

Juridical Analysis of Khamar Crimes in the Perspective of Aceh Qanun Number 6 of 2014 Concerning Jinayah

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Abstract

Historical developments in the prohibition of alcohol in Aceh refer to Islamic Sharia which firmly and clearly prohibits and forbids alcohol for all Muslims. Because one of the maqashids of Sharia is to maintain reason, Islamic Sharia strictly prohibits this. The prohibition on alcohol is sharia in the Al-Qur'an and Hadith. The punishment in Aceh is to implement Islamic Sharia as a whole (kaffah), by applying Islamic Sharia in various aspects of life, including in this case applying the punishment of caning to perpetrators of the crime of drinking wine. Caning is used as a crime with the aim of fostering and educating perpetrators to be aware and regret their actions and also as a lesson (tadabbur) to society so that they do not commit the same actions.

Keywords: crime, khamar, Aceh Qanun.

Introduction

Based on the perspective of the Indonesian legal system, the function of the state must be to protect every religion and its adherents through the role of ensuring the implementation of worship, providing support facilities and maintaining harmony between religious communities, including regulating private and public legal regulations, while carrying out the teachings of their religion. is the authority of each religion they adhere to.¹Islam as a religion that brings grace to all of nature has become a guideline in the life of society, nation and state in Aceh Province. Historically, when Islam came to Aceh, it produced several comprehensive works that earned it the nickname Veranda of Mecca.²

The Central Government has juridically given full authority to the Aceh Government to determine the course of government itself, especially with regard to the implementation of Islamic Sharia.³The special privileges and autonomy given to the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam are based on Law Number 44 of 1999 concerning the Implementation of the Specialties of the Province of Nanggroe Aceh Darussalam and Law Number 18 of 2001 concerning Special Autonomy for the Special Region of Aceh Province as

¹A. Rahmat Rosyadi and Rais Ahmad, Formalization of Islamic Sharia in the Perspective of Indonesian Legal System, Ghalia Indonesia, Bogor, 2012, page. 2.

²Syarifudin Tippe, Aceh at the Crossroads, Pustaka Cidesindo, Jakarta, 2017, page. 11.

³Azman Usmanuddin and Nabhani, Implementing Islamic Sharia in Aceh, Aceh Darussalam Langsa Development Foundation, 2011, page. 33.



the Province of Nanggroe Aceh Darussalam, among other things, aims to apply Islamic Sharia in people's lives in order to create a prosperous, safe, peaceful, just and orderly community life system in order to achieve Allah's approval.⁴

Based on this and with the enactment of Law Number 11 of 2006 concerning the Government of Aceh, it has brought new developments to the Province of Nanggroe Aceh Darussalam, so that the Aceh Government is free to make regulations that can better regulate its people to achieve Allah's approval.⁵

The birth of Qanun Number 12 of 2003 concerning Khamar Drinks and the like as has been replaced and codified into Aceh Qanun Number 6 of 2014 concerning Jinayah Law is one of the anticipatory steps and guidelines for law enforcers in Nanggroe Aceh Darussalam Province.⁶ Khamr and the like are substances/drugs either derived from plants or through synthetic (chemical processes) which can cause the user to experience changes and decrease in consciousness, can relieve pain/soreness and can also cause dependence (addiction) according to the level of khamr used.

Based on Article 1 number 21 Aceh Qanun Number 6 of 2014 concerning Jinayah Law, khamar is a drink that is intoxicating and/or contains alcohol with a content of 2% or more. Consuming alcohol is a violation of Islamic Sharia, damages people's health, reason and life and has the potential for other immoralities to arise. In its development, alcohol and similar drinks have apparently claimed many lives and caused unrest in society, because apart from endangering the personal health of the users themselves, they also pose a threat to the surrounding community. To compensate for and prevent the increase in drinking wine and the like, a comprehensive outreach strategy is needed and is able to touch all aspects of life to complete the circle of interconnected chains and provide access to wine and the like, therefore it is necessary to tackle drinking wine and the like in a comprehensive manner with an emphasis on community participation and intensive development of the attitudes of law enforcers.⁷

Efforts to apply Islamic Sharia in Nanggroe Aceh Darussalam Province to stop the rate of development of khamar are through imposing penalties that can provide a deterrent effect. One form of punishment method mentioned in each qanun is caning as contained in Aceh Qanun Number 6 of 2014 concerning Jinayah Law.⁸

The application of Islamic Sharia is to fulfill the aspirations of the Acehnese people, namely the need to maintain identity. Because Islam is the identity of Aceh Province which has been developed through a long historical journey.⁹ This caning punishment is a type of punishment that

⁴Moh Fauzi, *Formalization of Islamic Sharia in Indonesia*, Walisongo Press, Semarang, 2013, page. 7.

⁵Meta Suriyani, *Implementation of Aceh Qanun Number 6 of 2014 Concerning Jinayat Law Seen from the Concept of Maslahah*, *Mizan Law Journal PPs-MH-UNPAB*, Vol. 4, no. 16, July-December, 2016, page. 76.

⁶Zaki Ulya, *Dynamics of the Application of Jinayat Law as a Form of Reconstruction of Islamic Sharia in Aceh*, *Rechtsvinding Journal*, Vol. 5 No. 1, April 2016, page. 136.

⁷Iriansyah, *Enforcement of the Jinayat Law Against Khamar Before and After the Implementation of Aceh Qanun Number 6 of 2014 in Aceh Tamiang Regency*, *Samudra Perempuan Law Journal*, Vol. 12, no. 1, January-June 2017, page. 63.

⁸Mohd. Din, *Stimulation of National Criminal Law Development from Aceh for Indonesia*, Unpad Press, Bandung, 2011, page. 9.

