

THE LEGAL POSITION OF CANING PUNISHMENT IN ACEH

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Abstract: Amongst the punishments that have been implemented in the Islamic criminal law is caning punishment. The caning punishment in Aceh is carried out directly and opens to the public. However, some Islamic countries carry out caning in private such as in prisons. In Aceh, the implementation of caning that has been carried out openly is based on Aceh Qanun Number 6 of 2014 concerning Jinayat Law and Qanun No. 7 of 2013 concerning Jinayat Procedural Law. However, in 2015, the implementation of the caning was carried out behind closed doors like in prisons. This is in accordance with the Governor Regulation Number 5 of 2018 about the Implementation of 'Uqubat Whip' in the Correctional Institutions. Changes in the implementation of the caning punishment led to the pros and cons among the society. Many believe that the implementation of caning in a closed manner will affect the effectiveness of the punishment in reducing the number of shari'ah violations. Although there are many factors that influence the number of crime in society, the punishment and the implementation of the punishment itself are considered as the most important factors.

Keywords: *Legal Position; Punishment; Caning; Aceh.*

1. INTRODUCTION

Amongst the punishments stipulated in the Aceh Qanun Number 6 of 2014 concerning Jinayat Law are caning, fines in the form of pure gold, and imprisonment (Bahri, 2012). Caning punishment has become preferable in punishing perpetrators of violations of Islamic law in Aceh, thus, almost all offenses (jarimah) regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law implement this punishment. (Gayo, 2017).

The caning punishment is introduced in the Quran for two offenses, namely adultery (Al-Qur`an, Surah An-Nur, Verse 2) and accusing someone of adultery (Al-Qur`an, Surah An-Nur, Verse 4). In Surah An-Nur, paragraph (2), it is stated that "adultery perpetrators are subject to 100 lashes." and in An-Nur verse (4), it is stated that "people who accuse others of adultery are threatened with 100 lashes." In addition to strengthening the sanctions provisions for the two offenses, the hadith adds another

type of offense punishable by whipping, namely drinking alcohol and is punishable with 40 lashes. (Ferizal, 2019).

The administration of the caning punishment is completely left to the government (ullil amri), hence the different methods of carrying out the caning in different Islamic States (Dahlan, 1996). In the Kingdom of Saudi Arabia for instance, caning and death sentences are carried out in public places and witnessed by all those who are in that place (Citrawan, 2014). However, the State of Malaysia carries out the caning in private at the Penitentiary, witnessed by the inmates at the Institution (Qamar, 2010).

The execution of the caning in Aceh was initially carried out openly and witnessed by the general public and in places where there were a lot of mass concentration, such as in front of the mosque after Friday prayers (Abubakar, 2012). The legal basis for the execution of the caning in an open place and witnessed by the general public are the various regulations such as Law Number 4 of 1999 concerning the Implementation of Privileges for the Province of Nanggroe Aceh Darussalam (NAD), Law Number 11 of 2006 concerning the Government of Aceh and Aceh Qanun Number 6 of 2014 concerning Jinayat Law (Amsori, 2020).

Article 262 paragraph (1) of Aceh's Jinayat Law stipulates that the execution of the caning shall be carried out in an open place and seen by those present. However, this provision underwent changes as regulated in Governor Regulation Number 5 of 2018 Article 30 paragraphs (1) to (3) which reads: "Uqbat whipping is carried out in an open place and can be seen by people present. Paragraph (2) The implementation of the uqbat whip as referred to in paragraph (1) may not be attended by children under the age of 18 (eighteen) years. Paragraph (3) The open place as referred to in paragraph (1) is located at the Correctional Institution/Detention Center/Detention Branch.

The issuance of Governor's Regulation Number 5 of 2018 concerning the implementation of uqbat caning in Correctional Institutions raises controversy within the society. Many consider that the implementation of caning in public aims to provide lessons (education) to the perpetrators as well as to the public who witness the execution of the punishment so that they do not commit the same crime or other crimes (Asdian, 2020). However, the rejection to the caning execution in public is also suspected of being pressured by external parties who use human rights issues as an argument in order to override the punishment of caning in public. (Zainuddin, 2011).

