

Article Title

A Comparative Study of the Concept of Adultery Offenders in *At-Tasyri' Al-Jina'i Al-Islami* and the Aceh Qanun Number 6 of 2014 on Jinayat Law

Author (s)

Andi Muhammad Firdaus Tamin

Magister of Law, Universitas Muslim Indonesia, Indonesia

Email: andimfirdau.tamin@umi.ac.id

Syahrudin Nawi

Faculty of Law, Universitas Muslim Indonesia, Indonesia

Email: syahrudin.nawi@umi.ac.id

Hardianto Djanggih

Faculty of Law, Universitas Muslim Indonesia, Indonesia

Email: hardianto.djanggih@umi.ac.id

Anzar Makkuasa

Faculty of Law, Universitas Muslim Indonesia, Indonesia

Email: anzar.makkuasa@umi.ac.id

How to cite:

Tamin, A.M.F., Nawi, S., Djanggih, H. & Makkuasa, A. (2025). A Comparative Study of the Concept of Adultery Offenders in *At-Tasyri' Al-Jina'i Al-Islami* and the Aceh Qanun Number 6 of 2014 on Jinayat Law, 29(1), *Al-Ishlah: Jurnal Ilmiah Hukum*, 29(1), 17-29.

ABSTRACT

This study aims to analyze and compare the concept of zina offenders in *At-Tasyri' Al-Jina'i Al-Islami* by Abdul Qadir Audah with the provisions stipulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law. This study is important to understand how the concepts of classical Islamic criminal law found in the literature of *fiqh jinayah* are adopted and adapted within the regional positive legal system in Aceh, which has special authority in implementing Islamic law. This research employs a normative legal research method using statutory, conceptual, and comparative approaches. The legal materials consist of primary legal sources, namely *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014, as well as secondary legal materials in the form of books, scientific journals, and relevant previous studies. The analysis is conducted using a descriptive-comparative method to identify similarities and differences in the legal concepts contained in the two sources. The results show that both share similarities in their theological foundation, objectives of punishment, and the principle of caution in proving the offense of zina through confession and the testimony of four witnesses. However, fundamental differences exist in the definition of zina, the classification of offenders, and the types of sanctions imposed. *At-Tasyri' Al-Jina'i Al-Islami* distinguishes offenders between *muhsan* and *ghairu muhsan* with sanctions of stoning and flogging, whereas the Aceh Qanun simplifies the classification of offenders and only imposes flogging as the principal punishment. These differences indicate a process of adaptation and positivization of Islamic law within the Indonesian national legal system by considering aspects of public welfare, the effectiveness of law enforcement, and human rights principles.

Keywords: Adultery (Zina), Fiqh Jinayah, Aceh Qanun, Islamic Criminal Law, Comparative Law.

INTRODUCTION

Adultery is one of the acts that is explicitly prohibited in religious teachings, particularly in Islam, because it is considered to damage the moral, social, and spiritual order of society. The prohibition of adultery not only has a theological dimension but also affects social, cultural, and legal aspects (Maharani, 2025). In the context of modern society, the phenomenon of adultery has become a complex issue because it is closely related to changes in values, patterns of social interaction, and technological developments (Nugraha & Arifin, 2024). In Indonesia, cases of adultery are still frequently found in various layers of society, including among upper, middle, and lower socioeconomic groups. This condition indicates that religious and social norms that prohibit adultery are often not optimally implemented in social life (Sani, 2024).

Historically, the concept of adultery has been recognized in various legal systems since ancient times. At certain periods, particularly in medieval Western legal traditions, adultery was understood as a violation of family honor, especially the husband's honor in relation to his wife. This concept often placed women as the primary subjects of legal regulation and sanctions (Satianagara & Arifin, 2025). In practice, the laws applied during that period tended to be discriminatory toward

women. In several cases, men were not always subjected to the same sanctions even when committing similar acts.

For example, in certain ancient societies, severe sanctions were imposed on women who committed adultery, while men were not always treated under the same legal standards. In some legal traditions, married women could be subjected to corporal punishment if proven to have committed adultery (Miranti, *et al*, 2025). Conversely, married men were sometimes allowed to have sexual relations with other women outside marriage. These provisions illustrate the inequality in legal regulation that existed at that time. Therefore, the development of modern legal systems has sought to reassess the concept of justice in regulating adultery-related offenses (Anisa & Ikawati, 2021).

In the context of modern society, the development of digital technology has also influenced changes in patterns of social interaction. Increasingly open and broad access to information has caused the boundaries of social and moral norms to become more flexible. Social media and communication technology also create opportunities for individuals to establish relationships that may lead to deviant behavior. This phenomenon contributes to the increasing prevalence of free sexual behavior in society. Its impact is not only moral but also has the potential to create broader social problems.

Free interaction between men and women who are not mahram often becomes an entry point for the occurrence of adultery. From the perspective of Islamic law, even actions that lead toward adultery are prohibited because they may bring individuals closer to committing greater wrongdoing (Shobri, 2022). Islam considers adultery as a highly reprehensible act that damages the social order of human life. This prohibition is emphasized in the Qur'an as the primary guidance for Muslims. Allah SWT states in Surah Al-Isra verse 32 that believers must not approach adultery (Wiranto & Akib, 2022).

