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Terima kasih atas konfirmasinya. Akan segera saya perbaiki sebagaimana diinstruksikan, insyallah selesai dalam jangka waktu 5 hari.

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Public Caring: Should it Be Maintained or Eliminated? (A Reflection of Implementation Shara Law in Indonesia)

Muhammad Siddiq Arma

Status
Publisher Vol 7, No 2 (2016)
Published 2020-11-13
Last modified 2020-12-04

Title and Abstract
Title: Public Caring: Should it Be Maintained or Eliminated? (A Reflection of Implementation Shara Law in Indonesia)

Abstract: This article investigates the corporal punishment through judicial caring in Aceh, Indonesia. The judicial caring is conducted publicly and easily watched by the crowd, including children. The article aims to research the target that occurred during the implementation of judicial caring in Aceh. This study employs a qualitative method, with the interview as the main instrument and also used the backlorer law as a supporting approach. The research finding showed that public caring does not guarantee a deterrent effect on the offenders. In some cases, such as gambling and driving, some of them will potentially repeat the same cases the following years, because the law concerning gambling and driving does not convince rehabilitation mechanisms. Furthermore, children attending the caring process will likely inhibit the process in their future lives. This research has a clear novelty as publication related to judicial caring is still limited in research and articles regarding the Indonesian legal system.

Indexing:
Academic discipline and sub-disciplines
Islamic Criminal Law
Keywords
Public Caring, corporal punishment, Islamic criminal law,

Supporting Agencies
This article bases on research funded by Faculty of Shariah and Law, State Islamic University (UIN) Ar-Raniry, Banda Aceh, Indonesia.

References

USAID

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#4974 Review

**Submission**

Authors: Muhammad Siddiq Artna

Title: Public Caring: Should it Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)

Section: Fall Noor

**Feer Review**

Round 1

Review Version: KERI UNTAN IN DOCI 2019-05-04

Initiated: —

Last modified: —

Uploaded File: None

**Editor Decision**

Decision: —

Notify Editor: Edition/Autor Email Record / No Comments.

Editor Version: None

Author Version: Now

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Authors: Muhammad Soleq Arma
Title: Public Caring: Should it Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)
Section: Faiz Noor

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Layout Comments: No Comments

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Proofreader: None

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Proofreading Corrections: No Comments

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Vol 7, No 2 (2019)

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Caning in Front of Public: Should It Be Maintained Or Eliminated?

Abstract

Judicial caning as a corporal punishment has created long debate on its implementation in Aceh – Indonesia. One of the main debates is the punishment process in front of public is not having a clear outcome for millennial Muslim. Recently the caning process has been shown off publicly that can be watched live by people including children. The caning punishment has been involving more than three government institutions. Unfortunately, those institutions do not have a clear mechanism to work together. The judicial caning has resulted in a psychological impact on the defendants. They have also received injustice treatment from their society, including exiled from the community. It is very hard for the defendants to heal people stigma after the punishment, and vulnerable to access several public services. So far, the Government of Aceh does not have a specific bylaw to treat the defendants after caning punishment. Caning in front of public cannot guarantee a deterrent effect to the defendants. In some cases, such as gambling and drinking, some of them will potentially repeat the same cases in the future, because the bylaw on gambling and drinking does not accommodate rehabilitation process. The gambling and drinking cases are part of addiction problem that required a specific attention. The philosophical approach on this context is that the law is not only to punish but also to heal people. To get primary data for this article, the writer will conduct some interview from the prominent people relating to this topic, and also searching a clear point of view on judicial caning in front of public.

Keywords: Caning in front of public, Corporal punishment, Islamic criminal law

A. Introduction

This article has significant impact on developing public law in Indonesia, chiefly Islamic criminal law. The article bases on a research finding conducted in the Province of Aceh, Indonesia, post the amendment of Qanun Acara Jinayat (Islamic criminal bylaw procedure) since 2013. The writer critiques the caning in front of public as a compulsory law enforcement, having purposes to implement Qanun Acara Jinayat and QanunJinayat in Aceh, Indonesia. Those Qanun also known publicly as shariah bylaw or Islamic criminal law in Indonesia (Garadian, 2016). Furthermore, in caning process all of people are allowed to watch directly the entire process until finish. The bylaw disgraces a Muslim in front of public. For a millennial Muslim, law is not only an instrument of enforcement, but also an instrument which is used to engineer Muslim behavior, and making every person close to God the Almighty. The law must also teach guiltier Muslims after the punishment, and
ensuring them not to repeat the same mistake. If the same mistake has been repeated by the same person, this can be assumed that the law should be amended. Nowadays, the *Qanun Acara Jinayat* only punishes the guiltier, and forgetting to teach, to repair, and to rehab the guiltier. Consequently, the same guiltier will be the next guiltier with same case in year to come (DinasSyariat Islam Aceh, 2017).

To get comparative approach of this article, the writer will consider several research results relating to this topic. For instance, research on caning as law enforcement conducted by Farrel (2018; Kaur & Yuan, 2017). He explains judicial caning that legally enforced in Malaysia, Singapore, Brunei Darussalam, and Aceh-Indonesia. Farrel also states on how judicial caning as corporal punishment has been critiqued globally (Gershoff, 2017; Han, 2017). In other research Fonseca has also described his findings on sociology of punishment in post-colonial context. Fonseca states that outlying countries have tried to revolutionize their criminal justice devices, while community control in Western democracies has progressively implemented postcolonial features. The purpose is not only to develop this legal thought by surrounding more multiplicity, but also to improve 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 in Asia, Europe, and North America. Their findings specified that corporal punishment during childhood and adolescence can lead to antisocial behavior that developed amongst young adults who report suffering 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 arise when it originates from both parents. This research proposes that self-control and social apprehension, but not conservative insolences, mediate a helping of the association between retrospective information of youthful corporal punishment and antisocial behavior in early maturity (Rebellon, 2017).

However, all of research results explained above have not explained clearly about the main topic of this article. This article will give an important contribution for the development of Islamic criminal law in general, including for the amendment of *Qanun Acara Jinayat* in Aceh-Indonesia. This bylaw has played significant role as a tool of social engineering in Aceh, and also influencing Indonesian legal framework (Feener, 2013; Islam, 2018; Fakhruroji, 2015).
Therefore, the purposes of this research are to answer several points; firstly is judicial caning in front of public in some countries. Secondly is government’s institutions involving in caning process. Thirdly is redefinition the norm of ‘in-front-of-public’. Fourthly is *hukom-adat* as escape strategy from judicial canning. Lastly is canning without educating.

**B. Research Method**

This article bases on qualitative research method, and using interview protocol and observation as main instruments for data collection. This qualitative method is supported by several methods in law 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 law, which are generally identified and free from uncertainty or disagreement that can be found in act, judgment, official document, which are mostly accepted by majority of judges. The black-letter law in this article can be found mainly from several judgments in *Mahkamah Syar’iah* (Islamic Court in Aceh). The empirical legal research at this point inclines to be more narrowly quantitative, exploring many judgments and regulations related to the research. Those judgment and regulations will be explained in figure or statistics. The comparative constitutional law method has functioned to appraise other countries’ experiences including international legal context (Pal, 2017; Tushnet, 2017; Hirschl, 2013). Comparative constitutional law can promote law reformation, preparing a tool of structure to know authorized rules (Banakar, 2015; Gutteridge, 2015; Siems, 2018; Frankenberg, 2016). In comparative constitutional law, researcher will learn on how other countries implement caning process as a part of law enforcement, and exploring international debate on caning as corporal punishment.

**C. Research Finding**

1. **Judicial Caning In Front Of Public In Some Countries**

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

Following successful story of other countries, Aceh-Indonesia tries to implement the judicial caning through Qanun Acara Jinayat. Despite gaining a successful story, Qanun Acara Jinayat has faced several critiques on its implementation, chiefly shaming defendant in front of public. Most of countries implementing judicial caning have carried out the punishment in closed or private places instead of opened-place or facing a mosque. The private places here are in the chosen jail which highly has a secured supervision, such as implement in Malaysia. Based on research report conducted by Amnesty International, the proses of judicial caning in Malaysia has been held in a closed-door and confidential place, consisted of diverse prison center. It is secreted from the common prisoner residents and padlocked from communal sight. The only spectators at the process of judicial caning are government-officers involved in managing the sentence process, including caning officer, crews, and health workers. This process of judicial caning is nearly similar with other British colonies in Southeast Asia countries, including Brunei Darussalam and Singapore (Amnesty International, 2010).

This judicial implemented by Government of Malaysia can closely select some viewers who want to observe the punishment process, preventing children to watch the caning process. This fact gives interpretation that the meaning of in-front-of-public has wide range interpretation, and has fully depended on judicial interpretation and political interpretation in those specific countries. So, it still has possibility to change the meaning of in-front-of-public, from widely accessed to closely accessed. The people who want to see the punishment process must be selected on what purpose of watching the punishment, and limiting public attendances.

2. Government’s Institutions Involving In Caning Process

The Qanun Acara Jinayat implemented in Aceh-Indonesia covers a number of 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 (*Qanun Aceh*, 2013). The breaking of those laws will have consequences such as paying fine, staying behind bars, and caning in front of public. The caning mechanisms regulate in the *Qanun Acara Jinayat*, stating the caning process must enforce in front of public that 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 authorities for spreading information, supervising, law enforcement and developing sharia law (*Qanun Aceh*, 2013). People have closely recognized 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 specific call. Then, *Satpol PP-WH* will investigate the call to ensure whether there is a law breaker or just a fake call. If a law breaker is confirmed, this institution will bring the law breaker to their office for further investigation. After investigation, the case will be passed to *Kejaksaan* (attorney officer). When the case handled by *Kejaksaan*, the Satpol PP-WH’s authorities ended. Both *Satpol PP-WH* and *Kejaksaan* will meet again in the process of judicial caning held publicly in a specific date. One of main problem in this institution is uncertainty career in the future. Thus, some officers may just pop up in this institution, before moving to another task. This fact creates disadvantages impact for 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* (prosecutor). As Aceh is autonomous province, *Kejaksaan* in Aceh has additional authorities that are totally different amongst other *Kejaksaan* in provinces Indonesia. This institution is not only having authorities to enforce national law, but also having authorities to technically implementing a bylaw such as *Qanun Acara Jinayat* (*Governing of Aceh*, 2009). The *Kejaksaan*’s authorities have started since receiving and checking case files from *Satpol PP-WH* as investigator, and will finish after caning punishment. When receiving a case file from *Satpol PP-WH*, *Kejaksaan* will doublecheck the file in detail most importantly the concrete evidences, consisting of statement of witness, 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’iyyah*. One of main obstacles here are
the Kejaksaan’s budgeting-system. Kejaksaan is a vertical institution that directly connected to central government in Jakarta. Unfortunately, central government have not allocated the budget for implementing Qanun Acara Jinayat, because the Qanunis a part of autonomous province budget, which must be provided by the Government of Aceh. If the Government of Aceh does not allocate the budget, Kejaksaan usually will not proceed Qanun Acara Jinayat cases. This fact is based on interview with High Auttorney Officer, as stated below:

Based on my experienced, in budgeting system some districts [in Aceh] is still not similar. There are some districts [in Aceh] that has prepared the special budget for implementing Qanun Acara Jinayat, but in some districts has not prepared the budget at all, causing the unimplementing of Qanun Acara Jinayat. This bylaw is the autonomous bylaw, which must spend autonomous budget, allocating not from General Auttorney’s budget. General Auttorney’s budget have been allocated to spend budget for national law, not related to an autonomoum bylaw (Syahdansyah, 2018).

