



Analyzing the Offense of Juvenile *Khalwat* in Aceh: Evaluation of *Qanun* Number 14 of 2003 from an Islamic Legal Perspective

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Abstract: Aceh presents an intriguing area of study for numerous researchers in legal domains, owing to its distinct legal system in contrast to other regions in Indonesia. This legal jurisdictional authority underscores the intricacies involved in delineating the jurisdictional boundaries within the overarching framework provided by the national regulations. This is evident in cases of *khalwat*, an offense where a man and a woman date in seclusion. This study delves into an examination of the offense of juvenile *khalwat* in Aceh, as stipulated in *Qanun* Number 14 of 2003, employing Islamic legal theory within a sociological context. The findings of this study suggest that the juvenile occurrence of *khalwat* in Aceh stems from a combination of factors. These include the enduring influence of religious teachings, the prevalence of casual relationships among adolescents coupled with insufficient parental supervision, and the impact of modern social structures on youthful behavior. As a result, they engage in the offense of *khalwat* in public spaces, disregarding societal moral norms and public decorum. This *Qanun* fails to explicitly delineate the parameters for imposing penalties such as *uqubat* (corporal punishment), flogging, and fines. Consequently, it leads to legal disparities in enforcement by the *Wilayatul Hisbah*, particularly when the offender is a minor or immature individual.

Keywords: Juvenile Crime; *Khalwat*; *Qanun* Number 14 of 2003; Islamic law; Aceh

Abstrak: Aceh merupakan daerah di Indonesia yang menarik untuk dijadikan kajian reset oleh banyak peneliti dalam aspek hukum, karena Aceh memiliki sistem hukum yang berbeda dibandingkan dengan daerah lainnya di Indonesia. Yurisdiksi hukum di Aceh ini menggambarkan kekhususan dalam kerangka menyeluruh yang ditentukan oleh peraturan nasional. Hal ini dapat dilihat antara lain dalam kasus *khalwat*, yaitu tindak pidana ringan berupa berdua-duaan laki-laki dan perempuan di tempat sepi. Kajian ini menganalisis tindak pidana *khalwat* anak di Aceh yang diatur dalam *Qanun* Nomor 14 Tahun 2003 menggunakan teori hukum Islam dengan pendekatan sosiologis. Hasil penelitian ini menunjukkan bahwa tindak pidana *khalwat* yang dilakukan oleh anak di Aceh disebabkan karena beberapa faktor, antara lain karena faktor ajaran agama yang masih dipegang erat, namun pergaulan remaja yang longgar dan minimnya pemantauan orangtua, dan karena faktor sistem sosial modern

yang berpengaruh pada perilaku anak. Oleh karena itu, mereka melakukan perbuatan tindak pidana khalwat di tempat umum tanpa memperhatikan asas moral sosial dan ketertiban umum. Qanun ini tidak mengatur secara spesifik batasan seseorang dapat diberikan hukuman berupa *'uqubat*, cambuk, dan denda. Oleh karena itu, Qanun ini menimbulkan ketimpangan hukum ketika dieksekusi oleh Wilayatul Hisbah ketika pelakunya adalah anak di bawah umur atau orang yang belum dewasa.

Kata Kunci: Pidana Anak; Khalwat; Qanun Nomor 14 Tahun 2003; Hukum Islam; Aceh

Introduction

The integration of Islamic law within Aceh Province, as an integral component of the Unitary State of the Republic of Indonesia, has garnered considerable interest for exploration, particularly concerning its application within the legal domain. From a legal standpoint, Aceh operates under a distinct legal framework compared to other regions across Indonesia.¹ This represents the adoption of Islamic law, facilitated by the Indonesian government through the enactment of Law Number 11 of 2006 regarding the Administration of Aceh Province.² Aceh stands as the sole region endowed with special autonomy authority,³ particularly in matters of legal jurisdiction, as outlined in accordance with Law Number 18 of 2001 concerning Special Autonomy. Fundamentally, this legislation serves to establish a unique governmental framework, particularly within the legal realm, for Aceh Province. Within this framework, there exists regulation of Islamic legal authority within the Sharia Court (*Mahkamah Syar'iyah*) and is operationalized through *Qanun* (regional regulations in Aceh).⁴ The legal authority delineated in this regulation underscores the challenges associated with distinguishing between the court's exclusive jurisdiction⁵ and matters governed by Law No. 4 of 2004 concerning Judicial Power.⁶ Aceh's distinctiveness lies primarily in its specialization in the application of Islamic law, as stipulated in *Qanun* No. 11 of 2002 regarding the Implementation of Islamic Sharia.

Qanun, akin to a Regional Regulation, governs the administration of government affairs and community life in Aceh. Specifically in the implementation of Islamic law, *Qanun* functions as a juridical tool guiding the entire process from conception and formulation to execution, employing appropriate methodologies and adhering to standardized criteria that hold authority over all authorized institutions involved in *Qanun* formulation.⁷ The existence of laws or *Qanun* pertaining to *khalwat* (intimacy in seclusion) in Aceh is not a recent development according to the populace of

¹ Danial Danial, "Qanun Jinayah Aceh Dan Perlindungan HAM (Kajian Yuridis-Filosofis)," *Al-Manahij: Jurnal Kajian Hukum Islam* 6, no. 1 (2012): 85–98.

² Zuhlul Pasha, "Lembaga Penyelenggara Pemilu Di Aceh (Studi Atas Pencabutan Pasal 57 & Pasal 60 Ayat (1), Ayat (2), Dan Ayat (4) Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh Melalui Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum)" (Universitas Gadjah Mada, 2018).

