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Between sanctions and judicial reasoning: Contemporary perspectives on gender justice in *khalwat* cases in Aceh

RESEARCH ARTICLE

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ABSTRACT

Cases involving *jarimah khalwat* in Aceh raise questions about the application of ‘*uqubat* and judicial reasoning toward male and female defendants. This study examines sentencing patterns and judicial reasoning in *jarimah khalwat* cases before the *Mahkamah Syar’iyah* through a substantive equality perspective on gender justice. Employing normative legal research with statutory, case, and conceptual approaches, the study analyzes eleven judgments representing seven *jarimah khalwat* cases, identified through an online search of the Supreme Court of Indonesia’s judicial decision database using the keyword “*Khalwat*.” The analysis applies substantive equality, focusing on consistency in legal treatment, justification for differential treatment, and scrutiny of gender stereotyping. The judgments show both equal and differential treatment of male and female defendants, while the reasons for differential ‘*uqubat* are not always articulated with sufficient legal clarity. Differential ‘*uqubat* may constitute legitimate individualized sentencing when supported by relevant, objective, proportionate, and legally defensible grounds. However, reliance on gendered assumptions without clear legal justification may undermine substantive equality. The study proposes a gender-just judicial reasoning model emphasizing consistent legal standards, justified differential treatment, and scrutiny of gender stereotypes, providing a framework for assessing and articulating discretionary ‘*uqubat* in a transparent, consistent, and accountable manner.

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Introduction

Aceh occupies a distinctive position within Indonesia's legal system because its authority to implement Islamic law permits the enactment of Islamic criminal law through regional *qanun*.¹ Within this framework, Aceh Qanun No. 6 of 2014 on Jinayat Law regulates *khalwat* as a *jarimah* and prescribes the 'uqubat applicable to its perpetrators. This regulatory framework places *khalwat* cases within the regime of Islamic criminal law, whose adjudication involves the *Mahkamah Syar'iyah* as a specialized judicial institution in Aceh.² Because sentencing constitutes a central component of adjudication, attention must be directed not only to the type and severity of sanctions imposed but also to the legal reasons underlying judicial decisions.³ Recent scholarship on the Jinayat Qanun has likewise emphasized the importance of examining its implementation within institutional practice and the broader development of Aceh's legal system.⁴ Judicial reasoning therefore provides an important site for examining how legal norms and principles of justice are translated into sentencing practice.⁵

This issue becomes particularly significant when *khalwat* cases involve male and female defendants. Equality before the law cannot be assessed solely by reference to identical outcomes, because equal treatment does not necessarily produce substantive equality when the circumstances and reasons underlying legal treatment differ.⁶ From a substantive equality perspective, attention must also be given to disadvantage, stereotyping, and the assumptions that may shape legal decision-making.⁷ This framework makes it possible to assess sentencing beyond whether male and female defendants receive identical sanctions, by asking whether the considerations underlying differential sanctions are legally relevant and free from unjustified gender assumptions. Renzulli demonstrates that the use or reproduction of gender stereotypes in judicial decisions may raise concerns regarding discrimination and the realization of substantive gender equality, making judicial reasoning an important dimension in assessing the justice of adjudication.⁸ In this sense, gender justice in adjudication concerns the application of equal legal standards, the justification of differential treatment where relevant circumstances warrant it, and scrutiny of gender stereotypes within judicial reasoning.⁹

¹ Zainul Fuad, Surya Darma, and Muhibbuthabry Muhibbuthabry, "Wither Qanun Jinayat? The Legal and Social Developments of Islamic Criminal Law in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2053269>.

² Muhammad Nur et al., "Models For Implementing Punishment Against Jarimah Khalwat Perpetrators In Aceh Province," *Brawijaya Law Journal* 11, no. 2 (2024): 242–62, <https://doi.org/10.21776/ub.blj.2024.011.02.04>.

³ Anis Mashdurohaturun et al., "Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law: A Comparative Study of Justice and Penal Philosophy," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 80–100, <https://doi.org/10.32332/milrev.v5i1.11887>.

⁴ Dian Andi Nur Aziz et al., "Examining Qanun in Aceh from a Human Rights Perspective: Status, Substance and Impact on Vulnerable Groups and Minorities," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 37–56, <https://doi.org/10.18326/ijtihad.v23i1.37-56>.

⁵ Lilik Andaryuni et al., "Negotiating Legal Pluralism: Judicial Reasoning on Domestic Violence Divorce Cases in Indonesian Religious Courts," *JURIS (Jurnal Ilmiah Syariah)* 25, no. 2 (2026): 265–278, <https://doi.org/10.31958/juris.v25i2.16530>.

⁶ Nurlaily Nurlaily, Agusta R. Minin, and Dinesha Samararatne, "The Substantive Justice in Regional Elections: A Philosophical and Sociological Comparison of Asian, European, And African Countries," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (2025): 107–27, <https://doi.org/10.29303/ius.v13i1.1656>.

⁷ Sandra Fredman, "Substantive Equality Revisited," *International Journal of Constitutional Law* 14, no. 3 (2016): 712–38, <https://doi.org/10.1093/icon/mow043>.

⁸ Isobel Renzulli, "Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of *JL V Italy* – A Retreat into the Shadows?," *Netherlands Quarterly of Human Rights* 41, no. 3 (2023): 155–73, <https://doi.org/10.1177/09240519231191172>.

⁹ Yusida Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 122–40, <https://doi.org/10.19109/nurani.v25i1.27133>.

Recent scholarship on *khalwat* in Aceh has addressed the implementation of the law, sentencing practices, the effectiveness of sanctions, and the relationship between the Jinayat Qanun and the broader legal system. Aksa et al. examine the implementation of the Jinayat Qanun from a legal perspective, highlighting Aceh's distinctive legal status and the institutional arrangements supporting the enforcement of Islamic law.¹⁰ Harahap et al. specifically examine *khalwat* involving children by analyzing the provisions of Qanun No. 14 of 2003 from the perspective of Islamic law.¹¹ Nur et al. focus on models of punishment for *jarimah khalwat* in Aceh, while Mulizar, Asmuni, and Tanjung examine *khalwat* sanctions through the perspective of *maqāsid al-shari'ah*.¹² Bastiar et al. address public perceptions and the effectiveness of *khalwat* sanctions in Aceh.¹³ Mukhlis et al. discuss the position of the Jinayat Qanun within the development of Aceh's legal pluralism and its relationship with the newly enacted National Criminal Code.¹⁴ Although these studies have enriched the literature on the norms, sanctions, effectiveness, and broader development of *khalwat* law, they provide limited attention to how judges reason when determining 'uqūbat, particularly in cases involving male and female defendants.

Studies connecting the Jinayat Qanun with gender issues, meanwhile, have largely focused on women's justice, victim protection, and access to justice. Muzakkir, for example, evaluates the compatibility of the Jinayat Qanun with the interests of women and children and identifies provisions that may generate injustice for these groups.¹⁵ Through empirical research on the experiences of women subjected to sexual violence, Febriandi et al. demonstrate limitations in the Jinayat Qanun in facilitating access to justice for female victims.¹⁶ These studies indicate that the gender dimensions of the Jinayat Qanun have received scholarly attention, particularly concerning women's status as victims, legal protection, and access to justice. However, comparatively little attention has been given to gender as a dimension of judicial reasoning in *khalwat* sentencing, especially where men and women appear as defendants and may receive either similar or different 'uqūbat.

This gap is particularly significant because *khalwat* differs in important respects from *jarimah* such as rape. Unlike offenses in which gender may primarily arise in relation to victimization, *khalwat* cases may place men and women within the same legal category as perpetrators.¹⁷ This allows judicial decisions to reveal how judges characterize the respective conduct and

¹⁰ Fauzah Nur Aksa, T Saifullah, and Al Farabi, "The Implementation of Qānūn of Jināyāt in Aceh: A Legal Point of View," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 8, no. 1 (2023): 16–34, <https://doi.org/10.22515/alakhkam.v8i1.5896>.

¹¹ Zul Anwar Ajim Harahap, Zulfan, and Muhammad Ridwan, "Analyzing the Offense of Juvenile Khalwat in Aceh: Evaluation of Qanun Number 14 of 2003 from an Islamic Legal Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 79–94.

¹² Nur et al., "Models For Implementing Punishment Against Jarimah Khalwat Perpetrators In Aceh Province."