The interview above shows that the implementation 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 state organs operating in Aceh, including in budgeting systems.

Thirdly is Dinas Syariat Islam (Sharia Islam Bureau). This institution has significant role in implementing Qanun Acara Jinayat as a thinker of Islamic law in Aceh. This system of government has main duties consisting of drafting, revising, and ensuring the implementation of regulations relating to Islamic law in Aceh (Governing of Aceh, 2009). Dinas Syariat Islam also has task to ensure all of institutions relating 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 law enforcement, selfish institutions, are still the main obstacles that need a specific approach to solve it. For instance, it is still difficult to enforce Qanun Acara Jinayat if the defendant is a prominent person, having important level position in governmental system. Mostly he/she will be transferred to another province before a judicial process (Firdaus, 2018).

Fourthly is Mahkamah Syar'iyyah. It is a significant institution to enforce Islamic law in Aceh. This institution gives judgement whether somebody is found guilty or will be freed from any allegations. Mahkamah Syar'iyyahin Aceh, also called Pengadilan Agama (Islamic Court) in Indonesia, has supplementary powers that are totally diverse from other provinces in Indonesia. This institution not only has powers to enforce national law regarding to Islamic
private law (Religious Court, 1989; 2006; Governing of Aceh, 2006; Qanun Aceh, 2013), but also has powers to officially executing an Islamic criminal law stated in Qanun Acara Jinayat. However, Mahkamah Syari’iyah has also faced some critical points. Not all of cases have passed to this court, because some are handled by community leader to be solved through Hukom-adat mechanism.

Lastly is Dinas Kesehatan (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 timing and place of caning, medical equipment, and appointing doctors (Qanun Aceh, 2013). Dinas Kesehatan focuses only on handling cause and effect regarding the physical appearance of defendant. Unfortunately, the psychological impact experienced by defendant have not taken care by Dinas Kesehatan. Most of defendants are very difficult to rehabilitate themselves in social life. In some Khalwat cases 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 addiction person, needing a psychological rehabilitation as well.

Furthermore, another problem faced by those institutions are that the mutual understanding amongst those institutions do not have a clear guidance on how those institutions implement their jobs desk. An integrated justice system amongst institutions implementing Qanun Acara Jinayat has not work properly. This fact has been stated by WH officer in interview:

The main obstacles I have seen in integrated justice system, that is not yet embedding and unifying. All of justice system officer should work inextricably and coexistence, in fact, this is not appropriating to the main destination of Islamic criminal law. So far, all of institutions having mandate to implement Sharia law including MPU (Ulama Consultative Assembly), Syariat Islam Agency, Social Agency, have still worked alone, and having lack of coordination (Marzuki, 2018).

The mutual understanding amongst institutions have not been regulated in a specific law or decree that binding those institutions. Consequently, amongst those institutions claim each other on duties and responsibilities, creating law uncertainty in implementing Sharia law.
3. Redefinition the norm of ‘in-front-of-public’

One of crucial critique in *Qanun Acara Jinayat* is the norm of opened-place and seen-by-people. This norm then has been publicly known as the norm of ‘in-front-of-public’ (Qanun Aceh, 2004). The meaning of opened place, seen by people, or in-front-of-public have interpreted widely, based on the perception of government officer 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 opened-place has been interpreted by law enforcer as a place located in front of public mosque not private mosque (Al-Qurthubi, 1985; Al-Syafi‘i, 2002; Ibnu ‘Asyur,1997). The chosen public-mosque here is in district where a case happened, aiming to give moral lesson for public in order not to repeat the same case in year to come. In contrast, this moral lesson has not fully worked as planned. Based on the interview with Police officer working in Aceh stating that:

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

The repetition case has come from the same persons or the only person, caused by the justice system in the Qanun Acara Jinayat itself. This bylaw has not legislated the mechanism of retributive justice system, also not stating the way on how to heal perpetrators addicted from alcoholic-drinking and gambling.

The norm of seen-by-people and ‘in-front-of-public’ have been construed as people who just completing *SholahZuhur* in Friday or people coming in that specific time. Those interpretations have not regulated in a specific bylaw, but it has regularly implemented in every caning occasion. However, in Indonesian legal system or national law, the meaning of *in-front-of-public* or opened-place have variety interpretation coming from several regulations. In the Act of Freedom of Expression states that the meaning of *in-front-of-public* not includes presidential palace, worshiping place, military camp, hospital, airport, port, train station, bus stop, national companies, and national holiday (Freedom of Expression of Public Opinion, 1998). So, other places not stated in the Act of Freedom of Expression also can 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 the decree that describing the specific meaning of *in-front-of-public*. In this decree *Kapolri* classifies *in-front-of-public* as facing
many people and also can be 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 those places. His definition was based on the understanding of Article 281 of the Criminal Code (Sianturi 1983; Harahap, 2015).

The above explanation indicates that the norm of in-front-of-public in national level must be interpreted through several regulations, not only through the perception of government officer. This interpretation system can prevent abuse of power by government officer in law enforcement mechanism. Unfortunately, this interpretation system has not worked in provincial level including the enforcement of Qanun Acara Jinayat, which is still interpreted through provincial government officer instead of a specific regulation. This fact has a potential chance to abuse of power 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 can avoid the abuse of power by provincial government officer.

4. Hukom-adatAs Escape Strategy From Judicial Canning

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

Those hukom-adat punishments are; firstly is advising the perpetrators. This sanction is the lightest hukom-adat punishment. In this punishment the perpetrators will receive important advice regarding law and hukom-adat order in society. After declaration of commitment not to repeat their failure, the perpetrators will be released peacefully with hukom-adat procession. If perpetrators do not obey the advice, they will be seriously warned by the head of hukom-adat leader. This warning has important message in order to heal the behaviour of the perpetrators. After the warning and the perpetrators have asked for apology, the cases will be closed and
not be proceeded to higher level. The apology commonly will restore the circumstances of two people involving in dispute with *hukom-adat* community.

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

*Lastly* is exiled from *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 are still repeating their mistake after receiving previous punishment such as advising and paying fines. Exiling is the hardest punishment in *hukom-adat* community. The perpetrators in exiling punishment will not be able 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 leded by the head of *hukom-adat* leader. It will be such as due process of law among *hukom-adat* community to decide whether someone found guilty or not. In this context NyakPha stated that *hukom-adat* punishments have purposes to solve the cases instead of deciding the cases. All of cases must be proceed wisely among *hukom-adat* community, and also ensuring all of parties take moral lesson from the cases. After the cases solved, the perpetrators and *hukom-adat* community will have a healing circumstance that can prevent revenge in the future (Nyak Pha, 1991; Amdani, 2014).

However, there is still an unclear boundary on which case should be solved through *hukom-adat* and should be passed to *Mahkamah Syar’iyyah*. This fact leads to unfair treatment for people who breaks the law in Gampong level. The prominent people has potential chance to be treated by *hukum-adat* court (Sulaiman, 2007). The mechanism of *hukom-adat* in solving some cases has been indicated as an illegal approach, because within *Qanun Acara Jinayat* not states clearly. This bylaw mandates *jinayat* cases only to be solved through state institutions as the official one, not through *hukom-adat* as unofficial one. If cases have delivered through *hukum-adat*, the abuse of power by top leader in village level will highly be possible to occur. The approach through *hukom-adat* has also not solved the cases permanently. In year to come, people in that village level will potentially take revenge for unfair treatment done by *hukom-adat* court.
Moreover, the implementation of *hukum-adat* in millennial period has widely transformed. Before Dutch colonial period, *hukum-adat* treated the guiltier privately and honor, giving special advice personally to not repeating same mistakes in the future, also not shaming them publicly. In contrast, nowadays, the *hukom-adat* has changed dramatically. Marzuki stated:

The guiltier tend to be disgraced publicly. The judiciary process of *hukom-adat* opens publicly viewed by people. The *hukom-adat* punishment has also held in public place, unfortunately in some cases people also involve punishing the guiltier with illegal mechanism, such as showering with sewage water (Marzuki, 2018).

5. Canning Without Educating

The implementation Islamic law in the time of Prophet Muhammad had always followed with educational approach. Most of perpetrators was educated by Prophet if they have committed crime. The way of Prophet Muhammad educating the perpetrators has two methods. The first method educates through verbal method that also called Sunna Qauliyah. In this method Prophet Muhammad give advice and also supervise the perpetrators verbally, and also insisting that perpetrators not committing crime against Quran and Sunnah. The second method is the non-verbal (action) method called Sunna Fi’liyah that Prophet tends to shows how to do something. Several cases of adultery, Prophet has given a lesson learnt to the perpetrators. For instance, in the case of adultery of pregnant woman, Prophet instructed the woman to give birth first and not to punish the woman in time of making confession (Dawud, 1996). This case has clearly educated us that protecting an infant is a must. In Maiz’s case, Prophet has also ignored two times confession of adultery from Maiz (Dawud, 1996). This case has given a lesson learnt for us that Prophet tends to not proceed first and second confessions that may not correct confession.

