Analysis of ‘Uqubah Jarimah Khalwat in the Qanun of Jinayatlaw in Aceh

Nurdin*
Associate Professor at Faculty of Sharia and Law at Ar-Raniry State Islamic University, Aceh, Indonesia

Abstract: ‘Uqubah or punishment is a form of retaliation for someone for his/her actions in violation of the provisions of syara’ (sharia), which Allah and His Messenger have decreed for the benefit of humans. Jarimahkhalwat, was regulated in Aceh Qanun, Number 6, the Year 2014, concerning the Jinayat (Indecency) Law. Article 23 of the Aceh JinayatLawQanun, stipulated that the ‘uqubah of khalwatjarīmah is ta’zīr(discretionary punishment), in the form of ten lashes, or a fine of 100 grams of pure gold or a maximum of ten months in prison. The ‘Uqubah (punishment) is too light. This argument is based on the stipulation that the khalwatjarīmah is classified in three forms of jarimahta’zir, the type of violating the rights of God, as a form of immorality, and a violation that have been affirmed in the Qur’an for which no punishment is specified in the Qur’an or hadith. However, the provision of Article 23 of the Aceh Jinayat(Indecency) LawQanunconsists of law renewal because there is an arrangement for the type of ‘uqubah (punishment) of fine, in the form of fine gold, which must be paid to the Baitul Mal (House of Wealth) of Aceh.

Keywords: *Uqubah, JarimahKhalwat, The QanunJinayat law, Aceh

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I. INTRODUCTION

‘Uqubah is a form of retaliation for someone for his/her actions in violation of the provisions of syara’ (sharia), which Allah and His Messenger set for the benefit of human. RahmatSyfi’ie (1998) argued that punishment is what Allah has decreed in the Qur’an, related to the actions of people who are subjected to the law (mukallafl) and demanded of its implementation. Mukallafl is defined as a person who is subjected to the law, while in the ushulfiqh (the source of Islamic law) term, a mukallafls called makhmalyahor legal subject(RachmatSyafe’I, 1998). Punishment is imposed on mukallafls who are proven to have committedjarimah or criminal actions, which are prohibited by syara’ (Abdul Aziz Dahlan, 2003), and the perpetrators are threatened with the punishment of ḥador ta’zī, both hudud, Qishas/Diyat and Ta’zīr( Abdurrahman Al-Jaziry, 1968).

Jarimah is an Arabic term, namely جريمة (جرمة), which literally means bad, bad or sinful deeds, cutting, cutting, shaving, completing and picking (Achmad W. Munawwir and M. Fairuz, 2007, Wizârah al-Awqâf, 1995). One form of jarimah is khalwat, which means a man is with a woman, who is not his mahram(unmarriageable kin), and there is no third person with them (Marwânibrâhîm al-Qâsi, 2000). Basically, khalwat is carried out by men and women who are not mahrâmin a hidden or closed place. The legal basis for prohibiting khalwat is the Word of God in the Quran, Surah An-Nur (24) verse 30.

Translation:
Tell the believing men to reduce [some] of their vision and guard their private parts. That is purer for them. Indeed, Allah is Acquainted with what they do.

As well as in Surah Al-Isrâ’ (17) verse 32, as follows.

وَلَا تَقْرَبُوا الْزَّنَا إِلَّا كَانُوا فَاحِشَاءً وَسَاءَ سَبْبَاهُ (الْقُرْآنُ سُورَةُ الْإِسْرَاءَ: 32).

Translation:
And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way.

Al-Marâghî stated that the sentence that says وَلَا تَقْرَبُوا الْزَّنَا means the prohibition of Allah to His servants regarding the matter of approaching zina(adultery) (Ahmad Mustâfâ al-Marâghî, 1946). Al-Sya’râwwî, the element of approaching adultery areikhîlîtând khalwat. That means, it is not permissible to perform khalwat
because zina (adultery) is forbidden, and khalwat is one of the acts leading to zina(adultery) (MuhammadMutawallî al-Sya'arawi, 1991). In this verse Allah does not say: "do not commit zina (adultery)," it is instructed not to approach zina (adultery) instead. The act of approaching adultery includes, but not limited to, looking at, mingling with, getting along intimately, and talking privately with the opposite sex. The intention of not approaching zina (adultery) means "do not approach the elements that motivate to commit zina (adultery), such as looking at, mixing with women, or other actions (MuhammadMutawallî al-Sya'arawi, 2006).