⁹Rusjdi Ali Muhammad, *Revitalization of Islamic Sharia in Aceh*, Logos, Jakarta, 2013, page. 56.



comes from Allah SWT, which is categorized as a hudud punishment. In Aceh, the criminal law of caning has been widely applied in several cases relating to khalwat (lewdness), maisir (gambling), khamar (liquor and the like).¹⁰ However, this is an obstacle in itself as to whether the stipulation of caning punishments for those who violate Jarimah in Aceh can be implemented in accordance with what was implemented during the time of the Prophet Muhammad SAW.

Caning is a type of corporal punishment imposed on the convict by whipping his body. The implementation of flogging is the authority and responsibility of the prosecutor. Caning is carried out after the judge's decision has permanent legal force which is guided by the provisions regulated in the qanun and/or the provisions regulated in the qanun regarding formal law.¹¹

The place and time of caning have been determined by the prosecutor and in coordination with the chairman of the sharia court to prepare a supervising judge who must be present at the time of caning, to the health service who prepares a doctor who will examine the health of the convict before and after the caning and sends the name of the doctor appointed to the prosecutor before the examination time and the agency in charge of the wilayatul hisbah to prepare the whipping and notify the prosecutor about the whipper's readiness before the caning time.¹²

Caning punishment in Aceh Province is relevant to the social and cultural conditions of the community, because this punishment is desired by the majority of society and it can influence behavior and social relations towards the law itself. This is in line with Soerjono Soekanto's opinion, that law must study the reciprocal relationship between law and other social phenomena. In terms of the extent to which the law influences social behavior and the influence of social behavior on the formation of law.¹³

The perpetrators of alcohol crimes in Aceh Province basically come from all walks of life, including adults, teenagers and even children. Seeing this condition, it is quite worrying, remembering that children are the nation's next generation who should be directed towards good things so that in the future they can become the nation's next generation who will continue to advance the nation's welfare in the future. Based on this, we are interested in discussing it further in a study with the title: Juridical Analysis of Khamar Crimes in the Perspective of Aceh Qanun Number 6 of 2014 Concerning Jinayah. This research will discuss: legal regulation of alcohol crimes based on Aceh Qanun Number 6 of 2014 concerning Jinayah and the effectiveness of policies related to alcohol crimes based on Aceh Qanun Number 6 of 2014 concerning Jinayah.

Method

This research is descriptive in nature, as descriptive research is research that aims to accurately describe the characteristics of an individual, situation, symptom or certain group or to determine whether there is a relationship between a symptom and other symptoms in

¹⁰M. Isa Sulaiman, *Free Aceh (Ideology, Leadership and Movement)*, Pustaka Al-Kautsar, Jakarta, 2011, page. 49-53

¹¹Wahbah Zuhaili, *Imam Syafi'i Jurisprudence*, Al-Mahira, Jakarta, 2011, page. 259.

¹²Madiasa Ablisar, *Caning as an Alternative to Punishment in the Context of Reforming Indonesian Criminal Law*, USUPress, Medan, 2011, page. 154.

¹³Sudirman Tebba, *Sociology of Islamic Law*, UII-Press, Yogyakarta, 2013, page. 1.



society.¹⁴This research uses a type of normative juridical research which is carried out by examining library materials in the form of books and statutory regulations related to the problem.¹⁵Normative legal research is also called doctrinal legal research. In doctrinal research, law is conceptualized as what is written in statutory regulations (law in books).¹⁶

The data collection method uses library research. The literature study was carried out to explore theories regarding concepts and understanding, especially related to the research theme, namely the crime of alcohol in the perspective of Aceh Qanun Number 6 of 2014 concerning Jinayah using qualitative data analysis methods, namely using legal interpretation, legal reasoning and rational argumentation. Then the writer describes the data in narrative form, so that it becomes clear and understandable sentences.¹⁷

Legal Regulation of Khamar Crimes Based on Aceh Qanun Number 6 of 2014 concerning Jinayah

Khamar is something that is intoxicating, it can erase reason and cause people to lose their true consciousness.¹⁸Reason is the most important element contained in the human body. It is the power or power bestowed by Allah SWT to humans as a thinking tool and a tool to consider the good and bad of something and one of the two potentials given to humans apart from the soul. Mind and soul are spiritual potentials originating from God which are placed into the human body. Reason is also what differentiates humans from animals. Therefore, maintaining mental health is a dharuri (absolute) need for humans. Every intoxicating drink is haram and is called khamar. Anything that can be intoxicating if you drink a little or a lot is haram.¹⁹

During the time of the Prophet Muhammad SAW, some people were used to drinking wine, this habit has not disappeared even though they have converted to Islam. They continued to drink wine until the Prophet Muhammad SAW migrated from Mecca to Medina. Muslims ask questions about drinking wine and gambling in order to see the crimes and damage caused by these two actions. Therefore, Allah SWT revealed Surah Al-Baqarah verse 219 which means: They ask you about wine and gambling. Let's say that both of them have great sins and some benefits for humans, but the sins of both are greater than their benefits. And they ask you what they earn. Say more than necessary. Thus Allah explains His verses to you so that you think. The meaning of this verse is that committing these two acts contains major sins, because they contain harm as well as material and religious damage. Both of these things do have benefits from a material perspective, namely profits for the wine seller and the possibility of obtaining property easily for

¹⁴I Made Pasek Diantha, Normative Legal Research Methodology, Prenada Media Group, Jakarta, 2016, page. 191.

¹⁵Soerjono Soekanto and Sri Mamudji, Normative Legal Research (A Short Review), Rajawali Press, Jakarta, 2011, page. 13-14.

