

Non-Muslim Khalwat in Qonun Jinayat in Aceh, Indonesia: Discourse on Islamic Sharia and Human Rights

Muhammad Yunus Hidayatullah

Sunan Ampel State Islamic University, Surabaya, Indonesia
yunuzlif@gmail.com

Nur Rohmah

Sunan Ampel State Islamic University, Surabaya, Indonesia
rahmahnur0319@gmail.com

Kenneth Sulthon Alafi Al-Hallaj

Sunan Ampel State Islamic University, Surabaya, Indonesia
elaphy07@gmail.com

Abdul Kadir Riyadi

Sunan Ampel State Islamic University, Surabaya, Indonesia
riyadi.abdulkadir@gmail.com

Accepted manuscript: October 30, 2024, revised: December 12, 2024; Approved: January 23, 2025

Abstrak

Artikel ini mengkaji penerapan Qanun Aceh No 6/2014 tentang Hukum Jinayat terhadap perbuatan khalwat yang dilakukan non-muslim. Tujuan penelitian yakni untuk menganalisis ketentuan hukum terhadap non-muslim yang melakukan perbuatan khalwat berdasarkan ketentuan Qanun Jinayat. Jenis penelitian ini adalah yuridis normatif, dengan pendekatan deduktif. Sumber data yang dipilih ialah data primer dan sekunder. Sumber data primer meliputi Qanun Aceh No 6/2014 mengenai Hukum Jinayat. Sedangkan sumber data sekunder terdiri dari berbagai buku, artikel, jurnal, dan berbagai informasi terkait jarimah khalwat di Aceh. Hasil dari penelitian ini adalah non-muslim yang berkhalwat baik dengan orang Islam atau bukan, maka akan dikenakan ketentuan yang berlaku di dalam Qanun Aceh No 6/2014, dan tidak perlu diberi keleluasaan antara harus memilih diadili dengan Qanun Jinayat ataupun Hukum Nasional (KUHP). Hal ini dikarenakan Hukum Nasional (KUHP) tidak mengatur secara khusus mengenai perbuatan tindak pidana khalwat. Adapun hukuman yang diberikan kepada non-muslim yang melakukan khalwat adalah *uqubat ta'zir* cambuk maksimal 10 kali ataupun membayar denda maksimal 100 gram emas murni ataupun penjara maksimal 10 bulan. Dengan diberlakukannya syari'at Islam kepada non-muslim yang melanggar perbuatan jarimah yang mana ketentuannya tidak diatur dalam Hukum Nasional (KUHP), maka kedepannya Qanun Aceh akan terus menimbulkan kontroversi baik dilingkup nasional maupun internasional.

Kata Kunci: Non-Muslim, Khalwat, Qanun Aceh.

Abstract

In this article, we examine the application of Aceh Qanun No. 6/2014 on the law of jinayat against acts of khalwat committed by non-Muslims. The aim of the research is to analyse the legal provisions for non-Muslims who commit acts of khalwat based on the provisions of the Qanun Jinayat. This type of research is normative jurisprudence. It uses a deductive approach. The sources of data chosen will be both primary and secondary data. The primary source of data is the Aceh Qanun No. 6/2014 on the Jinayat Law. Meanwhile, the secondary sources of data consist of various books, articles, magazines, and various pieces of information related to the Khalwat movement in Aceh. The result of this research is that non-Muslims who engage in khalwat, whether with Muslims or not, are subject to the applicable provisions of Qanun Aceh No. 6/2014 and do not need to be given the freedom to choose whether to be tried under the Qanun Jinayat or the national law (KUHP). Khalwat crimes are not specifically regulated by the national law (KUHP). The punishment for non-Muslims who commit khalwat is uqubat ta'zir caning up to 10 times or paying a fine of up to 100 grams of pure gold or imprisonment for up to 10 months. With the application of Islamic law to non-Muslims who violate the laws of jarimah, the provisions of which are not regulated in the National Law (KUHP), the Aceh Qanun will continue to cause controversy both nationally and internationally.

Keywords: Good Law, Non-Muslim, Unlawful Seclusion (khalwat)

Introduction

The application of Islamic shari'a contained in the Qanun Jinayat Aceh within the legal framework of the Unitary State of the Republic of Indonesia is very interesting to research. In the context of the implementation of Islamic sharia, Qanun Aceh is a type of legislation similar to Provincial or Regency/City Regulations in general, but Qanun has its own characteristics because it contains Islamic shari'a rules as a privilege and its specificity as a special autonomous region of Aceh Province (Susantri & Hidayat, 2020, p. 39). This can be found from several Islamic shari'a rules adopted by Qanun Jinayat in criminal acts, such as the prohibition of khalwat acts with the sanction of whipping. The act of khalwat in the Islamic legal system is interpreted as a perverted act committed by two or more people of the opposite sex, without the existence of a mahrom (marriage bond) in a closed or hidden place (quiet) so that it is possible to commit immoral acts that have the opportunity to commit adultery (Aceh, 2014, p. 4). The prohibition of jarimah khalwat does not only apply to the people of Aceh who are Muslims, but also applies to the people of Aceh who have non-Muslim status (Alamsyah, 2014; Nurhalizah, 2023).

Nowadays, there is often a problem regarding the Aceh government's policy in qanun that imposes the law of whipping on violators. One example in Article 23 (1) of Qanun Aceh No. 6/2014 concerning the Law of Jinayat is the prohibition of the act of jarimah khalwat.

The article is applied to Muslims and non-Muslims, with punishment if found to have committed a criminal act of khalwat, the perpetrator is sentenced *to a* maximum of 10 times or a maximum fine of 100 grams of pure gold or imprisonment for a maximum of 10 months. Rules related to jarimah khalwat and the punishment of whipping in the future can provide challenges and cause contradictions, because in its application qanun which is based on Islamic shari'a is also applied to non-Muslims, moreover, if they violate the rules contained in the qanun, the punishment must be in accordance with what is written in the qanun, for example, non-Muslims violate the rules about khalwat, then they will be punished with ta'zir in the form of whipping a maximum of 10 times or pay a fine a maximum of 100 grams of pure gold or a maximum of 10 months in prison.

