

THE FORMULATION OF CRIMINAL SANCTIONS FOR DRINKING LIQUOR (KHAMR) UNDER QANUN JINAYAH IN ACEH

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Abstract: This study aims to explain why the legislators of Qanun Jinayah in Aceh formulated sanctions for liquor consumption of 40 lashes and the relationship between the category of alcohol drinkers and the number of lashes in the Qanun Jinayah in Aceh because Aceh is an area that has the specialty to regulate its own government, especially in the form of implementing Islamic law.

The methodology used in this research was normative juridical by using a law approach. The data were obtained through a literature review and interviews with experts in the field of Islamic criminal law. However, the interviews with Islamic law institutions were conducted directly involving authorities from Islamic Law Agency and Aceh Provincial Legislative Council members.

Based on the results of this study, it can be concluded that according to Qanun Number 6 of 2014, the punishment for drinking liquor is subject to 40 lashes, as mentioned in Article 15. The provisions of Article 15 are based on the Hadeeth of the Prophet narrated by Muslim, which states that the punishment for drinking alcohol is 40 lashes. Moreover, the arrangements and placements of caning as a punishment concerning the appropriateness of the severity of caning is a matter of choice of the authorities in Aceh, which is under the nuances of Islamic criminal law. The purpose of imposing punishment in Islamic law is to prevent, improve, and educate. It is believed that these could be achieved by imposing a mandated sentence of 40 lashes for those who drink liquor.

Keywords: Formulation, Liquor Drinkers, Aceh's Qanun Jinayah.

Abstrak: Penelitian ini bertujuan untuk menjelaskan mengapa perumus Qanun Jinayah di Aceh merumuskan sanksi bagi peminum khamar 40 kali cambuk dan untuk menjelaskan hubungan antara kategori peminum khamar dengan jumlah hukum cambuk dalam Qanun Jinayah di Aceh berhubung Aceh adalah daerah yang memiliki kekhususan untuk mengatur pemerintahan sendiri terutama dalam bentuk pelaksanaan syariat Islam.

Metodelogi yang digunakan dalam penelitian ini bersifat yuridis normatif dengan menggunakan pendekatan Undang-undang. Data yang terkait dalam penelitian ini diperoleh melalui peninjauan ke perpustakaan serta wawancara narasumber dari akademisi hukum pidana Islam dan wawancara kelembagaan syariat Islam yang dapat menunjang penelitian ini antara lain dari Dinas Syariat Islam dan Dewan Perwakilan Rakyat Aceh.

Hasil penelitian ini dapat disimpulkan bahwa Menurut Qanun Nomor 6 Tahun 2014, hukuman bagi yang mengonsumsi khamar adalah cambuk sebanyak 40 kali, hal ini sebagaimana yang dimaksudkan dalam Pasal 15. Ketentuan Pasal ini didasarkan pada Hadis Nabi yang diriwayatkan oleh Muslim: yang menyatakan bahwa hukuman bagi peminum khamar adalah hudud 40 kali cambuk. Beberapa pengaturan dan penempatan hukuman cambuk sebagai suatu hukuman, memberi gambaran bahwa penentuan kesesuaian berat ringan suatu hukuman cambuk sebagai suatu hukuman dapat dianggap sebagai suatu

pilihan dari para penguasa di Aceh dalam menentukan kebijakan hukum pidana yang sesuai dengan nuansa hukum pidana Islam. Tujuan dijatuhkannya hukuman dalam syariat Islam adalah pencegahan, perbaikan dan pendidikan. Tujuan inilah yang ingin dicapai dalam penjatuhan hukuman hudud 40 kali cambuk terhadap peminum khamar.

Kata Kunci: Formulasi, Peminum Khamar, Qanun Jinayah Aceh

INTRODUCTION

Islamic criminal law is a translation of the word *fiqh jinayah*. *Fiqh Jinayah* is all legal provisions regarding criminal acts or criminal acts committed by *mukallaf* people (people who can be burdened with obligations), as a result of understanding the detailed legal arguments from the Qur'an and Hadith.¹ criminal act is an act that disturbs public peace and acts against the laws and regulations that are sourced from the Qur'an and Hadith.

