

**PUBLIC CANING: SHOULD IT BE MAINTAINED OR ELIMINATED?
(A Reflection of Implementation Sharia Law
In Indonesia)**

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Abstract

This article investigated the corporal punishment through judicial caning in Aceh, Indonesia. The judicial caning is conducted publicly and easily watched by the crowd, including children. This article aimed to search the facts that occurred during the implementation of judicial caning in Aceh. This study employed a qualitative method, with the interview as the main instrument and also used the black-letter law as a supporting approach. The research finding showed that public caning does not guarantee a deterrent effect on the defendants. In some cases, such as gambling and drinking, some of them will potentially repeat the same cases the following years, because the law concerning gambling and drinking does not accommodate rehabilitation mechanism. Furthermore, children attending the caning process will likely imitate the process in their future life. This research has a clear novelty as publication related to judicial caning is still limited in research and articles regarding the Indonesian legal system.

Keywords: Public caning, corporal punishment, islamic criminal law.

A. Introduction

This article has a significant impact on developing public law in Indonesia, chiefly Islamic criminal law. It is based on the findings of research that has been conducted in the Province of Aceh, Indonesia, post the amendment of *Qanun Acara Jinayat (Islamic criminal bylaw procedure)* since 2013. The author critiques the public caning, caning in front of the public, as compulsory law enforcement to implement *Qanun Acara Jinayat* and *Qanun Jinayat* in Aceh, Indonesia. Those *Qanun* are also known publicly as sharia bylaw or Islamic criminal law in Indonesia (Garadian, 2016). Furthermore, anyone can directly watch the entire process of caning. This bylaw disgraces a Muslim in front of the public. For a millennial Muslim, the law is not only an instrument of enforcement, but also an instrument which is used to engineer Muslim's behavior, and leading everyone to close to God, the Almighty. The law must also teach the Muslim offenders, and ensuring them not to repeat the same mistake after the punishment. If the same person makes the same mistake, it can be assumed that the law should be amended. Nowadays, the *Qanun Acara Jinayat* only punishes the offenders without teaching, repairing, and rehabilitating them. Consequently, the same person will be the next offenders with the same case in the following years (Dinas Syariat Islam Aceh, 2017).

To apply the comparative approach to this study, the author considered previous research results related to this topic, for instance, research on caning as law enforcement conducted by (Farrell, 2018; Kaur & Yuan, 2017). He explained judicial caning that is legally enforced in Malaysia, Singapore, Brunei Darussalam, and Aceh-Indonesia. Farrel also

elaborated on how judicial caning, as corporal punishment, has been critiqued globally (Gershoff, 2017; Han, 2017). In other research, Fonseca also described his findings on the sociology of punishment in the post-colonial context. Fonseca stated that outlying countries have tried to revolutionize their criminal justice devices, while community control in Western democracies has progressively implemented the post-colonial features. The purpose is not only to develop this legal thought by surrounding it with more multiplicity but also to improve the current accounts through visions from other realities (Fonseca, 2018; Garland, 2018; Savelsberg, 2018). Caning, as a part of corporal punishment, has also been debated by Rebellon and Straus. They took random sample in three regions, including Asia, Europe, and North America. Their findings specified that corporal punishment during childhood and adolescence could lead to antisocial behavior developed amongst young adults who report suffering from corporal punishment in childhood, particularly in Asia, Europe, and North America. In general, this connection is least likely to arise when corporal punishment derives only from fathers and most likely to occur when it comes from both parents. This research proposed that self-control and social apprehension, but not conservative insolences, mediate the association between the retrospective information of youth corporal punishment and antisocial behavior in early adulthood (Rebellon & Straus, 2017).

However, previous research results presented above have not explained clearly the main topic of this article. Hence, this article will give an important contribution to the development of Islamic criminal law, in general, including for

the amendment of *Qanun Acara Jinayat* in Aceh, Indonesia. This bylaw has played a significant role as a tool of social engineering in Aceh, and also influenced Indonesian legal framework (Fakhruroji, 2015; Feener, 2013; Islam, 2018).

This research aimed to address several issues, namely: the public judicial caning in some countries, the government institutions involved in the caning process, the redefinition of the norm of 'in-front-of-public', *hukom-adat* as an escape strategy from judicial canning, and canning without educating.

