

# Mapping the Bruneian and Acehese reponses towards sharia law formalization and its implementation

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## ABSTRACT

Brunei Darussalam and Aceh are the only two Southeast Asian regions that apply Islamic Sharia law. Both regions have applied Islamic Sharia law for more than ten years and yet have received many reactions from both internal and external regarding the application. This study aims to examine the formulation of sharia in Brunei and Aceh and how the people of Brunei and Aceh respond to its implementation. Based on the findings, Shari law in Aceh hudud tends to appear more liberal and moderate because the ideas are not connected to a school of fiqh. At the same time, Brunei demonstrates a distinct "thread" with traditional fiqh ideas, particularly the Shafi'i school. This article will also discuss groups who accept Islamic law willingly, those who completely reject it, and those who are forced to accept but still criticize it.

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## Introduction

Brunei Darussalam and Aceh in Indonesia might be incomparable since one country and another a city. However, although Aceh is a city in Indonesia, it is more prominent in size (56,839 km<sup>2</sup>) and number (5.405 million) than Brunei, which has 5,765 km<sup>2</sup> and 459,5000 people. In other words, both are worthy of comparison since they have similarities besides their differences (Muthohhar, 2003). Both were used to using the Islamic legal system to regulate their affairs in the pre-colonial era. Nevertheless, under the influence of colonization, the Western legal system gradually replaced Islamic law as the dominant system. In the post-independence age, there is a significant inclination to "Islamize" the law by reverting to the traditional ways of thinking about the legal system and highlighting the law's core principles.

According to Hooker, the definition of sharī'ah has widened during the past 20 years, even in terms of criminal law (Hooker, 1970). Two states have different statuses in the current world constellation. Aceh is a territory with the right to implement Islamic law despite being a part of the Unitary State of the Republic of Indonesia based on Pancasila (five principles of the nation).

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On the other hand, Brunei reverted to an absolute monarchy with "Islam" as one of its three guiding ideologies. Based on the specifics and privileges of Aceh, since 2002, several Islamic laws have been enacted, including those in the field of Islamic criminal law (Din, 2009). On 27 September 2014, Dewan Perwakilan Rakyat Aceh (DPRA) passed a new and more complete *Qanun Jinayat*, namely *Qanun Aceh No. 6 of 2014*, concerning *Jinayat Law*, hereinafter referred to as "*Qanun Jinayat Aceh*" and abbreviated as "QJA". Only a difference of 3 months, on 1 May 2014, Brunei enacted a *jinayat* (criminal) law called the Sharia Penal Code Order, 2013, which hereinafter is called "*Kanun Hukuman Jenayah Brunei*" and abbreviated as "KHJB." The conceptually, hudud punishment is unique and different from the legal concept of any crime, mainly because it is considered a violation of the rights of God and not solely based on the loss of others (victimless crimes). The punishment is known to be severe, fixed, and specific so that it cannot be added, subtracted, replaced, or deleted other than by type and levels that have been determined by the Shari'a but are balanced with strict and complex evidence and have dimensions of *ukhrawī* (one's fate in the hereafter) as well. Based on the description above, this study focuses on addressing two main questions: (1) How is the conception and implementation of hudud punishment in QJA and KHJB; and (2) How do the people of Brunei and Aceh respond to the changes in the new face of the Shariah law?

This research is concerned with how the people of Brunei and Aceh respond and adapt to the social and political changes. This article focuses on what data collection methods will be used to receive the most suitable information for this study. It will explain how participants for this research were selected, such as who and how many people were involved for the appropriate data to be received. Ethical considerations will also be explored, such as ensuring informed consent is received from all participants. The reliability and validity of this research will also be discussed, and what limitations this study was faced with. Finally, it will consider how the data established was analyzed. These factors were taken into consideration when looking at the nature of this study. Qualitative analysis, reduction data, collecting data, displaying data, and drawing a conclusion.

## Discussion

### General Overview Sharia Law

The position of Islamic law in Islam is critical for those who embrace this religion. Muslims are expected to study how to apply Islamic law in daily life. According to Akh. Minhaji, it is not an exaggeration to say that "there is no subject more important for students of Islam than what is usually called Islamic law" (Minhaji, 1999). Minhaji has compiled the interpretations of scholars who discussed the importance of law in Islam. First, Islam is a religion of law. Second, law is the

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distilled essence of the civilization of a people. Since it reflects civilizations in general, there can be no doubt that it is particularly true in Islam. Third, it is impossible to understand the Muslim mind, Muslim society, Muslim ideals, politics, and reactions without some knowledge of that law, which still molds and pervades them all.

