

## **KHAMR CRIMINAL ACT AND ITS RESOLUTION IN SUBULUSSALAM CITY, ACEH**

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**Abstract:** *The enactment of khamr qanun in Aceh shows Aceh government's commitment in prohibiting and eradicating khamr and similar drinks. However, the enforcement of the qanun has not been effective, especially in the City of Subulussalam as evidenced in several violations of the qanun. This paper aims to discuss what and how the khamr qanun in Subulussalam, its effectiveness, obstacles faced by the Subulussalam city government in enforcing the qanun, and solutions offered by the city government. After examining relevant literature and conducting observations, discussions, and interviews with Subulussalam City leaders, this paper concludes that the ineffectiveness of the khamr qanun enforcement is due to some constraints, such as lenient punishment, limited human resources, weak socialization of Islamic law and community education.*

**Keywords:** *Khamr Qanun, Sharia, Aceh*

**Abstrak:** *Kehadiran qanun khamar di Aceh menunjukkan keseriusan pemerintah Aceh dalam melarang dan memberantas minuman khamar dan sejenisnya. Namun dalam pelaksanaannya, penegakan qanun tersebut belum terlalu efektif, khususnya di Kota Subulussalam, Aceh. Hal ini dibuktikan dengan ditemukan beberapa kasus pelanggaran terhadap larangan khamar. Tulisan ini bertujuan, pertama, mendiskusikan apa dan bagaimana qanun khamar di Aceh, khususnya di kota Subulussalam. Kedua, sejauh manakah keefektifan qanun khamar tersebut di Kota Subulussalam. Ketiga, kendala apa saja yang dihadapi oleh pemerintah kota Subulussalam dalam menegakkan qanun khamar dan apa saja solusi dari pemerintah. Setelah menelaah pustaka yang relevan serta diperkuat dengan observasi, diskusi, dan wawancara dengan para tokoh Kota Subulussalam, tulisan ini menyimpulkan bahwa ketidakefektifan penegakan qanun khamar di Kota Subulussalam Aceh disebabkan adanya kendala yang dihadapi, seperti tindakan penghukuman yang belum tegas, terbatasnya Sumber Daya Manusia, lemahnya sosialisasi syariat Islam dan pembimbingan masyarakat.*

**Kata Kunci:** *Qanun Khamar, Syariat Islam, Aceh*

## Introduction

Qanun No. 12 of 2003 Aceh Darussalam firmly forbids the people of Aceh to drink, consume, produce, supply, import, distribute, transport, store, stockpile, trade, give, and promote *khamr* and the like.<sup>1</sup> Sanctions will be imposed on those who violate it. As stated in Article 26 Qanun No. 12 of 2003, every person who consumes *khamr* is subject to *'uqubat hudud* in the form of flogging for as many as 40 times. Every person or legal / business entity is subject to *'uqubat ta'zir* in the form of maximum confinement of 1 (one) year and a minimum of 3 (three) months and / or a maximum fine of IDR 75,000,000 (seventy-five million rupiah), at least IDR 25,000,000 (twenty-five million rupiah) if they produce, supply, sell, import, distribute, transport, store, stockpile, trade, give, promote and participate in the above business process.<sup>2</sup>

In the context of Aceh, this regulation is highly needed. Besides it does not contradict higher rules, such as Presidential Decree (*Kepres*) No. 3 of 1997 concerning Supervision and Control of Alcoholic Beverages and Instructions of Ministry of Home Affairs No. 4 of 1997 concerning the Prohibition, Supervision, Control, Distribution and

Sale of Alcoholic Beverages in the Indonesian Regions,<sup>3</sup> it is also in line with the historical background of the Acehnese people who cannot be separated from Islam. This paper aims at discussing the *khamr* criminal act and its resolution in Subulussalam City, Aceh, by focusing on how is the qanun of *khamr* in the City, enforcement effectiveness of the qanun, and obstacles faced by the Aceh government as well as solutions for the problems.

This paper argues that the enforcement of the qanun has not been effective. In order to prove it, this paper begins with a discussion on qanuns of *khamr* in the City of Subulussalam, Aceh, which have been approved by the city government. Next, this paper discusses violations and resolutions of the qanun of *khamr* in Subulussalam City. The paper also discusses obstacles faced by the local government in implementing the qanun in Subulussalam City, Aceh. Finally, the article discusses supervision and guidance for those who violate these *khamar* qanuns.

Studies on Islamic law in Aceh have been enormous. This study, however, is different from previous ones. While prior research was focused more on Aceh in general, this study has a specific focus, which is the City of Subulussalam. One of the previous studies was the work of Tim Lindsey, MB. Hooker,

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<sup>1</sup> Qanun No. 12 Tahun 2003 Aceh Darussalam

<sup>2</sup> Article 26 Qanun No 12 of 2003. See, Nasrullah Yahya, "Legislasi Hukum Positif (Fikih) Aceh: Tinjauan Pergumulan Qanun Hukum Jinayah," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 2 (2014): 149-66.