The fuqaha define *uqubah* as a retribution imposed on a person who commits a crime for the sin he has committed as a sanction for himself and a deterrent or barrier for others from committing a crime.² Types of punishment concerning criminal acts in Islamic criminal law are divided into two parts, namely: *hudud* and *ta'zir*. Islam regulates to maintain the human mind by setting on the main principle that has become part of the *maqhasid shari'ah* away from food and drinks that have been prohibited in the *shari'ah*, one of which is drinking alcohol.

In the Jahiliyah era, the Arabs were famous for drinking wine (*khamr*). In order to avoid significant opposition from the people who are ingrained with the traditions, customs and culture of drinking *khama*, the revelation about the

prohibition of *khamr* was passed down gradually.

The arguments contained in the Qur'an above do not explicitly mention legal sanctions for drunkards. Although the prohibition is relatively firm, the types of sanctions are only mentioned in the hadith narrations. The Prophet in several hadiths he gave a stern warning about the dangers of alcohol, so that the drinker of alcohol should be given a punishment of 40 lashes.

As it is also explained that there is a difference in the number of *hadd* who drank alcohol at the time of the Prophet Muhammad and his companions. Prophet Muhammad lashed alcohol drinkers 40 times. Burnt ash also 40 times. While Umar 80 times.

Aceh Province is the only province in Indonesia that applies Islamic law which refers to the provisions of Islamic criminal law, which is also known as *jinayat* law. In Aceh Qanun Number 6 of 2014 concerning *Jinayat* Law, there are two types of punishment, namely *hudud* and *ta'zir* punishments.

As formulated in the Qanun that consuming alcohol is an evil act which is prohibited in Islamic law and is contrary to the customs of the Acehnese people. According to Qanun Number 6 of 2014, the punishment for consuming alcohol is subject to 40 lashes, this is as intended in Article 15.

¹ Zainuddin Ali, *Hukum Pidana Islam*, Sinar Grafika, Jakarta, 2012, hlm. 1.

²Zulkarnain Lubis, *Dasar-Dasar Hukum Acara Jinayah*, Kencana, Jakarta, 2016, hlm. 4.

Scholars differ on the level of punishment for drinking alcohol. This is because the Qur'an does not specify a definite and clear punishment. In addition, also because the execution of the punishment for drinking alcohol at the time of the Prophet and the Companions varied. So to get the results from the explanation above who wants to see how the punishment for alcohol drinkers in Islam is and how the formulation of criminal sanctions against alcohol drinkers in the law of jinayah.

METHOD RESEARCH

The type of research used is normative juridical which examines library materials or research on secondary data.³ As for this research, it uses a statutory approach (*statutae approach*), Aceh's Qanun Jinayah

This research is often referred to as a series of activities related to the methods of collecting library data, reading and taking notes and processing research materials.⁴ Literature research is the first step in data collection methods, thus it can be said that library research will affect the credibility of research results.

So the data analysis used in this paper is using qualitative analysis methods, namely the data obtained and then arranged systematically which is then analyzed qualitatively to get an explanation of the problem to be studied.

RESULT AND DISCUSSION

³ Bambang Sungono, *Metodologi Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, 2009, hlm. 189.

⁴ Mestika Zed, *Metode Penelitian Kepustakaan*, Yayasan Obor Indonesia, Jakarta, 2008, hlm. 3.

A. Criminal Sanctions Against Alcohol Drinkers in Islamic Criminal Law

Islam comes from the word *salama* which means peace or safety. According to the term, Islam means submission and obedience to Allah's rules conveyed through the Prophet Muhammad, to achieve safety and prosperity in life both in this world and in the hereafter.⁵

In Islam, if someone commits an action against the rules that are sourced from the Qur'an and Hadith, he will be given a sanction or punishment. In Arabic terms, punishment is known as the word *uqubah* which means torment or punishment, namely punishment for actions that violate the provisions of Shari'a which are set for the benefit of society. According to 'Abd al-Qadir 'Audah punishment is a vengeance that is determined for the benefit of society, because of violations of the provisions of *syara'*. In Islam, punishment is divided into two parts, namely *hudud* and *ta'zir*.