The implementation of Islamic shari'a is implemented by the government, because Aceh is one of the regions with the status of a special autonomous region (special), so it is known as the "Special Region of Aceh" based on Law No. 44/1999 concerning the Implementation of Special Privileges of the Province of the Special Region of Aceh and Law No. 11/2006 concerning the Government of Aceh. Aceh Province is known as the City of Mecca Porch because in all aspects of its people's lives it is regulated by Islamic law, this is what characterizes Aceh as an area with special autonomy (Kemendikbudristek, 2023; Tim Redaksi Pemerintahan Aceh n.d). If you go far back, the implementation of Islamic shari'a regulations which later became known as the Aceh qanun is not a new thing, because if analyzed from the history of the implementation of Islamic shari'a or qanun, it has actually been carried out since the time of the Iskandar Muda sultanate (Roslaili, 2021, p. 136). Qanun Aceh is a product of Islamic shari'a law that is still applied to Muslim and non-Muslim communities by the Aceh regional government (Praja & Ulfa, 2020, p. 12). The content of the regulation is outlined in Qanun Aceh No. 6/2014 concerning the Law of Jinayat, which binds the criminal act of jarimah including khamr, maisir, khalwat, zina, ikhtilath, rape, sexual harassment, liwath, qadzaf, and musahaqah.

Qanun Aceh No. 6/2014 concerning Jinayat Law juridically is the result of a number of revisions of the previous Qanun regarding criminal law. However, in its journey, this qanun reaped many polemics and controversies for academics and legal activists because it was considered very opposite and unfair if Islamic shari'a was applied to the people of Aceh who had non-Muslim status (Delta, 2016, p. 36; Mafazi, 2022, p. 491). In terms of personal jurisdiction, the application of qanun to non-Muslims who violate the act of jarimah is

explained in Article 5 letter (b and c) of the Aceh Qanun No. 6/2014 concerning the Law of Jinayat. The Aceh Qanun also contains the law of whipping on the perpetrators of jarimah, then this provision becomes a debate in the scope of human rights, because the application of the whipping law in the Aceh Qanun is considered to violate the basic rights owned by human beings, including the right to life, justice, welfare, security, and the right to personal freedom (ICJR, 2014; Rosida & Hariri, 2023, p. 124).

Initially, Qanun or Islamic shari'a was not applied to non-Muslims in Aceh, quoting the words of Al Yasa' Abubakar who wrote that Islamic shari'a in Aceh was limited to being applied to Muslims only, while non-Muslims were not forced to follow rules or laws based on Islamic sharia, it was aimed at respecting the human rights of non-Muslims (Abubakar, 2005, p. 145). However, over time it became different when the Aceh government passed the Aceh Qanun Regulation No. 6/2014 concerning the Jinayat Law which was effective and came into effect on October 23, 2015, where in the qanun non-Muslims must also submit and apply the rules in the Aceh Qanun No. 6/2014 regarding the Jinayat Law. Therefore, it is not surprising that the Aceh Qanun received a poor response from all sides, because the enforcement of Islamic shari'a in Aceh tends to harm the rights of non-Muslims in Aceh who are also required to submit to Islamic law.

Talking about the act of jarimah khalwat, previously there have been several previous studies written by a number of academics related to the act of jarimah khalwat in Aceh both in terms of the study of criminal law, customary law, the settlement of khalwat in Qanun Jinayat, and other research related to jarimah khalwat. However, in several previous studies, no academics have discussed the act of jarimah khalwat carried out by non-Muslims in Aceh. Based on the description above, the author will discuss and analyze the position and punishment for non-Muslims who commit jarimah khalwat in Aceh. The implementation of Islamic shari'a implemented in Aceh is an interesting issue to study, considering that not all Acehnesse residents are Muslims. Therefore, it is necessary to conduct a study related to the position and application of Islamic shari'a to the people of Aceh who are non-Muslims, especially about non-Muslims who practice jarimah khalwat in Aceh.

Research Methods

This research is categorized as a type of normative juridical research, which is research that is descriptive in nature and tends to use analysis with a deductive approach. The primary data sources applied in this writing are divided into (2) two, the first consists of primary data sources, namely Qanun Aceh No. 6/2014 concerning Jinyat Law. Then the

second consists of secondary data sources including books, journals, expert opinions, and information that discusses jarimah khalwat and the application of Qanun Aceh No. 6/2014 regarding the Law of Jinayat. Furthermore, a number of these materials were analyzed using a qualitative descriptive method, namely to describe the implementation of the Qanun of the Jinayat Law so that it could produce a comprehensive conclusion on the implementation of the Aceh Qanun No. 6/2014 concerning the Jinayat Law.

Results Research and Discussion

Qanun Aceh No. 6/2014 Regarding Jinayat Law in Implementing Islamic Shari'a in Aceh

Aceh is a province that enacts a Regional Regulation regarding the comprehensive implementation of Islamic law, it regulates family law, economy, law *Diyāni* (worship and morals), even *Jinayat* which is written in Qanun No. 5/2000 in Article 5 (2). The implementation of Islamic shari'a in Aceh occurred because of the demands of the Aceh Muslim community who uphold Islamic teachings from all aspects of their lives. The Indonesian government realized the implementation of Islamic shari'a in Aceh to prevent Aceh from separating from the Republic of Indonesia. At that time, the rebellion carried out by GAM (Free Aceh Movement) had reached its peak. The people of Aceh who are members of the Free Aceh Movement want to separate from the Republic of Indonesia because of the aspirations of the Acehnese people who want to implement Islamic sharia, the implementation of Islamic shari'a is a desire that has been coveted by the Acehnese Muslim community for a long time since 1959 led by Tengku Muhammad Daud Beureuh (Djumala 2013, p. 76). In anticipation of this action, the Indonesian government decided to give special autonomy to Aceh Province to apply Islamic shari'a to all communities in Aceh.