³ Yuni Roslaili, Suparwany Suparwany, and Amirulhakim Bin Ahmad Nadzri, "Why the Growth of Qanun Jinayah in Aceh Was Slowly? An Analysis Using Structural Functionalism Theory," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 2 (December 26, 2021): 182–93, <https://doi.org/10.30631/alrisalah.v21i2.928>.

⁴ Erina Pane, "Eksistensi Mahkamah Syar'iyah Sebagai Perwujudan Kekuasaan Kehakiman," *Al-Adalah* 13, no. 1 (2017): 39–52.

⁵ Fadli Fadli and Budi Juliandi, "Negotiations between Positive Law and Islamic Law: Determination of Marriage Guardians at Idi Rayeuk Religious Affairs Office, Aceh, Indonesia," *Journal of Islamic Law* 2, no. 2 SE-Articles (August 26, 2021), <https://doi.org/10.24260/jil.v2i2.329>.

⁶ Syamsuar Syamsuar et al., "Settlement of Islamic Sharia Violations in the Perspective of Teungku Dayah and Local Wisdom Values on the West Coast of Aceh," *Jurnal Ilmiah Peuradeun; Vol 11 No 3 (2023): Jurnal Ilmiah PeuradeunDO - 10.26811/Peuradeun.V11i3.995*, September 30, 2023.

⁷ Ali Geno Berutu, *Penerapan Qanun Aceh Di Kota Subulussalam (Kajian Atas Qanun No. 12, 13 Dan 14 Tahun 2003)* (Ali Geno Berutu, 2016).

Aceh. Given Aceh's reputation as the "Veranda of Mecca", the region has long been characterized by a robust religious life and a profound adherence to Islamic principles deeply ingrained in society, particularly regarding the application of Islamic law since the era of ancient kingdoms.⁸ Nonetheless, there exists a narrative suggesting a sense of apathy and pessimism among the people of Aceh toward the implementation of Islamic law, evidenced by the lukewarm stance of the central government in granting autonomy and authority to regional administrations.⁹ This reluctance is apparent both in the realm of implementing Islamic law, which faces certain limitations, and in the prohibition against imposing punitive measures aligned with Islamic law.¹⁰

There are differing viewpoints concerning the imposition of caning as a punishment, both among Muslims and non-Muslims in Aceh, despite its longstanding presence within the region's criminal justice system. This form of punishment is not unique to Aceh, as it is also prevalent and practiced in various Muslim-majority countries, such as Saudi Arabia, Pakistan, Iran, Malaysia, among others.¹¹ The perception of Islam as being harsh or cruel depends on individual perspectives, shaped by one's philosophical, sociological background, and their understanding of particular cultural norms. From a legal standpoint, all forms of punishment entail a degree of coercion. Nevertheless, they are regarded as preventive measures, both specific and general, aimed at deterring criminal behavior within society. The enforcement of caning penalties in Banda Aceh City is grounded in the *Qanun* concerning *khalwat*, serving as a means of implementing statutory regulations.¹²

The punishment of caning is administered to individuals found guilty of *khalwat*. However, caning is not exclusively reserved for offenders of this particular offense. It is also imposed on individuals who commit various other criminal acts, such as alcohol consumption, gambling, and other transgressions, in accordance with the dictates of Islamic law.¹³ Within the framework of *Qanun* implementation, a total of five actions are deemed as criminal offenses (*jarimah*), comprising: a) propagation of deviant beliefs (pertaining to matters of faith), b) consecutive failure to attend Friday prayers without valid sharia-based justifications (in the realm of worship), c) providing premises with amenities for Muslims who lack valid sharia-based reasons for not fasting (in the realm of worship), d) public consumption of food or drink during the fasting month (in the realm of worship), and e) failure to adhere to Islamic attire norms.¹⁴ In *Qanun* number 14 of 2003 concerning *khalwat* (engaging in immoral conduct), such illicit behavior is not a novel concept. It mirrors the moral context enshrined within the Indonesian Criminal Code.¹⁵ However, notable disparities

⁸ Syamsuar et al., "Settlement of Islamic Sharia Violations in the Perspective of Teungku Dayah and Local Wisdom Values on the West Coast of Aceh."

⁹ Bani Syarif Maula, "Post-Islamism and the Rise of Sharia Laws in Contemporary Indonesia: Aspirations of Implementing Islamic Laws in a Democratic Era," *International Journal of Social Science and Religion (IJSSR)* 4, no. 2 (2023): 163–84.

¹⁰ Aslati et al., "Utilizing Science and Maqāṣid Al-Sharī'ah in Resolving Contemporary Issues of Islamic Family Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (March 16, 2024): 17–36, <https://doi.org/10.24090/mnh.v18i1.10571>.

¹¹ Muzakkir Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Al-Ahkam* 32, no. 2 (2022): 131–52.

¹² Ali Geno Berutu, "Qanun Aceh No 14 Tahun 2003 Tentang Khalwat Dalam Pandangan Fikih Dan KUHP," *Muslim Heritage* 2, no. 1 (2017): 87–106.

¹³ Ita Musarrofa, "Reconstructing the Concept of Khalwat Sahihah in the Digital Era: An Analysis of Scholars' Legal Perspectives," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (2023): 577–602.

¹⁴ Ali Geno Berutu, "Penalaran Fikih Terhadap Rumusan Ancaman Pidana Ta'zir Pada Pelaku Khalwat Dalam Qanun Aceh No. 6 Tahun 2014," *El-Mashlahah* 9, no. 2 (2019): 119–36, <https://doi.org/10.23971/maslahah.v9i2.1294>.

