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Crime Settlement of *Khalwat* in Aceh

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Article Info	Abstract
<p>Keywords: Settlement; Application; Criminal Act; Seclusion.</p>	<p>Introduction: <i>Khalwat</i> (Seclusion) is a despicable act that violates Islamic law because it leads to adultery. However, Qanun No. 6 of 2014 concerning Jinayat Law stipulates that the settlement of <i>khalwat</i> must go first through the Customary Court so that the punishment applied is not Islamic law punishment, such as <i>ta`zir</i>, but customary punishment.</p> <p>Purposes of the Research: This study aims to analyze the mechanism for resolving the crime of seclusion in Aceh.</p> <p>Methods of the Research: This is normative/doctrinal research using a statutory approach and a comparative approach.</p> <p>Results of the Research: <i>Khalwat</i> is a crime (<i>jarimah</i>) that violates Islamic law and it is categorized into <i>jarimah ta`zir</i>. Settlement of <i>jarimah</i> seclusion can be carried out by litigation through the <i>Syar'iyah</i> Court and the settlement goes to customary courts. However, Article 24 of Qanun Number 6 of 2014 concerning Jinayat Law, stipulates that the settlement of criminal acts of seclusion must first be through customary courts. The settlement mechanism for <i>khalwat</i> is first resolved through customary courts using a deliberation-consensus approach like village meetings, it is usually called Gampong Customary Meetings (RAG) by executing customary punishments such as penalties of paying fines, feasting, bathing, and the <i>khalwat</i> couple is forced to get married. The consideration of implementing customary punishment is to solve the case more effectively and efficiently and in return can raise the level of trust and community compliance.</p>

1. INTRODUCTION

Aceh is a province with a muslim majority population with devoted Islamic nuances of customs. Based on Law no. 44 of 1999 concerning the Privileges of Aceh and Law Number 11 of 2006 concerning the Government of Aceh, Aceh is given special rights in the form of special autonomy to implement Islamic law purely (*kaffah*). On the other hand, the privilege of Aceh is not only merely implementing Islamic law, but the central government also provides privileges for Aceh in the field of customs so that customary law is used as the legal basis for resolving disputes and violations of Islamic law committed by Acehnese people.¹

It is obviously stated that every law or legislation has its sanctions or penalties. Similarly, Islamic law and customary law in Aceh have them also. Anyone who violates these two norms, the perpetrator will be punished according to the crime or violation

¹ Mukhlis, "Keistimewaan Dan Kekhususan Aceh Dalam Perspektif Negara Kesatuan Republik Indonesia," *Jurnal Ilmu Hukum* 4, no. 1 (2018): 79-90.

¹ Mahdi Abdullah Syihab, "Crime Settlement of *Khalwat* in Aceh"

1 committed. However, before the perpetrators of the crimes get punished, the actions of the perpetrators will be tried under the jurisdiction of the Syar'iyah Court.² However, there are still violations of Islamic law in Aceh which are resolved through customary law in order to maintain brotherly relations or friendship by using a deliberation and peace approach.

One of the criminal acts (*jarimah*) that is resolved through the mechanism of customary law is the crime of seclusion. *Jarimah* seclusion is a disgraceful act where a man and a woman who do not have a *mahram* relationship are secluded themselves in a quiet place or a hidden place that provides an opportunity to do adultery. Article 24 of Qanun Number 6 of 2014 concerning *Jinayat* Law stipulates that the *khalwat* (seclusion) as the authority of the customary court is settled according to the provisions of the Aceh Qanun concerning the development of customary life and customs and/or other laws and regulations regarding customs.

