

PUNISHMENT FOR GAY OFFENDERS (PERSPECTIVE OF QANUN NO. 6 OF 2014 AND LAW NO. 1 OF 2023)

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Abstract. This study aims to analyze the punishment for gay offenders from the perspective of Qanun Number 6 of 2014 and Law Number 1 of 2023 concerning the Criminal Code (KUHP). The research method used is normative legal research through an examination of Qanun Number 6 of 2014 applicable in Aceh as well as the provisions in Law Number 1 of 2023. The results of the study indicate that the Qanun explicitly regulates the act of *liwath* as a *jarimah* subject to *uqubat ta'zir* in the form of caning, fines, or imprisonment, which is based on Islamic law values and the special autonomous status of Aceh. Meanwhile, Law Number 1 of 2023 does not specifically criminalize sexual orientation, but rather focuses on regulating certain immoral acts with defined elements of the offense and complaint-based provisions in specific contexts. Due to these differences, harmonization of legal understanding is necessary in order to create legal certainty and justice in its implementation, considering the various challenges faced in practice.

Keywords: Punishment, Offenders, Gay, Qanun Number 6 of 2014, Law Number 1 of 2023

I. INTRODUCTION

Homosexuality is a sexual orientation in which an individual experiences emotional, romantic, and/or sexual attraction toward persons of the same sex. This term includes men who are attracted to other men (gay) and women who are attracted to other women (lesbian). Homosexuality is understood as part of the complex development of sexual identity and is influenced by many factors. An individual's sexual development is not determined solely by biological factors, but also by life experiences, social environment, and cultural constructions and values adopted since childhood.

In Indonesia, according to a survey conducted by the Ministry of Health between 2009 and 2013 in 13 cities, the phenomenon of men engaging in same-sex relations increased each year. In 2024, a case occurred in South Jakarta where a same-sex sex party was held at a bar under the pretext of a birthday celebration. The event was supported by evidence such as lubricating gel and contraceptive devices. This incident indicates that homosexual behavior, particularly among men, is increasing, as demonstrated by such acts being carried out collectively and in a public place.

In Indonesia, there are legal regulations governing same-sex acts. First, Indonesian positive law regulates certain immoral acts, including those involving same-sex conduct. Second, same-sex acts are also regulated in the Province of Aceh, where the term "gay" is referred to as *liwath* in the Qanun. The concept of *liwath* originates from Islamic

teachings; therefore, Aceh, with its special autonomy and implementation of Islamic law in its legal system, has specific regulations governing such acts.

When examining the legal provisions governing same-sex acts, such as Law Number 1 of 2023 and Aceh Qanun Number 6 of 2014, a fundamental difference can be observed. Aceh Qanun Number 6 of 2014, Article 63, states that acts of *liwath* committed with the consent of both parties are subject to *ta'zir* punishment in the form of 100 lashes, a fine of up to 1,000 grams of pure gold, or imprisonment for up to 100 months (DPRA, 2014). Meanwhile, under Indonesian positive law through Law Number 1 of 2023, Article 414 of the Criminal Code states: "Any person who commits obscene acts against another person of the same or different sex:

- a. In public, shall be punished with imprisonment for a maximum of 1 year and 6 months or a fine up to Category III, amounting to Rp50,000,000;
- b. By force or threat of violence, shall be punished with imprisonment for a maximum of 9 years; or
- c. If published as pornographic content, shall be punished with imprisonment for a maximum of 9 years."

The Qanun explains that an act is classified as *liwath* if it is committed with the consent of both parties. Meanwhile, Law Number 1 of 2023 specifies three categories of punishable acts, namely those committed in public, by coercion, or published as pornographic content. This indicates

that consensual same-sex acts are not explicitly subject to criminal punishment under national criminal law.

This is based on the principle of legality in criminal law, which states that no act can be punished unless it has been formally regulated by law. Article 414 of Law Number 1 of 2023 stipulates that obscene acts committed by force are subject to criminal sanctions in the form of imprisonment or fines. This has led to the perception among the public and academics that same-sex acts may occur voluntarily between consenting parties.

