

**ANALISIS PELAKSANAAN HUKUMAN CAMBUK TERHADAP TINDAKAN
JINAYAH MAISIR DI ACEH**

**ANALYSIS OF THE SETTLEMENT OF THE WORSHIP PENALTY AGAINST
ACTION OF JINAYAH MAISIR'S IN ACEH**

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ABSTRAK

Pelaksanaan hukum jinayah Islam di Provinsi Aceh hanya berlaku terhadap perbuatan jinayah *maisir* (judi), *khamar* dan *khalwat*, serta *hudud*, sedangkan perbuatan jinayah *qisas* dan *diyat* belum diberlakukan. Penelitian ini menganalisis kasus-kasus *maisir* yang telah diputuskan oleh Mahkamah Syariah Aceh pada tahun 2005 dan 2006 berdasarkan Qanun Provinsi Aceh Nomor 13 Tahun 2003 Tentang Jinayah *Maisir* (Berjudi) yang kemudian pada saat ini telah diberlakukan Qanun Nomor 6 Tahun 2014. Kajian ini menggunakan metodologi kualitatif dengan pendekatan undang-undang dan pendekatan kasus. Kajian ini mendapati mahkamah yang mensabitkan hukuman berkaitan dengan jinayah perbuatan *maisir*, menunjukkan bahawa peruntukan hukuman *ta'zir* ke atas pesalah *maisir* mengikut Qanun Provinsi Aceh Nomor 13 Tahun 2003 Tentang *Maisir* (Berjudi) adalah selaras dengan kehendak *ta'zir* dalam Islam. Disarankan kepada para hakim di mahkamah untuk terus berpegang teguh pada ketentuan Islam dan perundangan yang ada dalam memutuskan perkara-perkara jinayah Syariah di Aceh.

Kata Kunci: Penyelesaian, Sanksi Hukuman Cambuk, Aceh

ABSTRACT

The implementation of Islamic jinayah law in Aceh Province applies only to the actions of jinayah maisir (gambling), khamar and khalwat, as well as hudud, whereas the acts of jinayah qisas and diyat have not been enforced. This study analyzed the cases that were decided by the Aceh Syariah Court in 2005 and 2006 based on Qanun Aceh Province Number 13 of 2003 about Jinayah Maisir (Gambling) which was then currently enacted Qanun No 6 of 2014. The study uses a qualitative methodology with a legal approach and a case approach. This study found that the court, which convicted the court in connection with the jinayah of the maisir act, showed that the allocation of ta'zir punishment on maisir offenders according to Qanun Aceh Province Number 13 of 2003 About Maisir (Gambling) is in line with the requirements of ta'zir in Islam. It is recommended to the judges in the court to continue to adhere to the Islamic and legal provisions that exist in deciding sharia law matters in Aceh.

Keywords: *The Settlement, The Worship Penalty, Jinayah Maisir's, Aceh.*

INTRODUCTION

This study was conducted on the acts of jinayah maisir which took place in 2005 and 2006, although the cases are maisir Prosecutor's case against Ahmad Yani Bin Abdullah and Ismadi Bin Ridwan Salam and the Maisir Case of the Public Prosecutor against Ismail Gadeng who was tried and decided by the Aceh Syariah Court. Aceh Province was enforced Qanun Aceh Province Number 13 of 2003 About Maisir (Gambling)

Now Aceh has enacted Qanun Number 6 of 2014 about Jinayat and Qanun Number 7 of 2013 About Qanun The Law of Jinayat Events. The analysis of the case using qanun Number 13 of 2003 is due to the fact that in the judicial proceedings it is still using the qanun. This study conducted an analysis of the maisir case decided by the Aceh Syariah Court.

RESEARCH METHODOLOGY

This study used qualitative methods with a legal approach or a doctrinal research method. This study will be done by conducting an analysis of the case of the act that has been decided by the Aceh Syariah Court.

