

PUNISHMENTS FOR HOMOSEXUALS IN INDONESIAN CRIMINAL POLICY PERSPECTIVE

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ABSTRACT

The purpose of this paper is to analyze the crime of homosexuals (liwat) in the Qanun Jinayat which has been enforced in Aceh, one of the provinces in Indonesia, since 2015, especially regarding the formulation of the punishment. This topic needs to be studied considering that homosexuality in Aceh is seen as a crime that must be punished, some experts see it as a disease that needs to be cured. Therefore, the assessment needs to be linked to the purpose of punishment which is closely related to the type of crime and the method of implementation. The research was conducted using a normative juridical approach, by examining the provisions of punishment in the Qanun Jinayat which were seen from the principles and theories of the purpose of punishment and sentencing policies. The results of the study indicate that the sentencing provisions in the Qanun Jinayat are not yet integrative, so that the purpose of the sentencing has not been fully achieved. However, in several respects, the Qanun has led to both punishment and action. It is still necessary to set norms and completeness of facilities. The position of the Qanun Jinayat, especially the regulation of homosexuals, can be a pioneer in reforming criminal law in Indonesia.

Keywords: *Homosexual, Criminal Policy, Qanun Jinayat.*

INTRODUCTION

Published The facts show that there have been various criminal acts which are generally said to involve the LGBT (Lesbian, Gay, Bisexual, and Transsexual) community in Aceh. In 2020, there was a raid by the Sharia Police (Wilayatul Hisbah) against a homosexual couple or often called Gay in Banda Aceh (CNN, 2020) . CNN also reported that gay couples in Aceh were lashed 77 times by 3 executioners (CNN, 2021) . The Court's decision (Mahkamah Syar'iyah) also shows that these crimes have begun to be handled in Aceh, for example Decisions Number 18/JN/2017/Ms.Bna, 19/JN/2017/Ms.Bna, and 15/JN/2018/Ms. Bna. These facts and the public's reaction to the symptoms of these crimes are only a small part of the picture that shows that these crimes also occurred in Aceh. This phenomenon is in contrast to Aceh, which has been dubbed the State of Shari'a, which strictly prohibits same-sex sexual relations (homosexuals and lesbians) and; a form of crime that is considered heinous in Islamic law. Qanun Jinayat threatens this act with whips or imprisonment or a fine. Homosexuality is one of the behaviors or actions that has been firmly established as a crime in one of the provinces in Indonesia, namely the province of Aceh. This arrangement is contained in Aceh Qanun Number 6 of 2014 concerning Jinayat Law. Because it has been stipulated in the regulation, efforts to overcome it have been carried out through the judicial system which ultimately gives punishment to the perpetrator.

Existing studies on LGBT in general and homosexuals in particular tend to go in three directions. First, the link between LGBT and human rights (Juliani, 2018) . Second, the discourse on LGBT as a disease or crime/illegal act; if it is a disease, it must be treated. However, if a crime/action is prohibited, it must be shunned or punished (Harahap, 2016; Hayati, 2019; Syam et al., 2021) . In Indonesia, the government tends not to legalize LGBT in

the form of official recognition (Asyari, 2017; Fajrin et al., 2020; Hasnita et al., 2020) ; Likewise, the Provincial or Regency/City Governments tend to prohibit it (Annisa & Indrawadi, 2020; Ichwan, 2021; Kemala, 2017; Sarbini & Bintang P. Has, 2019) . Third, the prevention or punishment and execution of LGBT people, especially homosexuals and lesbians in the Qanun Jinayat; generally support for Qanun which punishes LGBT perpetrators with caning, imprisonment, or fines (Annisa & Indrawadi, 2020; Ichwan, 2021; Kemala, 2017; Khairani, 2019) . It can be seen from a number of these articles, that no one has reviewed it in terms of the possibility of giving punishment and action at the same time against LGBT perpetrators. That is, on the one hand the perpetrator is considered to have committed a crime but, on the other hand, punishment will not solve the problem; special measures need to be taken so that the perpetrator returns to a normal life. Of the few writings that have led to offers of punishment and action, Keumala (2017) and Fajrin et al. (2020), but the study is limited to offering action, other than punishment for homosexual and lesbian perpetrators. This paper covers the existing shortcomings; studies related to the types of crimes in the Qanun Jinayat are related to the purpose of sentencing, especially regarding the formulation of LGBT punishment and sentencing policies.