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<sup>3</sup> Komnas Perempuan, "Analisis Terhadap Qanun Nanggroe Aceh Darussalam," *Materi Dialog Komnas Perempuan Tentang Pelaksanaan Syariat Islam Di Aceh* (Aceh, 2005).

Ross Clarke and Jeremy Kingsley entitled "Sharia Revival in Aceh" which argues that the rise of sharia in Aceh is a very radical change whose development and sustainability is largely determined by politics in Jakarta. Qanun influence on society occurs slowly, but yet changes have occurred on a small-scale at the beginning of its application. The application of Islamic law in Aceh has increased the authority of ulemas to compete with secular intellectuals. The ulemas have been benefited from the enactment of the Aceh qanuns in the form of the creation of religious institutions such as the Ulama's Consultative Assembly (MPU).<sup>4</sup>

This research is a field research using a socio-legal-historical approach. The data presented here were obtained through observations, interviews and documentation study.

### ***Khamr* Qanun in the City of Subulussalam**

*Khamr* could be considered to be an initial cause of crimes because when someone loses his mind, he will also lose control over himself. Thus, to protect the Aceh people from mental damages, the Government of Aceh has imposed a ban on *khamr* and the like which is accompanied by the provisions of *'uqubat* or punishment. This regulation is intended to protect all people

<sup>4</sup> Jeremy Kingsley Tim Linsdey, MB. Hooker, Ross Clarke, *Sharia Revival in Aceh* (Cambridge: Harvard Law School, 2007), 253-254.

from the negative effects of consuming the alcoholic drink.<sup>5</sup>

The Qanun of *khamr* prohibition, besides imposing sentences in the forms of flogging, confinement and fines, it also regulates criminal acts of administrative sanctions in the form of revocation of business licenses.<sup>6</sup> For a repetitive punishment (*recidivist*), the penalty imposed is in the form of an additional 1/3 of the maximum *'uqubat*. If the sanctions involve someone's business, such as selling, distributing, and so on, the punishment are imposed on the person responsible for the business and the punishment is added by imposing an administrative *'uqubat*, namely revocation of business license if a permit has been granted.

The enforcement of Qanun No. 12 of 2003 had been effective for approximately 12 years (2003-2014). But in its application it still had many weaknesses, so in 2014 Qanun No. 6 about *Jinayat* Law was passed. The *Jinayat* Qanun was to improve Qanun Number 12 of 2003.<sup>7</sup> The *khamr* formulation regulated in Qanun No. 12 of 2003 was different from the *Jinayat* Qanun that was passed

<sup>5</sup> See Article 26 ayat 1-4 Qanun 12/2003.

<sup>6</sup> See Article 30 Qanun 12/2003.

<sup>7</sup> Iriansyah, "Penegakan Hukum Jinayat Terhadap Khamar Sebelum Dan Pasca Pemberlakuan Qanun Aceh Nomor 6 Tahun 2014 Di Kabupaten Aceh Tamiang," *Jurnal Hukum Samudra Keadilan* 12, no. 1 (2017): 62-79.

in 2014 in terms of number of *'uqubat* received by perpetrators.<sup>8</sup>

Sanctions for every person who violates the *khamr* qanun as stated in Qanun No. 6 of 2014 is subject to *'uqubat hudud*, that is being flogged 40 times or a fine of up to 400 grams of pure gold or a maximum of 40 months imprisonment. Meanwhile, recidivists are punishable with *'uqubat hudud* by 40 times of flogging plus *'uqubat ta'zir* by up to 40 times of flogging.<sup>9</sup> Thus, the punishment received by everyone who repeats the prohibited act is multiplied in terms of punishment number when compared to the previous qanun.

Meanwhile, for anyone producing, storing/stockpiling, selling, or exporting *khamr*, the offender is punishable with *'uqubat ta'zir* by a maximum of 60 times of flogging or a fine of at least 600 grams of pure gold / jail term of 60 months. If involving children in an activity of drinking, transporting and selling *khamr*, an offender is punishable with *'uqubat ta'zir* by up to 80 times of flogging / a fine of up to 800 grams of pure gold / jail term of up to 80 months. Likewise, culinary businesses are subject to the same penalty as those who produce *khamr* plus a revocation of

<sup>8</sup> Analiansyah, "Qanun Hukum Acara Jinayat Dalam Pelaksanaan Syari'at Islam: Studi Terhadap Draf Qanun Hukum Acara Jinayat Di Aceh," *Legitimasi* 1, no. 1 (2011): 74.

