

The Effectiveness of Crime Prevention with Corporal Punishment in Nanggroe Aceh Darussalam

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Abstract

The enactment of corporal punishment in Nanggroe Aceh Darussalam is one of the efforts of local government in realizing Islamic society. This corporal punishment is one of the alternatives for national criminal law policy in preventing crime which keeps increasing. This research aims to identify the background, implementation, and effectiveness of the corporal punishment in Qanun No. 14 Year 2003 for crime prevention and establishment of Islamic society in Nanggroe Aceh Darussalam Province. This research is the field research, in Banda Aceh City, with the normative and empirical juridical approaches. Primary, secondary, and tertiary data sources were obtained through the field and document studies related to the topic of research using the content of qualitative descriptive analysis in which the instrument of research is the researcher. This research shows the result that implementation of the corporal punishment in Nanggroe Aceh Darussalam is still limited to the caning as one of the criminal sanctions, particularly in handling the case of khalwat (close proximity). However, the implementation of corporal punishment, in this case, has a quite effective role in the process of establishing an Islamic society in Nanggroe Aceh Darussalam.

Keywords: *sharia; qanun; corporal punishment; nanggroe aceh darussalam*

Efektifitas Penanggulangan Kejahatan Dengan Pidana Badan Di Nangroe Aceh Darussalam

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Abstrak

Pemberlakuan pidana badan di Nangroe Aceh Darussalam merupakan salah bentuk upaya pemerintah setempat dalam mewujudkan masyarakat Islami. Pidana badan ini juga merupakan alternatif kebijakan hukum pidana nasional dalam penanggulangan kejahatan yang semakin meningkat. Tujuan penelitian adalah untuk mengetahui latarbelakang, pelaksanaan dan efektifitas hukuman pidana badan dalam Qanun Nomor 14 Tahun 2003 bagi penanggulangan kejahatan dan pembentukan masyarakat Islami di Propinsi Nanggroe Aceh Darussalam. Penelitian ini merupakan penelitian lapangan, yaitu di kota Banda Aceh dengan pendekatan yuridis normatif dan yuridis empiris. Adapun sumber data primer, sekunder dan tertier diperoleh melalui studi lapangan dan studi dokumen terkait topik penelitian dengan menggunakan konten analisis deskriptif kualitatif dengan instrumen penelitian adalah peneliti itu sendiri. Hasil penelitian menunjukkan penerapan pidana badan di Nanggroe Aceh Darussalam sampai saat ini masih terbatas pada penggunaan pidana cambuk sebagai salah satu jenis sanksi pidana, khususnya dalam penanganan perkara khalwat (mesum). Meskipun demikian, penerapan pidana badan dalam perkara tersebut memiliki peran yang cukup efektif dalam proses pembentukan masyarakat Islami di wilayah Nangroe Aceh Darussalam.

Kata kunci: *syariat; qanun; corporal punishment; nangroe aceh darussalam*

INTRODUCTION

The implementation of Sharia in Nanggroe Aceh Darussalam Province is a privilege for Aceh which has been regulated through Law No. 44 Year 1999 concerning Implementation of Privilege in Aceh Special Region Province, supported Law No. 18 Year 2001 concerning Special Autonomy for Aceh Special Region Province as Nanggroe Aceh Darussalam Province, which has been amended with Law No. 11 Year 2006 concerning Aceh government, which includes implementation of religious life, tradition, education, and the role of scholars of Islam in determining policy in Aceh.¹

The government has allowed the implementation of Sharia in Nanggroe Aceh Darussalam Province as an obligation in Islamic teaching in all aspects of life. However, it was implemented in June 2005 in which the first execution was done in Bireuen on the verdict of Sharia Court which has obtained permanent law.