This view is also supported by Indonesian criminal law expert Chairul Huda, S.H., M.H., who stated in the Hotroom television program hosted by Hotman Paris that LGBT acts committed voluntarily or with mutual consent are not subject to criminal sanctions. Based on the above explanation, the author is interested in conducting further research on same-sex acts in Indonesia from the perspective of Law Number 1 of 2023 and Aceh Qanun Number 6 of 2014 as a comparative legal study.

II. RESEARCH METHODS

This study employs a normative legal research method. Normative legal research is a type of legal research that conceptualizes law as a system of norms, including legal principles, rules, statutory regulations, court decisions, agreements, and legal doctrines or teachings (Gunardi, 2022). The data sources used in this study are derived directly from Law Number 1 of 2023 concerning the Criminal Code and Aceh Qanun Number 6 of 2014. Supporting data sources include personal notes, magazines, journals, theses, literature, classical texts, and books relevant to this research topic. The data analysis method applied in this research is descriptive comparative analysis, which involves examining library data and presenting it in a descriptive form to explain the similarities and differences between the legal provisions being compared.

III. RESULTS AND DISCUSSION

Gay in Islamic Terminology

In Islamic terminology, gay refers to the same general meaning as commonly understood, namely sexual acts between men and other men. Linguistically, the term used in Islam is al-liwath, which refers to a person who commits acts similar to those of the people of Prophet Lut (peace be upon him).

In Islamic law, gay acts referred to as liwath are derived from the same root word as the name Lut. This term is used because such acts were committed by the people who opposed the teachings brought by Prophet Lut, namely Islam. These people lived in the land of Sodom, and for this reason, Western Christian societies refer to such acts as sodomy.

The Origin of the Term Gay

Gay behavior has existed for thousands of years and was first recorded during the time of Prophet Lut, the seventh prophet who must be known and believed in Islamic teachings. This indicates that such behavior has existed since ancient times. In other historical contexts, homosexuality was

also known in Ancient Greece, where relationships between adult men and younger males were sometimes viewed as part of education and character formation, although they existed within certain social norms and boundaries. In Ancient Rome, same-sex relations also existed, but social status influenced acceptance; dominant groups were often more accepted, while minority groups were marginalized.

The term "gay" itself did not exist during the time of Prophet Lut, Ancient Greece, or Ancient Rome. The word was introduced during the medieval period in Old French, where it meant cheerful, joyful, or lively. Between the 17th and 19th centuries, the term underwent a shift in meaning and began to describe a morally free lifestyle. By the late 19th and early 20th centuries, the term "gay" gradually became a coded term within homosexual communities. Eventually, by the mid-20th century until today, the term "gay" has been openly used as a social identity referring to men who engage in same-sex relationships (Weeks, 2011).

Punishment for Gay Offenders from the Perspective of Aceh Qanun No. 6 of 2014

Aceh Qanun No. 6 of 2014 concerning Jinayat Law serves as the legal foundation specifically regulating various forms of jarimah in Acehnese society, including liwath, which is now commonly referred to as gay. The regulation of liwath in this qanun is based on the fundamental principle of implementing Islamic law as the legal identity of Acehnese society. From the qanun perspective, homosexual acts are not viewed as sexual orientation, but rather as violations of Islamic legal provisions that require enforcement of public morality. Therefore, the focus of regulation is not on the identity of the individual, but on actions considered contrary to religious and social norms.

The qanun stipulates that perpetrators of liwath may be subject to uqubat hudud or ta'zir. The sanctions include up to 100 lashes, fines of up to 1,000 grams of pure gold, or imprisonment for up to 100 months (DPRA, 2014). These provisions reflect the characteristics of Islamic criminal law, which emphasize preventive, repressive, and educational aspects. The implementation of caning in public is intended to create a deterrent effect and serve as a warning to the broader community.

Furthermore, the enforcement of punishment for liwath follows procedural mechanisms regulated comprehensively in the qanun, including investigation, evidence examination, and execution of punishment. Proof may include witness testimony, confession, or other supporting evidence. However, the implementation of this qanun has also faced criticism from both national and international legal perspectives. Some parties argue that caning is inconsistent with human rights principles. Nevertheless, the Aceh government maintains that the qanun is part of Aceh's special autonomy as protected under the Law on Aceh Governance.

Thus, punishment for gay offenders under Qanun No. 6 of 2014 is firm and based on Islamic legal principles, which serve as the philosophical foundation of Aceh's legal system. This regulation demonstrates a fundamental difference from the national legal system, particularly in its view of homosexuality as an act violating Islamic law.