Jarimahkhalwat is jarīmah ta'zīr, the type of violating the rights of God, as a form of immorality, and the type of acts that have been confirmed in the Qur'anfor which the punishment is not determined. The punishment for khalwat is not regulated specifically as what type of ta'azīr (punishment) is appropriate for the offender. The scholars tend not to set the punishment, because the leader has the authority to determine its type. Basically the punishment for the perpetrators of the jarimahkhalwat is determined by considering its benefit and not exceeding the sentence of ḥadd, that it should not exceed the punishment of a hundred times lashes, as the ḥadd is assigned to the perpetrators of zina(adultery). The consideration of ḥadd of adultery because khalwat is a way to commit zina(adultery).

Jarimahkhalwat was regulated in Aceh Qanun Number 6, of the Year 2014, concerning JinayatLaw. The definition of khalwat is explained in the General Provisions of QanunJinayat Law Number 23, namely the act of being in a closed or hidden place between two people of different sex voluntarily, who are not mahram and without marriage ties, leading to zina (adultery).

The 'aqubah towards the perpetrators of the khalwatJarimah is found in Article 23 of the Aceh JinayatLawQanun:

(1) Anyone who intentionally commits jarimahkhalwat, is threatened with the 'UqubahTa'zi'rof at most ten times lashes or a maximum fine of 100 grams of pure gold or a maximum of ten months imprisonment.

Based on the provision of the article above, the 'aqubah that can be imposed by the judge on the perpetrators of the khalwatJarimah is the sentence of ten times lashes or a maximum of 100 grams of pure gold or a maximum of ten months in prison. Thus, the 'aqubah that found in the Aceh Jinayat Law Qanun is lighter than the basic law in JarimahTa'zi' in Islamic Law. Based on the description above, this study aims to analyze the 'aqubah for the perpetrators of the khalwatJarimah in the Jinayat Law Qanunin Aceh.

II. RESEARCH METHODS

This research is library research conducted by examining secondary data. The approach used was that statute approach, an approach using legislation and conception. The main references in this research concerning jarimahkhalwat are the Qur'an and Hadith, as well as statutory regulations, specifically the Law Number 11 the Year 2006, and Aceh Qanun Number 6 the Year 2014, concerning JinayatLaw, as well as the opinions of ulama. Data analysis was performed through a prescriptive analysis.

III. ANALYSIS OF ‘UQUBAH JARIMAH KHALWAT IN THE ACEH JINAYAT LAW QANUN

a. ‘Uqubahkhalwat according to the Aceh Jinayat Law Qanun

Jarimahkhalwat is a form of criminal acts which is prohibited according to the Jinayat Law in Aceh. Article 1 Number 23 of Aceh Qanunof Jinayat, stated that khalwat is the act of being in a closed or hidden place between two people of different sex voluntarily, who are not mahram and without marriage ties, leading to zina (adultery). Prohibition of Khalwat (seclusion) is intended to protect the community, as early as possible, from committing acts that lead to adultery and damaging the honor. In this article, the Qanun stated that "the scope of the khalwat(seclusion) prohibition are all activities, actions and circumstances leading to zina (adultery)".

According to the general explanation of Qanun, khalwat, any immoral sexual acts that can lead to adultery is usually only conducted in a remote (closed) place, far away (protected)from the sight of others. However, it is also possible that acts of khalwat leading to adultery to occur in relatively crowded places, such as in restaurants, hotel’s waiting rooms and recreation areas or in the streets, such as in public vehicles or other places.