To follow up on the above provisions, Aceh government issued Aceh Qanun No. 9 of 2008 concerning Guidance in Customary and Customary Life which stipulates that the village/*gampong* through the Customary Court/*gampong* Court that has the authority to resolve disputes or criminal acts, such as:

- 1) Disputes on customary space include:
 - a) Disputes in the household;
 - b) Disputes between families relating to *faraid*;
 - c) Disputes between residents;
 - d) Seclusion/lewd;
 - e) Disputes over property rights;
 - f) Theft in the family (minor theft);
 - g) *Seuhareukat* property disputes;
 - h) Minor theft;
 - i) Theft of stocks/pets;
 - j) Violation of customs regarding livestock, agriculture, and forestry
 - k) Disputes at sea;
 - l) Disputes in the market;
 - m) Mild abuse;
 - n) Forest burning (on a mild scale that harms indigenous communities);
 - o) Harassment, slander, sedition, and defamation;
 - p) Environmental pollution (mild scale);
 - q) Threatening threats (depending on the type of threat) and,
 - r) Other disputes that violate customs.
- 2) Resolve the dispute on customs and customs as regulated in Article 13 in paragraph (1), it is resolved in stages.
- 3) Law enforcers provide opportunities/opportunities so that disputes that occur can be resolved in the village, if they cannot be resolved in the village, they will be transferred to the next legal level.

The consequence of resolving cases of *khalwat* through customary courts in the village is the application of punishment. The punishment (*'uqubat*) contained in Islamic law and customary law is certainly different.³ The punishments imposed by Islamic law for violators

² Muhammad Hafiz Badarulzaman et al., "A Review on Legal Interpretation of Khalwat Under the Syariah," *Journal of Global Business and Sosial Entrepreneurship (GBSE)* 2, no. 5 (2016): 44-54.

³ Kurniawan, "The Dynamics of Formalization of Islamic Law In Indonesia," *KANUN: Jurnal Ilmu Hukum* 14, no. 3 (2012): 423-47.

1 of the Qanun are generally in the form of lashes, fines, and imprisonment. This can be seen in Article 23 of Qanun Number 6 of 2014 concerning *Jinayat* Law which stipulates that any person who intentionally commits *khalwat* is threatened with 'Uqubat Ta'zir lashes for a maximum of 10 (ten) times or a fine of a maximum of 100 (one hundred) grams. pure gold or imprisonment for a maximum of 10 (ten) months. When the punishment is through customary courts, the criminal act of *khalwat* applies the punishment of exile, fines, feasting, bathing, or the *khalwat* couple is forced to get married and so on, according to their respective region's policy.⁴

The dualism of the mechanism for resolving the crime of *khalwat* has caused a controversy in the community because in practice all reports from the community and even those who are caught red-handed are reported to the police on the grounds that the case must first be resolved through customary courts in the village. If the customary court is unable to resolve the case, the case will only be resolved through a formal legal mechanism under the authority of the Syar'iyah Court. Therefore, this study will analyze the settlement of the criminal act of seclusion in Aceh.

2. METHOD

This type of research is legalistic, doctrinal/normative. According to Rowe, normative research aims to find, explain, study, analyze and systematically present facts, principles, concepts, theories, and certain laws so as to find new knowledge and ideas to be suggested for renewal.⁵ In this study, all documents, references, facts, theories, doctrines, and laws related to health will be reviewed, especially those relating to the settlement of criminal acts (*jarimah*) *khalwat* in Aceh. The approach used in legal research generally uses several approaches such as the concept approach, the statute approach, the historical approach to law, the case analysis approach, and the comparative approach.⁶ However, this study only uses a legal or legal approach (statute approach) and a comparative approach to law (comparative approach) because this study more or less compares the settlement mechanism of Islamic criminal law with customary criminal law in Aceh

3. RESULTS AND DISCUSSION

3.1 Interpretation of *Khalwat*

One of the sins forbidden in Islam is committing *jinayat* fornication and something that is closer to adultery, namely seclusion that becomes *washilah* or an opportunity for adultery to occur. This indicates that the act of adultery occurs due to other acts that cause adultery, then *khalwat* is also one of the *jarimah* (criminal acts) and is threatened with '*uqubat ta'zir*'.⁷ Seclusion is prohibited in Islam because this act can plunge people into adultery, namely having sex outside of a legal marriage.⁸

⁴ Hari Suroto, "Perlakuan Hukum Yang Berbeda Bagi Pelaku Khalwat Antara Hukum Jinayat Dan Hukum Adat," *Jurnal Ilmiah Mahasiswa FISIP Unsyiah* 5, no. 1 (2020): 1-12.