B. Research Method

This article employed a qualitative research method and used interview protocol and observation as main instruments for data collection. This qualitative method was supported by several methods in legal research, including black-letter law, empirical legal research and comparative constitutional law. The black-letter law here defines the basic standard of essentials or ideologies of the law, which are generally identified and free from uncertainty or disagreement that can be found in the act, judgment, and official documents, that are mostly accepted by the majority of judges. The black-letter law in this article was found mainly from several judgments in *Mahkamah Syar'iyah* (Islamic Court in Aceh). The empirical legal research at this point inclined to be more narrowly quantitative, exploring many judgments and regulations related to the research. Those judgments and regulations were then explained in figure or statistics. The comparative constitutional law method has functioned to appraise other countries' experiences, including international legal context (Hirschl, 2013; Pal, 2017; Tushnet, 2017). Comparative constitutional law can promote law reformation, preparing

a tool of structure to identify the authorized rules (Banakar, 2015; Frankenberg, 2016; Gutteridge, 2015; Siems, 2018). In term of the comparative constitutional law, the author studied how other countries implement the canning process as a part of the law enforcement and explored international debates on caning as corporal punishment.

C. Research Findings

1. Public Judicial Caning in Some Countries

Judicial caning has been implemented in several countries, including Southeast Asia. Malaysia, Singapore, and Brunei Darussalam still implement judicial caning in their legal system as a part of corporal punishment (Chuanyu, 2018; Fanani, 2017; Ngiam & Tung, 2016; Stivens, 2015). The rehearsal of judicial caning is basically a heritage of and was imposed by British colonial regulation. Also, the cases for judicial caning have diverse models. Breaking Sharia law in Brunei Darussalam and Malaysia will be threatened by judicial canning. Whereas, Singapore has implemented judicial canning for various crimes under the Criminal Procedure Code (Ong, 2019; Rajah, 2017) and for disciplining prisoners. Furthermore, several Muslim-majority countries have also enforced judicial caning as a corporal penalty, including United Arab Emirates, Qatar, Saudi Arabia, Iran, Northern Nigeria, Sudan, and Yemen. These countries have implemented judicial whipping as well as caning for a wide-range of crimes (Gershoff, 2017; Pate & Gould, 2012; Roy, 2012).

Following the success story of other countries, Aceh, Indonesia, tries to implement the judicial caning through

Qanun Acara Jinayat. Despite its success, *Qanun Acara Jinayat* has faced several critiques on its implementation, especially in term of shaming the offenders in front of the public. Most countries implementing judicial caning have carried out punishment in a closed or private place instead of open-place or facing a mosque. The private sites here are the chosen jail which is highly secured, such as implemented in Malaysia. Based on the research report conducted by Amnesty International, the process of judicial caning in Malaysia has been held in a closed and confidential place, namely several prison center. It is hidden from the common prisoners and blocked from the communal sight. The only spectators at the process of the judicial caning are the government officers involved in managing the sentencing process, including the caning officer, crews, and health workers. This process of judicial caning is nearly similar to other British colonies in Southeast Asia, including Brunei Darussalam and Singapore (International, 2010).

The judicial caning implemented by Malaysian Government allows some selected viewers who want to observe the punishment process, preventing children from watching the caning process. This fact gives an interpretation that the meaning of '*in-front-of-public*' has a broad range interpretation, and has entirely depended on the judicial and political interpretation in those specific countries. So, it is possible to change the meaning of '*in-front-of-public*', from widely to closely accessed. The people who want to see the punishment process must be selected on the purpose of watching the punishment and public attendance is limited (Hung, 2016; Kamal, 2019; Lukito, 2019; Peletz, 2018; Santoso, 2015; Steiner, 2019; Stivens, 2015; Whiting, 2018).

2. Government's Institutions Involved in Caning Process

The *Qanun Acara Jinayat*, implemented in Aceh, Indonesia, covers several Islamic criminal laws, including *Khamar* (alcoholic drinking), *Maisir* (gambling), *Khalwat* (secluding with illegal spouse), *Ikhtilath* (intimate with illegal spouse), Adultery, Sexual Harassment, Rape, *Qadzaf* (accusing adultery), Gay, and Lesbian (Armia, 2018; Qanun Aceh, 2013). Breaking of those laws will have consequences, such as paying fine, imprisonment, and public caning. The caning mechanisms regulated in the *Qanun Acara Jinayat*, states the caning process must enforce in front of the public so that it can visually be seen by people attending the process (Qanun Aceh, 2013).