Fourth, law is the heart of Islam; this proposition has been generally accepted within the ranks of unbelievers and believers, forming the basis of much of Islamic scholarship. Fifth, for many devout Muslims, traditionalists, and modernists alike, Islam without the law is unimaginable. Sixth, the shari'ah was a way of life, which, for Muslims, constituted the core of Islam. Seventh, it is impossible to understand Islam without understanding Islamic law. Eighth, Islamic law will always remain one of the most important, if not the most important, subjects of study for the student of Islam (Minhaji, 1997). It can be inferred from the above remarks that Islamic law encompasses every facet of Islamic teaching. Unfortunately, there are many diverse conceptions of Islamic law when we investigate it. It is necessary to ask some questions, such as when Islamic law is regarded as shariah. When does Islamic law become *fiqh*? Islamic law, technically speaking, is not uniform, as Mashood A. Baderin observes. Its jurisprudence allows for a pluralistic interpretation of its sources, leading to variations in juristic conclusions that can be pretty important when compared.

The terms *fiqh* and *shari'ah* have similar meanings. *Fiqh* is used in the literal sense to mean "understanding" (*al-fahm*) (Bustamam-Ahmad, 2002). The meaning of the term *fiqh* is usually similar to words such as *'ilm* (knowledge) and *kalam* (theology) (Nyazee & Nyazee, 2019). The term *'ilm* has the same meaning, and in the era of the Prophet, there appears to have been no difference between the two terms (Nyazee & Nyazee, 2019). According to Nyazee, "as sophistication crept in, the term *'ilm* came to be applied narrowly to mean knowledge that comes through the report, traditions: *hadith* and *athar*. The term *fiqh* came to be used exclusively for knowledge of the law" (Nyazee & Nyazee, 2019). Thus, the terms *'ilm* and *fiqh* were separated when specialization in law and tradition came into existence toward the end of the first century of Hijrah (Hassan, 1984). Several Islamic studies experts have been deeply concerned about the application of Islamic law in Muslim nations and how it relates to non-Muslim minorities for the past ten years. According to Annika Rabo's study, sharia implementation in Syria has resulted in racial and gender inequality (Rabo, 2012). The detrimental effects of Islamic law are also evident in the relationships between Christian and Muslim Jordanian women's social statuses.

The drawback of Sharia in such nations is comparable to the drawback of Aceh's Sharia, which seeks to be way too political and poses serious obstacles to gender issues, particularly those about the rights of women (Alfian, 2006). Ichwan has researched the application of sharia in Aceh. These studies offer several hypotheses, including the following: first, the local leader in Aceh

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implemented sharia as a political ploy to consolidate power and explore money resources. Islamic law is a tactic employed by the national elites to settle disputes and win elections. Additionally, the central government's efforts to utilize a religious strategy to resolve the persistent separatism struggle in Aceh cannot be divorced from the application of sharia (Ichwan et al., 2020). In order to implement Sharia, including *jinayat* (criminal law), Aceh has been given special autonomy by the Indonesian government. Second, adopting Islamic law might be viewed as a social transformation initiative or a response to the perceived "modernity crisis" and political intrigue vying for state control. Recently, the arrangement of moral authority, law, and political power in the current international order is strongly tied to the application of Islamic Sharia (Feener, 2012). Finally, the Acehnese people's complaints about human rights breaches have not been heeded by the implementation of Sharia law in Aceh. It is incorrect to interpret the acceptance of Sharia law as an act of Islamic radicalization or Islamic revivalism. However, due to the history of the Darul Islam uprising, Islam has had a significant impact on Acehnese politics (Feener, 2012).

Furthermore, the QJA may promote intolerance, resulting in a breach of fundamental human rights and the 1945 Constitution, which guarantees each citizen the freedom to exercise his or her religion (Danial, 2017; Feener, 2012). Fourth, adopting the QJA has helped the ulama (Islamic scholars) by elevating their status compared to the secular authority. Then, the Ulama Consultative Council (MPU) is established, enhancing the ulama's authority (Shaw, 2008). Finally, non-Muslim women in Aceh have been harmed by public spaces that are dominated by the Islamic identity. The Christian women's organizations are still vital even though they are still independent and unaffected by the Islamic beliefs and identities of the Muslim majority. They always have a way of articulating the agencies as objects of the socio-cultural framework around them, albeit at many levels, at both the individual and collective levels. Multiple agencies are produced by objectifying these structures, which is a situation in which one person exhibits multiple forms of agency, such as a mix of submission and resistance, capability and helplessness, *etc.* (Ansor, 2019). According to Al-Omari and Al-Ani, Islamic law is the most contentious area of Shariah since it imposes severe corporal punishment for some offenses, such as flogging, amputation, stoning, or beheading. Nonetheless, these physical punishments and Shariah regulations have sparked a debate with contemporary international concepts like human rights, religious freedom, and the ability to confront new concerns.

Brunei Darussalam, an Islamic kingdom, adheres to the Malay Islamic Monarchy model, which calls for the Sultan to serve as the head of state with complete authority. With this idea, laws are based on Islam, the nation's official religion, to bring prosperity to all of its citizens. Their attempts to provide affluence and prosperity to the entire population have, throughout time, proven somewhat effective thanks to the guidance of Sultan Haji Hassan al-Bolkiah Mu'izzaddin Waddaulah.

