

A LITERATURE STUDY ABOUT THE EFFECTIVENESS OF QANUN LAW IN DECREASING THE *KHALWAT* BEHAVIOR IN ACEH, INDONESIA

Alesyanti and Nurul Hakim

Muhammadiyah University of North Sumatra (UMSU), Medan, Indonesia

ABSTRACT: *Zina is an act committed by two opposite sex, who have no marriage bond. In Islam this act is much forbidden and told the people to stay away from it. This provision also applies in customs, especially in Aceh where customary law is in synergy with Islamic Shari'a. Islam and tradition in Aceh are two sides of the coin that cannot be separated. But along with the era of telecommunications and transparency, the culture of free interaction also includes the daily culture of young people of Aceh. We see that the increasing cases of khalwat conducted among the teenagers, students and the general public in Aceh that makes us sad. The question arises, whether the existence of qanun not able to change the significance of khalwat? But if there is a decline, whether the qanun can be said to be effective, since there are still many people recognize not knowing comprehensively the rules of qanun, so the mechanism of law implementation is not so clearly accepted by society, which is actually the benchmark of effective legal regulation, recommendation to comply with the qanun. This is proved with the lack of mobilization of the local government's ability to socialize the law. Based on these conditions, this study will examine the existence of the effectiveness of the qanun law with the parameters of the effectiveness of a rule of law, when the rules can continue to be implemented and regulate the deviant behavior of the community. The method used empirical study with the approach of legal effectiveness. This review will result in problem solving of the existence of qanun law which only punishes the perpetrators without regard to the effectiveness, efficiency, and continuity of long-term qanun law enforcement. Meanwhile the study of the substance of qanun rules has been claimed by the local government as synergy of customary law and Islamic law.*

KEYWORDS: Al Quran, Qanun Law, Khalwat

INTRODUCTION

The crime of *Zina* is a criminal act that is not based on a legal marriage, a crime that has been deeply rooted among the teenagers, students and adults, is a community disease that should be anticipated as early as possible. Many factors that lead to the problem of adultery become common place among the public, it is also triggered by the rise of pornographic VCDs, pornographic images, which are so easily accessible in Indonesia not only in the city even in rural VCD has been up to It is also one of the factors damage to the mental and moral of the nation so it is not surprising if every dtemui case of adultery, sometimes the community itself who intervened in giving punishment to the perpetrator. Yet it is very clear Islam firmly prohibits such actions. "The law of *khalwat* between other men and women, is absolutely forbidden (Surah Al-Isra 17: 32) "Do not go near *zina*, *zina* is really a cruel act and a bad way.

The rise of immorality or adultery in the midst of Indonesian society, also spread to the area of Aceh, which is very thick with Islamic *Shari'a*. Aceh which is a two-sided currency with Islamic law seems unable to escape from the misguided cultural strikes. Indeed we cannot deny, post tsunami Aceh into a very open area, against the entry of elements of foreign culture.

Islamic lifestyle is displayed in a style of compulsion, such as minimal and tight dress but still in *hijab*, young associations like without a curtain. The local government regulation on the ban on 'ngangkang' or spreading thighs on motorcycle is opposed by the people. As a consequence, Acehese young people can be seen together with *non-muhrim*. It can be seen that the *khalwat* in Aceh cannot be tolerated anymore, also from the number of *khalwat* is very concerned from year to year. It seems strange, Aceh is much closed from a culture that is misleading, finally eroded also its Islamic values that they uphold so far. The data below can be illustrated:

Tabel 1: Data of *khalwat* in Aceh for the last 5 years

No	Year	Number of <i>Khalwat</i> Case
1	2006	132 cases (42 serious cases and 90 light cases)
2	2007	149 cases (47 serious case and 102 light cases)
3	2008	103 cases (22 serious case and 77 light cases)
4	2009	91 cases (21 serious case and 70 light cases)
5	2010	6 serious case

Source: Syar'iah Court in Banda Aceh, Indonesia

The above data shows that there is a significant decrease in the number of *khalwat* (contact with the opposite sex) in Aceh since the enactment of *Qanun* on *khalwat* act in 2003. However, the data is not all of a sudden, indicating that *qanun* is very effective in minimizing the behavior of *khalwat* in the younger generation of Banda Aceh. Why is there a statement like that? This is because the benchmark to assess the effectiveness of the introduction of a regulation is not that simple, given the 5 components that must be met: 1) the easy law rule is to be understood; 2) the extent of the people who know the content of the law rule; 3) the effective and efficient mobilization of legal rules; 4) the effective mechanisms for resolving disputes; and 5) the public recognition of the effective rules and legal institutions, Warassih (Rachmadi, 2013: 1).