The verse emphasizes that adultery is an immoral act and a harmful path for human life. The prohibition is intended not only to preserve individual honor but also to maintain social order within society. In Islamic legal perspective, violations of this prohibition fall into the category of *jarimah* that carry clear legal consequences. Therefore, Islam prescribes strict sanctions for those who commit adultery. These provisions aim to safeguard the general welfare of humanity (Nabila, 2024).

Islam views adultery as a violation of the rights of Allah that falls within the category of *hudud* crimes. *Hudud* are punishments that have been explicitly determined in the Qur'an and the Sunnah. The primary objective of these punishments is to protect the five fundamental principles of *maqashid al-shariah*: religion, life, intellect, lineage, and property. In the context of adultery, protection of lineage and family honor becomes particularly significant. For this reason, Islamic law gives serious

attention to regulating and enforcing laws related to adultery (Nasruddin & Nurdaim, 2024).

The regulation of adultery in Islamic criminal law can be found in various fiqh jinayah literature. One of the most widely referenced works in the study of Islamic criminal law is the book *At-Tasyri' Al-Jina'i Al-Islami Muqaranan bil Qanun al-Wadhi*. The book was written by the contemporary Egyptian scholar Abdul Qadir Audah. This work is widely recognized as an important reference in comparative studies between Islamic criminal law and positive law (Sirajuddin, Risdayani & Indriani, 2024). Through this book, Abdul Qadir Audah attempts to demonstrate the systematic structure and advantages of Islamic criminal law in addressing criminal issues.

The book has had a significant influence on the development of Islamic legal studies in various countries. Many academics, scholars, judges, and legal practitioners use it as a primary reference in understanding the concept of jinayah law. Furthermore, the book has been translated into various languages and is used as teaching material in universities across the Muslim world (Assaidi, 2025). This demonstrates that Abdul Qadir Audah's ideas have made an important contribution to the development of modern Islamic legal scholarship. The work also provides a comparative perspective between Islamic law and positive legal systems.

Abdul Qadir Audah is known as a scholar and legal expert with progressive ideas in the field of Islamic criminal law. He argued that Islamic law possesses a comprehensive and rational legal system. According to his view, Islamic criminal law is not merely repressive but also preventive and educational in nature (Ghufroon & Sanusi, 2022). Such an approach aims to maintain social stability and create justice within society. Therefore, the concepts explained in his work remain relevant for contemporary legal studies.

In his work, adultery offenders are classified into two main categories: zina muhsan and zina ghairu muhsan. Zina muhsan refers to adultery committed by individuals who are legally married. Meanwhile, zina ghairu muhsan refers to adultery committed by individuals who have never been legally married. This classification has implications for the type of punishment imposed on offenders (Ulfiyati & Muniri, 2022). The distinction indicates that Islamic criminal law has a clear classification system in determining sanctions.

For offenders categorized as zina ghairu muhsan, the Qur'an prescribes a punishment of one hundred lashes. This provision is explicitly stated in Surah An-Nur verse 2. Meanwhile, for offenders categorized as zina muhsan, the hadith of Prophet Muhammad SAW explains the punishment of stoning (Haq & Nuraini, 2025). These provisions demonstrate that Islamic criminal law imposes strict sanctions for acts of adultery. However, the implementation of such punishments also requires very strict evidentiary standards.

In Indonesia, the formal implementation of Islamic criminal law does not apply nationally. However, certain regions possess special authority to implement Islamic law within their legal systems. Aceh Province is the only region in Indonesia granted such authority through Law Number 11 of 2006 concerning the Government of Aceh. The law provides a legal basis for Aceh to regulate and administer the implementation of Islamic law independently (Azzahra, *et al*, 2025). This authority is realized through regional regulations known as Qanun.

One of the qanun regulating Islamic criminal law in Aceh is Aceh Qanun Number 6 of 2014 concerning Jinayat Law. This qanun regulates various criminal acts categorized as jarimah. One of the offenses regulated in the qanun is adultery. According to the qanun, adultery is defined as sexual intercourse between a man and a woman without a valid marriage bond. This provision indicates an attempt to adopt the concept of Islamic law into the regional positive legal system.

However, differences exist between the concept of adultery explained in *At-Tasyri' Al-Jina'i Al-Islami* and the regulation contained in the Aceh Qanun. One difference lies in the definition and classification of adultery offenders. The book clearly distinguishes between zina muhsan and zina ghairu muhsan. Meanwhile, the Aceh Qanun tends to impose the same punishment without distinguishing between these categories. This difference raises questions about how Islamic legal concepts are adapted into regional legal regulations.

Another difference can also be found in the sanctions imposed on adultery offenders. In classical fiqh jinayah, zina muhsan is punished by stoning, while zina ghairu muhsan is punished by whipping and exile. In contrast, the Aceh Qanun imposes a punishment of one hundred lashes without distinguishing between muhsan and ghairu muhsan offenders. This provision reflects an adjustment between classical Islamic law and the national legal system. Such adaptation becomes an interesting subject to study within the perspective of Islamic criminal law.

