



## Implementation of Caning Punishment in Nanggroe Aceh Darussalam Province in a Human Rights Approach\*

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[10.15408/jch.v11i2.34607](https://doi.org/10.15408/jch.v11i2.34607)

### Abstract

The Nanggroe Aceh Darussalam Provincial Government is one of the regions that has special autonomy. This is as regulated in Law Number 11 of 2006 concerning the Government of Aceh. The Islamic criminal law that emerged in Aceh is different from criminal law in general. Among the applications of criminal law in Aceh is caning. There is a conflict between the Aceh Qanun regarding the Jinayat law and the Governor's Regulation regarding the application of the caning law. Initially carried out in an open place (mosque courtyard), it was then moved to a closed place, namely a correctional institution. The research method used in this research is a qualitative method with an empirical approach and a statutory regulatory approach. The results of the research state that the transfer of caning punishment has been in the spotlight since this regulation was discussed until the publication of this legal product. So there needs to be a more in-depth and comprehensive study in order to find the best solution in enforcing Islamic criminal law.

**Keywords:** Caning; Qanun; Jinayat; Governor's Regulation

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\* Received: March 27, 2023, revised: April 29, 2023, accepted: April 23, 2023, Published: Agustus 30, 2023.

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## Penerapan Hukuman Cambuk di Provinsi Nanggroe Aceh Darussalam dengan Pendekatan Hak Asasi Manusia

### Abstrak

Pemerintah Provinsi Nanggroe Aceh Darussalam merupakan salah satu wilayah yang mendapat otonomi khusus. Hal itu sebagaimana diatur dalam Undang-undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh. Hukum pidana Islam yang lahir di Aceh berbeda dengan hukum pidana pada umumnya. Diantara penerapan hukum pidana di Aceh berupa hukuman cambuk. Terdapat pertentangan antara Qanun Aceh tentang hukum Jinayat dengan Peraturan Gubernur tentang penerapan hukum cambuk. Yang awalnya dilaksanakan di tempat terbuka (halaman masjid), kemudian dipindahkan ke tempat tertutup yakni di lembaga pemasyarakatan. Metode penelitian yang digunakan dalam penelitian ini adalah metode kualitatif dengan pendekatan empiris dan pendekatan peraturan perundang-undangan. Hasil penelitian menyatakan bahwa perpindahan pelaksanaan hukuman cambuk telah menjadi sorotan sejak aturan ini diwacanakan hingga terbitnya produk hukum ini. Sehingga perlu adanya kajian lebih mendalam dan komprehensif agar didapatkan solusi terbaik dalam penegakan hukum pidana Islam ini.

**Kata Kunci** : Hukuman cambuk; Qanun; Jinayat; Peraturan Gubernur

### Осуществление наказания канингом в провинции Нангрой-Ачех-Даруссалам в рамках подхода в области прав человека

### Абстрактное

Провинциальное правительство Нангро-Ачеш-Даруссалам является одним из регионов, обладающих особой автономией. Это регулируется Законом No 11 2006 года, касающимся правительства Ачеха. Исламское уголовное право, возникшее в Ачехе, отличается от уголовного права в целом. Среди приложений уголовного права в Ачехе очень много. Существует конфликт между Ачешским Qanun в отношении закона Jinayat и Правил губернатора в отношении применения закона Caning. Первоначально она проводилась в открытом месте (дворце мечети), затем была перенесена в закрытое место, а именно в исправительное учреждение. Исследовательский метод, используемый в этом исследовании, является качественным методом с эмпирическим подходом и нормативным регулирующим подходам. Результаты исследований свидетельствуют о том, что с момента обсуждения этого регламента до публикации этого правового продукта в центре внимания находится вопрос о переносе наказания в виде каникул. Таким образом, необходимо провести более углубленное и всеобъемлющее исследование, с тем чтобы найти наилучшее решение для обеспечения соблюдения исламского уголовного права.