Globally, the issue of homosexuality is still being discussed a lot, there are even countries that have a discourse on the death penalty for this behavior, such as Uganda (Bhala, 2019) ; also 10 other countries namely Yemen, Iran, Mauritania , Nigeria , Qatar , Saudi Arabia, Afghanistan , Somalia , Sudan , United Arab Emirates (Bearak & Cameron, 2016) . So, in general, rehabilitation measures to deal with all crimes are still very limited; The general tendency is to take action against perpetrators with punishments, especially imprisonment (Andrews & Bonta, 2010) , even though it is recognized that this prison sentence is prone to human rights violations (Snacken, 2021) . Punishment -oriented actions have had a negative

impact on law enforcement, where in America it is described that in addition to causing high costs, there are also those who give punishments that are not commensurate with the actions. (Tonry, 2006) . On the other hand, giving action is also considered a punishment that has the potential to violate human rights, because during treatment for narcotics abuse, for example, they are detained (Rick et al., 2022) .

Specifically related to the study of LGBT, there is an assumption that LGBT is the behavior of strange people, so it must be treated specifically in the justice system (Giovanna & J, 2012) ; criminalization of gay behavior is still questionable; more of a mistake. There is a view that homosexuality can be learned and not learned. If this is the case, then the proposed solution is an approach that the state must take, namely how to help shape the behavior of citizens (Arimoro, 2021) . From all the studies that have been described, there is an empty space that will be examined in this paper, namely a combination of views that see homosexuality as a disease so that the perpetrator must be treated as a sick person who must be treated with the view that the act is a crime and must be punished . This combination is known as the double track system in the sentencing policy.

The purpose of this study is to see whether the types of crimes contained in the Qanun Jinayat are related to LGBT in accordance with the purpose of sentencing which is of course very closely related to the type of crime. For this purpose, three research questions were asked: (1) How is the regulation of homosexual offenses in Aceh Qanun Number 6 of 2014 concerning the Jinayat Law?; (2) What is the relationship between the regulation of homosexual offenses in Aceh Qanun Number 6 of 2014 concerning the Jinayat Law with the aim of sentencing?; and (3) How can the homosexual offense in Aceh Qanun Number 6 of 2014 concerning the Jinayat Law be used as a model for criminal policy?

RESEARCH METHOD

This theme was chosen because there are still limited studies by experts on the relationship between the types of crimes for LGBT perpetrators and the purpose of sentencing. Existing studies tend to only be in the form of “defense” or “criticism” which leads to the condemnation of LGBT. The main data in this study is secondary data consisting of primary legal materials in the form of legislation, secondary legal materials in the form of literature, and tertiary legal materials, in the form of encyclopedias and dictionaries. The approach used is normative juridical, by examining the sentencing provisions in the Qanun Jinayat which are seen from the principles and theories regarding crime and punishment. The research data were analyzed following three stages of analysis (Huberman, 1992) namely data reduction, display, and data verification. The verified data were analyzed using the concept of the purpose of punishment, criminal law policies, and the double track system theory.

RESEARCH OUTCOME AND DISCUSSION

1) The Regulation Of Homosexual Offenses In Aceh Qanun Number 6 Of 2014 Concerning The Jinayat Law

Research Homosexuality is sexual interest and attraction to others of one's own gender. The term gay has often been used as a synonym for homosexual since the 1970s (Wikipedia, 2021) ; female homosexuality is often referred to as lesbianism (Britannica, 2021) so that the terms “gay” and “lesbian” are generally known. In the Arab world, the equivalent term is *liwāth* which is derived from the word "Lut", the name of the Prophet who was sent to the Sudum (sodom) people, around present-day Jordan. This also gave birth to the term "sodomy" (Shihab,

2011). Since about 1988, activists have begun to use the initials LGBT (lesbian, gay, bisexual, transgender) in the United States (Knight & Wilson, 2016). Although some members of this large community still do not fully accept bisexual and transgender individuals, the term LGBT has become a symbol of inclusive positive. Another term ego-dystonic homosexuality (EDH) was removed from the DSM-III-R (1987) (Conrad & Angell, 2004). Other names for these communities were also introduced, for example the GLBT Historical Society in 1999. In 2016, GLAAD's Media Reference Guide used the acronym LGBTQ (+ queer, eg men who behave like women) (Knight & Wilson, 2016). Another variant of the acronym is LGBTQIA+; letter A for "asexual", "aromantic" or "agender". WHO removed the word homosexuality from the International Classification of Diseases (ICD) on May 17, 1990 (Knight & Wilson, 2016), while the Indonesian Ministry of Health in the Guidelines for the Classification and Diagnosis of Mental Disorders in Indonesia (PPDG II) edition II in 1983 and PPDG III in 1983 1993 was also removed from mental disorders (Khairani, 2019). Legalization of same-sex marriage, Netherlands (2000), Belgium (2003), Spain (2005), South Africa (2006), and Malta, Australia, and Germany (2017) (Tabiri, 2019).

