

Examining The Istinbath Method On Jarimah Qadzaf In Qanun Jinayat Aceh

R. Fakhurrrazi¹

¹Ibrahimi University, Indonesia, 68374

*Corresponding author: r.fakhrurrozi@gmail.com

ABSTRACT

Every Islamic legal product is produced through what is called legal reasoning (istinbath). This research is an effort to find out and examine the istinbath method used in compiling the Aceh Qanun Jinayat, especially regarding qadzaf (criminal acts). The study of the jarimah is limited to four variant objects, namely definition, perpetrator, and uqubat. This research includes applicable approaches that are considered effective include five types of approaches; legislative approach (statute approach), historical approach (historical approach), sociological approach (sociological approach), philosophical approach, methodological approach. The data sources used consist of primary, secondary and tertiary data sources. Meanwhile, the data processing and analysis technique is content analysis. It proves that the formulation of legal norms jarimah qadzaf and its three variants can be methodologically justified. The methodology in question is the istinbath reasoning method which ranges between three istinbat reasoning methods, namely: first, the lughawiyah method with a mantuq theory approach or like an-nas and mafhum mukhalafah. Second, the ta'liliyah method with the illat tasyri'i approach. Third, the istislahiyah method with the maslahah mursalah approach.

Keywords:

Aceh Qanun; Istinbath Method; Jarimah Qadzaf;

INTRODUCTION (11 PT)

One of the privileges mandated by Law Number 4 of 1999 concerning the Implementation of the Specialties of the Special Region of Aceh Province and Law Number 11 of 2006 concerning the Government of Aceh is implementing Islamic law by making Islamic law into positive law or legislation called Qanun. Aceh. The application and practice of Islamic law as regulated in this legislation is a special privilege given to the city of Mecca.

As regulated in Law Number 11 of 2006 concerning Aceh Government Article 125 paragraphs (1) and (2) the aspects of Islamic law which are the authority of the Aceh government include: aqidah, shari'ah and morals. The sharia referred to here includes: worship, al-ahwal ash-syakhsiyah (family law), mu'amalah (civil law), jinayat (criminal law), qadla' (judiciary), tarbiyah (education), da'wah, syi'ar, and defense of Islam. Then in Article 127 paragraph (4) it is stated that further provisions regarding the fields of al-ahwal ash-syakhsiyah (family law), mua'amalah (civil law), jinayat (criminal law) will be regulated in the Aceh Qanun. To fulfil the mandate of this Law, the Aceh government has created Aceh Qanuns, including Qanuns relating to jinayat as regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law, which in this article will be referred to as Aceh Qanun Jinayat.

The scope of the Aceh Qanun Jinayat regulates the actions of the judimah, perpetrators and uqubat. Meanwhile, the jarimah acts regulated in this Qanun contain 10 (ten) criminal acts (jarimah), namely khamr, maisir, khalwat, ikhtilat, adultery, sexual harassment, rape, qadzaf, liwat and musaqah. The legal norms in this qanun result from thinking and reasoning carried out by a team of ulama and intellectuals regarding the texts of the Qur'an and al-Hadith through the process of taqin (legislation).

The law states that in the Aceh Qanun legislative process which regulates matters relating to Islamic law, there are stages which involve ulama and elements of the Ulama Consultative Council (MPU) and other competent Islamic legal experts. At this stage, extraordinary intellectual reasoning was carried out by the team, they mobilized all their abilities in studying various aspects of the syar'i propositions regarding the qanun in question, then connected them with the development of sophisticated human civilization in this era and then produced a legal conclusion. This reasoning activity is more often called

istinbath al-ahkam. The legal product produced through istinbat is then compiled into an academic text which will be legislated into positive law (qanun) by the Aceh Government together with the DPR.

Therefore, researchers are called upon academically to conduct research and explore further the istinbath reasoning used in compiling the Aceh Qanun Jinayat. Paying attention to the background above leads this research to a problem formulation that asks what istinbat method is used in the Aceh Qanun Jinayat, and how the istinbat method is used in the Aceh Qanun Jinayat.

METHOD

This research includes normative juridical research with qualitative data types. Meanwhile, the steps that will be taken in this research to obtain accurate and objective research findings are as follows: **First**, research approach. This research will use three approaches. (1). Legislative approach (statute approach), namely an approach that uses legislation (taqnin) and regulations. This approach was chosen because the object of study and central are the legal norms in the Aceh Qanun Jinayat. (2). Sociological approach (Sociological Approach), namely an approach that aims to understand the themes of the social reality of society as the situation and conditions of society where this Qanun Jinayat was formulated. (3). Approach, methodological approach. This approach was taken to find out what methods and how they were used in formulating the Aceh Qanun Jinayat. The method in question is the istinbat method which includes the lughawi, ta'lili and istislahi methods.

Second, the type and source of research data. This research is library research. Thus, the data for this research will be obtained from library sources. If directed at scientific disciplines, the data analysis of this research is included in the discipline of legal methodology as a part of the science of Usul Fiqh. Thus, Aceh Qanun Number 6 of 2014 concerning Jinayat Law can be researched using the analytical knife of Ushul Fiqh science embedded in the legal istinbath methodology material.

