

## DETERRING OR ENTERTAINING? Can the Caning Punishment Execution in Aceh Meet its Objective?

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### Abstract

*This article probes whether the implementation of the caning sentence in Aceh may reach its objective of deterrent effect given the way the execution conducted. From the field observation, the flogging was not much different from entertainment. The mass gathered in one place to watch the execution; they include children, street vendors, researchers, and journalists. There was a stage, VIP seats for guests, loudspeakers, administrative arrangements, and the caning punishment procession. Using a qualitative research approach with an in-depth interview method, it seeks to understand how the community involved in the caning execution was and how the government was designed the sentence as such and why. It finds that while the government saw the caning law as the implementation of Islamic sharia in Aceh, the people perceived its execution more as entertainment. The government has used the caning sentence execution as a demonstration of power, often for a political gain, because it emphasizes its presence not only as of the guardian of shari'a for Acehnese but also as a devout politician who keeps his political promises. Yet, little of this punishment deterrent effect conveyed to the society due to the way it was staged and executed.*

**Keywords:** Qanun Jinayat, Aceh, Caning Punishment, Stage, Entertainment, Deterrent Effect.

### A. Introduction

The Qanun Jinayat is the Islamic Criminal Law that has been implemented in Aceh since 2014. Aceh is the only province in Indonesia that implements Islamic criminal law. The Qanun Jinayat regulates acts which are prohibited by sharia such as *khamar* (alcohol consumption), *maisir* (gambling), *khalwat* (certain

intimacy outside married), *ikhtilat* (intermingling between women and men), *liwath* (homosexuality), *musahaqah* (lesbianism), *qadzaf* (false accusation), adultery, sexual harassment, and rape. Punishments include caning, fines, and imprisonment.<sup>1</sup>

There is some research related to caning in Aceh; yet, only a few has examined the impacts of its implementation to the offenders and society, viz. deterrent effect, as well as the local government politics of shari'a. A case in point was a study conducted by Rizky Rullya Ananda titled "Community Perceptions of the Implementation of Caning Law in Banda Aceh City."<sup>2</sup> This paper used a symbolic interactionism approach which states that human communication took place through the exchange of symbols and the meaning of symbols in which perceptions were influenced by understanding and knowledge of a person or group (community) through a series of stages of thought that developed in a society. These series of stages of thought were influenced by social background and culture that shapes self-concepts through a process of developing socialization of values and norms.<sup>3</sup> This study found a positive impact of caning law for the Cot mosque communities in Rukoh, Syiah Kuala because the caning law was not only created a deterrent effect but rather provided educational, moral, and social values of religion in people's lives.<sup>4</sup>

Another study of caning was carried out by Junaidisyah Sanja entitled "Deviations in the Criminal Execution of caning A Research in the Jurisdiction of the

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<sup>1</sup> Fadlia, Faradilla., and Ramadani, Ismar, "The Qanun Jinayat Discriminates Against Women (Victims of Rape) in Aceh, Indonesia" (Journal of Southeast Asian Human Rights, 2018), 450.

<sup>2</sup> Ananda, Rullya, Rizky, "Persepsi Masyarakat Terhadap Pelaksanaan Hukum Cambuk Di Kota Banda Aceh. Faculty of social and political sciences" (Syiah Kuala University, 2016), 78, <https://etd.unsyiah.ac.id/baca/index.php?id=26016&page=1>.

<sup>3</sup> Ibid, p.13.

<sup>4</sup> Ibid. p. 13.

Court of Justice, Meulaboh and Jantho."<sup>5</sup> The study found that there has been irregularity in the implementation of the caning law in the form of caning carried out across the back boundary (shoulder to hip) and the presence of many children under the age of 18.<sup>6</sup> Another study related to caning, but from a legal perspective, was conducted by Madiasa Ablisar with the title "The Relevance of Caning Penalty as One Form of Criminalization in Criminal Law Reform". This study saw the presence of Islamic law as a renewal of criminal law in Indonesia as part of guarantees of religious freedom.<sup>7</sup>

Moreover, the research on the Caning of Non-Muslim perpetrator of *Jarimah* (criminal act in Islamic Law) in Nanggroe Aceh Darussalam was conducted by Sudirman Suparmin. This study analyzed the Sharia Court Decision No. 01/JN/2016/ MS.TKN). It concluded that the application of the Jinayah Qanun (Islamic criminal by law procedure) which also applied to non-Muslims certainly was by the common good and to create peace of society so that the purpose of implementing the Qanun Jinayat could be carried out by properly and perfectly.<sup>8</sup>

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<sup>5</sup> Sanja, Junaidisyah, "Penyimpangan Terhadap Eksekusi Pidana Cambuk (Suatu Penelitian di Wilayah Hukum Mahkamah Syar'iyah Meulaboh dan Jantho)" (Faculty of Law, Universitas Syiah Kuala 2016), 92, <https://etd.unsyiah.ac.id/baca/index.php?id=23030&page=1>.

