

JARIMAH KHALWAT ARRANGEMENTS IN QANUN NUMBER 6 OF 2014 CONCERNING JINAYAT AND ITS POLYMICS IN ACEH

Bukhari, Asmuni, Muhammad Hatta, Anwar

bukhari@iainlhokseumawe.ac.id, asmuni.tarmun7@gmail.com, delicten@yahoo.com,
anwarpante@gmail.com

IAIN Lhokseumawe, Universitas Islam Negeri Sumatera Utara, Universitas
Malikussaleh, STAIN Meulaboh

Abstract: This study aims to determine the punishment for various polemics regarding jinayat khalwat in the province of Aceh, especially in the cities of Banda Aceh, Lhoksukon and Langsa. This study uses a normative-empirical method with a statutory approach and a case approach. The data source in this research is the Al-Qur`an; the 1945 Constitution; Law No. 1 of 1946 concerning the Criminal Code; Law No. 8 of 1981 concerning the Criminal Procedure Code; Aceh Qanun No. 6 of 2014 concerning Jinayat Law; and Aceh Qanun No. 7 of 2013 concerning Jinayat Procedural Law. The results of the study show that the background to the regulation on the prohibition of khalwat crimes in Qanun No. 6 of 2014 concerning the Law of Jinayat is to prevent the occurrence of a larger jinayat, namely adultery, both adultery muhsan and ghairu muhsan. The formation of the nomenclature of jinayat khalwat in this Qanun is a form of concern for the Government of Aceh towards “decency” regulations relating to actions that lead to jinayat of adultery. The community fully supports the formation of jinayat khalwat rules that aim for the good and benefit of the ummah even though there is polyemic in this finger *khalwat* arrangement.

Keywords: *Crime, Khalwat and Qanun*

A. Introduction

The application of Islamic law in Aceh is the desire of the whole community. The people of Aceh are known as a religious society and are fanatical towards the teachings of Islam, so that Islam becomes a cultural identity and self-awareness.¹The people of Aceh unite religious teachings into customs in such a way that they unite and mingle and cannot be separated. The unification of Islamic law in all aspects of the life of the people

¹ Mahmud Syaltut defines Shari'a as regulations revealed by Allah to humans so that they are guided and obeyed in every relationship with their God, with fellow human beings, with the environment and their lives.. Lihat Mahmud Syaltut, *al-Islam wa syariah*, (Mesir: Daar al-Qalam, 1966), h. 2.

of Aceh is reflected in a saying that “hukom ngoen adat lage dzat ngoen sifeut”.² This expression means that the interaction between shari’a and adat is like the relationship between matter and its nature, which is inherent and cannot be separated.

In the field of law, Aceh has different laws compared to other regions in Indonesia. The law applied in the Aceh region originates from Islamic law which is regulated through the issuance of Law Number 11 of 2006 concerning the Governance of Aceh.³ The implementation of Islamic law is inseparable from the status of the Aceh region as a special autonomous region. Aceh is a province-level region which is a legal community unit that is special in nature and is given special authority to regulate and manage the interests of the community and its government both in the aspects of muamalah, jinayat and siyasa in accordance with regulations legislation in the system and principles of the Unitary State of the Republic of Indonesia.⁴

In the jinayat aspect, the Aceh government has issued several regulations, both material and formal, including Aceh Qanun No. 7 of 2013 concerning Jinayat Procedural Law, Qanun Aceh No. 6 of 2014 concerning Jinayat Law, Aceh Qanun No. 8 of 2014 concerning Principles of Islamic Sharia, and many other Qanuns⁵. In addition, in implementing law enforcement, the government established a special judicial institution, namely the *Syar’iyah* Court which was established based on Qanun No. 23 of 2016. The duties and authorities of the *Syar’iyah* Court are an integral part of the absolute authority contained in Law no. 4 of 2004 concerning Judicial Power.⁶

2 Literally, the meaning of the expression “hukom ngoen adat lage dzat ngoen sifeut” is that the relationship between shari’a and adat is like the relationship between a substance (object) and the nature of the object, the substance of which is inherent and inseparable. In the explanation of Qanun Aceh Number 6 of 2014 concerning Jinayat in the general part of the second paragraph it is stated that it is impossible for customs in Aceh to be separated from Islamic teachings because the customs carried out by the people of Aceh are in accordance with or Al-Qur’an and As-Sunnah. Syamsul Bahri, *Pelaksanaan Syari’at Islam di Aceh Bagian Wilayah Negara Kesatuan Republik Indonesia (NKRI)*, *Jurnal Dinamika Hukum*, Vol. 12, No. 2, Mei 2012, h. 361.

