Politics of Law Legislation of Qanun Sharia Islam in the Province of Aceh, Indonesia

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Abstract

This paper discusses the regulation in The Province of Aceh, which is related to the Islamic sharia law regarding the prohibition of seclusion, the so-called Qanun Khalwat. This writing looks at the initial socio-political conditions underlying the Qanun legal process as well as the effects of external pressure arising during this legislating process. This study aims to understand to what extent the Qanun Khalwat legislating process refers to the prevailing legal standards in Indonesia. The data in this paper were collected from interviews with several informants such as civil servants of the Aceh Islamic Sharia Department, Legal Bureau, and academics. Some information is also obtained through archive review. It found that the Qanun Khalwat legal process does not follow the standard formulation of national law because several conditions are not implemented in the legislating process, such as the lack of public participation during the process. Besides, there are still some texts in the qanun that are not standardized and are not suitable for use as formulations in qanuns.

Keywords: Politics of law, Legisltaion, Qanun Khalwat, Aceh

Abstrak

Tulisan ini membahas tentang peraturan di Provinsi Aceh yang terkait dengan syariat Islam tentang larangan khalwat atau yang dikenal dengan Qanun Khalwat. Tulisan ini melihat kondisi sosial politik awal yang melatarbelakangi proses disusunnya Qanun serta dampak dari tekanan eksternal yang muncul selama proses legislasi ini. Penelitian ini bertujuan untuk memahami sejauh mana proses legislasi Qanun Khalwat mengacu pada standar hukum yang berlaku di Indonesia. Data dalam tulisan ini dikumpulkan dari wawancara dengan beberapa informan seperti pegawai negeri Syariat Islam Aceh, Biro Hukum, dan akademisi. Beberapa informasi juga diperoleh melalui kajian arsip. Ditemukan bahwa proses hukum Qanun Khalwat tidak mengikuti rumusan standar hukum nasional karena beberapa kondisi tidak diterapkan dalam proses legislasi, seperti kurangnya partisipasi masyarakat selama proses tersebut. Selain itu, masih terdapat beberapa teks dalam qanun yang tidak baku dan tidak layak untuk dijadikan rumusan dalam qanun.

Kata Kunci: Politics of law, Legislation, Qanun Khalwat, Aceh

INTRODUCTION

The implementation of Islamic law, which has been running for almost two decades since 2001, still meets several controversies in Acehnese society. Those controversies often occur regarding ethics of decency, especially the issue of sexuality. It is one of the important items in the Qanun of Nanggroe Aceh Darussalam Province No. 14 of 2003 concerning Seclusion (Khalwat) or what is known as Qanun Khalwat. The Qanun Khalwat is one of the sources of material criminal law that was enforced in the early time of implementation of Islamic law in Aceh, i.e., in the early twentieth.

In its implementation, the Qanun Khalwat as an instrument of social change ideally has a significant impact on the social life of the Acehnese people in general. However, since its implementation, the number of khalwat violations has increased. In the early days of the Qanun Khalwat implementation in 2005, there were eight cases of khalwat. In 2006, it increased sharply to 75 cases, and until June 2007, it fell back to 20. This increase in number raises a question, while there is a regulation, why khalwat cases are increased? Here, I argue that apart from the lack of socialization of the regulations, the qanun itself has weaknesses both in terms of procedure and content.

There are some indications that the legislation process of the qanun has not been properly implemented using a good regulatory process. It is usually preceded by an in-depth study of the issues. The next process is the provision of academic papers, which serve as guidelines for drafting qanuns.

Many experts have paid attention to this issue of Qanun Khalwat from various aspects (Berutu, 2003, 2017a; Feener, 2013; Khairani, 2018; Melayu, 2011; Sembiring, Mulyadi, Ekaputra, & Sembiring, 2016a; Shihab, 2011). There are also other writings in terms of the normative study of the Qanun Khalwat concerning National Law (Ablisar, 2014; Berutu, 2017c, 2017b; Fauzi, 2012; International Crisis Group, 2006; Ridwan, 2014a). Some writings have also focused on the relation of the Qanun Khalwat with customary law in Aceh (Azzubaili, Aqwaddin, & Abubakar, 2014). All these writings show the great attention from legal experts toward the construction and implementation of Qanuns as well as the dynamics of the application of Islamic law in Aceh.

In explaining the dynamics of legal politics in the preparation of the Qanun Khalwat, this article based analysis on three interrelated assumptions. First, procedurally, the Qanun Khalwat legislative process is not followed the national law legislation process.