⁵ Suzanne E. Rowe, "Legal Research, Legal Analysis, and Legal Writing: Putting Law School into Practice," *SSRN ELibrary*, 1193, no. 2000 (2019): 1-19.

⁶ I Made Pasek Diantha, "*Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*," (Jakarta: Prenanda Media Group, 2017), p. 41.

⁷ Sri Suyanta, *Buku Pelaksanaan Panduan Syari'at Islam Untuk Remaja Dan Mahasiswa* (Banda Aceh: Dinas Syari'at Islam Provinsi NAD, 2018), p. 12.

⁸ Dede Hendra, *Eksistensi Penerapan Pidana Cambuk Terhadap Pelanggar Qanun Syariat Islam Di Provinsi Aceh* (Depok: UI Press, 2012), p. 23.

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In Qur'an, Allah Almighty says "...and do not approach adultery; Indeed, adultery is a heinous act. and a bad way (QS. Al-Israa' 17 : 32)." The verse above forbids two things at once, namely adultery and all behaviors that approach adultery, including being alone between two opposite sexes who are not *mahrams*, which are referred to in Arabic terms as seclusion with those other than *mahrams*. In several hadiths, the Prophet Muhammad SAW also shows the boundaries of association between men and women who are not muhrimnya.

Understanding from the etymological aspect, *khalwat* means quiet or lonely.⁹ But in general, it provides at least two understandings of the word seclusion. First, the term *khalwat* is in a basic sense. In the basic sense what is meant is to cover the realm of Sufism which is a form of the inner human journey, not a physical amaliyah formality whose scope of work is outward. In the Sufistic perspective, the term *khalwat* means seclusion (solitude) which aims to calm the mind or meditate in solitude to worship.

Second, the term *khalwat* in a literal sense. This understanding is to emphasize the understanding of the term in fiqh whose scope is *dhahir*, where *khalwat* is defined as a two-to-one activity between men and women who are not *mahram* in a quiet or hidden place. The term silent and hidden in this understanding was then replaced by Ibn Hajar al-Asyqalani with the term closed from the human view so that what is understood from the editorial of al-Asyqalani is an activity of men and women (together) where others cannot see it.¹⁰

In the book of *Mu'jam al-Tullab*, Syukri Farhad rests *khalwat* which means to be empty, alone, free, and airy.¹¹ According to Ibn Hajar, seclusion is the gathering of men and women. Ibn Hajar Al-Asqalani defines seclusion, namely being alone between a man and a woman until it is closed to human view.¹² In *mausû'ah al fiqhiyyah* it is stated that (خَلْوَةٌ مَعَهُ اجْتِمَاعٌ) (انْقَرَدَ: لَوْهٌ لَاءَ لَوْاٌ وَإِلَيْهِ أَحِبُّهُ الرَّجُلُ لَا) Seclusion is alone with him and gathering with him in a solitary place. The use of the word seclusion by the *fuqaha* cannot be separated from the linguistic understanding, namely being alone in a place where no one else is (no control from others).¹³

Shaykh Sholeh Alu Shaykh defines seclusion that is forbidden if it is accompanied by closing (locking) the house or room or car or the like or closing it from human view. *Jinayah* seclusion is an act of immorality. It takes place in a private situation between a man and a woman who are not *mahram* in a closed place and away from the view of the crowd.¹⁴ According to Shaykh Sholeh Alu Shaykh, it is not customary for a closed room to also be closed from public view.¹⁵

Seclusion is a social disease that always exists in every space and time of human life, however, it can be suppressed at least in the following ways:¹⁶

⁹ Ma'luf L, *Al-Munjid Fi Al-Adab Wa Al-'Ulum* (Beirut: Al Matba'ah al-Katulikiyah, 1986), p. 112.