In the course of Aceh's history, the Indonesian government has positioned the people of the Mecca Porch City in particular, where this characteristic can be seen in matters of religion. In fact, history also records that Islamic shari'a for the people of Aceh is an inherent aspect and cannot be separated from culture and customs (Roslaili, 2021, p. 7). In other words, shari'a is not only considered as a regulation but as a symbol and inherent identity as well as the sovereignty of the Acehnese people in living their lives in accordance with the values they believe. We can see this until now, that almost all activities of the Acehnese people are measured using Islamic religious norms.

Islamic Shari'a was formally implemented in Aceh after the enactment of Law No. 44/1999 concerning the Implementation of Special Privileges of the Province of the Special Region of Aceh and Law No. 18/2001 concerning Special Autonomy for the Province of the Special Region of Aceh, which was subsequently replaced by Law No. 11/2006 concerning the Government of Aceh (Nassir, 2013, p. 332; Santoso, 2003, p. 106). After obtaining the legality of the government to enforce Islamic shari'a rules, the Aceh regional government has the right to legitimacy and immediately formalized the mandate by issuing several Regional Regulations related to the Islamic shari'a implementation system which was later popularly known as "Qanun Aceh" in order to enforce Islamic shari'a massively based on legal rules.

Qanun in KBBi is popularly known as Kanun, which means regulations, legislation, laws, or legal rules, a book of laws (Antariksa, 2017, p. 20). Meanwhile, the word Qanun in Arabic, is interpreted as a law, custom, or custom. So in this case qanun can be interpreted as a legal regulation that is enforced in a certain region (Aceh). Qanun can also be interpreted as a legal stipulation based on fiqh that is so urced from ijti had fuqaha or ulama which is then made into a stipulation of certain regional regulations (Qotadah and Achmad 2020:78).

Historically, the Canon or what is famously called Qanun is a Constitution made by the kingdom of Aceh Darussalam around the XVI century during the leadership of Sultan Alauddin Riayat Syah II who issued *Qanun Al-Asyi*. Then *Qanun Al-Asyi* perfected by Sultan Iskandar Muda and during the leadership of Ratu Tajul Alam Safiatuddin known as *Qanun Meukuta Alam* or *Meukuta Alam Customs* or *Crown of Nature Customs* or *Qanun Meukuta Alam Al-Asyi* or also known as *Acehnese Customs* (Antariksa, 2017, p. 22). Qanun continues to undergo changes in the era of the next Aceh kings, so that until now the term "qanun" is used as another name for the Regional Regulation whose scope applies to all Regencies/Cities included in the territory of Aceh province.

There are several regulations whose implementation is related to Islamic shari'a that applies in Aceh. For example, the implementation of the Aceh Qanun regarding the famous Jinayat Law is called Qanun Jinayat, this qanun regulates an act that is not allowed in the teachings of Islam and will be subject to sanctions given by the judge for every person who violates it (Rahman, 2020, p. 96). In simple terms, it can be understood that Qanun Aceh is a form of Islamic shari'a implementation carried out by the people of Aceh, as a form of regulating all aspects of their lives.

Entering September 14, 2014, the Aceh Provincial Government through the Aceh House of Representatives, officially ratified the Aceh Qanun No. 6/2014 concerning the Jinayat Law, which was promulgated on October 23, 2014, and enforced on October 23, 2015. (Usman & Al-Asyi, 2019, p. 91) The Qanun is positioned to complement and replace the Aceh Qanun No. 12/2003 concerning Khamr Drinks or the like, the Aceh Qanun No. 13/2003 concerning Maitsir, and the Aceh Qanun No. 14/2003 concerning Khalwat. Qanun Aceh No. 6/2014 concerning the Law of Jinayat regulates jarimah and 'uqubat for jarimah perpetrators. The act of jarimah includes khamr, khalwat, masir, ikhtilath, adultery, rape, liwath, qadzaf, sexual harassment, and musahaqah.

The implementation of Qanun Jinayat Aceh is carried out in the context of enforcing Islamic law to every Acehnese community who is proven to have violated the regulations that have been passed by the Governor and the Aceh DPRA. Furthermore, the existence of Qanun Jinayat aims to become a law that overshadows the government and the people of Aceh. Qanun Jinayat as a product of Islamic sharia law must be obeyed by all Acehnese people, both Muslims and non-Muslims, as explained in the provisions listed in Article 5 of Qanun Aceh No. 6/2014 concerning the Law of Jinayat. This indicates that the Aceh government does not discriminate in the application of Islamic shari'a to the people of Mecca City.

Jarimah Khalwat According to Qanun Jinayat Aceh

Etymologically the word *jarimah* rooted root word *jarama-yajrīmu-jarīmatan*, means to do or to cut, then this word is more specifically used for an act of sin or an act that is hated, besides that *jarimah* rooted in root words *Ajrama-yujrīmu* which means carrying out something that is not in line with the principles of justice, truth, and even deviating (Hasan & Saebani, 2013, p. 14). While the term from *Jarīmah* quoted from al-Mawardi are various acts that are prohibited by sharia and threatened *Limits* or ta'zir (Berutu, 2020, p. 2). It is understood that *Jarīmah* is an act that deviates from the rules, as is the case with the jarimah of theft, jarimah *Maisir*, jarimah zina, jarimah khamar, and so on including jarimah khalwat.

Etymologically, khalwat comes from Arabic, namely *khulwah* rooted in the word *khalā-yakhūlu*, in the dictionary *Arabic Lisan* The word khalwat has a number of variations in meaning, including solitary, hidden, quiet, closed, and silent (Berutu, 2020, p. 2). Meanwhile, in terminology, khalwat is termed as a situation of individuals who avoid crowds

and are far from the crowd. In its use, the word *khalwat* contains two connotations of terms that lead to positive and negative things (Ikhwan & Daudy, 2019, p. 199). In a positive sense, the word *khalwat* is interpreted as being lonely to be closer to Allah. Meanwhile, in a negative sense, *khalwat* is interpreted as the act of being alone in a quiet place or far from the reach of other individuals between two lovebirds who are not mahrom and are not bound in marriage. The meaning of the word *khalwat* that is intended and will be discussed in this article is the second meaning of *khalwat*.