In contrast, the educating mechanism has not covered clearly in *Qanun Aćara Jinayat* (consisted of 286 articles) as well as in *QanunJinayat* (consisted of 82 articles). Those bylaws explain undoubtedly on how to catch and to punish perpetrators of Islamic criminal law imposed in Aceh, including evidence, and general prosecutor. Most of punitive punishment covered by those bylaws have only consisted of cunning and imprisonment, not considering social working as punishment. In contrast, in some Muslim countries have implemented the restorative justice as a part of punishment (Moss et al., 2018; Gade, 2018; Scheuerman, 2018). Restorative justice has recognized publicly as a method of justice system to form conciliation between victim and lawbreaker. The purpose of restorative justice is to
exchange for a resolve to the pleasure of all parties that involved in a case (Strang & Braithwaite, 2017; Daly 2017: 85-109; Gavrielides 2017). For instance, in Uni Emirate Arab have reduced the prison period for inmate who able to memorize some Surah in Al-Quran (Melha, 2018). In Lebanon, a Lebanese justice well-ordered three Muslim young men who disrespecting Christianity to memorize sections from the Quran’s to glorify Virgin Mary and Jesus Christ. The judge has made verdict aiming to educate the young men about the tolerance in Islam’s and also loving the Virgin Mary (Matta, 2018). The verdict has covered a way towards the advanced judicial methods, having benefit to resolve public problems and religious fanaticism.

Furthermore, Aceh’s curriculum system follows Indonesian educational policies (Bjork, 2018; Silalahi & Yuwono 2018). So, the implementation of Qanun Jinayat and Qanun Acara Jinayat have not covered the issue of Aceh’s curriculum system, including in level of junior high school and senior high school. Responding this fact Ataillah, school master of Darul Ihsan Aceh Besar, stated that:

All of senior high school in Aceh, including public and private school, must implement the curriculum of 2013 as required by Central Government. The curriculum has four core competences, including spiritual attitude, social attitude, knowledge, and skill. Unfortunately, those four competences have never stated or explained about Islamic criminal in Aceh, even some of pupils not knowing the Qanun Acara Jinayat and Qanun Jinayat. If not stated in curriculum, not compulsory for us to teach those bylaws for our pupils. So, most of pupils in senior high school and junior high school do not have basic understanding on Islamic criminal law in Aceh. The number of articles in those bylaws have differences with religious competences within curriculum of 2013 (Atailah, 2018).

The Atailah’s view makes sense, because Qanun Acara Jinayat and Qanun Jinayat only regulating on how to punish a lawbreaker instead of preventing a breaking law. Those bylaws do not give enough space to educational system to get involve. Thus, law enforcement through educational system cannot go hand in hand to implement Islamic criminal law, resulting lawbreakers from adolescence groups. Most of adolescence students do not understand the basic of Islamic criminal law, until they have caught red-handed of breaking those bylaws, such as breaking bylaw of Khalwat, drinking, and gambling. Responding this circumstance Marzuki as high-rank commander of Sharia Police have stated that:

“Most of lawbreakers have come from adolescence groups. They do not have a basic understanding of Islamic criminal law that implementing in Aceh.
Unluckily, in their senior high school also have not educated the Islamic criminal law. They have only practiced the method of five times praying (sholat), and fasting in Ramadhan. When studying in Banda Aceh, they have gotten friends from multi-cultural environment, including from opposite gender and opposite faith and believes. Thus, many of adolescences have caught red-handed in several Islamic criminal law cases such as Khalwat, drinking, and gambling. Khalwat is the most popular case in adolescences group who coming from remote sub-district in Province of Aceh (Marzuki, 2018).”

Marzuki’s statement have indicated that implementation Islamic criminal law in Aceh has still a weakness point, chiefly in promulgating regulations through educational system. This is a homework of Government of Aceh. Law enforcement should be in accordance with enhancing educational system. Government of Aceh must merge Islamic criminal law in school curriculum, to create understanding amongst youth community. So, preventing a law-breaking through school curriculum can reduce the increasing number of lawbreakers. Without integrated curriculum, school teacher does not have obligation to teach Islamic law for pupils in school. Even, some of school teachers have no basic understanding in Islamic law established in Banda Aceh. Regarding this fact Marzuki have stated that:

“Islamic criminal law has not been promoted in high school level that causing lawbreakers from adolescences. Even, most of teachers also does have understanding on Qanun Acara Jinayat and Hukum Jinayat. Government of Aceh so far has only promulgated those bylaws for law enforcement institutions such as WilayatulHisbah, Mahkamah Syar’iyyah, Polisi, and Kejaksaan (Marzuki, 2018).”

Marzuki’s views have shown us that the implementation of Islamic criminal law in Aceh has serious obstacles, chiefly in promulgation system for adolescence groups and high school teacher. If Government of Aceh not pays attention on this obstacle, the law breakers from adolescence groups can increase every year.

D. Conclusion

Judicial caning in front public is still a wide-ranging debate in discussion of corporal punishment issues, but writer personally disagrees on judicial caning in front of public for a millennial Muslim. In fact, the bylaw of Qanun Acara Jinayatand Qanun Jinayat not clearly regulates the detail process of judicial caning, whether must be enforced in opened place viewed by crowded of people or in a closed private place. For the time being, government officer has taken initiative to personally show off the judicial caning in opened place and in
front of public. The norm of ‘opened-place’ in Qanun Acara Jinayat can be widely interpreted and has potential threat to abuse of power by government officer.

 Judicial caning in front of public have created a new problem on society, instead of solving the real problem of law enforcement. The guiltier usually does not have basic understanding on such bylaws. Nowadays, the law enforcement excludes the educational enforcement through high school curriculum. So, the same guiltier has a potential chance to repeat the same mistake in the future. In the village level, the judicial caning has become a bargaining tool. A prominent person can choice hukom-adat approach to escape from caning punishment. This fact leads to unfair treatment of law enforcement, building a law distrust in civil society.

 Internationally, judicial caning as corporal punishment has been broadly criticized regarding issues of human rights. Therewith, judicial caning in opened place and widely viewed is not practiced in Southeast Asian Countries including Malaysia, Singapore, and Brunei Darussalam. So, the judicial caning in opened place and front of public in Aceh-Indonesia is purely interpretation of government officer. However, the writer has critique on judicial caning in Malaysia for those breaking Sharia law that the defendants have been caned on their bare buttocks shown off to other people. This technique has broken Sharia law itself, that prohibiting a person to see other people’s buttocks.

 Lastly, writer has a strong point that judicial canning in front of public must be reviewed. A millennial Muslim needs an innovative approach on law enforcement. The approach can be installing basic understanding of religious values through education, instead of corporal punishment. Furthermore, the defendant who has been punished should get rehabilitation, treatment for addiction person, and soul healing by religious approach. The rehabilitation needs for case indicating addiction such as gambling and alcoholic-drinking. Because defendants of those cases have potential chance to repeat the mistakes; unfortunately, Qanun Acara Jinayat and QanunJinayat has not regulated the rehabilitation mechanism for gambling and alcoholic-drinking cases. Thus, Qanun Acara Jinayat and QanunJinayat need a significant amendment in year to come.
1-REVIEWER FEEDBACK

Endnote

• This article bases on research funded by Faculty of Shariah and Law, State Islamic University (UI) Ar-Raniry, Banda Aceh, Indonesia.

1. The terminology of hukom-adatis not stated clearly in Qanun Acara Jinayat. This Qanun only regulates the mechanism of solving jinayat’s cases in village level, but the mechanism has been widely interpreted in village level, such as showering with sewage, forcing to marry, forcing to pay a fine, sacrificing cattle, and so forth.

2. Showing off buttocks to other people is also breaking other Sharia laws, because buttocks are the parts of human bodies which must be covered and not to show publicly.

Bibliography

Act Number 11 of 2006 on the Governing of Aceh

Act Number 3 of 2006 on the Amendment of Act Number 7 of 1989 on the Religious Court

Act Number 7 of 1989 on the Religious Court.


1-REVIEWER FEEDBACK


Governor of Aceh Decree Number 41 of 2009 on the *Organizational Structure and Working Procedures of the Technical Implementation Unit*.


1-REVIEWER FEEDBACK


Qanun Aceh Number 7 of 2013 on the Hukum Acara Jinayat.


**1-REVIEWER FEEDBACK**


Interview:

Interviewed with Syahdansyah Putera Jaya in February 2018, Banda Aceh.
Interviewed with Marzuki in March 2018, Banda Aceh.
Interviewed with Agus in April 2018, Banda Aceh.
Interviewed with Atailah in Mei 2018, Banda Aceh.
Caning in Front of Public: Should It Be Maintained Or Eliminated?

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Abstract
This article has investigated the corporal punishment through judicial caning in Aceh, Indonesia. The judicial caning has been shown publicly, and easily watched by gathering people including children. The purpose of article searches a fact which happening during the implementation of judicial canning in Aceh. Author has used qualitative method with interview as main instrument, and also using black-letter law as supporting approach. The research finding is that caning in front of public does not guarantee a deterrent effect to the defendants. In some cases, such as gambling and drinking, some of them will potentially repeat the same cases in year to come, because bylaw of gambling and drinking does not accommodate rehabilitation mechanism. Children attending the canning process potentially imitate the process in their future life. This research has the clear novelty, as judicial caning does not yet publish in research and article in Indonesian legal system.

Keywords: Caning in front of public, Corporal punishment, Islamic criminal law

A. Introduction
This article has significant impact on developing public law in Indonesia, chiefly Islamic criminal law. The article bases on a research finding conducted in the Province of Aceh, Indonesia, post the amendment of Qanun Acara Jinayat (Islamic criminal bylaw procedure) since 2013. The writer critiques the caning in front of public as a compulsory law enforcement, having purposes to implement Qanun Acara Jinayat and Qanun Jinayat in Aceh, Indonesia. Those Qanun also known publicly as shariah bylaw or Islamic criminal law in Indonesia (Garadian, 2016). Furthermore, in caning process all of people are allowed to watch directly the entire process until finish. The bylaw disgraces a Muslim in front of public. For a millennial Muslim, law is not only an instrument of enforcement, but also an instrument which is used to engineer Muslim behavior, and making every person close to God the Almighty. The law must also teach guiltier Muslims after the punishment, and ensuring them not to repeat the same mistake. If the same mistake has been repeated by the same person, this can be assumed that the law should be amended. Nowadays, the Qanun Acara Jinayat only punishes the guiltier, and forgetting to teach, to repair, and to rehab the
guiltier. Consequently, the same guiltier will be the next guiltier with same case in year to come (Dinas Syariat Islam Aceh, 2017).