JINAYAH MAISIR'S ACT BASED ON QANUN ACEH PROVINCE

The Aceh Syariah Court has jurisdiction only to punish Muslims who commit acts of jinayah maisir (gambling) in Aceh Province only

based on Qanun Aceh Province Number 13 of 2003. The act of jinayah maisir according to the provisions as mentioned in qanun, then what must be observed is about the scope of the jinayah maisir itself. The scope of the maisir jinayah is all forms of activities, acts and circumstances that lead to betting and can result in harm for the betting parties and the persons or institutions who participate in the betting

While the purpose or philosophy of the prohibition of the maisir is found in the consideration of the letters a and b of qanun maisir. The purpose of the prohibition of maisir (gambling) is:

- a. Preserve and protect property/wealth;
- b. Preventing members of the community from committing acts that lead to maisir;
- c. Protect the community from adverse influences arising from the activities and/or acts of maisir;
- d. To increase the role of society in the effort to prevent and eradicate maisir acts.

Apart from the purpose of the prohibition of maisir as mentioned in qanun maisir there is also the purpose of the prohibition of maisir in the consideration of qanun maisir letter a and the letter b which mentions:

- a. that the Special Privileges and Autonomy granted for the Aceh Special District based on Law Number 44 of 1999 and Law No. 18 of 2001, among others in the areas of maintenance of religious life, customary life,

education and the role of Scholars in the setting of district policy;

- b. that maisir includes one of the acts of disobedience which is prohibited in the Shari'a of Islam and other religions and is contrary to the customs that occur in the Aceh community because the act may lead a person to other vices;

Maisir can be defined as an activity or act of a betting nature between two or more parties where the winning party gets paid. It is further explained that the maisir is haram. everyone is forbidden to do the act of maisir. Then each person or agency is prohibited from providing facilities as mentioned in the following statement:

- (1) Every person or company or statutory body is prohibited from maintaining and/or providing facilities to the person who will perform the act of maisir.
- (2) Every person or legal institution or body of effort is prohibited from being a protector against the acts of the maisir.

In addition, government agencies are prohibited from issuing gambling licenses of any kind to any party as arranged in qanun maisir. Every person or community group and community institution is obligated to prevent the occurrence of maisir or gambling. This obligation as mentioned in the qanun that:

- (1) Each member of the community plays a role

in assisting in the prevention and eradication of maisir.

- (2) Every member of the community is required to report to the authorized officer both verbally and in writing upon learning of the existence of a maisir act.

When the perpetrator of the qanun maisir violation as mentioned in articles 5, 6, and 7 is caught by the villagers or citizens of the community, then the perpetrator and the evidence are immediately handed over to the powerful officer. The officer as referred to in qanun maisir is obliged to provide protection and security for the person making the complaint as referred to in Section 9 and/or the person who surrendered the perpetrator/offender as defined in Section 10.¹

The officer who has the authority as referred to in Article 11 when he negligently and/or does not provide protection and security to the complainant, the officer may be prosecuted by the complainant and/or the party who surrendered the perpetrator/offender of the breach. On the mechanism and manner in which the claim as referred to in Article 12 is carried out in accordance with the applicable legal regulations and is tried in court.

The investigations and allegations contained in qanun Qanun of Nanggroe Aceh Darussalam Province Number 13 of 2003 About Maisir (Gambling) are under the jurisdiction of investigation and prosecution powers. On the

investigation and allegations against the perpetrators of qanun maisir violations are carried out based on the applicable legal rules as not regulated in *qanun maisir*. This means that on matters of inquiry and allegations that have no arrangement in The Article-Pasal qanun maisir, then on investigations and allegations must refer to other laws governing regarding investigations and allegations. The officer who has jurisdiction to conduct an investigation is the police or the officer in charge as in the qanun maisir mentioned:

In addition, the public prosecutor also has the power to execute punishments against offenders who have obtained a court decision. Regarding the execution of the punishment 'uqubah against the offender maisir (gambling) as in the provisions of qanun mentioned:

- (1) Every person who contravenes the provisions as referred to in Article 5, may be charged with 'uqubatsebat (whipping) in front of the public at most 12 (twelve) times and at least 6 (six) strokes.
- (2) Every person or company or statutory body not of a Government Institution in violation of the provisions as referred to in Article 6, and 7 may be charged with 'uqubat or a fine of at most Rp. 35,000.000.00 (thirty-five million rupiah), at least Rp 15,000.000.00 (fifteen million rupiah).
- (3) Violation of the prohibition as referred to in Articles 5, 6 and 7 is a ta'zir finger.

