Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam
ISSN: 2697-6176 (e) & ISSN: 2597-6168 (p)
Vol. 6, No. 2, April 2023
https://doi.org/10.30659/jua.v6i2.28885

Pre-Trial Analysis of *Wilayatul Hisbah* Authority in Qanun Criminal Jurisdiction: A Study in Banda Aceh Syar'iyyah Court

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Abstract

Qanun is part of the Indonesian legal system that only applies in Aceh. The Aceh government can implement and enforce Islamic law in social life because it is supported by a dynamic society. However, in resolving criminal cases, Qanun faces many obstacles and is not well resolved, for example in the resolution of pretrial requests at the Sharia Police (*Wilayatul Hisbah*). Pretrial is a request submitted by a suspect if the actions taken by law enforcement officers are against the law, both in the investigation and prosecution processes. In other words, coercive measures taken by investigators contradict the *jinayah* procedural law and the Criminal Procedure Code (KUHAP) related to human rights. This research aims to determine the authority of *Wilayatul Hisbah* in handling criminal acts according to Qanun related to the criminal justice system in Indonesia (Integrated Criminal Justice System). This research was conducted through literature studies and interviews with several informants who are considered to understand the cases that occurred during the implementation of Qanun enforcement in Aceh society. This study found frequent overlaps in resolving Qanun cases between the police and *Wilayatul Hisbah* in the same case, resulting in unclear case handling. Effective law enforcement can be carried out if the five pillars of law function well: legal instruments or law enforcement officers, community members, legal regulations, cultural factors or legal culture, as well as facilities and infrastructure that can support the proper implementation of Qanun.

Keywords: Pre-Trial, Sharia Police, Aceh Qanun, Islamic Criminal, *Wilayatul Hisbah*.

Abstrak

Qanun adalah bagian dari sistem hukum Indonesia yang hanya berlaku di Aceh. Pemerintah Aceh dapat menerapkan dan menegakkan hukum Islam dalam kehidupan sosial karena didukung oleh masyarakat yang dinamis. Namun, dalam menyelesaikan kasus pidana, Qanun menghadapi banyak hambatan dan tidak terselesaikan dengan baik contohnya pada penyelesaian permohonan praperadilan di Polisi Syariah (Wilayatul Hisbah). Praperadilan adalah permohonan yang diajukan oleh tersangka jika tindakan yang dilakukan oleh pejabat penegak hukum bertentangan dengan hukum, baik dalam proses penyidikan maupun penuntutan. Dengan kata lain, upaya paksa yang dilakukan oleh penyidik bertentangan dengan hukum acara jinayat dan Kitab Undang-Undang Hukum Acara Pidana (KUHAP) yang berkaitan dengan hak asasi manusia. Penelitian ini bertujuan untuk menentukan kewenangan Wilayatul Hisbah dalam menangani tindak pidana menurut Qanun terkait dengan sistem peradilan pidana di Indonesia (Sistem Peradilan Pidana Terpadu). Penelitian ini dilakukan melalui studi literatur dan wawancara dengan beberapa informan yang dianggap memahami kasus yang terjadi selama pelaksanaan penegakan Qanun di masyarakat Aceh. Penelitian ini menemukan sering terjadi tumpang tindih dalam penyelesaian kasus Qanun antara polisi dan Wilayatul Hisbah dalam kasus yang sama, sehingga penanganan kasus menjadi tidak jelas. Penegakan hukum yang efektif dapat dilaksanakan jika lima Pilar Hukum berfungsi dengan baik: instrumen hukum atau aparat penegak hukum, anggota masyarakat, regulasi hukum, faktor budaya atau budaya hukum, serta fasilitas dan infrastruktur yang dapat mendukung pelaksanaan Qanun secara baik.

Kata Kunci: Praperadilan, Polisi Syariah, Aceh Qanun, Hukum Jinayat, Wilayatul Hisbah.

Introduction

Aceh Province is located at the western tip of Indonesia. Aceh became the first area where Islam spread and then grew rapidly throughout the archipelago. Four of the nine Wali Songo saints who played a role in bringing Islam to Java came from Aceh, namely Syarif Hidayatullah, Sunan Ampel, Sheikh Siti Jenar, and Maulana Malik Ibrahim[1]. Aceh received the nickname "the porch of Mecca" because the arrival of Islam to Aceh was an inclusive process. Additionally, there are many similarities between Aceh and Mecca. These similarities include both being followers of the Shafi'i school of thought, having Islamic culture, wearing Islamic clothing, the majority of Aceh's population being Muslim, and the applicable law being in accordance with Islamic Sharia.

So far, Aceh has formed several laws or qanuns (regional regulations) that regulate the implementation of Islamic law, including: Aceh Province Qanun No. 11 of 2002 concerning the implementation of Islamic sharia in the fields of Aqidah, Worship, and Islamic da'wa, and Aceh Qanun No. 6 of 2014 concerning Jinayat Law (Islamic criminal law), which addresses issues such as *khamar* (alcohol), *maisir* (gambling), *khalwat* (seclusion), *ikhtilath* (mixed-gender interactions), adultery, sexual harassment, rape, *qodzaf* (false accusation of adultery), *liwath* (sodomy), and *mushahaqah* (lesbianism). The Jinayat law regulates prohibited actions and their punishments.