¹⁶Amiruddin and Zainal Asikin, Introduction to Legal Research Methods, Rajawali Pers, Jakarta, 2014, page. 118.

¹⁷Muri Yusuf, Quantitative, Qualitative and Combined Research Methods, Prenadamedia, Jakarta, 2014, page. 400.

¹⁸Ahmad Asy-Syarbashi, Yas'akunaka: Questions and Answers About Religion and Life, Trans. Ahmad Subandi, Lentera, Jakarta, 1997, page. 526

¹⁹TM. Hasbi Ash-Shiddieq, Islamic Fiqh Laws Review Between Schools, Pustaka Rizki Putra, Semarang, 2001, page. 211.



the gambler. However, the sins far outweigh the benefits, which is why both of these things are forbidden.²⁰

Islam prohibits wine because of its multi-faceted negative effects, such as social, cultural, economic, legal, psychological and other aspects. Socially, drinking alcohol can give rise to rude, anti-social behavior. Culturally, society will grow into a society that is not creative, productive, innovative and so on, because the culture of drunkenness causes people to be lazy, wasteful and so on. Economically, the culture of drinking consumes income and expenses, because the budget that should be used for useful things has been used up to buy wine. Legally, if the alcohol culture thrives in society, then various cases of serious crime can result in murder, rape, fights, abuse and so on, which ultimately becomes a matter for law enforcement officials. Psychologically, many drunks are addicted to frustration, depression and other mental symptoms due to their bad habits which are contrary to social norms.²¹

Based on General Provisions Chapter 1 in Aceh Qanun Number 6 of 2014 concerning Jinayat Law, khamar is a drink that is intoxicating and/or contains alcohol with a content of 2% (two percent) or more. Producing wine is any activity or process of producing, preparing, processing, making, preserving, packaging and/or changing the form of something into wine.

The main element of the wine crime crime itself is the act of drinking and the nature of the substance of the object drunk is intoxicating. In this case, it does not mean that if the drink is not intoxicating then it is halal, because the Prophet's hadith clearly states that it is haram, whether you drink a lot or a little, whereas what is meant by evil intention here is that the perpetrator already knows that wine can destroy common sense. and it is very likely that when he is drunk he can do anything that is harmful to himself and others, but he still consumes it. This indicates that he is indifferent to the interests of other people.

In this definition, khamar has been specific to intoxicating drinks, meaning that other objects which are intoxicating in nature but are not in the form of a drink, such as narcotics and illegal drugs, are not included in the definition of khamar in this qanun. In the implementation of Islamic Sharia in Aceh, the issue of alcohol is regulated in Chapter IV Part One of Qanun Aceh Number 6 of 2014 concerning Jinayat Law. The material provisions regarding wine are as follows:

Article 15 Aceh Qanun Number 6 of 2014 concerning Jinayat Law:

1. Every person who deliberately drinks wine is threatened with 'uqubat hudud whipping 40 (forty) times;
2. Every person who repeats the act as intended in paragraph (1) is threatened with 'uqubat hudud whipping 40 (forty) times plus 'uqubat ta'zir whipping a maximum of 40 (forty) times or a fine of up to 400 (four hundred) grams of gold pure or imprisonment for a maximum of 40 (forty) months.

Article 16 Aceh Qanun Number 6 of 2014 concerning Jinayat Law:

²⁰Sayyid Sabiq, *Fiqh al-Sunnah*, Maktabah Dar al-Turas, Cairo, 1993, page. 375.

²¹Al-Yasa' Abubakar, and Marah Halim, *Islamic Criminal Law in Nangroe Aceh Darussalam Province*, Islamic Sharia Service of Nangroe Aceh Darussalam Province, Banda Aceh, 2006, page. 68-70.



1. Every person who deliberately produces, stores/hoards, sells or imports khamar, is each threatened with 'uqubat ta'zir whipping a maximum of 60 (sixty) times or a fine of a maximum of 600 (six hundred) grams of pure gold or imprisonment of a maximum duration 60 (sixty) months;
2. Every person who intentionally buys, brings/transportes or gives away khamar, is each threatened with 'uqubat ta'zir whipping a maximum of 20 (twenty) times or a fine of a maximum of 200 (two hundred) grams of pure gold or imprisonment for a maximum of 20 (twenty) months.

Article 17 Aceh Qanun Number 6 of 2014 concerning Jinayat Law: Every person who deliberately commits an act as intended in Article 15 and Article 16 by involving children is subject to a maximum of 80 (eighty) lashes or a fine of up to 80 (eighty) lashes. a maximum of 800 (eight hundred) grams of pure gold or imprisonment for a maximum of 12 (twelve) months.

In Aceh Qanun Number 6 of 2014 concerning Jinayat Law, it is stated that consuming wine and similar drinks is a violation of Islamic Sharia, damages people's health, reason and life and has the potential to give rise to other immoralities. In accordance with Islamic Sharia, Aceh Province has implemented punishment in the form of hudud for wine drinkers, namely in the form of a hudud sentence of forty lashes. This is in line with the bod punishment imposed on wine drinkers at the time of Rasulullah SAW and Sayyidina Abu Bakar ra, who imposed a penalty of forty lashes and that was a form of had punishment for those who committed it.²²

As formulated in the Aceh Qanun, consuming wine is an evil act that is prohibited in Islamic Sharia and is contrary to the customs of the Acehnese people. According to Qanun Number 6 of 2014 concerning Jinayat Law, the punishment for consuming wine is subject to hudud lashings of 40 times, this is as intended in Article 15 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