The pattern of this research is descriptive analysis, it is said to be descriptive because this research tries to explain clearly and comprehensively the legal norms collected in the Aceh Qanun Jinayat. Meanwhile, it is said to be an "analysis research pattern" because this research will examine and analyze the Aceh Qanun Jinayat from its methodological aspect. So that we can know the legal basis and legal considerations behind the birth of the legal products contained in the Aceh Qanun as well as the istinbath method used in formulating them.

This research is library research, the data sources used written literature. Meanwhile, the data that will be collected are the arguments relating to the qadzaf radius as well as the legal norms contained in the Aceh Qanun Jinayat regarding the radius, which are limited to the actions of the jarimah, perpetrators, and uqubat. Materials related to the istinbath method are data that must be collected in this research. Therefore, the data sources in this research are divided into three. First, the primary data sources are the Al-Qur'an and Hadith, ushul fiqh books related to the istinbath method, Aceh Qanun Jinayat, Qanun Jinayat Events. Second, secondary data sources, namely, the Law relating to Aceh Specialties, the Law concerning Legislation, and the Law concerning Procedures for Forming Qanun. Third, tertiary data sources, namely dictionaries, journals or encyclopedias can help to search and obtain primary and secondary data sources.

Third, data analysis methods. The data that has been collected is then classified according to research needs. Then the data was analyzed using the content analysis method. This method is used to study seriously and in-depth about the Aceh Qanun Jinayat. After that, a thorough istinbath analysis stage was carried out by utilizing the istinbath theory formulated by ulama. So that we can find out about the arguments of the Aceh Qanun Jinayat, considerations, 'illat and wisdom behind this legal product.

The analysis stages that will be taken are as follows: **first**, study and examine various references related to the Aceh Qanun Jinayat to find out the contents of the Aceh Qanun, which includes definitions, perpetrators, uqubat. Knowing the legislative process (taqnin) is very important in this research. Therefore, the author must know in detail about the Aceh Qanun Jinayat taqnin process.

Second, study, master and examine the theory of istinbath which includes the theory of istinbat lughawi, ta'lili, and istislahi. This theory will lead researchers to search for arguments related to the object under study, namely the Aceh Qanun Jinayat. Third, efforts to find the istinbath method used in formulating the Aceh Qanun Jinayat and find out the dominant istinbath method used.

RESULTS AND DISCUSSION (11 PT)

1. *Istinbath Method on Jarimah Qadzaf*

Four things will be discussed in this qadzaf radius; definition, perpetrator, proof and 'uqubat. This research will examine how the qanun carries out istinbath reasoning in four variants related to the qadzaf radius. Of course, this analysis is more about the author's subjective view with the help of istinbath theory.

2. *Definision of Qadzaf*

It is defined in the fiqh books that qadzaf is accusing someone of committing adultery. Regarding the meaning of this definition, scholars agree based on the fourth verse of Surah An-Nur. Ulama also agree that qadzaf contains defamation, which the Shari'ah was protected, in maqasid Shari'ah it is known as hifdhu al-'irdh. Therefore, Islam strongly threatens people accused of adultery with 'uqubat 80 lashes. Next, an analysis of the istinbath method regarding the definition of qadzaf formulated by the Aceh Qanun jinayat, the researcher will first present several verses to help determine the elements contained in the act of adultery. Among them is Surah An-Nur ayat 4:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً

Meaning: And those who accuse (adultery) of good women and do not bring four witnesses, then they will be beaten 80 times. (Q.S. al-Nur ayat: 4)

If you pay attention, the verse above contains at least two definitional elements. First the perpetrator indicated by lafaz } الَّذِينَ. Second, the accusatory act shown by the pronunciation يَرْمُونَ (accusing). Even though the verse is not actually defining qadzaf. It only serves as a guide to us regarding the discussion of qadzaf discussed in the Qur'an. If we look again at this verse, we don't find any qadzaf pronunciation at all. We actually find the pronunciation of qadzaf in Surah Thaha: ayat 39:

ان اقد فيه في التابوت فاقد فيه في اليم

Meaning: Throw (place) Him (Moses) in a chest, then throw Him into the river (Nile). (Q.S. Thaha: 39)

Even though this verse uses the pronunciation qadzaf, its meaning is not related to the term qadzaf being discussed. Because the meaning of qadzaf in this verse means throwing or putting down, while qadzaf in this discussion means accusing of adultery.

Therefore, the first thing we will discuss is the fourth verse of Surah An-Nur above. This verse can be explained using linguistic studies through several aspects as follows: **First**, the true meaning¹ of word يَرْمُونَ in this verse it means throwing. However, scholars agree that the word يَرْمُونَ dalam ayat tersebut tidak diarahkan kepada makna hakikat yang berarti melempar melainkan dipalingkan kepada makna majaz, yaitu menuduh.² There are several indications (qarinah) that distort the words يَرْمُونَ to the meaning of the figure of speech. Among other things, this verse comes after the discussion about adultery which indirectly shows that this verse is a continuation or more detailed explanation of the previous verse. If this verse is still interpreted as essentially, while this verse is a continuation of the previous discussion, then this verse will lose context and have no relevance to the previous discussion. In linguistic studies, this kind of conclusion-making method is known as rabth an-nushush bi an-nushush, namely connecting the discussion of one verse with another verse.

