

THE PENALTY OF ADULTRY ACCORDING TO QANUN ACEH NUMBER 6 OF 2014 ARTICLE 33 AND THE BOOK OF CRIMINAL LAW (KUHP) ARTICLE 284 IN THE PERSPECTIVE OF THEORY OF LEGAL EFFECTIVENESS

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Abstract: *The punishment for adultery is an attempt by the Aceh government to revive Islamic law in Aceh, which was implemented during the time of Sultan Iskandar Muda. The Criminal Code (KUHP) Article 284 concerning adultery has been applied from the Dutch era to the present. Qanun Jinayat Aceh concerning Punishment for Adultery with the Criminal Code (KUHP) Article 284 concerning adultery is examined from the perspective of legal effectiveness. This research is a comparative study that discusses the punishment for adultery according to Qanun Aceh Number 6 of 2014 Article 33 and the Criminal Code (KUHP) Article 284. Apart from that, this type of research studies, analyses, and researches Aceh Qanun Number 6 of 2014 Article 33 and the Criminal Code (KUHP) Article 284, supported by sociological data. This research is descriptive and comparative, namely collecting data and explaining how the sociological review of the law on adultery punishment according to Qanun Aceh Number 6 of 2014 Article 33 and the Criminal Code (KUHP) Article 284 by comparing the two legal objects. The results of this study prove that the application of caning punishment for adulterers in Nanggroe Aceh Darussalam and the Criminal Code is sufficient to provide a deterrent effect for society. This is due to aspects of the Aceh Qanun. The Government of Nanggroe Aceh Darussalam has been consistent with the legal norms that have been legalized to take action against people who commit acts of adultery. From the aspect of the Criminal Code, the law that is applied is still following the legal process established for married couples who commit adultery by committing adultery.*

Keywords: *Adultery Punishment, Aceh Qanun, Criminal Code*

I. INTRODUCTION

Nanggroe Aceh Darussalam is a province in Indonesia located in the westernmost position in Indonesia. Nanggroe Aceh Darussalam has unique characteristics compared to other provinces in terms of social, religious, cultural, political and legal. All of these aspects become a single entity guided by Islamic Shari'a's teachings. Islamic Sharia was implemented in Nanggroe Aceh Darussalam when Islam entered the archipelago to form a community called the "Islamic Community" this community became a political unit known as the Islamic kingdom¹

The Kingdom of Aceh, led by Sultan Iskandar Muda, played an active role in adopting and adapting Islam from the Middle East to become a religion embraced by the people of Aceh (Amirul Hadi, 2010). normative social values that can encourage human behaviour to become part of the social system and cultural system of society in life to form the rule of law (Beni Ahmad Saebani & H. Encup Supriatna, 2012)²

Islam in Nanggroe Aceh Darussalam has become a norm and value used as a rule of life, binding in the form of a legal institution, namely the Sharia Court. The Sharia Court has the function in carrying out Islamic Sharia in Nanggroe Aceh Darussalam (Mardani, 2009)³. Islamic Sharia in Nanggroe Aceh Darussalam has formed a judicial system held by Qadhi Malikul Adil (Supreme Court as the highest institution in the field of Justice) in the capital of the kingdom and has the authority to set up the legal system and legal institutions.

Aceh during the Kingdom led by Sultan Iskandar Muda. Has applied sanctions called *jarimah zina* according to the rules described in (Q. S. An-Nuur, 24)

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Adultery is a disgraceful act, and the perpetrators are subject to severe sanctions, be it flogging or stoning, for reasons that can be justified morally and rationally. The cause of adultery is threatened with severe punishment because Islam highly denounces the act of adultery with the consequence that the perpetrator is punished with 100 lashes (Makhrus Munajat, 2010)⁴

The 100 lashes applied at that time were aimed at building the moral construction of the Acehnese people so that they would become a civilized society based on Islamic Sharia (Muhammad Said, 1981)⁵. They have a deterrent effect on society. This teaching has very strong energy to indoctrinate the community that Islamic Sharia can provide a sense of obedience to the community to create a peaceful life in Nanggroe Aceh Darussalam.⁶

The differences between the Aceh Qanun and the Criminal Code are also seen from the effects and basis for applying these laws. The law, which is formulated as a rule, has sanctioned and is believed by the community to be able to create a social order in society through repressive sanctions. These sanctions are seen from how effectively the rule of law is applied to society. Can people be aware of these regulations.⁷

