

## *Maqashid Sharia* Perspective of Legal Sanction for *Khalwat* Actors in Aceh

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### Abstract

This paper discusses the dynamics of punishment for khalwat perpetrators which is habitually inclined to implement the rule of law underlined in Aceh. The aim of this research is to analyze the provision of legal sanctions carried out by Acehnese for khalwat perpetrators based on the *maqashid* sharia perspective. This study was conducted by using empirical juridical research with law sociology approach, and the source of the main data was an interview which was completed by supporting data such as significant articles related to the khalwat cases in Aceh. The results of this study point out that normatively the provision of sanctions for khalwat perpetrators in Aceh are regulated into two forms, namely *Jinayat Law Qanun*, and the Development of Traditional Life and Custom *Qanun*. Each of these regulations has differences in the provision of law sanctions for the khalwat perpetrators that cause law dualism. Practically, the sanctions determined by Acehnese for the khalwat perpetrators are various depending on each region. There are four kinds of sanctions enforcement, namely; First: *Jinayat Law Qanun*, Second: Customary Law, Third: the sanction of punishment in the name of customary law, Fourth: persecution. Based on *maqashid* al sharia aspect, some of these punishments are considered not in accordance with sharia principles, law of persecution, and in the name of customary law. Indeed, these

regulations tend to be decided arbitrarily and even followed by torture.

**Keywords:** *Khalwat*; customary law; *maqashid al-syariah*; *qanun Aceh*

## Introduction

*Khalwat* is an act that is prohibited by religion and nation. *Khalwat* is an act carried out by two people of the opposite sex (male and female) who are not married or who are not *mabram* in a certain quiet place.<sup>1</sup> *Khalwat* is a very despicable behavior carried out by people who are unable to contain their lust in certain quiet conditions and places where sexual disobedience or adultery is possible. *Khalwat*, which in Acehese society was originally categorized as a taboo act, has now become a place to socialize between men and women, sometimes closed or openly.<sup>2</sup> The essence of the rules of seclusion as stated in the Aceh Qanun as well as the law that lives in the community is a step to enforce Islamic law in Islamic communities, especially in Aceh.

The prohibition of *khalwat* is the result of people's reflection on the rampant promiscuity between women and men. Promiscuity can result in harassment or other actions that can degrade the dignity of women and the dignity of society. The emergence of the ban on seclusion in Aceh is of course based on the experience of the Acehese people so far. The free association of young people has resulted in various other evil acts, such as adultery. As a result, a number of children were born without a father. In Aceh literature, *khalwat* is one of the acts in the category of taboo and taboo acts.<sup>3</sup>

Resolving cases of *khalwat* in Aceh, in practice, sometimes is not in accordance with the qanun of jinayat law that applies in Aceh, so often the settlement of cases of *khalwat* is not in accordance with existing rules, so that there are multiple laws in society in giving punishments for the settlement of cases of seclusion, starting from playing judges themselves (persecution), or customary law and ends with qanun jinayat, which results in injustice in society. To dispel the act of judging other people by the community against the *jarimah* actor, a qanun that regulates this problem was born, namely Aceh Qanun Number 14 in 2003 regarding *khalwat*, and continued to Aceh Qanun Number 6 2014 concerning the law of *jinayat*.

In the context of the implementation of Islamic law in Aceh, the Qanun refers to laws in the form of Provincial or Regency/City Regional Regulations that regulate the implementation of government and people's lives

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<sup>1</sup> Alyasa' Abubakar, *Hukum Pidana Islam Di Provinsi Nanggroe Aceh Darusalam* (Banda Aceh: Dinas Syariat Islam Aceh, 2006), p. 80.

<sup>2</sup> Mohd. Harun, *Memahami Orang Aceh* (Bandung: Cita Pustaka Media Perintis, 2009), p. 35.

<sup>3</sup> Harun, 135.

in Aceh. The creation of a qanun is a normative juridical instrument so that the implementation of the formation, standard method and standardization is accountable to all institutions that have a role in the formation of the qanun.<sup>4</sup>

This paper discusses the ambiguity in law enforcement regarding the imposition of sanctions for *kehalwat* perpetrators in different Acehnese communities. On one hand, the settlement of *kehalwat* has been regulated in the jinayat law qanun, while on the other hand, it is resolved by customary law through the qanun for fostering traditional life and customs which, in practice, there are various models in each village in solving the seclusion case.

In fact, there are also multiple punishments given, starting from the persecution carried out by the community against the perpetrators of *kehalwat* in the form of acts of violence, mass processions and being bathed in sewage water before being given to the authorities to be sentenced to qanun jinayat. All the punishments given are considered to be a lesson for others. This is one of the goals of Islamic law which is to be a lesson (*ibrab*) for others.<sup>5</sup> However, some of the legal sanctions imposed by the community are not in accordance with Islamic principles. Of course, all the legal sanctions that have been mentioned are ambiguous in the application of the law. Therefore, there should be legal certainty.<sup>6</sup>

The *kehalwat* case that occurred in Aceh is rising, and it still requires a solution to each problem, so that there are many studies related to the problem of *kehalwat* that have been carried out by previous researchers, including Yusrizal et al.,<sup>7</sup> who in their writing states about how the Customary Court process compares to the Syar'iah Court. The discussion focuses on the study of the legal culture of the Acehnese people in resolving cases of *kehalwat*. Meanwhile, this research examines the double justice received by the perpetrators of *kehalwat* as a result of the ambiguity of the Aceh Qanun regarding *kehalwat*. Furthermore, an international article written by Ismail<sup>8</sup> discusses the perspective of the law of *kehalwat* as a sharia crime which is the case in Malaysia. While this research examines criminal acts that vary from society because they are supported by existing regulations.

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<sup>4</sup> Sirajuddin, *Pemberlakuan Syariat Islam Di Nangroe Aceh Darussalam Pasca Reformasi* (Yogyakarta: Teras, 2011), p. 59.

<sup>5</sup> F A Arfa, "Denda Sebagai Alternatif Hukuman (Kajian Hukum Islam Kontemporer)," *Journal Analytica Islamica* 3, no. 1 (2014): 68.