This is related to Islam's appreciation of the human mind which is a gift from Allah that must be maintained as well as possible. Currently, non-Muslims are starting to realize the benefits of prohibiting *khamr* after it is proven that *khamr* and so on (abuse of narcotics, marijuana) are dangerous for the nation.⁶

In Islam, narcotics crimes are not discussed specifically, but the Qur'an only mentions the word *khamr*, the word *khamr* itself has the meaning of something that can eliminate reason. Although in terms of the form of alcohol and narcotics, they are different, but the way the object works is the same, namely it can cause

⁵Choiruddin Hadhiri, *Klasifikasi Kandungan Al-Qur'an Jilid 1*, Gema Insani, Bandung, 2005, hlm. 74.

⁶ A Dzajuli, *Fikih Jinayah*, Raja Grafindo Persada, Jakarta, 2000, cet. III, hal. 95.

drunkenness and damage the function of the human mind.⁷

Islam is also a religion that glorifies reason and also places it in an honorable position. Intellect given by God to humans to be nurtured by eating halal and good food, because the type of food and drink can affect the soul and mental nature of those who eat them. Islam also regulates to maintain the human mind by setting on the main principle that has become part of the maqhasid shari'ah to stay away from food and drink that has been prohibited in the shari'ah, one of which is drinking khamr.

Etymologically, khamr means closed, blocked or hidden. Meanwhile, in terms of khamr, it is drinking intoxicating drinks, whether the drink is called khamr or not, khamr, both from grape juice and from other ingredients.

As a hadith narrated by Ibn Umar, that the Messenger of Allah said:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ النَّبِيَّ صَلَّى
اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ:
كُلُّ مُسْكِرٍ حَمْرٌ، وَكُلُّ مُسْكِرٍ حَرَامٌ
(رواه مسلم)

“Everything that intoxicates is wine, and every intoxicant is haram.” (HR. Muslim).⁸

Khamar is forbidden in the month of Rabiul Awwal in the fourth year of

Hijrah.⁹ In the Jahiliyah era, the Arabs were famous for drinking wine (khamr).

In order to avoid significant contradictions from among the people who are ingrained with the traditions, customs and culture of drinking khamr, then the revelation about the prohibition of khamr was revealed in stages, namely:

1. 1. The first stage of descending verse 219 of surah al-Baqarah.¹⁰

At this stage there is no absolute clarity about the prohibition of khamr. Allah only explains that the harm caused by wine is greater than the benefits that can be taken

2. 2. The second stage descends verse 43 of surah an-Nisa.¹¹

In this second stage, it is explained about the prohibition of khamr, but only to the extent that if you want to pray, khamr is forbidden. This verse forbids believers from praying when they are drunk so that they understand what they are saying.

3. 3. The third stage descends verse 90 of surah al-Maaidah.

In the third stage of the prohibition of alcohol, Allah revealed the verse after some time had passed from the second stage of prohibition. In this third stage, khamr is strictly prohibited.

As the word of Allah swt in the letter al-Maidah verses 90-91.

Meaning: "O you who believe, verily (drinking) alcohol, gambling, (sacrificing for) idols, drawing fate with

⁹ Ali Muhammad, *Sejarah Lengkap Rasulullah Jilid 2*, Pustaka Al-Kautsar, Jakarta, 2012, hlm. 137.

¹⁰ Neneng Nurhasanah, *Metodologi studi Islam*, Amzah, Jakarta, 2018, hlm. 125.

¹¹ Amrullah Hayatudin, *Ushul Fiqh Jalan Tengah Memahami Islam*, Amzah, Jakarta, 2019, hlm. 45.

⁷ Amir Syarufudin, *Garis-Garis Besar Fiqh*, Prenada Media, Jakarta, 2003. hlm. 289.