¹³ Bastiar Bastiar, Asmuni Asmuni, and Bukhari Bukhari, "Public Perception and Effectiveness of Punishment for Khalwat Perpetrators in Aceh," *Justicia Islamica* 19, no. 1 (2022): 94–112, <https://doi.org/10.21154/justicia.v19i1.3304>.

¹⁴ Mukhlis et al., "Pluralism of Islamic Law in Aceh: Qanun Jinayat in the Framework of the Indonesian New Criminal Code," *Ahkam: Jurnal Ilmu Syariah* 26, no. 1 (June 2026): 15–30, <https://doi.org/10.15408/ajis.v26i1.45826>.

¹⁵ Muzakkir Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Al-Ahkam* 32, no. 2 (2022): 131–52, <https://doi.org/10.21580/ahkam.2022.32.2.12130>.

¹⁶ Yogi Febriandi, Muhammad Ansor, and Nursiti Nursiti, "Seeking Justice Through Qanun Jinayat: The Narratives of Female Victims of Sexual Violence in Aceh, Indonesia," *QIJS (Qudus International Journal of Islamic Studies)* 9, no. 1 (2021): 103–40, <https://doi.org/10.21043/qiis.v9i1.8029>.

¹⁷ Bastiar, Asmuni, and Bukhari, "Public Perception and Effectiveness of Punishment for Khalwat Perpetrators in Aceh"; Harahap, Zulfan, and Ridwan, "Analyzing the Offense of Juvenile Khalwat in Aceh: Evaluation of Qanun Number 14 of 2003 from an Islamic Legal Perspective."

circumstances of male and female defendants and how those considerations are connected to the determination of ‘*uqūbat*. Gender therefore concerns not merely whether sanctions differ, but also the language of judicial decisions, the reasons given for sentencing, the characteristics of defendants taken into account, and the grounds relied upon in determining ‘*uqūbat*. A substantive equality perspective is relevant to examining these dimensions without assuming in advance that differential treatment constitutes discrimination or that identical sanctions necessarily establish justice.¹⁸

The central problem addressed in this study therefore concerns the relationship between sentencing outcomes and the reasoning used to justify them in *jarimah khalwat* cases involving male and female defendants. The study asks whether differences or similarities in ‘*uqūbat* correspond to consistent legal standards, whether differential treatment is supported by relevant and legally defensible grounds, and whether judicial reasoning relies on gendered assumptions concerning appropriate male or female conduct. These questions are important because judicial discretion in sentencing creates space for individualized assessment, while the exercise of that discretion also requires reasons that can be legally explained and consistently applied. Gender justice consequently cannot be determined from sentencing outcomes alone; it requires examination of the reasoning connecting the circumstances of the case and the defendant to the sanction imposed.¹⁹

Against this background, this study examines sentencing patterns and judicial reasoning in *jarimah khalwat* cases before the *Mahkamah Syar’iyah* in Aceh through the lens of contemporary gender justice. It analyzes seven *jarimah khalwat* cases represented in eleven judgments issued between 2010 and 2017, examining how ‘*uqūbat* varies between male and female defendants and how judges explain such treatment. The analysis applies substantive equality to examine three interconnected dimensions: consistency of legal standards in materially comparable circumstances, the relevance and legal justification of differential treatment, and scrutiny of gender stereotypes in judicial reasoning. On this basis, the study proposes a gender-just judicial reasoning model that seeks to clarify how judicial discretion in *khalwat* sentencing can be exercised while remaining consistent with equality, individualized assessment, and legally defensible reasoning. The study thus shifts attention from the formal conformity of sentencing outcomes with the *qanun* toward the reasons through which those outcomes are judicially justified.

Methods

This study employs a normative legal research method to examine sentencing in *jarimah khalwat* cases adjudicated by the *Mahkamah Syar’iyah* in Aceh. It uses three approaches: a statutory approach to examine the regulation of *khalwat* and the applicable ‘*uqūbat* under Aceh Qanun No. 6 of 2014 on Jinayat Law; a case approach to examine defendants’ characteristics, sanctions imposed, and judicial reasoning; and a conceptual approach to analyze sentencing through the framework of gender justice, particularly substantive equality.²⁰

The primary legal materials comprise eleven *jarimah khalwat* judgments identified through an online search of the Supreme Court of Indonesia’s judicial decision database using the

¹⁸ Fredman, “Substantive Equality Revisited”; Nurlaily, Minin, and Samararatne, “The Substantive Justice in Regional Elections: A Philosophical and Sociological Comparison of Asian, European, And African Countries.”

¹⁹ Imroatul Azizah et al., “Digitalization and Cyberfeminism: Reinterpreting Islamic Criminal Law for Gender Equality and Women’s Rights,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 9, no. 1 (2026): 127–43, <https://doi.org/10.24090/volksgeist.v9i1.15378>.

²⁰ Achmad Irwan Hamzani et al., “Legal Research Method: Theoretical and Implementative Review,” *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3610–19, <https://doi.org/10.15379/ijmst.v10i2.3191>.

keyword “*Khalwat*.” These judgments represent seven cases, consisting of seven first-instance judgments issued by the *Mahkamah Syar’iyah* in Banda Aceh, Lhoksukon, Sabang, and Takengon and four appellate judgments issued by the *Mahkamah Syar’iyah Aceh*, covering the period from 2010 to 2017. The cases were selected based on their relevance to sentencing and judicial reasoning involving male and female defendants. Other primary legal materials include Aceh Qanun No. 6 of 2014 on Jinayat Law, Aceh Qanun No. 14 of 2003 on *Khalwat*, relevant Indonesian legislation, and international legal instruments concerning equality and non-discrimination to which Indonesia is a party, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR). Secondary legal materials consist of books and scholarly articles concerning Islamic law, *khalwat*, sentencing, judicial reasoning, gender justice, and gender stereotyping. Relevant international and regional jurisprudence and interpretive materials are also used to contextualize the findings within broader principles of gender equality and access to justice.

The legal materials were analyzed qualitatively by identifying patterns in sentencing and judicial reasoning. The analysis focused on three dimensions of substantive equality: equal treatment, the legal justification for differential treatment, and the prevention of gender stereotyping. These dimensions were used to assess whether differences in ‘*uqūbat* and judicial considerations were supported by relevant, objective, proportionate, and legally defensible grounds. International legal materials were examined as a complementary normative framework for situating the proposed gender-just judicial reasoning model within Indonesia’s broader commitments to equality, non-discrimination, and access to justice, without treating international standards as a substitute for the normative framework of Aceh’s *jināyāt* law.

Results and Discussion

Patterns of sentencing in *jarimah khalwat* cases before the *Mahkamah Syar’iyah*

The *jarimah khalwat* cases examined in this study indicate that sentencing practice before the *Mahkamah Syar’iyah* does not follow a single, uniform sanctioning pattern. The corpus comprises seven cases represented in eleven judgments, including seven first-instance judgments and four appellate judgments. The cases were adjudicated by the *Mahkamah Syar’iyah Aceh*, *Mahkamah Syar’iyah Sabang*, *Mahkamah Syar’iyah Banda Aceh*, *Mahkamah Syar’iyah Lhoksukon*, and *Mahkamah Syar’iyah Takengon* between 2010 and 2017. Normatively, the cases fall under two regulatory regimes: Aceh Qanun No. 14 of 2003 on *Khalwat* (*Mesum*) and Aceh Qanun No. 6 of 2014 on Jinayat Law. This distinction is important because the types and formulations of available ‘*uqūbat* evolved between the two *qanun* regimes.

Judgment No. 03/JN/2010/MS-TKN illustrates the application of Qanun No. 14 of 2003 to male and female defendants in the same case. Both defendants were found guilty of *jarimah khalwat* and each was sentenced to a fine of IDR 6,000,000 as ‘*uqūbat ta’zīr*.²¹ On appeal, the *Mahkamah Syar’iyah Aceh*, through Judgment No. 05/JN/2011/MS-Aceh, upheld the amount of the fines. The court’s reasoning placed the sentencing within the range of sanctions available under Article 22(1) of Qanun No. 14 of 2003. The case therefore demonstrates equal treatment of male and female defendants in both the type and amount of ‘*uqūbat* imposed.²²

A different pattern appears in Judgment No. 01/JN/2012/MS-LSK. The case involved male and female defendants in the same *khalwat* incident. The *Mahkamah Syar’iyah Lhoksukon* found both defendants guilty of *jarimah khalwat* but imposed six strokes of whipping on the male

²¹ Mahkamah Syar’iyah Takengon, “Putusan Nomor: 03/JN/2010/MS-TKN,” 2010.