Based on the explanation above, it can be seen that differences exist in the concept of adultery offenders between fiqh jinayah literature and the positive legal regulation in Aceh. These differences indicate the dynamics in the transformation of Islamic law into the national legal system. A comparative study of these two legal sources is important to understand the conceptual foundations used in the formulation of the qanun. This research is expected to contribute academically to the development of Islamic criminal law studies. Therefore, this study will examine comparatively the concept of adultery offenders in *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

METHOD

This study employs a normative legal research approach, which focuses on legal norms, principles, theories, legal doctrines, and comparative legal analysis related to

the object of study. Normative legal research places law as a set of norms contained in statutory regulations, legal doctrines, and legal literature; therefore, its orientation emphasizes law in books rather than law in action. In this context, the research is directed at examining the concept of offenders of adultery (zina) as formulated in the book *At-Tasyri' Al-Jina'i Al-Islami* written by Abdul Qadir Audah and in Aceh Qanun Number 6 of 2014 concerning Jinayat Law. The approaches used in this research include the statutory approach, conceptual approach, and comparative approach in order to identify similarities, differences, and the underlying legal reasoning of the two sources. Through these approaches, the study aims to explain how the concept of adultery offenders is constructed in *fiqh jinayah* and how this concept has been adopted and adapted within the positive legal system of Aceh.

The sources of legal materials used in this research consist entirely of secondary data, which include primary legal materials and secondary legal materials. Primary legal materials include the book *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014 concerning Jinayat Law, while secondary legal materials consist of books, scientific journals, previous research findings, and other references relevant to the research topic. The legal materials were collected through library research and document study, by tracing, inventorying, and examining various legal literature and documents related to adultery offenses. Subsequently, the collected legal materials were analyzed using a descriptive-comparative method, namely by systematically describing the concept of adultery offenders according to each legal source and then comparing them to identify similarities, differences, and their relevance to the development of Islamic criminal law. Through this analytical method, the research is expected to provide a more comprehensive understanding of the normative construction of adultery offenders from the perspectives of *fiqh jinayah* and Aceh Qanun.

RESULT AND DISCUSSION

A. Comparison of Zina Punishments between *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014 concerning Jinayat Law

The comparison of zina punishments between *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014 is important in order to understand how classical Islamic criminal law has been adopted into regional positive law. *At-Tasyri' Al-Jina'i Al-Islami*, written by Abdul Qadir Audah, is an important work in *fiqh jinayah* that explains the foundations of Islamic punishment based on the Qur'an, hadith, and the opinions of Islamic jurists. Meanwhile, Aceh Qanun Number 6 of 2014 is a regional regulation enacted within the framework of Aceh's special autonomy to implement Islamic law. Although both address the jarimah of zina, they are constructed upon normative frameworks that are not entirely identical. Therefore, a comparative study is

necessary to assess their points of similarity, difference, and relevance in the practice of law enforcement.

From the perspective of Islamic law, zina is regarded as one of the reprehensible acts that damages honor, lineage, and social order. The Qur'an explicitly prohibits this act, as stated by Allah SWT in Surah Al-Isra' [17]: 32, *وَلَا تَقْرَبُوا الزَّوْجَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا*, which means, "And do not go near adultery. Indeed, it is an abomination and an evil way." This verse shows that Islam not only prohibits the act of zina itself, but also all actions that may lead a person toward zina. Thus, the prohibition of zina carries both preventive and repressive meanings in the Islamic legal system. This becomes the theological basis that zina is not merely understood as a moral violation, but also as an act with legal consequences.

In *At-Tasyri' Al-Jina'i Al-Islami*, zina is understood as unlawful sexual intercourse committed intentionally without a valid marital bond or any shubhat recognized by the Sharia. This definition emphasizes unlawfulness and intentionality as the principal elements of zina. Thus, zina is not sufficiently understood merely as intercourse outside marriage, but must also be analyzed on the basis of the offender's intention and awareness. Abdul Qadir Audah places zina within the category of *jarimah hudud*, the sanctions for which are determined by the Sharia and cannot be altered by human beings. This conception indicates that the law of zina in *fiqh jinayah* is founded upon normative certainty derived directly from divine revelation.

In contrast, Aceh Qanun Number 6 of 2014 defines zina as sexual intercourse between one man or more and one woman or more without a lawful marital bond and with the consent of both parties. This formulation shows an emphasis on intercourse outside marriage and the mutual consent of the parties involved. From the perspective of normative construction, the definition in the qanun is more juridical-positive in nature and was designed for law enforcement within the regional judicial system. However, the use of the phrase "with the consent of both parties" may open room for interpretations that differ from the concept of "intentionality" in classical *fiqh jinayah*. This terminological difference has implications for how the elements of the zina offense are understood and, ultimately, may affect its legal enforcement.