¹⁵ Vivi Ariyanti and Supani, "Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (March 16, 2024): 37–58, <https://doi.org/10.24090/mnh.v18i1.8280>.

exist between the two. The Criminal Code, originating from the Netherlands, encompasses issues of decency comprehensively and in greater detail compared to the *Qanun* governing *khalwat*. In the *Qanun*, *khalwat* is defined as clandestine interactions between two or more unrelated adults of opposite sexes lacking a marital relationship (*muhrim*). Conversely, the Criminal Code encompasses minor moral transgressions within its framework of immoral acts, which are punishable offenses.¹⁶

An intriguing aspect of the Criminal Code is that immoral acts are subject to legal prosecution if they occur in public; however, if conducted in private, they are no longer subject to legal scrutiny. The underlying objective of criminal law concerning the regulation of morality is geared towards safeguarding individuals from being perturbed by behaviors that may incite undesirable impulses in others. Upon examining the comparison between the *Qanun* of *khalwat* in Aceh and the immoral offenses outlined in the Criminal Code, it becomes evident that the regulation of *Khalwat* lacks legal grounding in the legislation preceding it.¹⁷ Specifically, the rationale behind the decision (consideration section) of the *Qanun* lacks detailed explanation. Consequently, several *Qanuns* enacted by the Aceh government have garnered criticism from various stakeholders, particularly the *Qanun* governing *khalwat*. In this regard, instances of clandestine activities between spouses are adjudicated by the Acehnese populace or society without undergoing a formal trial process beforehand.¹⁸ Furthermore, the criminal offenses of *khalwat* occurring in Aceh can be addressed through two avenues: either via the *Wilayatul Hisbah* (moral police) or by customary resolution facilitated through village governance. In several instances within Aceh, the resolution of *khalwat* offenses may proceed according to custom, as outlined in Aceh *Qanun* Number 9 of 2008. The existence of these dual procedures for addressing *khalwat* cases has sparked conjecture among the public, suggesting a perception of selective law enforcement. The provisions governing the resolution of *khalwat* criminal offenses, which permit the selection of one of the legal settlement procedures, have been established by several regulations, including Aceh *Qanun* Number 6 of 2014 concerning *Jinayat* (criminal law), *Qanun* Number 14 of 2003 concerning *Khalwat*, and Aceh *Qanun* Number 9 of 2008 concerning Customs.¹⁹

This study employs a juridical-empirical methodology. This genre of research scrutinizes the practical application of legal norms within society. Consequently, such research endeavors to analyze real-world conditions, thereby facilitating the acquisition of pertinent data essential for its objectives. In this research, the method employed for sample selection adopts a purposive sampling technique, specifically focusing on individuals deemed relevant to the study's objectives. From the entire population under scrutiny, researchers exclusively interviewed individuals engaged in the practice of *khalwat*. In order to gather pertinent and credible information, this research employs both library research and field research methodologies.²⁰ The objective of the library research component is to procure secondary data, encompassing an examination of statutory regulations, scholarly journals, and pertinent documents germane to the scope of this study. Conversely, field

¹⁶ Ahmad Nurozi and Dadan Muttaqien, "The Effectiveness of Crime Prevention with Corporal Punishment in Nanggroe Aceh Darussalam," *Millah: Journal of Religious Studies*, 2021, 223–44.

¹⁷ Mursyid Djawas et al., "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," *Ahkam: Jurnal Ilmu Syariah* 23 (2023).

¹⁸ Andi Rachmad, Yusi Amdani, and Zaki Ulya, "Kontradiksi Pengaturan Hukuman Pelaku Pelecehan Seksual Terhadap Anak Di Aceh," *Jurnal Hukum Dan Peradilan* 10, no. 2 (2021): 315–36.

¹⁹ Danial Murdani, "Globalization and the Paradigm of Islamic Law Implementation in Aceh," *Mazahib* 21, no. 1 (July 2022), <https://doi.org/10.21093/mj.v21i1.4323>.

²⁰ Ani Purwati, "Metode Penelitian Hukum Teori & Praktek" (Jakad Media Publishing, 2020).

research is utilized to collect primary data through interviews with respondents.²¹ Consequently, the methodology employed for synthesizing research findings utilizes descriptive techniques. This approach endeavors to elucidate the factual observations concerning the practices observed at the research site and strives to provide scientific explanations of the research outcomes grounded in relevant legal provisions.²²

Criminal Offense of *Khalwat* in Qanun No. 14 of 2003

The offense of *khalwat* is characterized as the secretive engagement between individuals of the opposite sex lacking marital ties, occurring in seclusion, and potentially involving immoral or sexually suggestive behavior, with the possibility of adultery.²³ The conduct of *khalwat* carries the inherent risk of adultery, thereby warranting its classification as a criminal offense (*jarimah*) and subject to the imposition of punitive measures.²⁴ In Islamic criminal law, the concept of *khalwat* diverges from its interpretation in other legal frameworks. Within Islamic jurisprudence, *khalwat* refers to the clandestine interaction between individuals of opposite genders who lack a lawful marital bond, conducted in seclusion, thereby facilitating immoral conduct in the realm of sexuality or potentially culminating in acts of adultery.²⁵ In essence, engaging in acts of *khalwat* in Aceh is deemed impermissible for all individuals, as elucidated in the Qanun of *Khalwat* concerning its prohibitions and preventative measures. The Qanun articulates explicitly that no individual, group, or governmental entity is permitted to facilitate or provide support, particularly in terms of accommodating or shielding those involved in *khalwat*. Article 7 underscores the collective responsibility of everyone, whether individually or as part of a group, to thwart instances of “*khalwat*” from taking place.²⁶