Qanun No. 14 Year 2003 concerning *Khalwat* aims to prevent all activities or deeds which can lead to adultery. Other purposes of *qanun* are to enforce the Sharia and tradition which are applicable in the society of Nanggroe Aceh Darussalam Province, to protect people from all activities or deeds which harm the dignity, and to prevent society from doing adultery as early as possible, and to improve the role of society in preventing and solving *khalwat*, and to dismiss the possibility of depravity. The caning punishment in *qanun* is one of the corporal punishments in Islamic law and criminal law.²

¹ Al Yasa' Abu Bakar, *Syariat Islam di Provinsi Nanggroe Aceh Darussalam; Paradigma, Kebijakan Dan Kegiatan* (Banda Aceh: Dinas Syariat Provinsi Nanggroe Aceh Darussalam, 2006), 116.

² Riduan Syarani, *Rangkuman Instisari Ilmu Hukum* (Bandung, 2004), 27.

METHODOLOGY

This research is a field research in Nanggroe Aceh Darussalam Province, Banda Aceh City in particular, since Banda Aceh City is the centre of Nanggroe Aceh Darussalam government and cultural development of Aceh society and region with the largest population density. The primary data were obtained from information and explanation from people who have the capacity and are suitable to be informant, namely people in the location of research, local public figures or scholars of Islam, government officials related to the implementation of Sharia in Nanggroe Aceh Darussalam, and the academician. Secondary data were obtained through several supporting documents related to the research topic. Meanwhile, the scope of this research is *Qanun* No. 14 Year 2003 for crime prevention and establishment of Islamic society, which includes the teachings, doctrines of religion and tradition related to prohibition of *khalwat*, the understanding of people about *khalwat*, law and opinion of the scholars of Islam and sanction, practice of *khalwat* in the society, and the motif of local people who support the enactment of *Qanun* No. 14 Year 2003. This research was conducted with the normative and empirical juridical approaches. The normative juridical approach was intended to study the criminal law and implementation of corporal punishment as a means of criminal law policy in development and renewal of criminal law in Indonesia. The empirical juridical approach was intended to conduct a research on the existence of corporal punishment in Indonesia and its implementation in law enforcement in Indonesia. The data analysis technique was performed in a qualitative way with an inductive methodology to construct data and fact.

RESULT AND DISCUSSION

The punishment is the last way in preventing and solving the crime and it is expected to function in an optimal way to protect people from the perpetrator. The function of law, criminal law in this case, is highly influenced by the characteristics of society where the law is applied. Besides, the use of suitable punishment as a means of crime prevention affects the rate of crime which also affects the public welfare. The criminalization is the last effort and a peak of law enforcement process, while the sentence is inseparable of the role of judges as officials of the country who are authorized by the law to impose a criminal sanction to everyone who infringes the rule in law.³

The criminalization theory can be used as a basis for the country through the law enforcement officers in imposing the criminal sanction to achieve the objective of punishment properly. There are some punishment theories; the first theory is absolute theory or retaliation theory. The basis of this theory is retaliation which means that punishment is imposed merely because people did crime or criminal offense, so they must get a just punishment for what they did.⁴ Retaliation in imposing punishment is directed to the perpetrator and to take a revenge in the society.⁵

Furthermore, Nigel Walker argued that the followers of retributive theory can be categorized into 1) the pure retributivist who argues that the punishment must be suitable or equivalent to the mistake of the perpetrator; and 2) impure retributivist (with modification) who can be categorized into the limiting retributivist

³ Aloysius Wisnubroto, *Kebijakan Hukum Pidana dalam Penanggulangan Penyalahgunaan Komputer*, (Yogyakarta: Universitas Atma Jaya 1999), 10.

