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Obstacles in Implementing Whiping Punishment for Violators of Islamic Law in Simeulue Regency

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Abstract *Aceh Province is the only one in Indonesia that is given the authority to implement Islamic law in all aspects of community life. One aspect that is of concern to the Aceh government is the enforcement of Islamic law. Where, if there is a violation of Islamic law, the perpetrator will be subject to sanctions in the form of ta'zir with a punishment of caning in accordance with the level of his/her guilt after receiving a final verdict from the Aceh Sharia Court. This study uses a qualitative approach with a literature study type of research. In this case, the researcher examines various existing literature related to the implementation of caning punishment, both from books, journals, articles, and even print and electronic media. The results of the literature study show that the implementation of caning punishment in Aceh faces various obstacles in the form of limited budget, human resources, and rejection from many parties who view the implementation of caning punishment as contrary to respect for Human Rights (HAM).*

Keywords: *Implementation Constraints, Caning Punishment, Violators Of Islamic Law.*

1. INTRODUCTION

Indonesia as a multicultural country highly respects diversity, one of which is in the application of law. Indonesia as a country of law as regulated in article 1 paragraph (3) of the 1945 Republic of Indonesia Law does not mean that in the national legal system the country does not provide space for special regions to implement laws in accordance with their local wisdom. This is as regulated in article 18 B paragraph (2) that the state recognizes and respects customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law.

Based on Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Aceh as a special region applies Islamic law in all aspects of community life, including in the legal field. In this case, the law enforcer for violators of Islamic law in Aceh is a special institution called the Sharia Court which is domiciled in the province and district/city in Aceh as stipulated in Article 1 paragraph (15) of Law Number 11 of 2006 concerning the Government of Aceh that: "The Aceh Sharia Court and the district/city Sharia Court are courts as implementers of judicial power in the religious court environment which are part of the national judicial system."

The implementation of Islamic law in Aceh covers all aspects of community life, including aspects of faith, sharia and morals as regulated in Article 125 paragraph (1) and (2) of Law Number 11 of 2006 that: (1) Islamic law implemented in Aceh includes faith, sharia

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and morals and (2) Islamic law includes worship, ahwal al syakhshiyah (family law), muamalah (civil law), jinayah (criminal law), qadha' (justice), tarbiyah (education), da'wah, syiar and defense of Islam". Regarding the application of caning punishment for violators of Islamic law, it is very appropriate as regulated in Article 126 paragraph (1) and (2) of Law Number 11 of 2006 concerning the Government of Aceh, which states: "(1) Every adherent of Islam in Aceh is obliged to obey and practice Islamic law and (2) Every person who resides or is in Aceh is obliged to respect the implementation of Islamic law."

In the life of the Acehnese people who are predominantly Muslim, Aqidah and worship are the main parts of practicing Islamic law that need protection and guidance so that they are fostered and maintained in the life of society, nation, and state in Aceh Province. Therefore, its implementation needs to be supervised maximally. Supervision of the implementation of Islamic law in Aceh Province is carried out by an official body, namely the Wilayatul Hisbah. In this case, if there is sufficient strong evidence of a violation of Islamic law, then the Wilayatul Hisbah officials have the authority to reprimand, advise, and take firm action, and report it to the authorized investigator. After sufficient and convincing evidence, the decision against the violators of Islamic law is made by an institution, namely the Sharia Court.

The legal sanctions that will be imposed on violators of Islamic law are in the form of caning. This is as regulated in articles 20, 21, 22, and 23 of Qanun Number 11 of 2002 concerning the Implementation of Islamic Law in the Field of Faith, Worship, and Islamic Law . Article 20 paragraph (1) and (2) of Qanun Number 11 of 2002 concerning the Implementation of Islamic Law in the Field of Faith, Worship, and Islamic Law mandates that: "(1) Anyone who spreads deviant beliefs or sects will be punished with ta'zir in the form of a maximum prison sentence of 2 (two) years or a maximum public caning sentence of 12 (twelve) times and (2) Anyone who intentionally deviates from Islamic Faith and/or insults or insults the Islamic religion will be punished with a punishment that will be regulated in a separate qanun."

Furthermore, Article 21 paragraph (1) and (2) of Qanun Number 11 of 2002 concerning the Implementation of Islamic Law in the Field of Faith, Worship and Islamic Law mandates that: "(1) Anyone who fails to perform Friday prayers three times in a row without a sharia excuse shall be punished with ta'zir in the form of a maximum prison sentence of 6 (six) months or a maximum public flogging sentence of 3 (three) times and (2) Public transportation companies that do not provide the opportunity and facilities for service users to perform obligatory prayers shall be punished with ta'zir punishment in the form of revocation of their business license.

