



## **Review on the Revisions being made to the Three Qanuns on *Jinayah***

The government of Aceh has made great efforts to implement *Syar'iyah law* (Islamic Law) throughout the province. Despite poor enforcement in a number of districts and cities, the government has recently carried out a number of steps to strengthen these laws. Among the efforts of the Office for *Syar'iyah* Enforcement (*Dinas Syariah Islam*) is the amendment of three *Qanuns* on *syar'iyah*-based *jinayah* (criminal cases). The three *Qanuns* to be revised are No. 12, 13 and 14 from year 2003 on *khalwat* (illicit relations between opposing sex), *maisir* (gambling), and *khamar* (sale and consumption of liquor).

After five years of the *Qanuns* being in effect, Acehnese *ulamas* and scholars have begun to recognise the drawbacks of how the laws were written. Some significant issues have not been governed by the *Qanuns*. "The *Qanuns* need to be revised for better enforcement," said Ameer Hamzah, a member of the Aceh parliament (DPR Aceh).

One of the most important things missing from the *Qanuns* is mechanism for arresting those who commit *jinayah*. The absence of such a provision has meant that the Office for *Syar'iyah* Enforcement does not know its legal obligation when a *syar'iyah* offender escapes during the case investigation process. In addition, the term *khalwat* has never been properly defined. *Khalwat* has been explained as the act of an unmarried couple being alone. Questions have arisen as to what happens if the offence is allegedly committed by more than two persons. The current *Qanun* does not sufficiently define *khalwat* in this respect. Some concerns on the form and level of punishment have also surfaced. "Some provisions are not clear enough and need to be revised" said Hamid Sarong, the lecturer at the Faculty of *Syari'ah* of the Ar-Raniry Public Islamic Institute in Banda Aceh.

Efforts to improve them have been attempted by the Government of Aceh during the past year and a revised draft has even been submitted to the Aceh Parliament. Although its deliberation is not on schedule, it is a positive step that the executive body has started the process for the revision.

The revised draft groups all violations of *syar'iyah* concerning *khalwat*, *khamar*, and *maisi* into one *Qanun*. In addition, a fourth type of violation has been added to the revised draft, namely *ikhtilath* (actions involving a male and female which properly should take place only between husband and wife). *Ikhtilath* is the revised term for *khalwat*. While *khalwat* only suggests an offense committed by two individuals, *ikhtilath* suggests more than two offenders in the act. In detail *ikhtilath* according to the *syar'i* (basic law) is the



free relationship of unmarried men and women at a moment of time or within a forum that are against the principles of Islam. The Indonesian language defines *ikhtilath* as the act of an illicit intimate relationship between an unmarried couple both in a closed and open setting.

When the draft *Qanun* is approved, it will be applicable not only to Muslims only but also to non-Muslims residing in Aceh.

The need to revise these Qanuns was identified in the Law on the governance of Aceh (UU No.11 2006). For example in comparison to the *Qanun* No. 12/2003 on *Khamar*, the revised draft *Qanun* has more detailed stipulations about the forms of evidence and the methods of punishment. Chapter III article 4 gives a clearer definition of *Khamar* together with the punishment for its violation:

*(1) Anyone found consuming khamar shall be subject to a penalty of caning of at least 40 lashes or a fine of a maximum of IDR 3 million or imprisonment of between 2 to 40 months.*

*Anyone found committing the same offense again referred to in paragraph (1) shall be subject to a penalty of 40 lashes.*

A severe penalty or punishment will given to anyone found producing or storing and/or selling/purchasing and/or transporting or promoting *khamar*. The offenders shall be subject to a penalty of caning of between 10 to 30 lashes or a fine of between IDR 15 to 45 millions or an imprisonment of between 10 to 30 months. The most severe punishment shall be enforced to those found committing the same crime repeatedly. The accused shall be subject to 20 to 60 lashes or a fine of between IDR 30 to 90 millions or an imprisonment of between 20 to 60 months.

On the prohibition of *maisir*, in Art. 8 the revised draft *Qanun* states:

*Anyone found committing maisir shall be subject to a penalty of caning of between 2 to 60 lashes, or a fine of between IDR 3 million to IDR 90 millions or an imprisonment of between 2 to 60 months.*

*Anyone found committing the same crime repeatedly referred to in paragraph (1) shall be subject to a penalty of a caning of between 20 to 60 lashes or a fine of between IDR 30 millions to IDR 90 millions or an imprisonment of between 20 to 30 months*



Punishment will also be given to anyone found taking part or helping in committing the crime or ordering or promoting *maisir*. The offenders shall be subject to between 2 to 60 lashes.

The draft of the revised *Qanun* governs mostly issues on *khalwat* and *ikhtilath*. There are 19 articles governing these two types of *jinayah*. Article 12, for instance, provides the following:

- (1) *Anyone found committing khalwat is subject to a penalty of caning of between 2 to 18 lashes, or a fine of between IDR 3 millions to IDR 27 millions or an imprisonment of between 2 to 18 months.*
- (2) *Anyone found committing the same crime repeatedly referred to in paragraph (1) shall be subject to a penalty of a caning of between 6 to 18 lashes or a fine between IDR 9 to IDR 27 million or an imprisonment of between 6 to 18 months.*

Again a more severe punishment will be given to anyone found guilty of committing the same crime repeatedly. Such crimes will be subject to a penalty of between 10 to 30 lashes or a fine of between IDR 15 to 45 million or imprisonment of between 10 to 30 months. If *ikhtilath* is committed with children, the offender is subject to a penalty of between 10 to 30 lashes or a fine of between IDR 15 millions to 45 millions.

The draft *Qanun* provides different types of *ikhtilath* offences. It also governs efforts to lure or have or force children to commit *ikhtilath* with fellow children. Such offences shall be subject to a penalty of between 15 to 45 lashes. More severe punishments are for couples committing *zina* (adultery), which is subject to a penalty of 100 lashes. Cases of *zina* can be proven if persons can bear witnesses to the case. Anyone found guilty of committing rape shall be subject to a penalty of between 100 to 200 lashes.