⁴ Jimly Asshiddiqie, *Pembaharuan Hukum Pidana Indonesia*, (Bandung: Angkasa, 1996), 164

⁵ Teguh Prasetyo and Abdul Halim Barkatullah, *Politik Hukum Pidana: Kajian Kebijakan Kriminalisasi dan Dekriminalisasi*, (Yogyakarta: Pustaka Pelajar, 2005), 11

who argues that punishment must not always be suitable with the mistake of defendants. The follower of distributive retributive theory, abbreviated as 'distributive' who argues that punishment should not be imposed on the people who did not do something wrong, but punishment must not be suitable and limited by the mistake; the principle of 'liability without fault' principle is respected, but an exception is possible, such as in the case of 'strict liability'.⁶The second theory is relative theory or goal theory. According to this theory, punishment is not intended to meet the absolute demand from justice. The retaliation itself does not have any value, but it is only a means to protect the interest of society. Therefore, according to J. Andenaes, this theory can be called the theory of social defence.⁷

According to Nigel Walker, it is more appropriate to call it the reductive theory or genre since the basis for justification in punishment is to reduce the frequency of crime according to this theory. Therefore, its followers can be called reducers. Punishment is not only for retaliation or giving equal punishment to people who did a criminal offense, but it has certain objectives which are more useful. Therefore, this theory is often called the goal theory.⁸

Thus, the basis for punishment justification according to this theory is in its purpose. The punishment is imposed not because people did the crime (*quia peccatum est*), but to prevent people from doing the crime (*ne peccatum*). Furthermore, in order to achieve the orderliness in society, punishment has three characteristics, namely to frighten, to repair, and to exterminate. Meanwhile, there are two

⁶ Barda Nawawi Arief, *Capita Selecta of Criminal Law*, (Bandung: PT Citra Aditya Bakti, 2003), 21

⁷ Sudarto, *Capita Selecta of Criminal Law*, (Bandung: PT. Alumni, Bandung, 2006), 113-114

⁸ Ema Wahyuni, T. Syaiful Bahri, and Hessel Nogi S. Tangkilisan, *Kebijakan dan Manajemen Hukum Merek*, (Yogyakarta: YPAPI, tt), 12

characteristics of prevention in this relative theory; the first is general prevention. The punishment from the relative theory which is general prevention is imposed to the villain which aims to make people in general afraid of doing the crime. The villain is punished and made an example for people, so the general public does not imitate and do the same crime.

According to the relative theory which is general prevention, in order to achieve and maintain the orderliness in society, criminalization is required, so the implementation of punishment must be done in a cruel way and in public. Seneca, the follower of relative theory which is general preventive, argues that to make general public afraid of doing the crime, it requires a cruel punishment in which the execution is very cruel and done in public, so everyone knows it. The punished villain can be made an example for many people and what they see will make them afraid of doing the same crime. This method is to frighten the general public, so they do not do the same crime.

The second characteristic is special prevention. According to the relative theory which is special prevention, punishment aims to prevent the perpetrator from repeating the same crime. The purpose can be achieved by imposing punishment with three characteristics, namely to frighten, to improve, and to make them powerless. To frighten means that the punishment must be able to frighten certain people who still have fear, so they do not repeat the crime. However, certain people do not have any fear left when repeating the same crime, so the imposed punishment must be done to improve them. Meanwhile, for people who cannot be improved anymore, the imposed punishment must make them powerless or exterminate them.

The third theory is the combined theory (*verenigings theorieen*). The first person to propose this combined theory is Pellegrino Rossi

who considered retaliation the principle of punishment and the punishment may not exceed a just retaliation, but he argued that punishment has several influences, namely improving something damaged in the society and general prevention. This combined theory can be categorized into 1) first combined theory which prioritizes the retaliation, but the retaliation may not exceed the limit of what is required and enough to maintain the orderliness in society; 2) second combined theory which focuses on orderliness in society, but the suffering as a result of punishment may not be more severe than the crime which is done by convict.