Second, there are socio-political pressures that affect the legislative process of this qanun. Third, there are still weaknesses in the qanun, both from the juridical and content sides. These three assumptions are at the core of the discussion of this paper.

LITERATURE REVIEW

Implementation of The Qanun Khalwat in Aceh

The study of the implementation of the Qanun Khalwat in Aceh cannot be separated from the discussion on the implementation of Islamic law in Aceh. Several writings on the implementation of Qanun Khalwat can be found in some articles (Berutu, 2017a; Khairani, 2018; Melayu, 2011; Sembiring, Mulyadi, Ekaputra, & Sembiring, 2016b; Shihab, 2011; Siregar, n.d.)

Khairani (2018) found interesting things from the implementation of customary law for perpetrators of khalwat and ikhtilath that occurred in The Central Trumon District, South Aceh Regency. In the customary law, it is stipulated that underage children, i.e., under 18 years old, are still given sanctions both to pay fines by their families to Adat institution and to marry them off. Whereas in Islamic law, children who are underage cannot be subject to the law (Khairani, 2018). The same thing was explained by Shihab (2011), Azzubaili et al. (2014), and Berutu (2017), that focused on the enforcement of the khalwat qanun tends to be resolved by the local community customary court (Azzubaili et al., 2014; Berutu, 2017; Shihab, 2011).

Melayu (2011) discusses the effect of caning on the number of violations of the Qanun Khalwat in Aceh from 2005 to 2008. It was found that, in general, caning reduced the number of khalwat violations in Aceh, although not significantly. This means that, in general, the Qanun Khalwat does not provide a maximum deterrent effect to the offender (Melayu, 2011). Berutu (2013) explained the same thing, which proved that the implementation of Aceh Qanun No. 14 of 2003 concerning khalwat in the Subulussalam, South Aceh, has not been fully implemented properly. There are many obstacles faced by both the government and the community as the legal object of implementing Islamic law itself. Legal factor is one of the main factors that caused the stagnation in the prosecution of violators of Qanun No. 14 of 2003 in the City of Subulussalam (Berutu, 2003). The weakness of Qanun Khalwat in reducing the number of khalwat violations in Aceh was also discussed by Sembiring (2016b), who viewed it from a comparison with national law. Sembiring (2016b) stated that there were differences in the punishments given by the

Qanun Khalwat and the Kitab Undang-Undang Hukum Pidana or KUHP (Criminal Code). Qanun Khalwat defines caning while the KUHP only provides warnings and rehabilitation for offenders (Sembiring et al., 2016b)

The Normative Study of Qanun Khalwat Concerning National Law

Several articles discuss the Qanun Khalwat from the normative law aspect. Ridwan (2014) sees that the implementation of Islamic law in Nanggroe Aceh Darussalam reflects the aspirations of the majority of the Acehnese people. The application of the khalwat qanun in Aceh is part of an effort to positivize Islamic law in the national legal system. The purpose of implementing the Qanun Khalwat is to create moral order based on the morals in Islamic law in the form of regulations that are enforced through a formal institution called the Sharia Court (Ridwan, 2014b). The same thing was expressed by Berutu (2017), who stated that the regulation of the prohibition of khalwat (mesum) in Aceh through Qanun No. 14 of 2003, is in line with what has been regulated in the provisions of both the fiqh and the Criminal Code with the main objective of creating a moral order based on Islam (Berutu, 2017c). The same thing was also expressed by Ablisar (2014), who explained that the use of Islamic law as a material for reforming criminal law is one of the main features of the Pancasila rule of law which guarantees the existence of religious freedom. The applicable law must be consistent with the legal ideals of Indonesian society, and the values of Islamic religious law must be reflected in national law as the embodiment of legal ideals (Ablisar, 2014).

There are also several works criticizing the implementation of Islamic law in Aceh. Fauzi (2009), for example, stated that the legislation implementing Islamic law in the Province of NAD (Nanggroe Aceh Darussalam) contains juridical problems. Determination of the form of sanction in the form of caning and the level of sanction in the form of imprisonment of one or two years is contrary to higher laws and regulations. Likewise, the competence of the Syar'iyyah Court, especially in handling criminal cases, is still unclear, and there is a conflict with the competence of the District Court (Fauzi, 2009). The same thing was voiced by the International Crisis Group in its report, which stated that there is a perception that women and the poor have become the main targets of the enforcement of Islamic law, and there is no indication that the application of Islamic law can improve justice for the majority of the people of Aceh (International Crisis Group, 2006).