The concept of "intentionality" in *At-Tasyri' Al-Jina'i Al-Islami* is closer to the notion of a conscious will to commit a prohibited act. In *fiqh jinayah*, intentionality indicates that the offender is aware of the unlawful nature of the act and nevertheless chooses to commit it. Meanwhile, "consent" in the Aceh Qanun places greater emphasis on the mutual agreement of the parties in the act of intercourse. Legally, these two terms are not identical, because intentionality relates to inner will and criminal intent, whereas consent concerns reciprocal agreement between the parties. Therefore, this difference in wording should be understood as reflecting a different normative approach between *fiqh jinayah* and regional positive regulation.

In classical Islamic criminal law, the punishment for zina is distinguished according to the status of the offender, namely between *zina muhsan* and *zina ghairu muhsan*. *Zina muhsan* refers to zina committed by a person who has previously entered into a lawful marriage, is of sound mind, has reached puberty, and has had the opportunity to engage in lawful sexual relations with a spouse. Meanwhile, *zina ghairu muhsan* refers to zina committed by a person who has never been lawfully married. This distinction in status is crucial because it forms the basis for differentiating the type of sanctions under Islamic law. Thus, *fiqh jinayah* constructs its classification of punishments on the basis of the offender's personal condition and the level of wrongdoing committed.

The Qur'an provides an explicit basis for the punishment of *zina ghairu muhsan* in Surah An-Nur [24]: 2, namely, *الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ*, which means, "The woman and the man guilty of zina, flog each of them with a hundred lashes." This verse demonstrates the firmness of the Sharia in imposing physical sanctions on zina offenders. In addition, the verse emphasizes that the execution of the punishment must not be influenced by compassion that would obstruct the enforcement of Allah's law. Accordingly, one hundred lashes for *zina ghairu muhsan* constitutes a form of *hudud* punishment with clear textual legitimacy. From this perspective, *hudud* punishment is fixed and not subject to human discretion.

Meanwhile, with regard to *zina muhsan*, *fiqh jinayah* bases the punishment on the hadiths of Prophet Muhammad SAW that explain the sanction of stoning. In the construction of classical law, stoning is viewed as a sanction for an offender who already has a lawful means of satisfying sexual desire but still chooses to commit zina. Abdul Qadir Audah explains that the status of *muhsan* aggravates criminal responsibility because the offender is considered not only to have violated the Sharia prohibition, but also to have damaged the honor of a lawful marriage bond. Therefore, *fiqh jinayah* clearly distinguishes the punishment for *muhsan* and *ghairu muhsan* as a manifestation of proportionality within the *hudud* system. This differentiation of punishment shows that Islamic criminal law recognizes a detailed and systematic classification structure.

Aceh Qanun Number 6 of 2014 does not explicitly distinguish between *zina muhsan* and *zina ghairu muhsan* in its formulation of sanctions. Article 33 of the Aceh Qanun stipulates that every person who intentionally commits the jarimah of zina shall be threatened with *'uqubat hudud* of one hundred lashes. This formulation reflects a simplification of offender categorization compared to classical *fiqh jinayah*. As a result, the marital status of the offender is no longer the primary determinant in the variation of punishment. From this, it is evident that the Aceh Qanun makes certain adjustments to *fiqh* doctrine in order to place it within a positive legal framework that can be institutionally enforced.

Normatively, the equalization of punishment for all zina offenders in the Aceh Qanun may be understood as a form of codification adjusted to the national legal system and the principles of modern law enforcement. Aceh exists within the framework of the Unitary State of the Republic of Indonesia, which requires every regional regulation to take into account the national legal structure and human rights guarantees. Therefore, although the Aceh Qanun draws inspiration from Islamic law, its formulation of sanctions is not entirely identical to the classical fiqh model. In this context, the qanun appears to adopt the basic values of the Sharia without fully adopting all forms of sanctions known in classical literature. Accordingly, the qanun cannot be understood merely as a textual reproduction of fiqh, but rather as a product of normative adaptation.

When viewed from the concept of *hudud*, *At-Tasyri' Al-Jina'i Al-Islami* emphasizes that *had* punishment is a punishment whose type and degree have been determined by Allah SWT. Abdul Qadir Audah explains that *hudud* have neither minimum nor maximum limits that can be altered by judges or rulers. This understanding is consistent with the principle that the rights of Allah are not subject to human compromise once all evidentiary requirements have been fulfilled. By contrast, the Aceh Qanun defines *hudud* as a type of *'uqubat* whose form and degree have been expressly determined in the qanun. This formulation indicates a shift from the concept of *hudud* as a matter of divine revelation to *hudud* as a norm expressly stipulated in regional legislation.

This conceptual difference becomes an important point in comparative analysis. In *fiqh jinayah*, the *nass* is the primary source that determines the form and degree of punishment. In the Aceh Qanun, regional legislators play a role in reformulating Islamic law into an operational regulation. In other words, *fiqh jinayah* moves from revelation to juristic *ijtihad*, whereas the qanun moves from normative *ijtihad* to the positivization of regional law. This difference in the structure of legal sources explains why there are variations in the definition, offender classification, and sentencing pattern of zina.