Homosexuality was not uncommon in ancient Greece and Rome (Britannica, 2021), but Judeo-Christian and Islamic cultures generally consider homosexual behavior a sin. In the Bible (Judeo-Christian) it is stated that past homosexuals were destroyed by angels; Sodom and Gomorrah (Genesis 19:1-29); this act is prohibited because it is abominable; sentenced to death (Lev. 20:13; cf. 18:22). With few exceptions, in the 2004 U.S. 13-state ballot, evidence was found that white evangelical Protestants supported the Republican Party to raise gay marriage as a problem with an important subset of their base that was key to Bush's victory in Ohio (Campbell & Monson, 2008). In Islam, the destruction of homosexuals at the time of the Prophet Lut as mentioned in the Bible Genesis 19:1-29, is also mentioned in several places in

the Koran, for example, Surah Hud (11): 70ff. and al-Hijr (15): 59 ff. However, Islam recognizes double sex or khuntsa (having a penis and vagina at the same time) which has an effect on inheritance law (Yuliasri, 2019) . Hinduism, Confucianism which emphasizes the goal of harmonious marriage and Buddhism (Mansur, 2017) . Besides religion, ethics and traditional culture of society tend to reject this sexual behavior. The opposition to same-sex marriage is reinforced by the media (Johnson, 2012) . Discourse of egalitarianism, morals traditional attitudes, feelings towards gays and lesbians, partisanship, and ideology produce changes in policy opinion (Brewer, 2003) , in addition to gender roles, concerns for minorities and civil rights, demographic attributes and changes , and local contexts (Gaines & Garand, 2010; Loftus, 2015) . Research on the debate on gay rights (1990-97) reveals that moral traditionalism is predominant (Brewer, 2003) . Opposition by religion, ethics, and traditional morals against LGBT is the background for the emergence of the term " homophobia " (culturally generated fear or prejudice against homosexuals) late 1960s ; used by George Weinberg, an American clinical psychologist, in his book *Society and the Healthy Homosexual* (1972). Research in Florida shows that people experience ambivalence towards LGBT (Tonry, 2006) .

From the point of view of health and psychology, are LGBT healthy conditions/norms or have abnormalities/abnormalities? Existing research suggests that sexual orientation is innate; can also be formed due to social factors, but the influence does not have a quick impact. According to the figure who first introduced the term homosexual, Karl Maria Kerbeny, in 1869, homosexuality is a medical pathology because it is congenital (genetic) so it cannot be changed (Conrad & Angell, 2004) . The research of Hasnita et al., (2020) shows that the factors for the emergence of LGBT include the environment, family, sexual and biological violence caused by the hormone tester and progesterone. LGBT is also a sexual disorder, but it is not a

mental disorder or disease. This is different from the view that initially homosexuality was classified as a mental disorder, a psychopathic personality disorder because it was seen as violating the provisions of society in 1952-1968. In DSM-II (1968) homosexuality is defined as medical pathology, “personality disorders and certain non-psychotic disorders”; officially means mental disorder (Conrad & Angell, 2004). Homosexuality is a disorientation of sexual function caused by psychological/psychological factors. Perhaps for that reason, LGBT community organizations in the United States have been providing healthcare since at least the 1970s, with no explanation as to why health is specifically linked so closely and consistently with LGBT activism. (Martos et al., 2017). From a physiological point of view, sexual orientation is influenced by the hypothalamus gland in the brain which stimulates the endocrine glands to produce many hormones, one of which is gonadotropin-releasing hormone (GnRH). The hormone GnRH is the parent of most hormones in the body, most notably testosterone (a 'sex' regulating hormone; dominant in men to a lesser extent in women) and progesterone (reproductive hormone; dominant in women, to a lesser extent in men). Excess testosterone in women or excess progesterone in men has an effect on “sex-different” sexual orientation and mental health. Efforts to rebalance to a “normal” state or attempts to stay in a desired state lead to the activity of hormone therapy (Medeiros et al., 2019) or other forms of health care (Braun et al., 2017; Deutsch & Deutsch, 2012; Walker & Prince, 2012). nd).