An act is categorized as jarimahkhalwat when it is committed by two mukallaf, and not by husband and wife or married couple (RahmatSyafie, 1998). JarimahKhalwat occurs when the two mukallaf are in a certain place that allows immorral sexual acts or the opportunity to commitzina(adultery) (Ahmad Al-Faruqy, 2011)

The prohibition on conducting jarimahkhalwat in Aceh is regulated in Aceh Qanun Number 6 the Year 2014, concerning JinayatLaw, a prohibition for two people of different gender, who are not mahram and without marriage ties, to stay in a closed or hidden place. This prohibition aims to: (1) enforce the Islamic Sharia and the customs applied in society in the province of Aceh; (2) protect the community from various forms of activities or acts that damage the honor; (3) prevent the members of the community, as early as possible, from committing
acts that lead to zina (adultery); (4) increase the community participation in preventing and eradicating khalwat obscene acts; and (5) close the opportunity for the moral damage.

Regarding the jarimahkhalwat in the Qanun Number 6 the Year 2014, concerning Jinayat Law, the act of being in a closed or hidden place between two people of different sex voluntarily, who are not mahram and without marriage ties, leading to zina (adultery).

The punishment for the perpetrators of khalwat Article 23 of the Aceh Jinayat Law Qanun is as follows.

1. Anyone who intentionally commits jarimahkhalwat, is threatened with the ‘Uqubah Ta’zir of at most ten times lashes or a maximum fine of 100 grams of pure gold or a maximum of ten months imprisonment.

Based on the provision of the article above, the perpetrators of jarimahkhalwat can be sentenced to a maximum of ten lashes. This punishment can be added or exchanged with other penalties, such as a fine up to 100 grams of pure gold or a maximum of ten months imprisonment. The scope of the jarimahkhalwatis based on the following criteria.

a. The acts are in a closed or hidden place
b. Two people
c. Different sexes
d. Not mahram
e. There is no marriage bond
f. The willingness of both parties (voluntarily)
g. The nature of the act leading to zina (adultery)

The emphasis on khalwat between non-Muslim men and women is also more flexible in its application. With these characteristics, all practices that are considered khalwat will be charged by law, even if it is in public places, such as hotels, inns, cafes, etc. (Alyasa ‘Abubakar and Halim Marah, 2007).

The Aceh Jinayat Qanun gives exceptions about two people who are in a closed place. For example, two people of different sexes are at their workplace, likewise, the resident in the house which can be proven by a family register or the approval of a local official. It is not called khalwar when someone is helping others in an emergency situation. This is stated in Articles 12 and 13.

(1): Everyone who is working at the workplace and during work hours cannot be accused of committing jarimahkhalwat with fellow workers. Paragraph (2): Every person who becomes a resident of a house, which is proven by a family register or the approval of a local official, cannot be accused of committing jarimahkhalwat with fellow residents of the house”.

Article 13:

Any person who helps to someone of the opposite sex in an emergency situation cannot be accused to perform Jarimahkhalwat or Ikhtilath.

Based on these descriptions, it can be concluded that the choice of law taken by the Aceh government through the DPRA (the people’s representative council of Aceh), that the jarimahkhalwatis punished by ta’zir in the form of a sentence of ten lashes or a fine of 100 grams of pure gold or a maximum of ten months imprisonment. This determination is part of the full authority of the Aceh government in dealing with the jarimahkhalwat which has disturbed Acehnese people.

b. The ‘Uqubahof JarimahKhalwataccording to Islamic Law

Islamic law encourages marriage, because it is the healthiest and most appropriate way to fulfill the biological needs (sex instinct). Therefore, Islam prohibits promiscuity and stimulating dances, pornographic images and songs, as well as other ways that can increase lust or lead people to sexual crimes that are not justified by religion (Sayyid Sabiq, 1987). All of these can lead to jarimahkhalwat, committing seclusion acts in a quiet and closed place without being accompanied by the mahram or in an open place doing Ikhtilath. Islam strictly forbids jarimahkhalwat, which is to maintain self-respect and morals.

Khalwat (seclusion) originated from Arabic, which is derived from the basic word خلاً, which means to be empty, to be peaceful, peaceful, calm, to be alone in a place, together with, being in a quiet place with, or being alone. Meanwhile, the word خلاءً means a quiet, hidden place, a place of seclusion, a place of hermitage, solitude, or quietly (Achmad W. Munawwir and M. Fairuz, 2007).