From some studies above, discussion about the implementation of qanuns in Aceh using a legal-political approach is something that is rarely found. This paper will try to discuss the legislative process of the Islamic law qanuns in Aceh through a legal-political approach. The main concern of this paper is how the legislating process of the Qanun Khalwat was implemented. The core question that will be answered in this paper is about how the Qanun Khalwat legislation process works whether the process has met the procedure and is following the legislative standards in Indonesia.

Based on these arguments, this study will begin with a discussion of the politics of law during the legislative process. The next discussion is about the application of Islamic law contained in the qanun, which is then followed by a discussion of the legislation process for the Khalwat Qanun, which is the subject of the study in this paper.

RESEARCH METHODS

This research is a qualitative study using descriptive-analytical methods. As a study of legal politics, this research will discuss more deeply the legal and political policies of the provincial government and parliament of Aceh regarding legislation process of qanuns on Islamic law in Aceh. The sampling method in this paper uses purposive sampling. The sample is selected based on the availability of information from the selected data source. The data sources can be in the form of being part of an institution that deals with the legal field of implementing Islamic law, such as the Islamic Sharia Department and the Legal Bureau. The data sources arealso dealing with the legislative process in parliament, and finally, academic information regarding the issues being discussed in this paper. Each sample was selected by looking at their role in the qanun legislative process.

Sources of data in this study were (1) the Aceh Provincial Government, which in this case was represented by the Legal Bureau and the Islamic Sharia Department of the Province of Aceh; (2) expert staff of the parliament of Aceh, as a legislative body in Province of Aceh; (3) Academic groups are also a source of data of this research. Data collection techniques are interviews and review of documentation. In-depth interviews will be conducted with expert staff in parliament, especially those who were active at the time the Qanun Khalwat was processed. Interviews were also conducted with several people from the Islamic Sharia Service at the provincial level, especially those in charge of qanun formulation.

This paper uses qualitative data analysis by tracing models for general statements about the relationship between various categories of data to build a conceptual understanding of social reality based on empirical findings. Looking at the purpose of the analysis, there are two basic things to be achieved from qualitative data analysis, namely: (1) analyzing the ongoing process of a social phenomenon and obtaining a concrete picture of the phenomenon; and (2) analyze the meaning behind the information, data and processes of a phenomenon (Bungin, 2003).

RESULT

Qanuns and Implementation of Islamic Sharia

The implementation of Islamic Sharia as the core of Aceh's privileges, which previously was only a slogan, received legality and a formal basis in Law Number 44 of 1999. In this law, the implementation of Islamic law as a privilege in the religious field will be supported by the implementation of privileges in the field of custom and education. The implementation of Islamic law is reinforced in Law no. 18 of 2001 (Aceh, 2010).

As mentioned above, the affairs according to Law no. 22 of 1999 are not autonomous to the regions, but by Law no. 18 of 2001 served as special autonomy is the Islamic Sharia court which is implemented by the Syar'iyyah Court. Looking at the two articles above, as well as the systematic position that lies after the police and prosecutors, it can be said that the implementation of Islamic Sharia in Aceh according to Law no. 18 of 2001 is included in the field (affairs) of law, not the field (affairs) of religion. Thus, the implementation of Islamic Sharia as part of special autonomy in Aceh can be said to have two main parts, some to religion based on Law Number 44 of 1999 and some to the law based on Law Number 18 of 2001.

Qanun Number 10 of 2002 stipulates in Article 53 and Article 54 that the material and formal laws of Islamic Sharia to be implemented by the Syariyah Court need to be stipulated in the Qanun. For this purpose, the Qanun on Aqidah (Faith), Worship and Syiar Islam (Islamic Preaching), Qanun on Khamar (Liquor) and the like; Qanuns on Maisir (Gambling), Qanuns on Khalwat (Seclusion), and Qanuns on Zakat (Alms) Management were regulated. In the future, these qanuns will be added little by little according to needs. As for procedural law, it will use the procedural law that applies nationally, i.e., Kitab Undang-Undang Hukum Acara Pidana or KUHAP (Criminal

Procedural Law), except in cases where there is a difference with Islamic Sharia (Melayu, 2011; Abdul Hamid Sarong, 2004).