We must never forget that *zina* or sex without marriage also affects the emergence of venereal diseases such as AIDS, and therefore preventive action should be the concern of all parties. The data I quote is urgent to reflect on "There has been a sharp rise in cases of HIV and AIDS in mothers and children. National AIDS Commission (KPA) said, the case of HIV and AIDS in Indonesia continues to increase. According to new data, the increase was from 120,000 cases in 2012, 20 percent of infants and children and 7,000 of them occurred in housewives (IRT). The transmission of HIV/AIDS disease to the housewives and toddlers, most likely from husbands who are already accustomed to being customers of prostitutes (WTS). The KPA data showed the highest increase in cases in mothers and children in 141 districts/cities in Indonesia. The majority of these areas is far from the city center or newly started areas of development, such as the Pantura region, tourism areas on the southern coast of Java, Aceh, and Lampung. (See more at: <http://www.voa-islam.com/read/indonesiana/2012/12/06/22197/adultery-first-place-order-first-patient-hiv-aids-accrue/#sthash.2mCHOekg.dpuf>).

Why is it so important that we maintain the existence of the *qanun khalwat* in Aceh. This is also voiced by the tradition leaders of Aceh, and the people of Aceh who longed to return to the Islamic culture, and was once highly upheld by the people of Aceh. *Zina (khalwat)* is a sexual act between men and women who are not bound by marital relationships. In general adultery is not only when humans have sexual intercourse, but includes all activities that can damage human dignity (Siti: 2015: 19). Based on the harm caused by the neglect of the committing of adultery, it is feared that the young generation of Aceh will grow in a culture without form. The Islamic living culture should not disappear from the land of *rencong*. Aceh

has been a Mecca in the barometer of religious obedience and elevates the cultural concept of shame in the relation of *hablun minnannas*.

We recognize the efforts of the Aceh government to reinforce the re-enactment of Islamic *Shari'a* in Aceh. The effort was with the enactment of *Qanun* no 14 year 2003 on *khalwat* act, which is an attempt to fill the need for positive law in the implementation of Islamic *Shari'a*. The *Qanun* passed in Banda Aceh on July 15, 2003 was formed as an "effort to prevent, supervise, and take action against the procurement of Islamic *Shari'a* in Aceh, especially the *khalwat*" (Faruq: 2011: 3).

The very ideal and synergy law with Islamic rule, it is unfortunate that its existence is only limited to punish the violators, without any effort to reduce the speed of crime, because not all physical punishment cause deterrent effect on the society. A good rule of law, as well as regulating the punishment of the perpetrator, but more importantly can generate public awareness to obey it. A good law is born from "bottom up", not from the interests of the ruler or "top bottom". The character of legal product was born from the needs of society, which should be a parameter of success of a legal product. This has been confirmed by (Mahfud M.D, 1998: 25) as a responsive/populist legal product: a legal product that reflects a sense of justice and meets the expectations of society.

From the expert's statement, it is very clear that the effectiveness of a law needs to be reviewed. If the law is effective and fulfills a sense of community justice, then the sustainability of a legal product will be maintained. Therefore, this research tries to explore the effectiveness of *qanun* in substance, community knowledge about *qanun*, positive mobilization toward law enforcement of *qanun*, the implementation mechanism, and more importantly the recognition and the awareness of society to obey the rule of *qanun*. To find the answer, empirical method with the approach of legal effectiveness is very suitable used in this study. The problem will be answered: 1) How is the depth of *qanun* law in the arrangement of *khalwat* in Aceh?; 2) How does the people of Aceh understand the law of *Qanun's khalwat* ?; 3) How is the enactment of the rules of *qanun* to the people of Aceh, especially about *khalwat*?

LITERATURE REVIEW

Meaning of *Qanun*

The term of *Qanun* has been used for a long time in Malay language or culture. The Book of the "*Undang-Undang Melaka*" compiled in the fifteenth or sixteenth centuries AD has used this term. In Malay, this is used similar with custom and is usually used to distinguish between the laws contained in tradition and the laws contained in the *fiqh*. This allegation of *qanun* terms is incorporated in Malay and Arabic as it is used in conjunction with the presence of Islam and the use of Malayan Arabic in the archipelago.