¹⁰ Ibnu Hajar Al-Asyqalani, *Fathu Al-Bari*, 9th ed. (Riyadl: Darus Salam, 2000), p. 121.

¹¹ Yusof Syukri Farhat, *Mu'jam Al-Tullab*, (*Dar Al-Kotob Al-Ilmiyah* (Beirut: Dar al-Kotob al-Ilmiyah, 2001), p. 142.

¹² Al-Asyqalani, *Fathu Al-Bari* (Riyadl: Darus Salam), p. 23.

¹³M. Taufik, "Khalwat Halal Vs Khalwat Haram," <https://mtaufiknt.wordpress.com/2010/01/13/khalwat-halal-vs-khalwat-haram/>, 2010.

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

¹⁵ Ibid.

¹⁶ Ibid.

- 1 a) Provide moral education for women, especially young women who can strengthen their faith and mental;
- b) The government must enforce the law as it should, if the positive legal sanctions are too light so as not to cause a deterrent effect, then it is appropriate to make the concept of Islamic criminal law as their guideline of life.

According to al-Munawi, Satan mediates (a third person) between the two by whispering to them (to commit disobedience) and makes their lust flare up and removes shame and shyness from both of them, and adorns disobedience so that it looks beautiful in front of them both until finally Satan even unites them both in humiliation (i.e. adultery) or (at least) drops them into actions that are lighter than adultery, namely cases that lead to adultery.¹⁷ According to as-Syaukani, the reason is that men love women because they have been created to have an inclination towards women, as well as because of the nature they have in the form of lust for marriage. Likewise, women are happy with men because of the nature and instincts that have been embedded in them.¹⁸ Therefore, Satan finds a means to inflame one's lust for another, so disobedience occurs.

The crime of *khalwat* is committed by men and women who will commit sinful activities when in a quiet place where others cannot see it if they do not use the word "still have a little shame". In the course of time later, the fact that sins committed between men and women can occur in the open, so it is necessary to expand the meaning of seclusion so that it can cover the *maqasid shari'ah* which is the main goal of the implementation of Islamic law. So, tying the meaning of seclusion with the meaning of being alone is an assumption conclusion, while letting go of the meaning of "alone" for seclusion in the definitive aspect is the realm of substance that continues to provide space for the development of the meaning of seclusion according to space and time. Both meanings have the same goal in terms of maintaining the objectives of the Shari'a which are both interrelated.¹⁹

Imam An-Nawawi said, "... He has forbidden seclusion with an ajnabiah woman and allowed her seclusion (a woman) with her *mahram*, and these two matters are ijma' (the scholars)."²⁰ As-Suyuthi is of the view that our companions (followers of the Shafi'i madhhab) say that the meaning of *mahram* is a woman who is forbidden to marry forever, either because of kinship or because of certain permissible reasons and because of the woman's *mahram*.²¹

In Al-Minhaj, Imam An-Nawawi cites about the *mahram* that:²²

- a) The woman who is forbidden to marry is not the *mahram* of the children of uncles and aunts (both uncles and aunts are siblings of the father and siblings of the mother);
- b) It is not the *mahram* of the wife's sister and also the wife's aunt (whether the aunt is a sibling of the wife's mother or the wife's father's brother) because both can be married if the wife is divorced, nor does it include the *mahram* of a woman who has been divorced three times, because she You can remarry if you have been married to someone else and then divorced. Likewise, it does not include *mahram* women other

¹⁷ Abdurrouf Al-Munawi, *Faidul Qodir*, 3rd ed. (Kairo: Al-Maktabah At-Tijariah, n.d.), p. 78.