In the Congress of United Nations which is held every five years about "*The Prevention of Crime and the Treatment of Offenders*", it is often stated that criminal law system in some countries are obsolete and unjust in general as well as outmoded and unreal. This is because their legal system is from the foreign law in colonial period which is not suitable with characteristic and philosophy of life in the society and current social need. It is assessed by Congress of United Nations as one of the contribution factors for crime and it can be a criminogenic factor when the legal development of a policy ignores moral and cultural values in the society where the law is applied. Therefore, the United Nations Congress suggests to rethink about the overall criminal policy, including in the field of criminal law policy in the policy of crime prevention.⁹

This repeated thought and review require re-evaluation, review, reorientation, reformation, and reformulation on the currently applicable policy of criminal law by investigating the law, with the comparison. This repeated process of thinking and investigating the law in strengthening the integral strategy of crime prevention is a suggestion to perform an approach which is oriented

⁹ Barda Nawawi Arif, *Capita Selecta of Criminal Law*, (Bandung: PT Citra Aditya Bakti, 2003), 45-46

to the values, namely humanitarian value and cultural identity and religious morality values.¹⁰

Qanun No. 14 Year 2003 explains some kinds of punishment, such as caning, fine, imprisonment, or administrative sanction by revoking or invalidating the given business license.¹¹ The caning in *Qanun* is one of the corporal punishments besides other punishments in Islamic law and criminal law.¹² The corporal punishment is a punishment by giving pain directly to the body; this punishment is given with expectation to directly change the behaviour which is not expected from a person. The kinds of corporal punishment as criminal sanction are also known with some terms, namely a) beating; b) blinding; c) branding; d) caning (with rattan or stick); e) flogging; f) mutilation; g) paddling; and h) pillory (punishment in public/on pole).

In Islamic law, the corporal punishment is one of the punishments given in hudud (the provision stipulated by Allah in Quran)¹³ or ta'zir (punishment through the verdict of judge with the overall consideration).¹⁴ The kinds of corporal punishment in Islam

¹⁰ Tongat, *Pidana Seumur Hidup dalam Sistem Hukum Pidana di Indonesia*, (Malang: UMM Pres, 2004), 58

¹¹ Ridwan, "Positivisasi Hukum Pidana Islam (Analisis Atas Qanun No: 14/2003 Tentang Khalwat/Mesum Provinsi Nangroe Aceh Darussalam)," *Al-Manahij: Jurnal Kajian Hukum Islam* 8, no. 2 (2014): 281-94, <https://doi.org/10.24090/mnh.v8i2.413>.

¹² Dian Agung Wicaksono and Ola Anisa Ayutama, "Pengaturan Hukum Cambuk Sebagai Bentuk Pidana Dalam Qanun Jinayat," *Majalah Hukum Nasional* 48, no. 1 (2018): 23-43, <https://doi.org/10.33331/mhn.v48i1.111>.

¹³ Ahmed Samir Hassanein, "The Impact of Islamic Criminal Law on the Qatari Penal Code," *Arab Law Quarterly* 32, no. 1 (December 26, 2018): 60-79, <https://doi.org/10.1163/15730255-12314037>; Intisar Rabb, "Islamic Legal Maxims as Substantive Canons of Construction: Hudūd-Avoidance in Cases of Doubt," *Islamic Law and Society* 17, no. 1 (January 1, 2010): 63-125, <https://doi.org/10.1163/092893809X12472107043920>.

¹⁴ Muhammad Munir, "Is Zina Bil-Jabr a Hadd, Ta'zir or Syasa Offence? A Re-Appraisal of the Protection of Women Act, 2006 in Pakistan," *Yearbook of Islamic and Middle Eastern Law Online* 14, no. 1 (January 1, 2008): 95-115,

are a) cutting hands and legs, b) cutting hands and legs, and c) punishment by slapping or hitting as a variation of punishment for warning and compensating.¹⁵ This punishment is done by caning or jilid. The practice of this punishment is highly various, but caning or hitting with a stick is more commonly used. Like Sparta, this punishment is a part of policy in the country, which is used to build spirit and physical strength, but the punishments in Sparta are highly violent and corporal punishment is commonly used.¹⁶

In Europe, in the Middle Ages, corporal punishment was used as a means of education in the church, but the punishment was opposed by some parties, bishops in church in particular, such as Saint Anselm, Archbishop of Canterbury who opposed this punishment on children in the eleventh century since it was considered violent. Since the sixteenth century, the use of corporal punishment has been directed to the villain through a court decision.¹⁷ This punishment is given as a lesson for other perpetrators to not do the same crime.