⁸ Ahmad Muhammad Yusuf, *Himpunan Dalil dalam Al-Qur'an dan Hadist Jilid 5*, Media Suara Agung, Jakarta, 2008, hlm. 280.

arrows, are included in the actions of the devil. So stay away from these actions so that you will get good luck. Indeed, the devil intends to cause enmity and hatred among you because of (drinking) alcohol and gambling, and preventing you from remembering Allah and praying; So stop you (from doing that work)."

Based on the above, it is increasingly clear that intoxicating drinks do not change the law by changing their name. In addition, a little or a lot of consumption is still the same as haram, regardless of the type of origin, such as marijuana and so on. Jurisprudence experts argue that there is no difference between liquid and solid, all of which are still forbidden to use because they can intoxicate and eliminate consciousness.

Surah al-Maidah verses 90-91 does not state that what is called khamr is the juice of grapes or apples, but only mentions khamr in general which means that what is said khamr is any category that closes the mind. This verse also hints at the similarity of drinking alcohol with the actions of Satan, and the actions of Satan are identical with things that lead to evil and darkness.

All forms of this crime can be triggered from alcohol and gambling which can anesthetize a healthy and clear mind. Alcohol and gambling are very close to the world of violence and crime, so according to the Qur'an, alcohol and gambling have the potential to trigger enmity and hatred between human beings. Alcohol and gambling can also distract a person from remembering Allah and praying.¹²

The arguments contained in the Qur'an above do not explicitly mention

¹² Qurais Shihab, *Tafsir al-Misbah, Pesan, Kesan dan Keserasian Al-Qur'an*, Lentera Hati, Jakarta, 2011, hlm. 239.

legal sanctions for drunkards. Although the prohibition is relatively firm, the type of sanction is only mentioned in the hadith narrations.¹³

The threat of punishment for drinking khamr is a maximum of 40 lashes, or up to 80 lashes may be added as a punishment *ta'zir*.¹⁴

Likewise with the Messenger of Allah, in several hadiths he gave a stern warning about the dangers of alcohol, so that alcohol drinkers should be given a punishment of 40 lashes. One example in a hadith Sahih Muslim stated that;

كَانَ النَّبِيُّ يَضْرِبُ فِي الْخَمْرِ بِالْجَرِيدِ وَالنَّعَالِ
أَرْبَعِينَ

Which means, a man who had drunk wine was brought before the Messenger of Allah, then the Messenger of Allah hit him with palm fronds and sandals 40 times.¹⁵

In the hadith, it is stated that the tools used for whipping are palm fronds and sandals. The terms palm stems and sandals lead to various understandings. Some understand that the palm fronds and sandals are seen as mere tools, not in numbers. Others think that date palm stems and sandals are quantities, not just tools. So, the number of lashes, which was 40 times, was multiplied by 40 times with the palm fronds and 40 times by the sandals, so that the total was 80 times.¹⁶

As it is also explained that there is a difference in the number of hadd who

¹³ Maulana Muhammad Ali, *The Religion of Islam*, Terj: R. Kaelan dan M. Bachrun), Cet 3,, Jakarta, Darul Kutubil Islamiyah, 2016), hlm. 769.

¹⁴ Abu Ahmad Najieh, *Fikih Mazhab Syafi'i*, Cet. 2, Marja, Bandung, 2018, hlm. 704.

¹⁵ Zainuddin Ali, *Hukum Pidana Islam*, Sinar Grafika, Jakarta, 2012, hlm. 94

¹⁶ M. Nurul Irfan, *Fiqih Jinayah*, Amzah, Jakarta, 2013. hlm, 51.

drank alcohol at the time of the Prophet Muhammad and his companions. As the following hadith of the prophet:

جَدَّ رَسُولُ اللَّهِ أَرْبَعِينَ وَأَبُو بَكْرٍ أَرْبَعِينَ وَعُمَرُ
تَمَائِينَ وَكُلُّ سُنَّةٍ وَهَذَا أَحَبُّ إِلَيَّ

Which means, the Messenger of Allah lashed the alcoholic drinker 40 times. Burnt ash also 40 times. While Umar 80 times. All of them are sunnah. But this one (80 times) I like more." (HR. Muslim).