<sup>6</sup> Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melaluikonstruksi Penalaranpositivisme Hukum," *Jurnal Crepido* 01, no. 01 (2019): 20, <https://ejournal2.undip.ac.id/index.php/crepido/>.

<sup>7</sup> Yusrizal, Mukhlis, and Amalia, "Adat Court vs Syar'iyah Court: Study of the Legal Culture of Aceh Communities Completing the Khalwat Cases," *International Journal of Recent Technology and Engineering* 7, no. 6 (2019): 1367–70.

<sup>8</sup> Ismail, "The Legal Perspective of Khalwat (Close Proximity) as a Shariah Criminal Offence in Malaysia," *Pertanika Journal of Social Sciences and Humanities* 24, no. 3 (2016): 923–35.

Another article related to this theme, written by Muntazar et al,<sup>9</sup> explains that the settlement of *khalwat* cases in Gampong is resolved through customary courts in accordance with the mandate of the qanun, but there is a misconception between the articles in the qanun and the realization in the Gampong community. Meanwhile, the researchers analyze and sits in depth related to the qanun related to *khalwat* analyzed with the *maqashid al-syariah* paradigm. Furthermore, another article written by Wahyu Fahrul Rizki<sup>10</sup> states that the legal sanction of marriage is a solution to the act of *khalwat* which has become a hereditary custom in the people of Bandar Pusaka Aceh Tamiang. Meanwhile, this research examines the forms of punishment for the perpetrators of seclusion, which are in accordance with Islamic law.

Based on those literature reviews, and from each of the problematic issues of the theme above, as well as to show where the gaps or positions of this research is, the comparisons and differences between this research and other research that have been carried out by previous researchers are clear. Thus, this research leads to the sanctions model laws that are relevant to the perpetrators of *khalwat* with the conditions of the Acehnese people in accordance with Islamic law. So the researchers considered that there are still few studies related to the phenomenon of punishment for *khalwat* perpetrators carried out by some Acehnese people based on theories in Islamic law.

The researchers take the *Maqashid Syariah* perspective regarding how the form of legal sanctions against perpetrators of *khalwat* is ideal. The legal principle must provide a deterrent effect or legal awareness, namely benefit. This *maqashid al-syariah* will provide a clear principle of legal certainty regarding which legal rules will be used on the perpetrators of *khalwat*. Then by looking at the cases of *khalwat* that still occur in the Aceh region with various problems of resolution, the researchers will reformulate how the legal sanctions for *khalwat* perpetrators are in accordance with Islamic law and the conditions of the Acehnese people that have been running in Aceh to date. *Maqashid Syariah* is one of the measuring tools of Islamic law to determine whether or not the punishment is good so that renewal can be carried out in the future.

This article belongs to the field research. The approach method used in this research is a normative approach and a legal sociology approach with qualitative analysis. The reason for using a normative approach is to analyze the rules related to the theme, in this case the regulation on *khalwat*. The normative approach is an approach that is carried out by looking at the legal aspects

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<sup>9</sup> Muntazar, Hamid A. Sarong, and Mohd. Din, "Penyelesaian Kasus Khalwat Melalui Peradilan Adat Aceh Complete Case of the Khalwat (Adultery) Through Aceh Administration," *Media Syariah* 19, no. 1 (2017): 159.

<sup>10</sup> Wahyu Fahrul Rizki, "Pernikahan Sebagai Sanksi Khalwat: Studi Kasus Desa Bedulang, Bandar Pusaka, Aceh Tamiang," *Al-Abwal* 11, no. 10 (2018): 69–78.

(statute approval) in this case examining the qanun related to the study of *khalwat*. The purpose of this approach is to look at the legal aspects of *khalwat* sanctions in Aceh. Meanwhile, the reason the researchers used the sociology of law approach is to see from the social aspect of the community the sanctions for *khalwat* perpetrators in community life based on customs that have been running in Acehnese society.

The primary data sources were obtained through field research using an inductive frame of mind, and through a process of in-depth interviews with competent parties regarding community punishments that had occurred so far. In addition to using the main source, this study also used secondary data sourced from important studies or important writings related to this research. Furthermore, doing qualitative data processing to be analyzed and presented in the research results.

Based on the phenomena that exist in Acehnese society, there are still many various sanctions practices against perpetrators of *khalwat*. This fact shows that there are different punishments for the perpetrators of seclusion, resulting in legal dualism in general in its application. So the purpose of this study is to analyze how the forms of giving legal sanctions for perpetrators of *khalwat* among the people of Aceh are based on *maqashid al-syariah*. This study is important because in general it shows how the experience of the community in carrying out the rules or punishments that exist in the *gampong* so that the *gampong* is in an orderly manner and avoids acts of *khalwat*. This research will provide a scientific contribution to the people of Aceh, to be able to use the results of this research in solving *khalwat* cases based on *maqashid al-syariah*.

## Discussion

### The Punishment of *Khalwat* in Aceh from Time to Time

*Khalwat* is an act of immorality and vile at the same time despicable. The same is true from the perspective of tradition, where the act of being alone with a man and a woman without marriage ties, especially in places unknown to the public, is considered an act of ignorance.<sup>11</sup> The province of Aceh is very thick with traditions and customs in the community, so one of the things regulated in customary law is a violation of decency, as in the case of *khalwat*/immorality. In Acehnese traditional literature, *khalwat* is a sin which is one of the taboo acts and is included in the group of taboo acts or behavior.<sup>12</sup> For example, if a man walks hand in hand with a woman, they will be hated by society and it can

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<sup>11</sup> Mochammad Hoesin, *Adat Atjeh* (Banda Aceh: Dinas Pendidikan dan Kebudajaan, Propinsi Daerah Istimewa Atjeh, 2018), p. 184.

<sup>12</sup> Harun, *Memahami Orang Aceh*, 135.

embarrass the family. Therefore, in Acehnese customs, the term courtship, the promiscuity of men and women (not mahram) is not known.<sup>13</sup>

Doing something together with the opposite sex in a situation that is not known to others will be considered a prohibited act, even in other terms it is called a ginger act or is called (ugly) and is categorized as immoral/*maksiet*.<sup>14</sup> Therefore, efforts to avoid immoral acts have been regulated in youth associations; all these rules live in Acehnese society and continue to be maintained until now. This rule exists because it has become part of the community's view of *khalwat* as a vile and despicable act and as an anticipation, the Acehnese usually cover it up to other residents or to other villages so that the disgrace that occurs is not known by other villages because it will affect the interaction between residents or between villages.