Internasional Amnesty on the rejection of the public caning, Sam Zafiri, Asia Pacific Director of Amnesty International, on 22 May 2011 asked the Indonesian government to stop the caning in Aceh because it was considered contrary to international law. (Long, 2007). The agency's records on the implementation of the caning law until May 12, 2011 show that 21 people were caned in public. The implementation of the caning law was deemed by the International Amnesty to violate the United Nations Convention Against Torture, which Indonesia has ratified since 1998 (Surbakti, 2010). The Committee of Against Torture has also raised concerns that the basic rights of persons detained under the Aceh qanun are not guaranteed. (Long, 2007).

Some of the appeals of the human rights activists were granted by the Aceh government by changing the execution of the caning in public into more private places

such as prisons. (Fuad, 2010). The Governor of Aceh, Irwandi Yusuf, emphasized that the implementation of uqubat whips based on Governor Regulation Number 5 of 2018 concerning the Jinayat Procedural Law does not conflict with Islamic Shari'a because it only regulates the technical implementation of caning, not the substance of Islamic law. (Kurniawan, 2020). The place for the caning execution has been moved to prison and the general public can still come to witness the whipping, except for minors. (Iqbal, 2020). However, the possibility that people will come to prison to witness the execution of the caning is very low. This is because the number of prisons and their conditions are not representative. On the other hand, people feel that if they come to prison, they are worried that they will meet other inmates whose notes are criminals, both those who are undergoing punishment or coaching or are in the status of being entrusted.

The implementation of caning in Aceh is a benchmark and an example for other regions in overcoming or reducing crime rates (jarimah). If the Aceh government does not carry out the implementation of the caning properly in accordance with Islamic law, it will give a negative image to the enforcement of Islamic law in Aceh. Therefore, this research is very important to be conducted in order to investigate the impact of the changing of the implementation of caning implementation from public to close/private. In addition, the changes in the implementation of the caning punishment is considered to be able to affect the effectiveness of the caning punishment in tackling sharia violations in Aceh, especially in the jurisdictions of East Aceh District, Langsa City, and Aceh Tamiang District.

2. METHODS

This research is a legal research using empirical legal research method. This empirical legal research method is basically a combination of normative legal approaches with the addition of empirical elements (Leeuw, 2015). Empirical legal research methods investigate the implementation of normative legal provisions (laws) in their actions on certain legal events that occur in a society (Soekanto, 2003). This study uses a sociological juridical approach (socio legal research). Sociological juridical is another approach model in legal research which does not only see law as a mere norm (law as writer in book) but also law in reality. (Abdul Kadir, 2015). This study focuses on the implementation of caning in Aceh province, especially in the jurisdictions of East Aceh District, Langsa City and Aceh Tamiang District. The caning punishment that has been regulated in Aceh Qanun No. 6 of 2014 concerning Jinayat Law can be implemented based on Islamic law so that it can tackle crime in the province of Aceh.

3. RESULTS AND DISCUSSION

3.1. Definition and Type of Punishment in Islamic Criminal Law

Punishment can be interpreted as the stage of determining sanctions and imposing sanctions in criminal law (Jahroh, 2011). The word "crime" is generally associated with law, while "sentencing" is defined as punishment or retaliation (Hamzah, 1985). Retaliation must be carried out proportionally, meaning that there must be a balance between the severity of the act committed and the sentence

imposed; the penalty must not exceed the limit of the violation. (Albisar, 2011). (Basri, 2016).

Van Bemmelen supports the proportionality of the retaliation, stating that for today's criminal law, the fulfillment of the demand for retaliation remains an important thing in the application of criminal law in order to avoid street justice (Albisar, 2011).

Punishment in Arabic terms is often called 'uqubah, which is a form of retribution for someone for his actions that violate the provisions of syara' set by Allah and His Messenger for the benefit of mankind. (Ritonga, 1987). The existence of punishment in Islamic law is regarded as the realization of the purpose of Islamic law itself, namely as retaliation for evil deeds, prevention in general and prevention in particular as well as the protection of the rights of victims. (Ferizal, 2019).