This is different from every person or legal entity or business entity who deliberately produces, stores/hoards, sells or imports wine, each of them is threatened with 'uqubat ta'zir whipping a maximum of 60 (sixty) times or a fine of a maximum of 600 (six hundred) grams of pure gold or imprisonment for a maximum of 60 (sixty) months. Meanwhile, for every person who deliberately buys, brings/transportes or gifts khamar, each person is threatened with 'uqubat ta'zir whipping a maximum of 20 (twenty) times or a fine of a maximum of 200 (two hundred) grams of pure gold or imprisonment of a maximum 20 (twenty) months, which is regulated in Article 16. If all activities related to drinking wine involve children under 16 years of age in their implementation, then a maximum of 80 (eighty) uqubat ta'zir lashes will be imposed.) times or a fine of a maximum of 800 (eight hundred) grams of pure gold or imprisonment of a maximum of 80 (eighty) months as regulated in Article 17 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

In jurisprudence, the term criminal act can be translated as jarimah or jinayah. Basically, according to the Aceh Province Qanun in accordance with the science of fiqh, jarimah can be

²²Iriansyah, Enforcement of Jinayat Law Against Khamar Before and After the Renewal of Aceh Qanun No. 6 of 204 concerning Jinayat Law in Aceh Tamiang Regency, Vol. 12, No.1, January-June 2017.



divided into two categories, namely, hudud and ta'zir. As stated above, acts that are categorized as hudud are perpetrators who consume or drink wine directly. Criminal acts or offenses are called jarimah or jinayah. According to Imam Al-Mawardi, jarimah are actions that are prohibited by sharia', which are threatened by Allah SWT with the punishment of hadd or ta'zir.²³ The word jinayah is a term for actions that are prohibited by sharia which relate to property, life, reason or intelligence.²⁴

An action can be considered as jarimah if it fulfills several elements, namely general elements and special elements. The general elements that must be met are:

1. There are texts that prohibit actions and threaten punishment against them. This element is usually called the formal element (rukun syar'i). The provisions regarding the prohibition of drinking alcoholic beverages are stated in Surah Al-Maidah verse 90.
2. There is behavior that forms a jarimah, whether in the form of real actions or inaction. This element is usually called the material element (rukun maddi). The person was already drinking, even though it was only a few sips.
3. The perpetrator is amukallaf person, that is, a person who can be held responsible for the crimes committed. This element is called the moral element.²⁵

Apart from the general elements mentioned above, there are special elements that must be fulfilled in Jarimah Shurb al-Khamr. There are two special elements, namely:

1. *Ash-Shurbu*

A person is considered to be drinking if the item they are drinking has reached their throat. If the drink does not reach the throat then it is considered not drinking, like gargling. This also applies to the act of drinking, if drinking liquor is intended to quench thirst, even though there is water that one can drink. However, if this is done because of necessity (emergency) or coercion, the perpetrator is not subject to punishment. Jumhur ulama stated that the act of drinking alcoholic beverages which is subject to a had punishment must fulfill two pillars, namely:

- a. What is drunk is liquor, regardless of the material or object from which the drink is made;
- b. The act was carried out consciously and deliberately.

According to Hanafiyyah scholars, the pillars of shurb al-khamr are in accordance with their understanding of khamar, that what is drunk is the type of drink they define as khamar. Therefore, if the drink consumed is not like the liquid they have formulated, even if it is intoxicating, it is not subject to the penalty of hadd shurb al-khamr. Meanwhile, Imam Malik, Imam Syafi'i and Imam Ahmad are of the opinion that this element (ash-syurbu) is fulfilled if the perpetrator drinks something intoxicating. In this case, the name of the drink and what ingredients the drink is produced from are not taken into account. Thus, there is no difference if what you drink is made from grape juice, wheat, dates, sugar cane or other ingredients.

²³Abdul Karim Zaidan, Introduction to Sharia Studies, Robbani Press, Jakarta, 2008, page. 504.

²⁴Sayyid Sabiq, Fiqh Al Sunnah, Juz III, Cairo Maktabah Dar al Turas, 2000, page. 5.

²⁵Ahmad Hanafi, Principles of Islamic Criminal Law, Bulan Bintang, Jakarta, 2003, page. 6.



Likewise, regardless of the level of intoxicating power, whether small or large, the punishment is still haram.²⁶

2. Intentions that are against the law

This element is fulfilled if someone commits the act of drinking wine even though he knows that what he is drinking is wine. Thus, if someone drinks an intoxicating drink, but he thinks that what he is drinking is an ordinary non-intoxicating drink, then he is not subject to a hadd penalty, because there is no element of breaking the law. If a person does not know that drinking wine is prohibited, even though he knows that the item is intoxicating, then in this case the element of unlawfulness (*qasad al-jina'i*) has not been fulfilled. However, the excuse of not knowing the law cannot be accepted by people who live and are domiciled in Islamic countries and environments.

The opinions of ulama, intellectuals and the Aceh Government regarding caning punishments for perpetrators of alcohol crimes in Aceh feel more humane when compared to caning sentences imposed in other countries. Caning in Aceh will be stopped if the convict is injured (bleeds) because of the whipping. The convict is left free, untied and unsupported, so that if the convict is no longer able to take the whipping, the supervising doctor will easily find out and the caning will be stopped. The convict was given clothing that covered the private parts, so that the lashes did not directly touch the skin.

According to Al-Yasa Abubakar, this caning punishment, in addition to worldly law, is also part of religious teachings, as such caning is part of the expected statement of repentance can forgive sins in the afterlife. Maybe the convict felt embarrassed and it is normal, but not necessary to overdo it, because of this activity is part of charity, as a sign and promise to Allah not to repeat the mistake in the future. The convict and his family did not need be ashamed, but instead feel satisfied and proud, that they belong in a group that has repented who can reflect and realize mistakes, including *assabiquna awwalun* (main group, pioneers) in implementation of Islamic Sharia in Aceh and in repentance to Allah SWT.