The court judge sentenced the offender to

the fine, then in the canon it is mentioned that the fine as referred to in Article 23 verse (2) is the result of the district collection and is handed over to the treasurer of Baitul Mal. When during the investigation it is found that the objects used to commit the act of maisir, the items will be confiscated by law enforcement and will be disposed. Means items obtained from confiscation by law enforcement or will be disposed of after a court decision. When the offender repeats the jinayah then the court will decide on a more severe punishment. Repeating doing jinayah as referred to in Articles 5, 6 and 7 of its 'uqubat can be added 1/3 (a third) of the 'maximum uqubat. Violation of the provisions as mentioned in Article 6 qanun maisir, shall be acted upon: Violation of the provisions as referred to in Article 6 of Qanun Maisir:

- a. when performed by a company or other statutory body, the 'uqubat is passed on to the incumbent or director of the company.
- b. when there is a relationship with the activities of his company, then in addition to the sanction 'uqubat as referred to in Article 23 verse (2), may also be subject to 'administrative uqubat by revoking or revoking the license/ permission of the company which has been granted.

This Qanun also regulates on the procedure for the execution of punishments against companies or agencies that provide facilities against the jinayah maisir. Violations by such companies will be punished based on the

provisions. Violation of the provisions as referred to in Article 6 of Qanun Maisir:

- (1) when performed by a company or statutory body, the 'uqubatnya is passed on to the director.
- (2) when there is a relationship with his efforts, then in addition to the sanction 'uqubat as referred to in Article 23 verse (2), it is also imposed 'administrative uqubat by revoking the business license which has been granted

If the act of jinayah is on the part of the company, then the one that will be penalized is to the insurer or the director of the company concerned. Execution of punishment will be carried out as well as mesta based on:

- (1) The execution of 'uqubat is carried out immediately upon the existence of an official decision of the judge (having a fixed legal force).
- (2) The delay in the implementation of 'uqubat can only be done on the basis of the designation of the Principal Public Prosecutor (Head of the State Prosecutor) when there are matters that endanger the offender after obtaining information from the responsible doctor.

Against offenders who have been convicted of jinayah and have obtained a court decision, will immediately be carried out the sentence of whipping on him with the provisions of:

- (1) Lashes are carried out somewhere that can be witnessed by the public by being attended

by the Attorney General (prosecutor) and the responsible medical doctor.

- (2) Whipping is done with a cane measuring between 0.75 cm to 1 (one) cm, 1 (one) meter long and has no double/split ends.
- (3) Lashes are performed on parts of the body except the head, face, neck, chest and genitals.
- (4) The rate of blows or strokes shall not injure.
- (5) The male offender is whipped in a standing position without a buffer, untied, and wears a thin shirt that covers the aurat. Whereas a female offender with a sitting position and covered in a cloth on it.
- (6) Whipping on pregnant women is carried out 60 (sixty) days after childbirth.

The delay of the whipping sentence is carried out when at the time of sentencing the whipping is carried out the occurrence of injuries that endanger the offender based on the evidence of the medical doctor in charge, then the remaining delayed whipping will be postponed until the time when it is possible to re-execute. In addition to the provisions in qanun maisir on the execution of whipping also applies the Aceh Gubernur Regulation on the Proserdur of the Procedure of Sebatan which is the Governor's Rule No. 10 of 2005 on Technical Indicators 'Uqubat whipping.