Qanun is one form of national law that is rooted in culture, in this case Aceh. A law that has a basic and a mature theory through a process, namely a process of cultivation of the law and formalized by the legislature. *Qanun* in *Ensiklopedia Islam* is rooted with *Al-taqnin* which means the size of everything. *Qanun* is used to mention a rule. The terminology of *Al-taqnin* means a collection of laws established by the ruler and has the force of coercion in regulating the relationships of fellow human beings in a society. *Qanun* contains four cases, namely law,

custom, *qanun* and *resam* (where the Qur'an and hadith are published), and from the four cases of *khalwat* (*Zina*) is one of the things he regulated in addition to gambling and liquor.

Zina in Islamic and Qanun Views

In the view of Islamic law, adultery literally means *fahisyah*, which is a vile act. *Zina* in the sense of the term is the sexual relationship between a man with a woman who is not bound to each other in a marital relationship. The *fuqaha* (jurist of Islam) defines adultery, ie sexual intercourse in the sense of entering the penis (male sex) into the vagina of women as declared *haram*, not for *syubhat*, and based on lust.

Zina according to Islamic law is not limited to married people only, but applies to anyone who has intercourse while they are not husband and wife, whether married or unmarried. Anyone who proves convincingly has committed *zina*, he is exposed to *zina*. It's just that there are different punishments that will be imposed on people who have or have never married a person who has never married. In contrast to the positive law that only impose penalty for adulterers who are married, then for those who have not married or on the basis of likes or commonly people call it *samen leven* get together is not given a punishment. In Islamic law the act of *zina* is very severe punishment and is a cruel or bad deed to be avoided.

According to Sudarsono (2001: 634) "if there is *zina*, then for the doers are sentenced to *jilid* or *rajam* on the condition that the act has met the requirements determined by *syara'*. Furthermore, he formulates if there is *zina* that has fulfilled the legal requirements as follows: If the adulterer either male or female free, has baligh, then the punishment as follows: 1) with *jilid* (hit) 100 times and exiled (*tagrib*) for a year for them, mature, intelligent, but never touched with a legitimate wife, 2) if the adulterer has made love with the rightful wife, it is called *Zina muhson*, then his punishment by *rajam* that is, stoned to death. Rasullullah said "let not one of you in *khalwat* with a woman because the real shaitan becomes the third person between you both". (Ahmad 1/18, Ibn Hibban 1/436, At-Thabrani (Al-Mu'jam Al-Awshoth 2/184, and Al-Baihaqi 7/9, validated by Shaykh Al-Albani (As-Sahihah 1/792 no 430).

The Effectiveness of Law

A law is considered to have effectiveness, if it has the ability to perform efficiently in a job to produce maximum (efficient) results consequently, its influence and its impression. The results of the law system are said to be effective when the societal behaviors are consistent with those specified in the applicable law rules. Paul and Diaz (Rachmadi, 2013: 100 says there are 5 rules that must be met, if a law can be said to be effective:

- 1) The easy rule of law to be understood.
- 2) The extent of the people who know the contents of these rules of law.
- 3) The efficient and effective mobilization of legal rules.
- 4) The effective mechanism in resolving disputes.
- 5) The Public recognition of effective rules and legal institutions.

And more importantly understood is that a rule of law that has been accepted by the community must be mobilized by the leaders. For that, the action that must be done is the deployment and the simultaneous use of National resources, in this case a legal product that was born and

perpetuated for the community of its users. Another thing that also should not stay is the readiness of facilities and infrastructure as the strength of the implementation of the rule of law.

RESEARCH METHODOLOGY

This study uses a literature study method with the approach of law effectiveness. The effectiveness approach examines the law conceptualized as actual behavior, as an unwritten social phenomenon, experienced by everyone in a community life relationship. The study of literary or normative law, examines the written law of various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation, formality and strength binding a law and legal language used, but does not examine the applied aspect or its implementation (Muhammad, 2004: 101-102). The resulting targets: 1) resulted in a comprehensive and detailed understanding of the substance of the articles set out in the *qanun* in particular that regulates *khalwat*. The next step 2) a review of the effectiveness of how the people of Aceh understand the rules and values contained in the *Qanun*; and 3) How is the implementation of the rules of law *qanun* to the people of Aceh especially about *khalwat* ?

DISCUSSION

What is the Depth of Qanun Law in the Setting of Khalwat in Aceh?