Meanwhile, a writer in the field of education, Roger Ascham, criticized the use of corporal punishment as a means of discipline for

<https://doi.org/10.1163/22112987-91000209>; Mohsen Rahami, "Development of Criminal Punishment in the Iranian Post Revolutionary Penal Code," *European Journal of Crime, Criminal Law and Criminal Justice* 13, no. 4 (January 1, 2005): 585-602, <https://doi.org/10.1163/157181705774662535>.

¹⁵ Olaf Köndgen, "Hadd Theft (Sariqa Haddiyya)" (Leiden, The Netherlands: Brill, 2017), 239-69, https://doi.org/10.1163/9789004357082_008; Rudolph Peters, "The Islamization of Criminal Law: A Comparative Analysis," *Die Welt Des Islams* 34, no. 2 (January 1, 1994): 246-74, <https://doi.org/10.1163/157006094X00116>.

¹⁶ Eugenia C. Kiesling, "Corporal Punishment in the Greek Phalanx and the Roman Legion: Modern Images and Ancient Realities," *Historical Reflections / Réflexions Historiques* 32, no. 2 (2006): 225-46; Paul Cartledge, "What Have the Spartans Done for Us?: Sparta's Contribution to Western Civilization," *Greece & Rome* 51, no. 2 (2004): 164-79.

¹⁷ Joseph Hartley Wicksteed, *The Challenge of Childhood; an Essay on Nature and Education*, (London: Chapman & Hall, Ltd., 1936), 34-35.

children since it was considered cruel.¹⁸ Besides, an English philosopher criticized the use of corporal punishment in the field of education; his thought was highly influential to the policymaker in prohibiting the use of physical punishment in Poland schools in 1783.¹⁹

In the eighteenth century, the use of corporal punishment was criticized by many people, from philosopher and the law reformer since the use of corporal punishment by giving pain to the offender was considered not too efficient since the imposed punishment in a short time cannot change the behaviour of a person in a permanent way.²⁰ The caning is one of the kinds of corporal punishment besides other punishments. This punishment is in the law of some countries.²¹

The corporal punishment based on the court decision is used to punish the villain. Nowadays, corporal punishment is still commonly used in some Islamic countries, including some countries in Africa, Middle East, South Asia, and Southeast Asia. A region in Indonesia which enforces the caning for lawbreaker is Nanggroe Aceh Darussalam. This caning is implemented as a punishment for breaking Qanun in Aceh, such as *khalwat*, drinking liquor, and gambling.

The implementation of Sharia, in the context of *khalwat*, is regulated in *Qanun* No. 14 Year 2003. The scope is in all forms of

¹⁸ Roger Ascham, *The Scholemaster* (London: Constable and Co., 1927), 1.

¹⁹ Peter Newell, *A Last Resort?: Corporal Punishment in Schools* (Middlesex: Penguin Books, 1972), 9.

²⁰ Randall McGowen, "The Body and Punishment in Eighteenth-Century England," *The Journal of Modern History* 59, no. 4 (1987): 652-79; The Editors of Encyclopaedia Britannica, "Corporal Punishment," Encyclopaedia Britannica, accessed February 27, 2020, <https://www.britannica.com/topic/corporal-punishment>.

