultery.⁴²

³⁶ Nairazi et al., "Fiqh Dan Negara."

³⁷ Misran, "Perspektif Perspektif Siyasa Syar'iyah Terhadap Pemberlakuan Had Zina Dalam Pasal 33 Qanun Aceh No. 6 Tahun 2014 Tentang Hukum Jinayat: Indonesia," *As-Siyadah* 2, no. 1 (2023): 1, <https://doi.org/10.22373/as-siyadah.v2i1.2950>.

³⁸ Julia Rahmayanti Siahaan, "Sistem Pembuktian Tindak Pidana Perzinaan Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam," *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* 1, no. 1 (2020): 1, <https://doi.org/10.58836/al-qanun.v1i1.6826>.

³⁹ *Qanun Aceh Nomor 7 Tahun 2013 - Paralegal.id*.

⁴⁰ *Qanun Aceh Nomor 7 Tahun 2013 - Paralegal.id*.

⁴¹ "Pembuktian Zina dalam Qanun Jinayat," *Serambinews.com*, accessed June 11, 2025, <https://aceh.tribunnews.com/2018/04/19/pembuktiab-zina-dalam-qanun-jinayat>.

⁴² *Qanun Aceh Nomor 7 Tahun 2013 - Paralegal.id*.

The provisions of the above article imply that in adultery cases, the defendant's confession alone is sufficient to prove that a person has committed adultery. Then, Article 37 paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law states that every person who is examined in a case of khalwat or Ikhtilath, then admits to having committed adultery, his confession is considered a request to be sentenced to 'Uqubat Zina. However, in paragraph (2) of the article it states that the confession as referred to in paragraph (1) only applies to the person who made the confession.⁴³

The provisions of the Aceh Qanun above in principle explain that besides four witnesses, there are other evidence that can be used to prove that someone has committed adultery, namely by confession from the accused. However, the accused's confession only applies to himself and cannot implicate his adulterous partner. Then, the accused's confession is not sufficient to be conveyed at the investigation stage alone, but must also be continued to the trial before the Panel of Judges examining the case, as regulated in Article 38 paragraph (1) of Aceh Qanun Number 6 of 2014 which states that the Judge examining the case as referred to in Article 37, after studying the minutes submitted by the public prosecutor, will ask whether the suspect continues his confession or withdraws it. Then, if the defendant states that he will continue his confession, the Panel of Judges will order the defendant to swear as regulated in Article 38 paragraph (2) of Aceh Qanun Number 6 of 2014 which states that In the event that the suspect continues his confession, the judge will order him to swear that he has committed the Crime of Adultery.⁴⁴

Proof of adultery crime other than four witnesses and the defendant's confession contained in the Aceh Qanun is a DNA test, this is as regulated in Article 44 paragraph (2) and (3) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law which states that the applicant who mentions the name of his/her adultery partner as referred to in Article 42 who is pregnant can prove his/her accusation through a DNA test (Deoxyribo Nucleic Acid) of the baby she gave birth to. Then the next article states that the results of the DNA test as referred to in paragraph (2) replace the applicant's obligation to present 4 (four) witnesses.⁴⁵

Proving adultery with DNA testing represents an update to the system of proving adultery established in the Aceh Qanun and differs from previous Islamic jurisprudence provisions. The Aceh Qanun explicitly states that DNA test results can replace the applicant's obligation to present four witnesses. Therefore, the obligation to present four witnesses is waived upon the availability of DNA test results from a reputable institution.

DNA testing evidence within the Jinayat Qanun applies only to a woman who claims to have committed adultery and is pregnant as a result of the illicit relationship. To prove the accusation against a partner who is unable to present four witnesses, DNA testing will be used as substitute evidence. Based on the provisions of the Aceh Qanun as outlined above, the author concludes that proving adultery under the Aceh Qanun can be met in three ways. First, by presenting four witnesses who witnessed the act of adultery directly and together at the same time and place. Second, by the defendant's confession recorded in the investigation report, which is then followed up in court before a judge, and the defendant confirms his or her confession by taking an oath before the judge. It should be noted that this confession only applies to the defendant who confessed and cannot implicate their partner. Third, by DNA testing. To make it easier to compare the proof of adultery in fiqh and Qanun Jinayat, the author explains the differences. In fiqh, four

⁴³ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat."

⁴⁴ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat."