The word *khalwat* is also often encountered and explained in fiqh books, according to the agreement of fiqh scholars what is meant by *khalwat* is an act that contains a possibility or opportunity for adultery to occur, the act does not only depend on the condition or loneliness of the place where they are alone (such as houses, hotels, villas, workplaces, and so on), but it depends on the act that has the opportunity to lead to adultery (Arifin, 2015, p. 10). If referring to fiqh books or Islamic law, the act of *khalwat* is clearly prohibited, this aims to prevent the infection of influences that lead to adultery. *Khalwat* is one part of Qanun Aceh No. 6/2014 concerning Jinayat Law and is also one of the implementation parts of Islamic shari'a in Aceh. Regulations related to prohibition *khalwat* is also explained in the Aceh qanun along with its punishment and applied to every perpetrator who violates the act of *Jarīmah khalwa*.

In the general provisions of Article 1 (23) of Qanun Aceh No. 6/2014 concerning the Law of Jinayat, it is explained that what is meant by *khalwat* is "any act of being in a closed or hidden place between two people of different sexes who are not mahram and without the bond of marriage with the willingness of both parties which leads to the act of adultery." From this definition, the prohibition of *khalwat* includes any activity of silence that leads to adulterous behavior. However, in its development, *khalwat* can also be done in crowded locations such as on the street, car, or other places where 2 (two) people of the opposite sex are alone without any mahram relationship or marital bond. Islam expressly prohibits the act of *khalwat* because it is considered an opportunity for the act of adultery, therefore *khalwat* in the Aceh qanun is classified as an act of *jarimah* and can be threatened *with 'uqubat ta'zir*. The prohibition of *khalwat* is intended and aims as a preventive effort to protect all Acehnese people from committing adultery.

The scope of the prohibition of *khalwat* in Aceh as regulated in the qanun jinayat is various activities, actions, situations that are close to adultery. Reviewing the definition of *khalwat* contained in Article 1 (23) of the Aceh Qanun regarding the Law of Jinayat, it can

be understood that a person can be said to have violated the jarimah of khalwat if several elements have been fulfilled, including: (1) An act in a quiet, closed, or hidden location; (2) Involving 2 (two) opposite sexes who are not mahrams and are not bound by marriage; (3) There is a willingness between the two parties; (3) Leading to the act of adultery (Abubakar & Lubis, 2019, p. 78).

The Aceh Regional Government expressly prohibits all Acehnese people from committing acts of khalwat. If the Aceh Qanun No. 6/2014 concerning the Law of Jinayat is reviewed again, then it can be found that the certainty of the law of *uqubat* for anyone who violates the provisions of the jarimah khalwat in the Aceh region. In Article 23 (1) of Qanun Aceh No. 6/2014 concerning the Law of Jinayat, it is explained that "every person who deliberately commits the jarimah khalwat, is threatened with 'uqubat ta'zir whipping at most ten times or pays a fine of up to one hundred grams of pure gold or imprisonment for a maximum of ten months." Not only the perpetrators of khalwat, but even the facilitator or person who facilitates the place to perform khalwat will also be charged with Article 23 (2), which reads "every person who deliberately organizes, provides facilities or promotes jarimah khalwat, is threatened with 'uqubat ta'zir whipping a maximum of 15 (fifteen) times or pays a fine of a maximum of 150 (one hundred and fifty) grams of pure gold and/or imprisonment for a maximum of 15 (fifteen months)." Based on this Article, a conclusion can be drawn that khalwat is a form of jarimah and *its* 'uqubat is included in the ta'zir part, where in its implementation it is handed over to the ruler of the "judge" in its entirety by considering the condition of the perpetrator and his jarimah actions.

Komnas Perempuan on the Implementation of Islamic Shari'a in Aceh considers that the act of khalwat in Qanun Jinayat when viewed from the type of unlawful act is equated with the rules on morality as regulated in the Criminal Code (Yani, 2011, p. 177). However, if we re-analyze the two clearly have different legal orientations, the act of khalwat will still be punished whether it is carried out in a closed or open place (public), which means that the legal orientation regarding the act of khalwat is for the benefit and benefit of the community. Meanwhile, immoral acts regulated in the Criminal Code will be decided as a violation of the law if they are committed in a public place (open), but if they are carried out in such a closed place, they will no longer be objects of law, meaning that the orientation of criminal law regarding the rules of morality leads to efforts to protect others so that they are not disturbed or not affected by actions that cause the sexual arousal of others. The difference

between Qanun on Khalwat and the Criminal Code on Morality indicates that in material law, the rules of khalwat do not have *Justification* products of the legislation on it, even if viewed from *considerations*. In the qanun, there is no mention of the Criminal Code as assumed above if the Criminal Code also regulates the same matter. *Considerations* mentioned in the qanun of Jinayat are the Quran and as-Sunnah, therefore the qanun is materially limited to having *Justification* Islamic Shari'a. In the author's view, based on the difference in legal orientation between khalwat and morality, it can be concluded that khalwat is not included in criminal acts in the Criminal Code and the two are clearly different and cannot be equated.

Furthermore, in Article 24 of the Aceh Qanun No. 6/2014 concerning the Jinayat Law, it is explained that "the jarimah khalwat which is the authority of the customary court is settled in accordance with the provisions of the Aceh Qanun concerning the development of customary life and customs and/or other legal arrangements regarding customs." In other words, the existence of this article indicates that the settlement of jarimah khalwat cases when referring to Qanun Jinayat Aceh can be grouped into two types by looking at the case from the perpetrator's side (Muksalmina et al., 2023, p. 440).

1. Settlement of jarimah khalwat case through the Aceh Syar'iyah Court

The settlement of jarimah khalwat cases through the Sharia Court is carried out to each perpetrator who lives in a different place based on evidence and witnesses at the crime scene who saw or heard it directly.

2. Settlement of jarimah khalwat cases through the Customary Court

If we look at Article 24 of Qanun Aceh No. 6/2014 concerning Jinayat Law, it is explained that "The Customary Court also has the authority to resolve cases of khalwat cases according to the provisions of the Aceh Qanun concerning the development of customary life and customs." This is also explained in Article 13 of Qanun Aceh No. 9/2008 concerning the Development of Traditional Life.