²¹ Geoffrey Scarre, "Corporal Punishment," *Ethical Theory and Moral Practice* 6, no. 3 (2003): 295-316; Paul Ocobock, "Spare the Rod, Spoil the Colony: Corporal Punishment, Colonial Violence, and Generational Authority in Kenya, 1897-1952," *The International Journal of African Historical Studies* 45, no. 1 (n.d.): 29-56.

activities, deeds, and situation which lead to adultery. Purposes of prohibiting *khalwat* are a) to enforce Sharia and tradition which are applicable in the society of Nanggroe Aceh Darussalam Province; b) to protect people from several activities or deeds which harm the dignity; c) to prevent people from doing deeds which lead to adultery as early as possible; d) to improve the role of society in preventing and eradicating *khalwat*; and e) to dismiss the possibility of depravity.²²

The material provisions concerning the prohibition of *khalwat* are a) Article 4, *khalwat* is haram; b) Article 5 in which each person is prohibited to do *khalwat*; c) Article 6 in which each person or the group of society or government officials and business entity are prohibited to provide facility and to protect people who do *khalwat*; and d) Article 7 in which each person, individually or in group, is obliged to prevent the *khalwat*.²³

Threat of punishment on those who infringe *Qanun* is regulated in Article 22, a). each person who infringes the provision as referred to in Article 5 is threatened with *uqubat* of caning up to 9 (nine) times and at least 3 (three times) and fine up to IDR 10,000,000 (ten million rupiah), at least IDR 2,500,000 (two million five hundred thousand rupiah); b). Each person who infringes the provision as referred to in Article 6 is threatened with *uqubat ta'zir* in form of imprisonment up to 6 (six) months, for a minimum of 2 (two) months and/or fine up to IDR 15,000,000 (fifteen million rupiah) and fine for a minimum of

²² Ali Geno Berutu, "Penerapan Qanun Aceh Nomor 14 Tahun 2003 Tentang Khalwat (Mesum) (Studi Kasus Penerapan Syariat Islam di Kota Subulussalam)," *Jurnal Hukum Islam* 15, no. 2 (2017): 323-52, <https://doi.org/10.28918/jhi.v15i2.763>.

²³ Ali Geno Berutu, "Qanun Aceh No 14 Tahun 2003 Tentang Khalwat dalam Pandangan Fikih Dan KUHP," *Muslim Heritage* 2, no. 1 (2017): 87-105, <https://doi.org/10.21154/muslimheritage.v2i1.1047>.

IDR 5, 000, 000 (five million rupiah); c). The infringement on prohibition as referred to in Article 5 and Article 6 is *jarimah ta'zir*.²⁴

Qanun also regulates the repetition in infringement of *Qanun*, as referred to in Article 24 in which for the repetition of infringement on provision as referred to in Article 22, the punishment of 1/3 (one third) of maximum *uqubat* can be added. In Article 25, infringement on provision as referred to in Article 5 and Article 6, when done by business entity/corporation, the *uqubat* is imposed to its responsible person. When there is a relation with its business activities, besides sanction of *uqubat* as referred to in Article 22 verses (1) and (2), the administrative *uqubat* can be imposed by revoking and invalidating the given business license.

Provision in the implementation of corporal punishment in form of the caning is regulated in *Qanun* No. 14 Year 2003 concerning *khalwat* and elucidated from Article 26 to Article 29. Article 26 states that *uqubat* of the caning is done by an officer appointed by General Prosecutor. In implementing the task as referred to in verse (1), General Prosecutor must be based on the provision regulated in this *Qanun* and/or *Qanun* concerning formal law. In Article 27, it is explained that implementation of *uqubat* is done immediately after the verdict of judge has permanent legal force. Besides, the delay of *uqubat* implementation can only be done based on determination and Chief of the Prosecutor's Office in case of the aspects harmful to the convict after receiving an explanation from the authorized doctor.