3 Aceh Province is one of the regions that has special autonomy status based on Law Number 18 of 2001 concerning Special Autonomy (State Gazette Number 114 of 2001 dated 9 August 2001) Jo. Law Number 11 of 2006 concerning the Governance of Aceh (State Gazette of the Republic of Indonesia of 2006 Number 62).

4 The regulation of Islamic law in Aceh is universal and holistic concerning various aspects of life, both the relationship with “*Hablum Minallah and Hablum Minannas*” (relationship with God and relations with fellow human beings). In Article 125 paragraph (2) of Law no. 11 of 2006 concerning the Government of Aceh stipulates that these arrangements include worship, ahwal alsyakhshiya (family law), muamalah (civil law), jinayat (criminal law), qadha’ (judiciary), tarbiyah (education), da’wah, syiar, and defense of Islam .

5 On October 22, 2014 the Governor of Aceh has ratified Qanun Number 6 of 2014 concerning Jinayat Law. The Aceh Qanun has raised relatively many pros and cons in various academic circles, practitioners and ordinary people. The rejection of the enactment of the Qanun on jinayat law in Aceh was because many parties did not properly understand the nature of jinayat law. The purpose of punishment and benefit to be realized by enforcing the jinayat law. Legal pluralism needs to be implemented in order to maintain the integrity of the Unitary State of the Republic of Indonesia. The Islamic Sharia in Aceh was formed in a Qanun.

6 Sirajuddin, *Pemberlakuan Syariat Islam di Nanggroe Aceh Darussalam Pasca Reformasi* (Yogyakarta, Teras, 2011), h. 59-60

In the context of the implementation of Islamic Sharia in Aceh,⁷ Qanun is an instrument or regulation similar to a Regional Regulation (PERDA) either at the Provincial or Regency/City level which regulates governance and the life of the people of Aceh. Formation of Qanun as a juridical instrument for implementation juridical instrument for the implementation of formation, methods and standards that are binding for all institutions that have the authority to form Qanuns.⁸

One of the most frequent violations of Islamic law in Aceh is jinayat khalwat with its various modus operandi. Jinayat khalwat is not only performed by certain age groups, but jinayat khalwat is performed by all age groups, both young and elderly perpetrators of jinayat. For example, in 2018, Wilayatul Hisbah (WH) Banda Aceh handled 77 cases of khalwat.⁹ The Langsa City Islamic Sharia Service stated that in 2018, the number of jinayat khalwat cases totaled 20 cases.¹⁰ Meanwhile, there were 25 cases of jinayat khalwat in Lhokseumawe City at the end of 2018.¹¹

Khalwat is an act of being in a closed or hidden place between non-mahrams and without marital ties with the consent of both parties which leads to adultery.¹² The prohibition of khalwat is an early prevention of adultery, this prohibition is different from other jarimah which is directly related to the act itself, such as the prohibition on stealing, drinking khamar and maisir. The prohibition of adultery actually starts from actions that lead to adultery, this indicates that the act of adultery occurs due to other actions that are the cause of adultery. Islam strictly prohibits committing adultery. While khalwat is a washilah or a way/opportunity for adultery to occur, khalwat is also one of the jarimah (criminal acts) and is threatened with 'uqubat ta'zir, in accordance with the Syar'i qaidah which means "an order to not doing or not doing something, including the process.

7 The legal basis for implementing Islamic Sharia in NAD is; Article 3 paragraph (2) sub a of Law No.44/1999, one of the features of Aceh is in the field of religious life and article 4 paragraph (1) of Law No.44/1999, in which the implementation of religious life in the region (Aceh) is manifested in form of implementation of Islamic Sharia for its adherents in society.

8 Qanun is a Regional Regulation (Perda) which becomes the implementing regulations for laws in the province of Aceh in the framework of implementing special autonomy in the jurisdiction of the government pr. See Article 1 point 8 of Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam. Sirajuddin, Implementation of Islamic Shari'a..., h. 74.

9 Diskominfo, 2018, Satpol PP dan WH Banda Aceh Tangani 230 Kasus Pelanggaran Perda Syariat,<http://diskominfo.bandaacehkota.go.id/2018/12/17/2018-satpol-pp-dan-wh-banda-aceh-tangani-230-kasus-pelanggaran-perda-syariat/>, Diakses Pada 11 Desember 2019.

10 Bakri, Langsa Tangani 57 Kasus Jinayat, <https://aceh.tribunnews.com/2019/01/11/langsa-tangani-57-kasus-jinayat>, Diakses Pada 11 September 2019.