Qanun No. 6 of 2014 concerning jinayat law applies to every Muslim person domiciled in Aceh and to non-Muslims who commit *jarimah* (crimes) in Aceh together with Muslims, choose to submit themselves voluntarily to the jinayah law, or commit *jarimah* in Aceh that is not regulated in the criminal code or criminal provisions outside the Criminal Code but is regulated in this qanun (Article 4). The types of *'uqubat* (punishments) in the jinayah law include *hudud* and *ta'zir* and also regulate the forms of punishment. For example, *'uqubat ta'zir* includes flogging, fines, imprisonment, confiscation of certain goods, revocation of permits and rights, and compensation.

According to Article 82 of the Aceh Qanun No. 7 of 2013 concerning Jinayat Procedural Law, the Regency or City Syar'iyah Court has the authority to examine and decide on the legality of arrests, detentions, searches, confiscations, document inspections, termination of investigations or prosecutions, and compensation and/or rehabilitation for every person whose criminal case is stopped at the investigation or prosecution level. Furthermore, in Article 83 Paragraph (1), the implementation of the authority of the Regency/City Syar'iyah Court as intended in Article 82 is carried out through pre-trial[2]. For example, in case Number 01/Pra.JN/2016/MS.BNA[3], it was determined that the actions

[1] Mega Purnama Zainal, "Why Aceh is Called the Veranda of Mecca," Abulyatama University, 2016.

[2] Pretrial is the judge's authority to examine and decide, in accordance with the provisions stipulated in the law. Based on the reasons above, the Banda Aceh Syar'iyah Court examined and decided on the first pre-trial lawsuit since the implementation of the jinayah law and the jinayah procedural law in Aceh Province.

[3] Pretrial is only limited to the authority regulated and determined in the Jinayat Procedural Law; namely the Petitioner's pretrial petition, the position/residence of the Petitioner and Respondent which is in the jurisdiction of the Banda Aceh Syar'iyah Court and reading the Petitioner's petition in the case where the case occurred is in the jurisdiction of the Banda Aceh Syar'iyah Court regarding whether or not the arrest and detention are legal as well as the confiscation carried out by Wilayatul Hisbah, Banda Aceh City has carried out the action of arresting and forcibly taking away the Petitioner by the Respondent who is suspected of having committed a criminal act by law, this action was carried out without showing a letter of assignment and an arrest warrant

carried out by the respondent were invalid because they conflicted with Article 19 Paragraph (1) of Qanun No. 7 of 2013 concerning Jinayah Procedural Law[4].

Apart from the jinayah procedural law which regulates pre-trial, pre-trial has been regulated in advance in the criminal procedure code and applies nationally. Pre-trial is the right of every suspect, family, legal representative, or third party to guarantee legal certainty regarding the ongoing or completed legal process. Pre-trial is normal and does not need to be feared as long as the investigation process or coercive measures are carried out based on the rules in the jinayah procedural law and the criminal procedure code. Generally, not all pre-trial decisions are won by the suspect or the party who submitted the case. In the pre-trial examination process, both juridical and material facts will be considered. Whether the pre-trial is granted or not must also be reviewed fairly, considering whether it is due to an intentional cause or a cause originating from outside the investigation process. The existence of pre-trial is to ensure that investigators are not arbitrary and to ensure that the investigation and/or prosecution process runs according to the mechanisms regulated in the criminal procedure code. In an investigation process, the investigator must act neutrally, professionally, and proportionally, ensuring that the investigation process has been carried out professionally and impartially.

The pre-trial lawsuit filed against *Wilayatul Hisbah* was carried out at the Syar'iyah Court, and the lawsuit was the first pre-trial hearing handled by the Banda Aceh Syar'iyah Court since the jinayah law was passed on December 13, 2013, replacing Qanun No. 12 of 2003 concerning Khamar and the like; Qanun No. 13 of 2003 concerning *maisir* (Gambling); Qanun No. 14 of 2003 concerning *khalwat* (Immoral Acts); and the jinayah procedural law concerning criminal procedural law in Aceh Province.

Requests for pre-trial lawsuits against investigators and public prosecutors in handling qanun cases had never been carried out before the implementation of the jinayah law or jinayah procedural law because the criminal procedure code did not clearly regulate the process of handling qanun criminal cases in Aceh. However, the case handling still referred to the national criminal procedure code in terms of arresting and detaining before the implementation of the jinayah qanun and jinayah procedural law. Therefore, this study aims to analyze the role of Wilayatul Hisbah in enforcing the law in pretrial request cases in criminal cases handled by the Sharia police under the Sharia Court of Aceh.

Method

This research is qualitative with a socio-legal approach to several regulations in the judiciary of Aceh Province. Primary data was obtained from laws and regulations in Aceh Province including Qanun No. 11 of 2002 concerning the implementation of Islamic sharia, Aceh Qanun No. 7 of 2013 concerning Jinayat Procedural Law, Qanun No. 6 of 2014 concerning Jinayat Law (Islamic criminal law). In addition, several cases of pre-trial petitions that have been filed in the wilyatul hisbah by deepening interviews with several informants who handle qanun cases and attend pre-trial hearings. The resulting data is then analysed using deductive normative research.

[4]"The Arrest Executing Officer as intended in Article 17 and Article 18 must show a letter of assignment and give the Suspect an arrest warrant stating the Suspect's identity, the place where he is being questioned and stating the reason for the Arrest and a brief description of the suspected Jarimah."

