



Comparative Review of Jarimah Khalwat and Ikhtilath: An Analysis of Uqubat in Qanun No. 4 of 2014 and the Indonesian Criminal Code

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Abstract

The regulation of jarimah *khalwat* and *ikhtilath* is part of Islamic criminal law efforts in maintaining the morality and honor of the community. Both acts are seen as acts that pave the way to more serious moral violations that require preventive legal arrangements. The existence of Qanun No. 4 of 2014 concerning Jinayat in Aceh presents a model of formalization of Islamic criminal law in the plural Indonesian national legal system, while the Criminal Code regulates morality in general without explicitly recognizing the concepts of *khalwat* and *ikhtilath*. This study aims to analyze comparatively the regulation and uqubat jarimah *khalwat* and *ikhtilath* in Qanun Jinayat and compare it with the regulation of morality in the Indonesian Criminal Code. The research method used is normative legal research with a statutory and conceptual approach, using primary legal materials in the form of Qanun No. 4 of 2014 concerning Jinayat and the Criminal Code, as well as secondary legal materials in the form of Islamic criminal law literature and national criminal law. The results of the discussion show that Islamic criminal law places *khalwat* and *ikhtilath* as jarimah ta'zir which is oriented towards the prevention and moral protection of the community, while Qanun Jinayat formulates both acts expressly with proportional and flexible uqubat. The Criminal Code has a different approach by emphasizing concrete consequences and the protection of individual freedoms. This paradigm difference reflects the pluralism of criminal law in Indonesia and emphasizes that Qanun Jinayat functions as a *lex specialis* that lives in the social and religious context of the Acehese people, so harmonization with the Criminal Code needs to be carried out through the recognition of regional specificity and a dialogue of fair values.

I. INTRODUCTION

The phenomenon of moral and moral violations of society is one of the main focuses in Islamic criminal law. Jarimah *Khalwat* and *Stuttgart* It is included in the category of violations that have the potential to damage the social and moral order of society. *Khalwat* refers to the act of alone between a man and a woman who are not muhrim in a place that can cause fitnah, while *Stuttgart* related to the free mixing between men and women that causes impropriety. These two jarimahs have significant social and legal implications (Hidayat, 2023).

The application of sanctions against the finger varies depending on the legal basis used. Qanun No. 4 of 2014 concerning Jinayat in Aceh stipulates specific provisions regarding uqubat for moral violations, including *Khalwat* and *Stuttgart*. Indonesia's national law, through the Criminal Code, also regulates immoral behavior, but the approach is more general and

does not always address moral aspects based on a particular religious perspective. This difference has led to a debate about the effectiveness and harmony of the application of the law in Indonesia, which is pluralistic (Irfan, 2013).

The application of Qanun Jinayat aims to provide legal certainty while upholding sharia values in social life. Uqubat sanctions are regulated in detail, ranging from whipping to fines, which are adjusted to the severity of the violation. The approach of the Criminal Code emphasizes more on the general criminal aspect and the protection of the community from moral disturbances without explicitly considering the religious dimension. This distinction becomes relevant in the context of harmonization of national law and sharia-based law (Putra primary, 2024).

Modern society faces increasingly complex social interaction dynamics. Free association and access to public space pose new challenges

for moral law enforcement. Case *Khalwat* and *Stuttgart* What was revealed shows that this behavior is not only a moral issue, but also triggers social conflict and injustice if the law enforcement is inconsistent. The study of these two legal systems is important to understand how Islamic criminal law and the Criminal Code respond to social changes (Bukhari, 2022).

The comparison between Qanun Jinayat and the Criminal Code opens up a space for analysis of legal principles, sanctions approaches, and enforcement objectives. Comparative analysis allows the identification of regulatory gaps, differences in legal philosophy, as well as potential future harmonization. This approach also provides an understanding of how moral values and principles of justice are translated in different legal practices (Riza et al., 2022).