Meanwhile, Article 22 outlines the penalties (*‘uqubat*) for individuals who contravene the provisions of the Qanun of *khalwat*, which include the following:

1. Those who breach the regulations stipulated in Article 4 may face the penalty of *‘uqubat ta’zir*, entailing a maximum of 9 canings and a minimum of 3 canings, or a fine ranging from Rp. 10,000,000 (ten million rupiah) to Rp. 2,500,000 (two million five hundred thousand rupiah).
2. Individuals found in violation of the regulations delineated in Article 5 may be subject to *‘uqubat ta’zir*, resulting in imprisonment for a maximum of 6 months and a minimum of 2 months, and/or a fine ranging from Rp. 15,000,000 (fifteen million rupiah) to Rp. 5,000,000 (five million rupiah).
3. Those who contravene the prohibitions outlined in Articles 5 and 6 are deemed to have committed a *jarimah ta’zir*.

²¹ Muhammad Syamsudin, “Operasionalisasi Penelitian Hukum,” 2007.

²² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

²³ Teuku Muttaqin Mansur et al., “The Effectiveness of the Implementation of Customary Fines in Settlement of Seclusion Cases in Banda Aceh,” *Sriwijaya Law Review* 4, no. 1 (2020): 52–61.

²⁴ Ansori Ansori and Muhammad Fuad Zain, “Analysis of the Constitution Court Verdict Number 46/PUU-XIV/2016 about Morality Criminal,” *Yuridika* 34, no. 2 SE-Civil Law (May 1, 2019): 261–78, <https://doi.org/10.20473/ydk.v34i2.9820.285> and 295 related to adultery, rape and molestation (sacrilege or abuse

²⁵ Vani Fahlian, “Penyelesaian Tindak Pidana *Khalwat* Melalui Hukum Adat (Studi Kasus Wilayah Hukum Kecamatan Blangpidie)” (Aceh: UIN Ar-Raniri Aceh, 2021).

²⁶ Reza Syahputra, “Implementasi Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayah Di Kota Banda Aceh Dan Kota Lhokseumawe” (UIN Sunan Gunung Djati Bandung, 2022).

Hence, *khalwat* constitutes a criminal offense (*jarimah*) and may incur the penalty of ‘*uqubat ta’zir*, which involves sanctions dictated by state authorities’ policies. The specifics of *ta’zir* punishment are not explicitly outlined in the Qur’an and Hadith, necessitating governmental policies to articulate and implement such penalties comprehensively.²⁷ The legal foundation for imposing *ta’zir* penalties upon offenders rests on the fiqh principle *al-ta’ziru yaduru ma’a maslahah*, signifying that *ta’zir* punishment is contingent upon considerations of societal welfare (*maslahat*), thereby adhering to the principles of justice within society.²⁸ The *ta’zir* penalty prescribed for individuals engaging in *khalwat* entails lashing or flogging, typically administered with a whip or similar instrument. In Aceh, rattan is commonly utilized for this purpose. One of the objectives of caning as a punishment for *khalwat* offenders is to serve as a deterrent, fostering awareness and accountability among perpetrators while also issuing a cautionary message to other members of society against transgressing established regulations. Moreover, caning can be efficacious when it elicits a sense of shame and does not endanger familial relationships. Additionally, the implementation of caning as a form of punishment can yield cost savings for the government compared to other punitive measures outlined in the existing Criminal Code. The enactment of *Qanun* concerning the prohibition of *khalwat* aims to undertake preventive measures at both remedial and repressive levels, as exemplified by the imposition of penalties in the form of flogging and fines (*gharamah*).²⁹

The *Khalwat* (Seclusion) Phenomenon in Aceh’s Public Space

Broadly speaking, Aceh is a province characterized by a multitude of ethnicities, cultures, and religious beliefs. The societal diversity serves as a potent catalyst for the province’s development and growth.³⁰ Consequently, law enforcement is intrinsically linked to the principle of *ibi ius ibi societates* (where there is society, there is law). The aspiration is for the presence of law to establish norms that govern societal life, fostering public order. The legal framework in Aceh encompasses both codified and customary laws. The residents of Aceh frequently encounter instances of promiscuity among unmarried couples, which contravene religious norms, often driven by individual desires for gratification. This conduct raises apprehensions within Acehnese society, particularly among those adhering to Islam.³¹

A prevalent occurrence in society is the phenomenon of seclusion (*khlawat*), wherein a man and woman convene in a secluded location (a private setting), appearing to be alone together without being legally married. Essentially, Islamic law in Aceh acknowledges varying interpretations and responses to acts of seclusion, contingent upon regional contexts. In regions where the majority population is non-Muslim, some perceive such acts of seclusion as commonplace or socially

²⁷ Dahyul Daipon, “Komparatif Hukum Acara Pidana Positif Dan Hukum Acara Pidana Islam (Jinayah) Aceh Dalam Proses Penyidikan,” *El-Mashlahah* 10, no. 1 (2020): 47–63.

²⁸ Berutu, “Penalaran Fikih Terhadap Rumusan Ancaman Pidana Ta’zir Pada Pelaku *Khalwat* Dalam *Qanun* Aceh No. 6 Tahun 2014.”