<sup>9</sup> Madiasa Ablisar, "Relevansi Hukuman Cambuk Sebagai Salah Satu Bentuk Pemidanaan Dalam Pembaharuan Hukum Pidana," *Jurnal Dinamika Hukum* 14, no. 2 (2014): 278-289.

business license in the form of *ta'zir* as an additional penalty.<sup>10</sup>

### Violations and Resolutions of *Khamr* Qanun

Violations of *Khamr* Qanun No. 12 of 2003 in Subulussalam City have rarely occurred as demonstrated by the data provided by Wilayatul Hisbah in the last 5 years. Until 2015, of the many *khamr* cases handled by the Wilayatul Hisbah of Subulussalam City, there had been no single case that had been resolved in court and ended in flogging or fines. The last 5 years data from the *Pamong Praja* Police Station and the Wilayatul Hisbah of Subulussalam City show that the resolutions of *khamr* cases have thus far been more towards guiding and reprimanding perpetrators.

**Table 1**  
Violations of the *Khamr* Qanun in Subulussalam City in the Last 5 Years

Years	Numbers of Cases	Resolutions	
		Customs/ Reprimands/ Education	Sharia Court (MS)
2011	5	✓	-
2012	12	✓	-
2013	2	✓	-
2014	22	✓	-
2015	12	✓	-

Source: *Pamong Praja* Police and the Wilayatul Hisbah of Subulussalam City

<sup>10</sup> See Article 6 section 1 and 2 Qanun 6/2014.

Thus far, *khamr* enforcement in Subulussalam City is carried out through education, reprimand and registration at the Wilayatul Hisbah office. For example, in mid-January 2015, there were 13 perpetrators and a *khamr* seller who were secured by an integrated team of Simpang Kiri Muspika (District Leaders Meeting), Subulussalam City. The case was that the perpetrators and the seller sold liquor in a cafe in Suka Makmur Village, Simpang Kiri District.<sup>11</sup> The education received by the perpetrators was spiritual education in the form of a series of ritual activities at the As-Silmi Mosque in Subulussalam City. In addition, the perpetrators were also given additional duties in the form of cleaning up the mosque, including the mosque's interior, yard, ablution facilities and bathrooms. The activities were carried out by the perpetrators and in shifts during their education program at the As-Silmi Mosque.

The punishment imposed on the 13 suspects shows that sale of liquor in Subulussalam City is increasingly rampant. It is true that one of the goals of such an education program is not only to punish perpetrators for their wrongdoings, but also to provide a deterrent effect or a feeling of shame so that people no longer commit acts that violate the law. However, in my opinion, by providing an education program for suspects, the Simpang Kiri Muspika has

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<sup>11</sup> Harian Prohaba, "Pelaku Khamar Dibina Di Masjid," 2015, <http://prohaba.co/m/index.php/2015/01/19/pelaku-khamar-dibina-di-masjid>.

ignored provisions of Qanun No. 12 of 2003, namely flogging punishment for perpetrators of *khamr* not from one person to another, but to implement the rights of Allah in the form of *hudud* against His servants who have violated provisions that have been prescribed by Him.<sup>12</sup> It is even more crucial due to the fact that the provisions have also been regulated in the Aceh Qanun.<sup>13</sup>

In this case, I consulted with religious scholars namely Chairman of the Ulama's Consultative Assembly (MPU) and the Aceh Customs Council (MAA) of Subulussalam regarding the imposition of sanctions in the form of education to the 13 suspects. They argued that there were other factors that were considered by the Simpang Kiri Muspika in giving such a punishment to the perpetrators. The majority of the perpetrators were still school and university students whose educational activities would have been disrupted had they been imposed with the applicable qanun provisions. Furthermore, the MAA chairman explained that the psychological factors of the 13 suspects were also taken into consideration by

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<sup>12</sup> Muhammad Iqbal Siddiqi, "The Penal Law of Islam. (2d Ed.) Lahore" (Kazi Publications, 1985).

<sup>13</sup> Syarifuddin Usman, "Tindak Pidana Minuman Khamar Dalam Qanun Provinsi Aceh No. 12 Tahun 2003," *Legitimasi: Jurnal Hukum Pidana Dan Politik Islam* 1, no. 2 (2017): 175.

the Simpang Kiri Muspika in imposing the education punishment.<sup>14</sup>

The main reason of the Wilayatul Hisbah's decision to impose the education punishment to the 13 suspects was that the body had coordinated with the police due to its function as a qanun enforcer in Aceh that was tasked to oversee the application of every qanun in Aceh and to provide education.<sup>15</sup> However, in my opinion and according to the community leaders I interviewed, the more appropriate punishment for the 13 suspects is the sanctions specified in the *Qanun Jinayat*. Actually, Head of Gampong Suka Makmur, H Abd Hamid Padang, had asked the Muspika to impose sanctions on the seller and drinkers of the *khamr* in accordance with an applicable qanun. The request was due to an assumption held by the neighboring Gampong community that the Gampong he led (Gampong Suka Makmur) was as a place of *khamr* drinking.<sup>16</sup>

