

## Penal Mediation Against *Khalwat* Settlement According to Customary Law in Aceh

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### Abstract

The case of *khalwat* or pairing between a man and a woman who are not mahram is one of the violations regulated in Qanun Aceh Number 6 of 2014 concerning the Law of *Jinayat*. However, in practice, the settlement of *khalwat* cases in Aceh is often resolved through customary channels, utilizing the penal mediation approach, in line with Aceh Qanun Number 9 of 2008, which concerns the Development of Customs and Traditions. This study aims to analyze how penal mediation is applied in the settlement of *khalwat* cases, as per customary law in Aceh, and the extent to which it contributes to creating restorative justice. The method used is a literature research with a juridical-normative and sociological approach to the literature and related laws and regulations. The results of the study show that penal mediation in the settlement of *khalwat* prioritizes social recovery, peaceful settlement, and family values rather than formal sanctions. However, this practice faces obstacles such as the absence of standard procedures and weak coordination between customary institutions and law enforcement officials. Therefore, stronger regulations and supervision are needed to ensure that penal mediation runs fairly, legally, and follows applicable legal principles.

**Keywords:** Penal Mediation, *Khalwat*, Customary Law, Qanun *Jinayat*

### Introduction

Aceh is the only province in Indonesia that has a specialization in the application of Islamic law, including in the judicial system and criminal law enforcement. This privilege provides space for the existence of customary law and the simultaneous application of Islamic law, creating a unique and complex pluralistic legal system (Anshari & Aminah, 2022). One form of sharia violation that often occurs and is of public concern is the deed of *Khalwat*, which is a dubious act between a man and a woman who are not mahram in a closed place that can cause fitnah. This act is not only considered a violation of religious norms, but also of local social and customary norms. In the context of Aceh, *Khalwat* is processed not only through formal legal channels, but also through a restorative approach known as Criminal mediation based on customary law (Iskandar & Alidar, 2020). This practice is an alternative to conflict resolution that prioritizes restorative justice and local values, while reducing the burden on formal judicial institutions.

The progression of restorative justice in law enforcement in Indonesia has recently received increased attention. This approach focuses on restoring relationships between perpetrators, victims, and society, instead of focusing only on punishing perpetrators. (Jaenudin & Nisa, 2024). Concept Criminal mediation is one of the concrete forms of this approach. In Aceh, the existence of customary institutions and a strong community value system has made it possible to implement Criminal mediation in the settlement of matters of *Khalwat*. In some cases, settlement through customary mediation is even more effective in creating a sense of justice in the community than formal justice that is procedural and often does not pay attention to the social context of the perpetrator. Criminal mediation is carried out by *gampong* officials such as *Imum Mukim*, *Keuchik*, *Tuha Peut*, and local traditional leaders, who have strong social and religious legitimacy in resolving customary-based legal issues and sharia (Usqo & Harahap, 2024).

Application of criminal mediation in the context of a violation of *Khalwat* is inseparable from the social and cultural dynamics of the people of Aceh. The people of Aceh have a deep-rooted local wisdom, which supports conflict resolution based on deliberation and kinship (Natsir & Fuadi, 2023). This approach not only resolves legal cases, but also repairs social relations that have been disrupted by the act of *Khalwat*. In this case, customary law functions as a means of social transformation that ensures community cohesion. On the other hand, it emphasizes that Criminal Mediation in Aceh has symbolic and educational aspects that are important in instilling moral values in actors and society (Nurdin, 2017).

However, the existence of penal mediation in the settlement of *khalwat* cases also poses various challenges, both from juridical, social, and administrative aspects. From the legal aspect, there is a normative dilemma related to the relationship between customary law, sharia qanun, and national law. For example, Qanun Aceh Number 6 of 2014 concerning the Law of *Jinayah* has explicitly stipulated that the violation of *khalwat* is a criminal act of *jinayah* that can be subject to *uqubat ta'zir* in the form of whipping, a gold fine, or imprisonment. In this case, penal mediation is often considered contrary to the provisions of the qanun if it does not get approval from the *Wilayatul Hisbah* or the Sharia Court. So that the insynchronization between customary law and Sharia Qanun can weaken legal authority and create legal uncertainty.

In addition, the effectiveness of penal mediation also depends on the capacity of human resources for customary law enforcement, as well as the level of public understanding of their rights and obligations in resolving cases. There are still many *gampong* officials who have not received adequate legal training, so in practice, penal mediation is often not carried out under the principles of restorative justice. This also has the potential to cause social pressure on the victim and the perpetrator, especially in cases that have a sensitive dimension, such as *khalwat*. In this context, it is

important that there is synergy between local governments, customary institutions, and formal law enforcement agencies to formulate collaborative mechanisms that are able to integrate customary law with formal legal systems without neglecting individual human rights.