The definition of khalwat in the book of Mausu’ah al-Fiqhiyyah, (Wizārah al-Auqāf), is as follows.

وخلاء الرجل بصاحبه وإليه ومعه خلاء وخلاء وخلاء وخلاء : انفرده به واجتمع معه في خلاء
Abdul Aziz Dahlan stated that khalwat is a man and woman in a quiet and remote place, avoided by the sights of others, so that it is very likely for them to commit immorality (Abdul Aziz Dahlan, 2005). According to Marwân b. Hârîm al-Qâisi, khalwat is when a man with a woman who is not his mahram, and there is no third person with him (Marwân b. Hârîm al-Qâisi, 2000). Islam forbids the acts of two people of different sexesto secluded in a closed place. Even the prohibition also applies to two people who have done khilâfah (proposal) and plan to marry. During the marriage proposal period, the two parties are not justified to dokhalwat (seclusion). Umar Sulaiman al-Asyqâr argued that based on the provisions of the Prophet, it is forbidden for a man to do khalwat with a woman. He also cited the opinion in the book of al-Mughni, that afiance should not be secluded with their partner because khalwat is forbidden (Umar Sulaiman al-Asyqâr, 2012).

Jarimahkhalwat is forbidden in Islam because this action can lead people to zina (adultery), intimate relationships outside of a legal marriage. The prohibition of adultery is found in Surah An-Nûr (24) verses 30-31.

Translation:
Tell the believing men to reduce [some] of their vision and guard their private parts. That is purer for them. Indeed, Allah is Acquainted with what they do. And tell the believing women to reduce [some] of their vision and guard their private parts. That is purer for them, O believers, that you might succeed.

The command to lower their gaze and guard their private parts (genitals) as mentioned in the verse above means not committing immoral acts. Al-Qurtubi argued that the meaning of preserving and guarding the private part (genital) in the above verse means preventing something that is not permissible, and the other meaning is guarding against adultery. (Abî Bakr al-Qurtubi, 2006). Imam al-Suyukî interpreted it as a mandatory order for them to guard what is forbidden for them. (As-Suyukî, 2010)

According to al-Baghawi, the meaning of guarding the private part (genital) in the verse is anything that is not permissible. Anything determined in the Qur’an regarding the obligation to keep the private part (genital) as adultery and other prohibited acts (Ibn Mas’ud al-Baghawi, 2002). This meaning is more appropriate so that all forbidden acts are part of the meaning of guarding the private part (genital) in general, including the practice of khalwat.

The prohibition on conducting the jarimahkhalwat is written explicitly in the Qur’an in Surah Al-Isra’ verse 32:

وَلَا تَفْخَرُوا الْزَّنَةَ إِنَّهَا كَانَ فَاحِشَةً وَسَاءَ سِبیلاً (القُرآن سورة الإسراء، 32).

Translation:
And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way.

Based on the provisions of surah al Isra’ verse 32, the acts directly prohibited is adultery and all behaviors leading to the act of adultery, including two opposite sexes, who are not mahram, being secluded between. The actions leading to adultery is jarimahkhalwat, so that khalwat is the root or path to adultery. Logically, if only approaching adultery is prohibited, then committing adultery is definitely more forbidden (Alyasa ‘Abubakar,), indicating that these are intended for the good of the mankind so that it is in line with the goals of Al-Maqashidisyar’iyyah in Al Kulliyat Al-Khamsa. Thus, khalwat is one of the heinous and unlawful acts prohibited in Islamic law.

Al-Marâghi believed that the sentence mentioning ‘وَلَا تَفْخَرُوا الْزَّنَة’ means the prohibition of Allah to His servants regarding approaching zina (adultery) (Ahmad Mustâfâ al-Marâghi). According to al-Sya’râwi, the element of approaching adultery arekhiltâfand khalwat. This means that it is not permissible to perform khalwat because adultery is forbidden, and khalwat is one of the elements for committing adultery.
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(MuhammadMutawalli al-Sya'rawi). Al-Sya'rawi also mentioned that in this verse Allah does not say: "do not commit adultery", instead He instructs not to approach adultery. The are many examples of approaching the acts of adultery, such as looking at the opposite sex, mingling with him/her, getting along intimately, and talking privately with him/her. The meanings of not approaching adultery "do not approach the elements that motivate you to commit adultery, such as looking, mixing with women, or other actions" (MuhammadMutawalli al-Sya'rawi).