Based on the view of Acehnese *Qanun*, the act of approaching *zina* is classified into the act of *khalwat* law. The existence of a ban on *khalwat* is contained in the *qanun*, this violation of the *qanun* is punishable, as contained in chapters 4,5,6 and 7 of *Qanun* No. 14 of 2003. *Khalwat* is an act that approaches to *zina*. The birth of this *khalwat qanun* not only raises a supportive opinion, but also raises an opinion that rejects the existence of this *qanun*. The variety of public views on this *khalwat* ban, because this *qanun* not meet the element as a law that effectively reject the *khalwat* society behavior. In addition to the least element of *khalwat* in *qanun*, so it is very difficult to ensnare the actions that can actually lead to *khalwat* actions, *qanun* also set the provisions that are still abstract for the people of Aceh. Consequently they do not have a comprehensive understanding of what and what actions are prohibited and not allowed, so there is a possibility that there will be denials, because there are still opportunities in *qanun*, to play and get out of the punishment by the people of Aceh.

Aceh is known as a strong society with the establishment of religion, so that religion and custom are two sides of the currency that is inseparable in the daily life of the people of Aceh. In Acehnese society, the tradition and religions are united in the beliefs of their people. And it is something written or unwritten that guides the Acehnese society. The rules issued by adat leaders are understood and are the decree of leaders and policy makers for the system in society. In Acehnese society, something that the leaders and the experts have decided must be in tune with the *Shari'a*. If contradictory, the local law born from the customary provisions will be abolished. This is evidence that the people of Aceh strongly uphold the position of religion in daily life. And *qanun* is born from a combination of religious law and customary law of Aceh or adat and religion is a synergy for the existence of *qanun* in Aceh. *Qanun* and its chapters

are not new values for the people of Aceh, but rather the revitalization of values that have long been rooted in Acehese tradition.

What is the Expectation of the Acehese People about the Law of *Qanun* Regarding *Khalwat* ?

The enactment of the *qanun* law must be accompanied by the mental and behavioral readiness of the Acehese people, since the law is essentially a preventive measure for all public attitudes. The people of Aceh are very enthusiastic about the formulation of the study of *qanun* which will basically govern all their behavior, and more importantly it is expected to destroy all forms of *khalwat* behavior in Aceh, but the community wants all the people are equal status in the eyes of law, should not be differentiated, that the law only applies to the little people, then it is more to the fault of law enforcement, because the law itself does not know big, the law applies to all. So if it only applies to the small people then this *qanun* will not be meaningful and will not run perfectly. And if "this *qanun* has been legalized then it is binding for all Acehese" (Adli Abdullah, <http://www.suaradarussalam.com/2014/10/tanggapan-masyarakat-aceh-terhadap.html>) With the existence of this *Qanun*, rape perpetrators will be punished heavier twice *Zina* and be fined, as well as sexual harassment, this is more severe punishment compared with *khalwat*. *Khalwat* problem, *zina*, *ikhtilat* it nationally has not been set then we set in Aceh. (Alyasa 'Abubakar, <http://www.suaradarussalam.com/2014/10/the-community-aceh-terhadap.html>)

Islam is *kaffah* (perfect), its laws are set in Al-qur'an and Hadist, and both of them cannot be separated, for examples of the law of *rajam* or stoning, it is not found in Al-qur'an but there is in *sahih hadith*. So if there is *qanun jinayat* but not complete it is not Islamic *jinayat*, according to man maybe it is yes but according to Allah it must be perfect. Well if there is *rajam* there, if there is a hand cut for thieves or *qisas* law, we just say Islamic *jinayat*.

Now let us see the effectiveness of *qanun* law in minimizing the increase in *khalwat* numbers in this *port city of Mecca*. Viewing from the statistical figures of 2014 cases of *khalwat* that occurred from 2005 to 2007, the number of *khalwat* cases tend to decline. In 2005 there were 8 cases, in 2006 rose sharply to 75 cases, and until June 2007 fell back to number 20. This indicates or indicates that the application of caning law, as a sanction of *khalwat* behavior, is very effective in suppressing the violation of *khalwat qanun*. If at a glance sometimes the case of *khalwat* in Aceh, it is considered trivial if the reader is not from the Acehese, because it could be in other areas of *Zina (khalwat)*, much higher than Aceh. And why this paper is so urgent to be listened to, because Aceh is a barometer of the implementation of Islamic law in Indonesia which means that all forms of immoral behavior must be forbidden in this *rencong* land. In fact there are some slogans that we find in Aceh and a spirit for the people "if they want to avoid the disaster, then stay away from the maximum act".

How is the Enforcement of Rules of Law *Qanun* to the People of Aceh, Especially about *Khalwat*?

Aceh is very different from other provinces in Indonesia. They are permitted by national law to apply *shari'a*-based regulations derived from the basics of Islam, as well as the Acehese view of *Zina* or *khalwat* in contrast to the understanding of others. If there are two adults of different sex who are unmarried in a remote place, it is a criminal offense, hereafter called *khalwat* and fined up to 10 million. But the *khalwat* category is actually much broader than just

adultery, because it also includes rape and seclusion. But this study is more dominant to the understanding of *zina*.