**Ключевые слова**: Caning; Qanun; Jinayat; Governor's Regulation

## A. INTRODUCTION

One form of regional autonomy in Indonesia is granting special autonomy to regions throughout Indonesia and for Aceh in 1999 Law No. 44 of 1999 concerning the administration of Aceh's privileges ([Badrudin, 2015: 1-11](#)). This law became the initial basis for implementing Islamic Sharia in Aceh after being buried for decades. This law emphasizes that implementing Islamic Sharia in the social life of society (total) is one of the other four specialities of Aceh ([Iqbal, Attarikhul, 2020: 153-175](#)). This means that all dimensions of social life in Aceh will receive regulation from Sharia law, especially in the reform era; it turns out that the door to Regional Autonomy has immediately kicked in throughout Indonesia, even the broadest possible autonomy for the Province of Nanggroe Aceh Darussalam to implement Islamic Sharia, this is in line with the intent of the birth of Law No.44 of 1999 concerning the Implementation of Privileges for the Special Province of Aceh ([State Gazette of the Republic of Indonesia of 1999 Number 172, Supplement to State Gazette Number 3839](#)), which was further emphasized by the issuance of Law No.18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam (NAD) (State Gazette of the Republic of Indonesia of 2001 Number 114, Supplement to State Gazette Number 4134). Both of these laws are further operationalized by Presidential Decree of the Republic of Indonesia (*Keppres*) 11 of 2003, dated March 3, 2003, concerning the Sharia Court and the Provincial Sharia Court in the Province of Nanggroe Aceh Darussalam. ([Pustaka Pelajar, 2005: 239](#))

Islamic criminal law was born in the Province of Nanggroe Aceh Darussalam, although it differs from Indonesian criminal law, which generally applies in this archipelago. Until now, this has been unified in Aceh *qanun* number 6 of 2014 concerning *jinayat* law where in article 3, the criminal that contained in this *qanun* is *Khamr* (Drinking Alcohol), *maisir* (Gambling), *khalwat*, *ikhtilat*, adultery, sexual harassment, rape, *qadzaf* (Scandal), *liwath* (Homosexual) and *musahaqah*. ([Miranda, Din, 2018: 606-616](#))

Qanun was born as a reflection of the Implementation of law that lives in society, explores, follows and understands legal values that live in society following Law Number 14 of 1970 concerning judicial power in conjunction with Law Number 4 of 2004 concerning changes to Law Number 14 of 1970 concerning judicial power judiciary Jo. Law No. 48 of 2009 concerning judicial power.

The current problem is the conflict between the Aceh *qanun* regarding *jinayat* law and a new regulation issued by the Governor of Nanggroe Aceh Darussalam Province regarding the Implementation of the caning law ([Bahri, 2012: 358-367](#)), from an open place (in the courtyard of the mosque) to a closed

place, namely in a correctional institution following Governor Regulation 05 of 2018 concerning Implementation of the procedural law of *jinayat* Article 30; Implementation of the whip punishment takes place in a disciplinary institution/jail/prison branch.

This regulation raises new legal problems regarding Implementation because the Prosecutor, as the executor, must use legal references with different provisions. Qanun Jinayat requires an open place, but Governor Regulation Number 5 of 2018 needs it to be in a closed location. To examine the problems above, the author will discuss the debatable Implementation of caning in the Province of Nanggroe Aceh Darussalam after Governor Regulation No. 5 of 2018.

Human rights are rights that are firmly attached to human beings and are an inseparable part of human life. As a right, human rights essentially existed when humans existed on earth. ([El-Muhtaj, 2005: 13](#)) This right is universal, meaning that even though everyone is born with a different skin colour, gender, language, culture, and nationality, they still have these rights. ([Smith, et.al. 2008:11](#))

According to Robert Audi, as quoted by Majda El-Muhtaj, human rights are principles that arise from values that become rules or norms governing human behavior concerning fellow human beings. The rights themselves are divided into 2: first, natural rights emphasize the natural human being and are inseparable from the human dimension of humanity (in alienable rights). Second, legal rights are the rights of a person in his capacity as a legal subject that are legally stated in the applicable law. Even though the two rights look different, that does not mean they are separate. Legal rights must have a fundamental framework in the form of philosophical values in the framework of human nature woven into natural rights. Natural rights require formal legality to be applied concretely in life.