This is one of the reasons why the mosque courtyard was chosen as the place for the implementation, so that solemnity and closeness to Allah is maintained and realized. This punishment is carried out in an open place that can be visited by the general public because the Koran recommends carrying it out like that.²⁷ In summary, the implementation of punishment for defendants who violate Qanun in the field of Islamic Sharia is as follows:

1. The sentence of imprisonment (imprisonment) is carried out in accordance with the regulations in the Criminal Procedure Code;
2. Fines are carried out in accordance with the regulations in the Criminal Procedure Code, the fine money is deposited into the Baitul Mal Agency (special account for the Regency government).
3. Caning

²⁶Ahmad Wardi Muslih, *Islamic Criminal Law*, Sinar Graphics, Jakarta, 2005, page. 74.

²⁷Al-Yasa Abubakar, *A Glance at Islamic Sharia in Aceh*, NAD Province Islamic Sharia Service, Banda Aceh, 2006, page. 25-28.



- a. Whiskers are officers who have been trained, appointed by the Public Prosecutor, usually Wilayatul Hisbah (Sharia Police) officers who have been trained for this purpose;
- b. 'Flogging is carried out in a place that can be witnessed by many people in the presence of the Public Prosecutor and the appointed doctor;
- c. The whip used is rattan with a diameter between 0'75 to 1.00 cm, 1 meter long and does not have double ends/is not split;
- d. The minimum distance between the whipper and the condemned person is 70 cm to 1 meter;
- e. The distance between the whipper and the people watching is at most 10 meters.
- f. Caning is carried out on a mat measuring at least 3 x 3 meters;
- g. The convict must be in good health (able to undergo caning) according to the doctor's statement;
- h. Caning is carried out on all parts of the body except the head, face, neck, chest and genitals;
- i. The level of blow does not cause injury;
- j. Male convicts are caned in a standing position without support, without being tied and wearing thin clothes that cover their private parts, while women are in a sitting position and covered with a cloth over their heads;;
- k. The whipping of pregnant women is carried out after 60 (sixty) days of giving birth.
- l. If something occurs during the caning that endangers the convict based on the testimony of the appointed doctor, then the remainder of the caning is postponed until the time permits.
- m. The convict is given a copy of the minutes as proof that he has served his sentence.

In Article 6 of Governor's Regulation Number 10 of 2005 concerning the implementation of caning 'uqubat, it is stated that if necessary, before carrying out caning the convicted person can be given brief spiritual guidance by a cleric at the request of the prosecutor or convict.

Caning will be temporarily suspended if:

1. The convict was injured as a result of whipping;
2. Ordered by the doctor on duty based on medical considerations; And
3. The convict fled from the place of caning before the caning was completed.

The process of carrying out the punishment of caning refers to the process of carrying out the punishment carried out by the Prophet. The basis is the incident that occurred during Maiz's execution, when he ran away because he could not stand the stoning thrown by the stone. Then people chased him in a group, after being caught they threw stones and finally died. When this was conveyed to Rasulullah SAW, he regretted the actions of those people and said, "Why don't you just let him run?" (H. R Abu Daudan An-Nasa'i).²⁸

There are many interesting things about the implementation of caning in Aceh. The caning that is regulated and implemented is a moral lesson as expected from the implementation of

²⁸Anton Widanto, Could Stoning be implemented in Aceh?, via, <http://www.acehinstitute.org/front-index.htm/AntonWidanto>, accessed on January 26 2022, at 09.35 WIB.



Islamic criminal law and is not merely for revenge. This moral lesson can be seen from the beginning of the process of carrying out public caning, beforehand the competent authorities announced to all relevant people to carry out Friday prayers at the mosque designated as the place where the caning was carried out. In the announcement, it was appealed to the public to attend to see the process of carrying out the punishment. The announcement also announces the name of the convict and the mistakes the convict has committed and the public is asked to pray that the convict will be forgiven for all his sins and mistakes and return to the right path.

With the existence of criminal sanctions in the form of caning for violators of Qanun in the Aceh region, especially violations of the crime of drinking alcohol, it is hoped that every perpetrator of a crime will be aware of the treatment of his crime so that he will try not to repeat the crime again. It is also hoped that the imposition of punishment in the form of flogging can provide a lesson or warning to other people so that they do not commit the same crime as the perpetrator of the crime.

Several things are the reasons why alcohol crimes in Aceh are punished with caning, namely:

1. Comprehensive implementation of Islamic Sharia (kaffah) in Aceh

Islamic Sharia in Aceh Province was officially declared by the Governor of Nanggroe Aceh Darussalam Province on March 23 2002 or coinciding with Muharram 1423 Hijriah. This date and year are quite important historical milestones for Aceh in implementing Islamic Sharia in a kaffah manner. Aceh has succeeded in implementing three hudûd punishments in the form of caning contained in Qanun Number 12 of 2003 concerning drinking wine, Qanun Number 13 of 2003 concerning Maisir and Qanun Number 14 of 2003 concerning Khalwat (lewdness), where these three Qanuns were then reformed so that Aceh Qanun Number 6 of 2014 concerning Jinayat Law was born. With the birth of Qanun Number 6 of 2014, the three previous Qanuns were declared no longer valid, because the regulations of these three Qanuns have been combined in this Jinayat Qanun.²⁹

Basically, there are several important factors that make Aceh successful in implementing the Islamic Qanun Sharia in the crime of alcohol. Among other things, the authority given by the Central Government to Aceh Province. The authority referred to is through Law Number 44 of 1999 and Law Number 18 of 2001 concerning Special Autonomy. These two regulations provide special privileges given by the Central Government to Aceh Province. This authority gave birth to Qanun Number 6 of 2014 concerning Jinayat Law, in one part of which there are provisions regarding the prohibition of drinking wine. Based on this qanun, every person who consumes wine is subject to a had, namely a hudûd of 40 lashes. If this privilege were not granted by the Central Government, the Aceh Government would probably not be able to enforce hudûd on drug offenders.