²⁹ Harits Amir, “Hambatan Dan Strategi Penegakan *Qanun* Jinayah Nomor 6 Tahun 2014 Pasal 1 Ayat 23 Tentang *Khalwat* (Studi Kasus Tempat Wisata Pantai Ulee Lheue, Banda Aceh)” (UIN Ar-Raniry Fakultas Syariah dan Hukum, 2023).

³⁰ Said Amirulkamar et al., “Administration Reagent of Aceh Family Law *Qanun*: Siri Marriage Motives Towards the Legality of Polygyny,” *De Jure: Jurnal Hukum Dan Syariah* 15, no. 1 (2023): 129–43.

³¹ Bukhari Bukhari, “*Khalwat* Dalam Perspektif Hukum Islam Dan Hukum Positif,” *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 10, no. 2 (2018): 109–21.

acceptable.³² Furthermore, in regions where the majority adhere to Islam, the consensus is that *khalwat* constitutes behavior conducive to adultery and is expressly forbidden under Islamic Qanun law.³³ Upon examination, the root cause of public instances of *khalwat* typically stems from unbridled desires or impulses within individuals unable to regulate their emotions and cravings. Consequently, several factors can be identified as contributing causes of *khalwat* occurrences in public spaces, which include the following.³⁴

1. Diminished religious conviction, which ideally should be ingrained within an individual's beliefs;
2. Insufficient understanding of Islamic jurisprudence;
3. Inadequate parental education and guidance provided to their offspring;
4. Succumbing to contemporary trends, particularly prevalent among the millennial generation, thereby embracing a liberal lifestyle with individuals of the opposite sex;
5. Erosion of societal norms regarding modesty within the public sphere;
6. Limited self-awareness, leading to engagement in promiscuous behavior.³⁵

Hence, adolescence is frequently perceived as a phase marked by an exploration of one's identity. This developmental period, transitioning from childhood to adulthood, often sees individuals striving to assert their autonomy and distance themselves from parental authority. A key motivation behind this inclination is the desire to establish connections with peers rather than solely relying on parental guidance. By engaging in self-adjustment, adolescents can cultivate relationships with their peers, thereby accentuating their social characteristics. Notably, teenagers' distinct social traits become more apparent when they express preferences or pursue aspirations aligned with their desires, lending the impression that they are inching closer to adulthood.³⁶

The presence of public spaces serves to invigorate the mind, offering openness and freedom to the gaze. However, witnessing unsettling scenes involving young individuals engaging in behaviors contrary to legal statutes, ethical principles, and religious precepts can disturb those present in or utilizing these public areas. Consequently, this disturbance impairs the intended function of public spaces, detracting from their ideal purpose. Presently, instances of *khalwat* transgressions extend beyond the teenage demographic, involving adults as well. Remarkably, adolescents frequently find themselves ensnared in social predicaments stemming from promiscuous behavior. *Khalwat* incidents sow discord within families, precipitating familial strife and, in severe cases, contributing to marital dissolution among married offenders. Adultery arises from individual choices, resulting in uncertain lineage, tarnished family honor, and the potential transmission of incurable diseases, serving as poignant ramifications of such transgressions.³⁷

³² Satria Juanda, Burhanuddin Abdul Gani, and Syarifah Rahmatillah, "The P2TP2A's Effort to Cope with the Intensification of Sexual Abuse of Children in Perspective of the Islamic Family Law (A Case Study at the City of Banda Aceh)," *El-Ussrah: Jurnal Hukum Keluarga* 6, no. 1 (2023): 115–30.

³³ Faradilla Fadlia et al., "Ruang Publik Dan Privat: Fenomena Razia Pakaian Di Aceh," *Intizar* 29, no. 1 (2023): 31–44.

³⁴ Ali Geno Berutu, "Pengaturan Tindak Pidana Dalam Qanun Aceh: Komparasi Antara Qanun No. 12, 13, 14 Tahun 2003 Dengan Qanun No. 6 Tahun 2014," *Mazahib*, 2017, 87–109, <https://doi.org/10.21093/mj.v16i2.821>.

³⁵ Zulfia Hanum Alfi Syahr et al., "The Role of Indigenous Peoples, Social Workers, and the Syar'iyah Court in Diversion of Children Perpetrators of Jinayah," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 113–24.

³⁶ Muhammad Yunus Bidin, "Penerapan Hukum Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat Terkait Tindak Pidana (Jarimah) Khalwat," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 3, no. 1 (2019).

³⁷ Muksalmina Muksalmina et al., "Khalwat Dalam Kajian Hukum Pidana Islam Dan Penyelesaiannya Menurut Qanun Jinayat Aceh," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 2, no. 4 (2023): 435–41.

According to field research findings, numerous incidents of *khalwat* take place in tranquil environments such as city squares and similar settings. Approximately 15 cases have been investigated, including one involving a perpetrator who subsequently entered into marriage after being apprehended for engaging in seclusion in a public area. One such case involves MH, a 21-year-old individual, who frequented the square during afternoon hours. Influenced by peer pressure and emboldened by the secluded nature of the surroundings, MH resorted to engaging in seclusion. Exposure to adult content further contributed to his actions, with the serene environment providing a conducive atmosphere for his clandestine behavior. Similarly, DH engaged in seclusion due to the proximity of the location to his school and the favorable quiet conditions. With many lights being turned off and the area often enveloped in darkness, the presence of Moral Police patrols was infrequent, rendering DH's actions relatively unnoticed by passersby.³⁸