Qanun as the foundation of community life in Aceh

The term "qanun" has been used for a long time in the Malay language and culture. The "Law of Melaka," compiled in the fifteenth or sixteenth century AD, used this term[5]. According to Liaw Yock Fang, this term in Malay culture is used in the same way as *adat* (customary law) and is usually used to distinguish between the laws stated in *adat* and those in the fiqh (Islamic jurisprudence) book. It is strongly suspected that this term entered Malay culture from Arabic[6], as it began to be used along with the presence of Islam and the use of Arabic in the Malay Archipelago. It is worth mentioning that in Western literature, this term has been used for a long time, including referring to Christian law (Canon Law) which existed before the Islamic era.

In the Acehnese language, this term is relatively popular and still used in the community. One of the customary sayings explaining the relationship between *adat* and Islamic law is still alive and is often quoted using this term[7]. In Acehnese Malay literature, qanun has also been used for a long time and is defined as a rule derived from Islamic law that has become customary. One such manuscript, "*Qanun Syara*' Kerajaan Aceh," was written by Teungku di Mulek in 1257 AH, on the orders of Sultan Alauddin Mansur Syah, who died in 1870 AD. This short manuscript (only a few pages) contains various matters in the field of constitutional law, division of powers, various judicial bodies and judicial authority, police and prosecutorial functions, and protocol rules in various state ceremonies. It can be concluded that in a narrow sense, qanun is a rule that is maintained and enforced by a sultan in his jurisdiction based on Islamic law.

Criminal law enforcement has gone through constitutional channels, being outlined in legislation that regulates the authority of law enforcers in their duties to enforce criminal law and achieve material truth. The Criminal Procedure Law regulates how the State, through its organs of power, exercises its right to criminalize and impose punishment[8]. It contains the procedures by which institutions of power and state organs, such as the police, prosecutors, and courts, can act to achieve state goals by implementing criminal law.

The implementation of Islamic law, especially in Aceh Province in the field of jinayah law, has been in place for a long time because the people of Aceh make Islamic teachings a guide for their daily lives. Moreover, Aceh is the center of the spread of Islam in the archipelago. Aceh is an area of Indonesia with a historic Islamic civilization. Its existence in the map of the distribution of Islam in this country is very vital, and it is not strange that

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[5] Liaw Yock Fang, The Law of Melaka, KITLV, The Hague, 1976 p.62.The text reads, 'As for the later of these, then this is a treatise on declaring the law of the kanun, namely on all the great countries and on all the great kings and viziers and on the subjugated adat and hamlets for the benefit of the countries and kings.'

[6] The Faculty of Law of Syiah Kuala University uses the term 'KANUN' for the name of the scientific journal they publish, which is now in its tenth year.

[7] This custom is quoted in: 'General Explanation' of Law Number 18 Year 2001, which reads: 'Adat bak potemerreuhum, hukom bak Syiah Kuala, qanun bak Putro Phang, reusam bak Laksamana (Adat from Sultan, Law from Ulama, Qanun from Pahang, Reusam from Laksamana).' If the names of the figures mentioned in this proverb are used as a reference (which is widely known in the community, Sultan is Sultan Iskandar Muda, Ulama is Syiah Kuala, Putri Pahang is Sultan Iskandar Muda's consort) then this proverb probably dates back to the early seventeenth century, during the reign of Sultan Iskandar Muda Meukuta Alam.

[8]Abdulah Sani Usman Basyah, Kanun Syarak of the Kingdom of Aceh during the Era of Sultan Alauddin Mansur Syah: A Comparative Study with Bustanus Salatin, Faculty of Islamic Studies, UKM, Kuala Lumpur, 2000, p. 17. 21 While in a broad sense, qanun is the same as the term law or adat. In its development, it can also be said that qanun is a term to explain the rules that apply in the community which are adjustments to local conditions or further explanations of the provisions in fiqh stipulated by the Sultan.

Aceh is often dubbed the land of "Serambi Mekkah" (the porch of Mecca). Islam there has taken root and formed a life cycle filled with nuances of grandeur.

Enforcement of criminal law has gone through constitutional channels, being outlined in statutory regulations that regulate the authority of law enforcers in their duties to enforce criminal law and achieve material truth. The criminal procedure law regulates how the State, through its complete instruments of power, exercises its right to convict and impose criminal penalties. It contains the ways in which institutions of power and state apparatus, such as the police, prosecutors, and courts, can act to achieve state goals by implementing criminal law. According to Eddy O.S. Hiariej[9], criminal procedural law contains rules that regulate the application or procedures such as investigation, prosecution, examination in court, decision-making, legal remedies, and implementation of court decisions in an effort to find material truth. The aim of criminal procedural law is to search for and obtain or at least approach the material truth, the real truth of a criminal act, by applying the provisions of criminal procedural law with the aim of finding out who the real perpetrator is and can be charged with committing a criminal act, and then requesting an examination and a decision from the court to determine whether the perpetrator of the crime has proven that a crime has been committed and whether the person accused can be blamed with material truth. The function of criminal procedure law is to serve as a reference for law enforcement officials—police, prosecutors, judges, and legal counsel—to carry out their authority to enforce criminal law and to provide protection for suspects, defendants, and victims so that their rights are protected.

In Indonesia, criminal procedure law is regulated in Law Number 8 of 1981. Article 285 states that this law is called the Criminal Procedure Code (KUHAP). Before KUHAP came into force, the applicable criminal procedure law in Indonesia was the updated Indonesian Reglement or "Het Herziene Inlandsch Reglement" (HIR), which was strengthened by Law Number 1 Drt. of 1951. With the existence of regional autonomy in the Province of Nanggroe Aceh Darussalam, the local government established Qanun Number 7 of 2013 concerning Jinayah Procedural Law. This became a new policy for law enforcers in the Province of Nanggroe Aceh Darussalam to apply the jinayah procedural law outside the Criminal Procedure Code, namely Qanun Number 7 of 2013, regulating the judiciary[10].