The caning process involves four provincial institutions. Firstly is the *Satuan Polisi Pamong Praja-Wilayatul Hisbah (Satpol PP-WH)* or also known publicly as Sharia Police. This institution has the authorities for spreading information, supervising, enforcing the law and developing sharia law (Qanun Aceh, 2013). People are familiar with this institution because of their activities in social life, such as caught-red-handed a suspect who breaks Islamic criminal law. Usually, *Satpol PP-WH* conducts routine patrols in a specific place where suspected as a place of law violation, or will come to the location after getting a particular call. Then, *Satpol PP-WH* will investigate the call to ensure whether there is an offender or just a fake call. If an offender is confirmed, this institution will bring him/her to their office for further investigation. After the investigation, the case will be passed to *Kejaksaan* (the prosecutor's office). When the case is handled by *Kejaksaan*, the *Satpol PP-WH*'s authorities are ended. Both *Satpol PP-WH*

and *Kejaksaan* will meet again in the process of judicial caning held publicly on a specific date. One of the main problems in this institution is the uncertainty future career. Thus, some officers may just temporarily work in this institution before moving to another task. This fact brings disadvantages for the institution development, because the government has trained them professionally to be law enforcement officer, chiefly the *Satpol-WH* (Dinas Syariat Islam Aceh, 2015).

Secondly is *Kejaksaan* (the prosecutor's office). As Aceh is an autonomous province, *Kejaksaan* in Aceh has additional authorities that are totally different from other *Kejaksaan* in other provinces in Indonesia. This institution not only has the authorities to enforce national law but also the authorities to technically implement a bylaw, such as *Qanun Acara Jinayat* (Governor of Aceh Decree, 2009). The *Kejaksaan's* authorities start from receiving and checking case files from *Satpol PP-WH*, as the investigator, and will finish after the caning punishment. When receiving a case file from *Satpol PP-WH*, *Kejaksaan* will doublecheck the file in detail, most importantly the concrete evidences, including the witness statement, expert description evidence, letter, electronic evidence, defendant's accusation, and defendant's statement (Qanun Aceh, 2013). If two of those evidences can be shown correctly, *Kejaksaan* usually will pass the file to *Mahkamah Syar'iyah*. One of the main obstacles here are the *Kejaksaan's* budgeting system. *Kejaksaan* is a vertical institution that is directly connected to the central government in Jakarta. Unfortunately, the central government has not allocated the budget for implementing *Qanun Acara Jinayat*, because it is a part of the autonomous province budget, that must be provided by the Government

of Aceh. If Aceh Government does not allocate the budget, *Kejaksaan* usually will not proceed *Qanun Acara Jinayat* cases. This fact is based on the interview with the General Attorney Officer, as follows.

Based on my experiences, in the budgeting system, some districts [in Aceh] are still not similar. There are some districts [in Aceh] that have prepared a special budget for implementing *Qanun Acara Jinayat*, and some others have not prepared the budget at all, causing the *Qanun Acara Jinayat* cannot be applied. This bylaw is the autonomous bylaw, which must be on the autonomous budget instead of the General Attorney's budget. General Attorney's budget has been allocated for national law, not related to an autonomous bylaw (Syahdansyah Putera Jaya, 2018).

The interview above shows that the implementation of the bylaw of *Qanun Acara Jinayat* must consider a wider perspective. The bylaw cannot be implemented through a single state organ; however, it has multiple connection and networking amongst the state organs operating in Aceh, including in the budgeting system.

Thirdly is *Dinas Syariat Islam* (Islamic Sharia Bureau). This institution has a significant role in implementing *Qanun Acara Jinayat* as a thinker of Islamic law in Aceh. This government system has main duties consisting of drafting, revising, and ensuring the implementation of regulations related to Islamic law in Aceh (Governing of Aceh, 2009). *Dinas Syariat Islam* is also in charge of ensuring all of the institutions related to Islamic law in Aceh can work together as a unity despite being diverse. However, the tasks are very complicated in real life. Some issues, such as budgeting problem, law enforcer, unclear guidance of the law enforcement, selfish

institutions, remain as the main obstacles requiring a specific approach to solve. For instance, it is still difficult to enforce *Qanun Acara Jinayat* if the defendant is a prominent person, having an important position in the government. Mostly he/she will be transferred to another province before a judicial process (Hamzah, 2012).