The caning punishment that has been determined in the Al-Qur'an and the Hadith of the Prophet Muhammad SAW is only imposed on three types of criminal acts, namely: the

²⁹Syarifuddin Usman, Crime of Drinking Khamar in Aceh Province Qanun No. 12 of 2003, Journal of Legitimacy, Vol. 1, No. 2, January-June 2012.



criminal act of adultery, the criminal act of accusing of adultery (qadzha) and the criminal act of drinking alcohol and is a postulate or norm. The basic principles are still general in nature and must be formulated in more concrete norms so that they can be implemented in practice.³⁰After that, the scholars differed on how many whips should be given to wine drinkers. According to Abu Hanifah and Imam Malik, the law for drinking wine is to be whipped eighty times. They think like this because they follow the practice of Umar's friend. Here it can be proven that wine drinkers enter uqubat hudud and not takzir. In this case, the provision from Allah for people who drink wine, whether drunk or not drunk, is to be whipped, as the Messenger of Allah SAW said: People who drink wine should be whipped (HR. Muttafaqu 'alaih).

From Aisyah ra. That the Prophet saw. said: Lighten the punishment for those who have never committed a crime for their deeds, except in the radius of hudud. (Narrated by Ahmad, Abu Dawud, Nasa'i and Baihaqi).³¹Meanwhile, Imam Ash-Shafi'i Rahmahullah is of the opinion that the punishment is 40 lashes and not 80 times. He has evidence, including a hadith from Anas ra. said that Rasulullah SAW whipped cases of drinking wine with fronds and sandals 40 times (HR. Muttafaqu 'alaih).

As is known, one of the sources of Islamic law is the Al-Qur'an and Hadith. As has been explained, the hadiths regarding the prohibition of drinking wine as well as the hadith regarding the punishment that must be imposed on those who drink wine, based on these hadiths, the provisions and punishments contained in these hadiths are then implemented in the form of the Aceh Qanun, p. This is one form of application of Islamic Law in Acehese society.

2. To provide awareness and relieve the perpetrator of guilt

The aim of punishment as prevention is divided into three parts, namely individual aims with the aim of deterring criminals from committing crimes again. Public goals with the intention of making other members of society afraid to commit crimes. The goal is long term (long time deterrence) with the aim of maintaining the seriousness of society's attitude towards crime.

Jack Gibbs, said that prevention is divided into three parts; statutory prevention, primary prevention and secondary prevention. Prevention of laws is carried out by threatening that many people will obey the prohibition. Primary prevention prevents or deters other people who are not perpetrators of criminal acts who may have the intention to commit criminal acts, while secondary prevention prevents perpetrators of criminal acts from repeating their actions again, if they have experienced and believe that the actions they have committed have led them to suffering and causing shame.³²

The form of the threat of caning is intended as an effort to provide awareness to the perpetrator and at the same time serve as a warning to the public not to commit acts that are

³⁰Madiasa Ablisar, *Caning as an Alternative to Punishment in the Context of Reforming Indonesian Criminal Law*, USU Press, Medan, 2011, page. 152.

³¹Abubakar Muhammad, *Subussalam Translation Volume IV*, Al-Ikhlash, Surabaya, 1995, page. 157

³²Ibid., page. 201.



prohibited in the Aceh Qanun. In addition, caning is an effort to provide education and guidance, so that the perpetrator will realize and regret the mistakes they have committed and lead them to justice. position yourself in nasuha repentance. The implementation of public caning is intended as a preventive measure and is more effective because the convict feels embarrassed. This type of caning punishment also makes the costs borne by the government cheaper compared to other types of punishment as known in the current Criminal Code system.³³

Releasing the feeling of guilt is the aim of punishment which JE Sahetapy calls liberation theory, which aims to free the person who is convicted of guilt by changing their mentality based on religious teachings. Releasing guilt based on the teachings of Islam can be done by repenting, caning is part of the statement of repentance which is expected to forgive sins in the afterlife. In the hadith of the Prophet Muhammad SAW narrated by Muslim from Ubadah Ibnush-Shamitra, it is stated that: Rasulullah emphasized the prohibitions to his companions as the prohibitions he emphasized to women, namely not to associate anything with Allah, not to steal, not to commit adultery, not to killing children and not lying to each other. Whoever is consistent in avoiding this prohibition, Allah will bear the reward. Whoever commits an offense and is punished for it, then the punishment will be an expiation for his sins.³⁴

Thus, caning is part of a person's expression of repentance, the implementation of which tends to be voluntary and cannot be forced on the condemned person.³⁵ The purpose of punishment as teaching and education is to educate the perpetrator to do good in himself so that he becomes a good person by realizing the mistakes he has committed so that he can distance himself from criminal acts, not because of fear of punishment, but because of self-awareness and hatred of criminal acts and with hope. get blessing from Allah. The punishment given to the perpetrator of a criminal act is intended to provide a sense of suffering that must be experienced by the perpetrator, as a means of purifying himself, thereby creating a sense of justice.³⁶

3. As a lesson to the community (tadabbur)

Another factor in the authority of qanun hudûd regulations in the form in Aceh is the effort to provide warnings and awareness to the public to stop consuming intoxicating drinks, even though basically the application of hudûd punishments is still at the initial stage, the enthusiasm shown by the community and government, which wants Islamic Sharia implemented in Aceh Province is an important factor in the implementation of hudûd in the form of caning punishment. Apart from that, by carrying out this caning punishment, the aim

³³Madiasa Ablisar, The Relevance of Caning as a Form of Punishment in Criminal Law Reform, *Journal of Legal Dynamics*, Vol. 14, no. 2, May 2014.