Qanun jinayah itself was originally a separate Qanun. Now, all types of *jarimah* (offenses) and *'uqubat* (punishments) are codified into one Qanun[11], with significantly increased offenses and punishments[12]. Article 3 Paragraph 2 of Aceh Jinayah Qanun states that this qanun only regulates 10 types of *jarimah* with their respective variants. The ten *jarimah* or criminal offenses are: *khamr* (alcohol), *maisir* (gambling), *khalwat* (seclusion), *ikhtilath* (mixed-gender interactions), *zina* (adultery), sexual harassment, rape, *qadzaf* (false

[9] Eddy O.S. Hieriej, Hukum Acara Pidana, (Tanggerang : Universitas Terbuka, 2017), hlm. 16-17

[10] Volume. 21. No.2 Desember 2021 https://ojs.unsiq.ac.id/index.php/mq p-ISSN: 1412-7075||e-ISSN: 2615-4811

[11] There used to be only three jarîmah, each with its own Qanun, namely khamr (drinking alcohol), maisir (gambling), and khalwat (being alone with non-mahram members of the opposite sex). Now it is added to ikhtilâth (making out between two people of the opposite sex who are not husband and wife), adultery, sexual harassment, rape, qadzaf (accusing someone of adultery without being able to present at least four witnesses), liwâth (homosexuality), and musâhaqah (lesbian). See 'Challenging Qanun Jinayat,' in http://icjr.or.id/menggugat-Qanun-jinayat/, accessed on 12 January 2024

[12] Dr Ali Geno Berutu concludes that Aceh Qanun No. 6/2014 is a revision that covers the shortcomings of the previous Qanun. See Ali Geno Berutu, 'Regulation of Criminal Offences in Aceh Qanun: A Comparison between Qanun Number 12, 13, 14 Year 2003", in Mazahib Journal, Vol. XVI, Number 2, 2017, p. 105. 105.

accusation of adultery), *liwath* (sodomy), and *musahaqah* (lesbianism). Khalwat, sexual harassment, *khamr*, *maisir*, and rape have similarities with the criminal code. The difference is more about the type and form of sanctions. Zina differs in definition and punishment. Homosexual acts (*liwath* and *musahaqah*) are current issues that Aceh responded to several years ago. The Constitutional Court did not grant an attempt to criminalize LGBT on the grounds that it is not the authority of the Constitutional Court to legislate a regulation[13].

One of the specificities given by the state to Aceh Province is the right and opportunity to establish a Syar'iyah Court as an Islamic Sharia Court. This is explained in Law No. 11/2006 on the Governing of Aceh, specifically in Article 128 Paragraph (2) which states that "The Syar'iyah Court is a court for every person who is Muslim and resides in Aceh."

The Islamic Shari'a Court as a "Special Autonomous Regional Organ of the Special Autonomous Region of Aceh Darussalam Province" has been established by law as one of the courts in the Indonesian national judicial system. Therefore, the principles of simple, fast, and low-cost justice still apply to it, in addition to the principles of Islamic justice requiring the active role of Judges to find the material truth in the process of resolving each case, including civil cases (*Mu'amalah* and *al-Ahwal al Syakhshiyah*).

This is explicitly stated in the Law on the Government of Aceh Article 128 of Law No. 11 of 2006:

1. The Islamic Shari'a Court in Aceh is part of the national judicial system within the scope of the Religious Courts, implemented by the Syar'iyah Court, which is free from the influence of any party.
2. The Syar'iyah Court is a court for all people who are Muslims and reside in Aceh.
3. The Syar'iyah Court is authorized to examine, hear, decide, and resolve cases covering the fields of *ahwal al-syakhsiyah* (family law), *muamalah* (civil law), and *jinayah* (criminal law) based on Islamic shari'a.

Wilayatul Hisbah according to Qanun No. 11 Year 2004 is an auxiliary institution of the police tasked with fostering, advocating and supervising amar makruf nahi mungkar and can function as Polsus and PPNS.

The implementation of Qanun in Aceh is by enforcing court decisions so that the public knows that the flogging of qanun violators is really carried out in accordance with the decision of the Shari'ah Court.

After a year-long socialisation process, the local regulation (qanun) on jinayat law was officially enacted in Aceh Province on Friday 23 October 2015.

Qanun number 6 of 2014 came into effect one year after it was enacted on 23 October 2014. Amnesty International and the Institute for Criminal Justice Reforrm (ICJR) are deeply concerned about the enactment of the Aceh Qanun Jinayat. This local criminal law will

[13] Article 284 Paragraph (1) letters a and b of the Criminal Code states that gendak (overspel) or adultery is punishable with a maximum imprisonment of 9 (nine) months. Zina in this article is the act of one or more women or men, one of whom has been bound by a marriage with another person. This definition is actually closer to the term 'cheating' or 'infidelity'. In addition to these circumstances, zina in this article can only be prosecuted if there is a complaint from the wife or husband who feels betrayed or defiled. This is completely different from Aceh where the Qanun Jinayat does not make zina a complaint offence nor does it require one of the adulterers to be the wife or husband of another person. This means that everyone who has intimate relations even without marital ties is considered to have committed the offence (jarimah) of zina and is threatened with 100 lashes (single sanction). Compare Criminal Code Article 284 Paragraph (1) letter a and b and Article 33 Paragraph (1) Qanun Aceh No.6 Year 2014 on Jinayat Law

criminalise consensual sexual relations and expand the use of flogging as a form of punishment.