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In Brunei, peace and unity are also reasonably strong and rising. Under the guidance of the Sultan, Brunei Darussalam, a developing nation, has continued to advance its development for 50 years (Haqqi, 2017). In my opinion, as a developing Islamic state, efforts to create prosperity for the people of Brunei are inseparable from challenges and obstacles.

However, these challenges have been able to be passed by the Sultan of Brunei independently and wisely. The Sultan manages and resolves each country's problems based on a spirit of consensus and a high understanding of the problem so that he finds solutions that bring prosperity to the people and the nation. The nation's long history has made Brunei a nation that can look to the future by prioritizing the union between the king and the people. By all means, Brunei seeks to help its country achieve its goals smoothly and safely without significant obstacles. One of the aspects of Islamic law that has been replaced by law in the most modern era of colonialization is criminal law, compared to other aspects of Islamic laws, such as family law or the field (*fiqh*) of *muamalah*. Most Muslim countries that experienced the period of Western colonialization in 17th to 20th centuries implemented the criminal law of their mother country, such as Indonesia, which used criminal law originating from the Netherlands and contained in the Criminal Code.

Until now, even the criminal law used by Indonesia is inheritance criminal law Dutch colonial, with only minor modifications and changes. A similar case also occurred in Brunei Darussalam when the British entered this country, and the Sultanate of Brunei was willing to come under a protectorate English. In practice, the UK only allowed Brunei to apply Islamic family law, while criminal law had existed since ancient times when Western criminals replaced the sultanate. This thing has become a pattern that is plural in the Islamic community, and with this also later application, Islamic criminal law is scarce in populated countries Muslims in colonial times. Adapting Daniel E. Price, Arskal Salim, and Azyumardi Azra put forward the elements of implementing Islamic Sharia in communities or Muslim countries. This can be formulated in five ways, namely: (1) Related matters with personal (civil) status, such as marriage, divorce, *waqf*, and inheritance; (2) Arrangements in terms of the economy, such as banking and practice business/business; (3) Matters related to religious practices, such as restrictions on women's clothing, consuming alcohol, gambling and other practices which are considered un-Islamic; (4) Implementation of Islamic criminal law, incl also the punishments; (5) The use of Islam as a guide in government. From here, criminal law has become an aspect that is rarely applied, compared to family law or *muamalah* law.

After the *muamalah* aspect is more widely applied by the community Muslims, as seen from many banking practices and economic systems, Islam, nowadays, has at least seen the cases of Aceh and Brunei Darussalam emerge as pressure from Muslims to implement Islamic criminal law. There is a determination *qānūn* or the Jinayat Law (in Brunei) has reappeared in the practice of

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Islamic criminal law, which has existed since the days of Islam the beginning. However, in practice, the application of Islamic criminal law is still tricky, separated from the tradition of modern state administration and law which was adopted by Muslim countries from the West in colonial times. This article will specifically look at how criminal law codifies Islam in the Muslim community, namely Brunei Darussalam, a country with the principles of Islam, and Aceh, which administratively entered the territory of Indonesia but was given special autonomy to implement Islamic law. Concerning the two *qānūn jināyāt* in Brunei and Aceh, the author will explain the substance of criminal law in these two areas while also emphasizing the implementation of Islamic criminal law within the framework of today's modern state.

Moreover, several researchers have already investigated Brunei's Islamic legal system. Cahyani, for instance, looks at "Islamic Family Law in Brunei Darussalam." He concentrated on Brunei Darussalam's family law reform during his research. The restrictions placed on the authority of applying Islamic law in Brunei Darussalam during the British colonial era served as the impetus for Cahyani's research. Cahyani asserts that applying British state law and restricting Islamic law are characteristics of colonialism (Cahyani, 2015). This study will examine how Islamic sharia law is implemented in state life in Brunei Darussalam, in contrast to Cahyani's research, which concentrates on Islamic family law.

This study concentrated on Islamic law because Islam was established as Brunei's official religion and as the country's guiding philosophy of life. On the other hand, the Sultan has total control over his people when it comes to the administration of Islamic law in Brunei. The Malay Islamic Beraja (MIB), which has two pillars—Islam as a guiding principle and Islam as a means of fortification—is strictly applied in Brunei's political system. Maintaining the Malay state, perpetuating an Islamic state (Islamic law, which is Shafi'i in terms of *fiqh* and *Sunnah wal Jamaah* in terms of its creed), and maintaining the State of the Earth then developed from these two grounds as the values of Islamic statehood (conservation). The Sultan established an Islamic religious assembly based on the Kadi Court and the Religious Law in 1955 to strengthen the administration. This group was tasked with counseling the sultan on matters relating to Islam. The monarch took this action to ensure that Islam would genuinely serve as the only ideology in Brunei and the way of life for its citizens. As a result, a viewpoint on religious issues was developed that helps the government, its representatives, and the general public comprehend Islam.