In relation to qanuns concerning the material and formal laws of Islamic law, especially regarding sanctions, sometimes the question arises whether the sanctions in Islamic law, especially whipping, can be stipulated by qanuns. It is because according to Law Number 22 of 1999 concerning Regional Government, the punishment that can be regulated in the Perda (Provincial Regulation) is a maximum fine of Rp. 5,000,000 - or a maximum of six months imprisonment. To answer this question, there is one thing that needs to be considered. Law no. 18 of 2001 states that the competence of the Syar'iyah Court is stipulated by Qanuns based on Islamic law and the national legal system. As for the Islamic Sharia that will be implemented by the Court, it is not stated clearly that it must be stipulated in the qanun first.

The regulation stated that the Sharia, which is implemented in Aceh, must be regulated in a qanun, namely Qanun No. 10 of 2002. This Qanun stipulates that the Islamic law to be implemented must be stipulated in the Qanun first, as mentioned above. This policy aims at making it easier and creating legal certainty. In other words, because it is written in the qanun, anyone who is interested can easily find and study it. The qanun may stipulate the Islamic law which is explained in a certain school of Islamic law book or directly ask for the judge to search in the verses of the Koran or the hadith of the Prophet, without the need to be formulated into qanuns first. However, this method was not applied because it would be very difficult for the judge. This method requires judges with very strict qualifications. It will also be very troublesome for the parties in the court, even the lawyers, because there are relatively few people who understand the Islamic law book. By writing in qanun, the judge is only looking for in the Islamic law book or verses of the Koran and the hadith for certain explanations or details (Abubakar, 2006).

Legislating Process of Qanun Khalwat

The legal drafting process needs to be based on four important elements, namely juridical, sociological, philosophical, and design techniques. These four elements can be classified into two main groups, namely: (Tjandra & Darsono, 2009)

1. The phase of composing the academic paper.
2. The phase of designing regulation which includes procedural aspects and aspects of legal drafting.

From these two stages, this article will focus on the process of designing the Qanun Khalwat. The discussion regarding the content of the Qanun Khalwat itself is not the focus of this paper. The focus on the phase of composing the academic paper and procedures aims to see a comprehensive picture of the legal politics of the Aceh government during the implementation of Islamic law.

1. The phase of composing the academic paper.

The composing of an academic paper is an important aspect before drafting a product of legislation. The academic paper contains intellectual responsibility regarding the design of regulation. Juridical, sociological, and philosophical principles are deeply described in this academic paper. The paper is usually preceded by researching matters to be regulated in a regulation.

At this stage, the Qanun Khalwat did not have an academic paper, unfortunately. Hamid Sarong (2016), one of the team members of the Qanun formulation, said that one of the reasons was the team did have limited time, and there were many demands from the people who were very enthusiastic about the implementation of Islamic law (Sarong, personal communication. 2016, July 13). This demand is captured in the daily newspaper in Aceh, where Acehnese people criticized the implementation of Islamic law in Aceh, which was running slowly. The enthusiastic attitude of the Aceh people then pushed the Aceh parliament member to quickly draft several qanuns in Aceh, including the Qanun Khalwat.

On the one hand, according to Alyasa Abubakar (2013), Regulation No. 18 of 2001 concerning the Special Autonomy of the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam clearly states the obligation to make Qanuns is the authority of Aceh Provincial Government in the context of implementing special autonomy. Fifteen parts must be regulated by qanun (Abubakar, 2013). Indeed, in practice, these fifteen things are regulated by 15 qanuns, but since the enactment of the law 18/2001 to 2002 DPRD has ratified 17 qanuns. Of the seventeen qanuns, only two are related to the implementation of Islamic law. The qanuns are Qanun No. 10 of 2002 concerning Islamic Courts and Qanun No. 11 of 2002 concerning the Implementation of Islamic Sharia in the fields of Aqidah, Worship and Islamic Syiar. Thus, it is understandable that the social and political demands of the people who are still euphoric about the implementation of Islamic law and the accumulation of tasks in legislating

qanuns have resulted in the qanun legislative process is not implemented properly (Muhammad, 2003).

Regulating the Qanun Khalwat referred to Presidential Decree No. 44 of 1999 concerning the Technique of Drafting of Laws and Regulations and Form of the Draft Law, Draft Government Regulation, and Presidential Decree. In this Decree, the existence of an academic paper is optional. This is based on the provisions of the Presidential Decree No. 188 of 1998, which uses the word "may" as written in Article 3 paragraph (1), which states that the Minister or Head of the Institution who initiated in the drafting of regulation may precede propose an academic paper regarding the law. From this provision, according to a team member of the Qanun Khalwat formulation that the legal drafter of the Qanun Khalwat might not propose an academic paper (Sarong, personal communication. 2016, July 13).