Based on this data, it becomes apparent that both teenagers and adults engage in the criminal act of *khalwat* in public spaces due to a deficiency in understanding Islamic law. Additionally, several conducive factors, such as the quietude of the square and the lack of governmental supervision, offer young individuals opportunities to engage in illicit behavior. This poses an unsightly spectacle for those passing through such areas. Consequently, there is a pressing need for vigilant monitoring by the Moral Police and other authorities to prevent the younger generations from being led astray by actions that contravene Sharia law, such as engaging in *khalwat* with non-marital partners.³⁹

The offense of juvenile *khalwat* in Aceh viewed from Islamic law

In 2002, Aceh enacted the *jinayat* law (Sharia criminal law) through *Qanun* no. 11 of 2002, which primarily consisted of symbolic provisions. Subsequently, in 2003, additional regional regulations were introduced, including *Qanun* number 12 of 2003 addressing alcohol consumption and similar activities, number 13 of 2003 targeting gambling, and number 14 of 2003 addressing seclusion (*khalwat*).⁴⁰ The *Qanuns* enacted in 2003 stipulate that offenders may face a maximum punishment of 40 lashes with a cane, yet in practice, lashings rarely exceed 12. However, the 2014 *Qanun* establishes a minimum threshold of 10 lashes and a maximum of 150. Moreover, in March 2018, the Aceh Province Islamic Sharia Service initiated a review and solicited public feedback regarding the potential implementation of the death penalty, including beheading, for severe offenses such as murder.⁴¹

Qanun No. 6 of 2014, also known as the *Qanun of Jinayat*, represents the most recent regional legislation governing Islamic criminal law in Aceh.⁴² This *Qanun* explicitly prohibits various offenses, including the consumption and production of alcohol (*khamr*), participation in gambling (*maisir*), engaging in seclusion with unrelated individuals of the opposite sex (*khalwat*), extramarital sexual relations (*ikhtilat*), adultery, sexual harassment, rape, making unfounded accusations of adultery

³⁸ Samsudin Aziz, "Kanunisasi Fikih Jinayat Kontemporer: Studi Materi Muatan Qānūn Jināyat Aceh Dan Brunei Darussalam," *Al-Ahkam* 24, no. 2 (2014): 173–94.

³⁹ Sakhawi, "Taqnin Method of Qanun Jinayah and Problems of Its Implementation in Aceh, Indonesia," *Journal of Islamic Law* 3 (2022): 193, <https://doi.org/10.24260/jil.v3i2.817>.

⁴⁰ Hasnul Arifin Melayu and Md Zawawi bin Abu Bakar, "Politics of Law Legislation of Qanun Sharia Islam in the Province of Aceh, Indonesia," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 4, no. 2 (2019): 200–215.

⁴¹ Eka N.A.M Sihombing, "Analisis Wacana Hukuman Pancung Di Provinsi Aceh," *Journal Legislasi Indonesia* 16, no. 4 (2019): 514–23.

⁴² Citra Dewi Keumala, Rizanizarli Rizanizarli, and Syarifuddin Hasyim, "Testimonium De Auditu in The Case Rape of Childrens," *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 2 (2022): 151–61.

without providing four witnesses (*qazaf*), sodomy between men (*liwat*), and sexual relations between women (*musahaqah*).⁴³ For transgressors, punishments range from caning, fines, to imprisonment, contingent upon the gravity of the offense. The severity of the penalty is commensurate with the nature of the violation. In the case of *khalwat*, the punishment is relatively lenient, with a maximum penalty of 10 lashes, 10 months of imprisonment, or a fine equivalent to 100 grams of gold. Conversely, for perpetrators of child rape, the punishment is significantly more severe, ranging from 150 to 200 lashes, 150 to 200 months of imprisonment, or a fine ranging between 1,500 to 2,000 grams of gold. The discretion to determine the appropriate punishment lies with the presiding judge.⁴⁴

In the enforcement of Islamic law, the issue of *khalwat* is addressed in *Qanun* Number 14 of 2003. The formulation of this *Qanun* signifies a proactive stance taken by the Aceh government, particularly in North Aceh Regency, concerning regulations governing decency and addressing instances of adultery.⁴⁵ The *Qanun* pertaining to *khalwat* offenses primarily serves as a preventive measure to curtail the prevalence of adultery cases within the jurisdiction of North Aceh Regency. Termed *sadd al-zari'ah* in Islamic legal doctrine, such preventive measures aim to obstruct the pathways leading to the occurrence of adultery.⁴⁶

Article 4 of *Qanun* Number 14 of 2003 regarding *khalwat* stipulates that engaging in seclusion (*khalwat*) is considered forbidden (*haram*). According to Article 5, all individuals are prohibited from participating in acts of seclusion. Additionally, Article 6 delineates that any person, community group, government entity, or business establishment is barred from facilitating or shielding individuals engaged in seclusion.

In addition to *Qanun* no. 14 of 2003, the offense of *khalwat* is delineated in detail within Aceh *Qanun* Number 6 of 2014, addressing *Jinayat* Law. This 2014 *Qanun* further delves into the legal procedures applicable to minors, as stipulated in Article 66 and Article 77. However, the enforcement of these regulations regarding minors implicated in *khalwat* tends to deviate from the principles of the juvenile justice system in Indonesia.

The implementation of legal provisions pertaining to juvenile offenders engaged in criminal seclusion under *Qanun* Number 6 of 2014 concerning *Jinayat* Law, as outlined in Article 66 and Article 67, entails imposing penalties amounting to one-third of those applicable to adults. However, this application of the law concerning juvenile offenders in criminal seclusion, as stipulated in *Qanun* Number 6 of 2014, diverges from the framework established by Indonesia's National Law Number 12 of 2011 concerning the Juvenile Criminal Justice System. Such discordance with established legal frameworks raises concerns regarding legal certainty,⁴⁷ utility, and judicial equity in addressing juvenile offenders involved in criminal seclusion under the *Jinayat* Law.