²² Mahkamah Syar’iyah Aceh, “Putusan Nomor: 05/JN/2011/MS-ACEH,” 2011.

defendant and three strokes on the female defendant.²³ On appeal, through Judgment No. 01/JN/2012/MS-Aceh, the case was brought by the male defendant, while the female defendant appeared as a co-respondent.²⁴ This case demonstrates that identical legal status as perpetrators of *jarimah khalwat* does not necessarily result in the same ‘*uqubat*’ for male and female defendants.

Equal sanctions are again evident in Judgment No. 0001/JN/2016/MS-SAB, involving a male defendant, UIS, and a female defendant, NJ. Both were found guilty of *jarimah khalwat* under the applicable provisions and each received six strokes of whipping. The period of detention already served was also taken into account in the execution of the ‘*uqubat*’.²⁵ This pattern indicates that, where male and female defendants are subject to the same basis of legal responsibility, the court may impose an identical sanction.

The application of Aceh Qanun No. 6 of 2014 is evident in Judgment No. 02/JN/2016/MS-BNA. The case involved male and female defendants who were found guilty of *jarimah khalwat* under Article 23(1) of Qanun No. 6 of 2014. Both received ten strokes of whipping, with the period of detention taken into account in accordance with the applicable provisions.²⁶ The judgment again demonstrates equal sentencing between male and female defendants in the same case. Such equality, however, cannot by itself be generalized as a defining feature of *jarimah khalwat* sentencing as a whole.

Judgments Nos. 30/JN/2016/MS-BNA and 31/JN/2016/MS-BNA present a different configuration because the female and male defendants were prosecuted in separate cases. In Judgment No. 30/JN/2016/MS-BNA, the female defendant, MA, was found guilty of *jarimah khalwat* under Article 23(1) of Qanun No. 6 of 2014 and sentenced at first instance to eight strokes of whipping.²⁷ In Judgment No. 31/JN/2016/MS-BNA, the male defendant, TYS, was likewise found guilty of the same *jarimah* under the same provision, with eight strokes of whipping sought by the prosecution.²⁸ Although the two cases involved the same legal basis and identical sentencing demands, the individual considerations relating to each defendant require separate examination.

Both cases were subsequently reviewed on appeal through Judgments Nos. 09/JN/2016/MS-Aceh and 10/JN/2016/MS-Aceh. In the case involving the female defendant, the *Mahkamah Syar’iyah Aceh* upheld the sentence under Article 23(1) of Qanun No. 6 of 2014. In the case involving the male defendant, the appellate court affirmed the first-instance judgment with amendments to the operative part, including the deduction of the period of detention from the ‘*uqubat*’.²⁹ These appellate judgments provide an opportunity to examine both consistency and adjustments in sentencing reasoning across judicial levels.

Judgment No. 31/JN/2017/MS-BNA demonstrates the continued application of Article 23(1) of Aceh Qanun No. 6 of 2014 in *khalwat* cases. The judgment expressly characterized the defendant’s conduct as *jarimah khalwat* and applied the provisions governing the available ‘*uqubat ta’zir*’ under the *qanun*.³⁰ This case broadens the analytical corpus beyond cases in which male and female defendants were prosecuted together.

²³ Mahkamah Syar’iyah Lhoksukon, “Putusan Nomor: 01/JN/2012/MS-LSK,” 2012.

²⁴ Mahkamah Syar’iyah Aceh, “Putusan Nomor: 01/JN/2012/MS-ACEH,” 2012.

²⁵ Mahkamah Syar’iyah Sabang, “Putusan Nomor: 0001/JN/2016/MS-SAB,” 2016.

²⁶ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 02/JN/2016/MS-BNA,” 2016.

²⁷ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 30/JN/2016/MS-BNA,” 2016.

²⁸ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 31/JN/2016/MS-BNA,” 2016.

²⁹ Mahkamah Syar’iyah Aceh, “Putusan Nomor: 10/JN/2016/MS-Aceh,” 2016; Mahkamah Syar’iyah Aceh, “Putusan Nomor: 09/JN/2016/MS-Aceh,” 2016.

³⁰ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 31/JN/2017/MS-BNA,” 2017.

Taken together, these judgments demonstrate variation in both the type and amount of ‘uqūbat imposed in *khalwat* cases. Equal sanctions for male and female defendants are evident in Judgments Nos. 05/JN/2011/MS-Aceh, 0001/JN/2016/MS-SAB, and 02/JN/2016/MS-BNA.³¹ By contrast, the proceedings arising from Judgment No. 01/JN/2012/MS-LSK demonstrate a difference in the number of strokes imposed on male and female defendants.³² Judgments Nos. 30/JN/2016/MS-BNA and 31/JN/2016/MS-BNA show identical legal bases and sentencing demands, while the individual judicial considerations in each case require further examination.³³ Overall, the corpus does not establish a single pattern linking the gender of defendants to sentencing outcomes.

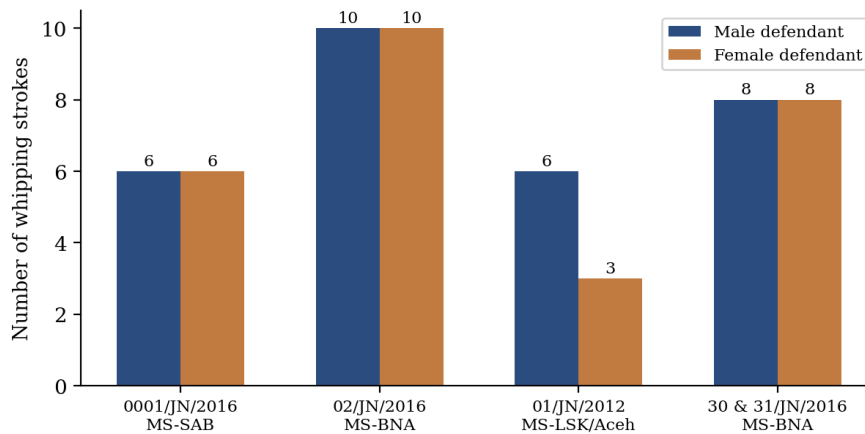


Figure 1. ‘Uqūbat (whipping strokes) imposed on male and female defendants across four *khalwat* case clusters discussed in this study

These findings provide an important basis for the subsequent analysis. Variation in ‘uqūbat cannot, by itself, be understood as evidence of gender inequality, just as identical sanctions do not automatically establish gender justice. The more consequential issue concerns the reasons invoked by judges, the factors regarded as legally relevant, the characteristics of defendants incorporated into the reasoning, and the role of gender within that reasoning. The analysis therefore proceeds from mapping sentencing outcomes to examining the substance and structure of judicial reasoning in the cases.

Judicial reasoning in *jarimah khalwat* sentencing

Judicial reasoning in *jarimah khalwat* cases indicates that the imposition of ‘uqūbat is not determined solely by proof of the elements of the *jarimah*. Judges also consider the circumstances of the defendants, the context of the conduct, and other factors regarded as relevant to determining the severity of the sanction. A distinction therefore needs to be drawn between the basis for establishing criminal liability and the reasons for determining the type and amount of ‘uqūbat. This distinction is important because the fulfillment of the elements of *jarimah khalwat* establishes liability, whereas the subsequent assessment of relevant circumstances helps explain the judicial choice of sanction. The mere presence of male and female defendants does not, in itself, establish differential treatment. The analysis must therefore examine the considerations expressly relied upon by the judges and the relationship between those considerations and the ‘uqūbat imposed.

³¹ Mahkamah Syar’iyah Aceh, “Putusan Nomor: 05/JN/2011/MS-ACEH”; Mahkamah Syar’iyah Sabang, “Putusan Nomor: 0001/JN/2016/MS-SAB”; Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 02/JN/2016/MS.BNA.”

³² Mahkamah Syar’iyah Aceh, “Putusan Nomor: 01/JN/2012/MS-ACEH.”

³³ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 30/JN/2016/MS-BNA”; Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 31/JN/2016/MS-BNA.”