On the one hand, the application of penal mediation in *khalwat* cases is more accepted by the community because it is considered more "humanizing" of the perpetrator and victim. However, it also highlights the potential for abuse of authority in customary mediation if there is no clear supervisory mechanism. Therefore, it is important to develop a legal framework that supports the implementation of penal mediation based on the principles of substantive justice, not just legal formalism. The success of penal mediation is highly dependent on the social legitimacy and mediation ability of indigenous officials in maintaining neutrality and ensuring equality between the parties.

Meanwhile, the Criminal mediation against the *Khalwat* is also influenced by the public's perception of the perpetrator and the victim. In a conservative Acehese society, the perpetrators of *Khalwat* often experience prolonged social stigma despite having resolved cases through customary mediation. In this regard, the concept of restorative justice becomes very important, not only to resolve the case, but also to restore the honor and social position of the parties involved (Ropei, 2022). Criminal mediation, Custom-based activities accompanied by social reintegration mechanisms, can help reduce negative psychological effects for perpetrators and victims.

On the other hand, the existence of qanun as a source of positive law in Aceh opens up opportunities for integration between customary norms and sharia. In practice, several regions in Aceh have succeeded in formulating a mechanism for resolving *khalwat* cases involving customary and sharia elements harmoniously. The existence of flexibility in the implementation of Qanun allows law enforcement officials to use a restorative justice approach in certain cases, including *khalwat*, as long as it does not conflict with the basic principles of Islamic law. This is a meeting point between the need for law enforcement effectiveness and the local values of the community.

Furthermore, the relevance of penal mediation in the context of *khalwat* violations can also be seen as part of efforts to decolonize the law and empower local communities. The dominance of formal law in colonial heritage is often unable to reach the root of social problems that occur at the community level. Therefore, custom-based approaches such as penal mediation are a form of epistemological resistance to the hegemonization of the Western legal system and, at the same time, an effort to revitalize local laws that are more adaptive to the social dynamics of society.

By considering these various factors, this research is important to answer the fundamental issues related to the effectiveness, legality, and sustainability of penal mediation in resolving *khalwat* cases according to customary law in Aceh. This study aims to examine how *the mechanism of* penal mediation is carried out in various regions in Aceh, what is the position of customary law within the framework of the national legal system and sharia qanun, and the public's perception of the settlement of *khalwat cases* through penal mediation. It is hoped that the results of this research can contribute to the development of a just, sustainable case resolution model, following local values as well as national and international legal principles.

## Research Methods

This study uses a qualitative approach with a literature study method (library research). This method was chosen to analyze various scientific literature related to the concept of penal mediation, *khalwat* violations, Acehnese customary law, and the implementation of *qanun jinayat*. Literature research aims to identify, review, and synthesize relevant ideas, theories, and results of previous research, to build a complete conceptual framework regarding the role of customary law in resolving *khalwat* cases in Aceh through penal mediation (Wijaya et al., 2025).

The data sources in this study include secondary literature in the form of books, laws and regulations, Acehnese qanun, customary documents, and articles from scientific journals. The journals were selected purposively based on thematic relevance with research focus, especially those that discuss Islamic criminal law, the customary justice system, and restorative justice approaches. The collected data were analyzed descriptively and qualitatively with a normative and sociological approach, which considered the values of law, justice, and local wisdom of the Acehnese people.

The steps of data analysis are carried out through the stages of literature identification, theme categorization, and content analysis. The researcher mapped the main arguments from various sources to see the patterns of *khalwat* settlement through customary law, the effectiveness of penal mediation, and the normative challenges faced in its implementation. The results of this analysis are then used to formulate theoretical arguments and provide conceptual recommendations for strengthening penal mediation in the plural legal system in Aceh. With this approach, it is hoped that the research will be able to make a theoretical and practical contribution to the development of a restorative justice-based case resolution model in a local context.