Nonetheless, natural rights are attached to a certain status. If the class changes or changes, then the right changes or changes. Rights will be different when the situation shifts so that when faced with another party, the rights are related to who the person is dealing with and interacting with. ([El-Muhtaj, 2005](#))

## B. METHODS

The focus of this study is the reason for the change in the Implementation of the caning law in Aceh after the issuance of Governor Regulation Number 5 of 2018. This research is normative juridical research. namely legal research

conducted by researching and reviewing library materials. Especially regarding books and journals that discuss caning in Aceh. With data sources, interviews with parties competent in the issue of caning punishment, such as clerical prosecutors and scholars. The approaches and methods of this research are normative juridical and empirical juridical approaches. The practical juridical approach is used as a supporting approach in this study.

### C. RESULTS AND DISCUSSION

Initial arrangements regarding *'uqubat* caning in Qanun No. 6 of 2014 not only talk about the number of lashes but also explain the provisions regarding the procedure for caning (Iqbal, Attarikhul, 2020: 153-175), starting from the size of the whip, the degree of the caning, and the place of the caning carried out on pregnant women, this provision is contained in Article 33: (1) Caning punishment is carried out in a place that can be witnessed by many people in the presence of the Public Prosecutor and appointed doctor; (2) The caning is carried out with a rattan with a diameter of 0.75 to 1 (one) centimeter, a length of 1 (one) meter and does not have a double/split end. (3) The caning is carried out on any part of the body except the head, face, neck, chest, and genitals. (4) The level of blows or lashes is not to injure. (5) The male convicts were whipped in a standing position without support, without being tied up, and wearing thin clothes that covered their private parts. Meanwhile, women are in a sitting position and are covered with a cloth above them. (6) Caning for a pregnant woman is carried out after 60 (sixty) days after giving birth.

The Implementation of *uqubat* caning in Aceh has experienced various changes in the procedures for its Implementation. The legal umbrella journey regarding the Implementation of caning as described above also continued with the issuance of the Regulation of the Governor of Nanggroe Aceh Darussalam Province Number 10 of 2005 concerning Technical Instructions for the Implementation of Caning. The regulation's material regulates various technical matters at the time of the execution of caning as a form of punishment for carrying out Islamic Sharia in Aceh. Governor Regulation Number 10 of 2005 still contains material for execution in the open, as in Article 4: Article 4 (1). Caning is carried out in an open place which can be witnessed by many people in the presence of prosecutors and doctors. (2) Caning is carried out on a pedestal measuring at least 3 x 3 meters. (3) The distance between the convict and the whip is between 0.70 and 1 meter with the whip standing to the left of the convict. (4) The whipping was carried out on the convict's back (shoulder to hip). (5) The

closest distance between the place where the caning was carried out and the witness community is 10 meters. ([Iqbal, Attarikhul, 2020: 153-175](#))

After experiencing various advances in the Implementation of Islamic Sharia in Aceh, the legal framework has undergone rapid changes. It is getting stronger with the existence of a formulation that can be referred to more systematically, namely the existence of Qanun Number 7 of 2013 concerning *Jinayat* Procedure Law and Qanun Number 6 of 2014 concerning *Jinayat* Law. With the issuance of these two legal products, the reference will be easier and the same as in Indonesian criminal law, namely the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP). ([Bahri, 2012: 358-367](#))

Based on the rules contained in Qanun Number 7 of 2013 concerning the *Jinayat* Procedure Law regarding the Implementation of caning punishment, the Implementation is carried out as stated in Article 262, namely: (1) Caning punishment is carried out in an open place and can be seen by those present. (2) Children under the age of 18 (eighteen) may not be able to carry out the caning as referred to in paragraph (1). (3) Caning punishment is carried out on a pedestal (field) measuring at least 3 x 3 meters. (4) The distance between the place where the convict stands and the witness community is at least 12 (twelve) meters. (5) The Prosecutor, the supervising judge, the appointed doctor, and the whipping officer stand on or around the pedestal, as referred to in paragraph (3), while the caning is in progress. Article 262, paragraph 1 shows that the place of Implementation has not changed as contained in the previous regulation, namely Governor Regulation Number 10 of 2005 concerning technical instructions for carrying out caning punishment. Caning is a kind of corporal punishment imposed on the law by whipping the body. The whip is a bat made of rattan with a diameter of 0.75 to 1 (one) centimeter, is 1 meter in length, has no double ends, and has a handle at the base. The authority to carry out caning punishments based on Qanun number 7 of 2013 concerning *Jinayat* Procedural Law is the authority and responsibility of the Prosecutor. Caning in Aceh is carried out after a decision is made.