In carrying out the education punishment, the Wilayatul Hisbah first conducted an education program to every person who had been arrested during a *khamr* raid before being hand-

ed over to an investigator.<sup>17</sup> It seems that these are the two initial actions that have just been implemented by the Wilayatul Hisbah of Subulussalam City in tackling *khamr* violations in the city. The following section presents several examples of reprimands by the Wilayatul Hisbah of Subulussalam City against perpetrators of *khamr* in the city.<sup>18</sup>

On Saturday, August 8, 2012 at 21:00 Western Indonesia Time (WIB), the *Pamong Praja* Police and the Wilayatul Hisbah of Subulussalam City conducted a raid and managed to secure 79 bottles of branded liquor (not the traditionally made *tuak / arak*), in one of the stalls owned by PB (45), a resident of Gampong Jontor, Penanggalan District. Besides confiscating some liquor, the Wilayatul Hisbah officers also secured five women in the stall. After conducting the raid on Jontor Village, the Wilayatul Hisbah then conducted another raid on Penanggalan Village, precisely in Barto Alley of Swadaya street. The officers managed to secure five teenagers who were drinking wine (*khamr*) along with a seller. The Wilayatul Hisbah officers also managed to secure half

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<sup>14</sup> Interview with Chairman of Ulama's Consultative Assembly (MPU) City of Subulussalam, Ust. H. Qaharuddin Kombih on 20 April 2015.

<sup>15</sup> See, Qanun 11/ 2002.

<sup>16</sup> Interview with head of Gampong Suka Makmur, H. Abd Hamid Padang 12 April 2015.

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<sup>17</sup> Mukhlis Mukhlis, "Keistimewaan Dan Kekhususan Aceh Dalam Perspektif Negara Kesatuan Republik Indonesia," *Ilmu Hukum* 4, no. 1 (2014): 76-99.

<sup>18</sup> Marah Halim, "Eksistensi Wilayatul Hisbah Dalam Sistem Pemerintahan Islam," *Jurnal Ilmiah Islam Futura* 10, no. 2 (2011): 67.

a large bucket of palm wine (*tuak*) as evidence.<sup>19</sup>

The next case, on Saturday, 15 February 2015, the Simpang Kiri Police Sector succeeded in securing as many as 32 perpetrators of *khamr* drinkers during a *tuak* drinking party. The arrest took place at around 22:00 WIB during the *Operation Cempaka* in order to reduce criminal acts in a *tuak lapo* (*khamr* stall) in Kampong Buluh Dori, Simpang Kiri District which was far from residential areas. The 32 perpetrators were dominated by residents of Kampong Runding, Runding District who had come to the *tuak lapo* intentionally. In addition to the perpetrators, the stall owner was also secured along with evidence of a small gallon of *tuak*. Considering that the alcohol beverage was out of standard, Police Commissioner Adjutant (AKP) Haryono explained that he would coordinate with the Simpang Kiri Muspika, the MAA and the local MPU as to whether the violation would be handled according to Qanun or an education program. In the end, the 32 perpetrators were only given a warning and a reprimand accompanied by a registration with a provision that if they did the same criminal act, they would be punished in accordance with the applicable qanun provisions.<sup>20</sup>

Those are a few examples of violations of Qanun No. 12 of 2003 in the City of Subulusslam. And none of these

<sup>19</sup> Data Kasus Polisi Pamong Praja dan WH Kota Subulussalam Tahun 2016.

<sup>20</sup> Data Kasus Polisi Pamong Praja dan WH Kota Subulussalam Tahun 2016

cases were submitted to court to be resolved according to the *Jinayat* qanun of Aceh. On average, the perpetrators were only documented at the Wilayatul Hisbah Subulussalam office. They were then given a letter of agreement with a condition that doing the same act would be subject to applicable penalties according to the Aceh Qanun.

If the above cases are analyzed based on the provisions of the *Jinayat* Qanun of Aceh, the first case, namely the confiscation of 79 bottles of alcohol beverage in Jontor Village, the stall owner should have been subject to Article 26 paragraph (2) of Qanun No. 12 of 2003. In my opinion, this case is quite serious. The police and the Wilayatul Hisbah have long often released or given reprimands to people caught red-handed drinking liquor with a reason that *tuak* beverage is not standardized or its alcohol is below the general standard.<sup>21</sup> Regarding the standard of a drink, in Islamic law there is *qiyas* as a source of Islamic law. *Qiyas* analogizes a case that does not yet have a law with a case whose law is mentioned in *nash* due to a similarity of consequences (*'illat*).<sup>22</sup> Thus, it can be concluded that *tuak* beverage has a similar *'illat* to *khamr* referred to in QS. al-Maidah: 90 which is equally intoxicating.