¹⁸ Al-Syaukani, *Bustanul Akhbar Mukhtasar Nail Authar*, ed. Amir Hamzah Fachrudin (Jakarta: Pustaka Azam, 2006), p. 231.

¹⁹ Abdur Rakib, "Pergaulan Dalam Pertunangan Dan Khalwat : Studi Budaya Pertunangan Di Daerah Madura," *At-Turās: Jurnal Studi Keislaman* 6, no. 1 (2019): 23–45.

²⁰ Imam An-Nawawi, *Al-Minhaj Syarah Shahih Muslim* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), p. 153.

²¹ As-Suyuthi, *Al-Asybah Wa Al-Nazair* (Beirut: Dar al-Fikr, 1995), p. 121.

²² An-Nawawi, *Al-Minhaj Syarah Shahih Muslim* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), p. 153.

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than people of the book (whether they are magi, Buddhist, Hindu, or other beliefs) because they can be married if they reverse into Islam;
- c) It is not the *mahram* of the mother who is slept with (*jima'*) the father with the *jima'* who is doubtful (not with a legal marriage) and also the daughter of the mother. The mother is not allowed to be married but she is not a *mahram* because *jima'* 'syubhat is not said to be permissible;
- d) Not including the *mahram* of women who are separated from their husbands because of *mula'anah*, because the woman is forbidden to be remarried by her husband who has cursed her forever but not because of the woman's majesty but because of her firmness and emphasis on her husband.

The *mahram* criteria are very important because they will determine whether a person may or may not commit *jinayah* seclusion. If it is clear that the woman is his *mahram*, then it is not permissible for him to marry her and it is permissible for him to look at her and seek seclusion with her and travel with her, and this law absolutely covers the *mahram* due to kinship or due to breastfeeding or due to marriage. Therefore, the use of the word seclusion by the fuqaha cannot be separated from the meaning of the act of being alone which is not the *mahram* of being alone in a place where there are no other people or no control from others.

3.2 Settlement of the Crime of *Khalwat* in Aceh

Aceh is the most convincing area in formalizing Islamic law into Indonesian positive law.²³ In the final period of the Aceh conflict, a number of laws and regulations that were oriented towards Islamic law were enacted. Among them are Law No. 44 of 1999 concerning the Implementation of the Privileges of Aceh, Law No. 18 of 2001 concerning the Special Autonomy of Aceh, Law No. 11 of 2006 concerning the Government of Aceh, Qanun No. 10 of 2002 concerning Islamic Sharia Courts, Qanun No. 7 of 2004 concerning Zakat Management, Qanun No. 10 of 2007 concerning Baitul Mal and other regional regulations. A number of products of the legislation above are a manifestation of Aceh's privilege to enforce Islamic law, including criminal law (*jinayah*).

In the aspect of criminal law, the Aceh Government has issued Qanun No. 6 of 2014 concerning the Aceh *Jinayat* Law as the basis for regulating all types of criminal acts (*jarimah*) that occur in Aceh. However, this Qanun only regulates two types of criminal acts, namely some *hudud* and *Ta'zir* fingers. Meanwhile, *qishas*, such as crimes of torture and murder, have not been regulated at all in the qanun due to the large number of rejections of the punishment of cutting hands (*had*) and the death penalty by stoning.

In the legal aspect, there are two case settlement mechanisms, namely legal settlement through the courts (litigation) and settlement of cases outside the court (non-litigation). Settlement of cases outside the court is synonymous with Alternative Dispute Resolution (ADR) with several mechanisms such as mediation, deliberation, arbitration, and reconciliation. Likewise in the settlement of criminal cases, the settlement of criminal law cases can be through penal and non-penal.²⁴ Penal settlement of criminal cases uses a

²³ Rusjdi Ali Muhammad, *Revitalisasi Syariat Islam di Aceh: Problem, Solusi Dan Implementasi* (Jakarta: Logos Wacana Ilmu, 2013), p. 132-140.