Punishment for Gay Offenders from the Perspective of Law No. 1 of 2023

The regulation concerning same-sex acts is contained in Law No. 1 of 2023, Article 414 of the Criminal Code, which states:

“Any person who commits obscene acts against another person of the same or different sex:

- a. In public, shall be punished with imprisonment for up to 1 year and 6 months or a fine of up to Category III (Rp50,000,000);
- b. By force or threat of violence, shall be punished with imprisonment for up to 9 years; or
- c. If published as pornographic content, shall be punished with imprisonment for up to 9 years.”

Law No. 1 of 2023 introduces significant reforms in Indonesia’s criminal law system. In the context of sexual conduct, the 2023 Criminal Code does not criminalize homosexuality as a sexual orientation. This means that a person cannot be punished solely based on their sexual orientation. Instead, the national criminal law focuses on acts involving coercion, sexual violence, minors, or public indecency.

Thus, national law places homosexuality within the private sphere as long as it does not involve criminal elements. This principle aligns with universal human rights principles emphasizing non-discrimination and respect for human dignity (Sholihah, 2024). The Criminal Code focuses on protecting victims and maintaining public order rather than regulating sexual orientation itself.

This distinction was evident in a case in South Jakarta involving a same-sex party. Police detained 56 individuals, but only 9 were charged under pornography laws and Article 296 of the Criminal Code for facilitating obscene acts, while the others were treated as witnesses.

Therefore, the perspective of the 2023 Criminal Code is more moderate and aligned with a pluralistic national legal system, focusing on criminal acts rather than personal orientation.

Comparison of the Fundamental Principles of Punishment

The difference in punishment principles between Aceh Qanun No. 6 of 2014 and Law No. 1 of 2023 reflects two distinct legal philosophies. The Aceh Qanun is based on Islamic criminal law (fiqh jinayah) and considers *liwath* a criminal offense (*jarimah*) (Ichwan, 2013). Its philosophical foundation emphasizes protecting moral order and public virtue, with preventive and educational objectives (Muladi & Arief, 2010).

In contrast, the 2023 Criminal Code adopts modern legal principles emphasizing human rights, legality, legal certainty, and proportionality. It criminalizes harmful acts such as violence and coercion, rather than sexual orientation itself.

This difference illustrates the existence of legal dualism in Indonesia: Aceh applies Islamic criminal law, while national law applies modern criminal law. This reflects broader differences in the relationship between law, morality, and individual rights.

Implementation Challenges and Social Impact

The implementation of punishment under both legal systems faces complex challenges involving social, cultural, and political dimensions (Ibrahim, 2015). In Aceh, caning punishments have attracted criticism from human rights organizations, which argue that such punishments violate international human rights standards (Donnelly, 2013). However, many Acehnese view these laws as part of their religious and cultural identity.

Meanwhile, under national law, challenges involve social stigma and legal interpretation. Although homosexuality is not criminalized, discrimination and social stigma persist.

The social impacts of these legal systems differ significantly. In Aceh, the qanun reinforces religious norms but may also create fear and marginalization. Nationally, while homosexuality is not criminalized, social stigma remains.

Therefore, addressing homosexuality cannot rely solely on legal approaches but must also involve social, cultural, and educational strategies (Soekanto, 2019). The differences between Aceh Qanun and the national Criminal Code reflect Indonesia’s diverse legal and cultural landscape.

IV. CONCLUSION

Gay refers to sexual acts between men of the same sex. In Indonesia, there are legal regulations governing such acts. First, national positive law regulates certain sexual acts. Second, in Aceh Province, gay acts are regulated under the term *liwath* in the Qanun. However, research shows that the Qanun explicitly classifies *liwath* as a *jarimah* subject to *uqubat ta'zir*, which may include caning, fines, or imprisonment, based on Islamic law values and Aceh’s special autonomous status. Meanwhile, Law No. 1 of 2023 does not specifically criminalize sexual orientation, but instead focuses on certain obscene acts with specific elements and complaint-based offenses in particular contexts. Due to these differences, challenges arise in implementing both regulations. Therefore, harmonization of legal understanding is necessary to ensure legal certainty and justice in their application, considering the various implementation challenges.

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