Every act that violates the rules, if violated will be given legal sanctions, especially all the legal provisions that have been regulated by Allah swt, then a crime will be given a punishment in the form of a criminal, in this case according to the legal dictionary criminal threats are interpreted as a formulation of the threat of punishment for a crime committed by a person. Criminal threat in Islamic criminal law is termed as *al-'Uqubah*,<sup>15</sup> which includes things that are detrimental as well as criminal acts. Disgraceful acts according to the Shari'a are immoral acts that must be punished.<sup>16</sup> There is a term in Islamic criminal law for perpetrators of crimes that are prohibited by Islamic law with the threat of hudud or takzir, namely the term *jarimah*, then for the perpetrators of khalwat, it is called jarimah khalwat. The definition of Jarimah according to Abdul Qadir Audah, namely:

محظورات شرعية زجر الله عنها بحد أو تعزير

*Jarimah is an act that is prohibited by shari'ah and is threatened with had or takzir*<sup>17</sup>.

The culture of omission of *khalwat* behavior has been considered as part of reflecting on identity and socializing among others, so that in the end adultery can occur and there are even attempts to embezzle Acehnese religious and customary values with global humanism values that are packaged in form of human rights.<sup>18</sup> The institution authorized to resolve the khalwat in Aceh is the

<sup>13</sup> Harun, 139.

<sup>14</sup> Aboe Bakar Dkk, *Kamus Aceh Indonesia 2* (Jakarta: Pusat Pembinaan dan Pengembangan Bahasa Departemen Pendidikan dan Kebudayaan, 1985), p. 568.

<sup>15</sup> Pemerintahan Aceh, "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," .

<sup>16</sup> Abdurrahman Al-Maliki and Ahmad Al-Daur, *Sistem Sanksi Dan Hukum Pembuktian Dalam Islam*, ed. Syamsuddin Ramadhan (Bogor: Pustaka Thariqul Izzah, 2004), p. 1–2.

<sup>17</sup> Abdul Qadir Audah, *Al-Tasyri' Al-Jinai' Al-Islami Muqaraman Bi Al-Qanun Al-Wadh'i*, Juz 1 (Bairut: Dar al-Kutub 'Ilmiah, n.d.), p. 75.

<sup>18</sup> Mizaj Iskandar and Emk Alidar, *Otoritas Lembaga Adat Dalam Penyelesaian Kasus Khalwat Di Aceh*, ed. Irwansyah (Banda Aceh: Dinas Syariat Islam Aceh, 2020).

Syari'ah Court.<sup>19</sup> However, in the qanun jinayat, Article 24 states that the *jarimah khabwat* is the authority of the customary court which is settled according to the provisions of the Aceh Qanun regarding the development of traditional life or other statutory regulations related to customs. Then the customary institution also becomes the authority in resolving khalwat. this is also strongly supported in the qanun of customary law.<sup>20</sup>

Historically, Aceh has gone through difficult times, namely during the conflict between the Free Aceh Movement and the Indonesian army. The protracted conflict in Aceh at that time did not only result in significant loss of life and property, but also resulted in changes in various fields of social and political life of government. One of them is in the field of law enforcement which creates a vacuum at all levels. This vacuum then has a further impact on ways of resolving criminal cases in society, especially cases of immorality and immoral violations.<sup>21</sup>

A further consequence is the emergence of the phenomenon of legal execution by members of the community. Researchers find past records of the types and how people's justice was carried out in the past. The history of the past has become a reference for researchers in assessing and considering how the events of the past are still happening today. So with the data and information found by researchers in the past, it shows that punishments for perpetrators of disobedience in Aceh are tried according to custom through local customary institutions, namely as follows;

**Table 1. People's Court Data against Khalwat Actors of the Past<sup>22</sup>**

No	Case	Punishment	Place and time
1	Unmarried couple	Paraded by Residents	Kluet Utara, Aceh Selatan. 30 Oktober 1999
2	Unlawful couple in mob raid, brought to meunasah	Mandatory bathed	Ujong Batee, Aceh Besar. 1 November 1999
3	Adultery	Whipped 100 times	Blang Pidie, Aceh Selatan. 27 November 1999
4	Unmarried couple	Paraded by Residents	Tapak Tuan, Aceh Selatan. November 1999

<sup>19</sup> Ali Geno Berutu, “Mahkamah Syar’iyah Dan Wilayah Hisbah Sebagai Garda Terdepan Dalam Penegakan Qanun Jinayat Di Aceh,” *Al-Maslahah* 15, no. 1 (2019): 104.

<sup>20</sup> Iskandar and Alidar, *Otoritas Lembaga Adat Dalam Penyelesaian Kasus Khalwat Di Aceh*.

<sup>21</sup> Rusjdi Ali Muhammad and Khairizzaman, *Revitalisasi Syariat Islam Di Aceh* (Banda Aceh: Dinas Syariat Islam Aceh, 2018), 86.

<sup>22</sup> Muhammad and Khairizzaman, 87–88.



5	Iimmorality	Paraded by Residents	Simpang Rima, Aceh Besar. Desember 1999
6	A prostitutes and an old men accused of immorality	Paraded by Residents	Peuniti, Banda Aceh. 14 Desember 1999
7	A resident is suspected of adultery	Paraded by Residents	Jantho, Aceh Besar. 14 Desember 1999
8	Two Perverted Couples	Paraded by Residents	Takengon, Aceh Tengah. 14 Desember 1999
9	Couple caught doing perverted action	Paraded by Residents	Desa Hagu Tengoh, lhoksemawe. 15 Desember 1999

The data above show that most of the punishments given by the community in the people's judiciary against the perpetrators of *jarimah khalwat* in the past were predominantly in the form of being paraded by residents in public, although the punishment for this mistake is still being applied in some region today.

### The Enforcement of *Khalwat* Law Sanctions in Aceh

Based on the results of the search in the research field, the researchers see that the punishment by the community for the perpetrators of *khalwat* in Aceh has been going on for a very long time in the Aceh region, based on the data above which shows that the punishments for the perpetrators of this crime have been carried out since 1999 until now. However, the penalties given vary in each region.