²⁴ Fatilah A. Syukur, *Mediasi Penal: Penerapan Restorative Justice Di Pengadilan Anak Indonesia* (Depok: Indie Publishing, 2011), p. 78.

1 Judgment approach through the courts, while non-penal settlement is more of an out-of-court settlement approach such as penal mediation.²⁵

In the aspect of resolving criminal cases in Aceh, the two above-mentioned case settlement mechanisms are also implemented. To resolve all the cases that occurred in Aceh, the local government has issued Qanun No. 7 of 2013 concerning the *Jinayat* Procedural Law and Qanun Number 10 of 2002 concerning the Islamic Shari'ah Court, where the authority to carry out the judicial function is carried out by the Syar'iyah Court. The Syar'iyah Court has the authority to examine, hear and decide cases at the first level in the areas of *Ahwal al-Syakhshiyah*, *Mu'amalah* and *Jinayah*. In addition, the settlement of violations of Islamic shari'a is also given the authority to judge a customary institution or customary court established by Qanun Number 7 of 2000 concerning the Implementation of Traditional Life and Qanun Number 5 of 2003 concerning the Gampong Government in Aceh.

In the implementation of customary life, local governments can establish various policies in an effort to empower, preserve, and develop customs that do not conflict with Islamic law. Then, local governments are also given the authority to be able to form new traditional institutions and recognize and maintain existing traditional institutions in the Province, Regency/City, District, Settlement and Village or Village/*Gampong*.²⁶

In Aceh Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs, it is explicitly regulated in a separate chapter regarding the types of customary disputes/disputes that can be resolved through customary institutions. In Article 13 paragraph (1) of the qanun, it is regulated that there are at least 18 (eighteen) types of customary disputes/disputes that can be resolved through customary institutions. One of the violations of Islamic law that can be resolved through traditional institutions is *khalwat*. After the issuance of Aceh Qanun Number 9 of 2008 concerning the Guidance of Indigenous Life and Customary Traditions, indigenous peoples through customary institutions and mechanisms can resolve and impose customary sanctions on perpetrators of the crime of *khalwat* whole in the province of Aceh.

In Aceh Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs, it is determined that the authority of traditional institutions in resolving *khalwat* cases in Aceh is to reconcile the litigants through village customary meetings or called Gampong Customary Meetings (RAG), led by the Head Village (Geuchik). If within two months the case cannot be resolved, then the case can be forwarded to the Residencial (Kemukiman) level led by the Head Residencial (Imum Mukim) and so on if the Imum Mukim cannot resolve it within one month, then the case can only be forwarded to formal law enforcement officers (Police, Prosecutor's Office, and the Syar'iyah Court).²⁷

In resolving *khalwat* cases in Aceh, traditional institutions play an active role, so many *khalwat* cases are resolved by customary institutions, without involving formal law enforcement institutions. According to Samsul Rizal, many cases of *khalwat* were only resolved by the Gampong Customary Institution without involving the Syar'iyah Court,

²⁵Teddy Lesmana, "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pidana Dalam Perspektif Pembaharuan Sistem Peradilan Pidana Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 1, no. 1 (2019): 1–20.

²⁶Muntaza, "Penyelesaian Kasus Khalwat Melalui Peradilan Adat Aceh," *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 19, no. 1 (2017): 159–94.

²⁷Wahyu Fahrul Rizki, "Khalwat Marriage Adat and Practices in Aceh: A Study on Adat Sanctions and Settlement Process of Khalwat Case," *Asy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum* 54, no. 2 (2020): 342–50.

1 so data on the perpetrators of the criminal act of *khalwat* in Aceh were very difficult to find.²⁸ However, some of the data available at the Syar'iyah Court shows that in general, the punishments decided against the perpetrators of *jarimah khalwat* in the Gampong Traditional Meeting are in the form of reprimand, advice, feasts, paying a fine and getting married or the punishment is adjusted to the customs and customary norms that apply in the region.