In judgments applying Aceh Qanun No. 14 of 2003, judicial reasoning generally begins with the fulfillment of the elements of *jarimah khalwat* and the absence of grounds excluding criminal responsibility. In Judgment No. 05/JN/2011/MS-Aceh, the panel held that there were no justifying or excusing circumstances capable of relieving the defendants of criminal responsibility. The court consequently found the defendants guilty and imposed an ‘*uqūbat*’ considered commensurate with their conduct. This reasoning reflects an initial legal-formal structure focused on establishing the elements of the *jarimah*, the basis of criminal responsibility, and the conformity of the conduct with the applicable *qanun*. In the same case, the court also connected the prohibition of *khalwat* with the prohibition against approaching zina by referring to Q.S. al-Isra’ [17]: 32.³⁴

Judicial reasoning becomes more differentiated when determining the amount of ‘*uqūbat*. At this stage, the individual circumstances of defendants become more prominent. Judgment No. 30/JN/2016/MS-BNA, for example, records that the female defendant was a Muslim woman who was expected to uphold Islamic values, had repeatedly committed *jarimah khalwat*, and was considered to have disturbed the community. At the same time, her polite conduct, candor, clean criminal record, and remorse were considered mitigating circumstances.³⁵ The explicit reference to the defendant as a “*Muslimah*” is significant from a gender perspective because the identity was expressly incorporated into the aggravating considerations. At the level of judicial reasoning, however, this consideration appears alongside other factors concerning repetition, perceived social impact, and the defendant’s conduct during the proceedings. Its precise significance therefore requires examination of how the various considerations were combined in determining the sanction.

The reasoning concerning the male defendant in Judgment No. 31/JN/2016/MS-BNA demonstrates a different form of individualized assessment. In relation to TYS, the court considered his status as a Muslim, his marital status, the fact that the conduct occurred in a room at night after visiting hours, and his undergraduate degree in law. His legal education was considered relevant because he was presumed to have greater awareness of the prohibition against *jarimah khalwat*.³⁶ These considerations demonstrate that the court also incorporated personal characteristics and circumstances surrounding the conduct into the sentencing assessment of the male defendant.

Importantly, both Judgment No. 30/JN/2016/MS-BNA concerning MA and Judgment No. 31/JN/2016/MS-BNA concerning TYS resulted in eight strokes of whipping. The factors considered by the court were not entirely identical, but the difference in reasoning should not automatically be characterized as gender-based differentiation because several factors concerned the individual circumstances, context of the conduct, and the defendant’s presumed knowledge of the law.³⁷

Conceptually, individualized sentencing permits courts to consider circumstances relating to the offender and the offense in determining a sanction, provided that those circumstances bear a relevant relationship to criminal responsibility and the purposes of sentencing.³⁸ In the judgments examined here, this approach is reflected in the consideration of factors such as repetition of the conduct, marital status, education, the time and place of the conduct, perceived social impact, conduct during the proceedings, prior criminal record, and remorse.

³⁴ Mahkamah Syar’iyah Aceh, “Putusan Nomor: 05/JN/2011/MS-ACEH.”

³⁵ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 30/JN/2016/MS-BNA.”

³⁶ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 31/JN/2016/MS-BNA.”

³⁷ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 30/JN/2016/MS-BNA.”

³⁸ William W. Berry, “Individualized Sentencing,” *Washington and Lee Law Review* 76, no. 1 (2019): 13–92, <https://scholarlycommons.law.wlu.edu/wlulr/vol76/iss1/4>.

These factors show that the judicial assessment of ‘uqūbat extends beyond the formal finding of guilt to the circumstances surrounding the offense and the individual defendant.

The two judgments also reveal similarities in the structure of judicial reasoning. For both the female and male defendants, the court considered aggravating and mitigating circumstances as well as their conduct during the proceedings. Both defendants benefited from mitigating considerations concerning polite conduct, candor, the absence of a prior criminal record, and remorse. This indicates a relatively symmetrical structure of consideration, even though the aggravating factors were not entirely identical. Despite these differences in the factors considered, the final ‘uqūbat imposed on both defendants was the same: eight strokes of whipping.

The clearest difference in the amount of ‘uqūbat appears in appellate Judgment No. 01/JN/2012/MS-Aceh. At first instance, in Judgment No. 01/JN/2012/MS-LSK, the male defendant received six strokes of whipping, while the female defendant received three. Because both defendants were involved in the same *jarimah khalwat* case, the difference is particularly relevant to a gender analysis. Nevertheless, the appellate judgment does not provide a sufficient basis for concluding that the difference was explicitly grounded in gender, particularly because the appeal filed by the male defendant was declared inadmissible.³⁹ The appellate process therefore did not substantively reconsider the difference in the amount of ‘uqūbat. The judgment consequently provides evidence of differentiated sentencing, while leaving the precise basis of that differentiation insufficiently explained in the available judicial record.

By contrast, Judgment No. 0001/JN/2016/MS-SAB demonstrates equal treatment: the male and female defendants in the same case each received six strokes of whipping.⁴⁰ In the appellate proceedings, Judgment No. 09/JN/2016/MS-Aceh upheld the sentence imposed on the female defendant,⁴¹ while Judgment No. 10/JN/2016/MS-Aceh affirmed the judgment concerning the male defendant, with an amendment to the operative part concerning the deduction of the period of detention.⁴² The appellate judgments thus largely preserved the substance of the first-instance ‘uqūbat, while the modification in the male defendant’s case concerned the execution of the sanction rather than a change in its substantive amount.

Taken together, the sentencing reasoning in the *jarimah khalwat* cases can be understood through three levels of consideration. The first concerns the fulfillment of the elements of the *jarimah* and the absence of justifying or excusing circumstances. The second concerns circumstances surrounding the defendant and the conduct, including repetition, marital status, education, the time and place of the conduct, and perceived social impact. The third concerns mitigating circumstances, particularly the defendant’s conduct during the proceedings, prior criminal record, and remorse. This structure indicates an individualized approach to sentencing, although the factors considered were not identical across defendants.⁴³

The cases therefore show that judicial reasoning in *jarimah khalwat* sentencing operates through a combination of legal-formal findings and individualized considerations. The formal determination of criminal responsibility establishes the basis for liability, while the subsequent assessment of aggravating and mitigating circumstances explains the selection and severity of ‘uqūbat. The reasoning is consequently expressed through both the application of the applicable *qanun* and the judicial assessment of circumstances attributed to the offense and

³⁹ Mahkamah Syar’iyah Lhoksukon, “Putusan Nomor: 01/JN/2012/MS-LSK”; Mahkamah Syar’iyah Aceh, “Putusan Nomor: 01/JN/2012/MS-ACEH.”

⁴⁰ Mahkamah Syar’iyah Sabang, “Putusan Nomor: 0001/JN/2016/MS-SAB.”

⁴¹ Mahkamah Syar’iyah Aceh, “Putusan Nomor: 09/JN/2016/MS.Aceh.”

⁴² Mahkamah Syar’iyah Aceh, “Putusan Nomor: 10/JN/2016/MS.Aceh.”

⁴³ Berry, “Individualized Sentencing.”

the defendant. This pattern is particularly relevant to the subsequent gender analysis because the factors considered by judges are not uniform across cases or defendants. The comparison between male and female defendants therefore requires attention to which considerations are treated as legally relevant, how those considerations are explained, and whether comparable circumstances are treated consistently.

Assessing judicial reasoning through contemporary gender justice

An assessment of *khalwat* cases through the lens of contemporary gender justice must be situated at the intersection of legal norms, defendants' circumstances, the reasons underlying the imposition of 'uqūbat, and the gender constructions reflected in judicial reasoning. The equality or difference in the amount of 'uqūbat imposed is an important factual consideration, but it is insufficient, by itself, to determine whether a judgment satisfies the requirements of gender justice. Such an assessment requires examination of the reasons underlying the particular treatment. Within the framework of substantive equality, equality concerns the manner in which the law responds to relevant circumstances, disadvantage, and the possibility of stereotyping in legal treatment.⁴⁴ Accordingly, the question is not merely whether male and female defendants receive the same punishment, but whether they are assessed according to the same legal standards and whether any differentiation has a relevant and defensible basis.