Meanwhile, Article 22 paragraph (1) and (2) of Qanun Number 11 of 2002 concerning the Implementation of Islamic Law in the Field of Faith, Worship and Islamic Law explains that: "(1) Anyone who provides facilities/opportunities to Muslims who do not have a sharia excuse for not fasting during the month of Ramadan shall be punished with ta'zir punishment in the form of a maximum prison sentence of 1 (one) year or a maximum fine of 3 (three) million rupiah or a maximum public flogging sentence of 6 (six) times and their business license shall be revoked and (2) Anyone who eats or drinks in a place/in public during the day during the month of Ramadan shall be punished with ta'zir punishment in the form of a maximum prison sentence of 4 (four) months or a maximum public flogging sentence of 2 (two) times."

Regarding the use of clothing by the Acehnese people, it is clearly regulated in Article 23 of Qanun Number 11 of 2002 concerning the Implementation of Islamic Law in the Field of Faith, Worship, and Islamic Law that: "Anyone who does not dress in an Islamic manner will be punished with ta'zir punishment after going through a warning and guidance process by the wilayatul hisbah."

The implementation of the caning law in Aceh is in accordance with the qanun that has been socialized to the community. However, the provisions of the caning are indeed absolute, but the caning has elements and conditions that must be met.

Reality shows that the implementation of Islamic law often encounters difficult circumstances to approach with the law, whether it is related to Human Rights (HAM) or the law adopted by a country that has been determined as a legal reference for all citizens concerned (positive law). In addition, there are also assessments expressed by several humanitarian activists, so that resistance to the implementation of Islamic law in Aceh is increasing.

The concept of protecting Human Rights (HAM) is currently being touted, even in countries with Muslim majorities, so that the concept of humanity is used as a benchmark in every formation of laws and regulations in Indonesia. Many people think that the sanctions contained in the implementation of Islamic law in Aceh are very cruel and inhumane, for example the application of caning for violators of sharia law carried out by an executioner.

2. RESEARCH METHODS

Legal research aims to develop law and legal science in accordance and in line with the development of science and technology, especially global information technology. The impact is that legal research will become a sub-discipline of law that is studied professionally based on ability and expertise, as a profession that is a source of income (Muhammad, 2004: 37). In

this case, legal research is basically not to verify or test hypotheses as in social science research or natural science research. In legal research, according to some legal experts, there is no such thing as data.

Meanwhile, legal science research is conducted to find solutions to legal issues that arise, so that the results achieved do not reject or accept the hypothesis, but rather provide a prescription (solution) regarding what should be done to solve the problems that occur). Therefore, the methods used in studying legal science also differ from the methods used in studying sciences other than legal science, for example social sciences or natural sciences (Marzuki, 2005: 47).

The method used in this study is the literature study method. The literature study method or also known as the term library study is a technique for collecting data and information by reviewing written sources such as scientific journals, reference books, encyclopedias, and other reliable sources either in written form or in digital format that are relevant and related to the object being studied. This expression is in line with that put forward by (Moh.Nazir, 2015: 111) who said that literature study is a data collection technique by conducting a review study of books, literature, notes, and reports that are related to the problem being solved.

Meanwhile, Arikunto stated that literature study is a method of collecting data by searching for information through books, magazines, newspapers and other literature with the aim of forming a theoretical basis (Arikunto, 2010: 90).

The data analysis technique has been detailed to make it easier for researchers to analyze the data in four stages, namely:

1. Collecting data, at this stage the researcher collects data in the form of journals, articles and other literature to answer the formulation of the research problem.
2. Identify data.
3. Describe the data, clearly explain the literature.
4. Concluding data, based on all the data that has been obtained.

Meanwhile, according to Milles and Hubermen, the data analysis activity carried out is interactive and continues continuously until complete, so that the data is saturated (Sugiyono, 2012: 337). Therefore, in this study, the data analysis technique used uses an interactive model with the following steps.

1. Data Reduction.

   Data reduction is the initial step in analyzing data, which aims to facilitate understanding of the data obtained.

At this stage, the researcher summarizes or selects the main points, and focuses on the points to be studied in accordance with the objectives and problems of the research. The data analyzed is data that has been collected from data collection techniques using secondary data sources, including textbooks, journals, articles, theses, government regulations, encyclopedias and various other written sources, both printed and unprinted, that are in accordance with the research being studied.