Postponement of the execution of a sentence can only be carried out based on a stipulation from the Head of the State Prosecutor's Office if things endanger the convicted person after receiving a statement from an authorized doctor. The Prosecutor executed the caning sentence by preparing the place for the caning, determining the time and appointing the whip. A separate caning is a *wilayatul hisbah* officer who is assigned to whip the convict. Whippers are also required to wear head coverings made of cloth. In addition, it is carried out on a field that measures at least 3 x 3 meters. The distance between the convict and the whip is

between 0.70 meters and 1 (one) meter with the whip standing to the left of the convict. The distance between the whipper and the closest witness is 12 (twelve) meters. The Prosecutor, the Superintendent Judge, the appointed Doctor, and the whipping officers stand on or around the 3 x 3 meter pedestal (stage) while the caning is in progress. The Supervisory Judge is obliged to warn the Prosecutor to postpone the Implementation of *'uqubat* caning if the provisions above are not met. The lashes that were carried out on the limbs of the perpetrators of the fingering were not justified on the limbs such as the head, face, neck, chest and genitals, in other words, they only covered from the shoulders to the hips. At the time of carrying out the whipping *uqubat* the convict is required to wear a thin shirt that covers the nakedness that has been provided. Concerning his own position, this did not go unnoticed, where the male convict stood without support while the female convict sat.

Nevertheless, based on the request of the convict or doctor, the convict can be whipped while sitting on his knees or standing with support, but he must be accessible. The whipper can make a stance with the distance between the left and right feet at most 50 cm. The whipper is allowed to bend his arm and swing the whip sideways or backward, and the position of the tip of his hand is not higher than the shoulder. If the whipper cannot finish his work, another whipper will continue the whipping. The caning punishment was performed by whipping based on orders and instructions from the Prosecutor. During the process of carrying out the caning sentence, it can be temporarily stopped with various provisions that have been set forth in the *Jinayat* Procedural Law. The requirements include, first, if there is an order from the doctor on duty based on medical considerations during the process. Second, the convict fled the place of execution of the caning sentence before the end of the process of carrying out the caning sentence. Before carrying out the caning sentence, the Prosecutor must bring the convict to undergo a medical examination. In addition, the Prosecutor is also required to notify the family or *the keuchik* which is submitted by no later than 1 (one) day before the examination date and the caning date. After all the processes of carrying out the caning sentence were carried out, the Prosecutor made an official report on the caning.

Suppose the execution of the caning sentence is incomplete. In that case, the reasons for the postponement or temporary suspension and the number of lashes that have been carried out and those that have not been carried out are written in the minutes. Copies of the minutes were also handed over to the convict or to his family. As proof that the convict has served all or part of the sentence. Nevertheless, the latest legal product which has experienced various

pros and cons in society due to significant changes regarding the place of execution of caning punishment, has been formed.