## Discussion/results

### A. Provisions for Settlement of *Khalwat* in Aceh

Aceh, as a special region in Indonesia, has special authority in managing its legal system, including in the application of Islamic criminal law through *Qanun*

*jinayat* (Pradana et al., 2024). One of the acts that is explicitly regulated in this law is the act of *khalwat*, which is the act of pairing between a man and a woman who are not mahram in a closed place or that can arouse suspicion according to Sharia law. Regulations regarding *khalwat* can be found in Qanun Aceh Number 6 of 2014 concerning the Law of *Jinayat*, which is the basis of Islamic criminal law in the region. In addition, the implementation of customary law that still exists in the Acehnese community is also accommodated through Aceh Qanun Number 9 of 2008 concerning the Development of Indigenous Life and Customs, which regulates the mechanism for coaching, resolving disputes, and implementing customary values in community life. These two qanuns form a layered but integrated legal framework, which allows the settlement of *khalwat* cases to be carried out through formal *Jinayat* channels or customary channels, depending on the circumstances of the case and the approach used.

In Qanun Aceh Number 6 of 2014 concerning the Law of *Jinayat*, the act of *khalwat* is regulated in Article 23 which states that "every person who commits *khalwat* with the opposite sex who is not his mahram is subject to uqubat ta'zir a maximum of 10 (ten) lashes or a fine of a maximum of 100 grams of pure gold or imprisonment for a maximum of 10 (ten) months." This arrangement shows that the act of *khalwat* is categorized as jarimah ta'zir, which is a violation of sharia norms whose punishment is determined by the ruler (*Ulil Amri*) (Zulfadli et al., 2024). This Qanun provides alternative sanctions in the form of whipping, fines, or imprisonment, the implementation of which depends on the decision of the *Mahkamah Syar'iyah* judge after the legal process is formally carried out. Thus, the settlement of *khalwat* cases is normatively directed to the judicial realm, except in certain conditions where non-litigation approaches such as penal mediation can be taken according to the permitted procedures.

However, *Qanun Jinayat* does not rule out the possibility of settlement through customary channels, especially if the act has not entered the formal judicial process, or is still in the preliminary investigation stage. In practice, when a *khalwat* incident is found in the community, the settlement is often carried out through deliberation involving traditional leaders, the families of both parties, and *gampong* officials. If the mediation is successful and the parties agree, then the *khalwat* issue can be resolved without the need to involve the *Syar'iyah* court (*Mahkamah Syar'iyah*). This is in line with the restorative spirit that has developed in the Acehnese legal system, where the restoration of social relations is considered more important than punishment alone (Zulvyla & Anshari, 2024). However, this approach can only be done if it does not contradict the provisions of the qanun and has obtained approval from supervisory authorities such as *Wilayatul Hisbah*.

Meanwhile, Qanun Aceh Number 9 of 2008 concerning the Development of Customs and Customs gives legitimacy to the role of customary institutions in

resolving social cases, including acts of *khalwat*, as long as they are not included in the category of serious crimes that must be handled by formal courts. In Article 13, paragraph (1), it is stated that “Customary institutions can resolve customary cases through deliberation to achieve peace in the community.” This provision provides a legal basis for *gampong* officials such as *keuchik*, *tuha peut*, *imum mukim*, and traditional leaders to carry out mediation or peaceful settlement for acts that are considered to violate community norms, including *khalwat*. This article is also further affirmed in Article 14, which states that customary institutions have the authority to resolve customary violations and other social conflicts that do not conflict with laws and regulations.

The two Qanuns show the existence of normative synchronization between *Jinayat* law and customary law in the context of resolving *khalwat* violations. *Qanun Jinayat* provides a formal legal basis that regulates the types of violations, sanctions, and judicial processes, while the Traditional Qanun provides space for deliberation-based settlements and local values. In this context, penal mediation is an approach that combines legal and social aspects to resolve cases peacefully, restore relationships, and avoid prolonged social stigma against the perpetrator and the family (Lesmana, 2019). Settlement through customary mediation generally includes an apology, compensation, or the delivery of a pledge in front of the community. In some cases, perpetrators may also be subject to social sanctions such as social work or participating in religious activities on a regular basis as part of the moral recovery process.

However, for the settlement of *khalwat* through customary law to run effectively and legally, there needs to be good coordination and reporting to law enforcement officials, especially the *Wilayahul Hisbah* and the *Mahkamah Syar'iyah*. This is important to ensure that the customary settlement process does not contradict legal principles, does not harm the victim, and does not deviate from the provisions of qanun. If the perpetrator or family objects to the outcome of mediation, or if the case is considered to contain elements of sexual harassment, coercion, or violence, then the customary settlement must be abandoned and the case must proceed to a formal legal process. Thus, the distinction between pure *khalwat* and consensual elements and cases containing serious criminal elements is the key in determining the path to settlement.