MuhammadAbūZahrāh said that Allah does not state: "do not commit adultery", but "do not approach adultery", including the prohibition of adultery and anything leading to it. He also stated that approaching adultery means opening the way (zārī'ah) to adultery itself (MuhammadAbūZahrāh, 1987). So, there are many elements approaching adultery, one of which is khalwat. Khalwat in this case is an action that can lead to adultery, therefore it is prohibited in Islam. In relation to this, Ibn Qayyim(1975), stated:

وحرم الخلوة بالمرأة الأجنبية والسفر بها والنظر إليها لغير حاجة حسنة للمادة وسناً للذرية.

Translation:
And it is forbidden to conduct khalwat(seclusion) with a woman who is not your mahram, travel with her, and look at her without necessity, to minimize the cause and eliminate the means of evil.

The meaning of badness, as mentioned above, is zina(adultery). Therefore, referring to the verse of Qur'an above, it can be seen that the prohibition of Allah (Glory to Him, the exalted) of approaching the acts of adultery consists of a general meaning. It can be in the form of seeing women, or in khalwat with women who are not mahram.

Rasulullah SAW has shown the social boundaries between men and women who are not mahram (Alyasa ’Abubakar, Marah Halim,)
1. The Prophet forbids a woman from dealing with a man who is not her mahram without being accompanied by her mahram.
2. The Prophet forbids khalwat with an engaged woman, even though Islam allows men to look at the women they ask to convince and strengthen their hearts to marriage.
3. The Prophet forbids a man from entering a woman's house who is not with her mahram or anyone else.
4. The Prophet forbids women from traveling without being accompanied by their mahram.

Rasulullah SAW in a hadith said:
لا يخلون الرجل امرأة إلا ومعها محرم

Translation:
A man should not seclude himself with a woman except that there be with her someone who is of unmarriageable kin (mahram). (Narrated by Bukhari & Muslim)

The hadith narrated by Bukhari, from Qutaibah bin Sa'id (Imām al-ḤāfizAbī ’AbdillāhMuhammad bin Ismā'īl al-Bukhāri, 1998), the Prophet PBUH said:

فحذّلتا فتيلان ينعتهما نسيان عن عين أو عن أبي معين عن ين عيني ونهوب عن ين عيني ونهوب ين فقال يا رسول الله أكلتني في غزوة بما، ولفتتني نسيان، فأنا أذكرك أنت لست مخالفة أنت وأنشأك على الله، وليست مخالفة أنت، أنا نسيان

Translation:
Qutaibah bin Sa'id has told us, Sufyan from 'Amru from Abu Mab'ad, from Ibn `Abbas stated, “I heard the Prophet (God bless him and grant him peace) give a sermon. He said, ‘A man should not seclude himself with a woman except that there be with her someone who is of unmarriageable kin (mahram).’” [Bukhari, Muslim]. Then there was a man who rose and said: O Messenger of Allah, I have registered myself to join a battle while my wife goes to perform the Hajj. “So He said:” Perform Hajj together with your wife” (narrated by Bukhari)

Commenting on the hadith, Ibn Qayyim argued that the Messenger of Allah (PBUH) forbade to conduct khalwat with anyone who are not mahram (Ibn Qayyim al-Jauziyyah, 1423 H). The prohibition applies even in the cases of reading the Qur'an, travelling, performing hajj, or visiting the grave of parents. These are to eliminate the ways leading to slander.