Punishment in Islamic criminal law can be divided into several parts, by reviewing it from several aspects. In this case, there are five classifications which are described as follows (Khotimah, 2014).

- 1) In terms of the relationship between different punishments, there are five categories of punishments:
 - a. principal punishment ('uqubah ashliyah), which is the punishment that is set for the *jarimah* (fine) as the original punishment, such as the *qishas* penalty for murder, a hundred times lashes for adultery, or the cutting off of hands for theft.
 - b. Alternative punishment ('uqubah badaliyah) constitutes a punishment that replaces the principal punishment. If the principal punishment cannot be carried out for legitimate reasons, such as *diyat* punishment (fine) as an alternative for *qishas*, or ta'zir punishment in lieu of *had* punishment or unimplementable *qishas*.
 - c. Additional punishment ('uqubah taba'iyah) is considered as a punishment that follows the main/principal punishment without requiring a separate decision, such as the prohibition of receiving inheritance for those who kill the person to be inherited. This punishment is implemented in addition to the *qishas* or *diyat* punishment. Another example of the punishment of this kind is the penalty of revocation of the right of a person to be a witness for the people who commit *jarimah qadzaf* (accusing others for adultery). This punishment is implemented in addition to the main/principal punishment, namely caning eighty times.
 - d. Complementary punishment ('uqubah takmiliyah) is a punishment that follows the main punishment on the condition that there must be a separate decision from the judge. The existence of the condition is what distinguishes complementary punishment from additional punishment. An example of this punishment is draping a thief's hand that has been cut off around his neck.
- 2) In terms of the judge's power in determining the severity of the sentence, the sentence can be divided into two classifications (Hanafi, 1993):
 - a. Punishment that has one limit, meaning that there is no upper or lower limit, such as the caning punishment as a *had* punishment (eighty times or one hundred times).
 - b. The punishment that has two limits, namely the highest limit and the lowest limit. In this case, the judge is given the authority and freedom to choose the

- appropriate punishment between the two limits, such as imprisonment or the caning of *ta'zir jarimah*.
- 3) In terms of the necessity to decide with particular punishment, the punishment can be divided into two categories, namely as follows: (Marsuni, 2009):
 - a. Punishments that have been determined ('uqubah muqaddara), namely punishments whose types and levels have been determined by *syara'* and the judge is obliged to decide without reducing, adding, or replacing them with other punishments. This punishment is called the punishment of necessity ('uqubah ordinary).
 - b. Unspecified punishment ('uqubah ghair muqaddara) refers to a punishment that is left to the judge to choose the type of punishment from a set of punishments determined by *syara'*. The judge then determines its amount which will be adjusted to the perpetrator and his actions.
 - 4) In terms of which aspect of an individual is the punishment imposed, the punishment can be divided into three categories, namely as follows: (Muslih, 2004):
 - a. Corporal punishment.
Corporal punishment refers to a punishment that is imposed on the body such as the death penalty, caning, and imprisonment.
 - b. Mental punishment.
This punishment is a punishment that is imposed on a person's soul/mental, not his body. The punishment includes threats, warnings, and reprimands.
 - c. Property Punishment.
Property punishment is associated with the punishment which are imposed on someone's property, such as *diyat*, fines, and confiscation of property.
 - 5) In terms of the type of punishment that is threatened with sentences, punishment can be divided into four parts, namely as follows (Muslih, 2004):
 - a. Had punishment, namely punishment for *jarimah hudud*.
 - b. Punishment of qishas-diyat, the punishment for *jarimah qishas-diyat*.
 - c. Punishment of kifarat, the punishment for some *jarimah qishasdiyat* and some kinds of *jarimah kifarat*.
 - d. The punishment of tazir, the punishment for *jarimah ta'zir*.