2. Data Presentation.

Data presentation in a qualitative approach usually uses descriptive or presents data with narrative text. This is because every data that appears is always closely related to other data. Therefore, each data can be understood and is inseparable from its background. Data presentation is used as material for interpreting and drawing conclusions in research or in order to answer the problems being studied.

3. Data Verification.

Data verification is a step in drawing conclusions collected in this study in stages. *First* , draw temporary conclusions, but with increasing data, data verification is needed to obtain more objective data. *Second* , drawing conclusions is done by comparing the suitability of the respondent's statement with the meaning contained in the research problem conceptually (Sugiyono, 2016: 337).

3. RESULTS AND DISCUSSION

Indonesia is one of the *multicultural countries* in accordance with the geographical conditions of Indonesia. Therefore, the treatment in the fields of law, economy, culture, and social government must be fair (Budiyanto, 2006: 35). The purpose of fair treatment from the government is to realize social justice for the people of Indonesia as mandated by the fifth principle of Pancasila. Human life in society, both as individuals and collectivities (social) is always related to values, norms, and morals. The life of society everywhere grows in the scope of interaction of values, norms, and morals that provide motivation and direction for all members of society to behave, act, and behave (Budiyanto, 2006: 31).

In fact, Islam cares a lot about its followers by providing limitations in the form of laws. The purpose of Islamic law itself is inseparable from the happiness of human life in this world and in the hereafter, by taking everything that is beneficial and preventing or rejecting what is harmful, namely that which is useless for life and living. (Daud Ali, 1991: 61). In other words, Islam cares about all aspects of life, from things that are considered ordinary to problems that

are considered complicated, from problems that are considered very personal to general problems (Abu Bakar, 2005: 1).

Law is a norm or regulation that regulates the order of human life both in terms of behavior and social aspects, the purpose of law is of course to create a good and safe and prosperous society. Likewise in the Islamic system, the presence of Islamic law in general is of course in order to prevent damage and bring good benefits to Muslims by directing humans to the truth in order to achieve happiness in life, both in this world and in the hereafter. Like someone who commits an act that violates the law or statutory regulations, then that person will be punished (sanctioned). Punishment is imposed for every act, whoever the perpetrator is, regardless of the state of his body and mind. Punishment that has no naṣ, then this punishment is called ta'zir, while the types of violations that fall into this category are: attempted crime, hudud crime, unfinished qiṣaṣ/diyat, and the ta'zir crime itself .

In Indonesia itself, policies in the field of jinayat (Islamic criminal law) have experienced extraordinary development, especially since the granting of authority to one of the provinces in Indonesia, namely Aceh through a framework of Regional Autonomy and Special Autonomy in the field of Islamic law in a law. Therefore, with the implementation of Islamic law, Aceh has been given authority to implement Islamic law within the framework of the Unitary State of the Republic of Indonesia (NKRI).

This is not limited to Islamic civil law issues, but also aspects of criminal law, as well as various types of criminal acts regulated through regional regulations called Qanun, including: Qanun No. 12 of 2003 concerning Khamar and similar beverages . Qanun No. 13 of 2003 concerning Maisir, "Qanun No. 14 of 2003 concerning Khalwat, and several other Qanuns especially concerning Sharia." Then refined into Qanun Number 6 of 2014 concerning Jinayat Law. The achievement of peace in Aceh on August 15, 2005, Indonesia gave the Aceh region the broadest possible policy to implement sharia in the lives of the Acehnese people with Law Number 11 of 2006 concerning the Government of Aceh (UUPA). Article 17 paragraph (2) letter (a) states that Aceh is given the policy to organize religious life in the form of implementing Islamic law for its adherents in Aceh while maintaining religious harmony (Law No. 11 of 2006).

Implementation of the mandate of Article 17 of Law Number 11 of 2006 concerning the Government of Aceh, the Aceh government also issued Aceh Qanun Number 6 of 2014 concerning Criminal Law in Aceh related to the implementation of caning as a form of punishment in the context of learning and providing an effect to the community as well as a warning to the community not to commit acts prohibited in the Aceh *Qanun* . The caning

punishment in Aceh is carried out after a decision of the Sharia Court which has permanent legal force. The convict is not detained to await the execution of the caning sentence. At the time the execution is carried out, the public prosecutor will send a summons to be present at the time and place that has been determined.

In this case, the presence of the convict to undergo the execution is voluntary of his own accord. The public prosecutor never attempted to carry out a forced pick-up (Roslaili, 2009 : 9-10). The punishment of caning is defined as a type of punishment or sanction given to perpetrators of violations in Islamic Criminal Law. In other terms, the punishment of caning is also often referred to as *uqubat* (sanction) for violators of the established Islamic criminal law. In its implementation, this punishment comes in two categories, namely: *hudud* and *ta'zir* (Akbar, 2020).