To get comparative approach of this article, the writer will consider several research results relating to this topic. For instance, research on caning as law enforcement conducted by Farrel (2018; Kaur & Yuan, 2017). He explains judicial caning that legally enforced in Malaysia, Singapore, Brunei Darussalam, and Aceh-Indonesia. Farrel also states on how judicial caning as corporal punishment has been critiqued globally (Gershoff, 2017; Han, 2017). In other research Fonseca has also described his findings on sociology of punishment in post-colonial context. Fonseca states that outlying countries have tried to revolutionize their criminal justice devices, while community control in Western democracies has progressively implemented postcolonial features. The purpose is not only to develop this legal thought by surrounding more multiplicity, but also to improve 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 in Asia, Europe, and North America. Their findings specified that corporal punishment during childhood and adolescence can lead to antisocial behavior that developed amongst young adults who report suffering 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 arise when it originates from both parents. This research proposes that self-control and social apprehension, but not conservative insolences, mediate a helping of the association between retrospective information of youthful corporal punishment and antisocial behavior in early maturity (Rebellon, 2017).

However, all of research results explained above have not explained clearly about the main topic of this article. This article will give an important contribution for the development of Islamic criminal law in general, including for the amendment of Qanun Acara Jinayat in Aceh-Indonesia. This bylaw has played significant role as a tool of social engineering in Aceh, and also influencing Indonesian legal framework (Feener, 2013; Islam, 2018; Fakhruroji, 2015).

Therefore, the purposes of this research are to answer several points; firstly is judicial caning in front of public in some countries. Secondly is government’s institutions involving in caning process. Thirdly is redefinition the norm of ‘in-front-of-public’. Fourthly is hukom-adat as escape strategy from judicial canning. Lastly is canning without educating.
B. Research Method

This article bases on qualitative research method, and using interview protocol and observation as main instruments for data collection. This qualitative method is supported by several methods in law 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 law, which are generally identified and free from uncertainty or disagreement that can be found in act, judgment, official document, which are mostly accepted by majority of judges. The black-letter law in this article can be found mainly from several judgments in Mahkamah Syar’yah (Islamic Court in Aceh). The empirical legal research at this point inclines to be more narrowly quantitative, exploring many judgments and regulations related to the research. Those judgment and regulations will be explained in figure or statistics. The comparative constitutional law method has functioned to appraise other countries’ experiences including international legal context (Pal, 2017; Tushnet, 2017; Hirschl, 2013). Comparative constitutional law can promote law reformation, preparing a tool of structure to know authorized rules (Banakar, 2015; Gutteridge, 2015; Siems, 2018; Frankenberg, 2016; Armia, 2018). In comparative constitutional law, researcher will learn on how other countries implement caning process as a part of law enforcement, and exploring international debate on caning as corporal punishment.

C. Research Finding

1. Judicial Caning In Front Of Public In Some Countries

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

Following successful story of other countries, Aceh-Indonesia tries to implement the judicial caning through *Qanun Acara Jinayat*. Despite gaining a successful story, *Qanun Acara Jinayat* has faced several critiques on its implementation, chiefly shaming defendant in front of public. Most of countries implementing judicial caning have carried out the punishment in closed or private places instead of opened-place or facing a mosque. The private places here are in the chosen jail which highly has a secured supervision, such as implement in Malaysia. Based on research report conducted by Amnesty International, the proses of judicial caning in Malaysia has been held in a closed-door and confidential place, consisted of diverse prison center. It is secreted from the common prisoner residents and padlocked from communal sight. The only spectators at the process of judicial caning are government-officers involved in managing the sentence process, including caning officer, crews, and health workers. This process of judicial caning is nearly similar with other British colonies in Southeast Asia countries, including Brunei Darussalam and Singapore (Amnesty International, 2010).

This judicial caning implemented by Government of Malaysia can closely select some viewers who want to observe the punishment process, preventing children to watch the caning process. This fact gives interpretation that the meaning of *in-front-of-public* has wide range interpretation, and has fully depended on judicial interpretation and political interpretation in those specific countries. So, it still has possibility to change the meaning of *in-front-of-public*, from widely accessed to closely accessed. The people who want to see the punishment process must be selected on what purpose of watching the punishment, and limiting public attendances. (Kamal, 2019; Steiner, 2019; Lukito, 2019; Peletz, 2018; Whiting, 2018; Hung, 2016; Case, 2015; Santoso, 2015;)

### 2. Government’s Institutions Involving In Caning Process

The *Qanun Acara Jinayat* implemented in Aceh-Indonesia covers a number of 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 (*Qanun Ac, 2013; Armia, 2018). The breaking of those laws will have consequences such as paying fine, staying behind bars, and caning in front of public. The caning mechanisms regulate in the *Qanun Acara Jinayat*,


stating the caning process must enforce in front of public that 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 authorities for spreading information, supervising, law enforcement and developing sharia law (Qanun Aceh, 2013). People have closely recognized 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 specific call. Then, Satpol PP-WH will investigate the call to ensure whether there is a law breaker or just a fake call. If a law breaker is confirmed, this institution will bring the law breaker to their office for further investigation. After investigation, the case will be passed to Kejaksaan (attorney officer). When the case handled by Kejaksaan, the Satpol PP-WH’s authorities ended. Both Satpol PP-WH and Kejaksaan will meet again in the process of judicial caning held publicly in a specific date. One of main problem in this institution is uncertainty career in the future. Thus, some officers may just pop up in this institution, before moving to another task. This fact creates disadvantages impact for institution development, because the government has trained them professionally to be law enforcement officer chiefly the Satpol-WH (DinasSyariat Islam Aceh, 2015).

Secondly is Kejaksaan (prosecutor). As Aceh is autonomous province, Kejaksaan in Aceh has additional authorities that are totally different amongst other Kejaksaan in provinces Indonesia. This institution is not only having authorities to enforce national law, but also having authorities to technically implementing a bylaw such as Qanun Acara Jinayat(Governing of Aceh, 2009). The Kejaksaan’s authorities have started since receiving and checking case files from Satpol PP-WH as investigator, and will finish after caning punishment. When receiving a case file from Satpol PP-WH,Kejaksaan will doublecheck the file in detail most importantly the concrete evidences, consisting of statement of witness, 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 MahkamahSyar’iyyah. One of main obstacles here are the Kejaksaan’s budgeting-system. Kejaksaan is a vertical institution that directly connected to central government in Jakarta. Unfortunately, central government have not allocated the budget for implementing Qanun Acara Jinayat, because the Qanunis a part of autonomous
province budget, which must be provided by the Government of Aceh. If the Government of Aceh does not allocate the budget, Kejaksaan usually will not proceed Qanun Acara Jinayat cases. This fact is based on interview with High Attorney Officer, as stated below:

Based on my experienced, in budgeting system some districts [in Aceh] is still not similar. There are some districts [in Aceh] that has prepared the special budget for implementing Qanun Acara Jinayat, but in some districts has not prepared the budget at all, causing the unimplementing of Qanun Acara Jinayat. This bylaw is the autonomous bylaw, which must spend autonomous budget, allocating not from General Attorney’s budget. General Attorney’s budget have been allocated to spend budget for national law, not related to an autonomous bylaw (Syahdansyah, 2018).

The interview above shows that the implementation 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 state organs operating in Aceh, including in budgeting systems.

Thirdly is Dinas Syariat Islam (Sharia Islam Bureau). This institution has significant role in implementing Qanun Acara Jinayat as a thinker of Islamic law in Aceh. This system of government has main duties consisting of drafting, revising, and ensuring the implementation of regulations relating to Islamic law in Aceh (Governing of Aceh, 2009). Dinas Syariat Islam also has task to ensure all of institutions relating 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 law enforcement, selfish institutions, are still the main obstacles that need a specific approach to solve it. For instance, it is still difficult to enforce Qanun Acara Jinayat if the defendant is a prominent person, having important level position in governmental system. Mostly he/she will be transferred to another province before a judicial process (Firdaus, 2018).

Fourthly is Mahkamah Syar’iyyah. It is a significant institution to enforce Islamic law in Aceh. This institution gives judgement whether somebody is found guilty or will be freed from any allegations. Mahkamah Syar’iyyah in Aceh, also called Pengadilan Agama (Islamic Court) in Indonesia, has supplementary powers that are totally diverse from other provinces in Indonesia. This institution not only has powers to enforce national law regarding to Islamic private law (Religious Court, 1989; 2006; Governing of Aceh, 2006; Qanun Aceh, 2013), but also has powers to officially executing an Islamic criminal law stated in Qanun Acara Jinayat. However, Mahkamah Syari’iyyah has also faced some critical points. Not all
of cases have passed to this court, because some are handled by community leader to be solved through *Hukom-adat* mechanism.

*Lastly* is *Dinas Kesehatan* (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’iyyah*, and *Satpol PP-WH*. The understanding consists of timing and place of caning, medical equipment, and appointing doctors (*Qanun Aceh, 2013*). *Dinas Kesehatan* focuses only on handling cause and effect regarding the physical appearance of defendant. Unfortunately, the psychological impact experienced by defendant have not taken care by *Dinas Kesehatan*. Most of defendants are very difficult to rehabilitate themselves in social life. In some *Khalwat* cases 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 addiction person, needing a psychological rehabilitation as well.

Furthermore, another problem faced by those institutions are that the mutual understanding amongst those institutions do not have a clear guidance on how those institutions implement their jobs desk. An integrated justice system amongst institutions implementing *Qanun Acara Jinayat* has not work properly. This fact has been stated by *WH* officer in interview:

> The main obstacles I have seen in integrated justice system, that is not yet embedding and unifying. All of justice system officer should work inextricably and coexistence, in fact, this is not appropriating to the main destination of Islamic criminal law. So far, all of institutions having mandate to implement Sharia law including MPU (Ulama Consultative Assembly), Syariat Islam Agency, Social Agency, have still worked alone, and having lack of coordination (Marzuki, 2018).