The Aceh Qanun and the Criminal Code have differences in the application of adultery sanctions and the legal substance contained in these regulations is the subject of this research. Article 284 of the Criminal Code regarding adultery considers the act that is called

¹ Suni Ismail. (1980) Bunga Rampai Tentang Aceh, Jakarta: Bhartara Karya Aksara

² Saebani, Beni Ahmad H. Encup Supriatna. (2012) Antropologi Hukum, (Bandung, Pustaka Setia)

³ Mardani. (2009) Hukum Acara Perdata Peradilan Agama Dan Mahkamah Syariah, Jakarta:Sinar Grafika

⁴ Munajat, Makhrus. (2010) Fiqh Jinayah, Yogyakarta: Pesantren Nawesea Press.

⁵ Said, Muhammad (1981) Aceh Sepanjang Abad Medan: P.T. Percetakan dan Penerbitan Wapada Medan.

⁶ Alyssa Abu Bakar, 2004

⁷ Soekanto, Soerjano.(1978) Sosiologi Suatu Pengantar. Cetakan VI, Jakarta: Yayasan Penerbit Universitas Indonesia.

adultery. People who are married and have sexual relations with non-legal partners. This punishment is applied if there is a complaint from the husband or wife who feels aggrieved for the actions committed by the husband or wife.⁸

In contrast to the adultery sanction applied in the Aceh Qanun, which contains, "the perpetrator of adultery is a person who has intimate relations either with his illegitimate partner, and a married person who has intercourse with a non-legal partner is subject to 100 lashes of the whip (Aceh Qanun) In implementing Criminal sanctions for perpetrators of adultery are the subject matter of this research.

In terms of substance, the law is different, caused by historical factors. In Nanggroe Aceh Darussalam, Islam has become a norm that must be obeyed and a way of life to move social institutions within it. To create a harmonious society and create a society based on Islamic religious teachings.⁹ It is different from the application of criminal sanctions according to the Criminal Code brought by the Dutch nation, which focuses on adultery in the scope of marriage for people who have married, this difference in norms is the study in this study.

II. RESEARCH METHOD

Research is a way that is taken or carried out in search of a truth pursued through scientific methods. The methodology is needed in research to direct the focus of the objects taken and help compile research following applicable and systematic rules. This research uses several qualitative research methods.¹⁰

The type of research used is library research or library research. This research was studied by tracing the literature on a sociological review of the punishment for adultery according to the Qanun Aceh number 6 of 2014 article 33 and the Criminal Code Article 284. Furthermore, the nature of this research is descriptive-comparative. The approach used in this study is an empirical juridical analysis and review of the Aceh Qanun on adultery and Article 284 of the Criminal Code on adultery by examining the sociological aspects of law in examining the differences between the Aceh Qanun and the Criminal Code Article 284.

III. RESULT OF THE RESEARCH

Overview of Legal Effectiveness Theory

The theory of legal effectiveness examines the working power of law in regulating and forcing people to obey and comply with the rule of law. The essence of the theory of legal effectiveness is to study legal principles juridically, sociologically, and philosophically. Factors that can affect society in the functioning of the rule of law consist of four factors, namely: legal principles (the regulations themselves), officers/law enforcers, legal facilities or facilities, public awareness.¹¹

Below are the factors that determine the effectiveness of the law, which consists of four factors, namely:

Legal principles

Legal principles are rules that bind and regulate people's behaviour through written laws or statutes. This law becomes a guideline for human life in acting. In normative legal philosophy, the law is a set of legal principles that make law have an imperative and

⁸ Moelyatno. (2008) KUHP Kitab Undang-Undang Hukum Pidana, Jakarta: Bumi Aksara.

⁹ Forse, Michel, Anthony Giddens, Daniel Bell. (2005) Sosiologi, Yogyakarta: Kreasi Wacana,

¹⁰ Sudrajat dan Subana. (2001) Dasar-Dasar Penelitian Ilmiah, Bandung: Pustaka Setia.

¹¹ Zainuddin Ali, 2006

operative structure. In contrast to the sociological understanding that sees the rule of law from the aspect of its formation in society and its function in the social system.¹²

According to Zainuddin Ali, legal principles, in terms of legal theory, differ in their application. These differences are divided into three things, namely: legal rules that are juridical, sociological, and philosophical. Legal rules that are juridical are those contained in laws and are hierarchical, binding and governing. Sociological legal rules grow from the social conditions of society and are formed by the authorities even though they are not accepted by society. These rules apply because society recognizes them as rules that must be obeyed. Furthermore, philosophical rules of law are legal rules that aim to reach the ideals of law as the highest positive value.