<sup>21</sup><http://www.prohaba.co/2015/02/16/polsek-simpang-kiri-tangkap-32pemabuk#>.

VbPmBbWt yVk . (Accessed 26<sup>th</sup> of July, 2015).

<sup>22</sup> 'Abd al-Wahhab Khalaf, "Maṣādir Al-Tashrī Al-Islāmi Fimā Lā Naṣṣa Fih," *Dār Al-Qalam, Quwait*, 1972, 19.

Here is, in my opinion, where the weakness of the application of Jinayat law in Subulussalam City lies. Every violator of the Jinayat qanun should be taken seriously and resolved in accordance with applicable regulations. There are no reasons for not punishing *khamr* drinkers with a maximum 'uqubat in the form of flogging as it will give lessons to the public about the punishment received for consuming intoxicating drinks in Aceh, especially in the City of Subulussalam.<sup>23</sup>

Adi Hermansyah, a lecturer of Unsyiah Banda Aceh School of Law launched his criticism in the national daily *Republika* saying the application of flogging for Islamic law violators in Aceh is no longer serious. The indicator can be seen from the number of violators that are not processed with the qanun or sharia law imposed in Aceh. He further argued that the elimination of a legal process against sharia law violators results from the implementation of other measures to resolve a case, such as customary resolutions, reprimands, education, and ties of kinship.<sup>24</sup>

Another contributing factor to the failed implementation of flogging against *khamr* violators in Subulussalam

is the unavailability of an adequate budget from the government, resulting in nonoptimal violation resolutions. Hence, it is understandable if Wilayatul Hisbah officers have thus far only given reprimands to violators of the *khamr* qanun in the City of Subulussalam as such a measure does not require significant costs.<sup>25</sup> It has to be noted that flogging law in Aceh is not the same as in other Islamic countries because flogging procedure in Aceh has been regulated in the Jinayat Procedural Qanun of Aceh. The main purpose of flogging is to give social sanctions to perpetrators in the form of shame as well as a warning to the wider public to avoid doing the same crime.<sup>26</sup>

Meanwhile, Edi Sahputra, Chairperson of the Aceh People's Advocacy Foundation (YARA) Subulussalam, also expressed the same concern about the absence of flogging against *khamr* violations. With the existence of the Simpang Kiri Muspika policy, it seems that *khamr* violators are caught for subsequently being released for an excuse that an education program will be conducted for the offender. Such a policy is considered comical as releasing a *khamr* of-

<sup>23</sup> Husnul Arifin Melayu, "Hukum Cambuk Dan Pengaruhnya Terhadap Kasus Khalwat Di Aceh," *Jurnal Jurnal Ar-Raniry, Media Kajian Keislaman Edisi I*, no. 87 (2011): 71.

<sup>24</sup> *Republika*, "Pidana Cambuk di Aceh Mulai Melempem", <https://www.republika.co.id/berita/nasional/hukum/13/02/12/mi3y9i-pidana-cambuk-di-aceh-dinilai-mulai-melempem> (diakses 03-06-2019).

<sup>25</sup> Interview with Bambang, Head of Administration, Pamong Praja Police and WH Subulussalam, on 24 April 2015.

<sup>26</sup> *Republika*, *Pidana Cambuk Di Aceh Mulai Melempem. ...* (accessed 12<sup>th</sup> of November, 2015).



fender under a pretext of an education program.<sup>27</sup>

The same notion is also expressed by many people of Subulussalam City; community leaders, young people, and NGOs. As concerned by Mustakim as Head of the Blegen Community and Community Leader of Simpang Kiri, the reprimands and the education program implemented by the Wilayatul Hisbah in dealing with *khamr* perpetrators in Subulussalam City have been unable to reduce the intensifying practice of *khamr* drinking in his region in particular and the city of Subulussalam in general.<sup>28</sup> In the City of Subulussalam, *khamr* that is often found is the *pola* (*tuak* made from sugar palm).

### Constraints in the Implementation of the *Khamr* Qanun in Subulussalam City

There are several constraints that can affect the application of the qanun of *khamr* in Subulussalam City, which are not only legal factors such as qanun and law enforcement agencies, but are also influenced by other factors, such as socialization to the public about the validity of a qanun, low public awareness on Islamic law, limited human resources and an unbalanced number of Wilayatul Hisbah members.

<sup>27</sup> Interview with Edi Syahputra, Chairperson of the Aceh People's Advocacy Foundation (YARA) Subulussalam, on 15 April 2015.