This framework is particularly relevant to the nature of sentencing in *jarimah khalwat* cases. The Jinayat Qanun determines the limits and forms of 'uqūbat, while judges retain the authority to assess the circumstances of the case and the defendants when determining the severity of the sanction within the available range. Scholarship on the implementation of the Jinayat Qanun indicates that the application of *jināyāt* law in Aceh operates within an institutional and normative framework that has distinctive characteristics within Indonesia's legal system.⁴⁵ Research on models for imposing punishment for *jarimah khalwat* likewise demonstrates that sentencing issues extend beyond the existence of sanctioning provisions to encompass how those provisions are applied in practice.⁴⁶ Judicial reasoning therefore constitutes an important site for examining how the principle of equality is translated into practice when the same legal norms are applied to defendants with different characteristics.

In this study, substantive equality is examined through three indicators: equal treatment, justifiable differentiation, and the prevention of gender stereotyping. Equal treatment requires the application of the same legal standards to defendants who are situated in legally relevant and comparable circumstances. Justifiable differentiation allows judges to take individual circumstances into account where such factors are relevant to the conduct or the defendant's criminal responsibility. The prevention of gender stereotyping, meanwhile, requires judges to exercise caution toward assumptions concerning behavior that is presumed to be inherent or expected of men or women. In the context of judicial reasoning, the use of gender stereotypes may influence how courts understand facts and assess the positions of women and men.⁴⁷

The first indicator can be observed in several judgments in which male and female defendants received the same 'uqūbat. In Judgment No. 0001/JN/2016/MS-SAB, the male and female defendants were found to have committed *khalwat* and received the same 'uqūbat of whipping.⁴⁸ A similar pattern appears in Judgment No. 02/JN/2016/MS-BNA, in which the male defendant, TRM, and the female defendant, SSM, were each sentenced to ten strokes of

⁴⁴ Fredman, "Substantive Equality Revisited."

⁴⁵ Aksa, Saifullah, and Farabi, "The Implementation of Qānūn of Jināyāt in Aceh: A Legal Point of View."

⁴⁶ Nur et al., "Models For Implementing Punishment Against Jarimah Khalwat Perpetrators In Aceh Province."

⁴⁷ Renzulli, "Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of *JL V Italy* – A Retreat into the Shadows?"

⁴⁸ Mahkamah Syar'iyah Banda Aceh, "Putusan Nomor: 02/JN/2016/MS.BNA."

whipping.⁴⁹ These judgments demonstrate that gender does not automatically result in differences in ‘uqūbat when both defendants are subject to the same basis of legal responsibility. From the perspective of equal treatment, this pattern may be understood as reflecting a relatively symmetrical application of sentencing standards.

The same pattern is also significant when compared with cases involving defendants of only one gender. Judgment No. 30/JN/2016/MS-BNA concerning the defendant identified as MA and Judgment No. 31/JN/2016/MS-BNA concerning the defendant identified as TYS both resulted in eight strokes of whipping, although the considerations concerning the circumstances of each defendant were not entirely identical.⁵⁰ The identical ‘uqūbat imposed in the two judgments demonstrates that individualized sentencing does not necessarily result in differentiated outcomes. Under the theory of individualized sentencing, the characteristics of the offender and the circumstances of the offense may form part of the judicial assessment in determining punishment.⁵¹ Accordingly, the consideration of individual circumstances does not, in itself, conflict with equality, provided that their use bears a legitimate relationship to sentencing.

The issue becomes more complex in Judgment No. 01/JN/2012/MS-Aceh. In that case, the male defendant received six strokes of whipping, whereas the female defendant received three. This difference constitutes one of the most relevant findings for testing substantive equality because the two defendants were involved in the same *khalwat* case but received different amounts of ‘uqūbat. However, the judgment does not provide a sufficient basis for concluding that the difference was attributable solely to gender. At the appellate level, the male defendant’s appeal was declared inadmissible because it was filed after the applicable time limit had expired, and therefore there was no substantive examination of the objection concerning the amount of ‘uqūbat.⁵² Accordingly, the judgment is more appropriately understood as evidence of differentiation requiring examination of its justification rather than as direct evidence of gender discrimination.

The requirement that differentiation be grounded in relevant considerations can also be understood through the concept of individualized sentencing. Individualized sentencing allows judges to consider the characteristics of the defendant and the circumstances of the offense before determining the punishment.⁵³ In *jarimah khalwat* cases, circumstances such as repetition of the conduct, marital status, the time and place of the incident, the defendant’s conduct, and other circumstances directly related to the case may form part of such judicial reasoning.⁵⁴ Accordingly, differences in ‘uqūbat become problematic from an equality perspective where the factors used as the basis for differentiation lack sufficient legal relevance, are insufficiently explained, or are applied inconsistently to male and female defendants in comparable circumstances.

The relevance of such factors is particularly apparent when comparing Judgment No. 30/JN/2016/MS-BNA and Judgment No. 31/JN/2016/MS-BNA. In the case involving MA, the judges identified several aggravating circumstances, including the defendant’s repeated commission of *khalwat*, the disturbance allegedly caused to the community, and the statement that she was “a Muslim woman who should uphold the values of Islamic Sharia.” By contrast, with respect to TYS, the judges considered that he was married, held an undergraduate degree

⁴⁹ Mahkamah Syar’iyah Banda Aceh.

⁵⁰ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 30/JN/2016/MS-BNA”; Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 31/JN/2016/MS-BNA.”

⁵¹ Berry, “Individualized Sentencing.”

⁵² Mahkamah Syar’iyah Aceh, “Putusan Nomor: 01/JN/2012/MS-ACEH.”

⁵³ Berry, “Individualized Sentencing.”

⁵⁴ Harahap, Zulfan, and Ridwan, “Analyzing the Offense of Juvenile Khalwat in Aceh: Evaluation of Qanun Number 14 of 2003 from an Islamic Legal Perspective.”

in law, was in a room after visiting hours, and had caused disturbance to the community. Both defendants were sentenced to eight strokes of whipping.⁵⁵

From the perspective of equal treatment, the two judgments demonstrate that the judges relied on different individual factors in assessing the circumstances of each defendant. Marital status, educational background, the time and place of the conduct, and repetition of the offence may be understood as factors relevant to the assessment of individual circumstances in judicial decision-making.⁵⁶ However, the use of the identity “Muslimah” warrants closer scrutiny. The relevant question is whether the term was used to indicate a religious obligation applicable to the defendant by virtue of her status as a Muslim, or whether it was used to construct a particular behavioural expectation because the defendant was a woman. This distinction is particularly important in examining how Muslim women’s religious identity is understood within judicial and legal contexts, where religious and gender identities may intersect in shaping the legal assessment of women’s conduct.⁵⁷

This distinction is important because gender stereotypes in judicial decisions may operate subtly through language and apparently normative reasoning. Renzulli demonstrates that gender stereotypes in judicial decisions may shape constructions of women’s positions and may affect the effectiveness of *substantive equality* when such stereotypes are not subjected to consistent scrutiny.⁵⁸ In the context of Judgment No. 30/JN/2016/MS-BNA, the use of the term “Muslimah” is not, by itself, sufficient to establish that the judges relied on a gender stereotype.⁵⁹ Nevertheless, the term warrants examination because it links gender identity to a behavioral standard that was subsequently treated as an aggravating factor.

The comparison between these judgments therefore suggests that substantive equality requires more than checking whether male and female defendants received the same ‘*uqūbat*. It also requires examining whether the considerations used to differentiate defendants have a clear legal and factual connection to the case. Where a consideration is expressly linked to gender, the reasoning should make its legal relevance sufficiently clear rather than leaving the relationship between gender identity and the severity of ‘*uqūbat* implicit.

This analysis also gains context from research on gender justice in Indonesian judicial decisions. Fitriyati et al. demonstrate that issues of gender justice in judicial decisions can be examined through the manner in which judges connect legal norms with social conditions and the objectives of justice they seek to achieve.⁶⁰ Meanwhile, Andaryuni et al. position judicial reasoning as an important object of inquiry for understanding how judges construct law when confronted with normative plurality and social circumstances in the cases before them.⁶¹ Together, these studies reinforce the proposition that the quality of justice in a judgment should be assessed through the reasoning process that produces the decision, rather than solely through its operative part.

⁵⁵ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 30/JN/2016/MS-BNA”; Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 31/JN/2016/MS-BNA.”