The regulation of homosexual offenses in the Aceh Qanun was made officially and was well received by the community. This arrangement is based on the public's view that homosexuality is a disgraceful act, in accordance with the teachings of the Islamic Shari'a which strongly condemns it. This has been taken into consideration by the judge in several decisions—in addition to formal legal considerations. This act is considered not to uphold the values of the Islamic Shari'a which is being enforced in Aceh and is troubling the community.

For that reason, the perpetrators were threatened with punishment in the form of whipping, imprisonment and a fine. That is, in this regulation, pure trespassing is seen as a crime, not a disease, so no action is needed. However, when viewed from the principle of administering the Qanun Jinayat, it is found the principle of learning to the community (tadabbur) which is essentially meant by this Qanun not only to punish the guilty, but also to educate; provide lessons and and foster legal awareness. This is reinforced by the existence of rules regarding additional punishments in the form of, among others, (1) coaching by the state (2) social work which actually shows the Qanun already recognizes the form of "action". To realize this "action", the Aceh Governor has issued Aceh Governor Regulation Number 05 of 2018 concerning the Implementation of the Jinayat Procedural Law, which among other things aims to (1) provide guidance for people who violate the Jinayat Qanun; (2) providing religious understanding and education for suspects, defendants, and convicts. However, this norm has not yet been realized.

In contrast to existing studies, this study finds that the regulation of homosexual offenses in Aceh is actually a form that is in accordance with the community's sense of legal justice. However, when studied comprehensively, this action has another side that needs to be observed, namely the psychological condition of homosexual actors (Conrad & Angell, 2004) . It can be said that the perpetrators are the same as narcotics users (Jamaludin, 2021) ; depend on the object. Physical and psychological perpetrators already consider the action part of their needs. Some medical experts and psychologists point out that homosexuality is a disease, at least an abnormal condition. Therefore, in contrast to the context of Western society's social life which—for some—legalizes homosexuality (Tabiri, 2019) , in Indonesia, particularly in Aceh, a more comprehensive treatment is needed. Action is needed in the form of rehabilitation or treatment. That is, apart from that the act is denounced as a crime so that it must be punished;

must also be rehabilitated or treated, so that the perpetrators will not fall into this heinous act again. As mentioned earlier, the "way" for this has been provided by Qanun Jinayat in the form of principles and alternative punishments.

2) The Relationship Between The Regulation Of Homosexual Offenses In Aceh Qanun Number 6 Of 2014 Concerning The Jinayat Law With The Aim Of Sentencing

In the Big Indonesian Dictionary (Editor, 2013) distinguished the notion of "punishment" with "criminal"; punishment is defined as "torture and so on imposed on people who violate the law and so on", "decision handed down by judges", "results or consequences of punishing". Crime is defined as "crime" and "criminal" (Editor, 2013). The crime referred to by the KBBI is the equivalent of a crime or crime, while in the criminal law literature, crime is punishment. Criminal means "grief" or "suffering". This means that someone who has committed a criminal act will be given a sanction in the form of "grief" or "suffering" as a consequence or reaction to the action taken. It is said so because something valuable is taken from it, such as freedom in the form of imprisonment and property in the form of fines or restitution (Hiariej, 2016). Criminal sanctions are one of the sanctions in the law. In addition to criminal sanctions or commonly known as criminal sanctions, other sanctions are also known, such as administrative sanctions and compensation. Certain forms of crime in one society are not necessarily the same as in another. This is reflected in the well-known principle in law, namely "Ubi societas i bi ius" (where there is society there is law). The development of the classic types of crimes directed at retaliation is slowly shifting towards a more humane direction, but of course it

remains as misery. In some of the old literature put forward by Arief (2008) and Soedarto, (2006) . It was stated that imprisonment is a form of punishment that is used as a substitute for a more cruel punishment, such as cutting off a limb, stabbing with a dagger. This prison sentence originates and develops on the understanding of individualism (Arief, 1996) . In this society, freedom is highly valued, so if that freedom is taken away, then it is a misery or suffering for him; not associated with prison facilities. This, of course, cannot be equated with society interpreting the limitation of freedom as well as the limitation of facilities in prison; provision of facilities means not prison; likewise with the types of fines and canings like in Aceh. Fines are a pain for people who really value material things and whipping will also not be effective if you only view whipping as a physical crime.