Second, the verse fragment ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ further clarifies the majaz meaning of the previous word yarmuna, that it means accusing, not throwing, and what is meant by accusing is not just any accusation, but only specifically accusing you of adultery. As it is understood, the accusation that requires the testimony of up to four witnesses is only an act of adultery. So it can be concluded that the verse is discussing the accusation of adultery.³ In the study of mantiq science, sentence fragments like this are referred to as fashl, namely sentences that function to distinguish one from another, namely distinguishing

¹ Secara kebahasaan, sebuah kata bisa mempunyai dua makna, yaitu makna hakikat dan makna maja>z.

² Muhammad 'Ali> as}-S}abu>ni>, *Tafsir Ayat al-Ah}ka>m Min al-Qur'an al-Kari>m*, Juz II, hlm. 42.

³ Namun perlu diperjelas bahwa tuduhan zina memiliki dua format kalimat. *Pertama*, tuduhan zina secara tegas. *Kedua*, menuduh zina namun melalui sindiran, seperti tidak mengakui anaknya dengan mengatakan anak ini bukan hasil dari pembuahanku.

between accusations that are qadzaf and accusations that are not qadzaf. Apart from that, the paragraph above also clarifies the definition in the Aceh Qanun, that the qadzaf penalty is imposed on people who are unable to present four witnesses. This understanding is obtained from meanings such as an-nash or manthuq from the verse above. The meaning of an-nash or manthuqayat above is "whoever cannot bring four witnesses". The words of the four witnesses included the mufassar pronunciation. Looking at the process of formulating the definition above which is taken from understanding the verse using the haml al-haqiqah ila al-majaz method, directing the true meaning to the meaning of majaz, it can be said that the term qadzaf taken from the verse above was obtained through the lughawiyyah method.

Furthermore, in order to determine what is called qadzaf and who the perpetrators are, the qanun defines it by looking holistically at the reality of the Acehese people who are under the auspices of the Republic of Indonesia. So the definition of qadzaf was born in the Aceh Qanun jinayat that qadzaf is "an accusation of adultery without presenting a minimum of four witnesses." In full, the article reads, "Qadzaf is accusing someone of committing adultery without being able to present at least 4 (four) witnesses."⁴

The definition of qadzaf in this qanun does not include the type of victim or who is accused. Meanwhile, in the verse above, it is said that to be considered qadzaf, the victim must be someone who behaves well every day or protects himself from heinous acts. This is shown by the verse fragment **المحصنات**. It is important to include this type of victim in the definition because it has quite a significant different impact. Among the impacts is the risk when accusations of adultery are made against people who are used to committing heinous acts, such as prostitutes. If the meaning of the word **المحصنات** is not included in the definition or explanation of the Qanun, then the charge of qadzaf against a prostitute will still be subject to qadzaf punishment, which is different if the definition includes a fragment of that verse.⁵

According to researchers, Qanun jinayat in Aceh does not include meaning **المحصنات** in the definition of qadzaf because it views the equal status of all the people of Aceh who are under the auspices of the Unitary State of the Republic of Indonesia (NKRI) without recognizing differences in social status and religious level. All people have the right to equal protection from the State. Both physical and psychological protection. In this discussion of jarimah qadzaf, the protection referred to is protection from defamation. Thus, in this definition of qadzaf there is a change in the application of the law to individuals, namely not including the word **المحصنات** because it views all the people of Aceh as equal without distinguishing between social status, this is what is called 'illat tasyri'i in ta'liliyyah reasoning with the 'illat tasyri'i approach.

Based on the description above, it can be seen that there are two pillars of qadzaf, namely the act of accusing adultery and the presence of a perpetrator. Meanwhile, the condition is that there is opportunity (time). All these conditions and pillars have been summarized in the definition of zina made by the Qanun jinayat in Aceh.

3. Qadzaf perpetrators

The perpetrators of qadzaf consist of two variants, namely mukallaf and children. What is meant by mukallaf is a person who has reached puberty (adult) and has sound mind. Meanwhile, what is meant by child in the qanun is a person who has not reached the age of 18 years and is not married. The verse that indicates the perpetrator of qadzaf in the Qur'an is a fragment of Surah An-Nur verse 4: **وَالَّذِينَ يَزْمُونَ** (and those who accuse of adultery).

Further explanation about the perpetrators can refer to the perpetrators in the discussion of rape cases which were discussed previously, because the perpetrators in these three jarimah are relatively the same, namely they are both mukallaf, except that in adultery children are categorized as perpetrators. The difference is whether there are victims or not. In the case of adultery, there is no victim because adultery is committed on a voluntary basis. So both parties are called perpetrators. In contrast to jarimah qadzaf, there is a perpetrator, namely the person accused of adultery, and there is also a victim who is harmed, namely the person accused of adultery. However, as explained in the definition, victims are not limited to al-muhsanat because they view that all people have equal status before the law, without distinguishing between social status, race and religion.

⁴ Qanun Aceh Nomor 6 Tahun 2014 Bab 1 Pasal I, angka 31

⁵ Muhammad Ali al-Syaibani, *Tafsir Ayat al-Ahkam Min al-qur'an al-Kari'm*, Juz II, hlm. 42.