In 2008, the UN Committee Against Torture called on Indonesia to review all national and local legislation that legalises the use of cruel punishment as a form of criminal punishment. Amnesty International and the Institute for Criminal Justice Reform (ICJR) urged that the flogging law and other provisions in Aceh's Qanun Jinayat that violate human rights should be revoked or revised. As reported by Acehterkini, Qanun number 6 of 2014 enhances the Islamic Sharia qanun which contains seven sharia offences that have not been mentioned in qanun numbers 11, 12, 13 and 14 of 2003 concerning khamar, maisir and khalwat. Munawar A Jalil, head of the Sharia Law Division at the Aceh Islamic Sharia Office, said the Qanun Jinayat Law is officially effective throughout Aceh. The last Qanun Jinayat was socialised in the city of Banda Aceh.

Qanun is stipulated for the perpetrators of khamar (liquor), maisir (gambling), khalwat (pervert), ikhtilath (making out and kissing) and zina (intercourse without the bond of marriage), sexual harassment, rape, liwath (gay), musahaqah (lesbian), qadzaf (accusing people of adultery). Likewise, for someone who provides facilities. Places or facilities and infrastructure for the perpetrators of khamar, maisir, khalwat, ikhtilath and zina are also subject to a maximum penalty of 100 lashes or a fine of 1,000 grams of pure gold. Qanun only applies to Muslims who commit jarimah (acts prohibited by Islamic law) in Aceh. Meanwhile, non-Muslims who commit jarimah with Muslims can choose and submit themselves voluntarily to the Jinayat Law. For non-Muslims also get the punishment that applies in this qanun if they commit Jarimah in Aceh. This is not regulated in the Criminal Code or criminal provisions outside the Criminal Code, but is regulated in this Qanun.

The Government of Indonesia is urged to end flogging, as a form of punishment, and revise various provisions in Qanun Jinayat, the Islamic penal code

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The Indonesian government is urged to end flogging, as a form of punishment, and revise various provisions in Qanun Jinayat, the Islamic penal code in Aceh. This is because this law provides for violations of international law and national criminal law.

The demands were made to reflect on one year of flogging under Qanun Jinayat, which has been used as a punishment for offences such as selling alcoholic beverages (khamar), consensual sexual intercourse outside marriage (zina), and being alone in an enclosed place with another person of the opposite sex outside marriage (khalwat).

Qanun Jinayat also legitimises the use of corporal punishment in Indonesia, namely flogging. Whereas the punishment system in Indonesia strictly prohibits the use of flogging, because the use of flogging is also included in the category of torture, cruel inhumane punishment,

and degrading. Data from the Aceh Women and Children Protection Agency states that in 2013, the number of cases recorded was 428 cases, in 2014 there were 515 cases and in 2015 there were 548cases[14].

In 2015, at least 108 people were executed by flogging. "These floggings are routinely carried out in public spaces to attract the attention of many people where they can take photos and videos that can add to the shame and long-term suffering of those convicted by this kind of cruel, painful and degrading punishment. In 2016, based on ICJR monitoring, the Aceh Sharia Court has decided at least 221 jinayat case decisions from January to September 2016. Among those decisions, at least 180 convicts have been executed by flogging in all regions of Aceh. Throughout the execution of flogging, ICJR also found the implementation to be full of violations. The use is discriminatory because it does not apply to some people who have positions. Its use is discriminatory because it does not apply to some people who have positions and produces a culture of violence, because it is publicly displayed. 'ICJR requests the Government of Indonesia to abolish all forms of corporal punishment in its legislation, in this case abolishing flogging,' said Supriyadi. In addition, it asks the Government of Indonesia to evaluate and review the existence of Qanun Jinayat in Aceh. The public is also expected to monitor the implementation of this law because it is full of violence, discrimination, and violations.

The authority of *Wilayatul Hisbah* in carrying out the criminal enforcement process of qanun is associated with the criminal justice system

Wilayatul Hisbah is an institution in charge of enforcing *amar ma'ruf* (promoting good) and preventing *munkar* (evil)[15]. The authority of this institution includes matters relating to public order (*al-nizham al-'am*), decency (*al-adab*), and some minor crimes. It is responsible for enforcing promoting good and forbidding evil.

A state of law is a state based on law, where there are restrictions on the power of the state against individuals. The state is not omnipotent and cannot act arbitrarily, as every action of the state against its citizens is limited by law. The rule of law not only limits the power of the state but also ensures that the entire population in social relations must adhere to the applicable law. According to Wiryono Prodjodikoro, the state of law means a state in which all state apparatus, especially government officials, in their actions towards both citizens and society, should not act arbitrarily but must pay attention to the rules of law that apply to everyone and in social relations.

In a state of law, state power is limited by law. The government, represented by law enforcement officers, must base their actions on the law when carrying out the criminal justice system. This system includes investigation, prosecution, trial, and execution, all of which must be carried out based on criminal law. "*.... The only legal subject that has the right to punish (ius puniendi) is the state/government*." A good legal structure will not function well if it is not supported by good legal substance, and good legal substance will not be effective without a good legal structure. Furthermore, a good legal structure and substance will not be impactful without the support of the community's legal culture.