It can be said that the privilege of criminal law compared to other laws is due to the sanctions in the form of such crimes and that is why criminal law is often regarded as a double-edged spear; in addition to maintaining the values that live in society, he also has to sacrifice one's right to restore the balance that was disturbed as a result of the actions taken by that person. In criminal law, the type of crime must be rational and lead to human welfare. Therefore, the punishment must fulfill the elements (1) suffering intentionally given by the state to a person; (2) a reaction to someone's actions that violate the criminal law; (3) provided by the state is regulated and implemented in detail (Hiariej, 2016) . However, in essence, punishment in the form of suffering or misery must be avoided. There are many principles and adage of criminal law that show this, among others, *ultimum remedium* (criminal law that has criminal sanctions in the form of misery should be used as a last resort) (Yoserwan et al., 2019) . In the realm of *fiqh*, there is a reference to the Prophet's hadith, "avoid punishment as much as you can. If there is a way, then free the evildoers" (Bukhari, 1980). There are several objections about the imposition of a criminal if it is related to the philosophy of society or the

state, where there are leaders and there are people, there are those who punish and others who are punished. Philosophically, the behavior of the leader and those who punish should be better than the people and those who are punished (Rommelink, 2003) . This is what gave birth to several theories in criminal law in the form of the theory of the purpose of punishment or the philosophy of punishment.

The purpose of punishment is closely related to the forms and types of crimes and values that live in society (Din, 2015) . The purpose of imposing a sentence or what is known as the philosophy of punishment has developed a lot from the beginning only to rely on revenge or to deter the perpetrator or which is always associated with the perpetrator without seeing whether the punishment is useful to the victim ; now it has led to an integrative one, where in addition to looking at the perpetrators, they also see the victims or perpetrators as victims. This development, for example, has the goal of rehabilitation where (1) the perpetrator is not seen as a bad person who must be tortured or made to suffer but must be repaired or restored; (2) medical or medical treatment where the perpetrator is not considered a criminal but a sick person who must be treated; (3) restoration in which the perpetrator must be responsible for restoring the victim (Santoso, 2020) . In America, reform of the form of punishment has begun in the 1970s (Tonry, 2006) ; in 1984, the American Congress passed the Penalty Reform Act, Congress established the Sentencing Commission to formulate the Federal Penal Code which is expected to be fair and rehabilitative, especially to children (Apparicio , 2008; Lowe, 2017) . These updates also occur in other parts of the world, for example in Europe and Africa (Ndeunyema, 2019) ; Retributive and utilitarian punishment based on individualism has received a lot of criticism (Dancig-Rosenberg & Dagan, 2019) .

The purpose of punishment in the Qanun Jinayat which is directed at improving the perpetrators' self is based on the general objective of Islamic law, namely achieving benefit and

avoiding harm. The Jinayat law is believed to be the main way to protect the people of Aceh from various immoral acts that violate the rules of Allah and His Messenger as stated in the Koran and Hadith. The people of Aceh believe that by implementing the Jinayat Law, peace, tranquility, happiness, and safety will be realized in this world and in the hereafter. These ideals are derived in the form of the principles of the implementation of the Jinayat Law, namely Islam, legality, justice and balance, benefit, protection of human rights; and learning to the community (*tadabbur*) (Article 2 Qanun Jinayat). The *tadabbur* principle is the difference between the Qanun Jinayat and the national criminal law (KUHP). The principle of *tadabbur* (from Arabic, meaning "lessons") means that the existence of law in Islam is essentially not to punish people, but to educate; provide lessons and and foster legal awareness. This parallels the choice of the term "takzir" itself; from Arabic, "azara" or "azzara" which means mana'a (prevent), addaba (educate), waqara (burden), and nasrah (help) (Al-'Awwā, 1983).

Takzir punishment in Qanun Jinayat consists of main takzir and additional takzir. In Article 4 paragraph (4) of Qanun Jinayat it is stated that the main takzir are flogging, fines, imprisonment, and restitution. In paragraph (5) it is determined that the additional takzir are (1) guidance by the state (2) return to parents/guardians; (3) termination of marriage; (4) social work; (5) revocation of license and revocation of rights; (6) confiscation of certain goods; and; (7) restitution by parents/guardians. When compared to these seven points, points 1-4 can be called closer to "action", while points 5-7 are closer to "punishment". Additional takzir sanctions can be imposed by judges on certain considerations. Article 4 paragraph (6) states that the implementation of additional takzir punishments is regulated in the Aceh Governor Regulation; which is a derivative of the Qanun Jinayat is Number 05 of 2018 concerning the Implementation of the Jinayat Procedural Law. This regulation aims to (1) provide guidance for people who violate the Qanun Jinayat; (2) protection of the public, officers,

defendants/convicts; (3) providing religious understanding and education for suspects, defendants, and convicts; (4) protection of children who are in trouble with the law; and (5) providing legal certainty and justice for the community.