Based on the flow of the description above, it is necessary to create conditions and pillars for qadzaḥ perpetrators as benchmarks to determine who can be categorized as qadzaḥ perpetrators. There is only one requirement for the perpetrator, namely the potential to commit qadzaḥ. Meanwhile, there are two pillars of perpetrators, namely, being amukallaḥ and being proven to have committed qadzaḥ. If these conditions and pillars have been realized then a person can be said to be a perpetrator of qadzaḥ.

4. Proof

Every criminal or criminal act is always threatened with sanctions or 'uqubat. However, every person suspected of committing a criminal act is not immediately executed, especially as there are parties who take the law into their own hands. People who are suspected of having committed a criminal offense can only be sentenced to sanctions or 'uqubat' if they are found to have been proven guilty by the authorities with valid evidence.

Aceh Qanun Jinayat Article 59 explains, "in the event that a husband or wife accuses their partner of committing adultery, they can submit a complaint to a judge and use an oath as evidence."⁶ The proof mechanism for this accusation of adultery begins with a submission made by the husband or wife to the Sharia Court that their partner has committed adultery. Then the court processes the case and then continues it to trial. The evidence used by the accuser is an oath whose oath mechanism is regulated in Article 60 paragraph (1) to paragraph (4) and 61 paragraph (1) to paragraph (5). The author views that proof of accusations of adultery filed by a husband or wife using oath evidence as in the article above, is based on the word of Allah in Surah an-Nur verse 6 which reads:

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ (6) وَالْخَامِسَةَ أَنْ
لَعَنَتِ اللَّهُ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ (7) وَيَذَرُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ (8) وَالْخَامِسَةَ أَنْ
غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ

Meaning: And those who accuse their wives (of adultery), even though they have no witnesses other than themselves, then each person's testimony is to swear four times in the name of Allah, that indeed he is one of the truthful people. And he swears that Allah's curse will befall him if he is one of those who lie. And the wife will escape punishment if she swears in the name of Allah four times that her husband is a liar. And the fifth vow that God's wrath will befall her if her husband is an honest person.⁷ [Q.S. An-Nur: 6-9]

In terms of proving accusations of adultery, the verse above recommends oath as evidence. However, before taking the oath, the accuser may bring in 4 (four) witnesses for his accusation as stated in Surah An-Nur verse 4. However, this is not regulated by the Qanun. So does the qanun go beyond paragraph 4 of Suarat an-Nur? the answer is definitely no. Because the content of this verse has been accommodated in the definition of qadzaḥ in the qanun. The Qanun states in the definition that what is meant by qadzaḥ is an accusation of someone's adultery without bringing in 4 (four) witnesses. If you can bring in 4 witnesses, it means it's not qadzaḥ. Therefore, in proving, the qanun directly uses oaths as legal evidence, rather than inviting 4 witnesses.

First of all, what is interesting to discuss in the verse above is the use of the letter fa' in the verse فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ. As is known in the study of Arabic, the letter fa' is included in the category of at}af letters, namely connecting sentences between one sentence and another sentence.⁸ In the verse above, the sentence that is connected is a verse fragment لَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ with verse fragments فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ. Meanwhile, one of the functions of the letter fa' is to show the meaning of order or order. This means that the sentence after fa' is a continuation or sequence of the sentence before fa'. So it can be concluded that the oath process to prove the accusation or what is known as li'an is a further process after the accuser cannot bring in four witnesses (which are already included in the definition of qadzaḥ). This understanding can be taken from the meaning of manthuq or like the an-nas verse.

⁶ Qanun Aceh Nomor 6 Tahun 2004 Pasal 59

⁷ Q.S. An-Nu>r ayat 6-9.

⁸ Abdullah bin Abd Rahma al-'Aqi>li> al-Hamda>ni>, *Syarh} Ibn 'Aqi>l ala> Alfiah Ibn Ma>lik*, Jilid II, cet ke-20, Kairo: Da>r at-Tura>s}, 1980, hlm. 200.

Therefore, the author can confirm that the istinbat method used is the lugawiyyah method with a manthuq meaning approach or like an-nash (written meaning).

Apart from being obtained from this verse, the formulation of the qanun above can also be obtained from the hadith which explains the reasons for the revelation of the verse about li'an above. This verse was revealed when Hilal bin Umayyah's friend accused his wife of adultery with Syarik bin Samha'. Hearing the accusations and complaints from Hilal bin Umayyah's friend, Rasulullah then said:

أَلْبَيِّنَةُ وَالْأَحَدُ فِي ظَهْرِكَ

Meaning: Bring witnesses, if not then your back will be hit by legal penalty.

Hearing Rasulullah's answer, Hilal bin Umayyah's friend felt dissatisfied and then asked again. The Prophet also answered with the same answer. Then Hilal bin Umayyah's friend said, 'By the One who sent you to bring the truth, I am a righteous person and I am sure that Allah will reveal a verse that will free me from the scourge.' 4 (four) witnesses regarding his slanted accusation (qadzaf) against his own wife.⁹ Indirectly, the above hadith confirms that li'an and qadzaf are two things that are related to each other. Li'an can occur if there was previously a qadzaf that cannot be proven by witnesses. That is why in the fiqh books, discussion of li'an is always combined with discussion of qadzaf, as in the Qur'an which places the discussion of li'an after the discussion of qadzaf.