3.2 Legal Position of the Caning Punishment in Aceh

In the Islamic criminal law (jinayah/jinayat), the punishment ('uqubat) of whipping is found in various forms of crime (jarimah), namely *jarimah hudud* and *jarimah ta'zir*. Provisions on *jarimah hudud* which are threatened with *caning 'uqubat*, among others, are drinking alcohol, adultery, and accusing others for adultery action (qazaf). Moreover, the types of *jarimah tazir* that can be punished with caning as the main punishment consist of several sentences including *jarimah maisir*, *khalwat*, *ikhtilath*, sodomy, *muṣaḥaqaḥ*, sexual harassment, and rape.

Qanun No. 6 of 2014 regulates the following types of crimes with sanctions imposed on violators. The principles adopted in the implementation of criminal law include (a). Islamic religiosity; (b). legality; (c). justice and balance; (d). benefits; (e). protection of human rights; (f). Education for society (tadabbur). The coverage of the

types of crimes contained in the Qanun are: (a). *khamar*; (b). *maisir*; (c). *khalwat*; (d). *ikhtilath*; (e). adultery/fornication; (f). Sexual harassment; (g). rape; (h). *Qadzaf*; (i). *Liwath*; and (j). *Musahaqah*. As for the form of punishment that will be given to those who violate Islamic law is the punishment of caning, fines in the form of gold, and imprisonment (Mahdi, 2011). The number of lashes or the amount of fines is determined by the level of violation committed by violators of Islamic law. The minimum is ten times, or a fine of 100 grams of gold, or imprisonment of 10 months. The heaviest is 150 times of lashes, or a fine of 1,500 grams of gold, or imprisonment of 150 months.

The implementation of 'uqubat (caning) as one form of the implementation of Islamic Shari'a in Aceh which over time underwent various changes in the procedures. Qanun No. 6 of 2014 concerning *Jinayat Law*, and Qanun No. 7 of 2013 concerning the *Jinayat Procedural Law* stipulates the execution of the caning sentence in an open place that can be watched by the general public such as the courtyard of the mosque. Basically 'uqubat (caning) is a kind of corporal punishment imposed on a person by whipping his body. The whip is a bat made of rattan with a diameter of 0.75 to 1 centimeter and a length of 1 meter. It does not have a double tip, and there is a grip at the base of it. The authority and responsibility for carrying out the caning, according to Qanun No. 7 of 2013, is the Prosecutor.

The execution of *'uqubat whip* (caning punishment) should be done after the decision of the Syar'iyah Court which has permanent legal force. The postponement of the implementation of the *'uqubat* can only be carried out based on a determination from the Head of the District Attorney should there be things that endanger the health of the convicted person after receiving information from an authorized doctor. The implementation of *'uqubat whipping* is carried out by the Prosecutor by preparing the place for the lashing, determining the time and appointing the whip (executioner). A separate caning officer is a *wilayatul hisbah officer* who is assigned to carry out the caning punishment of the convicted person. Whippers are also required to wear a head covering made of cloth.

Moreover, the caning execution is carried out on a stage with a minimum size of 3 x 3 meters. The distance between the condemned and the whipper is between 0.70 meters to 1 (one) meter with the executor standing to the left of the convicted person. The distance between the executor and the witness is the closest 12 (twelve) meters. Prosecutors, Supervisory Judges, the appointed doctors, and whipping officers stand on or around a 3 x 3 meter pedestal (stage) during the whipping. The Supervisory Judge is obliged to warn the Prosecutor to postpone the implementation of *the 'uqubat whip*, if the above provisions are not met.

The whipping should not be carried out on particular body parts of the perpetrator's which include the head, face, neck, chest and genitals. In other words, it should only be done on the body parts from the shoulders to the hips. At the time of carrying out the whip uqubat, the convicted person is required to wear a thin shirt that covers the aurat that has been provided. Regarding the position, if the convicted male is in a standing position without a support, while for the female convict it is in a sitting

position. However, at the request of the convict or a doctor, the convict can be whipped while sitting on his knees or standing with a support, but must be free.

