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The Implementation of Corporal Punishment in Qanun Number 14 of 2003 Concerning Khalwat (Seclusion) in Aceh Darussalam Province

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Abstract.
The government has authorized the implementation of Islamic law in Nanggroe Aceh Darussalam (NAD) Province as Islamic teachings in every aspect of life. The government has validated five qanun directly related to Islamic law and court: Qanun Number 13 of 2003 about maisir; Qanun Number 14 of 2003 about khalwat; Qanun Number 7 of 2004 about zakat administrator. This research is qualitative research using a normative sociological approach. The results of this study indicate that there are at least six kinds of obstacles that hinder the implementation of corporal punishment in Aceh, namely: the substance of the qanun on seclusion is weak; lack of political will from the Aceh government to implement the agency's criminal law earnestly; various perceptions of the qanun khalwat among Acehnese and students; reluctance of law enforcement officers to put the policies into practice; limited public pressure; and the low budget for the enforcement of Islamic law in Aceh. Those results implied the absence of legal ce*rtainty.*

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1. Introduction

The implementation of Islamic law in Nanggroe Aceh Darussalam Province is a privilege for Aceh regulated through Law No. 44 of 1999 concerning the Implementation of the Privileges of the Special Region of Aceh. Then it was strengthened again by the Law No. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as Nanggroe Aceh Darussalam Province, which has been replaced by Law No. 11 of 2006 concerning the Government of Aceh including the implementation of religious life, customs, education and the role of ulama in determining Aceh regional policies.[1] The government has allowed the implementation of Islamic law in Nanggroe Aceh Darussalam (NAD) Province to demand Islamic teachings in all aspects of life. However, the implementation was only actualized in June 2005 with the first execution in Bireuen

for the decision of the Syariah Court, which had obtained permanent law. In his speech, the Supreme Court Chairman conveyed three things in the inauguration of the Syar'iyah Court chairman. *First*, the Islamic law implemented in Aceh must meet the people's legal awareness and be able to provide better justice to the community. If this is not successful, the implementation of the sharia may backfire and be counter-productive. *Second*, the sharia must gradually be implemented because sharia in Aceh is now like a seed transferred from the nursery to the middle of the rice fields. Therefore, it must be maintained and properly cared for and should not be overloaded. *Third*, the establishment of a judiciary to implement Islamic law in the context of special autonomy in Aceh, not only will affect positive law in Aceh, but also will affect the development of constitutional law in Indonesia. [2]

Up to now, five *qanun* directly related to Islamic law and justice have been ratified. Those qanuns are Qanun No. 11 of 2002 concerning the implementation of Islamic law in the fields of aqidah, worship, and Islamic symbols, Qanun No. 12 of 2003 concerning alcohol, Qanun Number 13 of 2003 concerning Maisir, Qanun No. 14 of 2003 concerning seclusion, and Qanun Number 7 of 2004 concerning zakat management.[3] Qanun Number 14 of 2003 concerning seclusion aims to prevent all activities/deeds that lead to adultery. The other purposes of making this qanun are: (1) to enforce Islamic Shari'a and the prevailing customs in the community in the Province of Nanggroe Aceh Darussalam; (2) to protect the public from various forms of activities and/or actions that damage honor; (3) to prevent community members as early as possible from committing acts that lead to adultery; (4) to increase community participation in preventing and eradicating the occurrence of khalwat/seclusion; and (5) to eliminate the possibility of moral decay. [4] In applying this *qanun*, there are several types of crimes, including caning, fines, imprisonment, confinement, or administrative sanctions by revoking or canceling the business license granted.

In this case, the researcher focuses specifically on the *uqubat* of whips in the qanun of the province of Nanggroe Aceh Darussalam No. 14 of 2003 concerning khalwat (seclusion).[5] The object selection focussed on seclusion only is academically and sociologically motivated. Academically, research must be specific and clear. Therefore, it only focuses on criminal acts of seclusion. Researchers feel that the research on seclusion punishment already represents the type of corporal punishment. The caning punishment in the *qanun* is one of the corporal punishments in Islamic law and criminal law. [6]

2. Methodology

This qualitative research uses a normative sociological approach This primary data is collected through information and interviews from people who have the capacity and are appropriate to serve as informants, including: (1) people in the research location, such as parents of seclusion perpetrator or Acehnese natives. (2) community leaders/clerics (3) government related to the implementation of Islamic law in Nanggroe Aceh Darussalam, such as judges and MUI (4) academicians (5) seclusion perpetrators receiving corporal punishment.