<sup>28</sup> Interview with Mustakim, Head of Blegen Community on tanggal 21 May 2015

The Aceh government's formalization of Islamic Sharia is considered an implementation of God's teachings because there is a promise that the implementation of God's law in social, national and state life (*Islam kaffah*) will bring life prosperity in the world and the hereafter.<sup>29</sup> ... It is time for the Government of Aceh, especially the Subulussalam City Government to implement Islamic Sharia rules as mandated by the Aceh Government Constitution. In this case, the government must wholeheartedly carry out sharia law in the life of the people of Subulussalam City.<sup>30</sup>

Constraints in the implementation of sharia law in the City of Subulussalam are actually not much different from those in other regions of Aceh in general. There are still many obstacles that need to be faced by the Subulussalam city government, especially the Office of Islamic Sharia and the Wilayatul Hisbah in carrying out the mandate as the vanguard of Islamic law enforcement in Aceh. The problems are grouped as follow:

<sup>29</sup> Abubakar Alyasa, "Syari'at Islam Di Provinsi Nanggroe Aceh Darussalam: Paradigma, Kebijakan Dan Kegiatan," *Banda Aceh, Dinas Syariat Islam*, 2006, 81-83. Lihat juga Natangsa Surbakti, "Pidana Cambuk Dalam Perspektif Keadilan Hukum Dan Hak Asasi Manusia Di Provinsi Nanggroe Aceh Darussalam," *Jurnal Hukum* 17, no. 3 (2010): 460.

<sup>30</sup> H A Rahmat Rosyadi, "Pelaksanaan Syariat Islam Di Aceh (Studi Kritis Terhadap Hukuman Cambuk Pelaku Tindak Pidana Khamar, Maisir Dan Khalwat)," *Prosiding LPPM UIKA Bogor*, 2014, 83.

## 1. Poor Socialization and Supervision

The success of a statutory regulation cannot be separated from a sustainable socialization process. It serves to provide a broad understanding to the community about a regulation that will be applied in their region. In Subulussalam City, a socialization process has been carried out although still minimum (rare).<sup>31</sup> Likewise, supervision of the implementation of Islamic law is still weak, especially in remote and border areas, resulting in people being not fully knowledgeable about Islamic law. The solution given by the Aceh Provincial Government is by placing 18 Islamic preachers in border and remote villages in the City of Subulussalam<sup>32</sup> to provide religious understanding to the community. Unfortunately, the preachers assigned oftentimes do not stay in the villages, making a socialization process of Islamic law run slowly and even stuck.<sup>33</sup>

## 2. Poor Knowledge of the Society about Islam

The poor knowledge of the community about Islam greatly affects the application of Islamic law in the City of

Subulussalam.<sup>34</sup> They eventually assume that the presence or absence of the Aceh qanun is the same. A resident acknowledged the problem:

The application of Sharia in Sultan Daulad so far has not made a meaningful change for the people in my village, Gampong Jambi. It is the same whether there is or there is not Sharia; the people here remain unchanged and ignorant. There is no such thing as Sharia. The proof is that negative habits are still around. In my opinion, even the residents here behave like city dwellers; they are ignorant of each other.<sup>35</sup>

In addition to the general public, a poor understanding of Islam is also endemic among Subulussalam city officials and community leaders, ranging from civil society organizations (CSOs), political party leaders, to leaders and stakeholders at the government level. As a result, some of them misunderstand Sharia. For example, there is a cynical tone that is raised by some figures and leaders about the implementation of sharia in the community.<sup>36</sup>

## 3. Limited Human Resources

The success of law enforcement is not only limited to the rules and insti-

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<sup>31</sup> Interview with Wildan Sastra, Observer of Islamic law and child and women's protection of Subulussalam on 25 April 2015.

<sup>32</sup> Amir Musdik, Border Preacher of Aceh and Chairman of the Subulussalam City Preacher's Forum.

<sup>33</sup> Interview with Amir Musdik, Chairman of the Subulussalam City Preacher's Forum.

<sup>34</sup> Soerjono Soekanto, "Faktor-Faktor Yang Mempengaruhi Penegakan Hukum, Jakarta: PT," *Raja Grafindo Persada*, 2008, 45.

<sup>35</sup> Interview with GM, Gampong Jambi Youth on 3 June 2015.

<sup>36</sup> Mizaj Iskandar Usman, "Hambatan Dan Kesulitan Pelaksanaan Syariat Islam Di Provinsi Aceh," Makalah pada kajian mingguan KMA-SUDAN (Shabirin Apartement 3rd Floor, 28/10/2011.), 5.

tutions that guard it, but it also requires support in the form of an availability of qualified human resources.<sup>37</sup> This human resources problem is one of the obstacles to Islamic law enforcement in Aceh. For example, in the City of Subulussalam, there are still some officers in the Islamic Sharia office and the Wilayatul Hisbah do not yet have relevant educational qualifications to their positions. Therefore, the problem of improving human resources is not insignificant, and it needs to be taken seriously by the government because only through qualified human resources will Sharia problems in Aceh be immediately resolved.<sup>38</sup>

In addition, measures to improve human resources must not be designed for Islamic Sharia institutions only, but also for law enforcers in Aceh, such as Sharia Court Judges, Prosecutors and Police. In general, the orientation of the judges, prosecutors and police still exclusively refer to the Criminal Code, thus they could be not ready when undertaking tasks with a Sharia law orientation. Therefore, law enforcers other than Aceh SKPD should be given training so that solid cooperation can be established through a common frequency in the enforcement of the *Jinayat Qanun* in Aceh.