⁵⁶ Yannick van den Brink, “Equality in the Youth Court: Meaning, Perceptions and Implications of the Principle of Equality in Youth Justice,” *Youth Justice* 22, no. 3 (2022): 245–71, <https://doi.org/10.1177/14732254211013420>.

⁵⁷ Róisín Áine Costello and Sahar Ahmed, “Citizenship, Identity, and Veiling: Interrogating the Limits of Article 8 of the European Convention on Human Rights in Cases Involving the Religious Dress of Muslim Women,” *Journal of Law and Religion* 38, no. 1 (2023): 81–107, <https://doi.org/10.1017/jlr.2022.58>.

⁵⁸ Renzulli, “Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of *JL V Italy* – A Retreat into the Shadows?”

⁵⁹ Mahkamah Syar’iyah Banda Aceh, “Putusan Nomor: 30/JN/2016/MS-BNA.”

⁶⁰ Fitriyati et al., “Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah.”

⁶¹ Andaryuni et al., “Negotiating Legal Pluralism: Judicial Reasoning on Domestic Violence Divorce Cases in Indonesian Religious Courts.”

In the context of Aceh, attention to the gender dimension cannot be separated from the character of the Jinayat Qanun. Muzakkir identifies concerns regarding the compatibility of several provisions of the Jinayat Qanun with the interests of women and children, particularly where *jināyāt* law intersects with issues of justice and the protection of vulnerable groups.⁶² Meanwhile, Febriandi, Ansor, and Nursiti demonstrate, through the experiences of women who have suffered sexual violence, that access to justice within the framework of the Jinayat Qanun presents particular challenges for women.⁶³ Although neither study examines the *khalwat* judgments that constitute the subject of the present research, both are relevant as contextual perspectives for situating gender-related issues within the implementation of Aceh's *jināyāt* law.

This context must nevertheless be distinguished from the object of the present study. Research concerning female victims of sexual violence primarily addresses women's position as victims,⁶⁴ whereas this study examines men and women as defendants in *jarimah khalwat* cases. This distinction means that the gender analysis undertaken here focuses on equality in sentencing and judicial reasoning. Accordingly, findings concerning gender-related problems within the Jinayat Qanun cannot automatically be transferred to establish the existence of discrimination across *khalwat* cases generally.

When the judgments are examined collectively, three patterns emerge. *First*, several judgments demonstrate identical 'uqūbat for male and female defendants, as reflected in Judgment No. 0001/JN/2016/MS-SAB and Judgment No. 02/JN/2016/MS-BNA.⁶⁵ *Second*, Judgment No. 01/JN/2012/MS-Aceh demonstrates a difference in 'uqūbat, but the basis for that differentiation cannot be established solely from the operative part of the judgment and the available appellate proceedings.⁶⁶ *Third*, the explicit use of gender identity in the reasoning of Judgment No. 30/JN/2016/MS-BNA requires examination in terms of its relevance and consistency.⁶⁷ These patterns provide the basis for examining whether differences or similarities in 'uqūbat correspond to consistent legal standards and adequately justified judicial reasoning.

Table 1. Patterns of 'uqūbat and gender considerations in *jarimah khalwat* judgments

Judgment No.	Defendant(s)	Pattern of 'uqūbat	Gender relevance
0001/JN/2016/MS-SAB	Male & female	Same: 6 strokes	Equal treatment
02/JN/2016/MS-BNA	Male & female	Same: 10 strokes	Equal treatment
01/JN/2012/MS-Aceh	Male & female	Different: 6 and 3 strokes	Differentiation requires justification
30/JN/2016/MS-BNA	Female	8 strokes	"Muslimah" identity used as an aggravating consideration
31/JN/2016/MS-BNA	Male	8 strokes	Consideration of individual characteristics

Source: compiled from the *Mahkamah Syar'iyah* judgments analyzed in this study.

⁶² Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat."

⁶³ Febriandi, Ansor, and Nursiti, "Seeking Justice Through Qanun Jinayat: The Narratives of Female Victims of Sexual Violence in Aceh, Indonesia."

⁶⁴ Zul Fahmi, "Preventing Violence Against Women and Children in Mandailing Natal Regency: A Criminological Perspective," *Saree: Research in Gender Studies* 7, no. 2 (2025): 152–67, <https://doi.org/10.47766/saree.v7i2.6265>.

⁶⁵ Mahkamah Syar'iyah Sabang, "Putusan Nomor: 0001/JN/2016/MS-SAB."

⁶⁶ Mahkamah Syar'iyah Aceh, "Putusan Nomor: 01/JN/2012/MS-ACEH"; Mahkamah Syar'iyah Banda Aceh, "Putusan Nomor: 30/JN/2016/MS-BNA."

⁶⁷ Mahkamah Syar'iyah Banda Aceh, "Putusan Nomor: 30/JN/2016/MS-BNA."

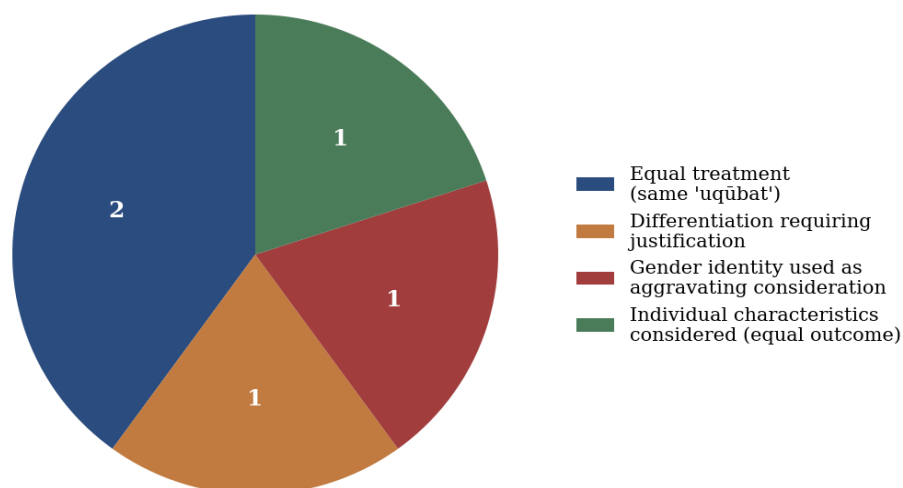


Figure 2. Distribution of gender-relevance categories among the five representative judgments summarized in Table 1

Based on this analysis, *contemporary gender justice* in *khalwat* cases can be formulated through three requirements. *First*, male and female defendants should be assessed according to the same legal standards when they are situated in circumstances that are legally relevant and comparable. *Second*, differences in treatment should be supported by reasons that are relevant, objective, and capable of being explained through the circumstances of the case or defendant characteristics that are legitimately subject to judicial consideration. *Third*, judicial reasoning should avoid gender constructions that transform male or female identity into a basis for aggravating punishment or differential treatment without a clear connection to the purposes of sentencing. These principles do not require all defendants to receive identical 'uqubat; rather, they require every difference to be justified through consistent legal reasoning.

Accordingly, this study does not find a sufficient basis for concluding that all *khalwat* sentencing before the *Mahkamah Syar'iyah* demonstrates discrimination against men or women. The more defensible finding is that variations exist in the use of individual factors and that certain gender constructions appear in some judicial reasoning. Gender justice should therefore be assessed in terms of consistency in legal standards, the relevance of differentiating factors, the transparency of reasons for differentiation, and vigilance against gender stereotypes. This framework provides a basis for formulating a model of judicial reasoning in *khalwat* cases that treats substantive equality as an integral dimension of sentencing quality.

Towards a gender-just model of judicial reasoning in *khalwat* cases

The findings from the judgments of the *Mahkamah Syar'iyah* indicate that gender justice in *jarimah khalwat* cases cannot be assessed solely by examining whether male and female defendants receive the same or different types of 'uqubat. Identical sanctions do not, in themselves, establish gender justice, just as differential sanctions do not automatically constitute discrimination. A more relevant measure is whether judicial reasoning explains the relationship between the defendant's individual circumstances, degree of culpability, circumstances surrounding the conduct, and purposes of sentencing, on the one hand, and the type and severity of 'uqubat, on the other. This approach is consistent with substantive equality, which assesses equality by reference to the reasons and context underlying legal treatment.⁶⁸

⁶⁸ Fredman, "Substantive Equality Revisited."