<sup>6</sup> Sanja, Junaidisyah, "Penyimpangan Terhadap Eksekusi Pidana Cambuk (Suatu Penelitian di Wilayah Hukum Mahkamah Syar'iyah Meulaboh dan Jantho)" (Faculty of Law, Universitas Syiah Kuala 2016), 92, <https://etd.unsyiah.ac.id/baca/index.php?id=23030&page=1>.

<sup>7</sup> Ablisar, Madiasa, "Relevansi Hukuman Cambuk Sebagai Salah Satu Bentuk Pemidanaan Dalam Pembaharuan Hukum Pidana," *Jurnal Dinamika Hukum*, Faculty of Law, Jenderal Sudirman University (2014): 280.

<sup>8</sup> Suparmin, Sudirman, *Hukuman Cambuk Terhadap Non Muslim Pelaku Jarimah Di Nanggroe Aceh Darussalam (Studi Putusan No. 01/JN/2016/MS. TKN)*, *Journal Analytical Islamica* (2017): 146.

Another interesting study conducted by Siregar<sup>9</sup> through a survey on the implementation of sharia law in Aceh showed that 61.9% of respondents strongly agree, and 33.7% agree, and the remaining 6% of respondents disagree with the establishment of sharia in Aceh. Furthermore, Siregar<sup>10</sup> found that the people of Aceh were ready for more serious sanctions, as many as 74.6% of respondents agree with local law regarding the punishment of cutting off hands for thieves and 81.9% of respondents agree to the death penalty for murderers. Even the punishment of stoning and caning for residents who had sex outside of marriage has the support of 90% of respondents in Aceh. Those studies of the caning law had been carried out, both in terms of public perception and legal perspective.<sup>11</sup>

Last but not the least, the study on the implementation of caning law in the public conducted by Muhammad Siddiq Armia.<sup>12</sup> This study investigated corporal punishment through caning in Aceh, Indonesia. Where the caning was carried out openly and easily witnessed by many people, including children. The research findings showed that the caning did not guarantee the deterrent effect on the defendant because the laws regarding gambling and drinking did not accommodate rehabilitation mechanisms. Furthermore, this study also looked at the adverse effects of corporal punishment on children who attended the caning process,

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<sup>9</sup> Siregar, Basri, Hasnil. "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia." *Journal of Law and Religion* (2009): 157-158.

<sup>10</sup> *Ibid*, p. 157-158.

<sup>11</sup> Siregar, Basri, Hasnil. "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia." *Journal of Law and Religion* (2009): 157-158.

<sup>12</sup> Armia, Siddiq, Muhammad. "Public Caning: Should it be Maintained or Eliminated? (A Reflection of Implementation Sharia Law In Indonesia)." *QIJIS: Qudus International Journal of Islamic Studies* (2019) Volume 7, Number 2, DOI: 10.21043/qijis.v7i2.4974.

where there was a possibility of imitating this process in their future lives.

Although there were similarities in seeing the deterrent effect in the caning legal procession, it was different from the study above, this paper aimed to understand the caning law from a different perspective than previous studies which examines the caning law as a part of efforts to reinforce and implement Islamic law in Aceh. The implementation of the caning law expected to provide lesson learned and deterrent effects for the community. Yet, what happens in the field was far from the original goal of the caning law and was considered more as an entertainment by the community than as a lesson learned or as a deterrent effect. This study used qualitative methods with observation, in-depth interviews, and informal interviews. This research was conducted in two mosques where the caning law was implemented at Teuku Umar Mosque, Setui, Banda Aceh, and Jantho Great Mosque, Aceh Besar.