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<sup>37</sup> Alyasa, "Syari'at Islam Di Provinsi Nanggroe Aceh Darussalam: Paradigma, Kebijakan Dan Kegiatan." 121.

<sup>38</sup> Hafifuddin, "Efektifitas Penerapan Hukum Islam Di Aceh," *Sarwah: Jurnal Pencerahan Intelektual Muslim* 9, no. 4 (2011): 18.

If we compare the enforcement of Islamic law in Aceh with other countries that make the Quran as a legal basis, it is certainly not the same because the text of the Quran does not provide a *prototife* regarding the application of Islamic law in the state.<sup>39</sup> For example, the application of Islamic Law in Aceh is more inclined to and focused on the problems of the *Jinayat Procedure Law*,<sup>40</sup> with many problems that are faced within the scope of national legal system. Thus, issues of *SARA*, human rights and gender often become a stumbling block to the formalization of Islamic law in Aceh. In Saudi Arabia there is no procedural law attached to it, so for law enforcement the Saudi government directly refers to the Quran, the Hadith of the Prophet, and Judges' *Ijtihad*. For this reason, the application of Islamic Law in Aceh still requires extra energy plus a long time.<sup>41</sup>

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<sup>39</sup> Syamsul Bahri, "Pelaksanaan Syari'at Islam Di Aceh Sebagai Bagian Wilayah Negara Kesatuan Republik Indonesia (NKRI)," *Jurnal Dinamika Hukum* 12, no. 2 (2012): 358-67.

<sup>40</sup> Jum Anggriani, "Kedudukan Qanun Dalam Sistem Pemerintahan Daerah Dan Mekanisme Pengawasannya," *Ius Quia Iustum Law Journal* 18, no. 3 (2011): 326-327.

<sup>41</sup> Sofyan Arianto, "Pengembangan Metode Penerapan Syariat Islam Di Aceh," *Sarwah: Jurnal Pencerahan Intelektual Muslim* 9, no. 4 (2011): 172.

#### 4. Inadequate Number of Wilayatul Hisbah Members

As an institution whose task is to oversee and enforce Islamic Sharia in Aceh, the Wilayatul Hisbah has offices in every district / city in Aceh. The offices are integrated in *Pamong Praja* Police offices and some are directly under the auspices of the Office of Islamic Sharia. In the City of Subulussalam, the position of the Wilayatul Hisbah is shared with the *Pamong Praja* Police Unit.

The obstacles faced by the Wilayatul Hisbah are full recognition of its presence by the community. Some people still consider that the existence of the Sharia enforcement police is not significant. Such a perception may be because Sharia police have not yet been equipped with security tools like the police in general, such as firearms<sup>42</sup>, making their legitimacy not as strong as the police. To make matters worse, many of Wilayatul Hisbah members in Subulussalam are non civil servants or contract employees. Such an insecure status causes many of the Wilayatul Hisbah members feel unsure of themselves.<sup>43</sup>

In addition, another obstacle is the unbalanced number of Wilayatul Hisbah members with operation areas, thus not all areas are covered when conducting patrols. Moreover, the existence of

the Wilayatul Hisbah in the City of Subulussalam is still centralized at city level. At sub-district level it has not had an office yet as does the police. This is one of the biggest obstacles so far that the Wilayatul Hisbah has been very difficult in exercising control over the community in order to minimize violations of the Sharia qanun in Subulussalam City.<sup>44</sup>

#### Supervision and Guidance against *Khamr* Qanun Violations

One way to implement this qanun effectively is by giving supervision and prevention role to local communities of all actions done by the people of Aceh. By involving local communities in the supervision of each qanun, the government indirectly emphasizes that the responsibility for formalizing Islamic law in Aceh is not only imposed on the Aceh Government, but also on every Acehnese whose role and obligation to oversee the implementation of a qanun in the community are vital.<sup>45</sup>

The supervision and guidance role is also carried out by all elements of the government from governor to the lowest government rank in Aceh, namely *keucik* (village head). The form of supervision referred to here is that governor and regents / Mayors create Wilayatul Hisbah as an institution to control the Sharia Qanun sustainability in

<sup>42</sup> Interview with Kalidin, head of Enforcers of Regional Policy and Islamic Sharia of Subulussalam on 23 April 2015.

<sup>43</sup> Interview with Kalidin.