Therefore, the total number of respondents who filled out questionnaires was 20 people. The detail respondents can be seen in the following table:

TABLE 1

Age	< 40	15 respondents
	> 40	5 respondents
Gender	Male	10 respondents
	Famale	10 respondents
Academicians		5 respondents
Acehnese natives		5 respondents
Community Leaders		5 respondents
Government		5 respondents

This study used a descriptive analysis method with the following flowchart:

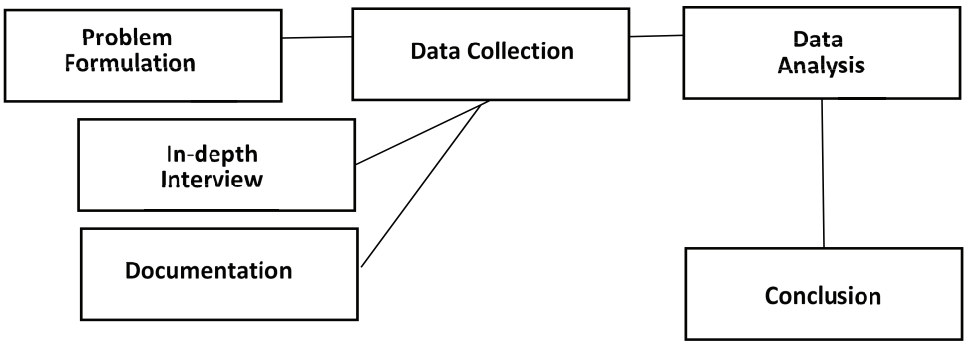

Figure 1

3. Result and Discussion

3.1. Corporal Punishment in Qanun Seclusion

Rethinking and legal exploration to strengthen an integral crime prevention strategy appeals to a Value-Oriented Approach, both human values and cultural identity values

and religious moral values. [7, 8] Qanun No. 14 of 2003 NAD explains several types of crimes from caning, fines, imprisonment, confinement, or administrative sanctions by revoking or canceling the business license that has been granted. The caning punishment in the qanun is one of corporal punishments and other types of punishment in Islamic law and criminal law.

In Black's Law Dictionary, corporal punishment has been termed Any kind of punishment of or inflicted on the body (physical punishment). Herbert M. Kritzer (Ed.), *Legal Systems of The World, A Political, Social and Cultural Encyclopedia, 2005: 362*: "*Corporal punishment is the infliction of physical pain on the body as a penalty for a person's wrongdoing*." *Corporal Punishment* is a *punishment of the body*. [9] Free encyclopedia, Wikipedia, states that corporal punishment is a crime by giving pain directly aimed at the physical. This punishment is given hoping for a direct change of behavior that is not expected from a person. [10] The types of corporal punishment as criminal sanctions are also known by various terms: (a) beating (hitting); (b) blinding (blind); (c) branding (stereotyping); (d) Caning (beating with rattan/stick); (e) Flogging (whipping); (f) mutilation (cutting); (g) paddling (beating with a whip); (h) pillory (public punishment/on the stake). In Islamic criminal law, this corporal punishment is one of the punishments given *hudud* (a provision set by Allah in the Koran), or one that is given *ta'zir* (a punishment given through a judge's decision with all considerations). The types of corporal punishment in Islamic criminal law are: (a) cutting off hands and feet, (b) cutting off hands/feet, and (c) slapping/beating is a variety of forms of punishment as a warning and a reward. This punishment is whipping/flogging or *jilid*.

Historically, corporal punishment is mainly provided by court decisions, which is a state policy. Corporal punishment is also widely enforced in school policies as a means of disciplinary punishment. This crime was first presented in classical civilizations, primarily used in Greece, Rome, Egypt, and Israel, both in court decisions and as a discipline in education. [11] These criminal practices vary widely, but caning or beatings with sticks are more commonly used. Like Sparta, this punishment was part of the state policy used to build morale and physical strength. Although the penalties in Sparta were extraordinarily harsh, corporal punishment was a common crime. In Europe in the Middle Ages, corporal punishment was used as a church educational discipline tool. However, some circles have opposed this punishment, especially the church diocese, such as Saint Anselm, the Archbishop of Canterbury, who was against giving this punishment to children in the XI century because it was considered cruel.