### **Sharia Law In Brunei**

Brunei Darussalam is a country dense with Islamic culture in various aspects, from social, economic, educational, and other aspects. In October 2013, the government of Brunei Darussalam announced the nationalization of Islamic sharia law regardless of religion. The Islamic Sharia Law applies to anyone without exception and was implemented on May 1, 2014. According to Sultan

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Hassanal Bolkiah, this nationalization is a significant achievement because it means that Brunei has gone one step further in becoming a fully Islamic country per the teachings of the Koran (Redaksi, 2014). The rules for implementing Islamic Sharia Law are carried out in stages in 3 stages, namely:

The first stage May 1, 2014 implementation of Islamic Sharia law nationally in Brunei Darussalam. This stage is the initial stage, containing the lightest rules for violations or sanctions. Altogether, this first stage contains 55 general rules. Among them are: first, for those who do not respect the month of Ramadan, such as opening a place to eat openly during the day. Second, for men who do not carry out Friday prayers as Allah and the Prophet commanded. Third, spread other religions besides Islam. Fourth, pregnant out of wedlock for women who have never been married before or are in a state with no husband status. If she already has a husband, she enters the second legal stage with more severe sanctions. Fifth, other religious events besides Islam should be held openly, such as celebrating Christmas. Sixth, insulting the Religious Council or the Minister of Religion fatwas. Seventh, publish something related to the Islamic religion without permission from the Royal Religious Council. This first stage has sanctions of imprisonment and monetary fines. The time and amount of payment of the fine is according to the judge's decision, depending on the type of violation committed, but the prison sentence for this first stage is under 30 years. At this stage, the initial stage of the three stages that have been determined, no news of violations is officially recorded from the prosecutor's office of Brunei Darussalam (Brunei, 2014).

The second stage, 1 May 2015, the implementation of Islamic Sharia Law nationally in Brunei Darussalam began 12 months or a year after the first stage, namely on 1 May 2015. According to the level, the rules and sanctions at this stage are automatically heavier than in the first stage. The second stage has several points of classification rules that have been defined, some of which are: first, stealing. Second, drink *khamr (liquor)*. In this case, there is a provision for differences in the amount regarding the amount of liquor consumed between Muslims and non-Muslims, and third, having sex or adultery with other people while still having a husband or wife. This applies to those who are not Muslim, while those who are Muslim enter the third stage. The sanctions set for violations in this second stage are hand amputation for theft, whipping or 30 years imprisonment plus payment of fines for adultery and drinking alcohol, depending on the context of the case and the judge's decision. In the second stage, between the initial and final stages of the stipulated Islamic Sharia Law, this is the same as in the first stage, namely that there was no reporting of violations that were officially recorded from the prosecutor's office of Brunei Darussalam.

The third stage, starting on May 1, 2016, is the last and is at the highest level, with the most severe violations and sanctions. Some of the rules in stage three include: first, blasphemy against Islam. Second, the insult to the Koran and the Prophet Muhammad SAW. Third, having sex or

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adultery with other people while still having a husband or wife and being Muslim. Fourth, homosexual or lesbian. Fifth, claiming to be God or the Prophet and not wanting to admit the truth of the hadiths whose truth has been agreed upon by the majority of Religion and the Minister of Religion of Brunei Darussalam. The sanctions imposed for this third stage are the most severe, namely the death penalty by stoning or beheading. This third stage is also not far from the two previous stages, as there was no official reporting of legal violations from the Brunei Darussalam prosecutor's office.

### **Sharia law in Aceh**

Aceh is the only province in Indonesia that has already implemented sharia law. Historically, Aceh is the first place Islam spread and developed in Indonesia eight centuries ago. 12th centuries ago, Aceh was the center of Islamic civilization, and the oldest Islamic kingdom in Indonesia ever existed (Ricklefs, 2008). Islam is the most crucial aspect that has shaped Aceh's traditions, culture, and customs. Islam has been incorporated into the Acehnese life. The point is that Islam and Aceh have experienced cultural assimilation and acculturation. In the contemporary context, Aceh is called '*Serambi Mekkah*' or Veranda of Mecca. That name is used to describe the powerful Islamic influence in Aceh. Nowadays, the Provincial Government of Aceh implements Sharia law as the fundamental law in Aceh as the consequence of conflict resolution between the Free Aceh Movement (FAM) and the Indonesian government. The provincial government of Aceh also desires to develop the current Islamic sharia with criminal code and capital punishment. The *Qanun Jinayat*, or Islamic criminal code, has been passed into the Acehnese Parliament (Afrianty, 2015). Generally speaking, Acehnese people think that *adat* and shari'ah should coexist in their nation (Van Vollenhoven et al., 2013). According to Acehnese proverbs, "*Hukum* (law) and *adat* are intertwined, even as God's essence and his qualities," according to Snouck Hurgronje. "*Hukum* and *adat* are like the pupil and the white of the eye; the *hukum* is Allah's *hukum*, and the *adat* is Allah's *adat*," it is said (C. S. C. Hurgronje, 1906).

