

Legal Policy on the Enactment of Criminal Law for Homosexuals in Aceh Province, Indonesia

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Abstract

Deviant sexual behaviour, which is currently prevalent in society, is known as homosexuality or *liwath*. Such sexual deviance is behaviour that is not permitted under Islamic law or positive law. According to Islamic law and Indonesian criminal law, *liwath* is a heinous act that can corrupt the intellect, mind and morals of human beings. Islam takes a firm stance against this prohibited act. This firmness is evident in the scriptural texts and hadiths that serve as the legal basis for Islamic jurists in determining the punishment for homosexuality. Although there are differences of opinion amongst Islamic jurists, they agree on the prohibition of homosexuality. Disagreements arise only regarding the specific legal sanctions to be imposed on the perpetrators. These differences stem from the varying legal sources utilised by individual scholars of Islamic jurisprudence, as well as differing interpretations of the verses and hadiths that form the basis for the legal rulings. The penalty for perpetrators of *liwath* under Law No. 6 of 2014 is flogging. The status of the criminal law (*Qanun Jinayat*) for perpetrators of *liwath* under Qanun No. 6 of 2014 within Indonesia's national criminal law system, as part of the reform of criminal law in Indonesia, is already in line with Indonesian law. The implementation of the criminal law set out in Qanun No. 14 of 2014 on the Criminal Code aims to uphold human dignity and protect the people of Aceh from committing sins against Allah. The implementation of the *Qanun Jinayat* has reduced the incidence of Sharia violations in Acehnese society.

KEYWORDS: Aceh, Homosexuality, Lesbians, Legal Policy, and *Qanun Jinayat*.

Introduction

Allah SWT created human beings and living creatures in pairs and ordained sexual orientation based on their respective partners. Recently, the phenomenon of same-sex couples, whether homosexual or lesbian, has become increasingly common, both openly and in secret; indeed, it is not uncommon for them to live as husband and wife. Sexual offences, such as indecent behaviour and sodomy—that is, the fulfilment of same-sex sexual desires through anal intercourse—are becoming increasingly widespread and are causing great concern amongst the public.¹

Islam has established guidelines for lawful sexual conduct for human beings. This is intended to safeguard religious principles, the continuity of life, reason, lineage and property.² Recently, there have been instances of sexual deviance that are the subject of public debate, and this deviant sexual behaviour is spreading rapidly through electronic and print media.

Islamic ethics advocates goodness and the eradication of evil. This is based on the Islamic view that human nature is inclined towards good, for humans were created through a sacred natural process, and the substance of their souls originates from the substance of the Most Holy, namely Allah. However, underlying this is the desire of human carnal urges to engage in sexual acts outside the bounds of Islamic law, which constitutes a biological deviation and violates human nature.³ This deviant sexual behaviour in society is known as homosexuality or *liwath*. Such sexual deviance is behaviour that is not permitted under Islamic law or positive law. Islamic law and positive law impose sanctions on homosexuals and lesbians based on the legal foundations applied by both systems of law.⁴

The negative consequences that can arise amongst homosexuals are often characterised by violence—whether sexual, physical or emotional. Mental and emotional problems and disorders in the perpetrators frequently cause this. A study published in the American Journal of Public Health found that 39 per cent of men attracted to men had experienced violence or abuse at the hands of other homosexual men.⁵

¹ Fatwa of the Indonesian Ulema Council No. 57 of 2014 on Lesbians, Gays, Sodomy and Sexual Abuse, page 1

² Fahmi Chairul, 'TRANSFORMASI FILSAFAT DALAM PENERAPAN SYARIAH ISLAM (Analisis Kritis Terhadap Penerapan Syari'at Islam Di Aceh)' (2012) VI al-manahij-jurnal kajian hukum islam.

³ Sayyid Sabiq, *Fiqh al-Sunnah*, Vol. VI (Lebanon: Dar al-Fikr, 1968), pp. 10–11.

⁴ Kevin Barnes-Ceeney and others, 'Recovery after Genocide: Understanding the Dimensions of Recovery Capital among Incarcerated Genocide Perpetrators in Rwanda' (2019) 10 *Frontiers in Psychology* <<https://doi.org/10.3389/fpsyg.2019.00637>>.

⁵ Ani Khairani, Didin Saefudin, 'Homosexuality from the Perspective of Islamic Psychology'. *Journal: Ta'dibuna*. Vol. 7, No. 2, October 2018.