³⁴M. Nashrudin Al-Albani, *Summary of Sahih Muslim*, Translated: Elly Lathifah, Gema Insani, Jakarta, 2005, page. 504.

³⁵Madiasa Ablisar, *Op. Cit.*, page. 204.

³⁶*Ibid.*, page. 197.



is to implement one of the principles of the Jinayat Procedural Code, namely the principle of community learning (tadabbur).

The principle of community learning is the principle that all judicial processes from arrest to implementation of uqubat must contain an educational element, so that the community obeys the law, knows the law enforcement process and protects the community. This principle is very important because the existence of law in Islam is not essentially aimed at punishing people but at educating, providing learning and fostering legal awareness. Actions that violate the law in Islamic Sharia will not only have consequences in the world, but also in the afterlife. Therefore, the existence of law in Islamic Sharia actually fortifies society, prevents and protects them from crimes and violations, because these actions are disobedience to Allah SWT.

However, there is a new regulation in Aceh regarding the prohibition of flogging executions in open spaces such as in front of mosque courtyards or in fields so that flogging executions cannot be seen or witnessed by the general public anymore. Namely Governor's regulation Number 5 of 2018, which moves the process of carrying out caning executions to a closed room, namely a correctional institution (prison).

In fact, the new regulation by the Governor of Aceh was also approved and signed by the Minister of Law and Human Rights (Menkumham), namely Yasona Laoli, on Thursday, April 12 2018. Yasonna invited the execution of caning sentences in Aceh to be carried out in the Aceh prison area. Previously, flogging executions were carried out in the mosque yard openly and could be witnessed by the public.³⁷

Apart from that, the reason the Aceh Governor's government itself moved the flogging execution to a closed room such as a prison was, so that the flogging itself could no longer be seen or watched by children and the public would no longer be able to see it and could not document it in the form of photos or videos, where if these photos and videos are published, they will continue to cause shame for the caned person and the caned person will feel as if they are being punished for the rest of their life. Based on this, the implementation of the flogging execution was moved from an open space to a closed space such as a prison. Regarding this provision, there have been many comments from various parties, both pro and con.

Effectiveness of Policies Related to Khamar Crimes Based on Aceh Qanun Number 6 of 2014 concerning Jinayah

The term effectiveness comes from the word effective, which means effect, influence, luck and efficacy. Meanwhile, effectiveness is the influence caused by a situation that befalls it.³⁸ The effectiveness that the author refers to in this discussion is the influence caused by caning on the

³⁷Irwansyah Putra, Execution of Caning Sentences, Permissible in Prison Areas, via, <http://www.jurnalasia.com/nasional/eksekusi-dunia-cambuk-boleh-di-area-lapas/.html>, on January 22 2022, at 23.50.

³⁸Ministry of Education and Culture of the Republic of Indonesia, Big Indonesian Dictionary, Balai Pustaka, Jakarta, 2009, page. 987.



process of implementing Islamic Sharia in the Aceh region. The effectiveness of law in society is discussing the effect and working power of the law in forcing people to obey and comply with the law.

Law enforcement will run well and effectively, which is one of the successes and benchmarks in protecting and elevating the dignity of the nation in the field of law, in addition to providing legal certainty and guarantees for the people, so that society and the people are protected in their rights in living their lives.³⁹

According to Soerjono Soekanto, whether a law is effective or not is determined by 5 (five) factors, namely:

1. The legal factor itself (law)
2. Law enforcement factors, namely the parties who form and implement the law.
3. Facilities or facilities factors that support law enforcement
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life.⁴⁰

Meanwhile, according to Nur Rohim Yunus, law enforcement is the process of making efforts for or functioning real legal norms as guidelines for behavior in legal relations between society and the state.⁴¹ This includes law enforcement for perpetrators of alcohol crimes.

Caning punishment consists of two terms that have different meanings. Punishment is a sanction given to someone who has violated the law, both civil law and criminal law.⁴² Meanwhile, a whip is a beating tool made from rattan or rope to be used as a tool to stone guilty people.⁴³

The caning punishment referred to here is a punishment carried out using rattan to make people who commit violations aware of acts that violate Allah's provisions in the implementation of Islamic Sharia. The aim of implementing caning sanctions for perpetrators of violations of Islamic Sharia is to provide awareness and shame for repeating their actions again and to serve as a warning to the public not to violate Islamic Sharia and not have a negative impact on their families. And the implementation of the criminal sanction of caning makes the burden that must be borne by the government cheaper compared to other types of punishment as known in the current Criminal Code system.

The functions and objectives of the implementation of Islamic Sharia in the Qanun of Aceh Province regarding the crime of alcohol are as follows:

1. Protecting society from various activities and/or actions that damage reason.
2. Preventing actions or activities that arise as a result of drinking alcohol in society.

³⁹Bambang Sutiyo, *Legal Actualization in the Era of Reform*, Rajawali Pers, Jakarta, 2004, page. 58.

⁴⁰Soerjono Soekanto, *Factors that Influence Law Enforcement*, Raja Grafindo Persada, Jakarta, 2008, page. 8.