[14] Ali Geno Berutu concludes that Aceh Qanun No. 6/2014 is a revision that covers the shortcomings of the previous Qanun. See Ali Geno Berutu, 'Regulation of Criminal Offences in Aceh Qanun: A Comparison between Qanun Number 12, 13, 14 Year 2003", in Mazahib Journal, Vol. XVI, Number 2, 2017, p. 105. 105.

[15] Rusdi Ali Muhammad, Revitalising Islamic Shari'a in Aceh, Problems, Solutions and Implementation (Jakarta Logos. 2003), pp. 136 and 186

Law will play a good role when the three aspects of the subsystem—structure, substance, and legal culture—interact with each other and perform their functions, ensuring the law operates in balance and in accordance with its purposes. Moh. Din,[16] in "Criminal Policy of Aceh Province Qanun in the National Criminal Law System", analyzes the issue by proposing three theories: the theory of the rule of law as a grand theory, the theory of criminal law policy as a middle-range theory, and the theory of punishment as an applied theory. According to him, these three theories are interrelated in a state of law.

Lawrence M. Friedman[17] expressed his opinion on the functions of the legal system, which include: first, as part of a social control system that regulates human behavior; second, as a means to resolve disputes (dispute settlement); and third, as a social engineering function. Furthermore, Friedman identified three elements of the legal system: structure, substance, and legal culture. Structure concerns the institutions authorized to make and implement laws (courts and legislative bodies). Substance refers to the material or form of legislation. The third aspect, legal culture, involves people's attitudes toward the law, including their beliefs, thoughts, ideas, and expectations regarding the law. The purpose of criminal procedure law is to seek material truth, so it can impose punishment on those who have committed criminal offenses while ensuring that the innocent are not punished. Criminal procedure law also serves to limit the actions of authorities.

Given the importance of law enforcement and legal effectiveness in society, it is essential to discuss the law's working power in regulating and/or forcing people to obey it. The effectiveness of the law requires meeting juridical validity, sociological validity, and philosophical validity. Therefore, factors affecting the law's function in society include[18]:

1. The rule of law/regulation itself.
2. Law enforcement officers.
3. Means or facilities used by law enforcement.
4. Public awareness.

The success of law enforcement is not only based on fulfilling the three components of a legal system but also on the synchronization of each component. The criminal justice system requires integration and harmony, as explained by Muladi. This integration includes:

1. Structural synchronization.
2. Substantial synchronization.
3. Cultural synchronization.

The "living law" refers to the rules that exist in society and legal culture, which reflect human attitudes or behavior towards the law.

In Article 6 of Aceh Qanun No. 7 of 2013 concerning Jinayah Procedure Law, it states that: Investigators are Police Officers and PPNS (WH Police) who have been authorized by law and/or Qanun to conduct investigations. Article 8 states that: (1) Investigators consist of: b. Certain civil servants who are specifically authorized by law and/or Qanun.

Wilayatul Hisbah investigators can conduct an examination of the perpetrator of a criminal offense or a qanun violator and witnesses. If the investigation results show strong

[16]Moh.Din: "Criminal Policy of Qanun Aceh Province in the National Criminal Law System, p. 10

[17]Lawrence M. Friedman, American Law (New York: W.W.Norton & Compani, 1984), pp.5-6, Prof. DR.Teguh Prasetyo and DR. Abdul Halim Barkahtullah; Philosophy, Theory and Science of Law, (Jakarta: Raja Grafindo, 2013) pp, 311-312.

[18] Trubus Rahardiansyah.P and Endar Pulungan: Introduction to the Sociology of Law, (Jakarta: Trisakti University Publisher, 2007), pp. 252 Moh.Din: "Criminal Policy of Qanun Aceh Province in the National Criminal Law System, p. 10,

evidence of a criminal offense by the suspect, *Wilayatul Hisbah* investigators must immediately coordinate with police investigators to notify the local prosecutor's office about the chronology of the criminal act or jinayah. This is done by sending a Notification Letter of Commencement of Investigation (SPDP). However, not all qanun cases handled by *Wilayatul Hisbah* are reported to police investigators, as *Wilayatul Hisbah* can handle investigations through customary settlement at the *gampong* (village) level.

In Article 9 Paragraph 2, PPNS investigators as referred to in Article 8 Paragraph (1) letter b are authorized to: a. Receive a report or complaint from a person about a criminal offense or violation of Qanun and/or other laws and regulations. i. Make an Order for Commencement of Investigation (SPDP) to the Public Prosecutor with a copy to the PPNS Supervisor after first coordinating with the Supervisor.

As explained by Muladi, the meaning of an "integrated criminal justice system" involves synchronization and harmony, which can be distinguished into[19]:

1. Structural synchronization: simultaneity and harmony within the framework of relations between law enforcement agencies.
2. Substantial synchronization: vertical and horizontal simultaneity and harmony in relation to positive law.
3. Cultural synchronization: synchronization and harmony in realizing the views, attitudes, and philosophy that comprehensively underlie the functioning of the criminal justice

   In the Governor Decree No. 1 Year 2004, the definition of Wilayatul Hisbah is an institution in charge of supervising, fostering, and advocating the implementation of legislation in the field of Islamic Shari'a in the context of implementing amar ma'ruf nahi mungkar, by carrying out the following tasks:

   a) Supervise the implementation and violation of legislation in the field of Islamic Shari'a;
   b) Conducting spiritual guidance and advocacy for everyone who based on preliminary evidence should be suspected of violating the laws and regulations in the field of Islamic Shari'at;

   The stages of Wilayatul Hisbah's duties and its relation with other sharia law enforcers are:

   a. The socialisation stage will be related to the gampong leadership.
   b. The investigation stage is in charge of PPNS (civil investigating officer) and will be in contact with the police.
   c. The sentencing stage serves as a whipping officer and will be in contact with the prosecutor's office.
   d. Sharia court.