The province of Aceh, as part of the Unitary State of the Republic of Indonesia, enjoys special privileges and autonomy. One of these is the authority to implement Islamic Sharia law whilst upholding justice, the public good and legal certainty. Article 125 of Law No. 11 of 2006 on the Government of Aceh stipulates that the implementation of Islamic Sharia law in Aceh includes criminal law. Furthermore, Law No. 11 of 2006 on the Government of Aceh grants the Aceh Government several special powers to govern the region. One of the powers held by the Aceh Government is the application of Islamic Sharia values to the local community, as regulated by the Qanun.⁶

The Qanun itself is a legislative instrument similar to provincial, regency or municipal regulations, governing the administration of government and the life of the Acehnese community. The Islamic Sharia implemented in Aceh encompasses *aqidah* (creed), *syar'iyah* (religious law) and *akhlak* (ethics). Further guidelines derived from Islamic Sharia include *ahwal al-syakhsyah* (family law), *muamalah* (civil law), *jinayat* (criminal law), *qadha'* (the judiciary), *tarbiyah* (education), *da'wah*, *syiar*, and the defence of Islam.⁷

One of the Aceh Qanuns is Qanun No. 6 of 2014 on Criminal Law, which stipulates penalties for those who engage in homosexual acts. Aceh Qanun No. 6 of 2014 on Criminal Law imposes penalties on those who commit deviant sexual acts, such as those who commit abominable acts, those who are wicked and commit acts of immorality, those who cause destruction, and those who are unjust. These are the vile characteristics described in the Qur'an. This serves to emphasise that the sin of *liwath*, homosexuality and LGBT practices are deeply abhorred by Islamic law.

Definition of Liwath

Imam Ibn Qudamah states that there is a consensus (*ijma'*) amongst all scholars regarding the prohibition of homosexuality (*ajma'a ahlul 'ilmi 'ala tahrim al-liwaath*).⁸ Lesbianism is referred to in books of fiqh by the terms *as-sahaaq* or *al-musabaqah*.⁹ It is defined as a sexual relationship between women. There is no disagreement amongst jurists that lesbianism is haram. Its prohibition is based,

⁶ Muhammad Ridwansyah and Asron Orsantinutsakul, 'The Strengthening of Guardian Institutions in Nanggroe Aceh During the Autonomy Era' (2022) 2 Journal of Human Rights, Culture and Legal System <<https://doi.org/10.53955/jhcls.v2i1.27>>.

⁷ Bukhari Ali and others, 'The Preemptive Approach of Ulama in Aceh to Eradicating Corruption' (2024) 14 El-Mashlahah 361 <<https://doi.org/10.23971/EL-MASHLAHAH.V14I2.8885>> accessed 11 March 2025.

⁸ Sohaib Mukhtar, 'In Defense of the Codification of the Islamic Law of Hudud into the Law of Pakistan' (2016) 2016 International Review of Law <<https://doi.org/10.5339/irl.2016.11>>.

⁹ Oren Gross, 'Unresolved Legal Questions Concerning Operation Inherent Resolve' (2017) 52 Tex. Int'l LJ.

amongst other things, on the saying of the Messenger of Allah (peace be upon him): “Lesbianism is (like) adultery amongst women.”

Liwath (sodomy/homosexuality) is a deviant sexual behaviour intended to satisfy one’s lust. Liwath or sodomy is a term derived from the story of the time of the Prophet Lot, when his people engaged in abnormal sexual acts, namely inserting the penis into the anus of their sexual partner. The people of Prophet Lot were materially very advanced, yet they defied Prophet Lot’s warnings by engaging in homosexual acts.¹⁰

According to Article 1(28) of Aceh Qanun No. 6 of 2014 on Criminal Law, liwath is the act of a man inserting his penis into the anus of another man with the consent of both parties.¹¹ Anyone who commits adultery must be punished in accordance with the penalty prescribed for adultery.¹² An offence of liwath must be proven in the same manner as that prescribed for adultery.¹³

Liwath, in the context of *fiqh al-jinayat* (Islamic criminal law), is considered a major sin because it contravenes religious norms, moral standards and the Sunnatullah and human nature. Allah SWT created humankind as men and women so that they might form couples, husband and wife, to produce legitimate offspring and attain tranquillity and affection.¹⁴ Islam strictly prohibits *liwath* because it has negative consequences for both personal and societal life, including:¹⁵

1. A lack of attraction to women and instead an attraction to men of the same sex. Consequently, if a homosexual man marries, his wife becomes a victim (suffering), as her husband is unable to fulfil his duties as a husband, and the couple lives without peace and affection, nor do they have children, even if they are fertile.
2. A psychological disorder that leads to an attraction to the same sex; the individual’s mental state is unstable, and this gives rise to strange behaviour in the male partner of a homosexual couple.
3. A neurological disorder that can weaken cognitive function, spirit and willpower.
4. AIDS causes sufferers to experience a decline in or loss of their immune system.