11 Dinas Syariat Islam Kota Lhokseumawe, *Laporan Tahunan*, Lhokseumawe, 2018, h. 17.

12 Bukhari, *Khalwat Dalam Perspektif Hukum Islam Dan Hukum Positif*, *Jurnal Ilmu Syari'ah, Perundang-undangan dan Ekonomi Syariah*, Juli-Desember 2018, h. 111.

The form of the ‘uqubat threat against the perpetrators of khalwat crime is intended as an effort to raise awareness for the perpetrators and One of the most frequent violations of Islamic law in Aceh is jinayat khalwat with its various modus operandi. Jinayat khalwat is not only performed by certain age groups, but jinayat khalwat is performed by all age groups, both young and elderly perpetrators of jinayat. For example, in 2018, Wilayatul Hisbah (WH) Banda Aceh handled 77 cases of khalwat. The Langsa City Islamic Sharia Service stated that in 2018, the number of jinayat khalwat cases totaled 20 cases. Meanwhile, there were 25 cases of jinayat khalwat in Lhokseumawe City at the end of 2018.

Khalwat is an act of being in a closed or hidden place between non-mahrams and without marital ties with the consent of both parties which leads to adultery. The prohibition of khalwat is an early prevention of adultery, this prohibition is different from other jarimah which is directly related to the act itself, such as the prohibition on stealing, drinking khamar and maisir. The prohibition of adultery actually starts from actions that lead to adultery, this indicates that the act of adultery occurs due to other actions that are the cause of adultery. Islam strictly prohibits committing adultery. While khalwat is a washilah or a way/opportunity for adultery to occur, khalwat is also one of the jarimah (criminal acts) and is threatened with ‘uqubat ta’zir, in accordance with the Syar’i qaidah which means “an order to not doing or not doing something, including the process.

The form of the ‘uqubat threat against the perpetrators of khalwat crime is intended as an effort to raise awareness for the perpetrators and regulated in the Criminal Code as well as criminal provisions regulated in the Qanun in Aceh. It can even lead to the blurring of the principle of legal certainty and legal justice. There have been various polemics in the aspect of law enforcement against khalwat jinayat, the government has issued Qanun Number 6 of 2014 concerning Jinayat Law as a legal basis to ensnare khalwat perpetrators. However, the formulation of khalwat in the Qanun is considered to be very narrow which only limits the jinayat of khalwat to the interpretation of “quiet, quiet, closed or hidden.” The modus operandi of criminals today has many varieties and patterns. Khalwat is performed in cars, cinemas, concerts and other open places.¹³ In the process of proving in court, the textual and contextual interpretation of *khalwat* becomes a debate.

13 Of course, the implementation of Qanun jinayat in Aceh Province has several juridical foundations, including: First, Law Number 44 of 1999 concerning the Administration of Privileges for the Province of the Special Region of Aceh. Article 3 of Law Number 44 of 1999 states that the implementation of Islamic Sharia is a privilege for Aceh. This privilege is part of the acknowledgment of the Indonesian nation which is given to the regions because of the struggle and the essential values of the people which have been maintained for generations as a spiritual, moral and human basis. The privileges possessed by Aceh include the implementation of religious life, customs, education, and the role of the clergy in establishing regional policies. Syahrizal, Dimensions of Legal Thinking in the Implementation of Islamic Sharia in Aceh, (Banda Aceh: Islamic Sharia Service, 2007), h. 9.

The concept of khalwat was tested against a “kissing” event between a girl named Yuni and a TNI member named Pratu Wahyudi in 2005. The incident took place at the Krueng Geukueh Port pier, Lhokseumawe, during the release ceremony for TNI soldiers who were serving in Aceh at the time.¹⁴ Aceh province security framework. The obscene incident was live covered by the media and became an interesting issue because Aceh is a special area that applies Islamic law. According to the Head of the NAD Islamic Sharia Service, Alyasa Abubakar, the TNI in Aceh will be free from caning. If they violate Islamic law, they will be tried at the Military Court, not the Syar’iyah Court. If the Syar’iyah Court wants to be able to try khalwat jinayat or other jinayat committed by TNI soldiers, the Aceh DPR must amend its Qanun.¹⁵

Apart from that, many views stated that this incident could not be snared by the Khalwat Qanun which at that time was regulated in Aceh Qanun No. 14 of 2013. The khalwat element which limits the condition of “alone or hidden is not fulfilled in the incident. The nomenclature of jinayat khalwat in Qanun Number 6 of 2014 concerning Jinayat Law is the same as the nomenclature of Qanun Aceh of 2013 concerning Jinayat Khalwat so that events like the above or the like cannot be tried under the competence of the Syar’iyah Court.