Based on the contents of the Governor's regulation Number 5 of 2018 concerning the Implementation of the *Jinayat* Procedural Law, the Article governing the Implementation of caning punishment has undergone an overhaul as contained in Article 30, namely: Article 30 (4) Caning is carried out in an open place and can be seen by people present; (5) Children under the age of 18 (eighteen) years of age may not attend the caning as referred to in paragraph (1). (6) Open places as referred to in paragraph (1) are located in Correctional Institutions/Detention Centers/*Rutan* Branches; (7) Implementation of '*uqubat* caning in Correctional Institutions or Detention Centers/Detention Centers as referred to in paragraph (3) is carried out after the existence of a cooperation agreement between the Government of Aceh and the Regional Office of the Ministry of Law and Human Rights of the Republic of Indonesia. (8) Further provisions regarding technical guidelines for implementing caning punishment in correctional institutions/detention centres/detention centres are regulated in a written Cooperation text. This notification must. (9) Before the existence of the cooperative document, as referred to in paragraph (4), the caning punishment was carried out in another open place. Based on the material in the Article above, it is clear that this regulation has changed and moved the previous Implementation to an open place without mentioning or limiting the open place itself. There is a content of rules explaining the intended open place, as in paragraph 1, which is described further in paragraph 3 regarding open places in question, which are Correctional Institutions/Detention Centers/*Rutan* Branches.

So as a result of this confirms that Governor Regulation Number 5 of 2018 has revised the previous rules starting from Qanun Numbers 11 to 14 as well as Governor Regulation Number 10 of 2005 Article 4 paragraph 1 concerning caning punishment carried out in an open place where people can witness many and also in Article 262 paragraph 1 of Qanun Number 7 of 2013 concerning *Jinayat's* Procedure Law regarding caning carried out in an open place and can be seen by those present. 1. Implementation of Caning Punishment in Governor Regulation Number 5 of 2018 The implementation of Islamic Sharia in Aceh itself, when it was first implemented, drew a lot of criticism, not only from within the country as well as various foreign media highlighting the continuation of the *Jinayat* law in Aceh. This is a form of rejection of the application of Islamic Sharia in Aceh which is echoed for various reasons such as being considered contrary to international law or violating human rights provisions. Regarding the Implementation of separate canings carried out in open places such as mosques, the Governor's Regulation Number 5 of 2018 has undergone an overhaul with an



explanation or emphasis on available places for the Implementation of caning punishments to be held in Correctional Institutions. The relocation of the area of Implementation has become a massive spotlight, starting from the discourse of this rule until the issuance of this legal product; even now, if this material is raised for a more in-depth study, it still reaps enormous enthusiasm.

With advances in technology and social media, many people have also expressed their various arguments regarding the issuance of Governor Regulation Number 5 of 2018 concerning the Implementation of Caning in Correctional Institutions. Therefore, it is necessary to study and see the reasons behind the existence of this regulation, which has become a pro and con in society. Through monitoring on the *acehprov.go.id* website, the Governor of Aceh, Irwandi Yusuf, emphasized that the Implementation of the caning as regulated in Governor Regulation Number 5 of 2018 concerning the Jinayat Procedural Law does not conflict with the Islamic Sharia Qanun because it only controls the technical Implementation of the caning. The place where the caning was carried out was moved to Prison, but the general public could still come to witness the caning, except for minors.

The emphasis that can be underlined is "By not reducing the sentence, I want to make the implementation of punishment orderly, without the presence of children, to be more solemn and the public is also not prohibited from witnessing caning" ([Bahri, 2012](#)). Governor Regulation Number 5 of 2018 is a derivative of Qanun Number 6 of 2014 concerning *Jinayat* Law. Some things need further confirmation, such as the place for caning punishment in the open, namely in correctional institutions (prisons).

The Implementation of caning punishment has the purpose of punishment. The general purpose of punishment in Islam is included in the main objective of Islamic law, namely to protect five main things: religion, life, honour, property, and lineage ([Khotimah, 2014](#)). More generally, Islamic law aims to preserve benefits and avoid harm. In particular, the scholars stated that the purpose of punishment in Islamic law is for prevention (deterrence) and development (reformation). The issuance of Governor Regulation Number 5 of 2018 concerning the Implementation of caning punishment in correctional institutions has become a problem that has raised pros and cons in society.

Based on the contents of the Governor's regulation Number 5 of 2018 concerning the Implementation of the *Jinayat* Procedural Law, the Article governing the Implementation of caning punishment has undergone an overhaul as contained in Article 30, namely: caning punishment is carried out in an open place and can be seen by those present and the execution of the sentence The

whipping as referred to in paragraph (1) may not be attended by children under the age of 18 (eighteen) years.

