

Criminal Sanction Approach to Liwath (Gay) and Musahaqah (Lesbian) Behavior in Qanun Jinayah Number 6 of 2014.

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CRIMINAL SANCTION APPROACH TO *LIWATH* (GAY) AND *MUSAHAQAH* (LESBIAN) BEHAVIOR IN QANUN JINAYAH NUMBER 6 OF 2014

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Abstrak

Gay and lesbian behavior has entered and developed in Aceh in the aftermath of the 2004 tsunami. As an area that is implementing Islamic law, the issue has become the focus of the community, religious scholarships, and the Aceh Government. Since Qanun Jinayah No. 6 of 2014 applies, there are only 3 (three) *liwath* cases which were tried with caning by the Syar'iyah Court of Banda Aceh City. The results of law enforcement research on *liwath* (gay) and *Musahaqah* (lesbi) perpetrators have not been able to provide a deterrent effect, because the more widespread this behavior develops in society. Additional sanctions should be proposed in the form of actions, such as counseling assistance, religious assistance, and social and health assistance. It is hoped that sanctions will change the behavior of gays and lesbians in terms of their sexual orientation.

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I. INTRODUCTION

Indonesia guarantees freedom of expression to its citizens, as in the 1945 Amendment II, Article 28 E paragraph (2): "Everyone has the right to freedom of belief, to express thoughts and attitudes, according to their conscience". Furthermore, paragraph (3) states: everyone has the right to freedom of association, assembly and expression of opinion".

Recently, the phenomenon of LGBT (lesbian, gay, bisexual and transgender) has emerged in Indonesia, although the 1945 Constitution does not prohibit these activities, Islamic law prohibits them (gay and lesbian behavior are known by two terms, namely *liwath* (gay) and *sihaq* (lesbian)).¹ No exception Banda Aceh Province (which uses Islamic law) has been exposed to LGBT in question. The

¹ *Liwath* (Is an act performed by a man by inserting his testicles (*penis*) into another man's rectum. *Liwath* is a word (naming) attributed to Lut's people, because Lut's people were the first to do this act. (Allah SWT calls this action vicious (*fahisy*) and exceeds the limit (*musrifun*). *Sihaq* (lesbian) is a lustful love relationship between women with the image of two women rubbing their limbs (*farji*) between one and another. the other, until both of them feel the delicacy of the relationship.

existence and activities of LGB raises pros and cons, some want LGBT to be legalized, they take refuge behind human rights issues².

In 2014, along with the specificity of Aceh Province in implementing Islamic law, Qanun Number 6 of 2014 concerning the Law of Jinayat, also regulates the prohibition of acts liwath (gay) and sihaq (lesbian). Until this research was conducted, there were only 3 liwath cases that had been processed by the Banda Aceh Syar'iyah Court, and were sentenced to caning.

However, according to the author's observations, LGBT behavior in Aceh is not diminishing but more vibrant. The latest data released by the Aceh Health Office³In Aceh Mode on November 21, 2019, male sex (MSM) from 2018 to 2019 in Banda Aceh continued to increase. From 350 people to 771 people. The result is moving straight with people with Human Immunodeficiency Virus (HIV / AIDS).

Data from the Aceh Social Service noted that the regions with the highest number of HIV sufferers were Aceh Utara with 105 cases, Banda Aceh 89 cases, Aceh Tamiang 83 cases, and Bireuen 72 cases, and LGBT cases had reached around 800 cases.

Based on the background described above, the problem formulations are as follows:

1. How gay and liwath behavior can be categorized as criminal acts in Qanun No. 6 of 2014 concerning the Law of the Law?
2. What are the criminal sanctions contained in Qanun No. 6 of 2014 can overcome Liwath and Musahaqah behavior?.

II. RESEARCH METHODS

This research uses normative juridical methods, and data collection is carried out through literature and document studies, analyzed qualitatively.