Wilayatul Hisbah's Authority in Handling Qanun Criminal Cases within the Criminal Justice System

The criminal justice system serves as a system for enforcing criminal law and attempting to address crime by controlling or limiting it within the bounds of community tolerance. It consists of systemic movements from its supporting subsystems, namely the

[19] In the journal De Jure Volume 16, Number 3, September 2016
LIPI Accreditation: No:740/AU/P2MI-LIPI/04/2016

Police, the Prosecutor's Office, Courts, Correctional Institutions, and Legal Advisers. These entities work together to transform input into output, aiming to control crime within acceptable societal limits. The cooperation of these four components is crucial for achieving integration in handling criminal cases, known as the Integrated Criminal Justice System.

Apart from the police, who act as investigators in handling *jinayah* cases, *Wilayatul Hisbah* also serves as investigators to handle cases of violations of the *jinayah* law. Aceh, being a province with a majority Muslim population, is attempting to re-actualize the role of *Wilayatul Hisbah*, which was active during the time of Khulafaur Rasyidin. *Wilayatul Hisbah* oversees the implementation of Qanun Islamic Sharia in the Beranda or Serambi of Mecca. In line with the enactment of the Law of the Republic of Indonesia No. 44 of 1999 concerning the implementation of the privileges of the Province of Aceh, Law No. 18 of 2001 concerning Special Autonomy for the Province of Nanggroe Aceh Darussalam, and PERDA No. 5 of 2000 concerning the implementation of Islamic law, an institution was formed. *Wilayatul Hisbah*, strengthened by the Decision Letter of the Governor of Nanggroe Aceh Darussalam No. 01 of 2004 concerning the organization and work procedures of *Wilayatul Hisbah*, operates under the Islamic Sharia service to supervise the implementation of Islamic Sharia in Nanggroe Aceh Darussalam.

In the book *as-Siyasatusy Syar'iyyah*, three law enforcement authorities are described: a. *Wilayat-ul Qadha*, an institution or body authorized to resolve disputes between people or act as an arbitration (peace) body. b. *Wilayat-ul Hisbah Mazhalim*, an institution or body with the authority to resolve state administrative disputes and disputes between officials and the people or between nobles and commoners (now called PTUN in judicial terms). c. *Wilayat-ul Hisbah*, a warning and supervisory body authorized to remind community members about the rules they must follow, how to comply with the rules, and actions to avoid as they conflict with the rules.

Wilayatul Hisbah's main task is to carry out the principle of enjoining good and forbidding evil (*amar ma`ruf nahi munkar*), including:

1. Introducing and socializing the qanun and other regulations related to Islamic Sharia, and reminding or reinforcing the rules of good morals and ethics.
2. Supervising the community to ensure they understand the existing rules and behave according to the noble morals guided by Islam.
3. Providing guidance to prevent repeat offenses by perpetrators of criminal acts.

For the first time, a suspect who violated the qanun in Aceh rejected the authority of *Wilayatul Hisbah* in the case handling process and the authority of the Syar'iyah court in deciding the case, with case number 01/Pra.JN/2016/MS.BNA. This rejection was the first instance in the history of qanun implementation in Aceh Province, challenging the handling of the case from *Wilayatul Hisbah* to the trial process.

The results of field research through observation of case handling by *Wilayatul Hisbah* investigators revealed mistakes, as evidenced by the pretrial application dated April 26, 2016, registered at the registrar of the Banda Aceh Syar'iyah Court. The suspect filed a pretrial lawsuit against the Banda Aceh City SatPol PP and *Wilayatul Hisbah* Institution, based on Respondent's lawsuit Number: 01/Pra-JN/2016/MS-BNA. This lawsuit was the first pretrial in a qanun case filed by a suspect against *Wilayatul Hisbah*, citing unlawful arrests, detentions, and seizures not supported by the necessary documents from authorized institutions, either the police or the court.

The pre-trial motion No. 01/Pra-JN/2016/MS.Bna dated April 27, 2016, basically stated as follows[20]:

1. Based on Article 82 letter a of Aceh Qanun Number 7 of 2013 on *jinayah* procedural law, the District/City Syar'iyah Court is authorized to examine and decide in accordance with the provisions stipulated in this qanun regarding the legality of arrest, detention, search, seizure, examination of documents, termination of investigation, or termination of prosecution.
2. Article 84 paragraph (1) of Aceh Qanun No. 7 of 2013 concerning *jinayah* procedural law gives the right and authority to the suspect, their family or proxy, or other aggrieved parties to request a hearing with the head of the District/City Syar'iyah Court regarding the validity or invalidity of the arrest, detention, search, seizure, and/or investigation.

In handling qanun cases, the *jinayah* law and *jinayah* procedural law as positive laws enforced in Aceh are followed. However, it is possible to handle *jinayah* cases through customary or preventive measures with the application of customary law. In the village meeting, two institutions play a role in resolving qanun cases: *Wilayatul Hisbah* and consulting with the indigenous community. Violations of shari'a committed by village residents can first be resolved through consulting with the indigenous community. Provisions should be known by investigators, *Wilayatul Hisbah* officers, and the general public so that anyone who makes an arrest (caught red-handed) must hand over the qanun violator to the *gampong* officials. If the qanun violator is not a resident of the *gampong* community, they must be immediately handed over to police investigators or *Wilayatul Hisbah* investigators who specifically handle *jinayah* cases.