Previous studies have placed more emphasis on theoretical aspects or partial local implementation. A comprehensive study comparing uqubat against *Khalwat* and *Stuttgart* in the context of Qanun Jinayat and the Criminal Code at the same time are still limited. This lack of literature raises the need for research that not only reviews formal regulation, but also examines the practical implications for society and the legal system at large (Hidayat, 2023).

This study uses a comparative juridical perspective to examine the application of uqubat in both legal systems. The analysis focused on the comparison of provisions, underlying legal principles, and the effectiveness of sanctions in upholding public morality. This approach aims to provide a comprehensive overview of the similarities, differences, and potential for harmonization of sharia-based criminal law and national law.

The results of the research are expected to make an academic contribution to the development of Islamic criminal law in Indonesia. These findings are also relevant for policymakers in designing harmonious regulations between national law and religion-based law. A deeper understanding of jarimah *khalwat* and *ikhtilath*, along with their uqubat, is the key to creating law enforcement that is fair, consistent, and in line with the social values of the community.

II. RESEARCH METHODS

This research uses a normative legal research method that places law as a norm or rule that applies in the legal system (Rizkia & Fardiansyah, 2023). This approach was chosen because the focus of the study is directed at conceptual and juridical analysis of jarimah regulation *Khalwat* and *Stuttgart* and its uqubat in Qanun No. 4 of 2014 concerning Jinayat and the Indonesian Criminal Code. Normative research allows a systematic tracing of the structure of norms, legal principles, and rationality for the formation of criminal sanctions in two different but applicable legal systems in one state space.

The approaches used include a legislative approach and a conceptual approach. The legislative approach is carried out by examining the positive legal provisions that regulate moral acts, especially the regulation of *khalwat* and *ikhtilath* in Qanun Jinayat and the provisions of morality in the Criminal Code. The conceptual approach is used to examine the concepts of jarimah, uqubat, and the purpose of punishment in Islamic criminal law and national criminal law, so that the differences in paradigms and philosophies underlying the formation of these norms can be understood.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, especially Qanun No. 4 of 2014 concerning Jinayat and the Criminal Code. Secondary legal materials include Islamic criminal law literature, books, scientific journals, and scientific papers that discuss moral and criminal justice. Tertiary legal materials are used to clarify terms and concepts through legal dictionaries and encyclopedias of Islamic law.

The technique of collecting legal materials is carried out through literature studies by systematically tracing relevant legal sources. The legal materials that have been collected are then analyzed qualitatively by comparative analysis method. The analysis was carried out by comparing the formulation of norms, types and purposes of uqubat, as well as the philosophical basis of punishment in Qanun Jinayat and the Criminal Code, so as to obtain a complete understanding of the similarities, differences, and juridical implications of the application of the two legal systems.

The results of the analysis are presented in the form of descriptive-analytical descriptions that emphasize legal arguments. The drawing of conclusions is carried out deductively by departing from the general principles of Islamic criminal law and national criminal law towards special findings related to the regulation of jarimah *khalwat* and *ikhtilath*. This approach is expected to be able to produce logical, systematic conclusions, and make an academic contribution to the development of the discourse on the harmonization of criminal law in Indonesia.

III. RESULTS AND DISCUSSION

A. Conceptualization of Jarimah *Khalwat* and *Ikhtilath* in Islamic Criminal Law

Jarimah *Khalwat* and *Stuttgart* In Islamic criminal law, it is an act that is qualified as a violation of the norms of morality and moral protection of society. Concept *Khalwat* It is interpreted as a state of solitude between a man and a woman who are not mahrams in a closed place or a situation that has the potential to cause reprehensible acts. *Ikhtilath* is understood as a free mixture between men and women without sharia restrictions that can open up opportunities for moral violations. These two acts do not stand solely as individual actions, but have a broad social dimension. The protection of human honor is the main goal of prohibiting such acts. The value of prevention takes precedence over retaliation. Religious norms function as instruments of social control (Humaira et al., 2025).