After the entire process of carrying out the uqubat of whipping is done, the prosecutor makes a report of the caning. In the case where the process of uqubat whips that is carried out have not been completed, the reasons for the delay or temporary suspension as well as the number of lashes that have been carried out and those that have not been carried out are written in the official report. Copies of the official report are also handed over to the convict or to his family as proof that the convict has served all or part of the sentence.

Currently, the caning punishment has undergone a change, from public to open with limitation. The change in the implementation of the caning is based on Article 30 paragraphs (1) to (3) of Governor Regulation no. 5 of 2018 concerning the Implementation of 'Uqubat Whips in Correctional Institutions which stipulates rules as follows:

- (1) 'Uqubat whip is carried out in an open place and can be seen by those present.
- (2) The implementation of the uqubat whip as referred to in paragraph (1) may not be attended by children under the age of 18 (eighteen) years.
- (3) The open place as referred to in paragraph (1) is located at the Correctional Institution/Detention Center/Detention Center Branch.

The issuance of Governor Regulation Number 5 of 2018, concerning the Implementation of 'Uqubat Whips in Correctional Institutions, has raised controversy in society. It is feared that these provisions will not be able to realize the purpose of the punishment itself, which are preventing, and/or reducing the crime that occurs in society, for the sake of the realization of order and peace in society.

The Governor of Aceh, Irwandi Yusuf, said that the reason for moving the location of the caning to a correctional institution was intended to protect children under the age of 18 from witnessing the execution of the caning. On that basis, a governor's regulation concerning the execution of canings in prisons was issued in order to avoid the psychological impact on the children when seeing such violence (Zainuddin, 2011).

In the MOU with the Ministry of Law and Human Rights, it is stated that the Ministry of Law and Human Rights provides an opportunity for the public to participate in the implementation of the uqubat whip by excluding children under the age of 18. This is due to the fact that there are still minors who are watching the process of execution of the whip. As for the reason for moving the location of the caning to the Penitentiary include the avoidance of disruption of the investment in Aceh Province. The investors should not be made phobic to invest in Aceh. This can help improve and accelerate the economy in Aceh (Abubakar, 2015).

The impact of the implementation of uqubat caning in public in addition to imprisonment and administrative sanctions is intended as an educational and psychological effort for violators of the Islamic Sharia Qanun, it is hoped that the violators will realize and regret the mistakes they have made in order to become better. Post-uqubat whipping is not pain that causes the adulterer to disagree with the implementation of uqubat whipping, but because of shame which causes psychological impacts for the adulterer. The most visible indication of shame when the adulterer is

executed by whipping is when the officers bring him to the stage, at that time the community cheers the violator with various words. The feeling of shame continues to grow when the officer announces the identity of the perpetrator (Sobari, 2017).

The implementation of caning has a criminal purpose. In general, the purpose of punishment in Islam includes the main purpose of Islamic law itself, namely to protect five main things; religion, life, honor, property, and offspring. More generally, the purpose of Islamic law is to maintain the good and avoid harm. In particular, scholars have stated that the purpose of punishment in Islamic law is for prevention (deterrence) and guidance (reformation). (Dinas Syariat Islam Aceh, 2015).

3.3 The Implementation of the Caning in Aceh

The process of punishing as a form of implementing the Qanun Jinayat provides various views and assessments. The caning punishment also reaps controversy around academics, practitioners and society. This does not only appear in the regions, but also becomes a national and even international problem. The application of caning is expected to reduce the occurrence of violations of Islamic law in Aceh, but the implementation of the caning caused different reactions in the community. The implementation of direct caning is considered contrary to human rights (HAM). For the people and the government of Aceh, the application of law for violators of Islamic law is a way for the realization of peace, tranquility, happiness and safety in life in this world and the hereafter.

The strong rejection towards the direct implementation of the caning has prompted the Aceh government to make changes in the implementation of the caning of perpetrators in Aceh. To change the implementation of the caning, the Governor of Aceh issued Governor Regulation Number 5 of 2018 concerning the Implementation of 'Uqubat Whips in Correctional Institutions. Based on these regulations, the implementation of the caning punishment changed which was initially carried out openly to the public to the implementation of an open but limited punishment, namely the implementation of the punishment carried out by the Penitentiary (LP).