On the one hand, these rules govern the human person and consist of the rules of belief and decency. The belief rules aim to achieve a life of faith clean.¹³ These rules are used as legal foundations that function as a means of social control.

Law enforcer

Law enforcers or people in charge of carrying out the rule of law and regulating society from social deviations that occur in the social environment. In carrying out their duties, legal officers must have a guideline legitimized by deliberation and prepared in writing covering the scope of their duties. In this case, the law enforcers studied in this study are law enforcers in Nanggroe Aceh Darussalam, such as the Islamic Sharia Office, the Ulama Consultative Council, Wilayatul Hisbah, and the Sharia Court, as well as the Sharia Police. The five institutions are tasked with enforcing Islamic Sharia in Aceh.

Law enforcement in Nanggroe Aceh Darussalam is studied in terms of the effectiveness of their performance in reducing the level of adultery in the community stipulated in the Aceh Qanun, namely Qanun Jinayah Number 6 of 2014. The factor of legal officers plays an important role in the functioning of the law. With a balance between the two elements between legal regulations and law enforcement, law enforcement and law enforcement must have a synchrony between the quality of regulations and the quality of law enforcement.

Law enforcement here is defined as formal institutions with legal power in governing society consisting of the police, prosecutors and courts. These three institutions have the authority to impose sanctions on people who violate recognized legal norms. These institutions function as a system of social control to create stability and order in society to create a peaceful life.¹⁴ every legal institution, within the scope of the Aceh Qanun and the Criminal Procedure Code (KUHAP), provides social functions in society to protect citizens from acts that violate the law.

Several obstacles may be encountered in implementing the role carried out by law enforcers towards their goals. These obstacles are:

1. Limited ability to put himself in the role of other parties with whom he interacts.
2. The level of aspiration is relatively not yet high.
3. Very limited enthusiasm for thinking about the future makes it difficult to make projections.
4. There is no ability to delay the satisfaction of certain needs, especially material needs.
5. Lack of innovative power which is the counterpart of conservatism.

These obstacles can be overcome by getting used to the attitudes as follows:

¹² Ananda, S. (2008) Tentang Kaidah Hukum. *Jurnal Hukum Pro Justitia*, 26 (1), 68-78

¹³ Purbacaraka, Purnadi. (1974) *Perihal Kaidah Hukum*, Jakarta: Fakultas Hukum Universitas Indonesia.

¹⁴ Soekanto, Soerjano. (1978) *Sosiologi Suatu Pengantar*. Cetakan VI, Jakarta: Yayasan Penerbit Universitas Indonesia.

1. An open attitude towards new experiences and discoveries.
2. Always ready to accept changes after assessing the deficiencies that existed.
3. Sensitive to the problems that occur around him.
4. Always have as complete information as possible regarding its establishment.
5. Orientation to the present and future is a sequence
6. Be aware of the potential that exists within him
7. Believe in the ability of Science and Technology to improve the welfare of the people
8. Recognizing and respecting the rights, obligations, and self-respect and the rights of others
9. Stick to decisions taken based on solid reasoning and calculations¹⁵

According to Soerjono Soekanto, problems affecting the effectiveness of written law in terms of the apparatus depend on the following things.

1. To what extent do existing regulations bind officers
2. To what extent are officers allowed to give discretion
3. What kind of example should officials give to the community
4. To what extent is the degree of synchronization of assignments given to officers to provide firm boundaries to their authority

Facilities

Facilities or means are very important to make a certain rule effective. The scope of the intended facilities, especially physical facilities, functions as supporting factors. In order to apply the caning punishment, supplies such as whips, special clothing for the accused and the place of execution are needed, all of which have been prepared by the Nanggroe Aceh Darussalam legal institution so that the sentencing process can run smoothly. From the point of view of the Criminal Code, there are several elements so that the facilities and amenities for legal institutions are fulfilled, namely: (1) what already exists is continuously maintained so that it functions at any time; (2) what is not yet available, needs to be procured taking into account the timeframe for its procurement; (3) what is lacking, needs to be completed; (4) what has been damaged, repaired or replaced; (5) what is stuck, is smoothed out; (6) what has been recreated, improved.