This paper argues that caning was not only a form of punishment but also seen as evidence of the achievement of government performance that the government had implemented Islamic law. Meanwhile, for the community, the application of the caning law was seen as entertainment. Besides the street vendors and local people, this caning execution also attended Malaysian tourists who were visiting Banda Aceh specifically for watching the execution.<sup>13</sup> In addition to the presence of the spectator which enlivened the caning legal procession, a set of procedures for implementation also made this procession like an entertainment show.<sup>14</sup> The event

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<sup>13</sup> Fitriady, Eddy, "Eksekusi Hukuman Cambuk di Aceh Jadi Tontonan Turis Malaysia," <https://www.tribunnews.com/regional/2018/04/20/eksekusi-hukuman-cambuk-di-aceh-jadi-tontonan-turis-malaysia>,

<sup>14</sup> Afif, "Hukum cambuk di Aceh jadi daya tarik wisatawan Malaysia," <https://www.merdeka.com/peristiwa/hukum-cambuk-di-aceh-jadi-daya-tarik-wisatawan-malaysia.html>.

procession refers to the operational standards that were established by the Islamic Sharia Agency that the stage made either permanently or not attended by government officials as VIP guests.

The discussion of this paper covers methods, time, and place of the execution of caning. In addition, it also discusses the actors involved, the composition of the program, and the operational standard of implementation. Finally, it explains what these all means for the implementation of Islamic criminal law in Aceh by examining the perceptions of government and the society towards the execution of caning sentences.

## **B. Qanun Jinayat and Caning Sentence in Aceh**

### **1. Sentencing and Its Objective in Islam**

The caning is one form of punishment in Islamic law that applied in Aceh as an implementation of the privileges of the Province of Aceh through Law No. 44 of 1999 concerning the implementation of the Privileges of the Special Province of Aceh which was then followed by Regional Regulation No. 5 of 2000 concerning the implementation of Islamic law.<sup>15</sup> The Qanun regulations include Aceh Province Qanun No. 12 of 2003 concerning “*Khamar*” (alcohol consumption), Aceh Province Qanun No. 13 of 2003 concerning “*Maisir*” (Gambling) and Qanun of Aceh Province No 14 of 2003 concerning “*Khalwat*” (certain intimacy outside married). After the Helsinki MoU, with the granting of broader authority to the Aceh government through the Law on the Governing of Aceh, The Qanun Jinayat was born as Qanun Aceh Province No. 16 of 2014 with more comprehensive Islamic criminal law provisions. However, The Qanun Jinayat is considered controversial in Indonesia because Islamic law had only

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<sup>15</sup> Alfitri, “Konflik Hukum antara Ketentuan Hukum Pidana Islam dan Hak-Hak Sipil? Telaah Konsep HAM dan Implementasi Ratifikasi ICCPR dan CAT di Indonesia,” *Jurnal Konstitusi*, Vol. 7, No. 2 (2010): 124.

regulated civil law; now, the Qanun law also governs Islamic criminal law for the first time in Indonesia.

Criminal acts or *Jarimah* in Islamic law encompass three crimes or offences namely *Qisas*, *Hudud*, and *Ta'zir*. *Hadd* and *Hudud* (plural) interpreted as prevention, obstacles and prohibitions. *Hudud* considers it as a right of God and technically refers to sanctions that determined the form and the amount of punishment in the Qur'an and Hadith. *Qisas* is the right of the family or guardian (legal guardian) that related to retribution, for instance, in case of murder sentence, *Qisas* gives the family of the victim the right to request the death penalty for murderers if approved by the court. *Ta'zir* is a sanction in the form of punishment not explained in the Qur'an and the Hadith because it is submitted to wisdom and determined by the authorities.<sup>16</sup>

According to Qanun Aceh No. 6 2014, The Qanun Jinayat is a law that regulates criminal acts or *Jarimah* and *Uqubat*. *Uqubat* is a sentence handed down by a judge against perpetrators. *Hudud* is a *Uqubat* referring to sanctions whose form and number of sentences have been determined in the Qanun Jinayat explicitly. Meanwhile, *Ta'zir* is a type of *Uqubat* that is determined in the Qanun Jinayat in which the form of punishment is selectable, and the amount of the punishment is in the highest or lowest limit.<sup>17</sup> *Jarimah* is an act that is prohibited by sharia as per article 3(1) of the Qanun. Types of crimes or offences prohibited by sharia in the Qanun are *Khamar* (alcohol consumption), *Maisir*

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<sup>16</sup> See Alfitri, "Can the Requirements of Shariah Law regarding Criminal Punishments be Interpreted in a Way that is Compatible with the ICCPR and Cat," *Indonesian Journal of International Law*, Vol. 7, No. 1 (2009): 104-106; Sidahmed, Salam, Abdel, "Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women," 28:2, *British Journal of Middle Eastern Studies*, (2001): 187.

<sup>17</sup> Qanun Aceh Nomor 6 Tahun 2014 about Jinayat Law.