This research was conducted by examining primary, secondary, and tertiary legal materials. The primary legal materials used are related provisions, namely Al Quran and Hadith, the 1945 Constitution, the Human Rights Law No. 39 of 2000, and Qanun Jinayah No. 6 of 2014. Secondary legal materials in the form of text books, research results, journals, scientific writings and other reading materials related to this research. Meanwhile, tertiary legal materials can be obtained from legal dictionaries and websites on the internet.

Meanwhile, the empirical juridical approach is preceded by examining the validity of the law in terms of reality (das sein). This is necessary considering that the effectiveness of a legal rule is

² LGBT is considered part of freedom of expression which is one of the fundamental rights recognized in a democratic rule of law that upholds human rights.

³ Cut Mery, *This is bad! Male Sex in Banda Aceh Reaches 771 People, 89 are HIV Positive*, <https://modusaceh.co/news>

highly influenced by various factors and dimensions such as social, political, economic, cultural and other change.

III. RESEARCH AND DISCUSSION RESULTS

3.1. Gay and Liwath behavior can be categorized as criminal acts in Qanun No. 6 of 2014 concerning the Jinayah Law

The LGBT phenomenon has become a global problem that continues to increase every year in Indonesia, especially in Aceh. Associations in an environment that supports LGBT and social media featuring LGBT activities have had a tremendous impact on LGBT development. This easy way of spreading occurs because every human being has an element of lust (sexuality hormone) and an element of reason, which is a frightening specter for society, especially parents.

For the community itself, LGBT behavior is behavior that is unconsciously recognized behavior and a common thing. People are used to being presented with shows where men behave gracefully and wear women's clothes, these men use this to earn a fortune. This can be seen from its extraordinary development, both on television and on social media.

Examples of popular LGBT actors are Milendaru, Lucinta Luna, and others. Stylish fashion and glamorous lifestyle are examples of teenagers, especially boys, to imitate life like them.

In addition, the wave of society supporting LGBT is growing rapidly. You can see many LGBT parades, both in Indonesia and in foreign countries. With their proud flag, rainbow flag depicting LGBT rights, they held the LGBT "Gay Pride Parade" parade which was held in various cities around the world in June 2019.

Fast information, able to provide access for LGBT perpetrators to get news about LGBT developments around the world.

Homo and lesbi behavior has entered and developed in Aceh, after the Tsunami disaster. The large number of foreign aid to Aceh by non-governmental organizations has also brought about this foreign LGBT culture and behavior.

In Al-Qur'an surah Al-A'raf, verses 80 to 81 have stated that:

وَلَوْطًا إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ
الْعَالَمِينَ ﴿٨٠﴾ إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ شَهْوَةً مِنْ دُونِ النِّسَاءِ
بَلْ أَنْتُمْ قَوْمٌ مُّسْرِفُونَ ﴿٨١﴾

"And (we have also sent) Lut (to his people). (Remember) when he said to them, why are you doing that fahishah deed, which no one (in this world) has done before you? In fact you come to men to release your lust (for them), not for women, even you are a people who transgress".

Following up on the Al A'raf letter, the Aceh government with special authority has compiled the Qonun Jinayah⁴ Number 6 of 2014, therein *action prohibition liwath (gay) and musahaqah (lesbian)*.

The Head of the Legal Division of the Aceh Province Sharia Islamic Service said that the qonun was officially effective since 23 October 2015, it is hoped that this qonun (Perda) will be able to overcome the development of LGBT in the province nicknamed Serambi Mekkah⁵.

*Liwath*⁶ regulated in Article 63:

- (1). Everyone who deliberately does Jarimah *liwath* be threatened with 'uqubat ta'zir for a maximum of 100 lashes or a maximum fine of 1,000 grams of pure gold or a maximum imprisonment of 100 months.
- (2). Every person who repeats the action as referred to in paragraph (1) is threatened with 'uqubat ta'zir of 100 lashes and can be added with a maximum fine of 120 grams of pure gold and / or a maximum imprisonment of 12 months.
- (3). Every oThose who commit liwath with a child, apart from being threatened with 'uqubat ta'zir as referred to in paragraph (1), can be added with a maximum of 100 lashes or a maximum fine of 1,000 grams of pure gold or a maximum imprisonment of 100 months.