3) The Homosexual Offense In Aceh Qanun Number 6 Of 2014 Concerning The Jinayat Law Be Used As A Model For Criminal Policy

Criminal law policy

It is recognized that attention and studies on criminal law policies are still not done enough (Vilks & Kipane, 2018) . Indeed, only a few studies have been found on it, for example the influence of emotion in legislation (Persak, 2019) , its form in certain countries, cases, or places, such as environmental protection criminal policies in Vietnam (Dinh & Nguyen, 2020) and Indonesia (Kim, 2013; Wirya, 2015) ; local criminal law in Aceh (Din, 2015) , handling of Covid-19 (Firdaus & Pakpahan, 2020) , and gambling (Munawar, 2019) in Indonesia. The term "criminal law policy" is also known as "criminal law politics", "criminal policy", "strafrechtspolitik", and "law enforcement policy" (law enforcement). (Arief, 2010) . Other related terms are "criminal policy" and "penal policy". Basically, "legal politics" (not just criminal law) is interpreted as an effort to realize good legislation in accordance with the conditions of society which is carried out by the state through the authorized agency to achieve the ideals of the community (Soedarto, 2006) . What is meant by criminal law policies are principles to direct the government (including law enforcement officials) in managing, regulating, and resolving community affairs, or drafting laws and allocating them in a goal that leads to realizing the welfare and prosperity of the community (citizens).); in accordance with certain circumstances (*ius constitutum*) and the future (*ius constituendum*) (L. Mulyadi, 2008) . In other words, criminal law policy or criminal law politics is an effort to determine the direction of criminal law enforcement in the future by looking at its current enforcement (M.

Mulyadi, 2008). *Iusconstituendum* also means criminal law reform which includes substance, structure, culture, anticipatory function, and addictive function (Arief, 2010) .

Criminal law policies include criminal policies and sentencing policies. Criminal policy is an effort to prevent and overcome criminal acts by using the means of criminal law (penal) (Arief, 2010) . An important part of this criminal policy is criminalization, namely the determination of an act that was originally not a criminal act or is not regulated in criminal law, but—due to the development of society—was turned into a criminal act by the government (Arief, 2003; Praseyto, 2011; Soekanto et al. , 1981) . In the labeling perspective, criminalization is interpreted as a government decision through the criminal law-making body to label human behavior as a crime or criminal act (Barlow, 1984). Criminalization must consider (1) the connection with actions that are not desired by the community because they cause harm or cause victims; (2) cost and benefit the principle between the making of regulations and the situation of the rule of law to be achieved; (3) and the burden of law enforcement apparatus (L. Mulyadi, 2008) ; there should be no emotional involvement in criminalization (Persak, 2019) . The end of criminalization is punishment or punishment (Arief, 2010) .

In general, the sentencing policy includes how good punishment is, and how it is typed and implemented; Among them is the theory of the double track system. The double track system is a punishment in two ways, namely through legal sanctions and witnesses of action; Legal sanctions are oriented towards revenge for their behavior, while action sanctions are oriented towards improving the perpetrator so that they can be accepted back in society (Jamaludin, 2021) . In Indonesia, there have been many studies on the double track system, both in the form of normative juridical and empirical juridical. For the first, it is related to the importance of an action system in the form of coaching or therapy for convicts, in addition to