Nevertheless, there are also important similarities between *At-Tasyri' Al-Jina'i Al-Islami* and the Aceh Qanun in the aspect of proving the *jarimah* of zina. Both place the proof of zina under a very strict standard in order to prevent slander and arbitrariness. The Qur'an affirms in Surah An-Nur [24]: 13, *لَوْلَا جَاءُوا عَلَيْهِ بِأَرْبَعَةِ شُهَدَاءَ*, which means, "Why did they not produce four witnesses?" This verse indicates that an accusation of zina cannot be justified without very strong proof. Thus, the protection of human honor becomes one of the main principles in the law of proof regarding zina.

In addition, Surah An-Nisa' [4]: 15 also states, *فَاسْتَشْهِدُوا عَلَيْهِمْ أَرْبَعَةً مِّنْكُمْ*, which means, "Then call to witness four witnesses from among you against them." This verse becomes an important basis that zina cannot be established lightly or on the basis of mere assumption. The Aceh Qanun also adopts this principle by requiring at least four

witnesses when a person accuses another of committing zina. If the required witnesses cannot be presented, the accuser may instead be subjected to the jarimah of *qadzaf*. This relevance shows that, in the aspect of proof, the Aceh Qanun remains very close to the fundamental principles of *fiqh jinayah*.

Another similarity appears in confession as a means of proof. In *fiqh jinayah*, a confession must be clear, detailed, unambiguous, and free from doubt in order to serve as the basis for imposing *hudud* punishment. This principle is intended to prevent a person from being subjected to severe sanctions on the basis of a vague, coerced, or legally uninformed confession. The Aceh Qanun also recognizes a confession mechanism that must be confirmed before a judge and even accompanied by an oath to affirm the seriousness of the offender's statement. Thus, both *At-Tasyri' Al-Jina'i Al-Islami* and the Aceh Qanun place caution as an important principle in proving zina.

When examined more closely, the Aceh Qanun may be regarded as relevant to *fiqh jinayah* in maintaining flogging as a form of punishment for zina offenders. Flogging is a sanction explicitly mentioned in the Qur'an and therefore has a strong normative basis in the Sharia. However, this relevance becomes limited when discussing the status of *muhsan* offenders, who in classical *fiqh* are subject to a different punishment. In other words, the Aceh Qanun is partially, rather than totally, relevant to the construction of zina law in *At-Tasyri' Al-Jina'i Al-Islami*. This indicates that the qanun is more appropriately understood as the result of adapting Sharia principles into the framework of national law rather than as the full implementation of classical *fiqh jinayah*.

Based on the overall discussion above, it can be concluded that the comparison between *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014 demonstrates a relationship between continuity and change. Continuity is reflected in the similarity of fundamental values, the prohibition of zina, the use of flogging, and the strictness of proof through confession and four witnesses. Change is reflected in the definition of zina, the emphasis on the elements of the offense, and especially in the elimination of the *muhsan* and *ghairu muhsan* classification within the qanun's sanction system. From an academic perspective, these changes show the process of transforming Islamic law from a classical-doctrinal form into a more contextual juridical-positive form. Therefore, the Aceh Qanun may be positioned as a form of legalization of Islamic legal values that has undergone simplification, adjustment, and institutionalization according to the needs of the Indonesian legal system.

B. Similarities and Differences in the Concept of Zina Offenders in *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014

The discussion of the similarities and differences in the concept of zina offenders in *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014 is important in order to examine how classical Islamic criminal law has been adopted into regional positive law. *At-Tasyri' Al-Jina'i Al-Islami*, written by Abdul Qadir Audah, is a work of

fiqh jinayah that comprehensively explains the concepts of Islamic criminal law by referring to the Qur'an, hadith, ijma, and qiyas. Meanwhile, Aceh Qanun Number 6 of 2014 is a regional legislative product established within the framework of Aceh's special autonomy to implement Islamic law. Both legal sources share common theological foundations, yet differ in their normative construction and technical sentencing mechanisms. Therefore, comparative analysis is necessary to identify carefully the forms of similarity and difference that exist between them.

In general, both *At-Tasyri' Al-Jina'i Al-Islami* and the Aceh Qanun view zina as a reprehensible act that is strictly prohibited in Islam. Both place zina as an act that damages honor, lineage, and social order within society. From a normative perspective, both regulations are equally rooted in the Sharia prohibition of all forms of sexual relations outside a valid marriage. Zina is understood not merely as a moral violation, but also as a legal offense that gives rise to criminal consequences. Thus, their first point of convergence lies in the recognition that zina is an act that must be prevented and sanctioned.

From the perspective of legal foundation, *At-Tasyri' Al-Jina'i Al-Islami* stands upon the framework of classical *fiqh jinayah*, directly referring to the sources of Islamic law. Abdul Qadir Audah constructs the law of zina based on the Qur'an, hadith, ijma, and qiyas without being exclusively bound to a single school of thought. By contrast, the Aceh Qanun still takes the Qur'an and hadith as sources of inspiration, but their implementation is carried out through a regional legislative mechanism within Indonesia's national legal system. This means that the Aceh Qanun is not merely a textual reproduction of *fiqh*, but rather the positivization of Islamic law in the form of regional legislation. This difference indicates that although both begin from the same source, the manner of legal formulation is different.

These differences can be seen more clearly in the following table, which summarizes the principal similarities and differences between the two legal sources.