Meanwhile, Musahaqah⁷ regulated in Article 64:

- (1). Anyone who deliberately commits Jarimah musahaqah is threatened with 'uqubat ta'zir for a maximum of 100 lashes or a maximum fine of 1,000 grams of pure gold or a maximum imprisonment of 100 months.
- (2). Anyone who repeats the act as referred to in paragraph (1) shall be subject to 'uqubat ta'zir of 100 lashes and may be subject to a maximum fine of 120 grams of pure gold and / or a maximum imprisonment of 12 months.
- (3). Anyone who commits Jarimah musahaqah with children, other than being threatened with 'uqubat ta'zir as referred to in paragraph (1) can be added with a maximum of 100 lashes or a maximum fine of 1,000 grams of pure gold or a maximum imprisonment of 100 months.

Qonun is considered to be one step ahead of Indonesian criminal law, because Indonesian criminal law does not regulate this issue.

At the time of writing this article, in Banda Aceh there had only been 3 LGBT cases being heard at the Sharia Court. From the data described above, with LGBT prosecution for approximately 5

⁴ Islamic criminal law that applies specifically to Aceh.

⁵ *Whip 100 times so that gays and lesbians are not rampant in Aceh*, <http://news.detik.com>, 27 February 2016

⁶ What is meant by liwath is the act of a man by inserting his testicles into the rectum of another man with the willingness of both parties.

⁷ What is meant by musahaqah is the act of two or more women by rubbing each other's limbs or faraj to obtain sexual stimulation (pleasure) with the willingness of both parties.

years, only 3 LGBT cases have reached the Sharia Court, and the phenomenon of the increasing number of LGBT people can indicate the ineffective law enforcement based on the Qonun.

3.2. The criminal sanctions contained in Qanun No. 6 of 2014 can overcome Liwath and Musahaqah behavior

Several cases that have occurred in Banda Aceh were related to lesbian and homosexual sex, such as:

1. The musahaqah case was arrested by the Sharia police on 29 September 2015 at the location of the Ulee Lheue tourist park, Banda Aceh. When arrested, one woman who looked male and the other dressed like a woman was sitting casually making out in that location.⁸
2. The next case was a lesbian with the initials F (15) and D (15) who was arrested by the Sharia police at 23.00 WIB, Tuesday (11/3). The two women had cut short hair and at a glance they looked like boys. Their arrest began with reports from the public who saw suspicious stretching in a house in Deah Glumpang Village, Meuraxa District, Banda Aceh.⁹

These two cases were not continued until the sharia court.

3. The case is up to the sharia court

a. Case No. 18 / JN / 2017 / MS.Bna¹⁰

The defendant was proven guilty of committing Jarimah liwath on May 28, 2017, and was sentenced to 'uqubat public lashes of 85 times.

b. Case No. 19 / JN / 2017 / MS.Bna¹¹

The defendant was proven guilty of committing Jarimah liwath on May 28, 2017, and was sentenced to 'uqubat public lashes of 85 times.

c. Case No. 15 / JN / 2018 / MS.Bna

The defendant was proven guilty of committing Jarimah Liwath on March 12, 2018, and was sentenced to 'uqubat public flogging 90 times.

The trial was held behind closed doors to the public, the witnesses were local people who made the arrest of the liwath perpetrator. Then the execution was carried out by the executor (prosecutor).