Understanding the hadith, some of the jurists are of the opinion that the sanction for drinking alcohol is 40 lashes as was done by the Prophet Muhammad and Abu Bakr, while others are of the opinion 80 lashes, because it was agreed upon by the companions during the caliphate of Umar bin Khattab.¹⁷ The last opinion is the opinion of the majority of scholars (jumhur).

As a result of this difference, Imam Malik and Abu Hanifah argue that the punishment for drinking alcohol is 80 lashes. Meanwhile, Al-Shafi'i is of the opinion that there are only 40 lashes, although according to him it may be more than 40 times, where the rest is an additional punishment (ta'zir) from a ruler.

According to Ahmad Hanafi, the amount of punishment for the crime of drinking alcohol based on the consensus of friends is 80 lashes because it is analogous to a *qadzaf* crime, forty lashes as a *hudud* punishment, and 40 more as a *ta'zir* punishment.¹⁸

¹⁷ Muhammad Tahmid Nur, *Menggapai Hukum Pidana Ideal (Kemaslahatan Pidana Islam dan Pembaruan Hukum Pidana Nasional)*, Budi Utama, Yogyakarta, 2018, hlm. 176.

¹⁸ Mardani, *Hukum Pidana Islam*, Prenada Media Group, Jakarta, 2019, hlm. 173.

B. Formulation of Criminal Sanctions against Alcohol Drinkers in the Jinayah Qanun in Aceh

Criminal law is the law that regulates violations and crimes against the public interest with punishment which constitutes suffering or torture. The law is coercive and binding, so it has consequences for its implementation.

In the criminal law system there are two types of sanctions that have the same position, namely criminal sanctions and action sanctions.¹⁹

Henry Campbell Black's Blacks Law Dictionary provides an understanding of criminal sanctions as a criminal offense imposed to punish a crime such as a fine, supervision and imprisonment.²⁰ Action sanction is a sanction that is anticipatory rather than reactive against perpetrators of criminal acts based on the philosophy of determinism in various forms of dynamic sanctions and non-suffering specifications or deprivation of liberty with the aim of restoring certain conditions for perpetrators and victims for individuals, public and civil legal entities.²¹

Islam as a religion that brings mercy to all nature has become a guide in the life of society, nation and state in Aceh Province. This is in accordance with the meaning and spirit of the state constitution Article 29 of the 1945 Constitution which is implemented by Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh and Law Number 11 of 2006 concerning the Government of Aceh.

¹⁹ Mahrus Ali, " *Dasar-Dasar Hukum Pidana* ", Jakarta, 2015. hlm. 193.

²⁰ Ibid, hlm. 195.

²¹ Ibid, hlm. 202.

Aceh is a special autonomous region that has the advantage that it can take care of its own household. The specifics given by the Indonesian government are in the fields of education, religion, customs, Islamic law and the participation of ulama in the implementation of honest, clean and authoritative government programs. The implementation of Islamic law as a whole and kaffah in the lives of the Acehnese people is an important part in the development of Islamic law in the archipelago.

The people of Aceh have long used Islam as a guide in people's lives. The implementation of Islamic law in a kaffah manner has been carried out since the kingdom of Aceh Darussalam. The reformation era in Indonesia in 1998 has also given the opportunity for Islamic law to be enforced by the governments of several regions in Indonesia, especially Nanggroe Aceh, which has long been given the title Veranda of Mecca..

Aceh Province is the only province in Indonesia that applies Islamic law which refers to the provisions of Islamic criminal law, which is also known as jinayat law. In Aceh Qanun Number 6 of 2014 concerning Jinayat Law, there are two types of punishment, namely *hudud* and *ta'zir* punishments.

As formulated in the Qanun that consuming alcohol is an evil act which is prohibited in Islamic law and is contrary to the customs of the Acehnese people. According to Qanun Number 6 of 2014, the punishment for consuming alcohol is subject to 40 lashes, this is as intended in Article 15.