Liwath is a form of sexual deviance and constitutes a vile act and a grave sin. *Liwath* is also an act that undermines ethical principles, human nature and

¹⁰ Abdulrahmah, *A Comprehensive Explanation of the Laws of Allah (Sharia)*. (Raja Gravindo Persada, Jakarta: 2015). p. 315

¹¹ Khamami Zada, ‘Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience’ (2023) 23 *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* <<https://doi.org/10.18326/ijtihad.v23i1.1-18>>.

¹² Mukhtar (n 8).

¹³ *ibid*.

¹⁴ Masfuk Zuhdi, *Fiqh Issues*. (Haji Masaung, Jakarta: 2015). p. 37

¹⁵ Mukhtar (n 8).

religion, and can even damage mental health. The term *liwath* is usually applied to men who have sexual relations with men, as well as to women who have sexual relations with women.¹⁶

An Overview of Islamic Criminal Law

The province of Aceh is one of the provinces in Indonesia that implements Islamic Sharia law, both in daily life and in applicable regulations. The enactment of Law No. 44 of 1999 on the Implementation of Special Privileges for the Special Province of Aceh, Law No. 18 of 2001 on Special Autonomy for the Special Region of Aceh, and Law No. 11 of 2006—which replaced Law No. 18 of 2001 on the Government of Aceh—enacted by the central government, established these three laws as the legal framework for the implementation of Islamic Sharia in the Province of Aceh Darussalam.¹⁷

Law No. 11 of 2006 also regulates Islamic Sharia and Sharia courts, as set out in Articles 125–137. According to this law, the implementation of Islamic Sharia in Aceh is elaborated upon and encompasses ‘aqidah (creed), Sharia (law), and akhlak (ethics). These three areas have sub-categories comprising worship, *ahwal al-shakhsyyah* (family law), *muamalah* (civil law), *jinayah* (criminal law), *qada* (judiciary), *tarbiyah* (education), da’wah, syi’ar, and the defence of Islam.¹⁸

On 2 October 2014, the Governor of Aceh enacted Aceh Qanun No. 6 of 2014 on Criminal Law and Aceh Qanun No. 8 of 2014 on the Fundamentals of Islamic Sharia. These Aceh Qanuns have generated considerable debate among various groups, including academics, practitioners, and the general public. Controversy surrounding a regional policy, particularly one relating to the formulation of Sharia law, is to be expected and must be addressed with prudence and wisdom. The debate surrounding the Criminal Law Qanun has arisen not only at the regional level, but also at the national and even international levels. To a certain extent, this debate has led to rejection of and opposition to the implementation of the Criminal Law Qanun in Aceh.¹⁹

Qanuns regulate various matters, including the halal product certification system, the fundamentals of Islamic Sharia, criminal law, and criminal

¹⁶ Triyanto, ‘Regulasi Perlindungan Hak Asasi Manusia Tingkat Internasional’ (2013) 1 Jurnal PPKn.

¹⁷ Reandi Saputra and others, ‘The Role of Wilayatul Hisbah in Maintaining Moral Order at the Market: A Case Study in Langsa City’ (2024) 1 AJIL: Aceh Journal of Islamic Law.

¹⁸ *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (2010) <<https://doi.org/10.5117/9789087280574>>.

¹⁹ Khairani Universitas Islam Negeri Ar-Raniry Banda Aceh, Chairul Fahmi and Ayyub Sabar, ‘BLASPHEMY ACCORDING TO THE ITE LAW AND ISLAMIC LAW’ (2018) 2 JURISTA: Jurnal Hukum dan Keadilan 133 <<https://doi.org/10.1234/JURISTA.V2I2.44>> accessed 17 August 2024.