Fourthly is *Mahkamah Syar'iyah*, a significant institution to enforce Islamic law in Aceh. This institution assesses whether somebody is found guilty or free from any allegations. *Mahkamah Syar'iyah* in Aceh, also called *Pengadilan Agama* (the *Islamic Court*) in Indonesia, has supplementary powers that are totally different from the other provinces in Indonesia. This institution not only has the power to enforce national law regarding Islamic private law (Governing of Aceh, 2006; Religious Court, 1989;2006; Qanun Aceh, 2013), but also to officially executing an Islamic criminal law stated in *Qanun Acara Jinayat*. However, *Mahkamah Syari'iyah* has also faced some challenges. Not all cases were passed on to this court; some are handled by a community leader to be solved through *Hukom-adat* mechanism.

Lastly is *Dinas Kesehatan* (the Public Health Office). Judicial canning as corporal punishment must consider the health condition of the defendant before and after the punishment. This is the main function of *Dinas Kesehatan* in *Qanun Acara Jinayat*. This institution makes mutual understanding amongst *Jaksa*, *Mahkamah Syar'iyah*, and *Satpol PP-WH*. The understanding consists of the time and place of caning, medical equipment, and appointed doctors (Qanun Aceh, 2013). *Dinas Kesehatan* focuses only on handling the cause and effect regarding the physical appearance of

the defendant. Unfortunately, the psychological impacts experienced by the defendant have not been handled by *Dinas Kesehatan*. Most of the defendants found it difficult to rehabilitate themselves in social life. In some *Khalwat* cases, the defendants have been exiled from their villages, because they have been stigmatized as a village disgrace. In the cases of *Khamar* and *Maisir*, most of the defendants tend to be an addict, needing psychological rehabilitation as well.

Furthermore, another problem faced by those institutions is concerning the mutual understanding between those institutions, no clear guidance on how those institutions implement their tasks. An integrated justice system amongst institutions implementing *Qanun Acara Jinayat* has not run properly. This fact has been stated by a *WH* officer in an interview.

The main obstacles I have seen in integrating the justice system, that it is not yet embedded and unified. All of the justice system officers should work together and coexistence, in fact, this is not in line with the main goal of Islamic criminal law. So far, all of the institutions have the mandate to implement Sharia law, including MPU (Ulama Consultative Assembly), Islamic Sharia Agency, Social Agency, still working separately, and having a lack of coordination (Marzuki, 2018).

The mutual understanding amongst the institutions has not been regulated in a specific binding law or decree. Consequently, those institutions claim each other on duties and responsibilities, creating the law uncertainty in implementing Sharia law.

3. Redefinition the norm of '*in-front-of-public*'

One of crucial critique for *Qanun Acara Jinayat* is the norm of open-place and seen-by-people. This norm has been publicly known as the norm of '*in-front-of-public*' (Qanun Aceh, 2004). The meaning of open place, seen by people, or '*in-front-of-public*' have been interpreted widely based on the perception of the government officers who enforcing the judicial caning. So far, there has not been a definite bylaw interpretation and explanation on the meaning of those norms. Recently, the norm of open-place has been interpreted by law enforcers as a place located in front of a public mosque, not a private mosque (Al-Qurthubi, 1985; Al-Syafi'i, 2002; Ibnu 'Asyur, 1997). The chosen public-mosque here is in the district of the related case, aiming to provide moral lesson for the public not to repeat the same case in the future. In contrast, this moral lesson has not worked as planned. Based on the interview with the Police officer working in Aceh, as follows.

Post implementing *Qanun Acara Jinayat*, the crime level of the alcoholic-drinking case has remained steady. I said steady because the perpetrators are the same person, and the only person (Agus, 2018).

The repeated case has come from the same person or the only person, caused by the justice system in the *Qanun Acara Jinayat* itself. This bylaw has not legislated the mechanism of the retributive justice system. It also does not stipulate the method to heal perpetrators who addicted to alcoholic-drinking and gambling.