⁴¹Nur Rohim Yunus, *Restoration of the Legal Culture of Indonesian Society*, Jurisprudence Press, Bogor, 2012, page. 68.

⁴²Abdul Aziz Dahlan et al., *Encyclopedia of Islamic Law*, Ikhtiar Baru Van Hoeve, Jakarta, 1999, page. 1439.

⁴³Abdul Fattah Idris, *Islamic Fiqh Law*, Rineka Cipta, Jakarta, 2003, page. 213.



3. Increase community participation in preventing and eradicating the occurrence of alcohol consumption and the like.

In order to effectively implement this Qanun, apart from having an investigation and prosecution agency, it also needs to be maximally supervised in this case by making efforts to guide perpetrators of alcohol crimes by wilayatul hisbah officials. Furthermore, the community and all figures in the environment are given a role in preventing the crime of drinking alcohol in order to fulfill their obligations as a Muslim to carry out Amar Ma'ruf Nahi Mungkar.

In Khamami's opinion there are several points for implementing Islamic Sharia in Aceh, namely as follows:⁴⁴

1. Viewed from the perspective of perpetrators of violations of Islamic Sharia, caning in Aceh has an influence and is very effective in reducing violations of Islamic Sharia.
2. From an economic perspective, the implementation of Islamic Sharia in Aceh is less effective, this is related to the costs that must be incurred by the Aceh Government every time it implements uqubat flogging in public.
3. From a psychological perspective, the implementation of Qanun Jinayat Aceh is very effective because it has a broad impact on society, namely creating a deterrent effect on perpetrators and also on the general public who witness the implementation of caning.
4. The Aceh Government in implementing and enacting the Aceh Qanun Jinayat Law is not general in enforcing the Qanun Law, this becomes ineffective because the Aceh Government itself does not support it seriously and is unfair in enforcing the law.

Meanwhile, according to Basid Djalil in an interview conducted by Munawir Sajali, he said that the implementation of Islamic Sharia in Aceh was very influential and effective in providing a deterrent and educational effect for perpetrators as well as providing education for the community who saw the implementation of caning in Aceh, because if someone in the family was punished by caning then a family will feel embarrassed and inferior in society so that they will distance themselves from socializing in society, due to this effect, it is what makes people not violate Islamic Sharia.

From the results of this research, according to the author, the implementation of the Qanun in Aceh is currently effective, but not yet optimal, so attention and preventive measures are needed so that the implementation of the Aceh Qanun Jinayat is effective. It is also necessary to formulate the concept of synergy using certain patterns, so in this case it is necessary The researcher mentioned several concepts to make the implementation of Islamic Sharia more effective, especially regarding Qanun Number 6 of 2014 regarding the crime of alcohol, including:

⁴⁴Munawir Sajali, Implementation of Aceh Qanun Number 6 of 2014 Concerning Jinayat Law Against Khamar Drinkers (Case Study in the Banda Aceh City area), Comparative Law Concentration Thesis, Comparative School of Schools Study Program, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta, 2018, page. 53



1. Preventive concept

The preventive concept is a countermeasure and action that can prevent a crime or violation before it occurs.⁴⁵ Deviant behavior that is not in accordance with the values of Islamic Sharia is the crime of drinking alcohol. This concept can be achieved in several ways, including:

- a. Inviting all elements of society to monitor and prevent the distribution of khamar drinks in various places and also instructing all supermarket, restaurant, cafe and hotel owners to always comply with the Aceh Qanun Jinayat by not selling and distributing khamar drinks or facilitating it.
- b. Make banners and socialize them in various places where alcohol drinking violations often occur.
- c. Carrying out routine communications and patrols to various villages where Sharia violations are indicated.

2. Coaching concept

Guidance is an effort by the Islamic Sharia Service to provide and increase understanding to the public regarding the implementation of sharia in a kaffah manner, as well as the sanctions that will be faced as a consequence of violating the crime of khamar. This requires several activities, namely:

- a. Islamic Sharia socialization training. In preventing the violation of drinking alcohol, there is a need for guidance aimed at increasing understanding, especially among the community and the leaders of Village Imams, Village Heads and youth, where they are people who have direct contact with the community every day.
- b. Fostering cooperation and direct contact between Wilayatul Hisbah with the District, Village Heads and the community so that all people have an adequate understanding of Islamic Sharia.
- c. Parental development in the family is an important step in developing the morals and behavior of the family. Often the perpetrators of qanun khamar crimes committed by the community come from troubled families or parents pay very little attention to their children's behavior patterns.

Conclusion

The legal regulation of the crime of alcohol based on Aceh Qanun Number 6 of 2014 concerning Jinayah states that every person who deliberately drinks alcohol is threatened with the uqubat hudud of being whipped 40 (forty) times. The effectiveness of policies related to alcohol crimes based on Aceh Qanun Number 6 of 2014 concerning Jinayah has been running effectively. This directly shows a decline after the caning process was carried out based on the Syar'iyah Court decision which was strengthened by the decision of the Provincial Syar'iyah Court. To be more effective in implementing Islamic Sharia in a kaffah manner, apart from the big role of the Aceh Government, it is also very necessary for the thought and participation of

⁴⁵Sudarto, Law and Criminal Law, Alumni, Bandung, 2006, page. 113.



the community and community figures to work together to maintain and socialize the Qanun Jinayat in Aceh and the Aceh Government to pay more attention to all aspects so that the implementation of Islamic Sharia achieves the desired goals and targets and also to be more effective and efficient in allocating funds for the benefit of society in the implementation and implementation of Islamic Sharia.

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