Based on this explanation, it can be understood that the Syar'iyah Court and the Customary Court have the authority to resolve the case of jarimah khalwat that occurred in Aceh. The existence of these two authorities is actually feared to cause legal dualism which must be an evaluation of the Aceh Regional Government. Because in the Aceh Qanun, it is not explained in detail how certain limits or levels related to khalwat must be resolved in the Syar'iyah Court or in the Customary Court.

Jarimah Khalwat Non-Muslims in Qonun Jinayat Aceh

The implementation of Qanun Jinayat in Aceh has been going on for a long time, but the implementation of Qanun Jinayat for non-Muslims is arguably still new as previously explained. Based on statistics from Aceh Province, the population of Aceh consists of Muslims who reach 98.923%, 0.795% Protestant Christians, 0.162% Catholic Christians, 0.103% Buddhists, 0.014% Hindus, and 0.005% Confucianists (Mafazi, 2022, p. 493). Thus, it can be seen that the existence of non-Muslims in Aceh is a minority community that only amounts to less than (3%) three percent.

The implementation of Islamic shari'a is basically limited to Muslims living in Aceh (Ismail, 2013, p. 63). Likewise, some of the author's readings from various references show that the implementation of Islamic shari'a in Aceh is basically limited to being applied to the Muslim community of Aceh, and is not applied to non-Muslim communities. However, in fact, the author also found that the Qanun on Jinayat Law as a form of implementation of Islamic shari'a in Aceh could apply to non-Muslims in Aceh when viewed from the provisions of Article 129 (1 and 2) of Law No. 11/2006 concerning the Government of Aceh. As also mentioned in Article 5b of the Aceh Qanun No. 6/2014 regarding the Law of Jinayat, it is explained that "every non-Muslim person who performs jarimah in Aceh together with Muslims and chooses and voluntarily submits to the Law of Jinayat." The point is that if a non-Muslim commits adultery with a Muslim, then the non-Muslim has the right to choose to submit to the Qanun Jinayat or the National Law (KUHP) "if the act is also regulated in the National Law" if he chooses to voluntarily submit to the Qanun Jinayat, then he will be judged in accordance with the provisions of the applicable Qanun and if he chooses the National Law (KUHP), then he will be released from Qanun Jinayat and will also be tried in accordance with the provisions of the applicable Criminal Code.

In Article 5 letter (b), a non-Muslim who commits a jarimah in the Aceh region is allowed to choose an alternative punishment (*choice of law*) and the judiciary (*choice of forum*) which is different if the act of violation is also regulated in other legislation. Alternative punishment (*choice of law*) interpreted as the freedom given to non-Muslims in choosing the punishment imposed according to the provisions of the law (Delimunthe and Siregar 2022:89). It is different if the provision is not bound by other laws and regulations, but is only bound in the Qanun.

Furthermore, Qanun also applies to non-Muslims if the rules cannot be found in the Criminal Code or other laws as explained in Article 5c of Qanun Aceh No. 6/2014 concerning the Jinayat Law that "every person who is not a non-Muslim who commits an act of jarimah in Aceh that is not regulated in the Criminal Code (KUHP) or criminal provisions outside the Criminal Code, but it is regulated in this Qanun." This means that if a non-Muslim commits a jarimah where the provisions are not bound by the Criminal Code or other laws, then he will be subject to sanctions or various provisions that apply in the Qanun Jinayat. For example, if a non-Muslim commits a khalwat jarimah that is tied in the Qanun Jinayat and is not bound in the Criminal Code, then the non-Muslim is enforced or tried with various provisions that apply in the Qanun Jinayat, because the jarimah khalwat is not specifically regulated in the provisions of the Criminal Code. In other words, if there is a non-Muslim who violates the act of jarimah khalwat, he will be subject to 'uqubat ta'zir as stated in Article 23 (1) of Qanun Aceh No. 6/2014 concerning Jinayat Law that "every person who deliberately commits jarimah khalwat, is threatened with 'uqubat ta'zir whipped a maximum of ten times or pays a fine of a maximum of one hundred grams of pure gold or imprisonment for a maximum of ten months."

The provisions regarding jarimah khalwat actually also raise a dilemma in the application of criminal law in Aceh. Because the implication of the provisions in the Qanun Jinayat is that non-Muslim groups who commit criminal acts that are not regulated in the regulations or laws applicable nationally either in the Criminal Code or outside the Criminal Code, will be punished based on the provisions of Islamic law or Qanun Jinayat. Public law in principle adheres to the principle of territoriality, which means that the law applies to anyone who commits a criminal act in the area where the law is enforced. However, for this Qanun, the principle has changed to a mixture of territorial principles and personality principles (Melayu et al., 2021, p. 144). It is very clearly illustrated where a non-Muslim is punished with Islamic law while there is no option of surrender as referred to by Article 5c of Qanun Aceh No. 6/2014 concerning the Law of Jinayat.

In general, in the theory of law there is a principle *lex superior derogat legi inferiori*, This means that higher regulations in the hierarchy can remove lower legal regulations under them. In the context of the enactment of Qanun Jinayat according to the arguments of legal experts in Aceh, the principle of *lex superior derogat legi inferiori* does not apply (Sucondro 2022:68). In fact, what applies is the opposite, namely *lex inferiori repealed superior law*, This can be seen in Article 72 of the Aceh Qanun No. 6/2014 concerning the Jinayat Law

which says that if the criminal acts in the Jinayat Law Qanun are also regulated in the Criminal Code (KUHP) or other criminal provisions, then what applies is the jarimah rule in the Jinayat Law Qanun (Melayu et al., 2021, p.144).

At least up to this point, it can be understood that non-Muslims who violate the act of jarimah khalwat will be subject to the provisions that apply in the Qanun Jinayat, and there is no need to be given the flexibility between having to choose first to be tried by the Qanun Jinayat or the National Law (KUHP). Apart from the assumption that Qanun Khalwat is equated with the Criminal Code on Morality, in the author's analysis of the previous material, khalwat is one of the acts whose provisions are only bound in Qanun Jinayat and not bound by the National Law that is enforced, namely the Criminal Code. Therefore, the author thinks that non-Muslims who perform jarimah khalwat will be directly enforced with the applicable Qanun Jinayat, because the provisions are not regulated in the National Law.