The open place as referred to in paragraph (1) is located in a Correctional Institution/Detention Center/*Rutan* Branch; (7) The implementation of caning punishment in Correctional Institutions or Detention Centers/Detention Centers, as referred to in paragraph (3) is carried out after the existence of a cooperation agreement between the Government of Aceh and the Regional Office of the Ministry of Law and Human Rights of the Republic of Indonesia. (8) Further provisions regarding the technical guidelines for implementing caning punishment in correctional institutions/remand centres/detention centres are regulated in the cooperation text.

Based on the material contained in the Article above, it is clear that this regulation has changed and moved the previous Implementation in an open place without mentioning or limiting the open place itself. Then, there is a content of rules explaining the intended available place, as in paragraph 1, which is explained further in paragraph 3 regarding the open locations in question: Correctional Institutions/Detention Centers/*Rutan* Branches. So at this moment confirms that Governor Regulation Number 5 of 2018 has revised the previous rules starting from Qanun Numbers 11 to 14 as well as Governor Regulation Number 10 of 2005 Article 4 paragraph 1 concerning caning punishment carried out in an open place that people can witness many and also in Article 262 paragraph 1 of Qanun Number 7 of 2013 concerning *Jinayat's* Procedure Law regarding caning carried out in an open place and can be seen by those present. The Implementation of Caning Punishment in Governor Regulation Number 5 of 2018 The implementation of Islamic Sharia in Aceh itself, when it was first implemented, drew a lot of criticism, not only from within the country as well as various foreign media highlighting the continuation of the *Jinayat* law in Aceh.

This is a form of rejection of the application of Islamic Sharia in Aceh which is echoed for various reasons such as being considered to be contrary to international law or violating human rights provisions. Regarding the Implementation of separate canings, which have so far been carried out in open places such as in the courtyard of a mosque, the Governor's regulation No. 5 of 2018 has undergone an overhaul with an explanation or emphasis on open places for the Implementation of caning punishment to be held in Correctional Institutions.

Society is an aspect that plays a significant role in the Implementation of Islamic Sharia in Aceh. The public's view of implementing Islamic Sharia as a matter of money deserves a more in-depth review. Several points of emphasis

are obtained based on the approach taken with the community. The community strongly agrees with the application of Islamic Sharia in Banda Aceh as a reference in the application of criminal law and also understands that this application is not perfect. Of course, the current application begins the following increasingly perfect stages.

Nevertheless, the enthusiasm of the community in carrying out and implementing it hopes that the application of Islamic Sharia in Banda Aceh is increasingly moving towards a comprehensive stage or all aspects that have not been contained in the legal umbrella for the application of Islamic Sharia can be realized, for example regarding *qishas* which have not been regulated in the Aceh *Jinayat* Law Qanun. The public's enthusiasm for the Implementation of Islamic Sharia in Banda Aceh can be seen from their willingness to attend the execution of canings in open places such as mosques. The implementation process so far has also received positive views from the public. The community felt a change from the Implementation of caning in the open. This can be seen from public exposure regarding the number of fingernail perpetrators arrested where the caning was carried out.

In contrast, when confronted with the Implementation of caning punishments carried out in correctional institutions, many people refuse to deliberately attend the process of carrying out caning sentences in prisons. This is based on several factors. First, if the Implementation is in prisons then of course to enter and watch it requires certain conditions that must be completed, this is very different from the atmosphere outside prisons such as in a mosque where people can see or watch without any specific conditions. Second, suppose the Implementation is carried out in a prison. In that case, the people who want to watch must of course waste a little time going to the prison to witness the caning process, and this is felt to be a bit heavy for the community to go to the prison to witness the caning process. Because the process of caning is not carried out to be shown, but rather the concept and purpose of sentencing.