It is also explained in Article 28 in which a) *Uqubat* of the caning is performed in a place which can be seen by many people and attended by General Prosecutor and the appointed doctor; b) The caning can be done with rattan with a diameter of 0.7 cm to 1.00

²⁴ Webby Aditya, "The Effectiveness of *Qanun* Aceh No. 6/2014 of Jinayat Law in Order to Prevent Jinayah *Khalwat* in Law Territory of Sabang Municipality," *Nagari Law Review* 1, no. 2 (2018): 191-98.

(one) metre, without double tip or split; c) The caning is done to limbs, except head, face, neck, chest, and genital; d) Hitting or caning is not intended to hurt; e) The punished men is caned in a standing position, without support and being tied, and they wear thin clothes which cover *aurat*, while women are in a sitting position and covered with clothes; and f) The caning on pregnant women is done 60 days after the women give birth. As stated in Article 29, when something harmful to the convict occurs during the caning, based on an opinion of the appointed doctor, the caning is delayed until the possible deadline.

In implementing the caning on the convicts, they must be in a healthy condition to undergo the caning, as proven with a health certificate from the doctor. Executor of the caning is a trained executioner. The punishment is implemented by the prosecutor as an executor of judge's verdict. The distance between executioner and convict is from 70 cm to 1 metre, while the distance between audience and place of execution is at least 10 metre. The caning is implemented on a pad with a size of at least 3 x 3 metre.

The implementation of *uqubat* is regulated in Governor Regulation of NAD No. 10 Year 2005 concerning the implementation of *uqubat* with caning in Article 4 verse (2). Article 6 states that a short spiritual guidance can be given by the scholars of Islam before the implementation of caning to the convict when required upon request of prosecutor or convict. The male convict still needs to wear thin clothes which cover *aurat* and is in standing position without any support, while the female convict is in sitting position. As stated in Article 7 verse (1), prosecutor brings the convict to the place of execution first after informing the family. Verse (2) states that the notification as stated in verse (1) is delivered in written form, by no later than three days before the execution.

In Article 8, the officer who is assigned to do the caning attends the place of execution with his face covered by fabric. Article 10 verse (1) states that every convict is caned by an executor, while in verse (2), when the executor is unable to finish his work, the caning will be continued by other executors. In verse (3), the replacement of executor as stated in verse (2) is decided by prosecutor. The caning will be stopped for a while, as stated in Article 11, when a) the convict is injured as a result of the caning; b) ordered by the doctor in duty based on the medical consideration; c) the convict flees from the place of execution before the caning is finished.

Meanwhile, a case of delay in the caning is regulated in Article 12, in which a) in the case of delay in the caning as stipulated in Article 5 verse (2) or when it is stopped for a while as stipulated in Article 11 points a and b, the convict is returned to the family; b) convict or the family reports the health condition of the convict to prosecutor periodically; and c) when convict or family does not submit report as referred to in verse (2) in one month, prosecutor can ask local police to bring the convict before prosecutor. Meanwhile, the continued process is regulated in Article 13; the delayed caning is continued as stipulated in Article 5 verse (2) or stopped as stipulated in Article 11 points a and b. It will be continued after the related convict is stated in a healthy condition by doctor to undergo *uqubat* of the caning. The delayed caning is continued as stipulated in Article 11 point c after caught or brought to the prosecutor. After the caning, the next step is regulated in Article 14 in which prosecutor makes and signs official report of the caning implementation, while the doctor also signs the official report as a witness, and prosecutor brings convict to a provided room to be freed and/or returned to family. When the caning cannot be implemented perfectly, the reason for delaying or stopping it for a while must be written in the official report. One copy of the official report is given to convict or

family as a proof that the convict has undergone all or some of punishments.

The process of escorting the convict and securing the execution of caning can be proposed by the prosecutor to the police of local reGENCY/city as stipulated in Article 15. The caning can be executed in public, particularly at grand mosques in NAD. However, before the execution, the authorized officer reports to the local people first to perform Friday prayer in a mosque determined as a place of execution. In the announcement, the name of convict and infringement are mentioned. People are expected to attend and directly see the caning implementation process and pray that all sins and mistakes of the convicts are forgiven and they return to the right way.