punishment (Fajrin et al., 2020) . The reason is, among other things, punishment often has an impact on the convict's family, both when the convict is in prison, and even more so when he is free. Special training for convicts to develop certain skills for their future when released from prison is considered very important (Utama & Suyanto, 2021) . Likewise, the suggestion that criminal acts motivated by deviant behavior such as homosexuality, in addition to being subject to criminal penalties, are also given action in the form of special guidance to return to normal conditions (Fajrin et al., 2020) . The same applies to drug addicts (Yuhermansyah & Fariza, 2017) (Nuryanto, 2018; Sinaga et al., 2018) requiring rehabilitation. From an empirical juridical point of view, in the existing legislation, in several Indonesian laws, a double track system has been implemented, for example, guidance for alcoholics who were decided by the Semarang District Court judge (NH et al., 2017) and against child perpetrators of crimes in 3 court decisions in Lampung which decided the development of convict children at the Special Child Development Institute (LPKA) (Dewi et al., 2021) . Several other laws which are considered by some to have implemented a double track system, for example, sanctions castration for perpetrators of criminal acts of sexual violence against children are regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection . Truly, Castration does not include action sanctions in the double track system, because the basic idea is to improve the perpetrators while chemical castration is more directed at retaliation (Jamaludin, 2021) . Likewise, the law on corruption which is considered to be still a single track system; does not provide efforts for general and special prevention measures (Setyowati, 2021) .

The results of the study indicate that the criminal policy carried out by the government in regulating homosexual offenses has led to the goal of punishment being achievable. It is said to be "leading" because as a criminal offense, the imposition of sanctions is considered

appropriate, but the punishment cannot totally make the perpetrator leave the act, because it requires sanctions in the form of action. Action sanctions also cannot be applied singly, because this action by the community is not purely a disease; must be combined between the two which is known as a double track system (Fajrin et al., 2020; Jamaludin, 2021) . The provisions of sanctions are simultaneously followed by rehabilitation measures. Actions taken against homosexual perpetrators are such as drug users or children of criminal acts; Apart from being the perpetrators, they are actually also victims. The source of the crimes they commit is not purely themselves, but the result of "crimes" or the community's mistakes so that they become perpetrators. Some homosexual perpetrators are victims of sexual harassment by adults that they experienced when they were children or teenagers or environmental factors that eventually made them experience sexual disorientation (Hasnita et al., 2020) . Therefore, in order to achieve the goal of integrative punishment— besides looking at the perpetrator also sees the victim or perpetrator as a victim — action is needed besides punishment as well as hormone therapy (Braun et al., 2017; Deutsch & Deutsch, 2012; Walker & Prince, nd) or other medical measures and rehabilitation . In fact, for certain cases, such as children, action takes precedence over punishment.

The results of the research can be directed to the development of formal criminal acts (without direct victims). This is important because the Qanun Jinayat has introduced these forms of crime in several jarimah, namely drinking alcohol, maisir (gambling), khalwat, ikhtilat, adultery, liwat (homosexual), and musahaqah (lesbian). The acts categorized as offenses by Qanun Jinayat actually have no direct victims (except for adultery, homosexuality, and musahaqah committed by people who are already bound by marriage). The victim of this act is the perpetrator himself or the community. As mentioned earlier, the rules for this act are based on the religious norms and morality of the Acehnese people. Violation of this prohibited

act is threatened from two directions; (1) get sin from Allah and (2) sanction from society or government. In this regard, the purpose of imposing sanctions on perpetrators is also directed at these two things. First, as forgiveness for sins that have been committed (A. Abubakar, 2015) . Second, lessons/improvements for the perpetrators and the community and prevention efforts so that the act does not repeat itself, either by the same perpetrator or by other perpetrators (Yuhermansyah & Fariza, 2017) . Thus, Qanun Jinayat, which based its formulation on fiqh, adapted to the needs of modern Aceh, is bidimensional (divine and human dimensions) (Azhary, 1992). Therefore, the development of setting norms to realize the ideals of the Qanun, namely Islam which brings mercy to all human beings, is very open to be carried out.

The study of criminal policy in the Aceh Jinayat Qanun case, especially homosexuality, leads to the necessity to consider the laws that live in society (historically, sociologically, anthropologically, psychologically), in a broad sense. This means that the Aceh government formulates various forms of criminal acts in accordance with religious norms and social norms that have been held by the community for a long time, while also taking into account psychological and medical studies that continue to develop. This is in line with the demands of Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power which affirms, "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society." It can be stated plainly that the Government, through the Aceh Qanun, has tried to formulate legislation that is needed and in accordance with modern Acehnese society. In a broader perspective, the Aceh Qanun found a new *ijtihad* that does not only use a linguistic approach or analogy to the texts of the Koran and the Prophet's Hadith, but also uses a benefit approach (AY Abubakar, 2016) and the general objective of establishing legislation. From an academic point of view, the drafting of the Qanun has been carried out with a well-thought-out plan and is intended for a long period of time

(although its ratification seems “hurried”) because it has entered into political considerations (A. Abubakar & Lubis, 2019) . From a methodological point of view, this activity can be accounted for because it is based on a valid and valid method; in accordance with the objectives of Islamic law in general, namely the benefit of the people. From a sociological perspective, it will dismiss many public assumptions that Islamic criminal law is an ancient law in the 7th century AD; undeveloped and incompatible with modern society.