Since the sixteenth-century corporal punishment has also been directed at criminals by court decisions, this punishment is a lesson for other perpetrators not to do the same

thing. Meanwhile, an author of education, Roger Ascham, criticized corporal punishment as children's disciplinary tool because it was considered cruel. Likewise, an English philosopher criticized the use of corporal punishment in education. His perspectives were significantly persuasive on policymakers to ban corporal punishment in Polish schools in 1783. In the eighteenth century, the application of corporal punishment drew much criticism, both from philosophers and law reformers, because its use by giving pain to the violator was considered inefficient since the punishment given in a short time cannot permanently change a person's behavior. Critics believe that the purpose of punishment should be to change (improvement), not retaliation. Jeremy Bentham expressed a similar statement that prison is more effective in changing a person's behavior because someone can be controlled and monitored at any time. This system can reduce the use of corporal punishment as a criminal. The consequence is the decline of corporal punishment application in the nineteenth century, especially in European and North American countries. It happened due to embarrassing incidents involving individuals, causing severe suffering and leading to death due to corporal punishment in European countries. For example, in England, there were two famous death cases of soldiers named Frederick John White who died after the military whipped him in 1847 and Reginald Cancellor who was killed at the Schoolmaster in 1860. These two incidents received a robust and sharp response from the public, and many countries introduced this punishment in official institutions as suffering.

The use of corporal punishment as a sanction was much reduced in several countries in the twentieth century. However, corporal punishment is still practiced as a disciplinary punishment in prisons, the military, and public schools. A whip is one of corporal punishment in addition to other crimes. This crime is in the constitution of several countries. Corporal punishment based on court decisions is a corporal punishment used to punish criminals. Generally, this corporal punishment is a culture that has existed since ancient times. However, from the nineteenth century until the twentieth century, corporal punishment was gradually abolished in court decisions because of industrial developments. Currently, corporal punishment is still commonly used in several Islamic countries, including countries in Africa, the Middle East, South Asia, and several countries in Southeast Asia. A region that imposed this punishment for violators of the law is Nanggroe Aceh Darussalam. The caning punishment is imposed as a criminal offense for qanuns in Aceh, such as perpetrators of seclusion, alcohol, and gambling

3.2. Qanun Concerning Khalwat/Seclusion

Since 2001, Aceh Province has declared the implementation of Islamic law. This enforcement is based on the Republic of Indonesia Law No. 44 of 1999 concerning the Implementation of the Privileges of Nanggroe Aceh Darussalam Province and the Republic of Indonesia Law No. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as Nanggroe Aceh Darussalam Province.[12] Since the formal implementation of Islamic law, several implementation instruments have been completed, such as establishing several institutions/services/agencies and the enactment of *qanuns*. Regarding the implementation of Islamic law in Aceh, the Ulama Consultative Assembly (MPU), the Sharia Court, Baitul Maal, the Islamic law agency, and Wilayatul Hisbah have been established. [13] Based on the regulations in 2002, Qanun of Nanggroe Aceh Darussalam Province No. 10/2002 on the Islamic Sharia Court was ratified, and Qanun of Nanggroe Aceh Darussalam Province No. 11/2002 on the Implementation of Islamic Law of Aqidah, Worship and Islamic Syiar. In 2003 the Government of Aceh had also ratified four qanuns related to the implementation of Islamic law, namely the Qanun of Nanggroe Aceh Darussalam Province No. 9 of 2003 concerning the Working Procedures of the Ulama Consultative Assembly with the Executive, Legislative and Other Agencies; Qanun of Nanggroe Aceh Darussalam Province No. 12 of 2003 concerning Alcoholic Drinks and the Others; Qanun of Nanggroe Aceh Darussalam Province No. 13 of 2003 concerning *Maisir* (Gambling); and Qanun of Nanggroe Aceh Darussalam Province No. 14 of 2003 concerning Khalwat (seclusion). [14]

This research is limited to Qanun No. 14 of 2003 concerning Seclusion. The scope of khalwat (seclusion) is as regulated in Article 2, which reads: The scope of the prohibition on khalwat/seclusion is all activities, actions, and circumstances that lead to adultery. According to the Qanun of Aceh Province, there are 3 (three) types of sanctions: caning, fines, and the last one is imprisonment. The objectives of Qanun No. 14 of 2003 are to enforce sharia and customs in Aceh, to protect the public from actions that ”damage their honor and dignity,” to prevent community members from committing adultery and the like from an early age, ”to increase community participation in preventing and eradicating the occurrence of khalwat/seclusion,” and to prevent the moral decline of the community. Qanun No. 14 of 2003 concerning Khalwat (Seclusion), was ratified on July 16, 2003, in Banda Aceh coinciding with 16 Jumadil Awal 1424 H. Regional Gazette of Nanggroe Aceh Darussalam Province Year 2003 Number 27 Series D Number 14, and an additional Provincial Gazette Nanggroe Aceh Darussalam 2003 Number 30