Regarding the explanation of the process of proving qadzaf with an oath (li'an) as mentioned in Article 59, the Qanun jinayat in Aceh details it in Article 60 paragraph 1 to Article 61 paragraph 2. It seems that the verification process explained in the Qanun is the meaning of manthuq or is like an-nashs} from the verses of the Qur'an about li'an above, namely verses 6 to verse 9 of Surah an-Nur. The three verses in Surah al-Nur are exactly the same as the two articles in the qanun which explain that the oath in question is carried out in two stages. First, the oath stage carried out by the accuser. Next, the defendant takes an oath. Each accuser and accused must swear five times. This is confirmed in qanun Article 60 paragraph (1) which says, "The oath as intended in Article 59 is made in front of a judge in the name of Allah 5 (five) times." Meanwhile, the detailed process is as follows:

First, the accuser first took an oath by declaring that his accusation was true, namely that he had actually seen the accused commit adultery with another person. This oath was carried out four times. Qanun Article 60 paragraph 2 states, in the first to 4th (fourth) oath, the accuser states that he has seen his wife or husband committing adultery. This oath process can be understood in manthuq or like an-nashs} from the verse fragment:

فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ

Sekilas, ayat di atas tidak bisa dikatakan sebagai sumber hukum dari apa yang tertera dalam qanun Aceh Pasal 60 ayat 2. Alasannya karena dalam qanun Aceh Pasal 60 ayat 2 di atas menggunakan bahasan sumpah atau "yamin". Sedangkan redaksi yang digunakan di dalam ayat tersebut adalah kata *syahadah* yang artinya persaksian, bukan sumpah. Maklum diketahui bahwa syahadah dan sumpah memiliki perbedaan konsekuensi dan dampak hukum yang berbeda.

At first glance, the verse above cannot be said to be the legal source of what is stated in the Aceh qanun Article 60 paragraph 2. The reason is because in the Aceh qanun Article 60 paragraph 2 above uses the discussion of oaths or "yamin". Meanwhile, the word used in this verse is the word *shahadah*, which means testimony, not an oath. It is understood that the *shahadah* and oath have different legal consequences and impacts.

However, if studied carefully and in depth, we will come to the conclusion that the Aceh qanun Article 60 paragraph 2 fully refers to this verse. The meaning as stated in the Aceh qanun is concluded by turning the meaning of *shahadah* into another meaning, known as the takwil¹⁰ process. In the study of Ushul Fiqh, it is known that the pronunciation of *shahadah* is the pronunciation of *dhahir*, namely a pronunciation that has another meaning that is rarely used.¹¹ In this case, another meaning of the word *shahadah* is an oath.

⁹ Baca hadits lengkapnya dalam Ahmad bin Husain Abu Bakar al-Baihaqi>, *Sunan al-Shaghir*, Juz III, hlm. 144.

¹⁰ Abu> al-Ma'a>li> al-Juwaini atau yang lumrah dikenal Imam al-Haramain, *Matn al-Waraqat*>, hlm, 13.

¹¹ *Ibid*.

The next question is what are the indications or evidence that the word shahadah in the verse is diverted to the second meaning (oath) even though it clearly says that the takwil process can only be carried out if there is an argument that requires a diversion of meaning. The answer can be found in surah al-Munafiqun verse 1 and verse 2. In the first verse of surah al-Munafiqun Allah says:

إِذَا جَاءَكَ الْمُنَافِقُونَ قَالُوا نَشْهَدُ إِنَّكَ لَرَسُولُ اللَّهِ وَاللَّهُ يَعْلَمُ إِنَّكَ لَرَسُولُهُ وَاللَّهُ يَشْهَدُ إِنَّ الْمُنَافِقِينَ لَكَاذِبُونَ

Meaning: When hypocrites come to you (Muhammad), they say, 'We acknowledge that you are the Messenger of Allah and Allah knows that you are His Messenger.' And Allah witnesses that the hypocrites are truly lying.¹²

The verse above outwardly uses the word yasyhadu which means to testify. However, the word yasyhadu in the verse above cannot be left as it is outwardly, but must be interpreted as an oath. This can be proven by the word of Allah in the next verse. In the next verse Allah says:

اتَّخَذُوا أَيْمَانَهُمْ جُنَّةً فَصَدُّوا عَنْ سَبِيلِ اللَّهِ إِنَّهُمْ سَاءَ مَا كَانُوا يَعْمَلُونَ

Meaning: they make their oaths a shield. Then they obstruct people from the path of Allah. It's really bad what they did.¹³

This second verse, is the answer to the first verse above. Whereas in the second verse, God no longer uses the word YasyHadu, but replaces it with the word Aiman. That means the purpose of the word YasyHadu in the first verse is Aiman, as in the second verse.

After swearing to state that he really saw his partner committed adultery, the suspicion then vowed for the fifth time that he was ready to get a curse from God when he lied in his oath. Qanun Aceh Article 60 paragraph 3 states, 'In the last oath or 5 (five) husbands stated that he was willing to accept God's curse in the world and in the hereafter if he lied with his oath.'¹⁴ This article is in istinbath or obtained from a mantuq or like an-nas fragments of the verse that reads:

وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ

Meaning: And the oath of the sentence that Allah will happen if he is one of those who lie.¹⁵

The editors mentioned in this verse only apply if the accuse of the husband is a husband. This is evidenced by the use of dhamir or pronouns in the verse. It is clear that the above verse uses Dhamir Mudzakkar or male pronouns, namely on fragments of verse عَلَيْهِ. In addition to the use of Dhamir Mudzakkar, which indicates that the editor above specifically for the husband is the use of the word الْكَاذِبِينَ. In Arabic grammatical science, the word is known as Jama 'Mudzakkar Salim, the word Jama' specifically for men.