However, for the solution, the case must be seen first whether it is resolved at the Syar'iyah Court or the Customary Court. So that if there are non-Muslims who commit violations of jarimah khalwat, it must first be seen the limits of jarimah khalwat that can be resolved at the level of the Customary Court, then it will be the authority of the Customary Court accompanied by supervision from the relevant institutions. On the other hand, if it falls within the limits of jarimah khalwat that must be completed at the Syar'iyah Court Level, then the case will immediately be transferred to Wilayatul Hisbah for further processing at the Syar'iyah Court (Muksalmina et al., 2023, p. 437). The settlement of khalwat is indeed still a polemic, because Qanun Jinayat has never given a limit related to the khalwat case that can be resolved by the Syar'iyah Court or the khalwat case that can be resolved by the Customary Court. According to Yudi Junaidi, this is because the meaning of khalwat is given a very broad meaning which in legal practice is often referred to as the "rubber article", so it is not surprising that its enforcement is also carried out haphazardly (Junaidi, 2012, p. 62).

Based on the description that the author has explained, it can be understood that regarding a non-Muslim who commits the act of jarimah khalwat in Aceh, the rule enforced is Qanun Jinayat which regulates the act of jarimah khalwat, because the Criminal Code does not specifically regulate the act of khalwat. As explained in Article 5c of Qanun Aceh No. 6/2014 concerning Jinayat Law, if it is not bound in the Criminal Code, Qanun Jinayat will be enforced. On the other hand, if in practice non-Muslims who violate the act of khalwat

are given the freedom to choose by what law they are tried by between Qanun Jinayat or the Criminal Code, then this will create a legal uncertainty for non-Muslims who commit violations of Qanun Jinayat, especially for a number of criminal offenses that are not specifically bound in the Criminal Code, for example khalwat, khamr, gambling, and other similar acts. This kind of act unconsciously gives non-Muslims the freedom to avoid the bonds of Jinayat Law (Abubakar, 2020, p. 75).

Intersection of Islamic Shari'a and Non-Muslim Human Rights in Aceh

Qanun Aceh No. 6/2014 concerning the Jinayat Law in its journey caused a number of contradictions, criticisms, and even rejection from a number of circles, both from practitioners, academics, to the general public. On September 14, 2014, in the plenary session of the Aceh DPRA, after the legalization of Qanun Aceh No. 6/2014 regarding the Jinayat Law, it immediately reaped polemics from interfaith groups and human rights activists in Aceh. Because the material contained in the Qanun Jinayat is considered to be full of coercion against non-Muslim Acehese citizens, because there are several articles that state that this Qanun Jinayat must be obeyed and also applies to the non-Muslim community of Aceh. This condition raises an assumption and concern in carrying out non-Muslim activities in Aceh, because they are forced to submit to Islamic shari'a which is not their religion. If we re-observe in the previous explanation that Qanun Jinayat also applies to non-Muslims, but it should be noted that the act of jarimah contained in the Qanun Jinayat is a prohibition in the moral deviation of the Acehese people and has nothing to do with the restrictions on worship for non-Muslims in Aceh. Al Yasa' Abubakar as the former Head of the Islamic Sharia Office emphasized that juridically religious freedom for minorities (non-Muslims) is protected their right to worship and carry out their religious teachings (Nuridin et al., 2018, p. 154). However, the presence of Qanun Jinayat is still considered and considered as a form of discrimination against minorities, because there is an element of coercion on non-Muslims to submit to Qanun Jinayat as a form of implementation of Islamic shari'a in Aceh.

The peak of the criticism and rejection of Qanun Aceh Number 6 of 2014 concerning the Jinayat Law is the submission of the right to material examination (*judicial review*) to the Supreme Court carried out by legal activists in representing the unrest of the Acehese people, especially minorities (ICJR, 2016). According to the petitioners, although the Aceh Government has the authority to regulate Aceh as a special autonomous region based on the UUPA (Aceh Government Law), it should be remembered that the authority concerned is

not absolute in nature to the national legal corridor and human values, including human rights agreements *international* which has been ratified by Indonesia which is the limit for the implementation of the authority of the Aceh government (Abubakar & Lubis, 2019, p. 48; Female, 2016, p. 6). In addition, legal and human rights activists also criticized the implementation of the *'Uqubat of Zir* whipping for all people who violate the rules of the Qanun Jinayat, because the punishment is considered harsh, cruel, and inhumane (Abbas, 2018, p. 24). These lawsuits are on behalf of NGOs (non-governmental organizations) in the legal sector to represent the minority community in Aceh, because they are worried that if they directly sue individually, they will be increasingly intervened and seen as infidels because they sue Islamic law.

The application of the Jinayat law implemented by the Aceh Regional Government for non-Muslims, actually puts non-Muslims in Aceh in a dilemma (Abubakar, 2007, p. 56). The reason is, if non-Muslims reject the implementation of Islamic law, they are aware that non-Muslims are a minority who do not have strong political power at all. But on the other hand, if they accept it, they are worried that they will be treated unfairly by Muslim rulers such as being forced to convert to Islam, obliged to wear a hijab, having their hands cut off if proven to steal, and so on that enforce Islamic shari'a (Salim, 2017, p. 52). This kind of dilemmatic position is natural for non-Muslims, given that they are only a minority living in the midst of a majority society.

In addition, there are legal impacts felt as a result of this transformation both in the national and international context. At the national level, the implementation of Qanun Jinayat often raises contradictory discussions regarding the harmonization of law between sharia law and national law, which results in legal dualism in Indonesia (Gayo, 2017, p. 141). Some legal experts consider that the implementation of Islamic shari'a in Aceh poses a challenge in maintaining the unity of the legal system in Indonesia (Efendi, 2024, p. 47). This is because Qanun Aceh has established principles that are not entirely the same as the principles of national criminal law, so that this can result in incompatibility on the one hand, but can also fill the void of national criminal law on the other hand (Nurdin, 2018, p. 358–59).