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

**3. Redefinition the norm of ‘in-front-of-public’**

One of crucial critique in *Qanun Acara Jinayat* is the norm of opened-place and seen-by-people. This norm then has been publicly known as the norm of ‘in-front-of-public’
The meaning of opened place, seen by people, or in-front-of-public have interpreted widely, based on the perception of government officer 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 opened-place has been interpreted by law enforcer as a place located in front of public mosque not private mosque (Al-Qurthubi, 1985; Al-Syafi‘i, 2002; Ibnu ‘Asyur, 1997). The chosen public-mosque here is in district where a case happened, aiming to give moral lesson for public in order not to repeat the same case in year to come. In contrast, this moral lesson has not fully worked as planned. Based on the interview with Police officer working in Aceh stating that:

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

The repetition case has come from the same persons or the only person, caused by the justice system in the Qanun Acara Jinayat itself. This bylaw has not legislated the mechanism of retributive justice system, also not stating the way on how to heal perpetrators addicted from alcoholic-drinking and gambling.

The norm of seen-by-people and ‘in-front-of-public’ have been construed as people who just completing Sholah Zhuhur in Friday or people coming in that specific time. Those interpretations have not regulated in a specific bylaw, but it has regularly implemented in every caning occasion. However, in Indonesian legal system or national law, the meaning of in-front-of-public or opened-place have variety interpretation coming from several regulations. In the Act of Freedom of Expression states that the meaning of in-front-of-public not includes presidential palace, worshiping place, military camp, hospital, airport, port, train station, bus stop, national companies, and national holiday (Freedom of Expression of Public Opinion, 1998). So, other places not stated in the Act of Freedom of Expression also can 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 the decree that describing the specific meaning of in-front-of-public. In this decree Kapolri classifies in-front-of-public as facing many people and also can be 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
those places. His definition was based on the understanding of Article 281 of the Criminal Code (Sianturi 1983; Harahap, 2015).

The above explanation indicates that the norm of *in-front-of-public* in national level must be interpreted through several regulations, not only through the perception of government officer. This interpretation system can prevent abuse of power by government officer in law enforcement mechanism. Unfortunately, this interpretation system has not worked in provincial level including the enforcement of *Qanun Acara Jinayat*, which is still interpreted through provincial government officer instead of a specific regulation. This fact has a potential chance to abuse of power 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 can avoid the abuse of power by provincial government officer.

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

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

Those *hukom-adat* punishments are; *firstly* is advising the perpetrators. This sanction is the lightest *hukom-adat* punishment. In this punishment the perpetrators will receive important advice regarding law and *hukom-adat* order in society. After declaration of commitment not to repeat their failure, the perpetrators will be released peacefully with *hukom-adat procession*. If perpetrators do not obey the advice, they will be seriously warned by the head of *hukom-adat* leader. This warning has important message in order to heal the behaviour of the perpetrators. After the warning and the perpetrators have asked for apology, the cases will be closed and not be proceeded to higher level. The apology commonly will restore the circumstances of two people involving in dispute with *hukom-adat* community.
Secondly is paying fine, charged to the perpetrators causing moral and material damage on hukom-adat system, which expected to recover and healing the public damage. The fine can be paid with an amount of money or a specific thing requested by a head of hukom-adat, including cattle, goat and poultry that have been regulated in Hukom-Adat. The provision on amount of fine depends on level of mistake made by the perpetrators.

Lastly is exiled from 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 are still repeating their mistake after receiving previous punishment such as advising and paying fines. Exiling is the hardest punishment in hukom-adat community. The perpetrators in exiling punishment will not be able 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 head of hukom-adat leader. It will be such as due process of law among hukom-adat community to decide whether someone found guilty or not. In this context NyakPha stated that hukom-adat punishments have purposes to solve the cases instead of deciding the cases. All of cases must be proceed wisely among hukom-adat community, and also ensuring all of parties take moral lesson from the cases. After the cases solved, the perpetrators and hukom-adat community will have a healing circumstance that can prevent revenge in the future (Nyak Pha, 1991; Amdani, 2014).

However, there is still an unclear boundary on which case should be solved through hukom-adat and should be passed to Mahkamah Syar’iyyah. This fact leads to unfair treatment for people who breaks the law in Gampong level. The prominent people has 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 within Qanun Acara Jinayat not states clearly. This bylaw mandates jinayat cases only to be solved through state institutions as the official one, not through hukom-adat as unofficial one. If cases have delivered through hukum-adat, the abuse of power by top leader in village level will highly be possible to occur. The approach through hukom-adat has also not solved the cases permanently. In year to come, people in that village level will potentially take revenge for unfair treatment done by hukom-adat court.

Moreover, the implementation of hukum-adat in millennial period has widely transformed. Before Dutch colonial period, hukum-adat treated the guiltier privately and honor, giving special advice personally to not repeating same mistakes in the future, also not
shaming them publicly. In contrast, nowadays, the *hukom-adat* has changed dramatically. Marzuki stated:

The guiltier tend to be disgraced publicly. The judiciary process of *hukom-adat* opens publicly viewed by people. The *hukom-adat* punishment has also held in public place, unfortunately in some cases people also involve punishing the guiltier with illegal mechanism, such as showering with sewage water (Marzuki, 2018).

### 5. Canning Without Educating

The implementation Islamic law in the time of Prophet Muhammad had always followed with educational approach. Most of perpetrators was educated by Prophet if they have committed crime. The way of Prophet Muhammad educating the perpetrators has two methods. The first method educates through verbal method that also called *Sunna Qauliyah*. In this method Prophet Muhammad give advice and also supervise the perpetrators verbally, and also insisting that perpetrators not committing crime against Quran and Sunnah. The second method is the non-verbal (action) method called *Sunna Fi’liyah* that Prophet tends to shows how to do something. Several cases of adultery, Prophet has given a lesson learnt to the perpetrators. For instance, in the case of adultery of pregnant woman, Prophet instructed the woman to give birth first and not to punish the woman in time of making confession (Dawud, 1996). This case has clearly educated us that protecting an infant is a must. In Maiz’s case, Prophet has also ignored two times confession of adultery from Maiz (Dawud, 1996). This case has given a lesson learnt for us that Prophet tends to not proceed first and second confessions that may not correct confession.

In contrast, the educating mechanism has not covered clearly in *Qanun Acara Jinayat* (consisted of 286 articles) as well as in *Qanun Jinayat* (consisted of 82 articles). Those bylaws explain undoubtedly on how to catch and to punish perpetrators of Islamic criminal law imposed in Aceh, including evidence, and general prosecutor. Most of punitive punishment covered by those bylaws have only consisted of cunning and imprisonment, not considering social working as punishment. In contrast, in some Muslim countries have implemented the restorative justice as a part of punishment (Moss et al., 2018; Gade, 2018; Scheuerman, 2018). Restorative justice has recognized publicly as a method of justice system to form conciliation between victim and lawbreaker. The purpose of restorative justice is to exchange for a resolve to the pleasure of all parties that involved in a case (Strang&Braithwaite, 2017; Daly 2017: 85-109; Gavrielides 2017). For instance, in Uni Emirate Arab have reduced the prison period for inmate who able to memorize some Surah in
Al-Quran (Melha, 2018). In Lebanon, a Lebanese justice well-ordered three Muslim young men who disrespecting Christianity to memorize sections from the Quran’s to glorify Virgin Mary and Jesus Christ. The judge has made verdict aiming to educate the young men about the tolerance in Islam’s and also loving the Virgin Mary (Matta, 2018). The verdict has covered a way towards the advanced judicial methods, having benefit to resolve public problems and religious fanatism.

Furthermore, Aceh’s curriculum system follows Indonesian educational policies (Bjork, 2018; Silalahi&Yuwono 2018). So, the implementation of Qanun Jinayat and Qanun Acara Jinayat have not covered the issue of Aceh’s curriculum system, including in level of junior high school and senior high school. Responding this fact Ataillah, school master of Darul Ihsan Aceh Besar, stated that:

All of senior high school in Aceh, including public and private school, must implement the curriculum of 2013 as required by Central Government. The curriculum has four core competences, including spiritual attitude, social attitude, knowledge, and skill. Unfortunately, those four competences have never stated or explained about Islamic criminal in Aceh, even some of pupils not knowing the Qanun Acara Jinayat and Qanun Jinayat. If not stated in curriculum, not compulsory for us to teach those bylaws for our pupils. So, most of pupils in senior high school and junior high school do not have basic understanding on Islamic criminal law in Aceh. The number of articles in those bylaws have differences with religious competences within curriculum of 2013 (Atailah, 2018).

The Atailah’s view makes sense, because Qanun Acara Jinayat and Qanun Jinayat only regulating on how to punish a lawbreaker instead of preventing a breaking law. Those bylaws do not give enough space to educational system to get involve. Thus, law enforcement through educational system cannot go hand in hand to implement Islamic criminal law, resulting lawbreakers from adolescence groups. Most of adolescence students do not understand the basic of Islamic criminal law, until they have caught red-handed of breaking those bylaws, such as breaking bylaw of Khalwat, drinking, and gambling. Responding this circumstance Marzuki as high-rank commander of Sharia Police have stated that:

“Most of lawbreakers have come from adolescence groups. They do not have a basic understanding of Islamic criminal law that implementing in Aceh. Unfortunately, in their senior high school also have not educated the Islamic criminal law. They have only practiced the method of five times praying (sholah), and fasting in Ramadhan. When studying in Banda Aceh, they have gotten friends from multi-cultural environment, including from opposite gender and opposite
faith and believes. Thus, many of adolescences have caught red-handed in several Islamic criminal law cases such as Khalwat, drinking, and gambling. Khalwat is the most popular case in adolescences group who coming from remote sub-district in Province of Aceh (Marzuki, 2018).”

Marzuki’s statement have indicated that implementation Islamic criminal law in Aceh has still a weakness point, chiefly in promulgating regulations through educational system. This is a homework of Government of Aceh. Law enforcement should be in accordance with enhancing educational system. Government of Aceh must merge Islamic criminal law in school curriculum, to create understanding amongst youth community. So, preventing a law-breaking through school curriculum can reduce the increasing number of lawbreakers. Without integrated curriculum, school teacher does not have obligation to teach Islamic law for pupils in school. Even, some of school teachers have no basic understanding in Islamic law established in Banda Aceh. Regarding this fact Marzuki have stated that:

“Islamic criminal law has not been promoted in high school level that causing lawbreakers from adolescences. Even, most of teachers also does have understanding on Qanun Acara Jinayat and HukumJinayat. Government of Aceh so far has only promulgated those bylaws for law enforcement institutions such as WilayatulHisbah, MahkamahSyar‘iyyah, Polisi, and Kejaksaan (Marzuki, 2018).”