The hadith narrated by Muslim, from Abū Bakr bin AbīShafīib (Imām al-ḤāfizAbū al-Ḥusain Muslim al-Hajjaj al-Qusairī al-Nisābūri, 1998), the Prophet PBUH said:

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Translation:

Abu Bakr bin Abu Syaibah and Zuhair bin Harb had told us, both from Sufyan, Abu Bakr said “Sufyan bin Uyainah had told us, from Amru bin Dinar from Abu Ma'bad, he said “I heard the Prophet (God bless him and give him peace) say, A man should not seclude himself with a woman except that there be with her someone who is of unmarrigeable kin (mahram)”.

Based on the hadith, jarimahkhalwat is forbidden in Islam. The terms uses in both hadiths are khalwat, which means close proximity or secluded situation. Rasulullah PBUH clearly prohibits the activity of khalwatwithout a mahram. Referring to the proposition, it is concluded that Islam ban a man who does khalwatwith his non-mahramfemale in a secluded or closed place. The ulama agree “it is forbidden to do khalwat with a woman ajnabiah(a foreigner), however, it is allowed to do it with his mahram” (Syarif Al-Nawawi).

Jarimah khalwat is included in jarimah ta'zir. The criminal act of ta'zir is not specifically explained the limitation of the type of acts and its law. The word ta'zir means avoiding and helping. According to fiqh expert, ta'zir is the punishment that is surrendered to the judge, both instructed to Allah right or to the human right (Abdus Sami' Ahmad Imam, 2006).

In other meaning, ta'zir is punishment or sin which has no haddor amercement (Abdul Aziz Mabruk al-Ahmad, 2016). Based on this definition, the form of criminal act of ta'zir mentioned neither in number nor in the type of the punishment. In short, all actions violating Allah and human rights will have the punishments that are decided by the judge or government.

From the descriptions, the type of criminal acts in Islamic law includes the criminal act on the soul or other than the soul that become the scope of qiṣāṣ-diyyatpunishment, the criminal acts for which the kinds of punishmentshave been decided are hudud, namely the seven crimes mentioned, and the criminal acts that the punishments are not assertively determined in Quran and Hadith named as ta'zir. Based on the basic provision in Islamic law related to the jarimah hudud and qiṣas, the punishments which have been set in jarimah hudud for the jarimah that are completed, are forbidden to apply for experimentaljarimah (Ahmad WardiMuslich). The regulation is based on the hadith of Imam al Baihaqi from N'u'man ibn Basyir, Rasulullah PBUH said that those who do the haddpunishments in jarimah hudud, he becomes the transgressor (Jalaluddin As-Sayuthi).

Jarimah khalwat is not included in the criminal act of hudud and qiṣāṣ-diyyat because they have been mentioned clearly in the proposition of Islamic law. Therefore, hudud and qiṣas-diyyat are categorized as ta'zir punishment. In this issue, the leader has the authorities to determine the type and size of the sanctions. Jarimahkhalwat is jarimah ta'zir, it is the punishment of immorality acts or mistakes (not included hadd and kaffarah) that are not specified because the authorities are given to the judge and government. Based on these terms and conditions, ta'zirdoes not have certain provision, either the type or the criterion of the punishments for the immorality perpetrators for ta'zirs also a preventive and educational punishment (Chairul Fahmi).

Ahmad WardiMuslich asserted that jarimah ta'zir consists of three perspectives, namely the perspective of the right prohibited, the characteristics and the legal basis (Ahmad WardiMuslich, MahrusMunajat, 2009).

1. Based on the rights prohibited, jarimah ta'zir is divided into two types. First, related to the Allah rights. Second, concerning the human rights. Due to the division, jarimahkhalwat is included into jarimah ta'zir that relates to Allah rights because khalwat is categorized as immorality (ma'siyyah).

2. Based on the characteristics, jarimah ta'zir is classified into three types. First, committing immorality acts. Second, threatening the public interest. Third, committing the violations. Based on these classifications, jarimahkhalwat is classified as immorality jarimah.
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3. Based on a legal basis, jarīmahta ‘zīr is divided into three types. First, jarīmahta ‘zīr which comes from jarīmahhudūdāorsiṣās; however, the requirements are not fulfilled, or predicted to have syubhat in it. Second, jarīmahta ‘zīr that is mentioned in the nashsyarak, however the law has not been determined, such as usury, bribery, or reducing the scale measurement. The third, jarīmahta ‘zīr both the type and the sanctions are not explained in the nashsyara (the Qur’an and Hadith) (Mustafa Hasan dan Beni Ahmad Saebani). In this division, jarīmahkhalwat is included in jarīmahta ‘zīr, which is the type mentioned in the nashsyara’. This is interpreted from the general meaning of the Qur’an in Surah Al-İsrā’verse32 that prohibits approaching zina. Accordingly, khalwat is included in this kind of prohibition.