The punishment given in a quo case is flogging. Caning is one of the forms and types in Islamic criminal law. Flogging is often referred to as uqubat (sanski). In qonun the concept of the

⁸ *Traces of a Rainbow in Aceh - A Caught Lesbian Couple Who Makes an Upset*, <http://habadaily.com>, 02 March 2016

⁹ *The Life of a Lesbian Couple in the Land of Sharia*, <http://www.merdeka.com>, March 12, 2014

¹⁰ Directory of Decisions of the Supreme Court of the Republic of Indonesia, Decision No. 18 / JN / 2017 / Ms.Bna,

¹¹ The two perpetrators were filed separately.

whip is divided into 2 types, namely hudud and takzir. The implementation of the two types of flogging is not completely differentiated, the only difference lies in the amount and formula of sanctions alone.¹²

Basically the procedure (the law of execution) of whipping is regulated in the Al Quran in verse (2) of the letter An-Nur. The verse explains that the execution of caning (in the case of adultery) must be witnessed by a group of believers. This verse is the basis that the procedure for caning must be in public or open.¹³

As for the implementation of flogging in the qanun of jinayat procedural law, it is carried out:

1. In public or in an open place that can be witnessed by the crowd, attended by prosecutors and doctors;
2. On a stage with a minimum size of 3 x 3 meters with the distance between the inmate and the people watching is 12 meters;

The procession should not be attended by children (ie those under 18 years of age). This is in accordance with Article 262 paragraph (1) to (4) Aceh Qanun Number 7 of 2013 concerning Law of Jinayat Procedure and Governor Regulation Number 10 of 2005 concerning Technical Instructions for the Implementation of the Whip Uqubat.

3.3. Theory of Legal Effectiveness

Lawrence M Friedman in American Law, explains that there are 3 important components of a legal system, namely: structure, substance, and legal culture.¹⁴

Structure concerning institutions that are authorized to make and implement laws, substance, namely the material or form of legislation, and legal culture is legal culture, namely people's attitudes towards law and the legal system, regarding beliefs in values, thoughts or ideas and expectations. they.

Anthony Allot quoted by Salim HS¹⁵, argues about the effectiveness of law that, the law will be effective if the purpose of its existence and its application can prevent unwanted actions, can eliminate chaos, generally effective law can make what is designed can be realized. If a failure, then the possibility of easy rectification if there is a necessity to implement or apply the law in a new, different atmosphere, the law will be able to solve it.

¹² Khairil Akbar, *Procedure for Caning in Islam*, 22 April 2018, www.acehtrend.com

¹³ *ibid*

¹⁴ Teguh Prasetyo, and Abdul Halim Barkatullah. *Philosophy, Theory & Law; Thought Towards a Just and Dignified Society*, Raja Grafindo Persada, Jakarta, 2013, p. 312.

¹⁵ Salim HS and Erlies Septiana Nurbani, *Application of Legal Theory in Desertation Research and Thesis*, Raja Grafindo Persada, Jakarta, 2014, p. 302.

Thus, there are 3 focus studies on the theory of legal effectiveness, including: success in law enforcement, failure in its implementation, and the factors that influence it, which can be examined from the aspects of success and failure.¹⁶

Soerjono Soekanto¹⁷ argues that law enforcement is an activity to harmonize the relationship of values outlined in solid and embodied principles and attitudes as a series of final value definitions, to create, maintain and maintain peace in society. There are five factors that must be considered in law enforcement. The five factors include: legal or statutory factors, law enforcement factors, facility or facility factors, community factors, cultural factors.

The five factors related to law enforcement mentioned above must be carefully considered in law enforcement so that the law can run effectively. If there is less attention, law enforcement will not be achieved.

Basically, the purpose of punishment is to repair damages both individually and socially (individual and social damages) caused by a criminal act. The purpose of punishment must be oriented towards an integrative view, which consists of a set of objectives of punishment that must be fulfilled, provided that which objectives are the emphasis of a case in nature.

like the LGBT case, the purpose of punishment is directed at the actions of the perpetrator, as well as for the self-improvement of the LGBT perpetrator himself.

The purpose of punishment in the Draft Criminal Code in Article 54 which states that the purpose of punishment is:

1. To preventing the committing of a criminal act in upholding legal norms for the sake of protecting society;
2. To socialize the convicted person by providing guidance so that he becomes a good and useful person;
3. To solve conflicts caused by criminal acts, restore balance and bring a sense of peace in society;
4. To free the guilt of the convict.