procedure.²⁰ The implementation of Islamic Sharia in Aceh, carried out through the enactment of qanuns, is governed by legislation on special autonomy, namely Law No. 44 of 1999, Law No. 18 of 2001 on Special Autonomy for the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam, and Law No. 11 of 2006 on the Government of Aceh.²¹ Under Law No. 11 of 2006 on the Government of Aceh, the Government of Aceh is granted several special powers to govern its region. One of the powers held by the Government of Aceh is the application of Islamic Sharia values to the local community, as regulated in the Qanun. The Qanun itself is a type of legislation similar to provincial, regency or municipal regulations, governing the administration of government and the life of the Acehnese community.²²

About Qanuns on criminal law, the Aceh Government has enacted them in two stages. Firstly, in 2003, three Qanuns were issued: No. 12 of 2003 on the Prohibition of Alcohol, No. 13 of 2003 on Maisir (gambling), and No. 14 of 2003 on Khalwat. Subsequently, these three qanuns were consolidated into a single qanun, which included seven additional criminal offences. This qanun is Qanun No. 6 of 2014. There are 10 forms of criminal offences listed in Qanun No. 6 of 2014.

Legal Provisions Regarding the Offence of Liwath in Qanun No. 6 of 2014

The homosexual community, whether referred to as gay or lesbian, demands equality, equal rights and recognition of their sexual orientation, including the right to marry. Sexual offences, such as indecent behaviour and sodomy—that is, the act of satisfying same-sex sexual desires through anal intercourse—are becoming increasingly widespread and are causing great concern amongst the public. Such forms of sexual deviance have become so alarming to society that they threaten the social order and undermine the

²⁰ Nurdin MH, Muazzin Muazzin and Zainal Abidin, 'THE ROLE OF TRADITIONAL JUSTICE PROVIDERS IN IMPLEMENTING THE CUSTOMARY COURT OF ACEH' (2023) 7 Syiah Kuala Law Journal <<https://doi.org/10.24815/sklj.v7i1.31507>>.

²¹ Chairul Fahmi and Syarifah Riyani, 'ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT' (2024) 11 Wahana Akademika: Jurnal Studi Islam dan Sosial 89 <<https://doi.org/10.21580/WA.V11I1.20007>> accessed 9 November 2024.

²² Nora Tuddini, Muslem Abdullah and Abbas Pannakkal, 'AN EXAMINATION OF THE EFFICACY OF ONLINE PAYMENT OF ZAKAT FITRAH BASED ON YUSUF AL-QARHDAWI'S THOUGHT' (2023) 7 JURISTA: Jurnal Hukum dan Keadilan 183 <<https://jurista-journal.org/index.php/jurista/article/view/77>> accessed 10 July 2024.

institution of marriage as the sole legitimate means of channelling sexual desire and organising family and community life.²³

This reality has arisen from questions raised by the public regarding the punishment for those engaging in same-sex sexual activity, whether lesbian or gay, those committing sodomy, and those committing sexual abuse.²⁴ Therefore, the Indonesian Ulema Council has issued a fatwa on lesbianism, homosexuality, sodomy and sexual abuse as a guideline. This fatwa explains the following terms:

- a. Homosexuality is a sexual activity in which a person engages with another of the same sex, whether male or female.
- b. Lesbian refers to sexual activity between women.
- c. 'Gay' is a term for sexual activity between men.
- d. Sodomy is a term for sexual activity that violates Sharia law, namely sexual intercourse via the anus, also known as *liwath*.
- e. Indecent assault is the term for sexual activity carried out against a person with whom one is not married, such as groping, fondling, kissing, and other activities, whether carried out with a person of the opposite sex or the same sex, or against an adult or a child, which is not permitted under Sharia law.
- f. Hadd is a type of punishment for criminal offences, the form and severity of which are prescribed by the text of the Sharia.
- g. Ta'zir is a type of punishment for a criminal offence, the form and severity of which are left to the discretion of the *ulil amri* (the authority responsible for determining the punishment).²⁵

Liwath, or homosexuality, is behaviour or conduct that deviates from human nature. Perpetrators of *liwath* commit acts of sexual abuse, often commencing with acts of violence or physical and mental abuse against the victim to facilitate the fulfilment of their deviant sexual desires.²⁶ This act is a degrading violation of human nature and places the perpetrator in a position more despicable than that of an animal. *Liwath* itself is regulated under Article 63 of Law No. 6 of 2014:

1. Any person who wilfully commits the offence of *Liwath* shall be liable to a 'Uqubat Ta'zir of up to 100 lashes or a fine of up to 1,000 grams of pure gold or imprisonment for a maximum of 100 months.