In recent years, there have been rampant punishments by the public for those who have been exposed to *khalwat* in the public sphere and in the media. Therefore, the researchers describe several events that occurred about how the punishment given by the community to the perpetrators of seclusion in several districts/cities in Aceh Province. Based on the social facts that have occurred in the community, as well as with the news published in the public sphere, there are legal sanctions against the perpetrators of *khalwat* so far. For more details, in the following, the researchers will show the people's judicial data based on the excerpt of the description above, namely as follows;

**Table 2. Data on People's Courts of *Khalwat* Actors in Aceh**

No	Case	Place & time	Punishment
1.	Unmarried khalwat couple.	Gp. Cot Masjid, Lueng Bata. Kota Banda Aceh.	1. Mass Paraded 2. Bathed in the sewage water (Ditch)



		18 April 2021. <sup>23</sup>	3. Bathed in tub water in a mosque 4. Dry in the sun until the clothes are dry 5. Submitted to Wilayatul Hisbah (WH) and then processed according to the Qanun of Jinayat law
2.	Unmarried khalwat couple.	Gp. Munjeng. Meuraxa, Banda Aceh. September 2018	Ateuk Kec. Kota 14 1. Mass Paraded 2. Bathed in the sewage water (Ditch) 3. Submitted to Wilayatul Hisbah (WH) and then processed according to the Qanun of Jinayat law
3.	Unmarried khalwat couple.	Gp. Bitai, Baru, Kota Aceh. 7 november 2010	Kec. Jaya Banda 1. Violence, in the form of getting beaten 2. Mass Paraded 3. Bathed in the sewage water (Ditch) 4. A fine of paying two goats. 5. Expelled from the village/Gampong
4.	College students (Man and Woman) living together without marriage	Gp. Teureubeh. Jantho. Besar. 28 Mei 2021 <sup>24</sup>	Kec. Kab. Aceh 1. Mass Paraded 2. The Gampong traditional fine is in the form of 1 (one) mayam (3grams) of pure gold and one complete glutinous rice dish. 3. Expelled from the village/Gampong
5.	Unmarried khalwat couple.	Gp. Kayee Lee. Ingin Jaya. Aceh Besar. 6 Maret 2018	Kec. Kab. 1. Bathed in the sewage water (Ditch) 2. Submitted to Wilayatul Hisbah (WH) and then processed according to the Qanun of Jinayat law
6.	A couple living together	Gp. Kota Lintang. Simbang. Kuala Kab.	1. Mass Paraded 2. Bathed in tub water in a mosque 3. Doing community service in the

<sup>23</sup> Lihat; [https://www.instagram.com/p/cn0kuwynw6e/?utm\\_medium=share\\_sheet](https://www.instagram.com/p/cn0kuwynw6e/?utm_medium=share_sheet).

<sup>24</sup> [https://www.instagram.com/p/CPc5CvaNr6k/?utm\\_medium=share\\_sheet](https://www.instagram.com/p/CPc5CvaNr6k/?utm_medium=share_sheet)

	without marriage	Aceh Tamiang. Juli 2021 <sup>25</sup>	20	courtyard of the prayer room 4. Giving <i>khanduri</i> (alms) to 20 orphans 5. Apologies
7.	A couple living together without marriage	Gp. Paya Bujok Seulemak. Langsa Barat. Kota Langsa. 26 Juli 2021 <sup>26</sup>		1. Doing community service around housing complex 2. Apology with a letter of agreement 3. Pledge oath
8.	Khalwat couple with <i>sirri</i> marriage	Gp. Paya Bujok Seulemak. Langsa Barat. Kota Langsa. 28 Juli 2018 <sup>27</sup>		Bathed in the sewage water (Ditch)
9.	Unmarried khalwat couple.	Gp. Cut Mamplam. Kec. Muara Dua. Kota Lhokseumawe. 19 Februari 2020		1. Bathed in the sewage water (Ditch) 2. Submitted to Wilayatul Hisbah (WH) and then processed according to the Qanun of Jinayat law
10.	Unmarried khalwat couple.	Julok, Kab. Aceh Timur. 28 Mei 2018		Violence in the form of getting beaten

Based on the events mentioned above, it shows that there is an irony in the people's judiciary. Therefore, it is necessary to have a legal basis for this people's/customary court, as a basis for society to act, and see to what extent things are allowed and what are not allowed in the people/customs judiciary. Some community members of the customary law unit call the customary courts as custom courts, custom leaders or custom meetings. The implementation of customary justice in the Aceh region is now supported by a number of laws and regulations, Qanun and agreements governing the administration of customary justice in Aceh.<sup>28</sup>

<sup>25</sup> [https://www.instagram.com/p/CRipW9btrj6/?utm\\_medium=share\\_sheet](https://www.instagram.com/p/CRipW9btrj6/?utm_medium=share_sheet)

<sup>26</sup> Syafi'i, "Hasil Wawancara" (Geuchik Gp. Payabujok Seulemak. Kota Langsa. 3 Agusutus 2021).

<sup>27</sup> <https://news.detik.com/berita/d-4140636/ombudsman-sayangkan-sanksi-siram-air-comberan-ke-pejabat-di-aceh>

<sup>28</sup> Juniarti, "Peran Strategis Peradilan Adat Di Aceh Dalam Memberikan Keadilan Bagi Perempuan Dan Kaum Marjinal," in *Annual International Conference on Islamic Studies (AICIS XII)* (Surabaya: Kementerian Agama, 2012), 2455.