The role of traditional institutions is very large in handling cases of *khalwat* in Aceh. Many perpetrators of seclusion were given direct punishment by the Gampong customary institution, either in the form of advice, feasts, paying a fine, or forcing the two couples to get married who were in seclusion without reporting to the Wilayatul Hisbah institution and to the Syar'iyah Court. According to Muhammad Isa, the role of traditional institutions is very important and strategic in resolving customary disputes and violators of Islamic law.²⁹ Customary institutions are independently given the authority to examine, carry out deliberation and impose penalties on perpetrators of seclusion. The role of customary institutions is actually to assist formal law enforcement agencies in resolving violations of Islamic law in Aceh.

Juridically, the crime of seclusion was originally regulated in Qanun Number 14 of 2003 concerning the Crime of Seclusion which stipulates that the settlement of *khalwat* cases is only through the Syar'iyah Court. However, after the issuance of Qanun No. 6 of 2014 concerning the *Jinayat* Law and Aceh Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs, determines that *khalwat* cases are resolved through two kinds of settlement mechanisms, namely the Islamic law mechanism through the Syar'iyah Court and the customary mechanism through customary institutions or customary courts. This is in accordance with the view of A. Qodri Azizy states that formal law does not always have to be applied or brought to court, but cases or disputes can be resolved out of court on the basis of mutual consent.

Apart from that, Aceh Qanun Number 9 of 2008 concerning the Guidance of Indigenous Life and Customary Tradition raises the question, why what is regulated outside the Syar'iyah court is only *khalwat* cases, while other Islamic sharia violations such as *maisir* (gambling) and *khamar* (alcohol) cannot be resolved through customary courts, even though *khalwat* (mesum), *maisir* (gambling) and *khamar* (alcohol) are a package of policies for enforcing Islamic law in Aceh and the three Islamic violations are included in the category of *ta`zir*. Supposedly, Aceh Qanun Number 9 of 2008 concerning the Guidance of Indigenous Life and Customary Traditions also regulates the issue of *maisir* (gambling) and *khamar* (alcohol). Former head of the Islamic Shari'ah Service in Aceh, Alyasa' Abu Bakar indicated that Aceh Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs is to strengthen the enforcement of Islamic law. To that end, the Aceh Provincial Office of Islamic Shari'a establishes and trains village law enforcers (*muhtasib*) in Aceh to resolve various finger-pointing committed by the community.³⁰

The application of customary law is considered more effective because this type of punishment is applied from generation to generation and applies to everyone. According to

²⁸ Syahrizal, *Hukum Adat Dan Hukum Islam Di Indonesia* (Lhokseumawe: Nadiya Foundation, 2004), p. 12.

²⁹ M. Isa Sulaiman, *Historis Tentang Peradilan Adat Di Aceh, Dalam Pedoman Adat Aceh, Peradilan Dan Hukum Adat* (Banda Aceh: Lembaga Adat Dan Kebudayaan Aceh (LAKA), Provinsi Nanggroe Aceh Darussalam, 2002), 45.

³⁰ R. Michael Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh Indonesia* (Oxford: Oxford University Press, 2013), p. 245.

1 Daniel S Lev, the demand for local law or customary law to be applied is not a new reality in Aceh. There is a tendency of society to ignore formal law. There is also a tendency to adapt Islamic law to suit local values because Islam also seems to provide space for the application of customary law. Gresham's view of the institutional theory states that formal legal processes tend to be avoided in order to resolve disputes through processes that are more familial and more accommodating.³¹

The mechanism for resolving *khalwat* cases through customary institutions has the full support of indigenous peoples in Aceh. Settlement through customary institutions is considered more efficient and effective both in terms of time and in terms of financing. Through customary mechanisms, *khalwat* cases are resolved faster than through other formal law enforcers. In addition, the community's trust in traditional institutions in resolving cases between fellow citizens is very high so that any punishment imposed by traditional institutions such as the customary court is accepted and obeyed by all local indigenous peoples.