The caning law has not been able to reduce cases of violations of Islamic law, especially in several regions. This is proven by the increasing number of cases recorded at the Aceh Sharia Court. There are 2 (two) main factors that cause the caning punishment to be ineffective, namely:

1. The seriousness of the government regarding the socialization of Islamic sharia law and action against perpetrators of sharia violations. In addition, weak supervision by the government and local communities, the very limited role of formal institutions, and the lack of socialization carried out by the Ulema Consultative Assembly, Civil Service Police Unit (Satpol PP) and Wilayatul Hisbah (WH), and the Islamic Sharia Service regarding the sanctions of the Jinayat law on target groups and the increasingly weak knowledge of religious knowledge in the community.
2. The method of implementing the caning punishment that is not in accordance with the protocol that has been set in the qanun jinayat, such as the prohibition of witnessing the caning of minors, and so on. There are obstacles to the implementation of the caning punishment in Aceh at this time, mainly due to finances, namely the very large budget for the caning punishment procession activities charged to the district/city government in Aceh through the District/City Revenue and Expenditure Budget (APBK) with a nominal amount of one caning procession activity amounting to around Rp. Rp 15,000,000.00 (*fifteen million rupiah)* to Rp 30,000,000.00 (*thirty million rupiah*) with various budget details allocated for setting up tents, providing snacks, honorariums for security officers, health workers, witnesses, and ustadz.

The implementation of the caning punishment in Aceh was born as a form of punishment in the context of implementing Islamic law in Aceh in its *entirety* . Therefore, the

legal position of caning in Qanun Number 6 of 2014 concerning Jinayat Law has a clear position as a punishment (punishment or principal punishment) for violators of Islamic law based on the main principles, namely Islam, legality, justice and balance, welfare, protection of Human Rights (HAM), and education for the community. Therefore, there is no reason for anyone in Indonesia or in the world to blame the implementation of Islamic law in Aceh, including the law of caning because it clearly has a position in the Islamic system and the Indonesian legal system. (Amin 2021: 173-174).

The punishment of caning is essentially to create welfare and a sense of security for the community and the certainty of the upholding of the law of Allah SWT. The application of the punishment of caning for violators of Islamic law, it is hoped that the violators will be deterred so that they will not repeat their actions, and become an example for other communities not to do the same. (Rizkiya, 2015:38). The Acehnese people themselves consider that the punishment of caning is better than imprisonment/confinement, because if they are sentenced to imprisonment, the perpetrators cannot carry out their activities as usual because they are locked up, moreover if the perpetrator is sentenced to caning, the perpetrator only needs to wait until their condition recovers so that they can carry out their activities as usual. In addition, the Acehnese people also consider this punishment of caning as a simulation of punishment in the afterlife (Rosida and Achmad Hariri: 2023: 126). Islamic law in Aceh has been implemented since the 17th century, then used as the basis for legislation applied to its people, the appreciation and practice of Islamic teachings over a fairly long period of history has given birth to an atmosphere of Acehnese society and culture that is thick with Islamic values (Ismail, 2014: 87).

The purpose of caning punishment for violators of sharia law is in two forms, namely physical and psychological, physical punishment is caning or lashing, which will cause pain and cause fear for the perpetrator and the community who witness it. Psychological punishment is the perpetrator is deliberately punished in front of many people with the intention of the perpetrator being given a sense of shame, likewise for people who have never committed a violation of sharia law will think twice about committing a violation because they will get a painful punishment and a very great sense of shame, so that their good name is damaged and their self-esteem and dignity fall in the eyes of society (Khotimah, 2013: 5).

In the application of Islamic law, in general there are several conditions that must be observed in order to fulfill the requirements for implementing the punishment, the conditions are as follows:

1. Punishment must have a basis in *Islamic law* . Law is considered to have a basis if it is based on laws stipulated by an authorized institution. In the case of punishment being stipulated by an authorized institution, it is required that it must not conflict with *Islamic provisions* . If it does, then the provisions of the punishment are void.
2. The punishment must be personal (individual) this means that the punishment must be imposed on the person who committed the crime and not on other innocent people. This requirement is one of the bases and principles upheld by Islamic law and this has been discussed in relation to the issue of accountability.
3. Punishment must be universal and generally applicable, this means that punishment must apply to everyone without any discrimination, whether based on rank, position, status or position (Suparyanto, 2015: 6).