The change in the implementation of the sentence invites various reactions from all elements of society. According to the Head of the Syari`at Islam Service, East Aceh Regency, the implementation of the caning at the Penitentiary aims to avoid negative influences on children who see the execution of the caning in public. The most important thing is that the purpose of the punishment is achieved, which is to provide education to the perpetrators so that they do not commit the same crime or other crimes.

The caning punishment that applies in Aceh, especially in East Aceh, gives its own color in the life of the people. The application of caning has been interpreted in various ways. There are some people who tend to avoid witnessing the execution process of the caning because of the fear that this could happen to themselves or their families.

“We don't want to witness the caning process, because we feel sad, we remember our own children and grandchildren. We feel sorry for the people who are punished with whipping, sometimes those who are punished with whipping are

students from outside this region, they came here to seek knowledge, they violate the Shari'ah and are punished with whipping. We also disagree the fact that it is carried out in the mosque, they will be ashamed, poor they."

However, a different view was conveyed by the Chairperson of the Ulama Consultative Council, Aceh Tamiang, who stated that the implementation of the punishment was not only aimed at changing the perpetrators of the crime to a better direction but also providing education for the community so that people who witnessed the caning could feel the pain and shame if they were punished, thus, they will do the same mistake in the future. This gives them the deterrent effect that if they do the same mistake, they will be whipped like the people who were whipped earlier. Therefore, the caning can prevent someone from committing the same violation or other kinds of violation.

The process of execution of the caning punishment carried out in the mosque's courtyard was seen differently by the people. There are those who think that the execution in the courtyard of the mosque will embarrass the convict so that he will not commit another violation later.

"Convicts of violating Islamic law who are whipped in the courtyard of the mosque will feel ashamed, so they will no longer do it."

The caning execution process that has been carried out provides space and freedom for all levels of society to witness it directly, including children.

From the observation, it is found that although security officers have verbally prohibited children from being in the area/location of the caning, there are still children who can witness the process of whipping punishment from outside the mosque which is not supervised by security officers. The development of the child should be the concern in the process of implementing the caning.

"Many children have seen the process of caning and imitated the process of caning that has been carried out. Even though it looks like role playing, it can affect a child's development"

The claim that caning is torture and acts of violence that are not good for children is overblown. According to the Chairman of the MPU of Langsa City, the deterrent effect will reduce the number of violators of Islamic law because the convicts will regret their actions and feel ashamed to be punished in public. The caning punishment will cause the feeling of embarrassment for the convict because this corporal punishment is carried out in a public area so many people will be aware of it and it becomes a lesson for them. It is believed that If children are deemed unfit to witness the execution of the caning, the government can add security personnel from the police, instead of changing the implementation of the punishment.

Today, the implementation of the caning has shifted from the execution of the caning in front of the mosque to the punishment that is executed in the Correctional

Institution (LP). Based on Governor's Regulation Number 5 of 2018 concerning the Implementation of 'Uqubat Whips in Correctional Institutions, the public is not prohibited from witnessing the execution of the caning in prison, conversely, the public is encouraged to witness the execution of the caning in prison. However, the public seems reluctant to come to the prison to witness the execution of the caning, especially because there are other prisoners / inmates.

According to the Head of the Langsa City Community Institution, the public's enthusiasm for the implementation of the caning in Langsa City Prison is very low. It is very different from the execution of the caning that is done in front of the mosque where the enthusiasm of the community to witness the implementation of the caning is very high. So far, if the caning is carried out by the prison, only the detainees, officers and families of the perpetrators of the crime have witnessed. Sometimes even the family of the perpetrator who was whipped did not come to witness the execution of the caning.