For the Acehnese people, *adat* and shari'ah were sources for applying Islamic law. *Adat* is seen in Acehnese society as a means of comprehending and putting shari'ah into practice (Abdullah, 1994). Buddhism and Hinduism inspired the Acehnese before Islam arrived (Auni, 1993). Islam invaded the area and replaced these customs with its own beliefs. Additionally, the *adat*-counterparts that govern Muslims' lives in other regions of the Islamic world, such as those of the Bedouins of Arabia, Egyptians, and Syrians, are primarily distinct from those of the Acehnese, Indonesians, and Malays. However, the relationship between these regional customary laws and Islamic law and the tenacity with which they uphold themselves are comparable (Van Vollenhoven et al., 2013). *Adat* also had a significant influence on Acehnese society. The *adat* system, which is founded on *shari'ah*, governs the administration of the *kampong* (village) (C. S. Hurgronje, 1997).



Three offices—the *ureung tuha*, the *teungku*, and the *keuchik*—run the kampong. The Acehnese used to refer to the headman—the *keuchik*—as "the father of the *kampong*" (Abdullah, 1996). The *teungku* is "the mother of the kampong," according to Mukti Ali. However, the *keuchik* devotes himself more specifically to maintaining the *adat*, it is also considered to be part of his job to encourage godly life among his people. The sustaining of the *hukum* is hence the *teungku's* area of expertise, however, a knowledge of and care for the *adat* are also seen as essential (Ali, 2001). The elders, or *ureung tuha* in the kampong, are the men with experience, knowledge of *adat*, good manners, and world wisdom. Although they are typically older, a younger guy who exhibits these qualities is also qualified to be a *ureung tuha*. According to Islamic beliefs, these leaders collaborate in the society's day-to-day operations in various ways. The *meunasa* (*Ar. madrasa*), which serves as a place of prayer and Islamic instruction, is central to these activities.

### **The conception and implementation of hudud punishment in Brunei and Aceh**

Islamic law —*fiqh* —is the result of understanding/reasoning (law in concreto) of Shari'a (law in abstracto) by using a certain set of methodologies and then elaborating until it is arranged systematically and detailed. As a unified whole, these concrete entities form a concept according to their respective fields, groups, or classifications. Therefore, as a result of "understanding/reasoning", the conception of *fiqh jinayat* is included hudud punishment - is very likely to be understood differently because it can also be influenced various non-legal factors that actually play a significant role in shaping the *fiqh* paradigm itself, such as socio-culture and development of the times. Conceptually, "certain limits" in hudud refer to several provisions of punishment that are believed cannot be deleted, exchanged, reduced or added due to sourced from the most fundamental Islamic law (Al-Quran and Sunnah). While in meaning more specifically, the "certain limit" is associated with the type of crime (*strafsoort*), its light weight punishment (*strafmaat*), and provisions for the implementation of criminal (*strafmodus*). Besides that, It also includes what criminal acts (*jarimah*) are prohibited/punished by crime

QJA defines hudud as "a type of '*uqubat* whose shape and size have been explicitly determined in the *qanun*" (Aceh). Two important phrases underlined in this formula are "has been determined" and "unequivocally." These two phrases are certainly associated with the word "*hadd*" or "limit" which is contained in the basic concept of hudud punishment, however in context it seems different because QJA explicitly states that it refers to "limits-limits" determined/stipulated "in the *qanun*" itself. While KHJB defines "*hadd*" as "the punishment or torment that has been determined by Allah SWT or the Sunnah Rasulullah SAW for the mistakes of *sariqah*, *hirabah*, adultery, *qazaf*, drinking *liquor*, and *irtidad*." (KHJB) In contrast to QJA, KHJB explicitly states that "limits/provisions" refers to the provisions of Allah SWT (Al-Quran) and Sunnah Rasulullah SAW. According to the legal subject and its enforceability, QJA adheres to the

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principle of territoriality, but it is not absolute because under certain conditions the right of legal choice is given to non-Muslim citizens. This fact indicates that QJA also adheres to the personality principle, however, it does not apply absolutely because it is limited to Aceh territory. At first glance it looks like the principle adhered to by the Imam Abu Hanifah. While KHJB adheres to both principles absolutely; without "discrimination" and jurisdiction; and this is in accordance with the principles espoused by Imam Syafi'i (al-Humam, 2003).