JINAYAH MAISIR'S ACTIONS BASED ON ISLAMIC LAW

Maisir or gambling is an act that is prohibited in Islam, as explained by Allah SWT through His word in the Quran as follows:

“O you who believe! That indeed wine and gambling and idol worship and voting for fate with the rods of arrows, is (all) dirty (despicable) from the deeds of the devil. So let you stay away from it so that you may succeed. Indeed, Satan only intends to cause enmity and hatred among you by reason of wine and gambling and to turn you away from the remembrance of Allah and from him doing the prayer. So do you want to stop (from doing such vile and dirty things or you are still stubborn)?

Tafsir Ath-Thabari narrated that Bisyr was instructing us, he said: Yazid bin Zurai looked at us – Bisyr said: Really I heard from Yazid, and he told me,-he said: Said told us from Qatadah, he said:

“There is someone who while ignorant of gambling by making his family and property his bets. Because of this, sometimes a person sits with sadness and is compensated when he sees his property change hands to others. This ultimately causes hatred and enmity among them, Allah SWT.pun forbids it, for Allah SWT.certainly knows better what is maslahat for his creatures.”

According to Imam Alusi, the gambling among them are dice, chess which uses betting money and other forms of games, including children's games that use money in the form of

raffles. Every game that benefits one side that wins and that inflicts loss and suffering on the other side i.e. the loser, then the game is categorized as a banned gambling game.

The game is categorized as gambling in a narration of the Prophet s.a.w. said in his hadith which means:

“Every game is banned except for three things; a man's game with his wife, throwing arrows from his bow and training his horse”.

In Islam it is not permissible to hold a bet when a person who bets on a win will earn the proceeds from the bet, whereas the one who suffers a defeat, is owed to his friend or loses part of his property or money at stake. This falls into the category of banned gambling. The Prophet s.a.w. said in the hadith which means:

“The horse has three types; horses for the Most Loving God, horses for men, and horses for the devil. A horse for God is a horse that is tethered in the way of Allah. So eating it, his poop peeing – he mentions a lot of others – all of that is a reward. As for horses for the devil are horses that are used to bet or gamble. As for the horse for man is a horse that is preserved and used to work to mask its mind”.

From the above hadith, it shows that betting and gambling is a game of shaytan. In another hadith the Prophet s.a.w. prohibits the game of dominoes or dice. Buraidah narrated from the Prophet s.a.w. which means: "Whoever

plays domino , then it is as if he dipped his hand into his pork and blood".

From the above hadiths, it is clear that gambling is haram. Therefore, offenders convicted in gambling or maisir cases will be punished with ta'zir according to the provisions set by the government through a judge or qadi.

The ruling of playing gambling (maisir) explained by both sources of Islamic jurisprudence is haram, but the form and rate of punishment on the person involved is not clearly explained by syarak. Therefore, to determine the form of punishment for those convicted is up to the wisdom of the government or the discretion of the judge, as far as it does not contradict the provisions of the Quran and al-Hadith even though the act of gambling jinayah is classified under the punishment of ta'zir.

Thus, the provisions of the law or punishment on persons convicted of the act of jinayah maisir under Qanun ProvinceAceh is Qanun Province of Aceh Province Number 13 of 2003 About Maisir (Gambling). This is based on the punishments of maisir offenders set by the government as mentioned in qanun. Whereas the council of judges only considered the rate of punishment that was worthy of being decided whether it was heavy or light, not in violation of the qanun set by the government.

Attitudes and Ways of Court Approach in Dealing With Maisir Cases

The court's approach in resolving cases involving maisir (gambling) in Aceh can be described in some cases that have been tried by the Aceh Syariah Court. The attitude and manner of the court's approach to the maisir case includes one of the acts of disobedience which is prohibited in the Islamic Shari'a and other religions as well as contrary to the customs and culture practiced by the Aceh community as the act can lead a person to other acts of vices. In addition, the court also considered that the act of maisir could threaten public impact or upset the community. In Aceh Province has enforced Islamic Shari'a law including one of which is qanun maisir.