Meanwhile, at the international level, the implementation of the Jinayat law in Aceh is in the spotlight because it is considered contrary to the international convention on human rights that has been ratified by Indonesia (Panjaitan & Tjandra 2022, p. 94). For example,

the rules of wearing clothes and the punishment of caning, such as jarimah khalwat, which often receive attention and criticism from groups that fight for human rights (Rahman et al., 2024, p. 190). Because the caning is considered a discriminatory form and is considered inconsistent with international human rights principles regarding human treatment (ICJR, 2014).

At the end of this writing, it can be understood that the application of Islamic shari'a in this case Qanun Jinayat applies to all Acehese people including Muslims and non-Muslims, because the purpose of this application is the benefit of all mankind and the realization of human rights. Apart from the pro-con debate regarding the implementation of shari'a for Muslims and non-Muslims in Aceh. In that case, according to the author, the application aims to create the principle of *equality before the law* (everyone is equal before the law). Regarding the authority of Qanun Jinayat, it has become the responsibility of the Aceh Government in implementing Law No. 44/1999 and Law No. 18/2001, which was subsequently replaced by Law No. 11/2006.

However, in the future, issues related to the implementation of Islamic shari'a contained in the Qanun Jinayat will continue to cause pro-con debates both at the national and international levels. The main challenge is how the Aceh government seeks the relevance and effectiveness of the law to the non-Muslim community of Aceh. So in this case, it is necessary to continuously evaluate Qanun Jinayat in order to be able to adapt to the times, including reconsidering aspects of law that are more progressive and inclusive. Of course, further research is also urgently needed to assess the future impact of the implementation of Islamic shari'a on non-Muslims in Aceh.

Conclusion

Khalwat is part of the jarimah act that is prohibited in the Qanun Jinayat Aceh, and every Acehese person who violates the jarimah of khalwat will be subject to *'uqubat ta'zir* in the form of a maximum of 10 whippings or pay a maximum fine of 100 grams of pure gold or imprisonment for a maximum of 10 months. The prohibition of khalwat does not only apply to the Muslim community, but also applies to non-Muslims in Aceh. Non-Muslims who violate the act of jarimah khalwat will be subject to the provisions applicable in the Qanun Jinayat, and there is no need to be given the flexibility between having to choose first to be tried with the Qanun Jinayat or the National Law (KUHP), this is because the National Law (KUHP) does not specifically regulate the act of the criminal act of

khalwat. In responding to this, there needs to be an evaluation from the government regarding jarimah khalwat and the punishment imposed on non-Muslims, this aims to harmonize the law between Islamic shari'a law and national law.

Bibliography

- Abbas, S. (2018). *Philosophy of Islamic Sharia Implementation in Aceh*. Banda Aceh: Aceh Manuscript & UIN Ar-Raniry.
- Abubakar, A. Y. (2005). *Islamic Sharia in Nanggroe Aceh Darussalam Province, Policy and Activity Paradigm*. Banda Aceh: Islamic Shari'at Office of NAD Province.
- Abubakar, A. (2020). *The Position of Non-Muslims in Qanun Jinayat*. Banda Aceh: Aceh Islamic Sharia Office.
- Abubakar, A., & Lubis, Z. (2019). *Aceh Jinayat Law: An Introduction*. Jakarta: Kencana.
- Abubakar, A. (2007). *Islamic Criminal Law in NAD Province*. Banda Aceh: Islamic Shari'at Office of Nanggroe Aceh Darussalam Province.
- Aceh, Regional Government. (2014). Qanun Aceh Number 6 of 2014 concerning the law of Jinayat. Aceh Islamic Sharia Office. Retrieved December 13, 2023, from <https://www.regulasip.id/book/8964/read>
- Alamsyah, I. E. (2014, September). Aceh House of Representatives: Qanun Jinayat applies to non-Muslims, if... *Republika Online*.
- B., Space. (2017). The position of Qanun Aceh reviewed from the aspects of history, regulation, function, and content of Qanun. *Scientific Journal of Advocacy*, 5(1), 17–33. <https://doi.org/10.36987/jiad.v5i1.317>
- Arifin, M. (2015). Criminal acts against khalwat perpetrators according to the Qanun of Nanggroe Aceh Province Number 14 of 2003. *Al-Fikrah Journal*, 4(1), 6–36.
- Berutu, A. G. (2020). *Fiqh Jinayat (Islamic Criminal Law) complemented by the discussion of Qanun Jinayat Aceh*. Purwokerto: CV. Pena Persada.
- Delimunthe, D., & Siregar, S. (2022). *The law of whipping for non-Muslims applied based on the judge's decision in the Sharia Court*. West Pasaman: CV. Azka Pustaka.
- Delta, R. (2016). The issue of controversy over the implementation of Qanun Jinayah after the enactment of the Special Autonomy Law of Nanggroe Aceh Darussalam Province. *Justicia Science: Journal of Legal Sciences*, 1(1), 29–43. <https://doi.org/10.24967/jcs.v1i1.98>