QJA does not make a specific *jarimah* classification. The ten kinds of *jarimah* contained in the charge material are arranged randomly and are only distinguished according to two types 'uqubat that was threatened, namely 'uqubat hudud and ta'zir. *Jarimah* that are threatened with hudud punishment in the form of only whipping, namely *jarimah khamar*, adultery and *qadzaf*. While the other seven *jarimah* are threatened with ta'zir punishment in the forms of various punishments. However, among the seven *jarimah* there are two kinds *jarimah* which according to jumhur ulama is hudud *jarimah*, namely rape and *liwath*. Compared to QJA, the systematics of KHJB's content material is more extensive and complete. The *hudūd* punishments are classified specifically, namely *sariqah*, *hirabah*, adultery, *qazaf*, drinking intoxicating drinks, and *irtidad*, and threatened with had in the form of whipping, stoning, imprisonment, amputations, to the death penalty. In addition, KHJB equates had adultery *bil-jabbar* (rape) and through adultery. QJA defines certain *jarimah* differently, for example adultery and rape. The definition of adultery seems to have expanded, especially in terms of legal subjects which are not only limited to intercourse between two people but also includes intercourse that involves more than two people. Likewise the definition of rape; extended beyond the commonly known notion of rape. While KHJB seems to have a close relationship with classical fiqh thought; the definition of *zina* and *zina bil-jabbar* looks very conventional. Uniquely, even though QJA does not equate it with adultery, "the act of accusing committing rape" can be correlated with the threat of 'uqubat hudud *qadzaf*. Whereas *Qadzaf* itself is limited to the norm of accusing someone of "committing adultery". not accusing others (Hamzah, 2015).

The proof of hudud in QJA contains a number of uniqueness. Among other things, the judge has the authority to revoke 'uqubat hudud based solely on a confession (seeking to be punished) or if the accused retracts his confession. This is novel in the context of establishing Indonesian criminal law and suggests the existence of aspects *ukhrawi*/worship (penance of sins) as the fundamental idea of hudud. Additionally, QJA claimed to have created a "legal breakthrough" by accepting DNA test findings in place of four witnesses in some circumstances to prove adultery. The KHJB proof of hudud strictly refers to sharia law's rules. The judge is required to perform "*tazkiyah al-syuhud*" in regard to testimony. Whether the hudud offenders can be punished hudud depends on the outcomes of *Alsyuhud's tazkiyah* and the judge's conviction. KHJB does not, however, disprove any

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additional reliable evidence. It is interesting to note that if the case is established, the court can still impose a sentence, but not a severe sentence (*'uqubat hudud*), but a replacement punishment (*'uqubat badaliyah*), whose formulation of the threat has also been defined in detail and is made explicit and thorough in the KHJB content.

In the case of *hudud*, two sets of criminal provisions are governed by the formulation KHJB criminal provisions. According to the description given above, QJA's conception of *hudud* tends to appear more liberal and moderate; in the sense that the ideas are not connected to a school of *fiqh*, even with regard to specific substances, are seen to differ from the *fiqh* of any Sunni school of thought, for example in its elimination of discrimination against adultery offenders based on their marital status. But generally speaking, QJA still exhibits conceptual similarity, or at the very least a likeness, to the idea of classical *fiqh*, as shown, for instance, in the dimension of *ukhrawi*/worship. While KHJB demonstrates a very distinct "thread" with traditional *fiqh* ideas, particularly the Shafi'i school.

#### **Varieties of Response to Sharia Law in Brunei and Aceh**

An interviewed was made with Wan Mohd Nik Wael a student from Universiti Brunei Darussalam, A Bruneian student taking Bachelor Degree of Economics. He attended religious school for 6 years and he said he was aware of implementation of sharia law in Brunei. Despite attending religious school in the afternoon, Wan also receive compulsory curriculum learning Malay Islamic Monarchy (Melayu Islam Beraja) since Primary 1 until Pre-University. In fact, the module MIB is still mandatory for students learning in Universiti Brunei Darussalam along with the module Islamic Civilization and the modern world. Wan feels that the Islamic Education in Brunei Darussalam has been prioritized by the Brunei government since childhood in line with the national philosophy, Malay Islamic Monarchy with the Islamic knowledge and education given by the Government of Brunei. Wan feels that the Bruneian community is ready to carry out the Islamic Sharia. Wan also agrees that with the implementation of Islamic Sharia in Brunei is bringing him closer to Allah swt and preventing him from doing things prohibited in Islam.

For Wan, he feels that the application of Islamic Sharia in Brunei is something that is not surprising due to the awareness of the Islamic law, Wan also mentioned that he is grateful to have been born from a family that always reminds him of the teachings of Islam, Wan also often gathers with the youth of the mosque in the village and does welfare activities. Wan also feels grateful for the educational facilities provided for free by the Brunei government until he is now able continue his studies at the university level. Wan feels that the decision taken by the Brunei government to implement Islamic Sharia is a right decision for the well-being of the nation and the country, Wan hopes that after graduating from university he can become a person who contributes greatly to the nation and the country.