⁴³ Hudzaifah Achmad Qotadah, Ali Abdul Wakhid, and Is Susanto, "Problems With the Implementation of *Qanun* Aceh Number 6 of 2014 Concerning *Jinayat* Law," *Analisis: Jurnal Studi Keislaman* 22, no. 1 (2022): 111–32, <https://doi.org/10.24042/ajsk.v22i1.6556>.

⁴⁴ See more, Nurhayati Nurhayati, "Pelaksanaan Tindak Pidana Pemerkosaan (Studi Komparasi Antara Hukum Islam Dan *Qanun* *Jinayat* Di Aceh)," *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 1 (2018): 17–30, <https://doi.org/10.24090/mnh.v12i1.1358>.

⁴⁵ Ali Geno Berutu, "Penerapan *Qanun* Aceh Nomor 14 Tahun 2003 Tentang *Khalwat* (Mesum) (Studi Kasus Penerapan Syariat Islam Di Kota Subulussalam)," *Jurnal Hukum Islam IAIN Pekalongan* 15, no. 2 (2017): 323–52, <https://doi.org/10.28918/jhi.v15i2.763>.

⁴⁶ Munawaroh Hifdhotul, "Sadd Al-Dzari'At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer," *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 12, no. 1 (2018).

⁴⁷ Fitri Wahyuni, Ishaq Ishaq, and Aris Irawan, "Criminal Sanctions for Corruption Crimes Based on Perspective Study of Renewal Law and the Relationship with Islamic Criminal Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 2 SE-Articles (December 31, 2021): 219–33, <https://doi.org/10.30631/alrisalah.v21i2.795>.

According to the provisions of the *Qanun of Jinayat*, juvenile offenders, defined as individuals under 18 years of age, are subject to legal proceedings under juvenile justice legislation. However, the *Qanun of Jinayat* in Aceh specifies that minors aged between twelve and eighteen years who commit offenses such as *khalwat* may receive a sentence equivalent to one-third of that imposed on adults. For instance, in the case of *khalwat*, juveniles can face caning penalties comparable to those of adults, yet not exceeding one-third of the prescribed punishment.⁴⁸ If an adult offender is liable to receive ten lashes, a juvenile aged between twelve and eighteen may be subject to approximately two to three lashes, constituting one-third of the adult penalty.

The punishment of juvenile offenders for criminal acts, including *khalwat*, under the Aceh's *Qanun of Jinayat* is not independent. Instead, its implementation and procedural framework are governed by subsidiary regulations, specifically Governor Regulation Number 5 of 2018 concerning the Implementation of the *Jinayat* Procedural Law. The procedure for administering caning penalties to juvenile offenders under Aceh Governor's Regulation No. 5 of 2018 entails seeking restorative justice through diversion for minors engaged in criminal acts such as *khalwat*, as outlined in Articles 37 to 47.

In certain instances, albeit not universally applied, law enforcement conducted by the *Wilayatul Hisbah* (Moral Police) against juvenile perpetrators of *khalwat* is addressed immediately on-site, bypassing formal court proceedings. Instead, cases involving children in conflict with the law are initially directed towards restorative justice measures or diversion to law enforcement agencies, with the aim of resolving them without resorting to formal court adjudication.

Islam, as a deeply rooted religion, wields significant influence over its adherents. Its teachings emphasize the cultivation of virtuous living, encompassing the maintenance of harmonious relations between individuals and God, fostering positive interactions among people, and preserving a respectful relationship between humans and the natural environment.⁴⁹ These principles are codified within the Al-Quran and Hadith, serving as guiding tenets for a righteous and fulfilling life. Divine teachings instruct individuals to uphold righteousness, fairness, fidelity to their obligations, trustworthiness, and kindness towards others, thereby fostering harmony and preventing hostility and injustice.⁵⁰ As servants of God, humans are obligated to fulfill His commands to the best of their ability and continuously seek His favor and benevolence.

The Qur'an and hadith do not provide explicit directives on the specific punishment for those engaged in *khalwat*. While the Qur'an prohibits actions that may lead to adultery, the precise penalties for *khalwat* are not delineated. Consequently, scholars classify *khalwat* as a *ta'zir* offense, falling within the jurisdiction of discretionary punishment administered by authorities or judges.⁵¹ The aim is to deter offenders from repeating similar transgressions.

The prohibition of seclusion (*khalwat*) finds firm grounding in Islamic jurisprudence literature. This prohibition encompasses all individuals who are not legally married. One commonly cited legal

⁴⁸ Muhd Fadhil Almaududi, "Penerapan Hukum Terhadap Jarimah *Khalwat* Yang Dilakukan Anak Di Bawah Umur Menurut Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayah" (UIN Ar-Raniry, 2021).

⁴⁹ Ahmad Shofi Muhyiddin, "Model of Islam Nusantara Da'wah Based on Multiculturalism," *Jurnal Ilmu Dakwah* 43, no. 1 (2023): 49–77.

⁵⁰ Ridwan Ridwan and Muhammad Fuad Zain, "COVID-19: New Normal and New Procedures of Worship in Indonesia," *Fieldwork in Religion* 16, no. 2 (2021): 258–76.