The implementation of caning in Nanggroe Aceh Darussalam is optimized in the last few years, though the regulation of *Qanun* has been started since 2002. So far, the government of Nanggroe Aceh Darussalam has determined five *Qanuns* which regulate criminal offense based on Sharia, namely *Qanun* No. 11 Year 2002 concerning the Implementation of Sharia in the field of *Aqidah*, Worship, and Islamic teaching; *Qanun* No. 12, 13, and 14 Year 2003 concerning the liquor (the intoxicating drink),²⁵ *maisir* (gambling),²⁶ and *khalwat* (close proximity), and *Qanun* No. 7 Year 2004 concerning Zakat management.²⁷

²⁵ Ayu Anisa, "Penerapan Pidana Cambuk Terhadap Pelaku Tindak Pidana Meminum Khamar Berdasarkan Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat Di Daerah Kabupaten Gayo Lues Provinsi Aceh," *Jurnal Mahupiki* 1, no. 1 (2019): 1-24.

²⁶ Siti Sahara and Meta Suriyani, "Efektifitas Penghukuman Bagi Pelaku Maisir (Perjudian) Di Kota Langsa," *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018): 118-38, <https://doi.org/10.33059/jhsk.v13i1.697>.

²⁷ Fuadi, "Sistem Pengelolaan Zakat (Kajian Terhadap Qanun Provinsi Nanggroe Aceh Darussalam Nomor 7 Tahun 2004)," *At-Ta'fikir* 7, no. 1 (2014): 166-81.

Implementation of corporal punishment in *Qanun* No. 14 Year 2003 for crime prevention and establishment of Islamic society is considered quite effective. The implementation of Sharia in Nanggroe Aceh Darussalam by regulating corporal punishment as a criminal sanction on infringement of certain verses in *Qanun* affects the rate of infringement to norm and tradition which are applicable in Nanggroe Aceh Darussalam. It is proven by the data from report of *jinayat* case which are accepted and decided by Sharia Court of Aceh from 2013 to 2015. There are 23 reports (1 report in 2013, 8 reports in 2014, and 14 cases in 2015) of *jinayat* cases, *khalwat* in particular, at first level, which are accepted by Sharia Court in Aceh for the last three years. From the report of *khalwat* cases, 22 cases were decided until August 2015.

Based on the aforementioned data, the infringement in the category of *jinayat* is done more frequently by people of Nanggroe Aceh Darussalam in the cases of *hudud* which is liquor. Meanwhile, in the category of *ta'zir*, it is dominated by the gambling. For the case of *khalwat*, it is seldom done by the people of Nanggroe Aceh Darussalam, though the data in three years show the increase. Thus, it can be said that the implementation of corporal punishment in the process of establishing Islamic society is quite successful.

CONCLUSION

As the end of description and data analysis explained in this research, it can be concluded that the implementation of Sharia in Nanggroe Aceh Darussalam Province has been regulated through Law No. 44 Year 1999 concerning Implementation of Privilege in Aceh Special Region Province, supported Law No. 18 Year 2001 concerning Special Autonomy for Aceh Special Region Province as Nanggroe Aceh Darussalam Province, which has been amended with

Law No. 11 Year 2006 concerning Aceh government, which includes implementation of religious life, tradition, education, and the role of scholars of Islam in the policy determination in Aceh. It has been recognized by government of Republic of Indonesia as a privilege of Nanggroe Aceh Darussalam Province.

The implementation of corporal punishment in *khalwat* case has a quite effective role in the process of establishing Islamic society and is quite successful, though there is an increase in some cases. Therefore, it requires review on effectiveness in the implementation of corporal punishment, preceded with education to people about noble and religious values in the social life to realize legal awareness, particularly in the society of Nanggroe Aceh Darussalam and Indonesia in general.

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