The norm of '*seen-by-people*' and '*in-front-of-public*' have been construed as people who have just completed

Sholah Zhuhur (noon prayer) on Friday or people coming in that specific time. Those interpretations have been not regulated in a specific bylaw, but it has regularly implemented in every caning occasion. However, in the Indonesian legal system or national law, the meaning of '*in-front-of-public*' or open-place have varying interpretations coming from several regulations. The Act of Freedom of Expression states that '*in-front-of-public*' does not include the presidential palace, worshiping place, military camp, hospital, airport, port, train station, bus stop, national companies, and national holiday (Freedom of Expression of Public Opinion, 2018). So, other places not stated in the Act of Freedom of Expression can also be defined as '*in-front-of-public*' that allowed to express freedom of speech.

To interpret the norm of '*in-front-of-public*', the *Kapolri (Kepala Kepolisian Republik Indonesia-Chief of Indonesian Police)* has also made a decree describing the specific meaning of '*in-front-of-public*'. In this decree *Kapolri* classifies '*in-front-of-public*' as facing many people and being visited or viewed by people. *Kapolri* also states the specific time that can be categorized as public time (Chief of Police Decree, 2012). Additionally, Sianturi defines '*in-front-of-public*' as a place where public can visit, see, hear, and witness. His definition was based on the understanding of Article 281 of the Criminal Code (Harahap, 2015; Sianturi, 1983).

The above explanation indicates that the norm of '*in-front-of-public*' in the national level must be interpreted through several regulations, not only through the perception of government officers. This interpretation system can prevent the abuse of power by government officers in the law

enforcement mechanism. Unfortunately, this interpretation system has not worked in the provincial level, including the enforcement of *Qanun Acara Jinayat*, which is still interpreted by the provincial government officer instead of a specific regulation. This fact has a potential chance of power abused by provincial government officer. So, the government of Aceh should legislate a bylaw or a decree to legally interpret the norm of 'in-front-of-public', and avoid the abuse of power by provincial government officers.

4. *Hukom-adat* As Escape Strategy From Judicial Canning

As previously explained that not all cases will be passed on to *Mahkamah Syariah*, but some of them will be solved in the *Gampong* (village) level using *hukom-adat* approach. The common case employing *hukom-adat* (customary law) approach is *Khalwat* case. The *Khalwat* case usually is ended in the level of *Gampong*. *Hukom-Adat* aims to prevent all cases in *Gampong* to pass to the court. The *hukom-adat* court consists of the top leader of prominent people in the village. Usually, this court is very different from the official court, such as *Mahkamah Syar'iyah*. *Hukom-adat* court has a system that enforces the *hukom-adat* wisdom. With this system, those people breaking *hukom-adat* will have the consequence for their disobedience. Most of the consequences are the *hukom-adat* punishments, inherited from generation to generation.

Those *hukom-adat* punishments include, firstly, advising the perpetrators. This sanction is the lightest *hukom-adat* punishment. In this punishment, the perpetrators will receive important advice regarding the law and *hukom-adat* order in society. After the declaration of commitment not to repeat their mistake, the perpetrators will be released peacefully

following the *hukom-adat* procession. If the perpetrators do not obey the advice, they will be seriously warned by the *hukom-adat* leader. This warning has an important message to change the behavior of the perpetrators. After the warning and the apology from perpetrators, the cases will be closed and not be proceeded to the higher level. The apology commonly will restore the circumstances of two people involved in the dispute with *hukom-adat* community.

Secondly is paying fine, charged to the perpetrators who cause the moral and material damage on the *hukom-adat* system. The fine is expected to recover and fix the public damage. It can be paid with the amount of money or a specific item requested by the head of *hukom-adat*, including cattle, goat and poultry that have been regulated in *Hukom-Adat*. The provision on the amount of the fine depends on the level of mistake made by the perpetrators.

Lastly is being exiled from the *hukom-adat* community. Exiling is *hukom-adat* punishment given to someone who does not obey and break a common life order. This punishment enforces for someone who keeps repeating their mistake after receiving previous punishment, such as being advised and paying fines. It is the hardest punishment in *hukom-adat* community. The perpetrators sentenced with the exiling punishment will not be able to return to their village, because *hukom-adat* community has marked them as a community disgrace that must be eliminated.

Most of *hukom-adat* punishment will be wisely considered by the *hukom-adat* community led by the *hukom-adat* leader. It will like a process of law among *hukom-adat* community to decide whether someone is found guilty or not.