The normative basis of prohibition *Khalwat* and *Stuttgart* sourced from the Qur'an and Hadith which emphasize the guard of honor and the closure of the path to adultery. The prohibition of approaching adultery as stated in the Qur'an shows a preventive approach in Islamic criminal law. *Khalwat* and *ikhtilath* are positioned as acts that open the door to greater evil. Rules *Sadd al-Dzari'ah* became the philosophical basis of its arrangement. This norm emphasizes that actions that directly or indirectly lead to haram acts must be prevented. This concept shows the rationality of Islamic criminal law in maintaining social order. The moral and legal dimensions are interintegrated (Nugraha et al., 2023).

Ranking *Khalwat* and *Stuttgart* As a jarimah ta'zir, the authority to determine sanctions rests with the ruler. The absence of standard

hudud provisions provides *ijtihad* space in the determination of *uqubat*. This flexibility aims to tailor sanctions to social conditions and the level of harm caused. The principle of benefit is the main consideration in imposing sanctions. The state is given the legitimacy to formulate a proportionate form of *uqubat*. This approach shows the adaptive character of Islamic criminal law. Norms are not rigid, but contextual (Khairani, 2018).

The purpose of punishment in jarimah *Khalwat* and *Stuttgart* more emphasis on educational and preventive aspects. Sanctions are not directed to hurt the perpetrators, but rather provide a deterrent effect and moral learning. Criminalization is understood as a means of improving individual behavior. The dimension of community protection is the main orientation. Criminal norms function to maintain a balance between individual freedom and social interests. The principle of substantive justice is the main reference. *Uqubat* is not separated from the purpose of sharia (Suganda & Dahlan, 2018).

The concept of honor (*'Irdh*) in Islamic law is a value that is protected through the prohibition of *Khalwat* and *Stuttgart*. Violations of honor are seen as a threat to social stability. This norm reflects a holistic view of Islamic law. Individuals are seen as part of a community that influences each other. The moral damage of individuals has the potential to damage the order of society. Criminal norms function as a social fortress. This approach shows the collective orientation of Islamic criminal law (Safana et al., 2024).

The relationship between religious norms and social norms is clearly seen in this jarimah arrangement. Muslim society makes religious values as a standard of propriety of behavior. Islamic criminal law does not only regulate acts that have caused real harm. Acts that have the potential to cause damage are also strictly regulated. This approach is different from modern criminal law which generally demands concrete consequences. Preventive norms become the main characteristic.

Context of the application of jarimah *Khalwat* and *Stuttgart* cannot be separated from the social dynamics of society. Changes in patterns of social interaction demand an adaptive interpretation of norms. Islamic criminal law provides room for adjustment through the mechanism of ta'zir. Legal

authorities are empowered to take into account social and cultural conditions. This approach avoids mechanical application of the law. Norms are applied proportionately (Dato'Kamarudin et al., 2023).

Criticism of criminalization *Khalwat* and *Stuttgart* often departing from the perspective of individual freedom. Islamic criminal law views freedom as not absolute. Freedom is limited by moral interests and public order. Criminal norms function as a legitimate instrument of social control. This approach puts collective interests above individual interests. This principle is the basis for the legitimacy of the jarimah arrangement (Dewi & Adam, 2021).

Normative construction of the finger *Khalwat* and *Stuttgart* shows that Islamic criminal law has a systematic and rational framework. The prohibition is not based on purely subjective morality. Norms are formulated based on the purpose of protecting basic human values. Uqubat was designed as a means of social correction. This approach shows a balance between norms, goals, and implementation (Humaira et al., 2025).

This conceptual understanding is an important basis in analyzing *the arrangement of khalwat* and *ikhtilath* in the Aceh Qanun Jinayat. The positive legal norms adopted reflect the values of Islamic criminal law. Further analysis is needed to assess how the norm is implemented in the national legal system. Comparison with the Criminal Code is relevant to see the difference in the paradigm of criminal law.