Meanwhile, if the Implementation is in another open place, the community can see it by itself without planning it first. Third, the number of spectators may be limited due to the limited space in prisons. This is also a factor in the community's preference for caning to be carried out in the open. Based on Governor Regulation Number 5 of 2018, the Implementation of caning punishment which initially took place in an open place such as a mosque was transferred to a Community Institution/*Rutan*/Detention Center branch. Regarding this regulation itself, the community is very diverse in terms of knowing the extent of the socialization of this regulation. Some don't even know

that this regulation has existed or has been issued, but some still think that this is still at the discourse stage, this is also supported by the Implementation of caning in open places such as in mosques even after the regulation was issued. The law passed by the Governor drew responses from many who disagreed with the changes, especially regarding the transfer of the place of execution for caning.

Based on the results of interviews conducted with the community, the reasons or causes for the relocation of the place for carrying out caning punishments, which were initially in the open and became provisions for Implementation in Correctional Institutions/Detention Centers/*Rutan* branches, the general public only knows through the mass media that the Implementation has been moved to prisons. *Lapas* due to concerns that it will create fear for tourists and investors if the Implementation is shown and watched by a large audience. Regarding this matter, the community strongly rejects it because the Implementation of Islamic Sharia that has been carried out so far is expected to move forward and get better and not backward, an implementation that has so far been inseparable from the presence of spectators who are still children. So, in this case, some people agree that children are not yet fit to be shown the execution of the caning. However, some say this is the most appropriate time to educate and teach children. Implementing caning punishment is expected to be a lesson for a society that cannot be separated from children.

However, suppose this is the reason that causes the transfer of the Implementation of caning punishment to prisons. Apart from that, the community also has the view that this regulation was made to cover up the teachings of Islamic Sharia. It is feared that this regulation will have the effect that Islamic Sharia is only carried out for formality, and the public cannot fully experience the Implementation of caning as a form of application of Islamic Sharia. The view as if the law of selective guessing also emerged regarding this regulation, namely the fear that the existence of this regulation was to protect if there were perpetrators of finger-picking from officials so that the Implementation could not be witnessed by the general public as has been done so far.

Implementing caning in an open place is considered to have a clear objective by presenting a deterrent effect for the perpetrator, namely the shame of being watched by the general public and, of course, being a deterrent for the community from committing the same act. With the process of caning in the open, the public can find out the effect of the finger action that has been Qanun if each individual carries it out. Therefore, it is considered that caning punishment, if it is carried out in prisons, will eliminate the deterrent effect for

the perpetrators, namely the moral sanction by presenting a sense of shame because the general public is watching it has disappeared.

Likewise, with the aim of prevention in the punishment of caning punishment itself, the community cannot make this a lesson and prevent them from committing the crime because of the community's lack of enthusiasm. Until now, the Implementation of caning punishment has still been carried out in the open, such as at the Syuhada Lamgugob Mosque some time ago ([Iqbal, 2020](#)). This also indicates that Governor Regulation Number 5 of 2018 concerning the Implementation of caning punishment in Correctional Institutions is still problematic because the Implementation is still in the open. This, of course, requires further consideration. This is also the case with the community's views, which generally consider this regulation inappropriate and require a more in-depth review so that regulation is accepted in society and does not generate judgments as if the issuance of the regulation is a total of politicization within it.

#### D. CONCLUSIONS

The *qanun jinayat* in the Province of Nanggroe Aceh Darussalam, in terms of material law, is influenced by Islamic law both in terms of the form of finger/crime as well as in terms of *'uqubah* (sanctions used), although the formal law of the *qanun* for the *jinayat* procedure is heavily influenced by the Criminal Procedure Code, with some differences. *Qanun Jinayat Aceh*, both in terms of material law and formal law, has contributed to the renewal of criminal law in Indonesia, both material and ceremonial law, even though its nature is only for people who are in the Province of Nanggroe Aceh Darussalam.

Implementing caning in an open place is considered to have a clear objective by presenting a deterrent effect for the perpetrator, namely the shame of being watched by the general public and, of course, being a deterrent for the community from committing the same act. With the process of caning in the open, the public can find out the effect of the finger action that has been *Qanun* if each individual carries it out. Therefore, it is considered that caning punishment, if it is carried out in prisons, will eliminate the deterrent effect for the perpetrators, namely the moral sanction by presenting a sense of shame because the general public is watching it has disappeared.

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