Citizen's awareness

One of the factors that make regulation effective is the community. What is meant here is awareness to comply with a statutory regulation, often called the degree of compliance. In simple terms, it can be said that the degree of public compliance with one of the indicators of the functioning of the relevant law can be seen from 3 things, namely: (1) regular legal counselling; (2) setting a good example from officials in terms of compliance with the law and respect for the law; (3) planned and directed institutionalization, in addition to activating social control mechanisms by activating religious institutions and customs, in reducing the level of adultery in Nanggroe Aceh Darussalam.

Several elements measure effectiveness depending on the condition of the community, namely:

1. Factors causing people not to comply with the rules even though the regulations are good.
2. Factors causing people not to comply with the regulations even though the regulations are very good and the apparatus is very authoritative.

¹⁵ Soekanto, Soerjano.(1978) Sosiologi Suatu Pengantar. Cetakan VI, Jakarta: Yayasan Penerbit Universitas Indonesia.

3. Factors are causing people not to comply with good regulations, officers or officials with authority and adequate facilities.

Application of Adultery Punishment According to Qanun Aceh and Criminal Code Article 284

Definition of Adultery According to Qanun Aceh and Criminal Code

Definition of Adultery According to Qanun Aceh

Adultery is intercourse between one or more men and one or more women without marriage ties with the consent of both parties. And the scope of the implementation of the Aceh Qanun is based on values in jinayat law, such as elements, Islam, Legality, Justice and Balance, Benefit, Protection of human rights, and Learning for the community. This Qanun regulates The perpetrators of Jarimah, Jarimah and Uqubat. Chapter IV Part Five of Zina Article 33 contains that every person who deliberately commits Jarimah Zina is threatened with Uqubat Hudud lashing 100 (one hundred) times.

Legal Definition of Adultery According to Qanun KUHP (Book of Criminal Law)

Adultery punishment according to the Criminal Code (Book of the Criminal Code). As described in article 284, which contains. A married man commits adultery, even though it is known that Article 27 BW applies to him. And also applies to a woman who commits adultery.¹⁶

The article explains that an act can be categorized as an act of adultery, as seen from the entry into force of Article 27 BW for those who commit it, namely married people. However, the punishment can run with a complaint. Either from a husband or wife who feels his heart is hurt. If there are no complaints from the husband or the wife, then there is no legal event. The law of adultery in the context of positive law only applies to married people as stated in article 284 of the Criminal Code (the Criminal Code)

Application of Sanctions for Adultery According to Qanun Aceh

Penal sanctions for adultery in Nanggroe Aceh Darussalam have been regulated in Qanun No. 6 of 2014 article 33 concerning jinayat (criminal law). Carried out by a member of the community, then it is processed through the Wilayatul Hisbah, which will coordinate with PPNS (Civil State Investigators).

An example of a case of adultery in Nanggroe Aceh Darussalam is a former Council member in the Pidie area who was found to have committed adultery with another man's wife. Their actions were caught when the two perpetrators were together and had sexual intercourse in the rented house of a female partner with the initials MA in Lorong II, Gampong Lamding, Banda Aceh, who still has the status of someone else's wife. Residents arrested them on 19 July 2016 at around 23.30 WIB. Both of these couples have a legal partners. After further investigation by the Wilayatul Hisbah agency, the results of the Wilayatul Hisbah investigation were submitted to PPNS (Civil Servant Investigators), who are in contact with the police. After that, it was processed by the Attorney and submitted to the Sharia Court to be tried. The punishment was carried out on Friday after Friday prayers in front of the Banda Aceh mosque, with a penalty of 100 lashes and witnessed by the public.

The punishment is applied to prevent or reject disobedience and educate the public, both the perpetrators and those who witnessed the execution of the punishment. That the act of adultery is an act that can undermine human dignity in all circles of society.¹⁷

¹⁶ Moelyatno. (2008) KUHP Kitab Undang-Undang Hukum Pidana, Jakarta:Bumi Aksara.

¹⁷ Wardi, Muslich Ahmad. (2006) Pengantar dan Asas Hukum Pidana Islam, Jakarta:Sinar Grafika.

Application of Sanctions for Adultery According to the Criminal Code (Criminal Code)

The application of adultery sanctions in the Criminal Code article 284 is applied following the principles that apply in criminal law. The elements of a criminal act are the conditions for determining the extent to which a human's actions can be subject to punishment/criminal. These elements include human actions that fulfil the formulation of the law and are against the law and elements of the person or perpetrator, namely the existence of an error in the perpetrator.