⁴⁵ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat."

witnesses must meet certain conditions, including being male, mature, sane, Muslim, just, and having directly witnessed the incident. In Aceh Qanun, the same requirements apply. In fiqh, a confession must be from an individual who is mentally competent, mature, has the ability to engage in sexual activity, and is delivered before a judge with full consciousness and without coercion. In Aceh Qanun, the defendant's confession must meet the same requirements, plus an oath before the judge. While fiqh does not allow DNA testing, Aceh Qanun permits DNA testing for women who admit to adultery while pregnant and name their adulterous partner but cannot provide the required four witnesses.

DISCUSSION

According to al-Syathibi, maqasid sharia can be generally understood as the goals set forth in sharia for individuals subject to obligations (mukallaf). This noble sharia obligation is not imposed on individuals without a clear reason. Every command given to individuals aims to achieve their benefit in both religious and worldly aspects, and the benefit of both aspects is the primary mission of sharia in providing provisions for individuals with obligations (mukallaf). Legal benefit must be measurable and must not deviate from the parameters of benefit formulated by scholars in the theory of maqasid al-shari'ah.⁴⁶

The content of maqashid al-syariah or the purpose of law is for the welfare of humanity. Therefore, every obligation (taklif) is formed to realize goodness for the servants. There is not a single law of Allah according to Ash-Syatibi's view that is without purpose. He also added that a law that has no purpose is the same as imposing a burden that cannot be met.⁴⁷

Al-Syatibi presented his findings regarding scholars' research on verses in the Quran and the Sunnah of the Prophet Muhammad, which indicate that the regulations established by God are intended to bring prosperity to humanity, both in this life and in the afterlife. According to Al-Syatibi, this prosperity is divided into three levels: essential needs, necessary needs, and necessary needs.⁴⁸

Dharuriyat is a type of demand that is essential in nature, also known as fundamental needs. If this category of needs is not met, the safety of humanity can be threatened both in this world and the afterlife. According to Al-Syatibi's view, there are five aspects included in this group: protection of religion (Hifdz Ad-Din), protection of life (Hifdz An-Nafs), protection of the mind (Hifdz Al-Aql), protection of dignity/offspring (Hifdz Al-Ardh/An-Nasl), and protection of property (Hifdz Al-Mal).⁴⁹

These five needs are essential for human life. Therefore, Allah SWT encourages humans to strive to fulfill and achieve this perfection. On the other hand, Allah SWT forbids actions that could eliminate or diminish any of these five needs. Any action that can realize or maintain these five essential elements is positive and should be undertaken.

⁴⁶ Halil Thahir, *Ijtihad Maqashidi Rekonstruksi Hukum Islam Berbasis Interkoneksi Masalah* (LKIS Pelangi Aksara, 2015).hlm.9

⁴⁷ Zaenudin Mansyur, "Implementasi Teori Maqashid Syari'Ah Asy-Syatibi Dalam Muamalah Kontemporer," *Jurisdictie: Jurnal Hukum Dan Syariah* 11, no. 1 (2020): 1, <https://doi.org/10.18860/j.v11i1.7675>.

⁴⁸ Aminuddin Ya'qub and dkk, *Ushul Fiqh* (Kencana, 2005).hlm.233

⁴⁹ Ya'qub and dkk, *Ushul Fiqh*.hlm.234

Meanwhile, any action that damages or diminishes the value of these five elements is negative and should be avoided. All of this is beneficial for humanity.⁵⁰

Hajiyat are needs whose failure to fulfill them does not directly endanger a person's safety but will cause hardship. *Hajiyat* aims to alleviate hardship or improve the maintenance of five key aspects. In other words, human needs aim to ease, provide comfort, and make it easier to face life's various burdens.⁵¹

In the category of worship, Islam establishes various rules that provide relief when someone experiences difficulties in carrying out God's commands. For example, Islam permits those traveling long distances to skip fasting on condition that they make up for it, as does the case for those who are ill. In the category of muamalat (social transactions), there are rules regarding *diyat* (district payment) for unintentional murder and a reprieve from amputating the hand of a thief forced to flee starvation.⁵²

Tahsiniyat (obligatory duties) are those that complement the pleasure and beauty of the essentials (*dharuriyat*) and *hajiyat* (pilgrimages). The goal of the third type of *maqasid* is for humans to strive to maintain the five basic principles of human life to the best of their ability. This is not intended to eliminate or alleviate difficulties, but rather serves as a complement, enlightenment, and perfection in human life. Examples of this type of *maqasid* include good speech and behavior, as well as improving the quality of production and work results.⁵³