Based on the results of interviews with several informants at related institutions, *first*, the chairman of the Aceh Customary Council (MAA) Prof. Dr. Farid Wajdi Ibrahim revealed that customary legal sanctions against perpetrators of seclusion must be carried out in a civilized manner by conciliating, not using physical violence, because it is something that demeans a person. Every customary law sanction given should be in writing.<sup>29</sup> *Second*, an interview with the head of the counseling and information division of the Aceh Islamic Shari'a Service stated that it is not permissible to punish the perpetrators of *khalwat* by means of persecution, especially in the name of customary law, because it is contrary to Islamic law, customary law and positive Indonesian law. It should be resolved through jinayat law which has national legal certainty.<sup>30</sup> *Third*, an interview with the Aceh Ulama Consultative Council (MPU) represented by Dr. Tgk. H. Mujibuttabriy as deputy chairman of the Aceh MPU revealed that he strongly rejects the persecution carried out in society against those who are guilty, and upholds customary law that dignified practice in society. Therefore, cooperation with all parties and government institutions is needed, to change the paradigm of society in dealing with the resolution of *khalwat* that occurs.<sup>31</sup>

Over time, seeing social problems as a result of *khalwat* acts committed by *jarimah* actors and as a preventive measure in tackling vigilante acts (persecution) in society, in 2014 Qanun Number 6 concerning the law of jinayat was born, which is the jinayat law as an Aceh version of the Criminal Code (KUHP).<sup>32</sup> Although there are some groups who oppose the existence of this qanun on jinayat law here and there, especially feminists who oppose the existence of the qanun on jinayat law because it harms women.<sup>33</sup>

The jinayat law qanun states that *khalwat* cases can be resolved with two settlement models, namely *first*, in accordance with article 23 with the threat of 'uqubat ta'zir, the whipping of a maximum of 10 (ten) lashes or a maximum fine of 100 grams of pure gold or 10 (ten) lashes or a maximum fine of 100 grams of pure gold. ten) months imprisonment.<sup>34</sup> *Second*, in accordance with article 24, the *jarimah khalwat* which is the authority of the customary court is resolved according to the provisions of the Aceh qanun regarding the development of

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<sup>29</sup> Farid Wajdi Ibrahim, "Hasil Wawancara" (Banda Aceh. 29 Juni 2021).

<sup>30</sup> Husni, "Hasil Wawancara" (Dinas Syariat Islam Aceh. Banda Aceh. 28 Juni 2021).

<sup>31</sup> Mujibuttabariy, "Hasil Wawancara" (Majelis Permusyawaratan Ulama Aceh, Banda Aceh. 28 Juni 2021).

<sup>32</sup> Ridwan Nurdin, "Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 42, no. 2 (2019): 356, <https://doi.org/10.30821/miqot.v42i2.542>.

<sup>33</sup> Kompas, "Qanun Jinayah Aceh Rugikan Perempuan?," <https://www.dw.com/id/qanun-jinayah-aceh-rugikan-perempuan/a-41074165>, 2017.

<sup>34</sup> Dinas Syariat Islam Aceh, "Hukum Jinayat & Hukum Acara Jinayat" (Banda Aceh, 2015), 20–21.

customary life and customs or other legislation regarding customs.<sup>35</sup> There is an imbalance in the settlement of legal sanctions of *khalwat* acts in the Aceh qanun regarding jinayat law that, so that the enforcement of *khalwat* legal sanctions in Aceh is generally carried out in two forms based on existing qanuns, namely customary law and jinayat law.

### Forms of Legal Sanctions for *Khalwat* Actors in Aceh from the *Maqashid al-Syariah* Perspective

As explained above regarding the ambiguity of the rules of punishment for *khalwat* perpetrators carried out by the community and even getting multiple legal sanctions, researchers need to explain which punishment according to the *maqashid al-syariah* perspective is in accordance with Islamic sharia principles. However, before that, the researchers analyzed the forms of punishment for *khalwat* actors in society based on the above events, the aim is for researchers to analyze more deeply related to legal sanctions against seclusion actors according to the *maqashid al-syariah* perspective which are permissible and which are not in accordance with the principles of *khalwat* in Islam, namely as follows;

**Table 3. Forms of Community Punishment against *Khalwat* Perpetrators in Aceh**

No	Punishment	Punishment model
1.	Persecution (people own judgment)	1. Beaten 2. Mass Procession/being paraded in public 3. Bathed in the sewer (ditch).
2.	In the name of customary law	1. Fine to pay a goat or 2. Fine money priced in gold 3. Cleaning the neighborhood 4. Married
3.	Customary law; Qanun No. 9 of 2008	1. Fine in the form of giving the specified animal 2. Money for the party 3. Apologies in front of the public 4. Expulsion from the village 5. Married 6. Residents' neighborhood cleaning
4.	Aceh Qanun No. 6 of 2014 concerning Jinayat Law	1. Whip and or; 2. Fines and or; 3. Prison

<sup>35</sup> Aceh, 21.

Of the four types of settlement of khalwat cases above, which are legal in the legal system of the Aceh government, namely customary law and jinayat law. While the two categories of settlement of khalwat cases above, namely persecution and in the name of custom, are the settlement of illegal seclusion cases, which do not have a clear legal basis. Some of these forms of punishment when viewed from the *maqashid al-syariah* aspect are felt to be inconsistent with sharia principles, the law of persecution and in the name of adat tends to be decided at will and even followed by persecution and even multi-punitive sanctions occur, resulting in legal uncertainty for the perpetrators of *khalwat*. Therefore, the researchers focus on customary law and jinayat law which are models for the settlement of khalwat punishment in the Aceh region.

In the context of the *maqashid al-syariah* perspective in terms of customary law, assessing that customary law is very good in Acehnese society, because customary law contains Islamic teachings, in reconciling a problem in social life and is the culture and local wisdom of the Acehnese people which has been passed down from generation to generation. who already live in the community that must be preserved. However, it is necessary to formulate and redirect how good and wise customary law is to the community.<sup>36</sup>

In the community, in the implementation of customary law, there are choices of legal sanctions that vary from one village to another, so that customary law sometimes results in the absence of legal awareness of the perpetrators of seclusion, because there is a choice of customary punishment that should not be given to the perpetrators of seclusion. perpetrator of seclusion. If we examine more deeply about the qanuns that talk about customary law, especially regarding the case of khalwat, then no one clearly states how the standard procedure is but only explains in general terms, this is returned to the gampong party who made the agreement in the *reusam* gampong.<sup>37</sup>

One of the qanuns that contain cases of seclusion are resolved by customary law, namely through Aceh Qanun Number 9 of 2008 concerning the development of customary life and customs, which states that there are 18 (eighteen)<sup>38</sup> problems that may be resolved in the gampong area. One of the 18 (eighteen) is a case of *Khalwat*. So this basis makes the community to be able to act to punish the perpetrators of seclusion, especially customary legal sanctions. This is also reinforced in the jinayat law qanun Number 6 of 2014 in article 24 which states that the *jarimah khalwat* which is the authority of the customary

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<sup>36</sup> Nailur Rahmi and Rinta Okta Henny, "Sanksi Adat Tentang Larangan Perkawinan Terhadap Orang Sesuku Dengan Pelaku Zina," *Al-Istinbath Jurnal Hukum Islam* 5, no. 2 (2020): 329–42, <https://doi.org/10.29240/jhi.v5i2.1525>.