Table of Similarities and Differences in the Concept of Zina Offenders

Comparative Aspect	<i>At-Tasyri' Al-Jina'i Al-Islami</i>	Aceh Qanun Number 6 of 2014
Legal Foundation	The Qur'an, Hadith, Ijma, and Qiyas, without exclusive adherence to a particular madhhab	The Qur'an and Hadith adapted through Aceh's special autonomy and the national legal system
Category of Jarimah	Classified as Jarimah Hudud, fixed as a right of Allah	Classified as Jarimah Hudud, the form and degree of which are expressly determined in the Qanun
Definition of Zina	Sexual intercourse committed intentionally and unlawfully	Sexual intercourse without a marital bond conducted with the consent of both parties
Category of Offenders	Explicitly distinguishes between Muhsan and Ghairu Muhsan	Uses the general term "Every Person" without distinguishing marital status

Principal Punishment	100 lashes for <i>ghairu muhsan</i> and stoning for <i>muhsan</i>	100 lashes for all zina offenders without applying stoning
Additional Sanctions	Exile for one year for <i>ghairu muhsan</i> offenders	Ta'zir in the form of a fine in pure gold or imprisonment for recidivists or providers of facilities for zina
Method of Proof	Confession or testimony of four male witnesses	Confession accompanied by an oath or testimony of four male witnesses
Object of Prohibition	Focuses on intercourse through the <i>qubul</i> , while anal intercourse is categorized as <i>liwath</i>	Focuses on intercourse between opposite sexes, while anal intercourse is also separately categorized as <i>liwath</i>

When viewed from the aspect of the category of *jarimah*, both legal systems equally place zina within the category of *jarimah hudud*. In *fiqh jinayah*, *hudud* are understood as rights of Allah whose type and degree have been determined by the *nass* and therefore cannot be altered by human beings. *At-Tasyri' Al-Jina'i Al-Islami* emphasizes this fixed nature as part of the certainty of Sharia law. Meanwhile, the Aceh Qanun also uses the term *hudud*, but defines it as a type of *'uqubat* whose form and degree are expressly determined in the qanun. It is here that one can see that the Aceh Qanun retains the term *hudud*, yet in practice places the qanun itself as the medium that determines the legal formulation.

In the aspect of the definition of zina, there is a rather fundamental difference between the two. *At-Tasyri' Al-Jina'i Al-Islami* defines zina as unlawful sexual intercourse committed intentionally and without a valid bond according to the Sharia. This formulation places emphasis on the element of intentionality as the basis of criminal responsibility. By contrast, the Aceh Qanun defines zina as sexual intercourse without a marital bond carried out with the consent of both parties. The terminological difference between “intentionality” and “consent” indicates a different point of emphasis between classical *fiqh jinayah* and Aceh’s positive law. This difference is not merely linguistic, but also conceptual in nature.

The element of “intentionality” in *At-Tasyri' Al-Jina'i Al-Islami* is closely related to the offender’s conscious will to commit a prohibited act. In the context of *fiqh jinayah*, this element indicates that the offender is aware of the prohibited nature of the act and nevertheless chooses to carry it out. Meanwhile, the phrase “the consent of both parties” in the Aceh Qanun functions more to distinguish zina from rape or sexual coercion. Thus, the Aceh Qanun appears to adjust the formulation of the offense to the evidentiary needs of the modern judicial system. This difference shows that *fiqh jinayah* places greater emphasis on the offender’s inner dimension, whereas the qanun emphasizes the factual relationship between the parties. Consequently, the legal approach of each reflects a different normative orientation.

From the perspective of offender classification, *At-Tasyri' Al-Jina'i Al-Islami* divides zina offenders into two groups, namely *muhsan* and *ghairu muhsan*. *Muhsan* refers to a person who has previously entered into a valid marriage, has reached

puberty, is of sound mind, and has had the opportunity to engage in lawful relations with a spouse. Meanwhile, *ghairu muhsan* refers to a person who has never been lawfully married. This distinction is crucial because it determines the type and degree of punishment imposed. In the Aceh Qanun, however, this distinction is not used explicitly, as the relevant provisions employ the general term “every person.”

The use of the term “every person” in the Aceh Qanun indicates a simplification of offender categorization. This simplification results in the loss of the relevance of marital status in determining the principal punishment. Unlike classical *fiqh jinayah*, which takes into account the personal condition of the offender, the Aceh Qanun standardizes the principal criminal sanction for all zina offenders. From a juridical perspective, this model facilitates law enforcement because it does not require complex classifications. However, from a doctrinal perspective, it reflects a departure from the legal construction of zina in classical *fiqh*. This is one of the most significant conceptual distinctions between the two systems.

The most striking difference lies in the aspect of principal punishment. *At-Tasyri' Al-Jina'i Al-Islami* stipulates that a *ghairu muhsan* zina offender is punished with 100 lashes, whereas a *muhsan* zina offender is punished with stoning. In addition, *ghairu muhsan* offenders may also be subject to an additional sanction of exile for one year. Meanwhile, the Aceh Qanun only stipulates 100 lashes for all zina offenders without distinguishing between *muhsan* and *ghairu muhsan*. The elimination of stoning in the Aceh Qanun constitutes the clearest and most substantial difference between the two legal systems. This difference reveals the significant transformation that occurs when Islamic criminal law is adapted into regional positive law.