Even though the Province of Aceh has the specificity of implementing Islamic law both during the royal era and during the current administration, there have been accusations that punishment or punishment contained in Islamic law is very cruel, inhumane and violates the principles of human rights. This accusation is also directed at the crime of khalwat for which the punishment is in the form of lashing in public and/or payment of fines and imprisonment for a certain time. Even though the nomenclature of caning in the *Qanun Jinayat* is the main punishment, it is very possible to apply other punishments besides the caning itself, even caning can be used as an alternative punishment.

B. Basis for the Formulation and Arrangement of the Finger of Khalwat in Qanun Number 6 of 2014 concerning Jinayat

The main principles that form the basis, as well as the method of writing the draft Qanun regarding the implementation of Islamic Shari’at from the perspective of ushul fiqh, there are four main ideas (principles) which are the main guidelines that need to be stated in this explanation. First of all, the provisions to be implemented must still be based on the Al-Qur’an and the Sunnah of the Prophet. Second, the interpretation or understanding of the Al-Qur’an and Hadith will be related to the local (customary) conditions and needs of the Acehnese people in particular or the Indonesian-Malay world

¹⁴ Heddy Lugito dan Ibrahim Passe, Tentara, Asmara, dan Air Mata, <http://arsip.gatra.com/2005-10-02/artikel.php?id=88737>, Diakses Pada 23 Oktober 2019.

¹⁵ Adi Warsidi, TNI di Aceh tak Tersentuh Hukum Cambuk, , Diakses Pada 23 Oktober 2019

in general, as well as with the rules and regulations that apply within the framework of the Unitary State of the Republic of Indonesia.

Third, the interpretation and understanding will be endeavored to always be oriented towards the future, in order to meet the needs of the Indonesian people who are developing at the beginning of the fifteenth Hijri century or the twenty-first century AD, and be able to respond to the “spirit” of modern times as reflected in the issue of protection of human rights and gender equality, and taking into account the progress of science and technology, especially law, whose development is relatively fast and rapid. Fourth, in order to complete the three principles above, the principles contained in a well-known lecture fiqh rule are guided broad, *al-muhafazhah ‘ala-l qadim-ish shalih wa-l akhdzu bi-l Jadid-il ashlah*, which means more or less “continue to use the old provisions (mazhab) which are still good (relevant) and try to find and formulate new provisions that are better and superior”

With these four principles, it is hoped that the Islamic Shari’a as outlined in the Aceh Qanun as Aceh’s positive law (fikih), which is a sub-system in the national legal system and national justice system, will remain under the auspices of the Al-Qur’an and the Sunnah of the Prophet and remain within the framework of a long history of fiqh thought and the application of Islamic law in various parts of the world. Likewise, these Qanuns will continue to rely on the local culture and customs of the Indonesian people, especially the people of Aceh, as well as the legal system that applies within the Unitary State of the Republic of Indonesia. Thus these activities and choices are expected to be able to create a new legal order (fiqh) that is rooted in and integrated with the people’s legal awareness and is able to meet the future needs of the nation which are increasingly complex and complex, and not stumble on accusations of neglecting the protection of human rights and gender equality. In local community expressions quoted from the Qur’an, this effort is often stated as an attempt to formulate legal rules that are “*rahmatan lil ‘alamin*”

The choice to use the four principles of interpretation above becomes important if it is remembered that efforts to implement Islamic Sharia in Aceh within the framework of the present Unitary State of the Republic of Indonesia, is a “big and important breakthrough” given by the state to the people of Aceh to seek and formulate a “model”.¹⁶ application of law based on Islamic Sharia in modern society and state. The positification of syara’ law requires ijtihad work on two dimensions, namely: the normative dimension of legal teachings and the practical dimension of formulating norms in laws and regulations. The normative dimension of legal teaching means that the Bible of Allah is traced, understood, constructed in an applicable building, so that it will be easy to implement in the current era. The dimension of formulating legal norms

16 Dinas Syariat Islam, *Hukum Jinayat Dan Hukum Acara Jinayat*, (Banda Aceh: Dinas Syariat Islam, 2015), h. 79

in statutory regulations is interpreted as an effort to formulate legal norms from Allah's khittab in the language of legislation. invitation based on the legal system in force in a country. This last process is known as legislation.