It is different for everyone who intentionally produces, stores/hoards, sells

or enters alcohol, then he is not subject to a hudud penalty, but in accordance with article 16, he is subject to ta'zir punishment, in the form of a maximum of 60 lashes or a maximum fine of 600 grams of gold. pure or imprisonment for a maximum of 60 years.

CONCLUSION

Based on the results of this study, it can be concluded that according to Qanun Number 6 of 2014, the punishment for drinking liquor is subject to 40 lashes, as mentioned in Article 15. The provisions of Article 15 are based on the Hadeeth of the Prophet narrated by Muslim, which states that the punishment for drinking alcohol is 40 lashes. Moreover, the arrangements and placements of caning as a punishment concerning the appropriateness of the severity of caning is a matter of choice of the authorities in Aceh, which is under the nuances of Islamic criminal law. The purpose of imposing punishment in Islamic law is to prevent, improve, and educate. It is believed that these could be achieved by imposing a mandated sentence of 40 lashes for those who drink liquor.

The legislators who formulate Qanun Jinayah in Aceh are urged to distinguish punishments between the habitual offenders and the first-timers, the law enforcement officials and the ordinary people, as well as the addicts. Apart from criminal sanctions, action sanctions must also be applied or a double-track system. A double-track system applies both criminal sanctions and equivalent action sanctions. The determination of the formulation of criminal sanctions must be based on a balance between the acts committed (the gravity of the offense) and the sanctions imposed.

REFERENCES

- A Dzajuli, *Fikih Jinayah*, Raja Grafindo Persada, Jakarta, 2000..
- Abu Ahmad Najieh, *Fikih Mazhab Syafi'i*, Cet. 2, Marja, Bandung, 2018.
- Ahmad Muhammad Yusuf, *Himpunan Dalil dalam Al-Qur'an dan Hadist Jilid 5*, Media Suara Agung, Jakarta, 2008.
- Ali Muhammad, *Sejarah Lengkap Rasulullah Jilid 2*, Pustaka Al-Kautsar, Jakarta, 2012.
- Amir Syarifudin, *Garis-Garis Besar Fiqh*, Prenada Media, Jakarta, 2003..
- Amrullah Hayatudin, *Ushul Fiqh Jalan Tengah Memahami Islam*, Amzah, Jakarta, 2019.
- Bambang Sungono, *Metodologi Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, 2009.
- Choiruddin Hadhiri, *Klasifikasi Kandungan Al-Qur'an Jilid 1*, Gema Insani, Bandung, 2005.
- M. Nurul Irfan, *Fiqih Jinayah*, Amzah, Jakarta, 2013.
- Mahrus Ali, “*Dasar-Dasar Hukum Pidana*”, Jakarta, 2015.
- Mardani, *Hukum Pidana Islam*, Prenada Media Group, Jakarta, 2019.
- Maulana Muhammad Ali, *The Religion of Islam*, Terj: R. Kaelan dan M. Bachrun, Cet 3, Jakarta, Darul Kutubil Islamiyah, 2016.
- Mestika Zed, *Metode Penelitian Kepustakaan*, Yayasan Obor Indonesia, Jakarta, 2008.
- Muhammad Tahmid Nur, *Menggapai Hukum Pidana Ideal (Kemaslahatan Pidana Islam dan Pembaruan Hukum Pidana Nasional)*, Budi Utama, Yogyakarta, 2018.
- Neneng Nurhasanah, *Metodologi studi Islam*, Amzah, Jakarta, 2018.
- Qurais Shihab, *Tafsir al-Misbah, Pesan, Kesan dan Keserasian Al-Qur'an*, Lentera Hati, Jakarta, 2011.
- Zainuddin Ali, *Hukum Pidana Islam*, Sinar Grafika, Jakarta, 2012.
- Zulkarnain Lubis, *Dasar-Dasar Hukum Acara Jinayah*, Kencana, Jakarta, 2016.