If customary settlement can provide benefits to violators, the punishment imposed must be considered. The perpetrator must receive social sanctions from the community, decided through the Gampong Customary Meeting, which carry a high psychological value. This is hoped to make the perpetrator embarrassed, deterred, or even move from the *gampong*. In formal law, the perpetrator may face detention.

In *jinayah* law, *'uqubat* is a punishment that provides a deterrent effect to violators, as its implementation in a public place witnessed by the general public causes psychological suffering. However, violations still increase in society. The pre-trial filed against the case mentioned above continued and was won by *Wilayatul Hisbah*. The rationale was that a negative outcome for the special sharia law enforcement agency *Wilayatul Hisbah* would set a bad precedent. This case was the first in the enforcement of Islamic sharia in Aceh province.

Customary settlements can provide benefits to offenders, namely: a. Benefits to the perpetrator, who will be free from the formal legal process, which requires the perpetrator to be in detention. b. The punishment given through the Gampong Adat Meeting is a community punishment with a high psychological value, so it is hoped that the perpetrator will be embarrassed, deterred, or even move from the *gampong*. c. In *jinayah* law, *'uqubat* is a punishment that provides a deterrent effect to violators, as its implementation in a public place witnessed by the general public causes psychological suffering, but violations still increase in the community.

Indigenous peoples greatly assisted the role of wilayatul hisbah, as an example of a case handled by wilayatul hisbah is the case below where the Banda Aceh Shari'iyah Court

[20]Case number 01/Pra.JN/2016/MS.BNA The first pre-trial since the enactment of Qanun in Aceh Province

held the first trial since the enactment of qanun in Aceh in the case of jinayat Pretrial Jinayah. The defendant who was alleged to have committed jarimah khalwat in his residence and this had violated Article 19 Paragraph (1) and Article 44 Paragraph (1) of Qanun No. 7 of 2013 concerning Jinayat Procedure Law, the trial that was held received special attention from the public, especially on the same day there was also a trial of 4 other Jinayat cases.

The pretrial lawsuit was heard at the Banda Aceh Sharia Court with a panel of judges, the defendant is a citizen who was arrested by the Islamic Sharia police in early February 2016. The defendant sued because WH officers made an arrest without an arrest warrant and the arrest was contrary to Article 19 Paragraph (1) of Qanun Number 7 Year 2013 on Jinayat Procedure Law, that the arrestee must show the arrest warrant and give it to the person to be arrested. As well as the arrest warrant must include the person to be arrested and the warrant must be given to the person and his family, but this did not happen, so the suspect filed the first pretrial lawsuit in Aceh related to the enforcement of Qanun, but this qanun case was still won by wilayatul hisbah, because if the lawsuit is granted it will bring a bad precedent for the syar 'iyah court in the case of qanun in Aceh province.

Conclusion

In handling the legal cases, it still refers to the *jinayah* law and *jinayah* procedural law as positive law applicable in Aceh. However, there must be an integration of the opinions of law enforcers, both *Wilayatul Hisbah* officials and police investigators. Although *Wilayatul Hisbah* conducts the investigation, the authority to submit the case to the prosecutor's office remains with the police investigator. The public prosecutor has the authority to submit the case to the authorized court in accordance with the applicable regulations in Aceh. *Wilayatul Hisbah*, as an Islamic Sharia investigator, has the authority to prevent, socialize, and maintain order in society, thereby minimizing violations, especially in Aceh.

In its implementation, each component of law enforcement in the criminal justice process must work together. It is impossible to overcome or eradicate crime based solely on the interests of one institution. Instead, there must be a relationship between institutions at each level of the criminal justice process to ensure the proper implementation of Islamic Sharia in Aceh.

It is crucial to have strict provisions regarding the bodies implementing the judiciary in the settlement of criminal offenses as referred to in the qanun. It is also necessary to clearly define the authority of each agency involved in the investigation of qanun cases to prevent overlap in their duties as law enforcement officers in implementing Islamic Sharia in Aceh.
Juridically, the implementation of customary justice has been supported by a number of laws and regulations. Various laws and regulations explicitly state that the strengthening of customary law and customary justice must start from the Gampong and Mukim. Dispute resolution in adat courts does not mention adat courts but directly mentions the names of government institutions such as gampong and mukim. So that customary justice is carried out traditionally in Gampong and customary settlement in Mukim. The results showed that the legal basis for the settlement of criminal offences through customary courts in Aceh is based on legislation, particularly Law of the Republic of Indonesia Number 11 of 2006 on the Government of Aceh, which authorises the establishment of Qanun Aceh Number 10 of 2008 on Customary Institutions. This is reinforced by Qanun No. 1/2019 on Village Administration, which requires the resolution of problems in the village through adat courts.

Courts at the Gampong level have legal force based on the jurisprudence of the Supreme Court decision Number 1644 K/Pid/1988.

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Comparison of Pretrial Authority in the Jinayat Procedural Law Qanun and KUHAP Journal of Legal Communication (JKH) Ganesha University of Education ISSN: 2356-4164 (Print) Vol.5 No:2, August 2019 ISSN;2407-4276
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