In the context of implementation, these two qanun are interpreted and carried out in various districts/cities in Aceh. Some regions have a strong customary structure, which allows the settlement of *khalwat* cases to be carried out entirely through the customary approach, while other regions prefer formal channels as a form of strict sharia enforcement (Hayati et al., 2024). This shows the local flexibility in implementing Islamic law in Aceh, which is also a characteristic of the pluralistic legal system. This flexibility needs to be balanced with the standardization of

procedures and supervision so that there are no irregularities or injustices in the settlement of *khalwat* cases.

As an important note, settlement through customary law does not mean ignoring the principle of justice. In fact, in many cases, this approach is more accepted by the community because it takes into account the social background, age of the perpetrator, motive for the act, and its impact on the family. *Khalwat* committed by teenagers, for example, is more suitable to be solved through a coaching and education approach, rather than being immediately subjected to whipping or imprisonment that can ruin their future. This is where indigenous values, which are full of family and tolerance, play an important role in creating restorative justice. Therefore, Qanun Number 6 of 2014 and Qanun Number 9 of 2008 must be understood as two legal instruments that complement each other, not affirm each other.

With the existence of these two qanuns, Aceh has a distinctive and contextual model for resolving *khalwat* cases. However, the successful implementation of this model is highly dependent on the understanding of local authorities, community legal awareness, and support from local governments (Efendi, 2024). Continuous socialization is needed so that the community knows their rights and obligations and understands that customary settlements remain within the legal corridor. Furthermore, the Aceh government needs to establish an evaluation mechanism for the practice of resolving *khalwat* through customary practices to ensure that penal mediation is not abused and still respects sharia values and human rights.

## **B. Penal Mediation Against the Settlement of *Khalwat* According to Customary Law in Aceh**

Penal mediation is a form of restorative justice application in the criminal law system that prioritizes the process of dialogue between perpetrators, victims, and the community to achieve a just, peaceful, and dignified settlement without having to go through a formal judicial process (Flora, 2018). In the context of Aceh, the application of penal mediation to *khalwat* cases (solitary intercourse between men and women who are not mahram in a closed or suspicious place) is very relevant, given the strong role of customary law and local values that support family conflict resolution. This penal mediation is carried out by *gampong* customary institutions consisting of traditional leaders, *keuchik* (village heads), mukim imum, and *tuha peut*. They are trusted as mediators who are able to solve social problems based on customary norms, religion, and collective awareness of the community.

In *khalwat* cases, the penal mediation approach is usually carried out from the early stages, namely when the perpetrator is caught or reported by the community. This process begins with the summoning of the parties (the perpetrator, the perpetrator's family, and the woman's family), then continues with deliberation at the *gampong* hall or *keuchik* house (S et al., 2023). In the deliberation, the party who is

considered to have committed a violation is allowed to explain the motive, chronology, and intention of their actions. Meanwhile, the woman (who is sometimes also considered a victim from a social perspective) and her family also expressed their opinions and feelings about the act. The main purpose of this mediation is not only to resolve the case legally, but also to restore honor, maintain the good name of the family, and ensure that similar acts do not recur.

Acehnese customary law views violations such as *khalwat* not only as a violation against individuals, but also against the social order and dignity of the community. Therefore, customary settlement prioritizes the restoration of social harmony, not retaliation. In many cases, settlement through penal mediation results in agreements in the form of a public apology, a statement of repentance, a promise not to repeat the act, and customary sanctions such as customary fines, social work, or the obligation to attend regular recitation (Suroto & Fadlia, 2020). These sanctions are not intended to punish physically, but as a form of moral and social responsibility to society. This approach is in line with the spirit of *restorative justice*, which emphasizes the restoration of relationships between perpetrators, victims, and society.

The success of penal mediation in Aceh in resolving *khalwat* cases cannot be separated from the strength of the indigenous social system that is still alive and respected. Customary institutions at the *gampong* level have high moral and cultural legitimacy, so decisions made through mediation are often more accepted and obeyed by the community than formal court decisions (Mawar, 2021). In addition, this approach is also considered more flexible, faster, and less costly than a formal legal process. This is especially important in rural areas where access to the judiciary is relatively limited. The people of Aceh tend to prioritize peaceful settlements that avoid prolonged conflicts and maintain harmony between families.

However, the existence of penal mediation in the settlement of *khalwat* must also be understood in the framework of positive law that applies in Aceh, especially Qanun Aceh Number 6 of 2014 concerning the Law of *Jinayat*. In the Qanun, *khalwat* is categorized as *jarimah ta'zir*, which can be subject to *uqubat* in the form of whipping, fines, or imprisonment. This means that, normatively, every act of *khalwat* should be processed through the judicial channels of the *Mahkamah Syar'iyah*. But in practice, many cases of *khalwat* are resolved customarily, especially if the perpetrator is a teenager, has no ill intentions, or if the victim's family wants a peaceful settlement. Therefore, penal mediation becomes a kind of "middle line" between law enforcement and local values, allowing for a more contextual and humanist approach to justice.