In Article 54 paragraph (2) it is also stated that, punishment is not intended to distress and humiliate human dignity.

This is where the political direction of criminal law or criminal law policy in tackling LGBT acts, with an emphasis on the purpose of punishment which can provide improvement and guidance and can create a deterrent effect on perpetrators of LGBT acts, as well as restore balance, harmony and harmony in society, and maintain chastity. The balance values that exist in Pancasila are especially divine values. The criminal law policy in tackling LGBT acts is also directed at fostering perpetrators so that they can be accepted again in a civilized society and get healing in addition to receiving punishment.

¹⁶ *Ibid*, p. 303.

¹⁷ *Ibid*.p. 307.

The punishments in the Qanun jinayah have not been able to provide a deterrent effect for LGBT perpetrators, because after the caning is carried out, the perpetrators are simply released without any supervision and guidance, so it is feared that they could fall back into LGBT behavior.

The results of researchers' observations since the implementation of qonun in Aceh, it turns out that the implementation of caning for Liwath (LGBT) perpetrators was not able to provide a deterrent effect both for the perpetrators themselves and also for the community in general.

The absence of supervision and guidance for the perpetrator can make the perpetrator fall back into LGBT behavior.

Therefore, the existence of qonun jinayah in Aceh is expected to be able to eliminate or at least minimize LGBT activities, it has not had a positive impact, because LGBT movements in Aceh are increasingly vibrant and mushrooming.

3.4. Double Track System or Restorative Justice Theory

Talking about the basic idea of a double track system means talking about the basic idea of a system of sanctions which forms the basis of policy and the use of sanctions in criminal law. In this case, there is a two-track system regarding sanctions in criminal law. The basic idea of the system is the equivalence between criminal sanctions and sanctions for action. Emphasis on equality of criminal sanctions and sanctions in the framework of a double track system. In fact, it is related to the fact that the elements of reproach / suffering (through criminal sanctions) and the elements of guidance (through action sanctions) are equally important.

Gerber and McAnany state something that is more or less in line with the view above. According to them "we can start by saying that while retribution has become unpopular, it is never completely 'removed'. Even in the worst of everyday life, people admit that no matter how far we move towards rehabilitation as a total goal, there must still be punishment. We cannot do without it".¹⁸

Likewise with rehabilitation and prevention (as the main objectives of the type of action sanction / treatment). Although this method has features in terms of the perpetrator's resocialization process, it is hoped that it will be able to restore one's social and moral qualities so that they can reintegrate into society.¹⁹

Double track system want the elements of reproach / suffering and elements of guidance to be accommodated in the system of criminal law sanctions. This is the basis why the double track system demands equality between criminal sanctions and sanctions.

¹⁸ Rudolph J. Gerber and Patrick D. McAnany, *Philosophy of Punishment*, in: *The Sociology of Punishment*, John Wiley and Sons, Inc., New York, 1970, p. 358

¹⁹ Yong Ohoitmur, *Ethical Theory of Legal Punishment*, T Gramedia Pustaka Utama, Jakarta, 1997, p. 17-23

An understanding that recognizes equality between *punishment* and treatment as mentioned above, is the philosophy of existentialism from Albert Camus. Camus admits the justification of punishment for a violator, because punishment is a logical consequence of freedom that is misused by the criminal.

According to Camus, the perpetrator of the crime remains *human offender*. However, as a human being, a criminal is still free to learn new values and new adaptations. Therefore, the imposition of sanctions must also be educational. Because only in this way can he return to society as a whole human being.

In his philosophy, Camus expressed his approval of sanctions which were of a nature *punishment*. However, punishment must not eliminate the human power of the convicted person in reaching new values and new adjustments. The imposition of punishment for someone who misuses their freedom to commit violations, must be maintained. But at the same time the perpetrator must be directed through educational sanctions (treatment) in order to achieve his fuller form as a human.²⁰

Researchers use this theory to find out whether trying to apply criminal sanctions in the form of actions is able to prevent Liwath and Musahaqah's actions, and provide changes to the perpetrators so that they return to normal humans.