The search for and understanding of legal norms from the book of Allah is aimed at discovering the mysticism, social situation and psychology of society when these legal norms are derived and applied to society. (asbab an nuzul). Searching for social reality is done by reading texts, looking for correlations between texts integrally based on certain themes (maudhu'i), and depicting and explaining the meaning of texts through the sunnah of the prophet and the practice of companions (tabyin).

Legal norms obtained through ijtihad work are set forth in the legal system and legal language. This work requires the ability to understand legal systems such as the civil law system and the language of legislation. Transformation of legal norms from the book of Allah into positive legal language. Sometimes they experience barriers to working and eating legal language. On the language side, words and sentences from legal norms are not necessarily all covered substantially in the standard language of statutory regulations.

The transformative work pattern has become a reference for Aceh in forming the Aceh Qanun which regulates the privileged aspect of implementing Islamic law. Aceh has broad authority in implementing Islamic law kaffah. This pattern of work continues to change from time to time to create a better society. So it is clear that the ijtihad method carried out by the formulation of Qanun Jinayat No. 6 of 2014 is through contemporary *ijtihad* which is oriented towards the social and psychological situation of the Acehnese people. Therefore, the basic philosophy of issuing Qanun No. 6 of 2014 concerning Jinayat Law is First, the provisions that will be implemented must still be based on the Al-Qur'an and the Sunnah of the Prophet. Second, the interpretation or understanding of the Al-Qur'an and Hadith will be related to the circumstances and needs Acehnese people in particular. *wa-l akhdzu bi-l-jadid-il ashlah*).

So on, in the legal aspect of jinayat the Aceh government has issued several Qanuns to regulate and punish perpetrators of criminal acts. On September 27 2014, Aceh Qanun Number 6 of 2014 concerning the Jinayat Law was passed through the plenary session of the Aceh People's Representative Council (DPRA). Aceh Qanun Number 6 of 2014 concerning Jinayat Law, commonly known as Qanun Jinayat. Jinayat is an Arabic vocabulary that can be translated into Indonesian as Criminal Law. So, Qanun Jinayat can be called a Regional Regulation on Criminal Law. In fact, long before that, even before the tsunami disaster hit the "land of rencong" or "porch of Mecca" Aceh Province already had three Qanuns regarding jinayat. First, Qanun No. 12 of 2003 concerning Khamar (forbidden drink) and the like. Second, Qanun No. 13 of 2003 concerning Maisir (gambling). Third, Qanun Number 14 of 2003 concerning Khalwat (alone/togethers between men and women who

are not close relatives). These three Qanuns have a criminal dimension. With the entry into force of Qanun Jinayat which was passed by acclamation in the plenary session of the Aceh People's Representative Council, the three Qanuns mentioned above were revoked and declared no longer valid.

The important thing that needs to be underlined here is that the Jinayat Law Qanun is based on Islamic principles, legality, justice and balance, benefit, protection of human rights, and learning for the community. However, since the beginning of its implementation, Islamic law in Aceh has reaped pros and cons. A number of Qanuns were ratified, since Qanun Aceh No. 12 of 2003 concerning Khamar Drinks and the like, Qanun Aceh No. 13 of 2003 concerning Maisir, Aceh Qanun No. 14 of 2003 concerning Khalwat, and Aceh Qanun No. 6 of 2014 concerning Jinayat Law. These four Qanuns in fact have criminal content material (jinayat), where the punishment includes caning, stoning, had which are considered contrary to human rights. In 2015, the legality of Qanun Jinayat was questioned through a judicial review of Qanun Jinayat by the Institute for Criminal Justice Reform (ICJR) to the Supreme Court. However, the Supreme Court through its Decision Number 60 P/HUM/2015 stated that the application could not be accepted (niet onvankelijke verklaard). In addition, the Lhokseumawe City Government issued a Circular Letter on January 7 2013 concerning the Prohibition of Adult Women Sit astride on the motorbike. This Circular Letter has gone viral and is considered controversial and many parties reject it. Even though the purpose of issuing the Circular Letter is a form of implementing Islamic Sharia which has been stipulated by Qanun Number 14 of 2003 concerning Islamic Sharia in Aceh.¹⁷

In general, Islamic Shari'ah in the field of law contains legal norms that regulate social/state life and legal norms that regulate morals or individual interests that must be obeyed by everyone. Obedience to legal norms governing morals is highly dependent on the quality of one's faith, taqwa and conscience, also accompanied by worldly and ukhrawi sanctions against those who violate them. In the Islamic legal system there are two types of sanctions, namely sanctions that are definitive from Allah and the Prophet and sanctions determined by humans through the executive, legislative and judicial powers. Both types of sanctions encourage people to comply with legal provisions. In many cases, law enforcement demands the role of the state, both issuing a law and enforcing the law. The law does not work if it is not enforced by the state. However, on the other hand a country will be disorderly if the law is not enforced.