²³ Faizi Faizi, 'How Are Islamic Banking Products Developed? Evidence from Emerging Country' (2024) 12 Cogent Economics and Finance <<https://doi.org/10.1080/23322039.2024.2378961>>.

²⁴ Salma and others, 'The Other Side of the History of the Formulation of Aceh Jinayat Qanun' (2022) 22 Ahkam: Jurnal Ilmu Syariah <<https://doi.org/10.15408/ajis.v22i1.21000>>.

²⁵ Fatwa of the Indonesian Ulema Council No. 57 of 2014 on Lesbians, Gays, Sodomy and Sexual Abuse

²⁶ Myengkio Seo, 'Living Sharia: Law and Practice in Malaysia' (2020) 50 Religion <<https://doi.org/10.1080/0048721x.2019.1656943>>.

2. Any person who repeats the offence referred to in paragraph (1) shall be liable to a 'Uqubat Ta'zir of 100 lashes, a fine of up to 120 grams of pure gold and/or imprisonment for a maximum of 12 months.
3. If the victim is a child, the 'Uqubat Ta'zir is 100 lashes, a fine of 1,000 grams of pure gold and/or imprisonment for 100 months.

Legal provisions regarding the Indonesian Ulema Council Fatwa No. 57 of 2014 on Lesbianism, Homosexuality, Sodomy and Sexual Abuse:

1. Sexual relations are only permitted between a husband and wife, namely a man and a woman who are lawfully married in accordance with Sharia law.
2. Same-sex sexual orientation is a disorder that must be cured and a deviation that must be corrected.
3. Homosexuality, whether lesbian or gay, is haram and constitutes a criminal offence (jarimah).
4. Those who engage in homosexual acts, whether lesbians, gay men or bisexuals, are subject to hadd and/or ta'zir punishments by the competent authorities.
5. Sodomy is haram and constitutes a vile act that incurs a major sin (fahisyah).
6. Those who commit sodomy are subject to ta'zir punishment, with the maximum penalty being the death penalty.
7. Homosexual activity other than sodomy (liwath) is haram, and those who commit it are subject to ta'zir punishment.
8. Sexual molestation, namely the gratification of sexual desire such as groping, fondling and other activities outside a valid marriage, committed by a person, whether towards the opposite sex or the same sex, towards adults or children, is haram.
9. Perpetrators of sexual molestation as referred to in point 8 shall be subject to a ta'zir punishment.
10. Where the victims of the crimes (jarimah) of homosexuality, sodomy and sexual molestation are children, the perpetrators shall be subject to aggravated penalties up to and including the death penalty.
11. Legalising same-sex sexual activity and other deviant sexual orientations is haram.

The MUI, in determining sanctions for perpetrators of homosexual acts, refers to several hadiths, most of which punish such acts as adultery. One hadith explains that homosexuality constitutes adultery. From Abu Musa, who said: The Messenger of Allah (peace be upon him) said: "If a man has sexual intercourse with another man, then both of them are committing adultery. And if a woman has sexual intercourse with a woman, then both of them are committing adultery" (Narrated by Al-Baihaqi).

In light of the above, the MUI concurs with Imam Malik, Imam Shafi'i and Imam Ahmad, who equate the punishment for those who engage in homosexual acts with that for adultery. The reasoning is that the Qur'an equates

the two. As Allah states in the Qur'an, in Surah Al-Ankabut, verse 28, and Surah Al-Nisa', verse 16, which declare that homosexuality is an abomination; thus, as the name is the same, so too is the ruling.

Discussions regarding homosexuality have, until now, invariably centred on the punishment for those who commit it, as the evidence for its prohibition, according to jurists, has been established by the Qur'an, just as it was established for the people of the Prophet Lot. Consequently, the imams of the schools of thought, except the Hanafi school, have prescribed the punishment of stoning to death for those who engage in homosexual acts. The Hanafi school, however, takes the view that this constitutes a sin not explicitly defined by Allah; consequently, it is punishable by ta'zir (a disciplinary punishment), as it is not classified as zina.²⁷

Legal Policy Regarding Law No. 6 of 2014 on Perpetrators of Liwath

The duty of the state in a state governed by the rule of law is to maintain public order, accompanied by the state's right to impose criminal penalties on citizens who violate the law, and this right must be in accordance with the law. Enacting sound legislation as the foundation for the state's imposition of criminal penalties is inseparable from criminal law policy, so that the intended objectives of criminal punishment may be achieved.²⁸