At the time of the Prophet and his companions, every act of adultery that had been confirmed and met the criteria for a serious offense had no other punishment than being flogged or stoning. The Prophet Muhammad (peace be upon him) did not show mercy to those who were proven guilty of adultery. However, if the word had not yet become public and the perpetrator remained silent, the Prophet Muhammad (peace be upon him) did not actively try to investigate the act. In fact, when the perpetrator of adultery confessed and reported his actions to the Prophet, he still gave the reporter the opportunity not to continue his report. It was as if he was reluctant to respond to the report of the adultery incident. We can see this for example from the hadith of the Prophet (peace be upon him) related to this issue: From Jabir who said, a man came to the Prophet (peace be upon him) who was in the mosque and said: O Messenger of Allah, I have committed adultery. The Messenger of Allah (peace be upon him) turned away from him, (but) the man repeated his confession four times. When he swore four times by himself, the Messenger of Allah (peace be upon him) then said: "Are you crazy"? He replied: "No". The Prophet asked again: "Have you married a wife"? He replied: "Yes". So the Prophet said: "Take this person and stone him". Jabir said: "I was one of those who stoned him". We stoned him in the mushalla. When the stones hit his body, he ran away. We chased him down

⁵⁰ Khodijah Ishak, "Pemikiran Al-Syatibi Tentang Masalah Mursalah Dan Implementasinya Dalam Pengembangan Ekonomi Syariah," *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 3, no. 2 (2014): 2, <https://ejournal.isnjbengkalis.ac.id/index.php/iqtishaduna/article/view/54>.

⁵¹ Agung Kurniawan and Hamsah Hudafi, "Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat," *Al-Mabsut: Jurnal Studi Islam dan Sosial* 15, no. 1 (2021): 1, <https://doi.org/10.56997/almabsut.v15i1.502>.

⁵² A. Ummu Fauziyyah Syafruddin, "Ekonomi Global Perspektif Konsep Maqashid Syariah Imam Al-Syatibi," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2023): 1, <https://doi.org/10.32332/muamalah.v2i1.7022>.

⁵³ Nirwan Nazaruddin and Farhan Kamilullah, "Maqashid As-Syariah Terhadap Hukum Islam Menurut Imam As-Syatibi Dalam Al-Muwafaqat," *Jurnal Asy-Syukriyyah* 21, no. 1 (2020): 106-23, <https://doi.org/10.36769/asy.v21i1.101>.

and caught him at Harrah's. Then we stoned him again. (Hadith Narrated by Al – Bukhari and Muslim).⁵⁴

From the events described, it can be seen that during the first and third confessions, the Prophet Muhammad (peace be upon him) actually gave the man an opportunity to retract his statement. He simply turned away as if he hadn't heard the complaint. However, when the man persisted in repeating his confession four times, the Prophet Muhammad (peace be upon him) refused to let it go. Finally, the report was responded to, and the perpetrator received punishment. If there had been no punishment, there would have been a misconception that such a mistake did not warrant punishment. However, if the man had not continued his report, for example, had only confessed once and then left, no punishment would have been imposed. This is because, according to our religious teachings, sins are more easily forgiven by God when they are unknown to others, as they are still private matters and do not involve many people. However, when the sin is publicly known, it has become a community problem, and therefore the perpetrator must receive punishment.⁵⁵

The incident as depicted in the hadith of the Prophet Muhammad SAW basically implies that adultery is a sin between a servant and Allah SWT. so that if a servant commits adultery he should conceal the act then immediately repent and regret the act and not repeat it again, because if the adultery has spread to the public, known by many people, and there has been sufficient evidence that he committed adultery, then there is no other choice but to impose a punishment in the form of whipping. As the opinion of Ibn Taimiyah that the punishment for adultery can be removed due to repentance. The removal of the punishment for adultery from the threat of 100 lashes or stoning is a rule that depends on conditions, namely as long as there has been no report to the authorities.⁵⁶

Based on the above descriptions, when linked to the system of proving adultery contained in the Aceh Qanun, the system of proving adultery in the Aceh Qanun is essentially in accordance with and aligned with the objectives of sharia, as proving adultery falls into the category of urgent needs that will threaten the lives of individuals and society in general if not properly enforced and fulfilled.

Proving adultery in the Aceh Qanun is intended to maintain a person's honor (hifdzul ardh). Because adultery is such a heinous act that a person accused of it will indirectly be held in disrepute by the rest of society, which will undermine their honor and undermine their self – confidence. If the system of proving adultery is relaxed, it will undoubtedly make it easier for people to accuse others they dislike of committing adultery. And therefore, the provisions in the Aceh Qanun are correct and proper, which stipulate that a person who accuses another person of adultery but cannot produce four witnesses, will be subject to had qadzaf with eighty lashes. Honor is an important basis that is highly considered in Islam, because with honor, humans can live a good life in the

⁵⁴ TM. Hasbi Ash – Shiddieqy, *2002 Mutiara Hadits* (Bulan Bintang, 1979), 62.