B. Regulation and Uqubat of Jarimah Khalwat and Ikhtilath in Qanun No. 4 of 2014 concerning Jinayat

Qanun No. 4 of 2014 concerning Jinayat is a manifestation of the formalization of Islamic criminal law in Aceh. Setup *Khalwat* and *Stuttgart*. In this Qanun it is explicitly formulated as a criminal act. Legal norms are designed to provide legal certainty for the community. The definition of deeds is clearly formulated to avoid multiple interpretations. This normative approach shows the seriousness of regional legislators in maintaining moral values. Qanun serves as an instrument of social engineering (Bukhari, 2022).

Summary *Khalwat*. In Qanun Jinayat emphasizes the element of being alone in a closed place or conditions that allow immoral acts to occur. *Ikhtilath* is regulated as a free mixture that violates the limits of sharia propriety. The elements of criminal acts are formulated specifically. This approach aims to facilitate proof. Norms are drafted to prevent abuse of authority. Legal certainty is the main orientation (Dato'Kamarudin et al., 2023).

The type of uqubat regulated in Qanun Jinayat reflects the character of *ta'zir*. Sanctions in the form of whipping, fines, or imprisonment are stipulated alternatively. The determination of the type and weight of uqubat is adjusted to the level of violation. The proportionality approach is the basis for punishment. Sanctions are not absolute. Judges have discretion (Dewi & Adam, 2021).

The purpose of uqubat in Qanun Jinayat is not only repressive. The educational and preventive dimensions are the main considerations. The implementation of the whipping uqubat is intended as a public warning. The deterrent effect is expected to appear not only for the perpetrators, but also for the wider community. Criminal norms function as a means of moral education. This approach reflects the philosophy of Islamic criminal law (Hayati et al., 2024).

The normative foundation of Qanun Jinayat is inseparable from the authority of Aceh's special autonomy. The Constitution provides legitimacy for the application of laws based on regional specificity. The Qanun was placed as part of the national legal system. Harmonization with national laws and regulations is a must. Local norms and national norms interact with each other (Hayati et al., 2024).

The application of uqubat in Qanun Jinayat gives rise to a discourse on human rights. The perspective of Islamic criminal law views uqubat as a means of protecting collective rights. Individual rights are not understood absolutely. Moral norms are positioned as public interest. This approach is different from the liberal paradigm (Usqo & Harahap, 2024).

The legal certainty in the Qanun Jinayat is strengthened through special judicial procedures. The Syar'iyah Court has the authority to adjudicate cases of adultery. This institutional structure provides juridical legitimacy. The judicial process follows the

principle of due process of law. The norm of criminal proceedings is a support for substantive application.

Effectiveness of *uqubat Khalwat* and *Stuttgart* in Qanun Jinayat depends on the consistency of enforcement. Clear legal norms require professional enforcement officials. Inconsistent implementation has the potential to cause injustice. Criminal norms must be accompanied by supervision. Public trust is a key factor (El-Islamy et al., 2026).

Criticism of the Qanun Jinayat often highlights the symbolic aspect of the whip *uqubat*. The normative perspective places symbolism as part of the preventive effect. Legal norms do not only work through physical sanctions. The moral message conveyed is an important element. This approach has a strong philosophical basis.

Setup *Khalwat* and *Stuttgart* In Qanun Jinayat shows systematic efforts to maintain the morals of the community. Norms are designed with religious, social, and legal values in mind. *Uqubat* is positioned as a means of achieving benefits. A comparative analysis with the Criminal Code is needed to assess differences in the orientation of the criminal (El-Islamy et al., 2026).

C. Jarimah Khalwat and Ikhtilath in the Perspective of the Criminal Code and the Challenge of Legal Harmonization

Indonesia's Criminal Code does not recognize the term *Khalwat* and *Stuttgart* explicitly. The regulation of morality in the Criminal Code is formulated in general through immoral delictions. Criminal norms require concrete acts that violate decency. This approach places consequences as an important element. Preventive norms do not stand out (Oktaviani & Agusmidah, 2023).