According to Simons, the occurrence of adultery, according to Article 284, requires a complete genital relationship between a man and a woman so that if two persons of the same sex commit it does not constitute adultery as referred to in Article 284 of the Criminal Code.¹⁸

Sanctions for perpetrators of adultery according to the Criminal Code Article 284 which reads. Article 284 of the Criminal Code consists of two numbers each consisting of two letters, namely:

- a. A married man who commits adultery, knowing that Article 27 Burgelijk Wetboek applies to him.
- b. Perempuan bersuami yang berzina

Based on these provisions, a man can be charged with committing adultery if he fulfils the following elements:

- a. The man is married
- b. The man already knows that Article 27 BW applies to him

Analysis of the Effectiveness of the Implementation of Adultery Penal Sanctions According to the Aceh Qanun and the Criminal Code

The Effectiveness of the Implementation of Adultery Penal Sanctions According to the Aceh Qanun

The enactment of Islamic Sharia or Islamic law aims to protect the public interest (maslahat al ammah). What is stated in the letter An-nur verse 2

وَلَا تَقْرَبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فُحِشَةً وَسَاءَ سَبِيلًا ۚ ۳۲

(Q.S. An-nur, 2)

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيْسَ لَهُمَا عَذَابٌ طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ ۚ ۲

The letter explains that the application of adultery punishment has moral values to protect society from disobedience, namely adultery. The Government of Nanggroe Aceh Darussalam codified the Qanuns that had been formed previously into one Qanun, namely Qanun Number 6 of 2014, called Qanun Jinayat, which means Islamic criminal law but the punishments included in the Qanun tend to be standardized moral rules into written punishments so that there is firmness law is not just an abstract rule that only provides social sanctions, either in the form of satire or ostracism from society. However, there are normative punishments to prove the existence of legal firmness in society. Judging from the effectiveness theory, some elements function in regulating society, especially from legal norms.

Legal norms in applying Islamic law in Aceh have a dual function. As a law, it seeks to regulate human behaviour (Muslims) following the image of Islam. This dual function

¹⁸ Lamintang. (1990) Delik-Delik Khusus: Tindak Pidana-Tindak Pidana yang Melanggar Norma-Norma Kesusilaan dan Keputusan, Bandung: Mandar Maju.

provides a specific characteristic of Islamic law when viewed from the point of view of the sociology of law. Because, as a law, it cannot be separated from the sociocultural influences around it. From this point of view, it can be said that it is a manifestation of the process of adapting human thoughts/ideas and the system of the cultural environment of society.¹⁹

The Effectiveness of the Implementation of Adultery Punishment Sanctions According to the Criminal Code

The application of adultery punishment from the point of view of the Criminal Code Article 284 regarding immoral acts in its application is seen from the social and legal elements that function in taking action against people who commit immoral acts. These elements are both formal and informal. The formal ones consist of :

1. The police who act as investigators and investigators are listed in the Criminal Procedure Code (KUHAP) for handling this case of adultery, which is seen from the complaint offence
2. The Attorney General acts as a public prosecutor in imposing criminal sanctions on the perpetrators of adultery following Article 284 of the Criminal Code, which is included in the category of extramarital affairs
3. The Panel of Judges whose duty is to provide Justice for criminal cases that enter the courtroom by making decisions based on the considerations between the Public Prosecutor and the perpetrator's Legal Counsel
4. The facilities and facilities owned by law enforcers in carrying out their duties have been fulfilled properly, both the investigator's equipment and legal tools, both from the level of the police, prosecutors, to the panel of judges in resolving the adultery case

The punishment for adultery applied by the Criminal Code from the perspective of effectiveness also looks at the aspect of the written legal norms contained in the Criminal Code Article 284 in imposing criminal sanctions on the community with practical objectives, an example of cases resolved in court which fall into the category of complaint offences are cases of adultery involving caused by disputes between husband and wife. His wife commits an affair with another person.

IV. CONCLUSION

Theory of Legal Effectiveness in dealing with adultery cases both in Aceh and in other provinces can be quite effective because the community has realized that adultery is a highly deviant act according to community social norms and legal norms that have been stipulated in writing. The effectiveness of the adultery punishment applied by the Aceh Qanun and the Criminal Code has differences in the social conditions of the people both in Nanggroe Aceh Darussalam and in the provinces that apply the Criminal Code. In the juridical area of Nanggroe Aceh Darussalam, which is synonymous with Islam and makes Islam the ideology of society, the punishment given is quite effective by building cooperation among elements of society. From the point of view of the positive law contained in the Criminal Code (KUHP), the punishment for adultery is still in the process of building public awareness to provide a deterrent effect in society because the punishment applied is only within the scope of the institution of marriage.

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