However, legislation contains not only various legal provisions that will be enforced in the life of the community, nation, and state but also contains various reasons or backgrounds why a law is needed and how effective it is. Therefore, even though it is optional and only a recommendation, the existence of an academic paper has a very important position (Tjandra & Darsono, 2009).

On the one hand, an academic paper is very important because it shows the paradigm of the social life of a society in which the constitution is intended to be formulated. Besides, the existence of an academic paper can be a source of inspiration for the legal drafters,which they will deeply discuss to reach the academic criteria. It will also minimize debate regarding the content of this draft during its process.

On the other hand, an academic paper is needed for the legal drafters to formulate the content of the material to be regulated in a regulation. The need for an academic paper is very important considering that the legal drafters - who are generally legal experts - are certainly not able to know all content of regulation. Academic papers can be a tool to assist the legal drafters in "translating" the scientific understanding of a specific field of knowledge that will be regulated into a juridical text. An academic paper is a collaborative work between legal experts and other scientific experts who have information relating to the content of a regulation (Farida Indrati, 2007; Jailani and Amsori, 2017).

2. Design phase: Procedural Aspects of Qanun Khalwat

It was the fact that during the legislative process of the Qanun Khalwat, it was understandable how difficult the legal drafter to compose the Qanun Khalwat. The drafter team for the Qanun Khalwat was established by the Department of Sharia Islam of the Province of Nanggroe Aceh Darussalam, which consisted of twelve members with a team leader and secretary (Sarong, personal communication. 2016, July 13). The Qanun Khalwat drafter team consisted of representatives from the Department of Sharia Islam, elements from the Ulama Consultative Council, the Sharia Court, practitioners, and academics (Faculty of Law Unsyiah and Faculty of Islamic Law IAIN Ar-Raniry) (Abbas, personal communication. 2016, July 15).

Before being delivered to the legislative body, this team met several times to draft the Qanun Khalwat. These meetings, according to one team member, seemed to be more a debate than the legal drafter meetings in drafting a regulation. Moreover, the lack of a scientific background regarding legal drafting and the absence of an academic paper resulted in the design of the Qanun Khalwat not more than a day-to-day discussion which was then formulated to be qanun. This is admittedly because the demands of people who were very enthusiastic about the implementation of Islamic law wanted to enforce the qanun and to show the provision of sanctions for violators of Islamic law. It is admitted that the majority of Acehnese people interpret the implementation of Islamic law as being caned or other physical punishment. This situation has forced the drafting team to quickly draft the qanun intended (Abbas, personal communication. 2016, July 15).

The limitedtime to design the Qanun Khalwat also denied public participation. It is known that the regulation was the embodiment of the people's value preferences which require the realization of legal certainty, justice, and benefit. This means that regulations should reflect the will of the people in a representative democracy (Abbas, personal communication. 2016, July 15).

Some aspects that can be done with the implementation of public participation in the legal drafting process are conducting a public hearing meeting conducted by the legislative body or other meetings aimed at absorbing people's aspirations. A public hearing by the legislative body (DPRD) members will be carried out to get information from the public, as well as seminars or similar activities in conducting studies to prepare a regulation (Abbas, personal communication. 2016, July 15).

However, in practice, sometimes there are still various interpretations of the term community; some interpret everyone in general, every person or institution involved, or

any non-governmental organization. Indrati (2007), of the legal experts, states that what is meant by society is everyone in general, especially people who are "vulnerable" to the regulation, any person or related institution, or any related non-governmental organization (Farida Indrati, 2007). Regarding the extent to which the community can participate in the formation of laws and regulations, it depends on the circumstances of the legislators themselves because the Constitution and various laws and regulations have determined which institutions can form these laws and regulations. If a regulation has been able to accommodate the aspirations of the wider community, of course, the participation of the community will not be too forced to implement it. Relating the legislative process of the Qanun Khalwat, even though it is institutionally represented, due to the lack of public participation, there may be some of the contents of the qanun that needs to be criticized.

The institutional aspect is also important to discuss. The legislative body, both in terms of capacity and capability, also needs to be addressed properly. Recruitment of the body members through direct elections has shown significant progress. However, this needs to be accompanied by sufficient capabilities to become a member of the body. In addition, during the legislation process of the Qanun Khalwat at the legislative body in Aceh, some constraints, such as limited time in regulating the Qanun as well as the accumulation of work to be completed by the DPRD members, were to be a problem at that time (Abbas, personal communication. 2016, July 15).