Because the LGBT phenomenon has become a global problem that continues to increase every year in Indonesia, especially in Aceh. Associations in an environment that supports LGBT and social media featuring LGBT activities have had a tremendous impact on LGBT development. This easy way of spreading occurs because every human being has an element of lust (sexuality hormone) and an element of reason, which is a frightening specter for society, especially parents. The punishments in the Qanun jinayah have not been able to provide a deterrent effect for LGBT perpetrators, because after the caning is carried out, the perpetrators are simply released without supervision and guidance, so it is feared that they could fall back into LGBT behavior.. Therefore, the purpose of punishment must be able to be directed towards the actions of the perpetrator, and also for the self-improvement of LGBT perpetrators themselves.

The role of the family in sex education in children, as well as the family is also able to provide support for the healing of LGBT perpetrators as well as Islamic counseling with the help of psychologists and clerics / ustads who understand the psychological conditions of LGBT perpetrators.

The government also participates in campaign activities about the dangers of LGBT and conducts a review of regulations that provide freedom to practice same sex relations, provides

²⁰Rudolph J. Gerber and Patrick D. McAnany, *Philosophy of Punishment*, in: *The Sociology of Punishment*, John Wiley and Sons, Inc., New York, 1970, p. 340-342. Furthermore, how Camus has laid down the moral foundations of human rights, can be read thoroughly in his work: *The Sisifus Myth, Struggle with the Absurdity*, translation by Apsanti D., PT Gramedia, Jakarta, 1999.

facilities and means for healing LGBT perpetrators, participates and is active in limiting social media that are vulnerable to broadcasting LGBT content.

Thus, comprehensive, more strategic action must be taken in an effort to minimize the development of LGBT in Aceh. For that at least there are ways that can be taken to prevent the spread of LGBT behavior, namely:

1. Through family roles and sex education for children.

Islam has regulated how to teach about sex and gender so as to foster a sense of responsibility for children from an early age to maintain their self-respect and humanity. Children and adolescents need sexual education that teaches them how valuable their bodies are and how to take care of them.

The ways of teaching Islamic sexual education taught by the Prophet Muhammad include:

a. Separation of the bed

For boys and girls, boys and boys, as well as girls and women.

Narrated by Abu Dawud with Sanad Hasan, Rasulullah Sallallahu 'alaihi Salam said:

"Order your children to pray at the age of 7 (seven) years, and beat them to pray at the age of 10 (ten) years, and separate their beds".

Thus, the separation is carried out when the children reach the age of 10 (ten) years. The purpose of this bed separation is that two or more children do not sleep in one blanket and in one bed. If in one bed, preferably with a separate blanket, the farther the better.²¹

b. Instill shame

Instilling shame in children by lowering the gaze and covering the genitals. Shame must be instilled early. Do not make it a habit for children, even though they are small, to be naked in front of other people. Sometimes parents or adults around children give inappropriate responses in instilling shame.

For example, when children come out of the bathroom naked, without realizing it, the response of the adults around them laughs at the cuteness.

Children will understand this without realizing that not covering their genitals is a good thing and pleasing to many people.²²

c. Instilling the masculine soul and femininity

Parents are expected to provide clothes that are in accordance with the gender of the child, so that they are accustomed to behaving in accordance with their nature.

Children must also be treated according to their sex. This is in accordance with the hadith of

²¹ Dr. Muhammad Nur Abdul Hafizh Suwaid, Prophetic Parenting How the Prophet SAW Educates Children, Yogyakarta, 2010, p. 555

²² Christianity, Lesbian, Gay, Bisexual and Transgender (LGBT) Relativity in a Magazine, Tarumanagara University Communication Journal Vol: 2 (2015): 87

the Prophet Muhammad SAW:

"Ibn Abbas ra said:" Rasulullah SAW cursed men who behaved like women and women who behaved like men (Narrated by Al-Bukhari).²³

Support from blood-related families is the last resort for LGBT perpetrators to get change. Not away from them, but helping them to return to their natural state is very necessary.