In this context, Nyak Pha stated that *hukom-adat* punishments aim to solve the cases instead of deciding the cases. All cases must be proceeded wisely among *hukom-adat* community, and should also ensure all parties take the moral lesson from the related cases. After the cases have been solved, the perpetrators and *hukom-adat* community will have a healing circumstance to prevent an act of revenge in the future (Amdani, 2014; Nyak Pha, 1991).

However, there is still an unclear boundary on which case should be solved through *hukom-adat* and should be passed on to *Mahkamah Syar'iyah*. This fact leads to the unfair treatment for people who breaks the law in the *Gampong* level, where the prominent people has a potential chance to be treated by *hukom-adat* court (Sulaiman, 2007). The mechanism of *hukom-adat* in solving some cases has been indicated as an illegal approach, because it is not stated clearly within the *Qanun Acara Jinayat*. This bylaw mandates *jinayat* cases only to be solved through the state institutions, as the official one, not through *hukom-adat*. When cases are handled by *hukum-adat*, the abuse of power by the top leader in the village is most likely to occur. Besides, the approach through *hukom-adat* has not solved the cases permanently. In the following years, people in that village may take revenge for the unfair treatment done by the *hukom-adat* court.

Moreover, the implementation of *hukum-adat* has widely transformed in the millennial period. Before Dutch colonial period, *hukum-adat* treated the offenders privately and with honor. Special advice was given personally to not repeating same mistakes in the future and no public shaming. In contrast, nowadays, the *hukom-adat* has changed dramatically. Marzuki stated that:

The offenders tend to be disgraced publicly. The judiciary process of *hukom-adat* is open publicly for people to view. The *hukom-adat* punishment has also held in a public place, unfortunately in some cases, people also involve in punishing the offenders with an illegal mechanism, such as showering them with sewage water (Marzuki, 2018).

5. Canning Without Educating

The implementation of Islamic law in the time of Prophet Muhammad PBUH had always followed by an educational approach. Most of the perpetrators were educated by Prophet PBUH if they have committed the crime. The Prophet Muhammad PBUH educated the perpetrators by two methods (Alhamuddin, 2018; Susilo, 2018). The first method was educating verbally, that also called *Sunna Qauliyah*. In this method, Prophet Muhammad PBUH advised and also supervised the perpetrators verbally, and also insisted that perpetrators not committing a crime against the Quran and Sunnah. The second method is the non-verbal (action), called *Sunna Fi'liyah*, where the Prophet PBUH showing how to do something. In several cases of adultery, the Prophet PBUH gave a lesson learnt to the perpetrators. For instance, in the case of adultery of a pregnant woman, the Prophet PBUH instructed the woman to give birth first and instructed not to punish the woman at the time of the confession (Dawud, 1996). This case has clearly educated us that protecting an infant is a must. In Maiz's case, the Prophet PBUH also ignored the confession of adultery from Maiz two times (Dawud, 1996). This case teaches us that Prophet tended not to proceed the first and second confessions that may not be correct.

In contrast, the education mechanism has not covered clearly in *Qanun Acara Jinayat* (consisted of 286 articles) nor in *Qanun Jinayat* (consisted of 82 articles). Those bylaws explain undoubtedly on how to arrest and punish the perpetrators of Islamic criminal law imposed in Aceh, including evidence, and general prosecutors. Most of the punitive punishment covered by those bylaws have only consisted of cunning and imprisonment, without considering social working as a punishment. In contrast, some Muslim countries have implemented restorative justice as a part of the punishment (Gade, 2018; Moss et al., 2018; Scheuerman, 2018). Restorative justice has recognized publicly as a method of the justice system to form a conciliation between the victim and the offender. The restorative justice aims to exchange for a resolve to please all parties involved in the case (Daly, 2017; Gavrielides, 2017; Strang & Braithwaite, 2017). For instance, Uni Arab Emirate has reduced the imprisonment period for the inmate who can memorize some Surah in the Quran (Melha, 2018). In Lebanon, a Lebanese justice ordered three young Muslim men who disrespecting Christianity to memorize sections from the Quran's to glorify the Virgin Mary and Jesus Christ. The judge has made this verdict to educate the young men about the tolerance in Islam and also about loving the Virgin Mary (Matta, 2018). The verdict has led towards the advanced judicial methods, benefiting for resolving public problems and religious fanaticism.