Whereas the editor of the fifth oath if the suspicion is a wife, explained in the Qanun Jinayat in Aceh Article 60 paragraph (4). The article reads, "In the last oath or 5 (five) wives state that he is willing to accept God's wrath in the world and in the hereafter if he lies with his oath." The difference in the fifth oath carried out by the husband with the fifth oath carried out by the wife is a consequence that will be received if they lie. The consequence for the husband in his oath is God's curse as in Article 60 paragraph (3). While the consequences for the wife are God's wrath as in Article 60 paragraph (4).

Actually the editor of the oath carried out by the wife as a suspicion as above was never explained in the Koran. The Koran only explains the form of the editor of the husband's oath as a suspension and explains the editor of the wife's oath as the accused party. Whereas if the accuse of the wife or the accused party is the husband, the Qur'an does not explain it. That is why, there are some scholars> saying that Li'an can only happen if the accusation is the husband and the accused party is a wife. In addition, this opinion also argued that the verse about Li'an came down to answer the case of Hila> L bin Umayyad's accusation of his wife, as explained at the beginning. In a rule it is explained that the verses of the Qur'an must always be understood based on the cause of the verse. In a kadiyah mentioned:

¹² Q.S. al-Munafiqun ayat 1.

¹³ Q.S. al-Munafiqun ayat 2.

¹⁴ Qanun Aceh Nomor 6 Tahun 2014 Pasal 60 ayat 3.

¹⁵ Q.S. al-Nur ayat 7.

willing to accept Allah's curse in the world and in the afterlife if he lied with this oath.²³ The requirement for the accused (wife) to swear four times is stated in verse 9 of Surah an-Nur:

وَيَذُرُّ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ

Meaning: *And the wife will escape punishment if she swears in the name of Allah four times that her husband is a liar.*²⁴

The oath as referred to in the paragraph was taken four times, as a comparison to the oath on the accusation of adultery made by the accuser. That is what is meant by Article 61 paragraph (2) above. Furthermore, related to the argument that explains the redaction of the oath of the five wives as accused parties, it is contained in the Al-Qur'an, verse 9 of Surah an-Nur. Allah says:

وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ

Meaning: *And the fifth oath that Allah's wrath will befall her if her husband is an honest person.*²⁵

Proof that this verse only explains the wife's position as the accused party is the redaction *إِنْ كَانَ مِنَ الصَّادِقِينَ*. As you understand, the oath taken by the accused is not to state or claim something, but rather to deny the oath (claim) of the accuser.

What differentiates the oath of the accused party from the oath of the accuser is the function or content of the oath being said. Meanwhile, the rest, namely the process, amounts, legal extraction methods and others are the same. The oath taken by the accuser is to claim or establish the charge of adultery (اثبات الزنا). Meanwhile, the content of the accused's oath is to deny the accuser's alleged claims (نفي الزنا).

The explanation above shows that the reasoning used by the Qanun Jinayat in Aceh, especially the article on qadzaf, in understanding the propositions uses approaches such as an-nash or manthuq, in iqtidha' or iqtidha' an-nash and the ta'liliyyah method.

5. 'Uqubat Qadzaf

Examined from the perspective of maqashid sharia, qadzaf punishment is prescribed to protect a person's honor or defamation (hifdh al-'irdh). It is known that hifdh al-'irdh is one of the most urgent goals of Islamic sharia or known as the parent of maqashid sharia (umm al-maqashid).²⁶ This means that qadzaf punishment is a teaching to uphold human dignity and dignity.

The types of 'uqubat or sanctions that exist in cases of accusations of zina or qadzaf are divided into three types, namely had qadzaf, had zina, and ta'zir punishment. An explanation of the three types of punishment is as follows.

The first punishment is had qadzaf. This punishment is given to people who commit judimah qadzaf (accusers of adultery and cannot bring in 4 witnesses). The Qanun states, "every person who deliberately commits qadzaf is threatened with 'uqubat hudud whipping 80 (eighty) times".²⁷ *This 'uqubat of 80 lashes is based on the word of Allah:*

وَالَّذِينَ يَزُمُونَ الْمُهَصَّنَاتِ تَمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً

Meaning: *And those who accuse (adultery) of good women and they do not bring four witnesses, then they will be beaten 80 times. (Q.S. an-Nur ayat: 4)*

The author views that the qanun understands this verse using a manthuq approach or like an-nash, with the meaning that the verse is understood explicitly. So the qanun threatens perpetrators of jarimah qadzaf with 'uqubat 80 lashes.

²³ Qanun Aceh nomor 6 Tahun 2014 Pasal 61 ayat (2).

²⁴ Q.S. al-Nur ayat 9.

²⁵ Q.S. An-Nur ayat 9.