A gender-just model of judicial reasoning should begin with equality of treatment,⁶⁹ requiring that the defendant's sex not operate as an independent basis for aggravating or mitigating 'uqūbat. Where male and female defendants engage in conduct presenting the same legally relevant characteristics, judges should apply the same legal standards. Article 23 of Aceh Qanun No. 6 of 2014 provides several 'uqūbat options for perpetrators of *jarimah khalwat*,⁷⁰ thereby giving judges room for individualized sentencing.⁷¹ Such discretion should be exercised on the basis of circumstances relevant to the conduct and the defendant's culpability.⁷²

Equality does not require the severity of 'uqūbat to be identical in every case. Differential treatment may be justified where it rests on grounds that are relevant, objective, and legally defensible.⁷³ Within a framework of individualized sentencing, the defendant's individual circumstances and the characteristics of the conduct may be considered insofar as they are relevant to culpability and are applied consistently to both male and female defendants.⁷⁴ This principle is consistent with the concept of individualized sentencing, which treats the characteristics of the case and the defendant as relevant bases for determining punishment.⁷⁵

The issue becomes more sensitive when judicial reasoning relies on gender identity or constructions of ideal male and female conduct. In Judgment No. 30/JN/2016/MS-BNA, one of the aggravating circumstances concerning the female defendant was that she was described as "a Muslim woman who should uphold the values of Islamic shari'a."⁷⁶ This consideration cannot, by itself, be categorized as discriminatory. However, where female identity is invoked as an aggravating factor but is not applied to male defendants in comparable circumstances, it may establish different standards of expected conduct. The relevant inquiry is therefore the function that gender identity serves within the sentencing reasoning.⁷⁷

The principles of non-discrimination and freedom from gender stereotypes require judges to distinguish between facts relevant to criminal responsibility and assumptions about appropriate conduct based on gender.⁷⁸ Gender may be referred to in a judgment where it has legal relevance, but that relevance should be explained through reasoned argument. Scrutiny of stereotypes is important because judicial reasoning may produce differential treatment when assumptions about men or women are invoked without an adequate basis.⁷⁹ Accordingly, gender-sensitive adjudication does not require judges to disregard gender altogether; rather, it requires them to explain why a gender-related consideration is legally relevant to the

⁶⁹ Rebecca Fielding-Miller et al., "Gender, Justice and Empowerment: Creating the World We Want to See," *Culture, Health & Sexuality* 22, no. sup1 (2020): 1–12, <https://doi.org/10.1080/13691058.2020.1736843>.

⁷⁰ Pemerintah Provinsi Aceh, "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 2014.

⁷¹ Berry, "Individualized Sentencing."

⁷² Yusrizal Hasbi et al., "Criminalising Women, Silencing Victims: Human Rights and Sharia Enforcement in Aceh," *De Jure: Jurnal Hukum Dan Syaria* 17, no. 1 (2025): 175–203, <https://doi.org/10.18860/j-fsh.v17i1.29635>; Nur et al., "Models For Implementing Punishment Against Jarimah Khalwat Perpetrators In Aceh Province."

⁷³ Andrew Cornford, "Beyond Fair Labelling: Offence Differentiation in Criminal Law," *Oxford Journal of Legal Studies* 42, no. 4 (2022): 985–1011, <https://doi.org/10.1093/ojls/gqac007>.

⁷⁴ Audrey Hickert et al., "Prior Punishments and Cumulative Disadvantage: How Supervision Status Impacts Prison Sentences *," *Criminology* 60, no. 1 (2022): 27–59, <https://doi.org/10.1111/1745-9125.12290>.

⁷⁵ Berry, "Individualized Sentencing."

⁷⁶ Mahkamah Syar'iyah Banda Aceh, "Putusan Nomor: 30/JN/2016/MS-BNA."

⁷⁷ Renzulli, "Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of *JL V Italy* – A Retreat into the Shadows?"

⁷⁸ Bárbara Pereira, Marta Sousa, and Andreia de Castro Rodrigues, "Gender and Judicial Decision-Making: A Systematic Review of How Gendered Narratives Shape Judicial Reasoning," *Victims & Offenders*, 2026, 1–25, <https://doi.org/10.1080/15564886.2026.2680008>.

⁷⁹ Renzulli, "Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of *JL V Italy* – A Retreat into the Shadows?"

determination of ‘uqūbat and to ensure that comparable standards are applied where materially similar circumstances exist.

The quality of legal reasoning is therefore central to the assessment of gender justice, particularly where judges exercise discretion in sentencing. Gender-sensitive adjudication requires judges to scrutinize the assumptions underlying sentencing decisions and to ensure that discretionary assessments do not perpetuate gender-based bias or exclusion.⁸⁰ This is particularly important where differences in sanctions arise. Judgment No. 01/JN/2012/MS-Aceh demonstrates a difference in ‘uqūbat between male and female defendants,⁸¹ but the basis for such differentiation cannot be conclusively established from the judgment and the available appellate proceedings. The difference in outcome should therefore be examined together with the quality of the reasoning rather than treated as automatic evidence of discrimination. This approach to judicial decision-making is also relevant to legal research that treats judicial judgments and their legal reasoning as primary objects of analysis.⁸²

Judicial authority to determine ‘uqūbat should be accompanied by legally defensible justification, because the legitimacy of punishment is connected to the rationality of judicial reasoning and the proportionality of sanctions.⁸³ Several studies demonstrate that the quality of judicial reasoning influences how equality principles are applied in judgments. Andaryuni et al. find that judges combine legal, social, and religious considerations in constructing their reasoning, while the application of certain norms remains inconsistent.⁸⁴ From a gender perspective, Renzulli demonstrates that gender stereotypes may enter judicial reasoning and affect the application of the principle of non-discrimination.⁸⁵ Berry, meanwhile, emphasizes the importance of defendants’ characteristics and the concrete circumstances of a case in individualized sentencing.⁸⁶ These findings indicate the need for a framework capable of examining the consistency of legal standards, the relevance of differentiating factors, and the possible use of gender stereotypes in determining ‘uqūbat.

The findings above support a framework for examining judicial reasoning through three cumulative questions. *First*, have the same legal standards been applied to male and female defendants in materially comparable circumstances? *Second*, where there is differential treatment or a difference in the severity of ‘uqūbat, is that difference based on circumstances that are relevant, objective, proportionate, and legally defensible? *Third*, are the reasons free from stereotypes that prescribe particular standards of conduct on the basis of sex? These questions translate the substantive-equality framework into a practical analytical model for assessing judicial reasoning without eliminating the discretion necessary for individualized sentencing.

⁸⁰ Rosemary Hunter, Sharyn Roach Anleu, and Kathy Mack, “Feminist Judging in Lower Courts,” *Journal of Law and Society* 48, no. 4 (2021): 595–617, <https://doi.org/10.1111/jols.12321>.

⁸¹ Mahkamah Syar’iyah Aceh, “Putusan Nomor: 01/JN/2012/MS-ACEH.”

⁸² Philipp Schroeder and Johan Lindholm, “From One to Many: Identifying Issues in CJEU Jurisprudence,” *Journal of Law and Courts* 11, no. 1 (2023): 163–86, <https://doi.org/10.1086/717421>.

⁸³ Zul Fahmi et al., “Criminal Law and Islamic Perspectives on The Death Penalty in Parental Murder Cases,” *Walisongo Law Review (Walrev)* 7, no. 2 (2025): 195–214, <https://doi.org/10.21580/walrev.2025.7.2.28829>; Muhammad Roihan Qowima et al., “From Permissibility to Proportionality: Reconstructing the Legitimacy and Limits of Capital Punishment in Contemporary Islamic Jurisprudence,” *Uqubah: Journal of Islamic Criminal Law* 1, no. 1 (2026): 52–70.

⁸⁴ Andaryuni et al., “Negotiating Legal Pluralism: Judicial Reasoning on Domestic Violence Divorce Cases in Indonesian Religious Courts.”

⁸⁵ Renzulli, “Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of *JL V Italy* – A Retreat into the Shadows?”

⁸⁶ Berry, “Individualized Sentencing.”