A state governed by the rule of law is a state founded on the law; this concept is usually contrasted with a state based on power. In a state governed by the rule of law, there are limitations on the state's power over individuals. The state is not omnipotent; it must not act arbitrarily. The law constrains the state's actions towards its citizens. In connection with the discussion of the Qanun of Nanggroe Aceh Darussalam, which is derived from Islamic law, it is necessary to address the concept of the rule of law within Islamic law. Muhammad Tahir Azhary states that within the comprehensive Islamic legal system, there are also aspects of constitutional law known as al-ahkam al-sultaniya. The rule of law in Islam is known as Islamic nomocracy.²⁹

Islamic nomocracy is a rule-of-law state that adheres to the following general principles:

²⁷ Hasan Zaini, 'LGBT from an Islamic Legal Perspective'. Journal: Ilmiah Syari'ah. Vol. 15, No. 1, January-June 2016. p. 7

²⁸ Nurul Hasana, Mustopa Mustopa and Enceng Arif Faizal, 'Akibat Hukum Perjanjian Penyelesaian Sengketa Perbankan Syariah (Kajian Terhadap Klausula Pilihan Forum Penyelesaian Sengketa Di Pengadilan Negeri)' (2023) 10 Al-Muamalat: Jurnal Ekonomi Syariah <<https://doi.org/10.15575/am.v10i2.29594>>.

²⁹ Panji Adam, 'LEGISLASI HUKUM EKONOMI SYARIAH: STUDI TENTANG PRODUK REGULASI HUKUM EKONOMI SYARIAH DI INDONESIA' (2018) 1 Tahkim (Jurnal Peradaban dan Hukum Islam) <<https://doi.org/10.29313/tahkim.v1i2.4105>>.

1. The principle of power as a trust.
2. The principle of consultation (musyawarat)
3. The principle of justice.
4. The principle of equality.
5. The principle of recognition and protection of all human rights.
6. The principle of an independent judiciary.
7. The principle of peace.
8. The principle of welfare.
9. The principle of public obedience.

Examining Aceh from a criminal law perspective is important. One key argument for the importance of such a study is that the application of criminal law in Aceh is based on the ideological and religious views of its people, namely Islam. Some may dispute this, given that there are countries such as Iran, Saudi Arabia and other Islamic states that also apply Islamic criminal law as positive criminal law. However, this can be easily refuted because the application of Islamic criminal law in Aceh is limited to the province, not the state.³⁰ This is the unique aspect that sets Aceh apart from other regions.

The autonomy of a province within a state has permitted the implementation of a separate legal subsystem.³¹ This reflects the reality that, empirically, Islamic Sharia in Aceh has been a living value within the Acehnese society for centuries. Another key factor is that within the Indonesian legal system, the 1945 Constitution explicitly guarantees freedom of religion, meaning the freedom for adherents to practise their religious teachings. The term 'Islamic Sharia' is defined in Law No. 44 of 1999 on the Special Status of Aceh, Articles 3 and 4, which clearly state that Aceh's attainment constitutes recognition by the Central Government. Furthermore, religious life is a key requirement within society. Specifically, regulations on such matters will be established through qanun. This constitutes a state decree or legislation that accommodates the community's wishes. The position of Sharia within the law reflects Aceh's special rights, including the implementation of Islamic Sharia, education and customs. From the very beginning of the declaration on the implementation of Islamic Sharia, challenges and even doubts, accompanied by a sense of pessimism, arose due to the lack of concrete examples of how to

³⁰ Fathullah Muhammad Parhan, Abdul Hamid and Lutfi Annisa, 'Perwalian Menurut Para Fuqaha (Tela'ah Kitab Fiqih Islam Wa Adillatuh, Dan Kitabun Nikah Syekh Muhammad Arsyad Al-Banjari)' (2024) 2 Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory <<https://doi.org/10.62976/ijjel.v2i2.618>>.