The criminal law paradigm in the Criminal Code is rooted in Western legal traditions. The principle of legality and the protection of individual freedom is the main orientation. Criminalization is limited to acts that cause real harm. Private morality is not used as a basis for punishment. This approach is fundamentally different from Islamic criminal law (Septia, 2024).

These paradigm differences pose challenges in the context of legal pluralism. Qanun Jinayat operates in a national legal system that adheres to the Criminal Code. Regulatory dualism raises

potential norm conflicts. Legal certainty is a crucial issue. Harmonization is an urgent need (Hadi, 2022).

The Criminal Code views decency as a limited legal interest. Criminal norms are directed to protect public order. Acts that do not cause real disturbance are less likely to be criminalized. This approach places the state as a neutral guardian. Religious morality is not used as a single standard.

Islamic criminal law through Qanun Jinayat adopts a moral-communal approach. The state plays an active role in maintaining religious values. Criminal norms function as a coaching instrument. This difference reflects the plurality of values in the Indonesian legal system. Challenges arise in ensuring equality before the law (Hayati et al., 2024).

Harmonization does not always mean uniformity of norms. Recognition of regional specificity is a constitutional principle. Qanun Jinayat can be understood as *lex specialis*. The Criminal Code functions as a general law. This principle provides space for the coexistence of norms.

Human rights issues are often used as a parameter for harmonization evaluation. The normative approach places human rights in the context of local culture and values. The universality of human rights is faced with cultural relativity. Normative dialogue is important to find common ground. The black-and-white approach is unproductive.

The comparison of *uqubat* shows different penal goals. The Criminal Code emphasizes retribution and rehabilitation. Qanun Jinayat adds a moral and preventive dimension. These differences are not always antagonistic. Value integration can be done selectively (Dato'Kamarudin et al., 2023).

The reform of the national Criminal Code opens up opportunities for legal dialogue. Local and religious values began to be considered in the formation of criminal law. This phenomenon shows a paradigm shift. Living law has received wider recognition. This context is relevant to the regulation of morality.

Comparative analysis shows that *khalwat* and *ikhtilath* reflect philosophical differences in criminal law. Qanun Jinayat and the Criminal Code depart from different destinations. Harmonization requires a contextual and dialogical approach. Legal norms must be able

to respond to the needs of diverse communities.

CONCLUSION AND SUGGESTIONS

A. Conclusion

The regulation of jarimah khalwat and ikhtilath in Islamic criminal law shows a strong preventive and moral-communal character. The prohibition of these two acts is not solely aimed at punishing, but to preserve human honor and prevent more serious acts, especially adultery. The concept of uqubat in Islamic criminal law is placed as a flexible, proportional, and oriented ta'zir instrument for the benefit of the community.

Qanun No. 4 of 2014 concerning Jinayat represents the formalization of Islamic criminal law norms in Indonesia's positive legal system. The arrangement of khalwat and ikhtilath in this qanun is explicitly formulated and accompanied by clear provisions of uqubat, thus providing legal certainty and strengthening the preventive function. This approach is different from the Criminal Code which does not recognize the criminalization of khalwat and ikhtilath specifically, but regulates moral acts in general with an orientation to concrete consequences and the protection of individual freedom.

The paradigm difference between Qanun Jinayat and the Criminal Code reflects legal pluralism in Indonesia. Harmonization between the two legal systems cannot be achieved through the uniformity of norms, but through the recognition of regional specificity and value dialogue. Qanun Jinayat can be understood as a *lex specialis* that lives in the social and religious context of the Acehnese people, while the Criminal Code continues to function as a general national criminal law.

B. Suggestions

Policymakers need to encourage the strengthening of the harmonization of national criminal law with laws based on local and religious values without ignoring the principles of justice and legal certainty. The enforcement of Qanun Jinayat should be carried out consistently, proportionately, and uphold the principle of due process of law so as not to create a discriminatory impression. The development of national criminal law in the future should open up a wider normative dialogue space to the concept of prevention

and moral protection as known in Islamic criminal law, so that the Indonesian legal system is able to reflect the social values that live in society in a more comprehensive and fair manner.

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