Marzuki’s views have shown us that the implementation of Islamic criminal law in Aceh has serious obstacles, chiefly in promulgation system for adolescence groups and high school teacher. If Government of Aceh not pays attention on this obstacle, the law breakers from adolescence groups can increase every year.

D. Conclusion
Caning in front of public should be eliminated. In spite of reducing the law-breakers, caning in front public has given an effect of entertaining, instead of effect of fear. Showing off the caning in front of people will also create violence effect for children viewing the caning process. To decrease the number of law-breakers, the government of Aceh must consider the prevention mechanism, such as attaching sharia law in school curriculum. So, the new law-breakers can be slightly decreased. Hukom-Adat have to have a clear mechanism to solve sharia law cases in village level, if not, abuse of justice will occur. Amongst government institutions in Aceh, involving in implementing sharia law, must have the clear jobs description, that can prevent overlapping job. The Government of Aceh also have to allocate
budget for *Mahkamah Syar’iyyah* (Islamic Court), *Kejaksan* (Prosecutor), and *Kepolisian* (Police). The rehabilitation also needs for case indicating addiction such as gambling and alcoholic-drinking, that can repeat the mistakes in the future.

**Endnote**

- This article bases on research funded by Faculty of Shariah and Law, State Islamic University (UIN) Ar-Raniry, Banda Aceh, Indonesia.

1. The terminology of *hukom-adat* is not stated clearly in Qanun Acara Jinayat. This Qanun only regulates the mechanism of solving *jinayat’s* cases in village level, but the mechanism has been widely interpreted in village level, such as showering with sewage, forcing to marry, forcing to pay a fine, and sacrificing cattle.

2. Showing off buttocks in canning process in Malaysia to other people is also breaking other Sharia laws, because buttocks are the parts of human bodies which must be covered and not to show publicly.

**Bibliography**

Act Number 11 of 2006 on the *Governing of Aceh*

Act Number 3 of 2006 on the Amendment of Act Number 7 of 1989 on the *Religious Court*

Act Number 7 of 1989 on the *Religious Court.*


Governor of Aceh Decree Number 41 of 2009 on the Organizational Structure and Working Procedures of the Technical Implementation Unit.


Qanun Aceh Number 7 of 2013 on the Hukum A cara J inayat.


Interview :
  Interviewed with Syahdansyah Putera Jaya in February 2018, Banda Aceh.
  Interviewed with Marzuki in March 2018, Banda Aceh.
  Interviewed with Agus in April 2018, Banda Aceh.
  Interviewed with Atailah in Mei 2018, Banda Aceh.
Public Caning: Should It be Maintained Or Eliminated?

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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 canning 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 canning 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 Farrel (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, 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 (Feener, 2013; Islam, 2018; Fakhruroji, 2015).

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’yah (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 (Pal, 2017; Tushnet, 2017; Hirschl, 2013). Comparative constitutional law can promote law reformation, preparing a tool of structure to identify the authorized rules (Banakar, 2015; Gutteridge, 2015; Siems, 2018; Frankenberg, 2016; Armia, 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 (Stivens, 2015; Fanani, 2017; Ngiam &Tung, 2016; Chuanyu, 2018). 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 (Rajah, 2017; Ong, 2018) 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 (Pate&Gould, 2012; Roy, 2012; Gershoff, 2017).

Following the success story of other countries, Aceh, Indonesia, tries to implement the judicial caning through \textit{Qanun Acara Jinayat}. Despite its success, \textit{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 (Amnesty 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. (Kamal, 2019; Steiner, 2019; Lukito, 2019; Peletz, 2018; Whiting, 2018; Hung, 2016; Case, 2015; Santoso, 2015;)

2. Government’s Institutions Involved in Caning Process

The \textit{Qanun Acara Jinayat}, implemented in Aceh, Indonesia, covers several Islamic criminal laws, including \textit{Khamar} (alcoholic drinking), \textit{Maisir} (gambling), \textit{Khalwat} (secluding with illegal spouse), \textit{Ikhtilath} (intimate with illegal spouse), Adultery, Sexual Harassment, Rape, \textit{Qadzaf} (accusing adultery), Gay, and Lesbian (Qanun Aceh, 2013; Armia, 2018). Breaking of those laws will have consequences, such as paying fine, imprisonment, and public caning. The caning mechanisms regulated in the \textit{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 (DinasSyariat 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 (Governing of Aceh, 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’iyyah. 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, 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 (Firdaus, 2018).

Fourthly is *Mahkamah Syar’iyyah*, a significant institution to enforce Islamic law in Aceh. This institution assesses whether somebody is found guilty or free from any allegations. *Mahkamah Syar’iyyah* 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 (Religious Court, 1989; 2006; Governing of Aceh, 2006; Qanun Aceh, 2013), but also to officially executing an Islamic criminal law stated in *Qanun Acara Jinayat*. However, *Mahkamah Syari’iyyah* 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’iyyah, 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, 1998). 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 (Sianturi 1983; Harahap, 2015).

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’iyyah. 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, NyakPha 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 (Nyak Pha, 1991; Amdani, 2014).

However, there is still an unclear boundary on which case should be solved through *hukom-adat* and should be passed on to *Mahkamah Syar’iyyah*. 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 drastically. 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. 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 (Moss et al., 2018; Gade, 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 (Strang & Braithwaite, 2017; Daly 2017: 85-109; Gavrielides 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 fanatism.

Furthermore, Aceh’s curriculum system follows the Indonesian educational policies (Bjork, 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, Ataillah, 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).

Ataillah’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’iyyah*, *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 canning should be eliminated. In spite of reducing the number of offenders, public canning 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’iyyah (Islamic Court), Kejaksan (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.

Endnote

• This article bases on research funded by Faculty of Shariat and Law, State Islamic University (UIN) Ar-Raniry, Banda Aceh, Indonesia.
1. The terminology of hukom-adat is not stated clearly in Qanun Acara Jinayat. This Qanun only regulates the mechanism of solving jinayat’s cases in village level, but the mechanism has been widely interpreted in village level, such as showering with sewage, forcing to marry, forcing to pay a fine, and sacrificing cattle.
2. Showing off buttocks in canning process in Malaysia to other people is also breaking other Sharia laws, because buttocks are the parts of human bodies which must be covered and not to show publicly.

Bibliography

Act Number 11 of 2006 on the Governing of Aceh
Act Number 3 of 2006 on the Amendment of Act Number 7 of 1989 on the Religious Court
Act Number 7 of 1989 on the Religious Court.


Governor of Aceh Decree Number 41 of 2009 on the Organizational Structure and Working Procedures of the Technical Implementation Unit.


Qanun Aceh Number 7 of 2013 on the *Hukum Acara Jinayat*.


Interview:
 Interviewed with Syahdansyah Putera Jaya in February 2018, Banda Aceh.
 Interviewed with Marzuki in March 2018, Banda Aceh.
 Interviewed with Agus in April 2018, Banda Aceh.
 Interviewed with Atailah in Mei 2018, Banda Aceh.
Caning in Front of Public Caning: Should It Be Maintained Or Eliminated?

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Abstract
This article has investigated the corporal punishment through judicial caning in Aceh, Indonesia. The judicial caning is conducted has been shown publicly, and easily watched by the crowd, gathering people— including children. This purpose of article aimed to search the facts that occurred which happening during the implementation of judicial caning in Aceh. This study employed qualitative method, with the interview as the main instrument, and also using the black-letter law as a supporting approach. The research finding showed is that public caning in front of public 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 year in year to come, because the bylaw concerning of gambling and drinking does not accommodate rehabilitation mechanism. Furthermore, children attending the canning process will likely potentially imitate the process in their future life. This research has a the clear novelty, as publication related to judicial caning is still limited does not yet publish in research and articles regarding in the Indonesian legal system.

Keywords: Public Caning in front of public, 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 The article bases on the research 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 writer critiques the public caning, caning in front of the public, as a compulsory law enforcement having purposes to implement Qanun Acara Jinayat and Qanun Jinayat in Aceh, Indonesia. Those Qanun are also known publicly as shariah bylaw or Islamic criminal law in Indonesia (Garadian, 2016). Furthermore, anyone can directly watch the caning process all of people are allowed to watch directly the entire process of caning until finish. 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 making everyone to person close to God, the Almighty. The law must also teach the guiltier Muslims offenders after the punishment, and ensuring them not to repeat the same
mistake after the punishment. If the same person makes the same mistake has been repeated by the same person, it this can be assumed that the law should be amended. Nowadays, the Qanun Acara Jinayat only punishes the offenders guiltier without, and forgetting to teaching, to-repairing, and to-rehabilitating—them the guiltier. Consequently, the same person—guiltier will be the next offenders guiltier—with the same case in the following years year to come (Dinas Syariat Islam Aceh, 2017).

To apply the get—comparative approach to of this study article, the author writer will considered previous several—research results relating to this topic, For instance, research on caning as law enforcement conducted by Farrel (2018; Kaur & Yuan, 2017). He explained judicial caning that is legally enforced in Malaysia, Singapore, Brunei Darussalam, and Aceh—Indonesia. Farrel also elaborated states on how judicial caning, as corporal punishment, has been critiqued globally (Gershoff, 2017; Han, 2017). In other research, Fonseca has 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 Rebillon and Straus. They took random sample in three regions, including in—Asia, Europe, and North America. Their findings specified that corporal punishment during childhood and adolescence could lead to antisocial behavior that 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 arise when it comes originates from both parents. This research proposed that self—control and social apprehension, but not conservative insolences, mediate a helping of—the association between the retrospective information of youthful corporal punishment and antisocial behavior in early adulthood maturity (Rebillon, 2017).

However, previous all of research results results—presented explained above have not explained clearly about the main topic of this article. Hence, this article will give an important contribution to for 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 (Feener, 2013; Islam, 2018; Fakhruroji, 2015).