Furthermore, Aceh's curriculum system follows the Indonesian educational policies (Bjork & Raihani, 2018; Silalahi & Yuwono, 2018). Thus, the implementation of *Qanun Jinayat* and *Qanun Acara Jinayat* have not covered the issue of Aceh's curriculum system, including the level of junior and

senior high school. Responding this fact, Atailah, a principal of Darul Ihsan Aceh Besar, stated that:

All senior high schools in Aceh, including public and private schools, must implement the curriculum of 2013, as required by the central government. The curriculum has four core competences of spiritual attitude, social attitude, knowledge, and skills. Unfortunately, those four competences have never stated or explained about Islamic criminal law in Aceh, even some students do not know the *Qanun Acara Jinayat* and *Qanun Jinayat*. If they are not stated in the curriculum, it is not compulsory for us to teach those bylaws for our students. So, most of the students in senior high schools and junior high schools do not have basic understanding on the Islamic criminal law in Aceh. The number of articles in those bylaws are different from the religious competences within curriculum of 2013 (Atailah, 2018).

Atailah's view makes sense because *Qanun Acara Jinayat* and *Qanun Jinayat* only regulate on how to punish offenders instead of preventing the offence. Those bylaws do not give enough space to the educational system to involve. Thus, law enforcers and the educational system cannot collaborate in implementing Islamic criminal law, resulting the offenders from adolescence groups. Most of the adolescence students do not understand the basic of Islamic criminal law, until they have been caught red-handed of violating those bylaws, such as violating the bylaw of *Khalwat*, drinking, and gambling. Responding to this circumstance Marzuki, as a high-rank commander of Sharia Police has stated that:

"Most offenders are from adolescence groups. They do not have a basic understanding of Islamic criminal law implemented in Aceh. Unfortunately, during their senior high school, they also have not been

educated about the Islamic criminal law. They have only practiced the five times praying (*sholah*), and fasting in Ramadhan. When studying in Banda Aceh, they make friends in a multi-cultural environment, including from opposite gender, faith and belief. Thus, many adolescences have been caught red-handed in several Islamic criminal law cases, such as *Khalwat*, drinking, and gambling. *Khalwat* is the most popular case in adolescence groups who come from remote sub-districts of the Province of Aceh (Marzuki, 2018)."

Marzuki's statement has indicated that the implementation of Islamic criminal law in Aceh has some weaknesses, specifically in promulgating regulations through the educational system. This is a homework of the government of Aceh. Law enforcement should be in accordance with enhancing the educational system. government of Aceh must integrate Islamic criminal law in the school curriculum, to create understanding amongst the youth. Hence, preventing law violation through the school curriculum can reduce the increasing number of offenders. Without integrating the law in the curriculum, school teachers do not have an obligation to teach Islamic law for the students in schools. Even, some of the school teachers have no basic understanding of Islamic law established in Banda Aceh. Concerning this issue, Marzuki has stated that:

"Islamic criminal law has not been promoted in high schools, causing the increase in offenders from adolescences. Even, most of the teachers also do not have understanding of *Qanun Acara Jinayat* and *Hukum Jinayat*. The government of Aceh, so far, has only promulgated those bylaws for the law enforcement institutions, such as Wilayatul Hisbah, Mahkamah Syar'iyah, Polisi, and Kejaksaan (Marzuki, 2018)."

Marzuki's views have shown us that the implementation of Islamic criminal law in Aceh faces serious obstacles, chiefly in the promulgation system for adolescence groups and high school teachers. If the government of Aceh does not pay attention to this obstacle, the adolescence offenders can increase every year.

D. Conclusion

Public caning should be eliminated. In spite of reducing the number of offenders, public caning has given an entertaining effect, instead of the scaring effect. Showing off the caning in front of people will also create the violence effect for children viewing the process. To decrease the number of offenders, the government of Aceh must consider the prevention mechanism, such as integrating sharia law in the school curriculum. Thus, new offenders can be slightly decreased. *Hukom-Adat* must have a clear mechanism to solve sharia law cases at the village level; if not, the abuse of justice will occur. The government institutions in Aceh, involved in implementing sharia law, must have clear job descriptions to prevent overlapping jobs. The government of Aceh must also allocate the budget for *Mahkamah Syar'iyah* (Islamic Court), *Kejaksaan* (the prosecutor's office), and *Kepolisian* (Police). In addition, the rehabilitation is necessary for the case indicating addiction, such as gambling and alcoholic-drinking, that are potentially repeated in the future.

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