In this case, the male convict is whipped in a standing position without support, without being tied, and wearing thin clothing that covers the genitals. While the woman is in a sitting position and covered by cloth on her side. If the female convict is pregnant, the whipping is carried out after 60 days after the person gives birth (Adan, 2009: 134).

The caning punishment in Aceh which is accused of violating Human Rights (HAM) and being inhumane is not true at all because the implementation process has paid great attention to the safety and rights of the convict. The pain suffered by the convict in the caning punishment does not cause permanent injury but is only temporary because in the implementation of the caning punishment, the psychological or psychological effects of the convict are more emphasized than the pain or physical effects. The parties who question the caning punishment which is considered to violate Human Rights (HAM) do not understand the concept and application of Islamic law in Aceh (Saifullah, 2020: 4).

4. CONCLUSION

From the various literature reviewed in this research, it can be concluded that:

1. The application of caning punishment in Aceh is based on the provisions of the qanun with the aim of creating a community life that is in accordance with the values of Islamic law.
2. Obstacles to the implementation of caning punishment in Aceh are caused by many factors, such as limited budget, limited resources, and higher regulations related to Human Rights (HAM).

5. BIBLIOGRAPHY

Abu Bakar, A. Y. (2005). *Islamic Sharia in the Province of Nanggroe Aceh Darussalam: Paradigms, policies, and activities* (3rd ed.). Banda Aceh: Department of Islamic Sharia, Province of Nanggroe Aceh Darussalam.

Adan, H. Y. (2009). *Shiayah and Jinayah in the framework of Sharia*. Banda Aceh: Adnin Foundation Publisher Aceh.

Akbar. (2020). Implementation of caning law. Opinion. Retrieved from https://www.acehtrend.com/news/tata-laksana-hukuman-cambuk-dalam-islam/index.html. Accessed on December 12, 2024, at 22:00.

Amin, M. (2021). *Implementation of caning law in Aceh (Legality, effectiveness, and context)* [Dissertation]. Ar-raniry State Islamic University.

Arikunto, S. (2010). *Research procedures: A practical approach* (Revised ed.). Jakarta: Rineka Cipta.

Budiyanto. (2006). *Civic education* (Vol. 3). Jakarta: Erlangga.

Daud Ali, M. (2005). *Islamic law: Introduction to the science and system of Islamic law in Indonesia*. Jakarta: Raja Grafindo Persada.

Ismail, F., & Manan, A. (2014). *Islamic Sharia in Aceh: Reality and community response*. Banda Aceh: Ar-raniry Press.

Khotimah, H. (2013). Punishment and its purpose in the perspective of Islamic law. *Journal of Law*, Faculty of Sharia and Islamic Economics IAIN Bengkulu, Bengkulu.

Law Number 11 of 2006 concerning the Government of Aceh.

Marzuki, P. M. (2005). *Legal research*. Jakarta: Kencana Prenada Group.

Nazir, M. (2015). *Research methods*. Bogor: Ghalia Indonesia.

Qanun No. 12 of 2003 concerning Alcoholic Beverages and Similar Drinks.

Qanun Number 11 of 2002 concerning the Implementation of Islamic Law in the Field of Faith, Worship, and Islamic Law.

Qanun Number 6 of 2014 concerning Criminal Law.

Rizkiya, M. (2015). Implementation of caning punishment in Tapak Tuan according to the perspective of Islamic jurisprudence: A comparative study. *Journal of Hikmah*, 12(1), January-June 2015. Padangsidimpuan: UIN Syech Ali Hasan Ahmad Addary.

Rosida, I. A., & Hariri, A. (2023). Implementation of caning sanctions, Qanun Jinayat in Aceh from a human rights perspective. *Journal of Media of Law and Sharia*, 4(2). Yogyakarta: Muhammadiyah University of Yogyakarta.

Roslaili, Y. (2009). *Formalization of Islamic criminal law in Indonesia: Analysis of Islamic criminal law cases in Nanggroe Aceh Darussalam* [Dissertation]. Postgraduate School of Jakarta Islamic University.

Saifullah. (2020). *Aceh's caning law in the perspective of Islamic law and human rights* [Thesis]. Banda Aceh: UIN Ar-raniry.

Sugiyono. (2012). *Understanding qualitative research*. Bandung: Alfabeta.

Suparyanto, A. (2015). Implementation of caning punishment in the perspective of Islamic education. *Tadarus Journal: Journal of Islamic Education*, 4(2), 2015. Surabaya: Muhammadiyah University of Surabaya.

The 1945 Constitution of the Republic of Indonesia.