<sup>37</sup> Peraturan Pemerintah, "Qanun Aceh Nomor 9 Tahun 2008," Pemerintah Aceh (2008).

<sup>38</sup> Lihat; Pemerintah. Qanun Aceh nomor 9 Tahun 2008, Pasal 13.

court is resolved according to the provisions in the Aceh qanun regarding the development of customary life and customs.<sup>39</sup> Even the perpetrators of khalwat receive multiple punishments, namely the gampong tradition and the jinayat qanun.

The punishment given by the community to the perpetrators of seclusion as discussed above has advantages and disadvantages. Therefore, something positive from the imposition of the punishment must be maintained, but something negative must be abandoned, and cannot be used anymore. Therefore, we need a sanction that is applied in the application of customary law in accordance with Islamic principles, namely through the theory of *maqashid al-syariah*, it will be found how the actual punishment for *khalwat* perpetrators should be applied in society, especially the Acehnese people who prioritize customary law in settlement of the Jarimah khalwat case that often occurs in Aceh. Therefore, the jinayat qanun is formulated as a regulation that solves the problem, which in its normative and applied studies there are still problems.

If we analyze the qanun jinayat which is a new legal order (fiqh) which is the treasure of jinayat fiqh thought and is the implementation of Islamic law, the qanun jinayat applies one of the main principles, namely *al-mubafazhah 'ala qadimish shalih wal akhzu bil jadidil ashlab*, maintaining tradition by continuing to innovate. So that this jinayat qanun is still possible to be revised in the future by making legal innovations that are in accordance with the demands of the times and the condition of the Acehnese people in general. This Qanun jinayat is part of the Islamic criminal law legislation applied in Indonesia.<sup>40</sup>

The central purpose of this *maqashid al-mukallaf* is so that whatever form of activity is carried out by the mukallaf is beneficial for him.<sup>41</sup> In addition, applying *Maqashid al-Mukallaf* correctly will bring a person to be able to create benefits in the *dharuri* element at the level of maintaining religion (*Hifdhu ad-Din*), soul (*Hifdhu an-Nafs*), reason (*Hifdhu al-Aql*), offspring (*Hifdhu an-Nafs*), and progeny (*Hifdhu an-Nash*), and property (*Hifdhu al-Mal*).<sup>42</sup> Therefore, there is always a benefit behind everything that is prohibited by the syaria. The act of adultery is at the level of the *dharuri* prohibition because it can produce religiously illegitimate offspring, ignoring the rules related to obtaining offspring will damage the existence of the lineage (descendants), sometimes in the world

<sup>39</sup> Lihat; Dinas Syariat Islam Aceh, "Hukum Jinayat & Hukum Acara Jinayat" (Banda Aceh, 2015), h. 70.

<sup>40</sup> Umarani Azkha, Syahrizal Abbas, and Mohd. Din, "Analisis Yuridis Terhadap Rumusan Jarimah Pemerkosaan Dalam Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," *Al-Istinbath Jurnal Hukum Islam* 5, no. 2 (2020): 193, <https://doi.org/10.29240/jhi.v5i2.1784>.

<sup>41</sup> Alvan Fathony, "Maqashid Al-Syariah Sebagai Konsep Dasar Dalam Teori Pembentukan Hukum Islam Di Indonesia," *Islam Nusantara* 02, no. 02 (2018).

<sup>42</sup> Ahmad Rasyuni, *Nazhariyah Al-Maqashid Ind Al-Imam Al-Syathibi* (Virginia: The International Institute of Islamic Thought, 1995), p. 14.

and in the hereafter. So that every act that leads to adultery must also be prohibited in order to block the way for adultery to occur, such as *khalwat*. The act of *khalwat* indeed is not adultery, and will not end by committing adultery. However, *khalwat* is prohibited from blocking the way for violating the prohibition that is *dharuri* because it can be harmful to one's self and others.

If you look at the existing arguments, related to the verse regarding *khalwat*, it is found that through *Maqāshid al-Syari'ah* rather than the prohibition of *khalwat*, which can lead to adultery, and make the perpetrator repeat the act of *khalwat*, namely addiction so that it can damage religion, soul, mind, lineage, and treasure. So, the logical reason (*illat*) for the prohibition of *khalwat*, is that it leads to adultery and addiction. Based on this, it can be developed using the analogy method (*qiyas*) that everything that can lead to adultery and addiction can be declared unlawful, for example, such as acts of pornography, action or viewing pornographic things, or fantasizing about things that arouse sexual desire, lust and so on that can lead to adultery.

Thus, the *illat* of law on a proposition if it is known, can be done by *qiyas* (analogy) against it. Based on the explanation related to the prohibition of *khalwat* in the *maqashid al-syariah* perspective above, therefore the researcher will examine the *maqashid al-syariah* concept of how the punishment for the perpetrators of *khalwat* according to the *maqashid al-syariah* perspective has benefits for the perpetrators of *khalwat* and society. As for the understanding of *maqashid al-syariah* that the researchers cites in this case, namely, in accordance with Abdul Wahab al-Khallaf's statement that *maqashid al-syariah*, namely;

والمقصد العام للشارع من تشريعه الأحكام هو تحقيق مصالح الناس بكفالة ضرورياتهم، وتوفير حاجياتهم وتحسينياتهم.<sup>٤٣</sup>

*God's general purpose in enforcing the law, is to ensure the achievement of human benefit which includes all primary needs, and to provide solutions to secondary and tertiary needs for humans."*

With regard to the benefits that must be created, when viewed from its interests and advantages, al-Syatibi and other scholars classify *maqashid al-Sharia* into three levels, namely *al-dharuriyyat* (primary), *al-hajiyat* (secondary), and *al-tahsiniiyyat* (tertiary).<sup>44</sup> So that in formulating punishment for the perpetrators of seclusion, of course, it must include one of the three levels of *maqashid al-syariah* with the main level (*ad-dharuriyah*) namely the five main elements, namely *al-din* (religion), *al-nafs* (soul), *al-'aql* (reason), *al-nasb* (descendants), and *al-mall* (wealth).