The lack of public interest in witnessing caning in prison is influenced by many factors. According to the Head of the Aceh Tamiang Prison, he said that there are several factors that influence people to watch the caning in prison. First, people should meet certain conditions that must be completed before they are allowed to enter the correctional institution; this is very different if the caning is done outside the prison such as in a mosque where people can see or watch without certain conditions. Second, if it is carried out in prison, people who want to watch it will have to spend a little time going to the prison to witness the caning process, and this is felt a bit difficult for people. Basically, the whipping process is not something that is intended to be shown to public; instead, it is done for the purpose of punishing criminals and syari'a violaters. If the implementation is in open places, the community can automatically see it without having to plan it first. Third, it is possible that the number of spectators will be limited due to the limited space in the prison. This is also a factor that people prefer if the implementation of 'uqubat whipping is carried out in a public area.

The implementation of 'uqubat whipping in the open area is considered to have a clear purpose which is presenting a deterrent effect for the perpetrators such as shame, because they are watched by the general public and of course a deterrent for the community to not doing the same act. With the process of implementing the 'uqubat whipping in the open area, the public can see the effects of the actions of jarimah that have been decreed if carried out by each individual. Therefore, it is judged that the uqubat caning that is carried out in prisons will eliminate the deterrent effect for the perpetrators which includes moral sanction such as feeling ashamed of being watched by the general public. Hence, the purpose of prevention in the punishment of 'uqubat whipping' can not be achieved because of the lack of enthusiasm from the community as it does not serve as education and prevention for them not to commit the same act.

It is feared that the public's low interest in witnessing the implementation of caning will affect the effectiveness of the punishment itself. So far, the implementation of caning in front of the mosque is considered effective in reducing the number of crimes or violations of sharia. The Head of Ranto Village, Aceh Tamiang, stated that the

community has felt the positive impacts of the caning execution that is done in public area since the number of crime is decreased in that village.

Eventhough there are many factors contributing the decrease in the number of crimes, the form of the punishment and the way it is implemented gives the significant effects it. According to the chairman of the Langsa City District Court, the severity of the sentence can have a deterrent effect on the perpetrators of the crime and the community itself. The distinctive feature of caning is that it does not only provide a deterrent effect to the perpetrators but also to public. Hence, the open implementation of caning will provide double benefits, and considered as more comprehensive.

In the aspect of national criminal law, the execution of punishment is generally closed. Even the implementation of the death penalty by shooting criminals is also carried out in secret. In the Islamic criminal law, the most important thing is not only the severity of the punishment but also how the punishment is carried out. The punishment should not only effective to change the behavior of criminals, but also the society as a whole.

4. CONCLUSIONS

The result of this study shows that the implementation of the caning punishment was in accordance with Law Number 4 of 1999 concerning the Implementation of Privileges of the Province of Nanggroe Aceh Darussalam (NAD), Law Number 11 of 2006 concerning the Government of Aceh, Aceh Qanun Number 6 of 2014 concerning Jinayat Law and Qanun No. 7 of 2013 concerning Jinayat Procedural Law. Based on these provisions, the execution of the caning is carried out directly and open to the public, and in front of the mosque. However, the implementation of the caning directly in front of the mosque reaps the pros and cons. Some people think that the direct caning execution in front of the mosque violates human rights, hinders the arrival of investors to Aceh, and gives a negative message to children.

As an attempt to change the way of implementing the caning punishment, the Governor of Aceh issued Governor Regulation Number 5 of 2018 concerning the Implementation of the 'Uqubat Whip in Correctional Institutions. Based on this regulation, the implementation of the caning punishment changed which was initially carried out openly to the public to an open but limited implementation of the punishment, namely the implementation of the punishment carried out by the Penitentiary (LP). However, the implementation of caning in prison will make it difficult for the public to access the caning process. In several prisons in Aceh, specifically the East Aceh Prison, the Langsa City Prison and the Aceh Tamiang Prison, there was a low level of community participation in witnessing the execution of the caning. The low public interest in witnessing the implementation of caning is feared to affect the effectiveness of caning in reducing crime rates in the community. Thus, the implementation of caning in front of the mosque is still considered more effective in reducing shari'ah violations in Aceh.

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