The shift from stoning to flogging in the Aceh Qanun demonstrates a process of adaptation of Islamic law into the framework of Indonesia's national legal system. The Aceh Qanun appears to take a middle path by retaining flogging, which has an explicit basis in the Qur'an, while not adopting stoning, which is based on hadith. This step may be understood as an attempt to harmonize Sharia values, the principle of public welfare, and human rights considerations. Within the context of the national legal system, such a choice is considered more feasible for institutional implementation. Therefore, the Aceh Qanun reflects a character of Islamic law that has undergone codification and contextual adjustment. This adaptation illustrates the tension between doctrinal fidelity and legal practicality.

In addition to principal punishment, the Aceh Qanun also introduces additional sanctions in the form of *ta'zir*. Such *ta'zir* may take the form of a fine in pure gold or imprisonment, especially for recidivists or parties who provide facilities for the commission of zina. In *At-Tasyri' Al-Jina'i Al-Islami*, the concept of *ta'zir* is also recognized, but in the context of zina the main focus remains on *hudud* whose basis is determined by the *nass*. By incorporating fines and imprisonment, the Aceh Qanun demonstrates a legal response to more modern social challenges. Here, it is evident

that the qanun does not merely adopt *fiqh*, but also reformulates it to address contemporary needs of crime control. This aspect highlights the dynamic character of the qanun.

In the aspect of proof, however, both legal systems display a fairly high degree of harmony. *At-Tasyri' Al-Jina'i Al-Islami* requires proof of zina through a valid confession or the testimony of four male witnesses who directly observed the event. The Aceh Qanun also maintains the principle of four male witnesses and recognizes the confession of the offender, which must be strengthened by an oath before the judge. This provision shows that both systems place zina proof under a very strict evidentiary standard. Their primary objective is to protect a person's honor and to prevent slander or criminalization without strong evidence. Thus, caution remains a central principle in both legal frameworks.

Another similarity is visible in the distinction between zina and *liwath*. *At-Tasyri' Al-Jina'i Al-Islami* emphasizes that zina concerns intercourse through the *qubul*, whereas intercourse through the anus is categorized as *liwath*. The Aceh Qanun also adopts a similar distinction by providing a separate definition of *liwath*. This demonstrates that, conceptually, the qanun remains fairly close to the categorization system in *fiqh jinayah*. Therefore, although there are differences in the level of sanctions and the formulation of norms, the basic structure of the prohibited object still reflects continuity. This continuity reinforces the theological link between the two systems.

Philosophically, the similarity between the two appears in the objectives of punishment they seek to achieve. Both *At-Tasyri' Al-Jina'i Al-Islami* and the Aceh Qanun aim to protect lineage, preserve social morality, and close the path toward broader corruption. These objectives are in line with the principle of *maqasid al-shari'ah*, particularly in the protection of lineage and honor. The difference lies only in the normative means used to achieve those objectives. The Kitab Tasyri operates within the framework of classical *fiqh*, whereas the Aceh Qanun operates within the framework of regional legislation that must interact with national law. Even so, their ultimate legal purpose remains substantially similar.

From the perspective of legal interpretation, *At-Tasyri' Al-Jina'i Al-Islami* tends to maintain a more textual normative understanding of the *nass*. By contrast, the Aceh Qanun demonstrates a more adaptive approach by taking into account the needs of Acehnese society, local customs, and the Indonesian legal system. Therefore, the Aceh Qanun may be understood as a form of transformation of Islamic law from the doctrinal sphere into the juridical-positive sphere. This transformation results in simplification, modification, and reinforcement in certain aspects. Nevertheless, the essence of the Sharia as a moral and legal foundation is still preserved in the formulation of the qanun. This confirms that the qanun remains rooted in Islamic legal values, albeit in a contextualized form.

Based on the entire discussion above, it can be affirmed that *At-Tasyri' Al-Jina'i Al-Islami* and Aceh Qanun Number 6 of 2014 have a simultaneous relationship of similarity and difference. Their similarities lie in the theological foundation, the classification of zina as *jarimah hudud*, the strictness of proof, and the distinction between zina and *liwath*. Their differences appear in the definition of zina, the legal terminology employed, the categorization of offenders, as well as the type and model of sanctions imposed. Thus, the Aceh Qanun cannot be understood as a complete replica of classical *fiqh jinayah*, but rather as a form of normative adaptation of Islamic law within the context of a modern rule-of-law state. From an academic perspective, this condition shows that the implementation of Islamic law in Aceh takes place through a process of selection, institutionalization, and harmonization with the needs of Indonesia's legal system.