Therefore, the purposes of this research aimed to address answer several issues points, namely: firstly the public is judicial caning in front of public in some countries, the Secondly is government’s institutions involved in the caning process, the Thirdly is redefinition of the norm of ‘in-front-of-public’, Fourthly is hukom-adat as an escape strategy from judicial canning, and Lastly is canning without educating.

B. Research Method

This article employed a bases on qualitative research method, and used and using interview protocol and observation as main instruments for data collection. This qualitative method was supported by several methods in legal law 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 which are mostly accepted by the majority of judges. The black-letter law in this article was found mainly from several judgments in Mahkamah Syar’yah (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 be explained in figure or statistics. The comparative constitutional law method has functioned to appraise other countries’ experiences, including international legal context (Pal, 2017; Tushnet, 2017; Hirsch, 2013). Comparative constitutional law can promote law reformation, preparing a tool of structure to identify the authorized rules (Banakar, 2015; Gutteridge, 2015; Siems, 2018; Frankenberg, 2016; Armia, 2018). In term of the comparative constitutional law, the researcher will studied learn on how other countries implement the canning process as a part of the law enforcement, and explored international debates on canning as corporal punishment.

C. Research Findings

1. Public Judicial Caning In Front Of Public in Some Countries

Judicial caning has been implemented in several countries, including in Southeast Asia. Malaysia, Singapore, and Brunei Darussalam still implement judicial caning in their legal system as a part of corporal punishment (Stivens, 2015; Fanani, 2017; Ngiam & Tung,
2016; Chuanyu, 2018). The rehearsal of judicial caning is basically a heritage of 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, the judicial canning in Singapore have been implemented for a various diverse variety of crimes under the Criminal Procedure Code (Rajah, 2017; Ong, 2018) and established 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-ranging of crimes (Pate & Gould, 2012; Roy, 2012; Gershoff, 2017).

Following the successful story of other countries, Aceh, Indonesia, tries to implement the judicial caning through Qanun Acara Jinayat. Despite its gaining a successful story, Qanun Acara Jinayat has faced several critiques on its implementation, especially chiefly in term of shaming the defendant in front of the public. Most of countries implementing judicial caning have carried out the punishment in a closed or private places instead of open-ed-place or facing a mosque. The private places here are in the chosen jail which is highly has a secured supervision, 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-door and confidential place, namely consisted of several diverse prison center. It is hidden-secreted from the common prisoners and blocked padlocked 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 with other British colonies in Southeast Asia countries, including Brunei Darussalam and Singapore (Amnesty International, 2010).

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

2. Government’s Institutions Involved in Caning Process

The Qanun Acara Jinayat, implemented in Aceh, Indonesia, covers several a number of 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 (Qanun Aceh, 2013; Armia, 2018). The breaking of those laws will have consequences such as paying fine, imprisoning, staying behind bars, and public caning in front of public. 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, law 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 specific call. Then, Satpol PP-WH will investigate the call to ensure whether there is an offender law breaker or just a fake call. If an offender law breaker is confirmed, this institution will bring him/her the law breaker to their office for further investigation. After the investigation, the case will be passed to Kejaksaan (the prosecutor's office, attorney officer). 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 in a specific date. One of the main problems in this institution is the uncertainty future career in the future. Thus, some officers may just temporarily work pop up in this institution, before moving to another task. This fact brings disadvantages impact 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 amongst other Kejaksaan in other provinces in Indonesia. This institution is not only having the authorities to enforce national law, but also the having—authorities to technically implementing a bylaw, such as Qanun Acara Jinayat (Governing of Aceh, 2009). The Kejaksaan’s authorities have started from since 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 consisting of statement of 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’iyyah. 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 the Qanun is a part of the autonomous province budget, that which must be provided by the Government of Aceh. If Aceh the Government of Aceh does not allocate the budget, Kejaksaan usually will not proceed Qanun Acara Jinayat cases. This fact is based on the interview with the General High Attorney Officer, as follows stated below.

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

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 system of government has main duties consisting of drafting, revising, and ensuring the implementation of regulations relating to Islamic law in Aceh (Governance of Aceh, 2009). *Dinas Syariat Islam* is also in charge of ensuring all of the institutions relating 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 it. For instance, it is still difficult to enforce *Qanun Acara Jinayat* if the defendant is a prominent person, having an important level position in the governmental system. Mostly he/she will be transferred to another province before a judicial process (Firdaus, 2018).

Fourthly is Mahkamah Syar’iyyah. It is a significant institution to enforce Islamic law in Aceh. This institution assesses and gives judgment whether somebody is found guilty or will be freed from any allegations. *Mahkamah Syar’iyyah* 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 powers to enforce national law regarding to Islamic private law (Religious Court, 1989; 2006; Governing of Aceh, 2006; Qanun Aceh, 2013), but also has powers to officially executing an Islamic criminal law stated in *Qanun Acara Jinayat*. However, Mahkamah Syar’iyyah has also faced some challenges and critical points. Not all of cases were have passed on to this court, because 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’iyyah, and Satpol PP-WH. The understanding consists of the timing and place of caning, medical equipment, and appointing 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 taken care by *Dinas Kesehatan*. Most of the defendants found it are very 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 addiction person, needing a psychological rehabilitation as well.

Furthermore, another problem faced by those institutions isare concerning that—the mutual understanding between amongst those institutions, no do not have a clear guidance on how those institutions implement their tasks—jobs desk. An integrated justice system amongst institutions implementing Qanun Acara Jinayat has not runwork properly. This fact has been stated by a WH officer in an interview.Ł

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

The mutual understanding amongst the institutions hasve not been regulated in a specific binding law or decree that binding those institutions. Consequently, amongst 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 opened-place and seen-by-people. This norm then—has been publicly known as the norm of ‘in-front-of-public’ (Qanun Aceh, 2004). The meaning of opened 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 opened-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 where a case happened, aiming to providegive moral lesson for the public in order—not to repeat the same case—in the futurein year to come. In contrast, this moral lesson has not fully—worked as planned. Based on the interview with the Police officer working in Aceh, as follows, stating that:
Post implementing Qanun Acara Jinayat, the criminality level of alcoholic-drinking’s case has remained steady. I said steady, because the perpetrators are the same persons, and the only person (Agus, 2018).

The repeated case has come from the same persons 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 on how 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 Zuhur (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 opened-place have varying interpretations coming from several regulations. In the Act of Freedom of Expression states that ‘the meaning of 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, 1998). So, other places not stated in the Act of Freedom of Expression also 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 that describing the specific meaning of ‘in-front-of-public’. In this decree Kapolri classifies ‘in-front-of-public’ as facing many people and being also can be 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 those places. His definition was based on the understanding of Article 281 of the Criminal Code (Sianturi 1983; Harahap, 2015).

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 abuse 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 of 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 sing-hukom-adat (customary law) approach is Khalwat case. The Khalwat case usually have-ended in the level of Gampong. The aim of Hukom-Adat aims to prevent all cases in Gampong to not 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’iyyah. Hukom-adat court has a system that able to enforce the hukom-adat wisdom. With this system, those people breaking hukom-adat will have consequence for their disobedience. Most of the consequences are the hukom-adat punishments, inherited from generation to generation.

Those hukom-adat punishments include firstly, is 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 with hukom-adat procession. If the perpetrators do not obey the advice, they will be seriously warned by the head of hukom-adat leader. This warning has an important message in order to change the behaviour of the perpetrators. After the warning and the perpetrators have asked for 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 causing the moral and material damage on the hukom-adat system. The fine which is expected to recover and fix healing the public damage. The fine can be paid with an amount of money or a specific thing requested by the e-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 still repeating their mistake after receiving previous punishment, such as being advised and paying fines. It Exiling is the hardest punishment in hukom-adat community. The perpetrators sentenced with the in 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 head of hukom-adat leader. It will like a be such as due-process of law among hukom-adat community to decide whether someone is found guilty or not. In this context, NyakPha stated that hukom-adat punishments aim have purposes to solve the cases instead of deciding the cases. All of cases must be proceeded wisely among hukom-adat community, and should also ensuring all of 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 that can prevent an act of revenge in the future (Nyak Pha, 1991; Amdani, 2014).

However, there is still an unclear boundary on which case should be solved through hukom-adat and should be passed on to Mahkamah Syar’iyyah. This fact leads to the unfair treatment for people who breaks the law in the Gampong level. 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 not states clearly. This bylaw mandates jinayat cases only to be solved through the state institutions, as the official one, not through hukom-adat as unofficial one. When If cases are handled delivered by through hukum-adat, the abuse of power by the top leader in the village level is most likely will highly be possible to occur. Besides, The approach through hukom-adat has also not solved the cases permanently. In the following years year to come, people in that village level may will potentially 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 guiltier privately and with honor, giving special advice was given personally to not repeating same mistakes in the future and no public also not shaming them publicly. In contrast, nowadays, the hukom-adat has changed dramatically. Marzuki stated that:

The offenders guiltier tend to be disgraced publicly. The judiciary process of hukom-adat is open opens publicly for viewed by people to view. The hukom-adat punishment has also held in a public place, unfortunately in some cases,
people also involve in punishing the offender guiltier 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 way of Prophet Muhammad PBUH educated the perpetrators by has two methods. The first method was educating through verbally, method that also called Sunna Qauliyah. In this method, Prophet Muhammad PBUH give 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), method called Sunna Fi’liyah, where the Prophet PBUH tends to showings how to do something. In Several cases of adultery, the Prophet PBUH has given 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 making the confession (Dawud, 1996). This case has clearly educated us that protecting an infant is a must. In Maiz’s case, the Prophet PBUH has also ignored the two times confession of adultery from Maiz two times (Dawud, 1996). This case teaches us has given a lesson learnt for us that Prophet tended to not proceed the first and second confessions that may not be correct confession.

In contrast, the educating mechanism has not covered clearly in Qanun Acara Jinayat (consisted of 286 articles) nor as well as 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 not considering social working as a punishment. In contrast, in some Muslim countries have implemented the restorative justice as a part of the punishment (Moss et al., 2018; Gade, 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 lawbreaker. The purpose of restorative justice aims is to exchange for a resolve to the pleasure of all parties that involved in the case (Strang & Braithwaite, 2017; Daly 2017: 85-109; Gavrielides 2017). For instance, in Uni Arab Emirate has reduced the imprisonment period for the inmate who can able to memorize some Surah in the Al-Quran (Melha, 2018). In Lebanon, a Lebanese justice well ordered three Muslim–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 aiming to educate the young men about the tolerance in Islam’s and also about loving the Virgin Mary (Matta, 2018). The verdict has led covered a way towards the advanced judicial methods, having benefiting for to resolving public problems and religious fanatism.