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Another interviewed was made with a Bruneian teacher, Fajrina, teaching in Rimba religious School one of the secondary school in Brunei. She has been working with the Ministry of Religious Affairs for 4 years and She felt that the concept of Malay Islamic monarchy which became the national philosophy is very important to be emphasized in the Education system because it educates the young generation on how important it is to obey the religion, the Sultan, the nation, and the country. Fajrina also admitted that before the Islamic Sharia panel was implemented in Brunei, she and the other government employees had been given an initial course. She thought that as a country with an Islamic status, it was time for Brunei to implement Islamic Sharia as commanded by Allah swt, this will also give awareness to the community to obey God's commands and abandon all his prohibitions.

Fajrina admitted that since the implementation of the Islamic Sharia system in Brunei, there have been many significant changes that she has felt regarding the students in her school, for example students are now more diligent in congregational prayer and evening many students would spend their time in the surau reciting the Qur'an with their friends, this has clearly given a positive impact on the children in Brunei. Fajrina also added that since the implementation of the Islamic sharia system in Brunei, there are rarely cases of students having problems such as fighting, skipping school and students fighting against teachers. Fajrina hopes that the Islamic Sharia panel needs to be maintained because it will educate the children of the nation in her school to always respect teachers and practice helping each other in school.

An interview was made by BBC Indonesia to 2 Bruneians living abroad from Brunei, they were having different thoughts about sharia law. They were not happy for the sharia law as they thought that it was against human rights. They feel that the Brunei government is putting harsh rules for the Bruneians. One of them was also saying that he was being judged for criticizing the Brunei government and he did not dare to go back home. A local Bruneian writer published an article titled "Should We Resort to Stoning or Flogging" in the Borneo Bulletin, local Brunei newspaper on March 13th. He said, among other things: (1) No chapter of the Qur'an mentions the punishment for adulterers; (2) The hadith was created by humans; (3) The punishment for adulterers is inconsistent between the Qur'an and the Hadith; (4) Questioning the veracity and authority of several Hadiths, despite the fact that they were recounted by Imam Al-Bukhari and Muslim; (5) Questioning the reliability of Muslims and Imam Al-Bukhari in Hadith narration; (6) Researching opinions about the punishment on the internet; (7) Prefer rationality when analyzing how some religious issues are positioned. The writer's article prompted an immediate response from the authorities in Brunei. He publicly apologized and expressed regret for publicizing his opinions in front of a Syariah Subordinate Judge and two witnesses on June 7, 2013.

Informants from Aceh were also taken for this study where the author met one of the students

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from Aceh named Fajar Maulana, he is a student studying at Muhammadiyah University of Yogyakarta. He thinks that since the implementation of Syariah law in Aceh, criminal cases in Aceh are decreasing, previously often young people are seen drunk on weeknights but now they are never seen again. He has personally seen people who have been flogged for offenses such as adultery and gambling that were watched by the public where people were cheered and shouted and that made him ashamed and afraid to commit offenses that are forbidden in religion. He said almost every day Syariah police officers roam the streets in a hunt for immoral activity. Meanwhile, in article written by Siti Ikromatoun the Islamic Shari'a implemented by the government after tsunami is getting weaker, whereas on the other hand some people still regard Islam as *kaffah*, causing them to insist on demanding the full implementation of Islamic Sharia (Ikromatoun, 2017).

The government did not immediately show its seriousness, so that opinions emerged from the public in the local mass media which tried to criticize the government's performance. The public gave various kinds of criticism by saying that the government only made Islamic Sharia as a tool of legitimacy to get to the seat of power. There are also those who respond by not complying with the Islamic Sharia regulations. As a result, there is a kind of "chaos" that colors the dynamics of the implementation of Islamic Sharia itself. Many people have violated it, while the government has not taken it seriously. Islam itself. On the other hand, the various community responses then developed into a kind of opinion which shows that there have been differences and changes in understanding between people in addressing Islamic Sharia.

Apart from the supporting groups, there are also groups that strongly reject the implementation of the Sharia Qanun. Several community groups in Aceh have different views when implementing qanuns in Aceh. The group opposed to implementing the *qanun* consists of various academics at universities in Aceh, as well as NGOs working in the field of human rights and women's issues. this group is not against Islamic Sharia being implemented in Aceh. Instead, they strongly criticized the contents of the *qanun* which were considered not comprehensive and also criticized the system of implementing the *qanun* which was considered to be very discriminatory. As for the contents of the *qanun*, the groups that oppose this are due to the fact that the current application of the Islamic Sharia Qanun has exceeded the country's national law. They believe that the *qanun* causes dualism of state law. This means that Aceh should implement two regulations, namely *qanun* law and Indonesian state law. The opinion of this group is that Aceh should apply national law as a basis because it is in Indonesian territory. This group also criticizes the material of the Islamic Sharia *Qanun* which is contrary to human rights.

### **Shariah and Its Response Map**

From the respondent's data collected from both regions, it can be analyze here that there are

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clearly groups that accept and rejects Islamic Sharia law. First, the author will discuss about responded in Brunei. According to two respondents who were interviewed by the author himself, namely Wan Nik Wael, a student from Brunei and Fajrina, a mathematics teacher, they agreed that Islamic Sharia should be maintained in Brunei because they saw many positive effects that were seen after the implementation.