3.3. The Obstacles of Qanun Implementation Concerning Seclusion in Aceh

Several obstacles still exist in implementing Islamic law in Aceh, mainly due to the lack of understanding, appreciation, and practicing of religious teachings among the community. [15] Some of the obstacles in the implementation of Qanun Khalwat include the following:

3.3.1. No Legal Certainty

The substance of the *qanun jinayah*, including the Khalwat Qanun is still weak, both in its content and the articles contained in the *qanun*. Even though there is still potential for law enforcers such as Judges of the Sharia Court, the Prosecutor Institution, Police, and Lawyers who have the authority to make legal discoveries, not legal politics. [16] However, it seems that this opportunity has not been used at all to raise legal settlements by the community according to the customs of a specific area. Law enforcement officers have been reluctant to enforce the jinayah qanun. Nevertheless, the contents of the *qanun jinayah* contain weaknesses. [17]

3.3.2. The Appearance of Harassment/ Violence

Another implication of the non-enforcement of the *qanun jinayah* in Aceh, including the Qanun Khalwat, is the emergence of various acts of violence against violators of the *qanun jinayah,* both violations of clothing and seclusion. Violence arising from community actions is physical destruction and beatings. Violence in the enforcement of *qanun jinayah* can arise from fellow community members and the community against Wilayatul Hisbah (WH) officers. Violence arising from fellow community members, such as violence against the violation of the qanun khalwat occurred in Central Aceh, Dewa Ronga-Ronga. The khalwat couple was beaten by residents until they were battered and then washed. After that, it was handed over to the local Wilayatul Hisbah (WH) officer. [18]

Based on interviews with Acehnese community leaders, it was found that violence arose because the form of jinayah punishment was physical, then the violence carried out by the community against khalwat violators seemed legal and permissible. [19]

3.3.3. Arguments on Enforcement of Qanun Jinayah

First, regarding the Islamic law that was enforced in Aceh, there are different interpretations of some Acehnese, non-governmental organizations, and migrants from outside Aceh regarding Islamic law. The stereotype built-in is that Islamic law is only *jinayah* which includes whipping. This interpretation prompted one of the NGOs managed by the Acehnese called the Insan Cita Madani Foundation (YICM) Aceh, to conduct a poll on the existence and understanding of the Acehnese regarding the implementation of Islamic law. [20] *Second*, regarding the sanctions for *qanun jinayah* and Human Rights (HAM), the issue of human rights violations in the enforcement of *qanun jinayah* after implementing the first caning in Bireuen District on June 24, 2005 with the case of "gambling." Then followed by the implementation of gambling whips in Lhokseumawe and other areas. The criticism then mentioned that the sanctions contained in the *qanun jinayah* (whipping) were contrary to human rights. Consequently, the Department of Islamic Law (DSI) and the Provincial MPU have a role to play in explaining carefully why they consider that Aceh's caning punishment does not contradict human rights. The arrangements are also agreed upon by the executive (the Aceh government) and the legislative (the Acehnese people) state institutions. *Third*, regarding the existence of the Wilayatul Hisbah institution. This argument arose because the authority run by the Wilayatul Hisbah officers seemed too excessive. The Islamic Sharia Service relies heavily on wilayatul hisbah as the spearhead in supervising the implementation of Islamic law. Consequently, statutory provisions question its existence so that Wilayatul Hisbah must be under the Islamic Sharia Service. [21]

4. Conclusion

The government has allowed the implementation of Islamic law in Nanggroe Aceh Darussalam (NAD) Province to demand Islamic teachings in all aspects of life. To date, five *qanun* related to Islamic law and justice have been ratified. Those are Qanun No. 11 of 2002 concerning the implementation of Islamic law in the fields of *aqidah*, worship, and Islamic symbols; Qanun No. 12 of 2003 concerning alcohol; Qanun Number 13 of 2003 concerning Maisir; Qanun Number 14 of 2003 concerning seclusion; and Qanun Number 7 of 2004 concerning *zakat* management.The results of this study indicate that there are at least six kinds of obstacles hindering the corporal punishment implementation in Aceh. Those obstacles are the substance of the qanun on seclusion

is weak; the absence of political will from the Aceh government to earnestly implement the agency's criminal law; various perceptions of the qanun khalwat among Acehnese and students; the reluctance of law enforcement officers to put into place the policies; limited public pressure; and the low budget for the enforcement of Islamic law in Aceh. Those obstacles have implications for the absence of legal certainty

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