Furthermore, Qanun Aceh Number 9 of 2008 concerning the Development of Customs and Customs provides a legal basis for customary institutions to handle social cases such as *khalwat*, as long as they do not conflict with national law and



qanun. The articles in this qanun state that customary institutions have the authority to resolve customary violations through consensus deliberation. In this case, penal mediation is one of the important instruments carried out by customary institutions to reduce conflicts, maintain social stability, and avoid wider psychological and social impacts, especially on women who are often the most affected parties in *khalwat* cases.

However, the practice of penal mediation in *khalwat* cases in Aceh also faces a number of challenges. First, not all *gampong* officials have adequate legal understanding or training on the principles of restorative justice, so in some cases, mediation is carried out in ways that are disproportionate or biased towards one of the parties. Second, because mediation takes place in a small, closed social space, there is sometimes social pressure or intimidation on the victim to accept a peaceful settlement, even though he or she may want a formal legal process. Third, the absence of standard customary mediation procedures causes mediation results not to always be in line with human rights principles, especially in terms of the protection of women and children.

Another challenge is the matter of synchronization between the results of customary mediation and the formal legal system, especially if the case has been reported to the *Wilayatul Hisbah* or the *Mahkamah Syar'iyah*. In some situations, the outcome of mediation is not officially recognized because it is considered legally invalid, even though it has been accepted by the community. This creates ambiguity in the implementation of the law at the local level and can reduce public trust in the justice system. To overcome this problem, an integration mechanism between customary institutions and law enforcement officials is needed, where the results of penal mediation can be reviewed, ratified, or legally recognized as long as they meet the principles of justice, do not contradict qanun, and have the approval of all parties involved.

Despite the obstacles, many studies have shown that penal mediation in resolving *khalwat* in Aceh has been successful in reducing the rate of criminalization, preventing the formation of recidivists, and strengthening the social capacity of the community in handling internal conflicts. Penal mediation also provides space for active participation for the community in the legal process, not just being the object of state legal policy. In the long run, this approach can strengthen social cohesion, accelerate reconciliation, and create a sense of substantive justice at the grassroots level. Therefore, local governments, academics, and customary institutions need to continue to encourage the revitalization of penal mediation as part of the plural legal system in Aceh (Ikhwan & Heikal Daudy, 2019).

In order to improve the quality and accountability of penal mediation, the Aceh government needs to develop technical guidelines or SOPs (*Standard Operating Procedures*) that regulate the stages of mediation, the roles of each party, the

principles of restorative justice, as well as reporting and evaluation mechanisms. In addition, periodic training for *gampong* officials, traditional leaders, and mediation facilitators needs to be carried out so that mediation runs under legal and ethical principles. With these standards and training, the mediation process is not only effective but also protects the rights of each party and ensures transparency and accountability.

In conclusion, penal mediation for *khalwat* cases according to customary law in Aceh is a tangible form of a combination of local values, Islamic justice, and restorative principles that are adaptive to the social context. It serves as an alternative way to resolve cases without having to go through a rigid and time-consuming judicial process. Although not perfect, this approach has proven to make a significant contribution to maintaining the social and moral stability of the Acehnese people. With the right policy support and strengthening the capacity of customary institutions, penal mediation has the potential to become a model of case resolution that can be applied in various other regions in Indonesia, especially those with strong customary structures.

## Conclusion

Based on the above description, it can be concluded that the settlement of *khalwat* cases in Aceh reflects the integration between formal Islamic law through *Qanun jinayat* and customary law-based settlement mechanisms through penal mediation. Qanun Number 6 of 2014 provides a normative basis for the handling of *khalwat* as *jarimah ta'zir* with certain sanctions, while Qanun Number 9 of 2008 opens up space for customary institutions to handle social cases through a deliberative approach that prioritizes family values and recovery. Penal mediation in Acehnese customary law has proven effective in creating restorative justice, avoiding excessive criminalization, and strengthening social cohesion, although its implementation still faces challenges such as the lack of procedural standards and limited understanding of *gampong* officials. Therefore, regulatory support, training, and integrated supervision from local governments and legal institutions are urgently needed so that penal mediation can be carried out proportionately, fairly, and following human rights principles within a pluralistic legal framework in Aceh.

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