Customary institutions have legal legitimacy from the Aceh government through Qanun No. 10 of 2008 concerning Customary Institutions. Samsul Rizal said that the customary Qanun was given for extension of the local government to the village government. This is due to the fact that the Islamic Shari'a Service which is responsible for implementing Islamic Shari'a and resolving cases of violations of Islamic Shari'a in Aceh is only located in the City District area and the minimum number of *Wilayatul Hisbah* personnel in Aceh, making it impossible to maximize the implementation of Islamic Shari'a in a kaffah manner.³² in various villages in the province of Aceh. Therefore, Qanun *jinayat* can apply not only in a juridical and philosophical order but also sociologically so that the Aceh government gives legitimacy to customary law through Qanun No. 10 of 2008 concerning Customary Institutions.

Through this Qanun, the Aceh government gave the Acehnese the authority to solve their own problems. Both in the form of disputes and disputes that occur between residents in their respective villages, before being handled by the government through formal law enforcement agencies. Customary institutions have legal power and authority in resolving violations of Islamic law. Although customary institutions have absolute authority based on statutory regulations, they do not necessarily have customary institutions to examine, adjudicate and prosecute punishing perpetrators of violations of Islamic law does not deviate from the "spirit of Islamic law".

4. CONCLUSION

One of the most common crimes (*jarimah*) in Aceh is *khalwat*. *Khalwat* is a disgraceful act that is contrary to Islamic law because this act can lead (*washilah*) to the greatest sinful act, namely the finger of adultery. *Jarimah khalwat* is a two-way act between a man and a woman who do not have a *mahram* relationship in a place that is closed or far from the view of the crowd so as to provide an opportunity for the couple to commit adultery. *Jarimah* seclusion is regulated in Article 23 and Article 24 of Qanun Number 6 of 2014 concerning *Jinayat* Law. Article 23 of Qanun Number 6 of 2014 concerning *Jinayat* Law stipulates that (1) any person who intentionally commits *Jarimah* seclusion, is threatened with 'Uqubat Ta'zir lashes for a maximum of 10 (ten) times or a fine of a maximum of 100 (one hundred)

³¹ Ibid.

³² Muhammad Siddiq, *Problematika Qanun Khalwat Analisis Terhadap Perspektif Mahasiswa Aceh* (Banda Aceh: Aceh Justice Resorce Center, 2019), p. 34.

1 grams of gold. pure or imprisonment for a maximum of 10 (ten) months. In addition, in paragraph (2) it is determined that any person who intentionally organizes, provides facilities or promotes *khalwat*, is threatened with 'Uqubat Ta'zir lashes for a maximum of 15 (fifteen) times and/or a fine of a maximum of 150 (one hundred and five twenty) grams of pure gold and/or imprisonment for a maximum of 15 (fifteen) months. Settlement of *khalwat* can be reached through two approaches, namely litigation settlement, namely the sharia court, and settlement through customary institutions, namely through customary courts. Litigation settlement through formal law enforcement starts from the process of investigation, investigation, prosecution, and trial at the Syar'iyah Court. However, the settlement of *khalwat* in Aceh is actually more resolved through customary courts. The authority of traditional institutions to resolve the *khalwat* is regulated in Article 24 of Qanun No. 6 of 2014 concerning *Jinayat* Law. Which determines that the finger of seclusion which is the authority of the customary court is settled according to the provisions in the Aceh Qanun concerning the development of customary life and customs and/or other laws and regulations regarding customs. Settlement of *khalwat* through customary courts uses a deliberation-consensus approach through village meetings or called Gampong Customary Meetings (RAG), so that the punishment (*uqubat*) that is applied is not based on Islamic law as regulated in the Aceh *jinayat* qanun, namely traditional punishments in the form of fines, feasts, bathed, disposed of/expelled, married or other punishment in accordance with the customary norms where the case occurred. This customary punishment is considered more effective because the punishment has existed and has been applied from generation to generation in the local indigenous community so that community members obey it more

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