Case of Maisir Prosecutor versus Ahmad Yani Bin Abdullah and Ismadi Bin Ridwan Salam

In the case of the Prosecutor against Ahmad Yani Bin Abdullah and Ismadi Bin Ridwan Salam Both accused have been accused of gambling (*maisir*) under Article 5 and Article 23 verse (1) Qanun Aceh Number 13 of 2003 About Maisir. Prosecutors demanded that both accused be sentenced to 7 (seven) lashes and removed from custody. Confiscated all the evidence found such as 1 (one) set of domino stones amounting to 28 (twenty-eight) pieces, a candle, a notebook of notes and cash of Rp. 27,000.00. Money will be handed over to the district treasurer and handed over to Baitul Mal.

The public prosecutor also demanded that the accused pay a judgment cost of Rp. 1,000.00.

In his judgment the judge ruled that the two accused had been found guilty of the act of maisir (playing gambling) and had sentenced them to 6 (six) lashes each and ordered that the two accused be removed from custody. The assembly of judges also confiscated all the evidence found in the form of 1 (one) set of domino stones totaling 28 (twenty-eight) pieces, a candle and a notebook of notes, for disposal. While the confiscation of Rp. 27,000.00- which is the money to be handed over to Baitul Mal. The judge also sentenced the accused to pay the cost of the judgment of Rp. 1,000.00. If the accused confesses to his jinayah act and expresses his regret, accept the verdict without appeal.

(a) Case Facts

Briefly the facts in this case can be described as follows:

On 5 December 2005 the accused was arrested by Wilayatul Hisbah who was on patrol. The accused was arrested while playing gambling (playing dominoes) in one of the areas in Aceh. The game was conducted by 4 adults divided into 2 groups, by installing money bets. The winning party will take the bet when the game is over. The game ends when it has reached the figure of 200, and the wagering money amounts to Rp. 2,000.00. The accused were arrested by Wilayatul Hisbah for 2 people, while 2 of his friends were able to escape. The accused was taken by Wilayatul Hisbah to the station for

questioning and then handed over to the police for further investigation purposes after which it was handed over to the Aceh Syariah Court for trial. The offender is held in prison until a whipping sentence is carried out on him.

The accused are Muslim and live in Aceh Province. Aceh province is one of the provinces in Indonesia that enforces Islamic Law. The accused knew that the act of maisir was illegal and illegal so that when the enforcers came they fled and were caught by the *Wilayatul Hisbah* team.

The acts of the accused can be convicted in Article 5 and Article 23 verse (1) of Qanun Aceh Province Number 13 of 2003 About Maisir. In Chapter 5 Qanun Aceh Province Number 13 of 2003 About Maisir states that: "Everyone is forbidden to do the act of maisir".

Whereas in Article 23 verse (1) Qanun Aceh Province Number 13 of 2003 About Maisir states that: Every person who violates the provisions as referred to in Article 5, may be charged with 'uqubatsebat in front of the public at most 12 (twelve) times and at least 6 (six) strokes.

On 6 December 2005 Police arrested accused Ahmad Yani Bin Abdullah and Ismandi Bin Ridwan Salam on charges of having committed acts of maisir (gambling). Next the accused's case was tried in the Aceh Syariah Court.

(b) Decision

The act of maisir (gambling) is one of the acts of disobedience which is prohibited in the Islamic Shari'a and other religions and is contrary to the customs in the Aceh community, as it can lead a person to other vices. Therefore the court ruled that the accused had committed an act of maisir (gambling) under Article 5 and Article 23 verse (1) qanun of Aceh Nomor Province 13 of 2003 About Maisir. The accused's actions are contrary to the Qanun Syariat Islam and the customs of the Aceh Muslim community. In addition, the act of maisir is an act of disobedience that can lead a person to a heinous act, so that the act can upset the community.