<sup>43</sup> Abd Wahhab Khallaf, *Ilmu Ushul Fiqh* (Kairo: Maktabah ad-Dakwah al-Islamiyyah, 1978), 197.

<sup>44</sup> Abu Ishak Asy-Syathibi, *Al-Muwafaqat Fi Ushulil Syariah*, Juz 2 (Bairut: Dar al-Kutub 'Ilmiyah, 2003), 8.



In order to create benefit in this world and in the hereafter, the scholars concluded various forms of protection to create benefit,<sup>45</sup> which must be maintained and realized.

Based on the results of the researchers' analysis of the two qanuns that touch on the issue of khalwat legal sanctions, the implementation of the khalwat punishment in accordance with the *maqashid al-syariah* is more to the jinayat law qanun as determined by the Aceh government, although the qanun jinayat in its application there are problems. There are several reasons (*ilat*) according to the perspective of *maqashid al-syariah* in the application of legal sanctions that must be in accordance with the jinayat law qanun Number 6 of 2014 as follows;

1. Qanun jinayat law Number 6 of 2014 is positive in the wider community compared to customary law which has a limited positive level in the local community. This is in accordance with the rules *درء المفاصد مقدم على جلب المصالح* (“*rejecting damage must take precedence over bringing benefit*”), so in this case, rejecting *mafsadat*, namely customary justice which has many problems in society compared to the qanun jinayat in the settlement of khalwat cases, must be prioritized, namely setting aside traditional *khalwat* and prioritizing the jinayat law in force in Aceh.
2. The law of jinayat in Aceh is implemented within the framework of special privileges and autonomy under the Unitary State of the Republic of Indonesia, so that the law of jinayat works within the national legal system.<sup>46</sup> This is the main point of choosing the Qanun on Jinayat Law Number 6 of 2014 to be the main choice in the perspective of *Maqashid al-Syariah* because it is carried out by law enforcers approved by the state, government policies must be followed by the people, because all government policies have a benefit basis in them, as explained in the fiqh rules, namely: *تصرف الإمام على الرعية: منوط بالمصلحة* (“*Government policies to the people must be based on maslahah*”). From this rule, it can be understood that all actions or policies of a leader towards people under his leadership must refer to the realization of benefits in his policies, either in the form of worldly or hereafter benefits or avoiding harm and damage from the people under his leadership.
3. The jinayat law Qanun Number 6 of 2014 was compiled based on the guidelines for the benefit contained in the Qur'an and sunnah which are the main basis of Islam which brings mercy to all nature and has become a belief and guide for the lives of the Acehnese people.

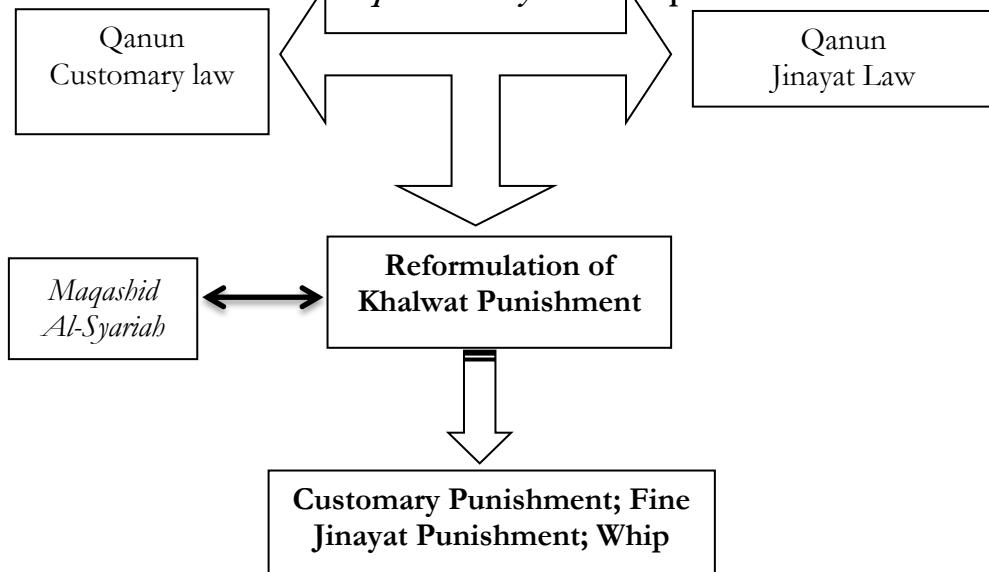
Based on the explanation above, with the various problems of punishment for the perpetrators of *khalwat*, it is necessary to have a legal sanction of *khalwat* that can accommodate all the provisions that have been

<sup>45</sup> 'Asyur, *Maqashid Al-Syariah Al-Islamiyah*.

<sup>46</sup> Azkha, Abbas, and Din, “Analisis Yuridis Terhadap Rumusan Jarimah Pemerkosaan Dalam Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat.”

running in society by using customary law and jinayat law which are based on *maqashid al-syariah*. Therefore, the researchers analyzed that the punishment for khalwat perpetrators in Aceh should be revised with a formulation of a combination of customary law and jinayat law, so that there will be legal certainty and justice for the perpetrators of *khalwat*. To be able to reformulate the implementation of punishment for *khalwat* perpetrators based on the *maqashid al-syariah* perspective, the researchers classify the forms of khalwat punishment, according to regulations and phenomena that occur in society.