The existence of homosexual arrangements in the Aceh Qanun can be an example of legal development based on norms that develop in society, both religious norms and moral norms adopted by the community (Tongat et al., 2020) . However, from the point of view of good legislation that is based on the purpose of punishment, this arrangement needs to be complemented by efforts to return the perpetrator to a normal condition so that the act is not repeated, either by the same perpetrator or by another perpetrator. In a penal effort which is based on statutory regulations, there must be a formulation of sanctions in the form of punishment (punishment) and action (treatment/matregel), as well as combining the two, known as the double track system. Moreover, the consequences of regulations that have often been neglected so far must also be considered, namely the readiness of facilities and infrastructure for their implementation. Costs and benefits principle between the making of regulations with the situation of orderly law to be achieved and the burden of law enforcement officials must be considered (L. Mulyadi, 2008) . In other words, apart from updating the substance, structure, culture, anticipatory function, and addictive function (Arief, 2010) , facilities and infrastructure are also being updated. Thus, current criminal law enforcement can be a direction for future criminal law enforcement (M. Mulyadi, 2008).

CONCLUSION

Aceh Qanun No. 14 of 2014 concerning Jinayat Law, which only formulates sanctions in the form of criminal acts, is not enough when viewed from the perspective of criminal policy which is part of legal policy. The policy is intended to achieve the goal of punishment that is integrative in systemic crime prevention, namely that current repressive efforts must also be viewed as preventive measures for the future. The Aceh government, through the Qanun Jinayat, has actually tried to realize this policy through regulating homosexuals. This effort can be seen in the additional principles and penalties provided by the Qanun. In fact, to realize this rule, the Governor of Aceh Regulation was issued. However, this regulation, in this context especially for homosexuals, cannot be implemented due to various reasons, including (1) the Qanun does not explicitly make treatment an inherent part of homosexuals and (2) the facilities and infrastructure owned by the Aceh Government are not sufficient. to provide guidance to the perpetrators, both in the process of case examination and execution, as well as post-execution.

Therefore, it is necessary to revise the Qanun so that it can truly become a means of social engineering. Overcoming criminal acts through penal means by formulating them in criminal legislation (especially the Aceh Qanun) must apply theoretical studies of criminal law policy (criminal policy), namely how to make good criminal law, so that the purpose of criminal law is to protect society. and social welfare can be achieved. This regulation applies to several other crimes that are similar or can be called "not merely crimes", namely musahaqah (lesbian), drinking alcohol (including drug addicts), including crimes committed by children . In the end, this effort can become a pattern that becomes a measure of the development of the formulation of new criminal acts in accordance with the needs of the community. Legislation must be open to research that leads to improvement and development of a better law.

This research is limited to examining Aceh Qanun Number 6 of 2014 concerning Jinayat Law, especially homosexual which categorizes it as a crime punishable by whipping, imprisonment, or a fine, and the opportunity to take actions other than punishment, so that it does not have full authority to generalize other acts or other legislation. At the same time, the qualitative approach used has limitations to see the real and detailed data of the object of study. This paper suggests the need for further studies that accommodate more homosexual cases, especially the real life of homosexual perpetrators, so that they can be reflected in the development of criminal law. Further research can be directed at other criminal acts, especially those that are "impure" or the position of the perpetrator can also be referred to as a victim (disease, environment-family or community, government). Research using combined methods with various approaches will be very much needed; in addition to developing legal norms, also for government policies and other related parties.

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If necessary, the acknowledgment can be place before the bibliography. The acknowledgment should only be addressed to the parties that contribute in conducting the research and writing the article.

Acknowledgment should be written using Times New Roman font, font size 12, *justify*, and space of 1.5.

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the bibliography, the author should use *American Psychological Association (APA) 6th Edition* style. Having at least 20 reference in every article is obligatory.

It is highly recommended that the references that are used in the research are from bibliography in the last 10 years. It is permitted to use the reference later than the last 10 years if that reference is the only reference available and hold such an essential material for the making of the article.

The bibliography should consist of 60% primary sources and 40% other sources. Primary sources includes national journal, international journal, thesis, dissertation, research paper, and national or international conferences proceeding. Other sources includes books or other sources of references.

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