²⁶ Jamal al-Din Athiyah, *Nahwa Taf'i>l Maqasid asy-Syari>'ah*, Damaskus: Da>r al-Fikr, 2003, hlm. 124.

²⁷ Qanun Aceh Nomor 6 Tahun 2014 tentang Hukum Jinayat Pasal 57 ayat (1)

In the verse, the word **المحصنات** is included in the 'amm' pronunciation category, because it uses a plural sentence which is ma'rifized with ال.²⁸ Thus, this verse is not only specific to cases of accusations of adultery against other people (اجنبي). This verse also covers cases of adultery accusations against mahrams, so the punishment is also the same, namely if they cannot bring four witnesses then they are threatened with had qadzaf.²⁹

The perpetrator of jarimah qadzaf is obliged to swear before the judge (as previously explained) that he is true in his accusation. If the person concerned does not want to take the oath, they will be threatened with 'uqubat qadzaf. The Qanun states "if a husband or wife who accuses their partner of committing adultery is not willing to take the oath as intended in paragraph (2) then he will be sentenced to 'uqubat qadzaf."³⁰ According to the author, this formulation is based on the qadzaf verse of Surah an-Nur verse 8 through a mafhum mukhalafah approach. The verse in question reads:

وَيَذُرُّ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ

Meaning: And the wife will escape punishment if she swears in the name of Allah four times that her husband is a liar.³¹

This Manthuqayat states that a person can be free from the charge of qadzaf if he is willing to take an oath. Thus, the meaning of this verse is that if he does not want to take the oath, he will be sentenced to had qadzaf.

This is in accordance with the sabab wurud hadith li'an that Hilal bin Umayyah's friend accused his wife. It is explained that the first process requested by the Prophet was to present four witnesses and if this was not possible then Hilal bin Umayyah's friend would be sentenced to had qadzaf. However, it turns out that Hilal's friend said that he was sure that Allah would provide a solution other than bringing in four witnesses to be free from punishment. Simultaneously with this incident, Allah revealed the li'an verse as a way out for Hilal bin Umayyah's friends to be free from the punishment of had qadzaf. The Prophet then said:

ابشر يا هلال قد جعل الله لك فرجا ومخرجا

Meaning: Be happy, O Hilal! Indeed, Allah has provided a way out (to be free from this punishment).³²

Combining the qadzaf verse and the context of the hadith above with the context of the li'an verse, it can be concluded that there are two ways to get free from the hadith punishment. First, invite four witnesses, this method is obtained from the qadzaf verse above, namely Surah an-Nur verse 4 through the understanding of mukhalafah approach. Second, swearing li'an is taken from the manthuq of Surah An-Nur verses 6 to 9, the revelation of this verse begins with the hadith about Hilal friends above, the meaning of the an-nash signal from the hadith is that Hilal friends are free from the hadith of qadzaf .

Furthermore, the form of had qadzaf punishment referred to is being whipped eighty times. In the qanun it is said, "Everyone who deliberately commits qadzaf is threatened with 'uqubat hudud whipping 80 (eighty) times."³³ This article was produced (istinbath) from the qadzaf verse of Surah an-Nur verse 4 with an approach to the meaning of manthuq or like an-nash. In this verse, Allah explains the form of punishment using words **ثمانين جلدة**. In linguistic studies, this word is included in the category of mufassar pronunciation, namely pronunciation that only has one possible meaning and no possibility of having another possible meaning.³⁴ This means that the total punishment for had qadzaf is eighty lashes, no less and no more (not 79 and not 81).

²⁸ Abu> Yahya Zakariyya> al-Ans}a>ri>, Ga>yah al-Wushul Syarh Lubb al-Ushul, Surabaya: al-Hidayah, TT, hlm 81.

²⁹ Muhyiddin bin Syaraf al-Nawawi>, al-Majmu>' Syarh al-Muhaz/z/ab, Mesir: Maktabah Tauqi>fiyyah, Juz XXIX, 2016, hlm. 179.

³⁰ Qanun jinayat Aceh Pasal 61 ayat (4)

³¹ Q.S. al-Nur ayat 8.

³² Abu> Abdillah Ahmad al-Syaibani>, Musnad al-Imam Ahmad bin Hanbal, Madi>nah: Muassasat ar-Risa>lah, 2001, Juz 4, hal. 35.

³³ Pasal 57 ayat (1)

³⁴ Abu> al-Ma'a>li> al-Juwaini> atau lebih dikenal dengan sebutan Imam al-Haramain, Matn al-Waraqat, Surabaya: al-Hidayah, TT, 13.