One of the offenses in which the role of the state as a ruler (ulil amri) is given authority and a role to shape its material law as well as its formal law is the khalwat offense or more populist with the term obscenity crime. In Aceh, arrangements for the

17 Muhammad Nasir, *Syariat Islam dan Ngangkang Style: Mengenal Kearifan Lokal Dan Identitas Perempuan Aceh*, Jurnal Miqot, Vol. XXXVII No. 1 Januari-Juni 2013, h. 198-213.

crime of khalwat are regulated in Aceh Qanun No. 14 of 2003 concerning Khalwat, and was later replaced by Qanun Aceh No. 6 of 2014 concerning Jinayat Law. Khalwat is an act committed by two or more people of the opposite sex, without marriage ties or not being married to a relative, in a certain quiet place which allows immoral acts in the sexual field to occur or which has the opportunity to commit adultery.

The background to the prohibition of the crime of khalwat is to prevent the occurrence of a bigger offense, namely the crime of adultery, both adultery muhsan and kharul muhsan. Islam strictly prohibits committing adultery. While khalwat is wasilah or an opportunity for adultery to occur, khalwat is also a finger (criminal act) and is threatened with 'uqubat ta'zir. Prohibition of khalwat crimes as a wasilah for the occurrence of adultery crimes is based on according to the syar'i qaidah which reads (ثله بوسا امر بالشئ الأمر) which means "an order to do or not do something, includes the process".

According to Markonah, the crime of khalwat is a bad act that draws closer to the valley of adultery. This is because when a man and a woman sit together then the devil and satan will sit between them and incite them to commit evil against Allah. The act of khalwat above is a sin which cannot be subject to a "had" and "kafarah" penalty, instead it is subject to "ta'zir". It is strictly prohibited because through this act it indirectly brings badness to humans, namely the opportunity for adultery to occur is very large.

The prohibition of khalwat acts is due to human nature, that is, men like women because he was created to have an inclination towards women, as well as the nature he has in the form of lust to marry women. Likewise, women like men because of the natural traits and instincts that have been embedded in them. Naturally, women who see and meet men will create a feeling of liking. Therefore, satan finds a means to inflame one lust for another, so disobedience occurs.

The prohibition of seclusion covers all levels, whether there are pious men, pious women or people who are old. This prohibition is indeed very appropriate in terms of human nature and tendencies, that is, a normal person will tend to women and vice versa. Even though in principle the association or mixing between men and women is prohibited only in some circumstances, but in certain circumstances and limits such as darurah, benefit needs and local customary customs, it is permissible on condition that the parties involved must maintain the social boundaries in in this association, such as covering the genitals, lowering views, being with a mahram, not causing slander and so on.

Allah 'Azza wa jalla said "and do not approach adultery" Allah did not say "do not commit adultery". This is because Allah s.w.t wants to close the roads that lead to adultery. Allah s.w.t forbids approaching the streets leading to adultery, whatever its form. For example by watching shows that indulge in private parts, reading pornographic

magazines or books or having seclusion, that is, being alone or alone between men and women who are not muhrim.

Approaching adultery through acts of khalwat has been expressly prohibited by Allah SWT. In the Qur'an Allah SWT says "And do not approach adultery, in fact adultery is an abomination and a bad deed." (Q.S Al-Isra': 32). The argument above is in the form of a prohibition and it is forbidden to do it, it is also clear to us that it is forbidden to approach adultery. The meaning of adultery is the worst way of life. While one of the wasilah for adultery is khalwat which occurs between men and women who are not mahrams. As we understand that Islam, when it forbids an act, it also prohibits wasilah which will lead to that illegal act, also forbids any method and all the preludes that might lead to that illegal act.

In terms of the legal privileges of Aceh, the formulation of the criminal act of khalwat was originally contained in Article 1 paragraph (20) of Qanun No. 14 of 2003 which stipulates that khalwat/obscenity is an act of seclusion between two mulattoes or more of a different sex who are not muhrim or without marital ties. This provision expressly formulates that the crime of committing khalwat focuses on a condition of solitude or solitude so that two persons who are mulattoes can be sentenced to either whips or fines.