Regarding the capacity of the member of this legislative body, according to one expert staff member of the body, Hamid Sarong, “in general, they do not know deeply about Islamic law, especially the issue of khalwat, which in this case is part of Islamic criminal law (fikah Jinayah).” The lack of initial information about khalwat and ta’zir punishment for violators - which is usually contained in an academic paper and public hearings - resulted in the low quality of the Qanun Khalwat produced. This low quality can be proven by the existence of several problems in the Qanun Khalwat itself, such as the inconsistency of the terms used, for example.

a. Article 14 mentions "Official Wilayatul Hisbah", while in article 15 "Wilayatul Hisbah". Are these two terms equated or differentiated? There was no more detailed explanation given in the explanation of the Qanun (Hamid Sarong, personal communication. 2016, 2016, July 13).

b. The word "community" in the general provisions of Article 1 paragraph 9, is not described in detail. According to the author, this is because there are multiple interpretations and problems in practice in society.
c. Regarding 'Uqubat (Article 22 Qanun No. 14 of 2003). The caning sentence contained in the above article is something interpretable (ijtihadi), a maximum of 9 (nine) times, and a minimum of 3 (three) times. This can be an interpretation of the Syar'iyah Court's judge in providing the provisions on how much to be flogged. Likewise, the provision of fines, in the form of payment of a certain amount of money to the Baitul Mall, is also something that is interpretable, and there is room for discussion and improvement.

Discussion and Conclusion

The study of the politics of law includes the process of making and implementing laws that express the nature and direction of the law to be built and enforced. Thus, politics of law is an official direction that is used as a basis and means of making and implementing laws to achieve the goals of the nation and state. Also, politics of law adheres to the double movement principle; namely, in addition to being a framework for formulating policies in the field of law (legal policy) by authorized state institutions, it is also used to criticize legal products that have been promulgated based on the legal policy. In detail, the scope of legal politics is:

- The process of extracting the values and aspirations that develop in a society by the state administration.
- The process of debate and the formulation of these values and aspirations into a draft of laws and regulations by state administrators.
- The State administration has the authority to formulate politics of law.
- Legislation containing politics of law.
- The factors that influence and determine a politics of law that will be is being and have been determined.
- Implementation of laws and regulations, which are the implementation of a state's politics of law (Siswanto, 2012; Syaukani & Thohari, 2008).

Closely related to the politics of law in this research are legal positification efforts. Legal positification is understood as an effort to formalize a normative law such as Islamic law into national law; in this case, the Aceh Government's efforts to positification as part

of Islamic Criminal Law to become national law in the form of Qanun Jinayat. Therefore, positive Islamic law means Islamic law that has been made national law (formalized). The provisions of formal law in Indonesia, which regulate criminal acts or what is known as Jarimah in Islamic law and described in the Qanun Jinayat, are the result of a positification process by the state which applies to all Muslims domiciled in Aceh and is coercive.

The characteristics of good governance, especially in the legislative process, cannot be separated from the role of public participation and transparency. Participation in this context is to create accountability and an open mechanism regarding law enforcement. The results of the analysis show that the Qanun Khalwat has not fully applied the Presidential Decree as a guideline in the formation of the Qanun. These deficiencies include the absence of community participation in the initiation of the design of the Qanun Khalwat. The principle of participation is properly implemented, which in turn does not fulfil the principles of transparency and accountability of a regulation.

In addition, the Qanun Khalwat legislating process, in general, does not go along with the standard formulation of a statutory regulation in which several conditions are not implemented, such as the absence of public participation in the process. Also, many qanun text formulations are found that are not standardized and are not suitable to be used as a qanun formula. In other words, the legislating process of the qanun is unsuitable, both in terms of process and content.

As explained above, during the discussion of the Qanun Khalwat at the DPRA, social and political pressures emerged at that time. The community forced DPRA members to immediately ratify this qanun because, according to them, the implementation of the caning means that Islamic law has been implemented in Aceh. This was the euphoria of the Acehnese people at the beginning of the implementation of Islamic law. This condition was also what forced DPRA members to immediately ratify this Qanun.

Looking at the juridical and content aspects of the Qanun Khalwat, there are still some weaknesses. From a juridical perspective, this qanun does not meet the standards for writing regulations that have been regulated nationally. For example, there is no academic paper that precedes the formulation of a regulation. In addition, there are overlapping terms in the text. This shows that the process of legal drafting of the Qanun was carried out in a hurry and did not meet the standard conditions both in the process and its compilation.

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