³¹ Husni Mubarrak and others, 'Sharia as a New Culture System of Identity in the Post-Conflict Aceh, Indonesia' (2024) 11 Al-Qadha : Jurnal Hukum Islam dan Perundang-Undangan <<https://doi.org/10.32505/qadha.v11i2.9250>>.

apply Islamic Sharia in a modern context. In this context, Islamic Sharia in Aceh refers to Islamic teachings codified in Qanun.³²

Criminal law in Indonesia, given the existence of special regions such as Aceh Darussalam, must be interpreted more holistically and comprehensively. The relationship between Aceh and Indonesia should be harmonious, relevant and mutually complementary. Aceh and Indonesia must be understood as a single entity, not as two binary entities. This means that when Aceh applies a principle that gives rise to a new norm—one that differs entirely from the Criminal Code (KUHP) and other criminal laws in Indonesia—this should be interpreted as filling a legal void, rather than as something alien or contentious. Many moral issues in Indonesian society today need to be addressed through proper law enforcement, given the significant negative consequences that arise.³³

The presence of the lesbian, gay, bisexual and transgender community in Indonesia has caused a stir within society. This is because it has been regarded as a challenge to religion, nature and the values upheld by Indonesian society, which has never permitted such behaviour. Liwath, or homosexual acts, constitute a serious violation of religious teachings and the values of religious life within Indonesian society.

Criminal law policy refers to the process of devising, drafting and formulating sound criminal legislation. The function of the law is to regulate social interaction. Such regulations guide what must be done, what is permitted and what is prohibited, to ensure that everything proceeds in an orderly and regulated manner. To this end, criminal law policy is essential in efforts to tackle the act of *liwath* or homosexuality.³⁴

Criminal law policy is used to establish regulations aimed at tackling law or homosexuality. This criminal law policy responds to the adverse consequences of deviations from divine values, natural law and morality by establishing regulations to tackle acts of lawlessness or homosexuality. Criminal policy is a derivative of criminal policy/criminal politics, as criminal policy (criminal policy) refers to rational efforts to tackle crime. Criminal politics is a derivative of law enforcement policy in the broadest sense. All of these form part of social policy, namely the efforts of society or the state to improve the

³² Amrullah Bustamam, 'Fungsi Lembaga Wali Nanggroe Dalam Menyelesaikan Konflik Lokal Masa Penerapan Otonomi Khusus' (2022) 10 Serambi Tarbawi <<https://doi.org/10.32672/tarbawi.v10i1.3953>>.

³³ Rahmad Kurniawan, Nur Asnawi and Chairul Fahmi, 'Juridical-Philosophical Review of the Position of Sharia Compliance in Islamic Banking in Indonesia' (2024) 9 Jurnal Ilmu Hukum Tambun Bungai 531 <<https://doi.org/10.61394/JIHTB.V9I2.497>> accessed 4 March 2025.

³⁴ Danial Murdani, 'Globalization and Paradigm of Islamic Law Implementation in Aceh' (2022) 21 Mazahib Jurnal Pemikiran Hukum Islam <<https://doi.org/10.21093/mj.v21i1.4323>>.

welfare of its citizens. This is synonymous with national development policy or planning, which encompasses a wide range of development aspects.³⁵

Efforts to reform criminal law must be based on criminal law policy and criminal policy that reflect national aspirations and the needs of society today and, in the future, can keep pace with legal developments in the developed world. Any efforts to reform criminal law policy or criminal law legislation based on Pancasila and the 1945 Constitution of the Republic of Indonesia must ensure that such regulations contain provisions restricting actions that go beyond merely regulating behaviour that is strictly prohibited—whether the act itself or its consequences— but also acts that violate the values of divinity and morality embedded in society, which are enshrined in Pancasila as the source of all sources of law.³⁶

Liwath or homosexual acts have hitherto taken refuge under the banner of universal human rights espoused by Western nations. In contrast, Indonesia adheres to Pancasila-based human rights because Pancasila already embodies humanitarian values. This can be seen from the values of balance found in Pancasila, which stem from the spirit of the nation. Efforts to combat all forms of crime are ongoing. The criminal law policies pursued to date are nothing less than measures that are continually being explored and reviewed to make these efforts to combat crime as effective as possible.³⁷ Therefore, criminal law policies are urgently needed to tackle the act of *liwath* or homosexuality.

Liwath or homosexual acts are already regarded as acts that disrupt balance, harmony and cohesion within society and cause unrest and fear of being drawn into such acts. However, it is hoped that future criminal law policy will address the act of liwath or homosexuality through criminal law, whilst aligning with criminal sanctions and the objectives of criminal law to ensure it is effective in tackling such acts. As it is considered a criminal offence from the perspective of Pancasila and the values upheld by society, liwath or homosexuality should be addressed promptly by directing criminal law policy.³⁸

About criminal policy, it should also be explained that in Islamic criminal law literature, criminal law is referred to as ‘jinayah’, meaning an offence or reprehensible act that requires the perpetrator to be held accountable.³⁹ The

³⁵ Nikolas Doukellis, ‘Excavations in Search of Cultural Artifacts During Armed Conflict: A War Crime Under Customary International Law’ [2017] SSRN Electronic Journal <<https://doi.org/10.2139/ssrn.2819760>>.

