

**ANALISIS PERTIMBANGAN HAKIM DALAM PUTUSAN
PENGADILAN TERHADAP PELAKU *JARIMAH LIWATH*
DARI PERSPEKTIF HAK ASASI MANUSIA**

INTISARI

Qanun Aceh No. 6 Tahun 2014 mengenai Hukum Jinayat menjadi satu-satunya instrument hukum di Indonesia yang mengakomodir pemidanaan terhadap pelaku homoseksual. Putusan Mahkamah Syar'iyah Banda Aceh No.:18/JN/2017/Ms.BNA, 15/JN/2018/Ms.BNA, 4/JN/2021/Ms.BNA menjadi bukti nyata penjatuhan sanksi pidana terhadap para pelaku *jarimah liwath* atau homoseksual. Pertimbangan yuridis dan non yuridis majelis hakim dalam putusan tersebut menarik untuk dikaji, karena pemidanaan terhadap homoseksual erat kaitannya dengan Hak Asasi Manusia.

Penelitian ini berjenis penelitian normatif, dan bersifat deskriptif analitis yang akan menjabarkan serta menganalisa sebuah putusan hakim dalam perkara dengan jarimah *liwath* atau homoseksual dari perspektif HAM. Penelitian ini dikaji dengan mempergunakan pendekatan perundang-undangan, kasus dan konseptual.

Beranjak dari perbedaan pendapat terkait universalisme dan relativisme Hak Asasi Manusia, pertimbangan yuridis dan non yuridis dari majelis hakim yang dituangkan dalam putusan Nomor:18/MS BNA/2017, Nomor:15/MS BNA/2018, dan Nomor:4/MS BNA/2021 yang berakhir pada pemidanaan terhadap para pelaku jarimah liwath tentunya terdapat potensi diskriminasi terhadap kelompok rentan di Indonesia, di sisi lain Indonesia juga telah mengakomodir keistimewaan Aceh yang sudah dituangkan dalam peraturan perundang-undangan.

Kata Kunci: Pertimbangan Hakim, *Jarimah Liwath*, Hukum Jinayat, Hak Asasi Manusia.

**ANALYSIS OF JUDGES' CONSIDERATIONS IN COURT DECISIONS
AGAINST PERPETRATORS OF *JARIMAH LIWATH*
FROM A HUMAN RIGHTS PERSPECTIVE**

ABSTRACT

Qanun Aceh No. 6 of 2014 concerning Jinayat Law is the only legal instrument in Indonesia that accommodates the punishment of homosexual offenders. The decisions of the Banda Aceh Syar'iyah Court Number: 18/JN/2017/Ms.BNA, 15/JN/2018/Ms.BNA, 4/JN/2021/Ms.BNA is clear evidence of the imposition of criminal sanctions against perpetrators of jarimah liwath or homosexuality. The juridical and non-juridical considerations of the panel of judges in these decisions are fascinating to study because the punishment of homosexuals is closely related to human rights.

This research is included in the type of normative research, and is analytical descriptive in nature which will describe and analyze a judge's decision in a case with jarimah liwath or homosexuality from a human rights perspective. This research was studied with statutory, case and conceptual approaches.

Based on differences of opinion regarding universalism and relativism of human rights, the juridical and non-juridical considerations of the panel of judges as outlined in decisions Number: 18 / MS BNA / 2017, Number: 15 / MS BNA / 2018, and Number: 4 / MS BNA / 2021 which ended in the punishment of the perpetrators of jarimah liwath, of course there is the potential for discrimination against vulnerable groups in Indonesia, on the other hand Indonesia has also accommodated Aceh's privileges which have been outlined in statutory regulations.

Keywords: Judge's consideration, crimes against homosexual, Jinayah Law, human right.