However, after the Aceh government was able to unify the jinayat law into Qanun No. 6 of 2014, the formulation of khalwat above is slightly different but not much different from the formulation of Article 1 paragraph (20) of Qanun No. 14 of 2013 concerning Khalwat (obscene). This provision formulates that khalwat is an act of being in a closed or hidden place between 2 (two) people of the opposite sex who are not Mahrams and without marital ties with the consent of both parties which leads to an act of Zina. This formulation is considered to be more comprehensive, however, the researcher believes that when viewed from the elements of the khalwat crime itself, the formulation of Qanun No. 14 of 2003 concerning Khalwat with the formulation Qanun No. 6 of 2014 Jinayat Law is the same, where punishment can only be imposed on two mulattoes.

However, in the explanation of Qanun No. 14 of 2003 concerning Khalwat in the general section, it is explained that the background for the issuance of the Khalwat Qanun is based on the current condition of society where khalwat or obscenity does not only occur in certain places that are quiet from the sight of other people, but can also occur in a crowd or on the streets or in other places, for example in cars or other vehicles, where men and women are having fun without marriage ties or mahram relations). This behavior can also lead to adultery. This Qanun on the prohibition of khalwat/obscenity is intended as a preemptive, preventive and at the optimum level of remedium as a repressive effort through the imposition of 'uqubat in the form of 'uqubat ta'zir which can be in the form of 'uqubat whipping and 'uqubat fines (gharamah).

Based on the explanation of Qanun No. 14 of 2003 concerning Seclusion, it can be explicitly understood that the formulation of khalwat no longer emphasizes quiet, closed or seclusion conditions. Insofar as the act is close to or washilah towards the act of adultery, it can be punished with the offense of khalwat. However, there are still differing views on crimes committed in public places. The general view still places that the crime of khalwat still focuses on a condition of being lonely, closed or secluded between the two mulattoes.

Solitude is still defined as an element of khalwat which in this case still follows the books of fiqh. In a number of ways, this definition is indeed contradictory to reality, because textually, this definition does not ensnare the nuances of khalwat which are sometimes carried out openly which is called promiscuity. These practices in the form of promiscuity can be seen in everyday life. Therefore, in accordance with the verse about the prohibition of adultery. The act of approaching adultery is khalwat itself, therefore khalwat is the way to adultery.

Formation of Qanun No. 6 of 2014 concerning the Law of Jinayat is motivated by the adverse effects arising from acts of khalwat, namely:

1. The destruction of household life, the destruction of family relationships, and the spread of divorce because each of the partners feel enough with the partner they get outside of marriage.
2. The spread of various kinds of evil such as domination of lust so that it leads to error, various damages occur everywhere.
3. The worst impression is the occurrence of adultery. Adultery is the greatest corruption because it results in unclear lineage, loss of honor and spread of disease.

The negative impact generated by the crime of khalwat has prompted the government to issue Qanun No. 6 of 2014 concerning Jinayat Law for the following reasons:

- a. To uphold Islamic Shari'ah and customs that apply in society in the province.
- b. Protecting the public from various forms of activities and or acts that damage honor.
- c. Prevent community members as early as possible from committing acts that lead to adultery.
- d. Increase community participation in preventing and eradicating khalwat or obscene acts.
- e. Closing the opportunity for moral damage.

According to Muhammad, the formation of this Qanun is a form of concern for the Government of Aceh towards "decency" regulations concerning adultery. growing in

the Aceh region. In terms of Islamic law, preventive efforts like this are called *saad al-dzari'ah* (closing the road) so that an offense that is even more harmful, namely adultery, does not occur. In the Qanun prohibiting *khalwat*, the scope of the prohibition includes all forms of activities, actions and circumstances or facilitating parties that lead to adultery. The Qanun explicitly stipulates that legal subjects, both humans and legal entities, provide opportunities for acts to occur *khalwat* crime can be punished using Qanun No. 6 of 2014 concerning Jinayat Law.

The Islamic legal system whose norms come from Allah SWT and is formulated in Qanun No. 6 of 2014 concerning Jinayat Law in the form of prohibitions, orders and recommendations, the purpose of which is for human benefit. Allah SWT prescribes His law is to maintain the benefit of humans, as well as to avoid *mafsada*, both in this world and in the hereafter. Benefit can be realized if the five main elements can be realized and maintained. The five main elements, according to al-Syatibi are religion, soul, lineage, reason and property, so that these five main elements in Islamic legal literature are known as *Ushul al Khamsah*. One of the five is maintaining offspring, namely being married and prohibited from committing adultery and something that opens the way for adultery, namely *khalwat*. *Zina* is a finger for which the punishment is *hudud*, namely the punishment determined by Allah SWT in the *Qur'an and al-Hadith*, while *khalwat* is *ta'zir*, namely the punishment is determined by the legitimate government in a country.