<sup>44</sup> Interview with Bambang, Head of Administration (PU) Pamong Praja Police and WH Subulussalam on 24 April 2015.

<sup>45</sup> See Article 10-15 Qanun 12/2003.

Aceh.<sup>46</sup> In carrying out the supervision of the Islamic Sharia qanun in Aceh, Wilayatul Hisbah issues a warning as well as provides guidance in advance of every violator of the Islamic Qanun in Aceh. Next, after reprimanding and coaching, Wilayatul Hisbah delivers a written report to an investigator if there is a violation of the Islamic qanun in Aceh. Wilayatul Hisbah must also report to the investigator that a warning and guidance have been given.<sup>47</sup> Wilayatul Hisbah has the right to pre-trial to the sharia court if the report given to the investigator is not followed up without a valid reason after 2 (two) months from the reporting period.

### 1. Reactivating Islamic Centers in the City of Subulussalam

The existence of Islamic centers such as *meunasah*, *dayah* (Islamic boarding schools), *madrassas*, and others are hoped to build awareness of the Aceh people about the implementation of Islamic law in Aceh. Many of these centers, however, have not functioned properly due to the decreasing public awareness to send their children to *pesantrens*. This phenomenon can be measured by the huge number of *pesantrens* in this city that are not functioning properly. Many *pesantrens* only hold formal teaching and learning activities (morning school), whereas in the past *pesantrens* were known as Islamic boarding schools that were full with

*santris* living in dormitories. Al-Ikhlas Islamic Boarding School in Penanggalan, Jontor Integrated Dayah Islamic Boarding School, ad-Derajat Islamic Boarding School are few examples of *pesantrens* that are dying for existence.

In addition, there are still many dysfunctions in education institutions such as *meunasah* and *madrrasah diniyah* (MI) despite having permanent buildings that are in good conditions for teaching and learning activities as well as for other educational purposes. It is unclear whether such a circumstance results from a declining interest of the Subulussalam people to study Islam or the greed of a few people for procurement projects of public education facilities and infrastructure without a comprehensive analysis. This opinion was the result of my discussion with chairman of the Subulussalam Islamic preachers' forum.<sup>48</sup>

If the centers of Islamic activities are activated, schools, *pesantrens* and other education institutions can be used as places to socialize the application of Islamic sharia. The Islamic institutions can also serve as places for activities aimed to strengthen Islam that involve all elements of the Subulussalam society so that the application of Islamic law in Subulussalam becomes more effective.<sup>49</sup>

<sup>46</sup> Article 14 ayat (2) Qanun 11/2002.

<sup>47</sup> Article 17 ayat 1-3 Qanun 12/2003.

<sup>48</sup> Interview with Amir Musdik on 2 June 2015.

<sup>49</sup> Interview with Muhammad Arifin, Head of Islamic Defenders Front (FPI) Subulussalam on 9 August 2015.

## 2. Improving Coordination Between Agencies in the Application of Islamic Sharia

Coordination between agencies also needs to be established. As widely known, the responsibility for overseeing the formalization of Islamic law in Aceh is not only imposed on the government through the Islamic Sharia Office, but also all elements including all regional institutions in Aceh. The application of Islamic Sharia thus far, especially in the city of Subulussalam, has not seen signs of solidity between agencies. Wilayatul Hisbah and the Islamic Sharia Office (DSI) have thus far served as coordinating institutions without inter-institutions fixed measures for application guidance on the field.<sup>50</sup>

There must not be an assumption that the duty to implement Islamic law is only burdened on the Islamic Sharia Office (DSI) and Wilayatul Hisbah. In fact, successful implementation of Islamic Law in Aceh is possible if carried out together by all elements or by the government and the society. Therefore, it is necessary to establish a good relationship between agencies and social institutions.

### Conclusion

The enforcement of *Khamr* Qanun in Subulussalam City has thus far not been very effective. There are several factors influencing the ineffectiveness of the Qanun, they are the lack of socialization

by related parties to provide knowledge and understanding to the public regarding the existence of the *Khamr* Qanun in Aceh, resulting in society's involvement in helping enforce the qanun being not maximum. Another obstacle is the unequal understanding of the society about Islamic law in Aceh that results in community's low awareness level to perform "*Amr bil Ma'ruf wa Nahy an al Munkar*".

To overcome the obstacles, the Subulussalam City Government through the Islamic Sharia Office has actually taken various measures to implement Islamic Sharia effectively, including sending border preachers to villages in order to improve public knowledge about the existence of qanun in Aceh. Facilities and infrastructure to support *Jinayat* Qanun enforcement in each district in the form of Wilayatul Hisbah posts have also been established. Thus, it is expected that the supervisory function carried out by Wilayatul Hisbah in enforcing Qanun can be improved and become more effective.

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<sup>50</sup> Hafifuddin, "Efektifitas Penerapan Hukum Islam Di Aceh," 18.

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