- Djumala, D. (2013). *Soft power for Aceh: Conflict resolution and decentralization politics*. Jakarta: PT Gramedia Pustaka Utama.
- Efendi, S. (2024). Transformation of Islamic criminal law in modern society in Aceh. *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam*, 5(2), 41–49. <https://doi.org/10.58836/al-qanun.v5i2.21513>
- Gayo, A. A. (2017). Legal aspects of the implementation of Qanun Jinayat in Aceh Province. *De Jure Journal of Legal Research*, 17(2), 131–154. <https://doi.org/10.30641/dejure.2017.v17.131-154>
- Hasan, M., & Saebani, B. A. (2013). *Islamic criminal law*. Bandung: Pustaka Setia.
- Institute for Criminal Justice Reform (ICJR). (2014). ICJR: Qanun Jinayat results in the degradation of Indonesia's criminal law and adds to Indonesia's burden in the international anti-torture forum. Retrieved December 19, 2024, from <https://icjr.or.id/icjr-qanun-jinayat-mengakibatkan-kemunduran-hukum-pemidanaan-indonesia-dan-menambah-beban-indonesia-di-forum-anti-penyiksaan-internasional/>
- Institute for Criminal Justice Reform (ICJR). (2016). Application for objection to Qanun Aceh No. 6 of 2014 concerning Jinayat law. Retrieved December 22, 2024, from <https://icjr.or.id/permohonan-keberatan-terhadap-qanun-aceh-no-6-tahun-2014-tentang-hukum-jinayat/>
- Ikhwan, M., & Daudy, M. H. (2019). Institutionalization of Jinayat law in Aceh as part of the Indonesian criminal law system. *Islam Universalia: International Journal of Islamic Studies and Social Sciences*, 1(2), 180–212. <https://doi.org/10.56613/islam-universalia.v1i2.119>
- Ismail, A. (2013). *The position of Islamic Sharia in Aceh in the framework of the national legal system*. Aceh: CV. BieNa Edukasi.
- Junaidi, Y. (2012). *Religious and state relations: Redefinition of constitutionalism discourse in Indonesia*. Cianjur: IMR Press.
- Ministry of Education and Culture, Inspectorate General. (2023). Acehese culture, getting to know the land of the Porch of Mecca closer. Retrieved December 17, 2024, from <https://itjen.kemdikbud.go.id/web/kebudayaan-aceh-mengenal-lebih-dekat-negeri-serambi-mekah/>
- Mafazi, S. S. (2022). The enforcement of Aceh's Sharia customary law for non-Muslim Acehese residents. *Lex Generalis Law Journal*, 3(6), 490–496. <https://doi.org/10.56370/jhlg.v3i6.274>

- Malay, H. A., Abubakar, M. Z., & Nasir, N. C. M. (2021). Minorities in the Shari'a territory: The position of non-Muslims in Aceh's Jinayat law. *Legitimacy: Journal of Criminal Law and Political Law*, 10(1), 129–149. <https://doi.org/10.22373/legitimasi.v10i1.10521>
- Muksalmina, M. R. S., Yulis, S., & Subaidi, J. (2023). Khalwat in the study of Islamic criminal law and its resolution according to Qanun Jinayat Aceh. *SEIKAT: Journal of Social, Political and Legal Sciences*, 2(4), 435–441. <https://doi.org/10.55681/seikat.v2i4.806>
- Nurdin, A., Chaidar, A., Nazarudidin, T., & Puteh, A. A. (2018). *Socio-religious movements*. Lhokseumawe: Unimal Press.
- Nurdin, R. (2018). The position of Qanun Jinayat Aceh in Indonesia's national criminal law system. *MIQOT: Journal of Islamic Sciences*, 42(2), 356–378. <https://doi.org/10.30821/miqot.v42i2.542>
- Nurhalizah, M. E. (2023, November). Non-Muslims and the application of Islamic law in Indonesia. *Nursyam Centre*.
- Panjaitan, E. M. L., & Tjandra, H. (2022). The practice of public flogging in the perspective of international human rights in Nanggroe Aceh Darussalam Indonesia. *Jurnal Hukum dan Peradilan*, 11(1), 93–108. <https://doi.org/10.25216/jhp.11.1.2022.93-108>
- Women, Institute for Criminal Justice Reform and Solidarity. (2016). Application for objection to Qanun Aceh No. 6 of 2014 concerning Jinayat law. South Jakarta: Institute for Criminal Justice Reform.
- Praja, S. J., & Ulfa, W. (2020). Implementation of Qanun Number 6 of 2014 concerning Jinayat law in Banda Aceh City, Aceh Province. *Journal of Government Policy*, 3(1), 11–20. <https://doi.org/10.33701/jkp.v3i1.1071>
- Qotadah, H. A., & Achmad, A. D. (2020). Qanun Jinayat Aceh between implementation, issues, and challenges. *Adliya: Journal of Law and Humanity*, 14(2), 171–194. <https://doi.org/10.15575/adliya.v14i2.9246>
- Rahman, A. (2020). Islamic Sharia-based government system in Indonesia (Case study of the implementation of Qanun Jinayat in the Aceh provincial government). *KAIS Social Science Studies*, 1(2), 91–106. <https://doi.org/10.24853/kais.1.2.91-106>
- Rahman, D. A., Abubakar, M. B., Rizwan, M., Muntasir, & Hidayat, B. (2024). Autonomy of the special region of Aceh: A bridge to reconciliation or a new source of tension.

Journal of Government and Politics, 9(3), 183–194.
<https://doi.org/10.36982/jpg.v9i3.4459>

Rosida, I. A., & Hariri, A. (2023). The enforcement of whipping sanctions, Qanun Jinayat in Aceh in the perspective of human rights. *Media of Law and Sharia*, 4(2), 115–129.
<https://doi.org/10.18196/mls.v4i2.6>

Roslaili, Y. (2021). *Formalization of Islamic criminal law in Indonesia: Case study of Qanun Jinayah in Aceh*. Sukabumi: CV. Footprint.

Salim, A. (2017). Jarimah Khalwat in the territorial Aceh (Analysis of the application of the criminal code and Qanun Jinayah Aceh Number 6 of 2014). Ar-Raniry State Islamic University.

Sucondro, B. (2022). Legal aspects of the application of Qanun Jinayat in the Pancasila paradigm. *Criminal Law and Legal Development*, 5(1), 63–84.
<https://doi.org/10.25105/hpph.v5i1.16246>

Susantri, Y., & Hidayat, R. (2020). Regional regulations, Qanun, and Perdasi in the national legal system. *Syiah Kuala Law Journal*, 4(1), 33–44.
<https://doi.org/10.24815/sklj.v4i1.16595>

Aceh Government Editorial Team. (n.d.). History of Aceh Province. Retrieved December 17, 2024, from <https://acehprov.go.id/halaman/sejarah-provinsi-aceh>

Yani, M. (2011). The implementation of Jinayat law in Aceh in the perspective of Fiqh and human rights: A study of Qanun Number 12, 13, and 14 of 2003. *UIN Syarif Hidayatullah Jakarta: Postgraduate School*.