Based on these explanations, jarīmahkhalwat is classified into three types of jarīmahta ‘zīr, the type of violating the rights of God, as a form of immorality, and a violation that have been affirmed in the Qur’an for which no punishment is specified in the Qur’an or hadith. Concerning the type of punishment for the khalwar perpetrators, the kind of appropriate ta ‘zīris not specified.

The determination of the legal type of khalwar perpetrators punishment refers to the four general punishment concepts, as described by IbnuQayyim al-Jauziyah, (IbnuQayyim al-Jauziyah,2006) as follows.

1. Ta’zīr punishment is applied by considering the benefit and concerning the physical condition of the convicted person. In this issue, the officials who have the authorities on deciding the ta’zīr punishment should be able to actualize it.
2. Ta’zīr punishment sentenced should not exceed the hadd punishment. Some views of syafi’i followers stated that ta’zīr punishment of gazing at a non-mahramwoman and intimate interaction with the opposite sex that breaks the regulated rules should not exceed the hadd punishment of zina.
3. Ta’zīr punishment can be applied below the minimum limit of hadd punishment. According to Syafi’i, Ahmad and Abu Hanifah’s opinions, the ta’zīr punishment that can be applied to the perpetrators are 40 or 80 lashes.
4. Themaximumta ‘zīr punishment does not exceed ten lashes. The determination is based on the opinions of mazhab Ahmad and others.

Based on the description, ‘uqubahof the jarīmahkhalwat perpetrator is given by considering the benefit and should be below the hadd punishment, namely, it should not exceed 100 lashes as the zina punishment. The consideration is referred to haddzina because khalwat is such an opening for the opportunities for zina. The leader may sentence the khalwarperpetrators 99 or 80 lashes, or lower because of the benefit consideration.

Based on the Article 23 of Aceh Jinayah law Qanun, the ‘uqubah of jarīmahkhalwat is ta’zīr punishment, namely ten lashes or the fine of 100 grams pure gold or jailed for ten months, is too light. It refers to the determination that jarīmahkhalwat, that is included to the three types of jarīmahta ‘zīr: the violation of Allah right, the act of immorality and the act that clearly mentioned in the Quran for which the type of punishment is not specified. However, the provision of Article 23 contains a law renewal because it consists of an agreement of ‘uqubah in the form of pure gold to be deposited to an Islamic financial institution, Baitul Mal Aceh.

IV. CONCLUSION

‘Uqubahof the jarīmahkhalwat perpetrator should not exceed the hadd punishment for the zina perpetrator, namely, it should not exceed 100 lashes and should be based on benefit consideration. Therefore, the provision in the Article 23 of Aceh Jinayah law Qanun determining the ‘uqubah of jarīmahkhalwat is ta’zīr punishment, namely ten lashes or the fine of 100 grams pure gold or jailed for ten months, is too light. It refers to the determination that jarīmahkhalwat, that is included to the three types of jarīmahta ‘zīr: the violation of Allah right, the act of immorality and the act that clearly mentioned in the Quran for which the type of punishment is not specified. However, the provision of Article 23 contains a law renewal because it consists of an agreement of ‘uqubah in the form of pure gold to be deposited to an Islamic financial institution, Baitul Mal Aceh.

V. RECOMMENDATION

It is expected that stakeholders will consider to exacerbate ‘uqubah (punishment) of jarīmahkhalwat because this crime has violated the three forms of jarīmahta ‘zīr, the type of violating the rights of God, as a form of immorality, and a violation that have been affirmed in the Qur’an for which no punishment is specified in the Qur’an or hadith.

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