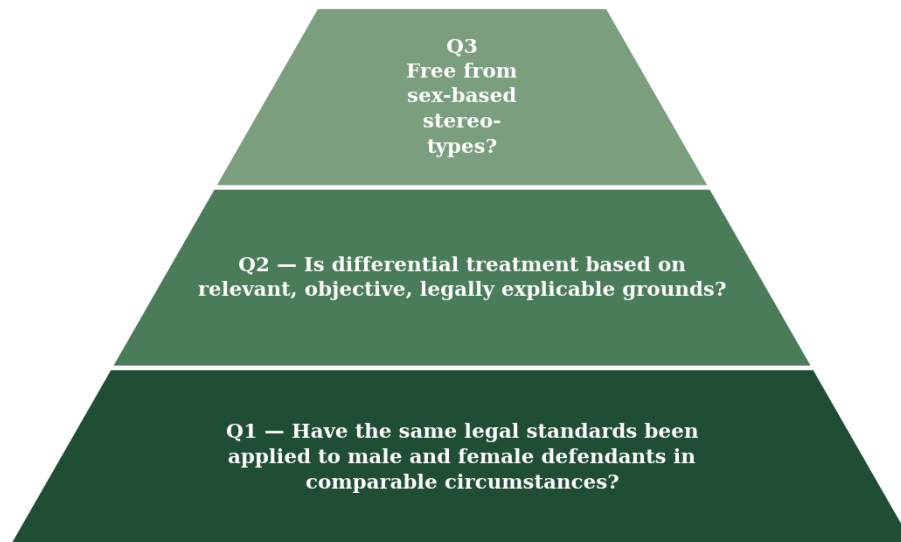


Figure 3. Proposed gender-just judicial reasoning model based on three cumulative questions

The three questions are intended to operate cumulatively rather than as alternatives. The first question establishes consistency of the legal standard; the second tests the justification for any differential treatment; and the third scrutinizes whether gender stereotypes enter the reasoning. Where all three dimensions are satisfactorily addressed, judicial discretion can operate within a framework that is more transparent, consistent, and legally defensible. Conversely, where a differential ‘*uqūbat* is not supported by relevant and adequately explained grounds, or where gendered assumptions substitute for legally relevant reasoning, the judgment warrants closer scrutiny from a substantive-equality perspective.

This model also clarifies the relationship between gender justice and individualized sentencing. Individualization remains permissible because defendants may differ in circumstances relevant to the offense and sentencing. What requires scrutiny is not differentiation itself, but the legal basis, explanation, and consistency of that differentiation. In this sense, gender justice in *jarimah khalwat* sentencing need not be achieved through identical ‘*uqūbat* for all defendants. What matters is equality in the reasoning process: legal standards must be applied consistently, differential treatment must have relevant and legally defensible justification, and gender identity must not become a stereotype that determines the severity of punishment.

The proposed model therefore preserves the normative character of Aceh’s *jināyāt* law while providing a structured means of evaluating the exercise of judicial discretion. Its contribution lies in shifting the assessment of gender justice from the outcome of sentencing alone toward the reasoning that connects legal standards, individual circumstances, and the severity of ‘*uqūbat*. This approach enables adjudicative practices to remain responsive to substantive equality while maintaining the judicial authority to individualize sentencing according to the circumstances of each case.

International law perspectives on gender justice in *khalwat* adjudication

The preceding analysis is grounded in Aceh’s Islamic criminal law framework, yet the issues of equal treatment, justified differentiation, and gender stereotyping identified in *khalwat* adjudication also have relevance within Indonesia’s international legal commitments. Indonesia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through Law No. 7 of 1984 and acceded to the International Covenant on Civil and

Political Rights (ICCPR) through Law No. 12 of 2005.⁸⁷ Article 15 of CEDAW recognizes women's equality before the law,⁸⁸ while Article 26 of the ICCPR guarantees equal protection of the law without discrimination.⁸⁹ These provisions provide a broader legal context for examining whether differences in judicial treatment are based on legally relevant grounds or on assumptions associated with gender.

The relevance of this framework is particularly apparent in relation to judicial reasoning. CEDAW General Recommendation No. 33 on women's access to justice emphasizes that gender stereotyping and gender bias within the justice system can distort judicial assessments by replacing relevant facts with preconceived assumptions, including rigid standards concerning appropriate behaviour for women and men.⁹⁰ This concern corresponds with the distinction developed in this study between individualized sentencing based on relevant circumstances and differential treatment grounded primarily in gendered expectations. International human rights law therefore provides a complementary perspective for scrutinizing the reasoning through which gender may enter judicial assessment, without displacing the normative framework governing *'uqūbat* under Aceh's *jināyāt* law.

Comparative jurisprudence further illustrates this concern. In *J.L. v. Italy*, the European Court of Human Rights examined judicial reasoning involving gendered assumptions and considered their implications for the prohibition of discrimination under Article 14 of the European Convention on Human Rights in conjunction with the right to respect for private life under Article 8. The Court's examination concerned judicial statements about the applicant in proceedings arising from allegations of sexual violence, while its reasoning addressed the potential impact of gender stereotypes on the protection of her rights.⁹¹ Renzulli's analysis of the judgment similarly highlights the significance of gender stereotypes in judicial reasoning and their implications for non-discrimination.⁹² Although the case arose under the European Convention on Human Rights and is not directly applicable to Aceh, it offers a comparative illustration of the broader concern addressed in this study: judicial reasoning should distinguish between legally relevant circumstances and assumptions about how women or men are expected to behave.

Viewed in this broader context, the gender-just judicial reasoning model proposed in this study can be understood as complementary to principles of equality, non-discrimination, and access to justice reflected in international human rights law. Its three elements—consistent legal standards in materially comparable cases, legally defensible justification for differential treatment, and scrutiny of gender stereotypes—remain grounded in the analysis of Aceh's *khalwat* judgments and the applicable *jināyāt* framework. International law does not determine the outcome of *khalwat* cases or replace Aceh's legal norms; rather, it provides an additional normative context for assessing whether judicial reasoning is transparent, adequately justified, and attentive to the requirements of equality and non-discrimination.

⁸⁷ Republik Indonesia, "Undang-Undang Nomor 7 Tahun 1984 Tentang Pengesahan Konvensi Mengenai Penghapusan Segala Bentuk Diskriminasi Terhadap Wanita (Convention on The Elimination of All Forms of Discrimination Against Women)," 1984; Republik Indonesia, "Undang-Undang Nomor 12 Tahun 2005 Tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik)," 2005.

⁸⁸ United Nations, "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979," September 3, 1981, pt. IV, art. 15.

⁸⁹ United Nations, "International Covenant on Civil and Political Rights," March 23, 1976, pt. III, art. 26.

⁹⁰ United Nations, "Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 on Women's Access to Justice," August 3, 2015, paras. 26–29.

⁹¹ European Court of Human Rights, "*J.L. v. Italy* (No. 5671/16)," May 27, 2021, paras. 136–141.

⁹² Renzulli, "Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of *JL V Italy* – A Retreat into the Shadows?"

Conclusion

The findings demonstrate that gender justice in sentencing for *jarimah khalwat* cannot be determined solely by comparing the ‘*uqubat* imposed on male and female defendants. The judgments examined reveal variations in ‘*uqubat* that may constitute legitimate individualized sentencing where differences are grounded in relevant circumstances of the offense and the defendant, supported by objective, proportionate, and legally defensible reasoning, and applied consistently in materially comparable cases. At the same time, judicial reliance on gender identity or assumptions concerning appropriate male and female conduct requires closer scrutiny where such considerations function as aggravating or mitigating grounds without clear legal justification. Gender justice is therefore better assessed through the quality and justification of judicial reasoning than through the uniformity of sentencing outcomes alone.

Based on these findings, this study proposes a gender-just judicial reasoning model comprising three points of examination: consistency of legal standards for male and female defendants in materially comparable circumstances; the relevance, objectivity, proportionality, and legal defensibility of differential treatment; and scrutiny of gender stereotypes in judicial reasoning. The model does not seek to eliminate judicial discretion or individualized sentencing, but provides a framework for making discretionary ‘*uqubat* more transparent, consistent, and accountable while preserving the normative character of Aceh’s *jināyāt* law. The model also provides a complementary basis for situating gender-sensitive judicial reasoning within Indonesia’s international commitments to equality, non-discrimination, and access to justice. Future research may expand the corpus of judgments and employ empirical approaches to examine how judges construct and justify gender-related considerations in practice.

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Author Contributions

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