³⁶ Heni Marlina and Serlika Aprita, ‘PENEGAKAN HUKUM TERHADAP KASUS KORUPSI PT. TIMAH SEBAGAI BENTUK POTRET BURUK TATA KELOLA SEKTOR EKSTRAKTIF’ (2024) 8 The Juris <<https://doi.org/10.56301/juris.v8i1.1182>>.

³⁷ Zainuddin, ‘ISLAM DAN MASALAH REMAJA’ (UIN Maulana Malik Ibrahim Malang, 2013).

³⁸ Imaro Sidqi, ‘Construction of Sumah Li’an Based on Sharia Maqashid’ (2023) 19 Al Ahkam <<https://doi.org/10.37035/ajh.v19i1.8013>>.

³⁹ Muhammad Rayhan Putera and M. Junaidi, ‘Kedudukan Mahkamah Syariah Aceh Untuk Menggantikan Peran Peradilan Agama Dalam Menjalankan Kekuasaan Kehakiman’

term ‘jinayah’ in the fuqaha's terminology is often considered synonymous with ‘jarimah’. However, there are opinions stating that the use of the term ‘jarimah’ is limited to ‘jarimah hudud’ and ‘qisas’ alone. Depending on the severity of the offence, ‘jarimah’ can be classified into ‘jarimah hudud’, ‘*jarimah qisas-diyat*’, and ‘jarimah ta’zir’. Of these three types of ‘jarimah’, the authority’s discretion in determining which acts are punishable and what penalties are imposed on the perpetrator lies with ‘jarimah ta’zir’. Whereas for hudud and qisas/diyat offences, there are already established provisions regarding the acts and their corresponding penalties. The determination of ta’zir is carried out as mentioned above: by examining the provisions of Sharia, applying the principles of *usul al-fiqh*, and finally arriving at a legal ruling. Criminal law policy in the field of criminal offences (types of punishment) continually seeks appropriate solutions to determine effective types of punishment to achieve criminal justice objectives, so that the draft of the new Criminal Code includes several new types of punishment, such as supervision, community service, payment of compensation and fulfilment of customary obligations, in addition to treatment in a psychiatric hospital, forfeiture of proceeds derived from criminal offences, remediation of the consequences of criminal offences and work training as forms of intervention.

Conclusion

Liwath, or homosexuality, is behaviour or conduct that deviates from human nature. Perpetrators of liwath commit acts of sexual abuse that begin with acts of violence or physical and mental abuse against the victim to facilitate the fulfilment of their deviant sexual desires. Liwath itself is regulated under Article 63 of Qanun No. 6 of 2014. Meanwhile, in the Criminal Code (KUHP), homosexuality/liwath is regulated under Article 292, which states: “An adult who commits an indecent act with a minor of the same sex, whilst knowing or having reasonable grounds to suspect that the person is a minor, shall be punished with imprisonment for a maximum of five years.” However, this article only covers children as victims of homosexuality/liwath.

Criminal law policy constitutes a new legal reconstruction aimed at adapting to changes in time, era and place. Qanun No. 6 of 2014 on Jinayat Law should serve as a model for Indonesian positive law to incorporate regulations on homosexuality or liwath into the legal framework, thereby benefiting society. According to Hanafi, ‘dita’zir’ is the implementation of Qanun No. 6 of 2014 on Jinayat Law, which regulates ‘liwath’. It represents the application of Islamic criminal law adapted to the Indonesian context. This is because, under Islamic jinayat law, according to Imam Shafi’i, the perpetrator must be put to death. However, Hanafi insists that Indonesia must immediately establish regulations concerning homosexuality to prevent a legal vacuum. In this matter, the need

for legal reform stems from the requirements of the law itself, to avoid giving rise to other criminal offences, such as mob violence, resulting from lawlessness. Based on Qanun No. 6 of 2014 on Jinayat, Indonesia should regulate homosexuality/liwath more clearly. In line with the evolution of the times and civilisation, the government may enact legal provisions that clearly regulate perpetrators of homosexuality/liwath within the Criminal Code or other regulations, drawing on Qanun No. 6 of 2014.

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