In some issues we hear from the Acehese society, that the law of *qanun* in its implementation is rarely applied to individuals who have a close political relationship with the authorities. A resource person said "this law discriminates if you have a relationship with the person in power, you will be released". And more concerning that the *qanun* is not applied to police or military officers, and rather targeting the poor or marginalized. In view of the above case, the Aceh government should start to be consistent, if law development in Aceh is to grow and develop, so that the *qanun* can be used as a reference for the regulation of public behavior in other regions in Indonesia. We know that Islam is the religion of the majority of adherents in Indonesia, so the rule of *khalwat* in *qanun* is certainly the same as other Muslims in this archipelago.

The development of law in Aceh is implemented based on 2 (two) basic frameworks, namely (1) values, methods, and morals based on *Shari'a* and Islamic teachings, and (2) the development of the law is within a wider environment national legal system. Thus, the implementation of *Shari'a* in the sense of legal formation and legal change in Aceh harmony in the wider environment, the national legal system. The system of values, methods, and morals based on *Shari'a* and Islamic teachings, in accordance with its *kaffah* nature, places humanity in a privileged position, as the caliph of the planet, based on faith. This system has affected the lives of individuals in their behavior, and the order of the Acehese people. Therefore, the system of values, methods, and morals based on *Shari'a* and Islamic teachings form the basis of the law development.

CONCLUSION

Law no. 11 Year 2006 becomes the juridical foundation in the implementation of the two frameworks of the above mentioned base in the development of law in Aceh. In this context, there are 3 (three) basic problems that are urgent and immediately begin to be implemented: First is the programs of the internalization efforts, actualization, and implimentasi principles, values, *syari'ah* and Islamic teachings in the formation of law, both written law and in the formation of law through the rule of law. The formation of the law is a continuous effort without stopping, therefore the business of *Shari'a*-based law formation, which includes *ahwal al-shakhshiyah*, *mu'amalah*, *jinayah*, *qadha'* (court), *tarbiyah*, etc., should be programmed as sustainable business. Second is the institutional arrangement of the legal apparatus in the framework of the implementation of Islamic *Shari'a* which is still not well ordered and comprehensive. To maintain it, the continuous institutional efforts of the legal apparatus is needed, especially strengthening on understanding of due process of law, impartial trial, transparency, accuntability, and the right to counsel. Third is the increased awareness of community law. The successful formation of legal and institutional material of the legal apparatus is not enough to realize the justice and the prosperity through legal development, without being followed by the legal awareness of the community. The legal awareness should be established as a legal culture of the society. (http://www.academia.edu/6837784/Hukum_Cambuk_dan_Pengaruhnya_Against_Kasus_Khalwat_di_Aceh).

REFERENCES

- Ahmad Al. Faruqy. 2011. Qanun Khalwat. Fkultas Syari'ah IAIN Ar-Raniry: Banda Aceh.
http://www.academia.edu/6837784/Hukuman_Cambuk_dan_Pengaruhnya_Terhadap_Kasus_Khalwat_di_Aceh
- Mahfud, MD. 1998. Politik Hukum di Indonesia. Jakarta : Pustaka LP3 ES Indonesia.
- Muhammad, Abdulkadir. 2004. Hukum dan Penelitian Hukum. Bandung : Citra Adytya Bakti: Bandung.
- Nurul Hakim 2012. "Mengkaji budaya Aceh dalam konstelasi Hukum Islam".Penelitian Hibah Bersaing : UMSU.
- Nurul Hakim. 2013. "Mengkaji Kembali Eksistensi Mahar Perkawinan di Aceh Pidie sebagai paya Meminimalisasi Rendahnya Angka Perkawinan pada pasangan Usia Mapan (Rancangan Konsep Mahar : Sebuah Revitalisasi syari'at Islam dan Hukum Adat)".Penelitian Hibah Bersaing : UMSU
- Rachmadi, Triyo. 2013. Buku Pranata hukum sebuah telaah Sosiologis. 25 November 2013.
- Siti, Nurmalasah, 2015. Efektifitas Hukum Qanun di Aceh.:UMSU.
- (See more at: http://www.voa-Islam.com/read/indonesiana/2012/12/06/22197/gawat_perzinahan-tempati-urutan-pertama-penderita-hivaidis-bertambah/#sthash.2mCHOekg.dpuf)
- <http://www.suaradarussalam.com/2014/10/tanggapan-masyarakat-aceh-terhadap.html>