The second type of punishment explained by the Qanun Jinayat in Aceh in the Jarimah Qadzaf chapter is the punishment for adultery. The law of zina can apply if the accused does not want to respond to the li'an oath made by the accuser. Aceh Qanun Article 61 paragraph (3) states, "If the husband or wife accused of committing adultery is not willing to take the oath as intended in paragraph (1), he will be subject to 'uqubat zina' as intended in Article 33 paragraph (1)."³⁵ This conclusion is obtained from the interpretation of the li'an verse which explains the function of the accused party's li'an oath, namely Surah an-Nur verse 8. Fragment of the verse *يدراً عنها العذاب*. dalam ayat tersebut, kata *adzab* yang dimaksud adalah hukuman *had* zina.³⁶

As explained at the beginning, the function of the li'an oath taken by the accuser is as a substitute for the four witnesses. When the accuser is willing to take the li'an oath, the accused party is automatically proven to have committed adultery. To dismiss proof of adultery on the basis of the accuser's false oath, the accused party can reply to the false oath made by the accuser. Thus it can be concluded that the function of the li'an oath taken by the accused is to abort the sentence of adultery which is proven on the basis of the li'an oath by the accuser..³⁷

The third punishment is ta'zir punishment as an additional punishment for people who repeat the action of jarimah qadzaf. The Qanun states, "every person who repeats the act as intended in paragraph (1) is threatened with 'uqubat hudud whipping 80 (eighty) times and can be added to 'uqubat ta'zir a fine of a maximum of 400 (four hundred) grams of pure gold or 'uqubat ta'zir imprisonment for a maximum of 40 (forty) months."³⁸

In the case of repeated qadzaf, it appears that there is a double 'uqubat, namely whipping 80 times and ta'zir as in the qanun above. If you pay attention, the contents of this qanun combine the opinions of Syafi'iyah and Malikiyyah, where Syafi'iyah is of the opinion that people who carry out qadzaf and have been restricted then repeat it.³⁹ *qadzaf, then it is enough just to do ta'zir. In contrast to the Malikiyyah, they argue that if someone performs qadzaf and is ta'zir then repeats the qadzaf again, then he is restricted again.*⁴⁰

The istinbath 'uqubat ta'zir method in the qadzaf finger is the same as the istinbath 'uqubat ta'zir method in the finger of adultery and rape, namely using the istishlahiyyah method. Regarding how the istishlahiyyah reasoning method used in 'uqubat ta'zir on the subject of adultery and rape can refer to the explanation of this problem which was discussed previously.

CONCLUSION (11 PT)

Every product of Islamic law must be produced through what is called legal reasoning (istinbath). One of the products of Islamic law with a modern and phenomenal background is the legal norms regulated in the Aceh qanun jinayat, especially regarding the qadzaf (criminal act) in four terms, namely definition, perpetrator, proof, and uqubat. The istinbath method for each of the four things is as follows:

1. Definition

Aceh Qanun Number 6 of 2014 Chapter 1 Article I: Qadzaf is accusing someone of committing adultery without being able to present at least 4 (four) witnesses. In this definition of qadzaf there is a change in the application of law to individuals, namely not including the word *المحصنات* as in the verses of the Koran because it views all Acehnese people as equal without differentiating social status. Thus, the formulation of this qanun was formulated using the istinbath method of reasoning *تعليقية* through approach *علة تشريعي*

2. Performer

³⁵ Qanun jinayat Aceh Pasal 61 ayat (3)

³⁶ Abu> Bakar Muhammad bin Abdillah atau yang dikenal dengan julukan Ibn al-'Arabi>, *Ah>ka>m al-qur'an*, Juz III, hlm. 1346.

³⁷ Muh>yiddin bin Syaraf al-Nawawi>, *al-Majmu>' Syarh> al-Muhaz>z/ab*, Mesir: Maktabah Tauqi>fiyyah, Juz XXIX, 2016, hlm. 181

³⁸ Qanun Jinayat Aceh Pasal 57 ayat (2)

³⁹ Kata "mengulangi" ini oleh qanun sudah dijelaskan dalam Pasal 1 angka 36: *Mengulangi adalah melakukan jarimah yang sama dengan jarimah yang sebelumnya sudah dia lakukan dan sudah diputus oleh Mahkamah Syar'iyah kabupaten/kota.*

⁴⁰ Wahbah, *al-Fiqh Isla>mi> wa Adillatuh*, Juz VII, hlm. 5404-5405

The perpetrators of qadzaf consist of two variants, namely mukallaf and children. What is meant by mukallaf is a person who has reached puberty (adult) and has sound mind. Meanwhile, what is meant by child in the qanun is a person who has not reached the age of 18 years and is not married. (Qanun Aceh Number 6 of 2014 Chapter 1 Article I number 40) The practice of jarimah qadzaf is formulated using the reasoning method لغوية through a meaning approach منطق or عبارة النص according to verse

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءِ

3. Proof

The proof of the qadzaf finger is formulated using the لغوية reasoning method through an approach to the meaning of منطق or عبارة النص according to Surah An-Nur verses 6-9.

There are also those who use the تعليلية method with the علة قياسي approach, namely in the wife's oath as an accuser which is allusion to the husband's oath as an accuser.

'Uqubat

Every person who deliberately commits qadzaf is threatened with 'uqubat hudud' whipping 80 (eighty) times (Qanun Aceh Number 6 of 2014 concerning jinayat law article 57 paragraph 1) 'Uqubat jarimah qadzaf is formulated using the reasoning method لغوية through the mantuq approach or عبارة النص

Every person who repeats the act as intended in paragraph (1) is threatened with 'uqubat hudud' 80 (eighty) lashes and can be added to 'uqubat ta'zir' a fine of a maximum of 400 (four hundred) grams of pure gold or 'uqubat ta' imprisonment for a maximum of 40 (forty) months. (Qanun Jinayat Aceh Article 57 paragraph 2) Meanwhile 'uqubat ta'zir in qadzaf cases uses the استصلاحية

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