2. Islamic counseling

Islamic counseling is carried out to foster LGBT people. Counseling can be assisted by psychologists and clerics / clerics who really understand the psychological conditions of LGBT perpetrators, which can be done in a number of steps:

- a. Provides knowledge about self-esteem as a man or woman completely by influencing his psychological condition by avoiding being judgmental.
- b. Enter Islamic aqidah
- c. Inviting himself to be closer to Allah SWT
- d. Provide Islamic knowledge related to LGBT law in Islam and its deepest studies.

3. Support from local and state governments

The government and the state as protectors of the community must be able to provide facilities that can improve the welfare of their people. In dealing with LGBT behavior, the government must support the development of LGBT perpetrators by:

- a. Reviewing laws and regulations that give freedom to practice same sex relations.
- b. The government and the community carried out a massive campaign to provide education about the dangers of LGBT.
- c. Large mosques open clinics for religious guidance and counseling for LGBT perpetrators, both directly and through online media, even with treatments for LGBT perpetrators that can be combined with modern therapies such as cupping, ruqyah, and so on.

People who are aware of LGBT need to continue to be supported with adequate facilities and infrastructure, especially by the government so that they can gather and empower themselves in carrying out daily activities and participate in awareness activities for LGBT perpetrators who are not aware of their mistakes in terms of sexual orientation.

Therefore, handling the LGBT problem in Aceh is not enough with mere repressive measures, but must work in synergy with religious guidance and involve families and religious leaders.

²³ Eka Yanuarti, Islamic Parenting Patterns for Parents in Preventing the Occurrence of LGBT Behavior from an Early Age, Jurnal Cendekia Vol 17 (2019): 73

IV. CONCLUSION

Based on several articles in Qanun Number 6 of 2014 concerning the Law of Jinayat, liwath (gay) and musahaqah (lesbi) behavior which can be categorized as a criminal act is sexual relations carried out by both parties of the same sex with the willingness of both parties or on a consensual basis.

The purpose of punishing liwath and musahaqah behavior is certainly not mentioned in Qanun Number 6 of 2014 concerning the Law of Jinayat, but if it is seen from the theory of the purpose of punishment, Jarimah liwath and musahaqah can be overcome by caning, fines, or imprisonment. Punishment for Gay / Liwath perpetrators is contained in Articles 63 and 64 of Qanun Number 6 of 2014 concerning the Jinayat Law. In Aceh itself, the punishment that has been carried out for liwath perpetrators in particular is public flogging, in accordance with the decision of the Syar'iyah Court. Since the implementation of qonun in Aceh. It turns out that the implementation of flogging for Liwath (LGBT) perpetrators is not able to provide a deterrent effect both for the perpetrators themselves and for society in general. The absence of supervision and guidance for the perpetrator can make the perpetrator fall back into LGBT behavior. Efforts to eliminate or at least minimize LGBT activities in Aceh as regulated in the qonun have not had a positive impact, because LGBT movements in Aceh are getting more vibrant and mushrooming. HIV / AIDS.

From the above conclusions, several suggestions can be put forward as follows:

1. The purpose of punishment must be able to be directed at the actions of the perpetrator, and also for the self-improvement of LGBT perpetrators themselves.
2. Increasing family participation in sex education for children, and the family is also able to provide support for the healing of LGBT perpetrators.
3. Conduct Islamic counseling with the help of psychologists and clerics / ustads who understand the psychological conditions of LGBT perpetrators.
4. The government participates in campaign activities about the dangers of LGBT, conducts review of regulations that give freedom to practice similar sexual relations, provides facilities and means for healing LGBT perpetrators, participates and is active in limiting social media that are vulnerable to broadcasting LGBT content.

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