C. Closing

1. Conclusion

The formulation of Qanun jinayat against the prohibition of *khalwat* crime in Qanun No. 6 of 2014 concerning the Jinayat Law is to prevent the occurrence of a larger jinayat, namely adultery or adultery, both adultery *muhsan* and *ghairu muhsan*. The formation of the nomenclature of jinayat *khalwat* in this Qanun is a form of concern for the Government of Aceh towards “decency” regulations concerning acts that lead to jinayat of adultery. In principle, the Qanun which regulates *khalwat* offenses is not only a repressive effort, but also a preventive effort as *saad al-dzari'ah*.

2. Suggestion

The government needs to continuously and intensively socialize and provide a complete understanding of the basis and background behind the formulation of the Qanun jinayat against the prohibition of the crime of *khalwat* in Qanun No. 6 of 2014 concerning the Law of Jinayat in preventing the occurrence of *khalwat* jinayat to the community, especially the socialization of regulations, the wisdom of prohibiting *khalwat* fingering and the adverse effects on *khalwat*

fingering and avoiding polymics in society related to the regulation of khalwat fingering.

Referensi

- Adi Warsidi, TNI di Aceh tak Tersentuh Hukum Cambuk, , Diakses Pada 23 Oktober 2019.
- Asafri Jaya Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi*, Jakarta: Raja Grafindo Persada, 1996.
- Bakri,Langsa Tangani 57 Kasus Jinayat, .<https://aceh.tribunnews.com/2019/01/11/langsa-tangani-57-kasus-jinayat>.
- Bukhari, *Khalwat Dalam Perspektif Hukum Islam Dan Hukum Positif*Jurnal Ilmu Syari'ah, *Perundang-undangan dan Ekonomi Syariah*, Juli-Desember 2018.
- Denny Indrayana, “Kompleksitas Peraturan Daerah Bernuansa Syari’at; Perspektif Hukum Tata Negara” dalam Negara Antara Ada dan Tiada: Reformasi Hukum Ketatanegaraan, Kompas, Jakarta, 2008.
- Dinas Syariat Islam Kota Lhokseumawe, *Laporan Tahunan*, Lhokseumawe, 2018.
- Dinas Syariat Islam, *Hukum Jinayat Dan Hukum Acara Jinayat*, Banda Aceh: Dinas Syariat Islam, 2015.
- Diskominfo, 2018, Satpol PP dan WH Banda Aceh Tangani 230 Kasus Pelanggaran Perda Syariat,.
- Heddy Lugito dan Ibrahim Passe, Tentara, Asmara, dan Air Mata, <http://arsip.gatra.com/2005-10-02/artikel.php?id=88737>, Diakses Pada 23 Oktober 2019.
- Mahmud Syaltut, *al-Islam wa syariah*, Mesir: Daar al-Qalam, 1966.
- Mardani, *Penerapan Syariat Islam di Aceh*, Yogyakarta: Pustaka Pelajar, 2010.
- Muhammad Nasir, *Syariat Islam dan Ngangkang Style: Mengenal Kearifan Lokal Dan Identitas Perempuan Aceh*, Jurnal Miqot, Vol. XXXVII No. 1 Januari-Juni 2013.
- Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat.
- Sirajuddin, *Pemberlakuan Syariat Islam di Nanggroe Aceh Darussalam Pasca Reformasi*, Yogyakarta, Teras, 2011.
- Syahrizal, *Dimensi Pemikiran Hukum dalam Implementasi Syariat Islam di Aceh*, Banda Aceh: Dinas Syariat Islam, 2007.
- Syamsul Bahri, Pelaksanaan Syari`at Islam di Aceh Bagian Wilayah Negara Kesatuan Republik Indonesia (NKRI), *Jurnal Dinamika Hukum*, Vol. 12, No. 2, Mei 2012.

Undang-Undang No. 11 Tahun 2006 tentang Pemerintah Aceh

Undang-undang Nomor 18 Tahun 2001 tentang Otonomi Khusus (Lembaran Negara Nomor 114 Tahun 2001 pada tanggal 9 Agustus 2001) Jo. Undang-undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh (Lembaran Negara Republik Indonesia Tahun 2006 Nomor 62).

Undang-Undang Nomor 44 Tahun 1999 tentang Penyelenggaraan Keistimewaan Provinsi Daerah Istimewa Aceh.