⁵¹ Ramadhan Syahmedi Siregar, Muhammad Syakban, and Muhammad Ikhlas bin Rosele, "The Role of Marriage Guardian of the Same Clan in the Traditional Marriage of Batak Toba Muslims in Samosir Regency in the Perspective of Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 41–52, <https://doi.org/10.24090/mnh.v17i1.6750>.

rationale for the prohibition of *khalwat* is derived from Quranic verse Surah Al-Isra' verse 32, which states, "Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils)". This verse elucidates the prohibition against approaching adultery. Scholars interpret the notion of approaching adultery as encompassing all actions that may lead to adultery, or even those that closely resemble it, such as embracing, kissing, and indeed, seclusion. Therefore, any factors or incentives leading to adultery must be actively avoided, including the practice of seclusion. Another legal justification, as documented in a hadith found in Al-Bukhari, originates from Ibn Abbas, who reported Prophet Muhammad's instruction: "A man must never be in seclusion (alone) with a woman, and a woman should not travel unless accompanied by her male relatives (*mahram*)".

Scholars concur that perpetrators of adultery will face punishment according to *hudood*, although there exists variance among scholars regarding the execution of such punishment. The divergence of opinion centers on the severity of transgressions committed by men engaging in adultery. Some perspectives argue that cases adjudicated by the Sharia court concerning *khalwat* encroach upon the realm of adultery. The court's ruling on *khalwat* aligns with Islamic jurisprudence, whereby adult offenders are categorized as *zina muhsan*, referring to adultery committed by individuals in valid marriages. According to Islamic legal doctrine, those found guilty of *zina muhsan* are subjected to the punishment of stoning, wherein they are pelted with stones until death ensues.⁵²

Islamic jurisprudence prescribes penalties for criminal offenses with distinct objectives. For instance, the enforcement of punishment for adultery aims to serve as a deterrent, fostering the preservation of lineage (*hifz al-nasl*) as outlined in *Maqasid al-Sharia*, or the objectives of Islamic law.⁵³ Similarly, criminalizing the practice of seclusion (the meeting of men and women in secluded places) serves a legal purpose aimed at preventing adultery. Imposing penalties on those who violate the prohibition of seclusion is a preventive measure against a more serious offense, namely adultery.

The implementation of Islamic law by the Aceh government warrants commendation from all sectors of society, particularly the Muslim populace. In this endeavor, the government, facilitated by the Sharia court, endeavors to deter individuals from engaging in *khalwat* and adultery by imposing public caning sentences, thereby instilling a sense of shame among offenders and serving as a cautionary measure to others.⁵⁴ The sentences pronounced by the judge against the defendants involved in *khalwat* are classified as *jarimah ta'zir*, which denotes legal sanctions whose nature and magnitude are unspecified in Sharia law. Instead, Islamic jurisprudence entrusts the determination of such penalties to state rulers (*ulil amr*) or competent judges vested with the authority to interpret the law. *Ta'zir* punishment is administered to admonish or instruct both current and prospective offenders.

In Islamic jurisprudence, minors are not held fully accountable for their actions in criminal matters. Fiqh scholars assert that authorities have the prerogative to impose educational (*ta'dibiyyah*)⁵⁵ penalties on juvenile offenders, aimed at instructing them towards virtuous conduct. Consequently,

⁵² Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib* 21, no. 2 SE-Articles (December 2022), <https://doi.org/10.21093/mj.v21i2.4800>.

⁵³ Husni Mubarrak, Faisal Yahya, and Iskandar Iskandar, "Contestation on Religious Interpretation in Contemporary Aceh Shari'a: Public Caning in Prison as the Case of Study," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (January 10, 2023): 213–22, <https://doi.org/10.31958/juris.v22i2.10258>.

⁵⁴ Rini Fitriani et al., "Legal Protection for Wife and Child as Consequence of Head of Family's Criminal Imprisonment Enforcement," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2023, 77–88.

⁵⁵ M Nurul Irfan and Masyrofah, *Fiqh Jinayah* (Jakarta: Amzah, 2013), 136.

there is general consensus among fiqh scholars that criminal sanctions should not be applied to immature individuals. Therefore, in Aceh, the punishment for *khalwat* involving underage offenders is determined in accordance with the Governor's Regulation, aligning with Islamic legal principles and historical fiqh perspectives.

Conclusion

Engaging in acts of *khalwat* is forbidden according to Islamic teachings. However, its classification as a legal offense is entirely contingent upon the authorities, thus positioning *khalwat* within the realm of *ta'zir* criminality. In Aceh, the enforcement of regulations regarding juvenile perpetrators of *khalwat* under Qanun Number 6 of 2014 concerning *Jinayat* Law is delineated in Articles 66 and 67. According to Article 66, individuals under 18 years old are subject to resolution under juvenile criminal justice legislation. Article 67 stipulates that those aged between 12 and 18 may receive a punishment equivalent to one third of the adult sentence. This implementation aligns with Aceh Governor Regulation Number 5 of 2018, detailing the *Jinayat* Procedural Law. As per the *Qanun* of *Jinayat*, minors can face 2 to 3 lashes. Consequently, this application diverges from Indonesia's juvenile criminal justice system, as outlined in National Law Number 12 of 2011. Nonetheless, the Aceh Governor's Regulation permits restorative justice mechanisms, such as diversion, for handling children in conflict with the law.

Therefore, in line with Islamic law, the punishment of minors cannot be fully executed. According to fiqh scholars, juvenile offenders may receive educational sanctions, the specifics of which are at the discretion of the authorities. Consequently, in Aceh, the punishment for *khalwat* among underage perpetrators is determined based on gubernatorial regulations, following the principles of Islamic law or the perspectives of historical fiqh scholars.

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