CONCLUSION AND SUGGESTIONS

Based on the results of the comparative analysis between *At-Tasyri' Al-Jina'i Al-Islami* by Abdul Qadir Audah and Aceh Qanun Number 6 of 2014 concerning Jinayat Law, it can be concluded that both share similarities in their theological foundations, objectives of punishment, and the principle of caution in proving the offense of zina, particularly through the mechanisms of confession and the testimony of four witnesses. However, fundamental differences exist in the definition of zina, the classification of offenders, and the types of sanctions imposed, particularly regarding the abolition of the stoning penalty in the Aceh Qanun and the simplification of offender categories without distinguishing between *muhsan* and *ghairu muhsan*. These differences indicate a process of adaptation and positivization of Islamic law within the Indonesian national legal system by considering aspects of public welfare, the effectiveness of law enforcement, and human rights principles. Therefore, it is recommended that the development of jinayat law in Aceh continues to maintain a balance between the normative values of classical *fiqh jinayah* and the contextual needs of modern society, including through strengthening academic studies, harmonizing regulations, and improving the capacity of law enforcement officials so that the implementation of the Aceh Qanun can operate in a fair, proportional manner and remain consistent with the principles of *maqasid al-shari'ah*.

REFERENCES

- Anisa, D., & Ikawati, E. (2021). Posisi perempuan dalam hukum keluarga Islam di Indonesia (Analisis kompilasi hukum Islam kajian gender dan feminisme). *Jurnal Kajian Gender dan Anak*, 5(1), 1-16.
- Assaidi, A. I. A. (2025). Konvergensi Hukum Jinayah Islam dan Hukum Pidana Modern: Telaah Normatif dan Praktis. *Jurnal Al-Nadhair*, 4(01), 42-54.

- Azzahra, S. K., Khairunnisa, N. H., Fajrin, A. P., Maghfirah, N., & Rizqillah, L. (2025). Tinjauan Hukum Islam terhadap Penerapan Qanun Jinayat Sebagai Instrumen Pencegahan Kriminalitas di Aceh. *Sanskara Hukum Dan HAM*, 4(01), 206-212.
- Ghufron, M., & Sanusi, A. (2022). Ijtihad Progresif Mahmud Syaltut tentang Hukum Pidana Islam dan Perbandingannya dengan Madzhab-Madzhab Fiqih. *Al-Jinayah: Jurnal Hukum Pidana Islam*, 8(2), 214-243.
- Haq, A. W. W., & Nuraini, D. (2025). Analisis Dalalah Lafdzyiah Dalam Surat An-Nur Ayat 2: Implikasi Hukum Islam Terhadap Fenomena Kohabitasi. *El-Faqih: Jurnal Pemikiran Dan Hukum Islam*, 11(1), 1-22.
- Maharani, N. A. (2025). Hukum Zina Dalam Islam: Perspektif Moral. *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 3(1), 340-345.
- Miranti, R., Yuliani, R., Fahiroh, S., Winarti, S., Sabrila, A. A., Merlinda, S., & Noviani, D. (2025). Penerapan Hukum Zina dalam Konteks Masyarakat Modern. *Jurnal Pendidikan Agama Islam Al-Amin*, 2(1), 124-134.
- Nabila, P. N. (2024). Analisis Hukum Ikhtilath dalam Al-Qur'an. *Qudwah Qur'aniyah: Jurnal Studi Al-Qur'an dan Tafsir*, 2(1), 61-80.
- Nasruddin, S., & Nurdaim, A. (2024). Tindak pidana zina menurut uu no 1 tahun 1946, UU no 1 tahun 2023 (KUHP) dan hukum Islam. *Journal of law and nation*, 3(1), 1-13.
- Nugraha, A., & Arifin, T. (2024). Larangan Zina Dan Pergaulan Bebas Ditinjau Dari Hadist Dan Pasal 284 KUHP. *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora*, 1(3), 321-338.
- Sani, A. (2024). Tinjauan Yuridis terhadap Pasal Kontroversial tentang Perzinaan dalam KUHP Baru dan Dampaknya terhadap Penegakan Hukum Pidana. *Jurnal Fakta Hukum*, 2(2), 103-113.
- Satianagara, A., & Arifin, T. (2025). Sanksi untuk Pelaku Zina: Berdasarkan Hadits Riwayat Ahmad dan Pasal 284 KUHP. *Jejak Digital: Jurnal Ilmiah Multidisiplin*, 1(4), 1509-1519.
- Shobri, A. (2022). Zina Online Di Era Informasi Transaksi Elektronik (Ite) Perspektif Hukum Islam. *AL-FIKRAH: Jurnal Studi Ilmu Pendidikan dan Keislaman*, 5(1), 21-35.
- Sirajuddin, S., Risdayani, R., & Indriani, D. (2024). Delik Aduan Tindak Pidana Perzinahan dalam Pandangan Hukum Pidana dan Hukum Islam: Adultery Offences in the View of Criminal Law and Islamic Law. *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam*, 5(2), 359-372.
- Ulfiyati, N. S., & Muniri, A. S. (2022). Perbedaan sanksi bagi pelaku zina dalam hukum pidana islam dan hukum pidana positif. *USRAH: Jurnal Hukum Keluarga Islam*, 3(2), 80-94.
- Wiranto, M., & Akib, N. (2022). Larangan Mendekati Zina Dalam QS Al-Isra '17: 32 (Analisis Kajian Tahlili). *El-Maqra': Tafsir, Hadis dan Teologi*, 2(1), 33-51.