Furthermore, Aceh’s curriculum system follows the Indonesian educational policies (Bjork, 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 high school and senior high school. Responding this fact, Ataillah, a principal school master of Darul Ihsan Aceh Besar, stated that:

All of 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, including 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 of pupils not knowing 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 have differences from the religious competences within curriculum of 2013 (Ataillah, 2018).

The Ataillah’s view makes sense, because Qanun Acara Jinayat and Qanun Jinayat only regulating on how to punish a-offenders lawbreaker instead of preventing-the offence-breaking-law. Those bylaws do not give enough space to the educational system to get involve. Thus, law enforcement and through the educational system cannot collaborate go hand-in-hand-into implementing Islamic criminal law, resulting the offenders lawbreakers 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 breaking-those bylaws, such as violating the break—bylaw of Khalwat, drinking, and gambling. Responding to this circumstance Marzuki, as a high-rank commander of Sharia Police has stated that:

“Most of offenders lawbreakers are have come from adolescence groups. They do not have a basic understanding of Islamic criminal law that implemented in Aceh. Unfortunately, during in their senior high school, they also have not been educated about the Islamic criminal law. They have only practiced the method of
five times praying (sholah), and fasting in Ramadhan. When studying in Banda Aceh, they make have gotten friends in from a multi-cultural environment, including from opposite gender, and opposite faith and beliefs. Thus, many of 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 adolescences groups who come coming from remote sub-districts of the Province of Aceh (Marzuki, 2018).”

Marzuki’s statement have indicated that the implementation of Islamic criminal law in Aceh has some still a weaknesses point, specifically chiefly in promulgating regulations through the educational system. This is a homework of the gGovernment of Aceh. Law enforcement should be in accordance with enhancing the educational system. gGovernment of Aceh must merge integrate Islamic criminal law in the school curriculum, to create understanding amongst the youth community. Hence So, preventing law violations law-breaking through the school curriculum can reduce the increasing number of offenders lawbreakers. Without integrating the law in the curriculum, school teachers does not have an obligation to teach Islamic law for the students pupils in schools. Even, some of the school teachers have no basic understanding of in Islamic law established in Banda Aceh. Concerning Regarding this issue, fact Marzuki have stated that:

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

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

D. Conclusion
Public caning in front of public should be eliminated. In spite of reducing the number of offenders law breakers, public caning in front of public has given an effect of entertaining effect, instead of the scaring effect of fear. Showing off the caning in front of people will also create the violence effect for children viewing the caning process. To decrease the number of
offenders-law-breakers, the government of Aceh must consider the prevention mechanism, such as integrating sharia law in the school curriculum. Thus, the new offenders-law-breakers 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. Amongst 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'iyyah (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, that can repeat the mistakes in the future.

Endnote

- This article bases on research funded by Faculty of Shariah and Law, State Islamic University (UIN) Ar-Raniry, Banda Aceh, Indonesia.
1. The terminology of hukom-adat is not stated clearly in Qanun Acara Jinayat. This Qanun only regulates the mechanism of solving jinayat’s cases in village level, but the mechanism has been widely interpreted in village level, such as showering with sewage, forcing to marry, forcing to pay a fine, sacrificing cattle.
2. Showing off buttocks in canning process in Malaysia to other people is also breaking other Sharia laws, because buttocks are the parts of human bodies which must be covered and not to show publicly.

Bibliography

Act Number 11 of 2006 on the Governing of Aceh

Act Number 3 of 2006 on the Amendment of Act Number 7 of 1989 on the Religious Court

Act Number 7 of 1989 on the Religious Court.


Chief of Police Decree Number 7 of 2012 on the *How to Implement Service, Security, and Handling Of Coverage Of Public Opinion Opinion*.


Governor of Aceh Decree Number 41 of 2009 on the *Organizational Structure and Working Procedures of the Technical Implementation Unit.*


Qanun Aceh Number 7 of 2013 on the *Hukum Aacara Jinayat*.


Interview:

Interviewed with SyahdansyahPutera Jaya in February 2018, Banda Aceh.
Interviewed with Marzuki in March 2018, Banda Aceh.
Interviewed with Agus in April 2018, Banda Aceh.
Interviewed with Atailah in Mei 2018, Banda Aceh.
Public Caning: Should It be Maintained Or Eliminated?

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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 canning 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 canning 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 (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 Farrel (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, 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 (Feener, 2013; Islam, 2018; Fakhruroji, 2015).

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’yah* (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 (Pal, 2017; Tushnet, 2017; Hirschl, 2013). Comparative constitutional law can promote law reformation, preparing a tool of structure to identify the authorized rules (Banakar, 2015; Gutteridge, 2015; Siems, 2018; Frankenberg, 2016; Armia, 2018). In term of the comparative constitutional law, the author studied how other countries implement the caning 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 (Stivens, 2015; Fanani, 2017; Ngiam & Tung, 2016; Chuanyu, 2018). 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 (Rajah, 2017; Ong, 2018) 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 (Pate & Gould, 2012; Roy, 2012; Gershoff, 2017).

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 (Amnesty 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. (Kamal, 2019; Steiner, 2019; Lukito, 2019; Peletz, 2018; Whiting, 2018; Hung, 2016; Case, 2015; Santoso, 2015;)

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 (Qanun Aceh, 2013; Arinia, 2018). 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 Kejaksan (the prosecutor's office). When the case is handled by Kejaksan, the Satpol PP-WH’s authorities are ended. Both Satpol PP-WH and Kejaksan 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 (DinasSyariat Islam Aceh, 2015).

Secondly is Kejaksan (the prosecutor's office). As Aceh is an autonomous province, Kejaksan in Aceh has additional authorities that are totally different from other Kejaksan 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 (Governing of Aceh, 2009). The Kejaksan’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, Kejaksan 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, Kejaksan usually will pass the file to Mahkamah Syar’iyyah. One of the main obstacles here are the Kejaksan’s budgeting system. Kejaksan 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, 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 (Firdaus, 2018).

Fourthly is Mahkamah Syar’iyyah, a significant institution to enforce Islamic law in Aceh. This institution assesses whether somebody is found guilty or free from any allegations. Mahkamah Syar’iyyah 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 (Religious Court, 1989; 2006; Governing of Aceh, 2006; Qanun Aceh, 2013), but also to officially executing an Islamic criminal law stated in Qanun Acara Jinayat. However, Mahkamah Syari’iyyah 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‘iyyah, 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, 1998). 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 (Sianturi 1983; Harahap, 2015).

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’iyyah. 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, NyakPha 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 (Nyak Pha, 1991; Amdani, 2014).

However, there is still an unclear boundary on which case should be solved through hukom-adat and should be passed on to Mahkamah Syar'iyyah. 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. 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 Acura 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 (Moss et al., 2018; Gade, 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 (Strang &Braithwaite, 2017; Daly, 2017; Gavrielides 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 fanatism.

Furthermore, Aceh’s curriculum system follows the Indonesian educational policies (Bjork, 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, Ataillah, 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).

Ataillah’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’iyyah, 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’iyyah (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.

Endnote

- This article bases on research funded by Faculty of Shariah and Law, State Islamic University (UIN) Ar-Raniry, Banda Aceh, Indonesia.
1. The terminology of hukom-adat is not stated clearly in Qanun Acara Jinayat. This Qanun only regulates the mechanism of solving jinayat’s cases in village level, but the mechanism has been widely interpreted in village level, such as showering with sewage, forcing to marry, forcing to pay a fine, and sacrificing cattle.
2. Showing off buttocks in canning process in Malaysia to other people is also breaking other Sharia laws, because buttocks are the parts of human bodies which must be covered and not to show publicly.

Bibliography

Act Number 11 of 2006 on the Governing of Aceh

Act Number 3 of 2006 on the Amendment of Act Number 7 of 1989 on the Religious Court

Act Number 7 of 1989 on the Religious Court.


Governor of Aceh Decree Number 41 of 2009 on the *Organizational Structure and Working Procedures of the Technical Implementation Unit*.


Qanun Aceh Number 7 of 2013 on the *Hukum Acara Jinayat*. 


Interview:
Interviewed with SyahdansyahPutera Jaya in February 2018, Banda Aceh.
Interviewed with Marzuki in March 2018, Banda Aceh.
Interviewed with Agus in April 2018, Banda Aceh.
Interviewed with Atailah in Mei 2018, Banda Aceh.
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 canning 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 canning 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 canning 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 Kejaksan 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 Kejaksan (the prosecutor’s office). As Aceh is an autonomous province, Kejaksan in Aceh has additional authorities that are totally different from other Kejaksan 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 Kejaksan’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, Kejaksan 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, Kejaksan usually will pass the file to Mahkamah Syar’iyyah. One of the main obstacles here are the Kejaksan’s budgeting system. Kejaksan 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’iyyah*, a significant institution to enforce Islamic law in Aceh. This institution assesses whether somebody is found guilty or free from any allegations. *Mahkamah Syar’iyyah* 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 Syar’iyyah* 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’iyyah, 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’iyyah*. *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’iyyah*. 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 fanatism.

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, Ataillah, 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’iyyah, 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 canning should be eliminated. In spite of reducing the number of offenders, public canning 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‘iyyah* (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.
REFERENCES

Act Number 11 of 2006 on the Governing of Aceh. (n.d.).

Act Number 3 of 2006 on the Amendment of Act Number 7 of 1989 on the Religious Court. (n.d.).


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*Governor of Aceh Decree Number 41 of 2009 on the Organizational Structure and Working Procedures of the Technical Implementation Unit*. (n.d.).


Interviewed with Agus in April 2018, Banda Aceh. (n.d.).

Interviewed with Atailah in Mei 2018, Banda Aceh. (n.d.).

Interviewed with Marzuki in March 2018, Banda Aceh. (n.d.).

Interviewed with Syahdansyah Putera Jaya in February 2018, Banda Aceh. (n.d.).


*Qanun Aceh Number 7 of 2013 on the Hukum Acara Jinayat*. (n.d.).