To each accused of the assembly the judge decided to sentence the whipping in front of the public of 6 (six) lashes to both offenders. The accused's actions have fulfilled the elements of Article 5 qanun of Aceh Nomor Province 13 of 2003 About Maisir stated; "Everyone is forbidden to do maisir (gambling)". The word contains elements as follows:

- (1) The element of each person, where this element requires to anyone who is the subject of law i.e. Muslim, mukallaf so that to him may be held accountable for a crime of jinayah committed. The accused was prosecuted in court by the public prosecutor for committing acts of jinayah as alleged to him. The people in the indictment are the accused Ahmad Yani Bin Abdullah and Ismandi Bin Ridwan Salam.

- (2) Regarding the element of committing the act of maisir (gambling), it is necessary and proper to know that the act is clearly prohibited by syarak (Islamic law) and against the offender will be prosecuted and punished in accordance with Article 5 Qanun of Aceh Nomor Province 13 of 2003 About Maisir (Berjudi).

In addition, the court is of the opinion that the accused is guilty of violating the law in which the accused has committed acts of maisir or gambling which are prohibited by Syarak and should not have been committed. To the accused shall be subjected to uqubat (punishment) whipping as arranged in qanun where the act of the accused has fulfilled the element of Article 23 verse (1) Qanun of Aceh Nomor Province 13 of 2003 About Maisir. Chapter 23 verse (1) Qanun Aceh Nomor 13 Province of 2003 About Maisir states that: Every person who violates the provisions as referred to in Article 5, can be charged with 'uqubatsebat in front of the public at most 12 (twelve) times lashes and at least 6 (six) strokes.

Based on the grounds of the judgment, the court has sentenced 6 (six) lashes against both accused. The accused received a verdict and did not appeal.

(c) Interpretation of the Court

The Judge's decision in this case, it appears that the court is considering only legal punishment without regard to the actions of the

accused that could affect the public. The act of maisir other than contrary to Islamic law is also contrary to the cultural customs of the Muslim Aceh community, so the individuals involved should be subjected to the appropriate punishment. Reality This can be seen from the decision of the court which provides for the act of jinayah based on qanun only. The court did not consider some other aspects that might be incriminating to the accused.

CONCLUSION

The provision of ta'zir punishment on maisir offenders according to Qanun Aceh Province Number 13 of 2003 About Maisir (Gambling) is in line with the requirements of ta'zir in Islam. Such acts in Islam are haram. However, the form of punishment for maisir offenders is not prescribed by syarak. Therefore, it is up to the discretion of the government to determine the punishment. The punishment of maisir offenders in Qanun Province Aceh Nomor 13 of 2003 About Maisir (Gambling) is determined by the Aceh Government, thus the punishment is categorized into ta'zir punishment.

Judges of the Aceh Syariah Court have the power to sentence the offenders according to the Article-Pasal set by the government. Ijtihad judges are limited to determining the number of lashes and fines and prison sentences to be determined on offenders. Ijtihad judges in

sentencing cannot be excluded from those set out in qanun. Since whipping and fines are part of ta'zir punishments, the judge's discretion in determining the sentence rate is also said to be ta'zir.

Every act of Sharia jinayah in Aceh Province will be tried according to the qanun-qanun jinayah Shariah of Aceh Province. In the canons in addition to arranging on matters of perversion also arrange on procedural matters and evidence in court, also arrange on the procedure of Syariah whipping. In addition, the canons are also applicable in matters of procedure and evidence, also used by the Law of Procedure and Evidence of Civil Jinayah (The Law of Criminal Events or KUHAP). The use of the Law of Procedure and Evidence of the Civil Jinayah is due to the unconfirmed Qanun Procedure and Evidence of Jinayah Shariah Aceh. In the case of the execution of the government whipping sentence according to the Gabernor Regulation which is Gabernor Regulation No. 10 of 2005 on the Technical Indicators of 'Uqubat Sebat. It is recommended to the judges who handle the Jinayah Syariah case in the Aceh Syariah court to continue to adhere to the Islamic and legal provisions that exist in deciding the matters of Shariah jinayah in Aceh.

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