**Figure 1. Punishment Reformulation for Khalwat Perpetrators in Aceh from the *Maqashid Al-Syariah* Perspective**



Based on Figure 1 above, it shows that the sanction of *khalwat* punishment based on *maqashid al-syariah*, is the result of a combination of two Aceh qanuns, which formulate two legal sanctions given to perpetrators of seclusion. *First*, legal sanctions in the form of customary law with the type of financial fines, the purpose of which is to develop gampongs, or non-financial fines in the form of an obligation to attend recitations in Islamic boarding

schools determined by traditional institutions for a certain duration, with the aim of fostering spirituality and awareness. the law of the perpetrators of seclusion, which states that the act of seclusion that is carried out is an act that is contrary to the Shari'a, which can invite the wrath of Allah and harm oneself and others. *Second*, the legal sanction for jinayat is in the form of flogging as the main legal sanction in the jinayat qanun.

The legal sanctions from the reformulation of punishments for the perpetrators of khalwat mentioned above have a more positive impact in their implementation, which will benefit them. *First*, legal awareness for khalwat perpetrators. *Second*, the perpetrators of khalwat feel sorry for his actions and it will be a way of repentance, thereby restoring spirituality within themselves. *Third*, they will not repeat the disobedience that has been done, because considering the legal sanctions to be imposed have two disadvantages, namely financially and physically. *Fourth*, in the context of *maqashid al-syariah*, the creation of protection for the five main elements in religion. *First*, protection of religion (*Hifdhu al-Din*) by keeping religion in the form of carrying out what Allah has commanded and staying away from all prohibitions. This is reinforced by the word of Allah QS. Muhammad; [47]: 7.

*Second*, protection of the soul (*hifdhu an-Nafs*), which is saving the soul, from the impulse of lust and so that it does not happen again to do *khalwat*, so that the perpetrators of khalwat do not fall into destruction. This has also been stated in QS. Al-Baqarah; [2]: 195. *Third*, protection of the mind (*hifdhu 'Aql*), protecting the mind of the perpetrator of *khalwat* from thinking of creating opportunities for *khalwat* because this mind is one of the reasons a person becomes motivated to do prohibited acts, and the way to protect the mind is also by not imagine or imagine the act of *khalwat* that has been done. Protecting the mind of every believer is very urgent, because reason is the center of every action that will be taken and has an impact on the creation of quality thoughts. Even if someone ignores his mind, it has the potential to send someone tormented in hell. As contained in QS. Al-Mulk; [67]:10.

*Fourth*, protection of offspring (*hifdhu an-Nasab*), saving offspring (*nasab*) from adultery. This *khalwat* is feared for the occurrence of adultery, because this is the entrance to the occurrence of adultery. This is in accordance with the word of Allah QS. Al-Isra; [17]: 32. Although khalwat is not adultery, the indications of approaching adultery are increasingly evident. *Fifth*, protection of property (*hifdhu al-Mal*), saving property that has the potential to create *khalwat*, and saving property from efforts to create comfortable conditions for *khalwat*. The potential for wealth to do *khalwat* is very large, because the efforts of the perpetrators of *khalwat* are motivated by financial ability to carry out these acts. Safeguarding property from things that are prohibited is important, because it is as explained in the QS. Al-Isra'; [17]: 26-27.

So, based on the analysis above, the researchers conclude that the qanuns related to the legal sanctions for *khalwat* should not occur in inequality in terms of resolving *khalwat* cases in Aceh. Therefore, the settlement of the *khalwat* case in Aceh's Qanun 9/2008 was abolished/revoked so that there would be no overlap in the resolution of the seclusion case in Aceh. So it is sufficient for Aceh Qanun Number 6 of 2014 concerning the law of *jinayat* which is the community's benchmark in resolving cases of *khalwat*, so that there are no more cases of persecution and others against *khalwat*. However, the formulation offered by the researchers regarding the punishment for the perpetrators of *khalwat* above, in the form of customary sanctions, namely fines and whips, is an input for the Aceh government to revise the legal sanctions for seclusion in the qanun *jinayat*. The formulation of legal sanctions will create legal certainty and justice for the perpetrators of *khalwat* and the community. the formulation of this legal sanction is a novelty in this research. The researchers view that the formulation of legal sanctions based on *maqashid al-syariah*, accommodates the perpetrators of *khalwat* and other people, not to do *khalwat* at other times. The formulation of the legal witnesses also combines the sanctions of customary law and the law of *jinayat* into a whole, in a single unit that is neomodernist in carrying out the law in Aceh's public sphere.

## Conclusion

Punishments for *khalwat* perpetrators in Aceh have various styles and models, ranging from punishments of a nature of persecution, to punishments resolved by customary law and *jinayat*. Normatively, the provisions for sanctions for perpetrators of *seclusion* in Aceh are regulated in two forms of regulations, namely the regulations of the *Jinayat Law Qanun* and the *Qanun on the Guidance of Customary Life and Customs*. Each of these regulations has differences in the provision of legal sanctions for perpetrators of *seclusion*, so that in practice they still experience legal dualism. In practice, the sanctions for *khalwat* perpetrators carried out by the Acehnese people vary, this depends on the respective *Gampong* region. There are at least four forms of imposition of sanctions, namely; *First*, using the *Qanun on Jinayat Law*; *second*, customary law; *third*, the sanction of punishment in the name of customary law; *Fourth*, persecution. Some of these forms of punishment when viewed from the *maqashid al-syariah* aspect are felt to be inconsistent with sharia principles, the law of persecution and in the name of custom tends to be decided at will and even followed by persecution.

In national law, the qanun on *jinayat* law has more special authority in law enforcement regarding *khalwat*, so that there is no longer any ambiguity in the enforcement of *khalwat* law. Therefore, the punishment for *khalwat* perpetrators according to the *maqashid al-syariah* perspective is based on the *jinayat* law qanun No. 6 of 2014. However, researchers have reformulated legal

sanctions against *khalwat* actors that create more benefit, namely customary sanctions in the form of fines and whips. In the context of *maqashid al-syariah*, law enforcement must lead to benefit, meaning that the law given must bring awareness rather than mistakes made to a person. Therefore, the reformulation of punishment for *khalwat* perpetrators is expected to provide *dharuri* (primary) benefits for *khalwat* actors, and become *ibrab* for others, so as not to commit *khalwat*. Thus, there will be fewer cases of *khalwat* in Aceh. So, the government in this case must supervise and emphasize to the public about law enforcement against the perpetrators of *khalwat* in accordance with the context of *maqashid al-syariah*.

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