⁵⁵ Kisworo, "Tuduhan Berzina (Qazfu Al – Zina) Dalam Kajian Teologis Dan Sosiologis," 115.

⁵⁶ Syuhada Syuhada and Zulkiram Zulkiram, "Ibnu Taimiyah on Repentance as Eliminating the Punishment for Adultery [Taubat Sebagai Penghapus Had Zina Menurut Ibnu Taimiyyah]," *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 10, no. 2 (2021): 2, <https://doi.org/10.22373/legitimasi.v10i2.11340>.

world. Especially in the case of qadzaf, which is basically very dangerous for individual honor.⁵⁷

Qadzaf is the act of accusing someone of adultery without sufficient evidence to support the claim. In Islamic teachings, there is a principle that anyone who accuses another person of a prohibited act must be able to provide evidence to support their accusation. If they cannot prove it, they must be prepared to face punishment. The term qadzaf is not only associated with accusations of adultery directed at women, but also includes accusations of adultery directed at men. Both men and women who make accusations of adultery are punished with eighty lashes. This is because qadzaf is considered a major sin and a violation of one's honor. Unproven accusations of adultery are seen as a serious threat to society. Therefore, in the Islamic criminal law system, this act is classified as a hudud crime. The purpose of this punishment is to protect the honor and reputation of the accused individual and to clear their reputation from baseless accusations.⁵⁸

Proving adultery in the Aceh Qanun, besides having the aim of maintaining honor (hifz al – ird), this evidentiary system is also in line with the other main objective of sharia which is the philosophical basis for the drafting of the Aceh Qanun itself, namely preserving offspring (hifz al – nasl). This can be seen by the expansion of proof of adultery with DNA testing in the Aceh Qanun. This DNA test is important in cases of adultery committed by women who are already married to clarify the status of the child in her womb. In addition, the DNA test evidence can also waive the obligation to present four witnesses for women who admit to adultery and name their partners.⁵⁹

CONCLUSION

The finding of this study reveals that the definition of adultery in Islamic jurisprudence and the Aceh Qanun is fundamentally similar, but the provisions in the Aceh Qanun are broader, allowing adultery to be committed by more than one individual, regardless of gender. The Aceh Qanun does not distinguish between muhsan (those who are married) and ghoir muhsan (those who are not married), treating both categories equally. Proving adultery under the Aceh Qanun can be done in three ways: by presenting four witnesses who directly observe the act of adultery, by the defendant's confession recorded in the investigation report and confirmed in court, or by DNA testing. DNA testing serves as an alternative when four witnesses cannot be provided, particularly in cases involving a pregnant woman who admits to committing adultery. If sufficient evidence exists, the punishment of lashing is imposed, ensuring that the act is publicly known and justice is served. The incorporation of DNA testing is a progressive step that adapts traditional legal frameworks to modern challenges, ensuring justice is effectively applied while maintaining the principles of Islamic law.

The significance of this study lies in how the system of proof for adultery in the Aceh Qanun aligns with the goals of sharia, particularly in preserving human honor (hifdzul irdh) and protecting offspring (hifz al – nasl). This system ensures that false accusations of adultery are minimized, as it requires clear and compelling evidence, thus safeguarding individuals from reputational harm. The Aceh Qanun's provision for DNA testing is a major advancement, accommodating contemporary legal and social needs while adhering

⁵⁷ M. Lutfi Khakim and Mukhlis Ardiyanto, "Menjaga Kehormatan Sebagai Perlindungan Nasab Perspektif Maqashid Syari'ah," *Nizham Journal of Islamic Studies* 8, no. 01 (2020): 01, <https://doi.org/10.32332/nizham.v8i01.2105>.

⁵⁸ Amelia et al., "Tindak Pidana Zina Dan Penuduhan Zina."

⁵⁹ Fadli et al., "DNA TEST AS AN EVIDENCE TO SUBSTITUTE FOUR WITNESSES."

to Islamic principles. This step forward provides a more balanced and just approach to handling cases of adultery, ensuring that both the rights of individuals and the integrity of the law are preserved. Furthermore, this legal framework represents a significant adaptation of traditional law to address modern societal issues. Future research could focus on the social impact of these legal provisions, including how they affect public perceptions of justice and whether they contribute to social harmony in Aceh. It would also be valuable to examine the effectiveness of DNA testing as a tool for justice and whether it fosters a more equitable legal environment.

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