The Brunei government's move to gradually introduce Islamic sharia in stages is a strategic decision because this will provide an opportunity for the Brunei community to gradually deepen Islamic sharia law. In this way, the community will begin to be sensitive and aware of the importance of Islamic Sharia. The author is confident that with good and continuous religious education from the government of Brunei, Brunei will be able to implement full sharia law in the future with the acceptance of the public. Meanwhile, the 2 local Bruneians who live abroad who were interviewed by BBC Indonesia show that they have different points of view about Islamic Sharia law because of the association and life they feel in western countries. This cultural difference is very influential to their decision not to return to Brunei. Where they now feel that living in Brunei is not safe because of the Islamic sharia that puts harsh punishment to the public which according to them is a violation of human rights different from what they feel in the place where they live now where they are free to voice their opinions. They seem to have not fully understood the rules of the Bruneian government on Islamic Sharia and believe more in the media they hear and read from the country they live in.

Regarding a local writer in newspapers and blogs, the writer should be more intelligent to comment and should realize that he is a citizen of Brunei who practices the monarchy system and in my opinion the details he wrote are something that is not true such as he stated that No chapter of the Qur'an mentions the punishment for adulterers even though in the Qur'an verse 2 of Surah Nur already explains. As for female and male fornicators, give each of them one hundred lashes, and do not let pity for them make you lenient in 'enforcing' the law of Allah, if you 'truly' believe in Allah and the Last Day. And let a number of believers witness their punishment (An Nur :2) There is strong evidence in the Koran which discusses adultery, but according to Rokhmadi, the provisions of Islamic law regarding adultery punishment are stipulated with careful preparation, after correctly understanding the formation and power of the human mind, analyzing their character, inclinations and feelings carefully, and also after stipulating to safeguard the benefit of individuals and society in general. These punishments are scientific as it is determined based on human psychology, and it is called legal, because it is determined to eradicate criminal acts. This is the privilege of Islamic law which is determined by criminal acts in the *jarimah hudud*, and this privilege is almost not found in conventional law.

According to Islamic history, at least the Messenger of Allah carried out the stoning

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punishment for adultery *muhshan* at least 4 times, namely; (1) The stoning of a Jew who reported himself to the Prophet and the Prophet imposed punishment based on the Torah which he believed in, and according to *al-Zarqani* this event occurred in the month of *Zulhijjah*, the 4th year of the *Hijriyah*; (2) The stoning of a woman who was accused of having committed adultery with the accuser's son. After being confirmed, it turned out that the woman had confessed herself, even though previously there was testimony from the father of the child accused of having committed adultery with him; (3) *Rajam* against Ma'iz bin Malik, the Prophet carried out the punishment of stoning him based on his confession; (4) The stoning of a woman from the *Ghamidiyah* Tribe who is pregnant from adultery, but the execution of the sentence after the woman gives birth and weans her child, is based on her confession because she is afraid of Allah's punishment in the hereafter.

Addressing respondents from the Aceh community who agree and reject the regulatory policies carried out by the Aceh government such as the example of an aceh student who was interviewed by the author himself where he felt that the policies carried out by the Aceh government were correct and he felt safer now where crime was rare in which he and the community began to be aware of Islamic sharia law. However, according to several authors, such as the article written by Ikramatoun, that some community groups in Aceh feel that the Aceh government does not seem to have fully or completely implemented Islamic orders where the government itself has not been serious about implementing Islamic law (Ikromatoun, 2017). The author is of the opinion that the Aceh government must show seriousness towards this policy so that it is accepted by the people without confusion. From the above responses shows there are groups who accept Islamic law willingly, groups who completely reject it for several reasons such as it is contrary to human rights and there are groups who are forced to accept but still criticize. Brunei practices an absolute monarchy system of government where the highest power is held by a single ruler and the people do not have the freedom to express opinions, in contrast to Indonesia, which practices a democratic system. And the people have the right to voice out their opinions. This also has an important influence on the response of the people in the two regions regarding the sharia law implemented.

## **Conclusion**

Islam has taught mankind to become a better personality by following the guidance of Al Quran and Sunnah. As Muslims, it is obligatory to obey all the commands of Allah swt and leave all his prohibitions. Brunei and Aceh are two small regions but have dared to take risks to implement Islamic Sharia. Since the Islamic Sharia has been tightened in the countries of Brunei and Aceh, many significant changes can clearly be seen where the community knows Islamic law more

deeply and the community is more aware and afraid to do everything that is forbidden by religion. Despite receiving a lot of criticism from outside parties, the country of Brunei and Aceh still do not change their minds to implement Islamic Sharia. They are confident that the decision taken is the right decision for the welfare of the two regions. Although it is seen that the two regions are still new in introducing Islamic Sharia, they are very optimistic and confident that Islamic law can be maintained in the region gradually.

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