(gambling), *Khalwat* (certain intimacy outside married), *Ikhtilat* (intermingling between women and men), *Liwath* (homosexuality), *Musahaqah* (lesbianism), *Qadzaf* (false accusation), Adultery, sexual harassment, and rape. Punishments include caning, fines, and imprisonment.<sup>18</sup>

The form and number of sentences for the violations of *Jarimah* are regulated in Chapter IV of the Qanun. Violation against *Jarimah Khamar*, for example, is stipulated in article 15: (1) Anyone who deliberately drunk *Khamar* threatened with 'Uqubat Hudud whip of 40 (forty) times. (2) Any person who repeated the act referred to in paragraph (1) threatened with 'Uqubat Hudud whip of 40 (forty) times plus' Uqubat Ta'zir whip at most 40 (forty) times or a maximum fine of 400 (four) hundred grams of pure gold or a maximum of 40 (forty) months imprisonment. Hence, there are three forms of punishment given for this offence namely, caning, imprisonment, and fines. One caning is equal to 1 month in prison and 100 grams of gold.<sup>19</sup>

The procedures and implementation of the Qanun Jinayat are regulated by the Procedural Bylaw of Islamic Criminal. Although in the Qanun Jinayat, the caning law is divided into Hudud and Ta'zir, there is no difference in practice; what distinguishes between the two is only the amount and formulation of sanctions. Hudud is a single sanction and has no maximum and minimum limits while Ta'zir has maximum and minimum limits. According to the Procedural Bylaw of

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<sup>18</sup> Fadlia, Faradilla., and Ramadani, Ismar, "The Qanun Jinayat Discriminates Against Women (Victims of Rape) in Aceh, Indonesia", *Journal of Southeast Asian Human Rights*(2018): 450.

<sup>19</sup> Qanun Aceh Nomor 6 Tahun 2016, Bab IV Jaimah dan Uqubat, Part One:9-20. See Bahiej, Ahmad. "Studi Komparatif terhadap Qanun Aceh. Tentang Hukum Jinayat dan Enakmen Jenayah Syariah Selangor Malaysia." *Jurnal Ilmu Syari'ah dan Hukum* (2014). Vol. 48, No.2: 343-349.



Islamic Criminal, caning punishment is carried out with three provisions: first, it is done in public and open space so that it can be witnessed by many people and attended by prosecutors and doctors; second, it is done on the stage with a minimum size of 3 X 3 meters with the distance between the convict and the spectators is 12 meters; third, it should not be witnessed by children and people under the age of 18 years.<sup>20</sup>

Based on article 2, Chapter II Principle and Space of the Qanun, there are six principles of Islamic Criminal Law, namely: Islam, Legality, Justice and Balance, Prosperity, Protection of Human Rights, and lesson learned for the community (*tadabbur*). Islam denotes the objectives of punishment in Islam.<sup>21</sup> There are five objectives of punishment in Islam: first, retaliation (*al-Jaza'*) which means that the perpetrators of criminal acts need to be punished in retaliation to what has been done. Under the concept of justice, someone gets retribution commensurable to what has been done.<sup>22</sup> Second, prevention (*al-Zajr*) which is aimed at preventing a criminal offense from happening again. There are two aspects to this objective, namely general prevention and special prevention. General prevention is aimed at the community as a whole, so people are not to commit a crime for fear of punishment. Meanwhile, special prevention is intended for the perpetrators of the crime itself from the

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<sup>20</sup> Akbar, Khairil. "Tata Laksana Hukuman Cambuk dalam Islam." <https://www.acehtrend.com/2018/04/22/tata-laksana-hukuman-cambuk-dalam-islam/>, accessed on 16 May 2020."

<sup>21</sup> Ocktoherrinsyah, "Tujuan Pemidanaan dalam Islam." *Jurnal In Right: Jurnal Agama dan Hak Asasi Manusia*, 2017). Vol. 1 No. 1: 34.

<sup>22</sup> Majid, Ab, Zuhdi, Mahmood. "*Bidang Kuasa Jenayah Mahkamah Syariah di Malaysia*." Kuala Lumpur: Dewan Bahasa dan Pustaka (2001): 409.

possibility of repeating the same crime.<sup>23</sup> Third, recovery/correction (*al-Islah*) which is aimed at recovering the convict from the desire to commit a crime. Fourth, restoration (*al-Isti`adah*) which is a method that involved the warring parties to repair the damage caused by criminal acts through dialogue and negotiations between them.<sup>24</sup> Fifth, atonement (*at-takfir*), which looks at the afterlife dimension in Islam; when a man commits a crime, he is not only charged with responsibility/punishment in the world but also accountability/punishment in the afterlife.<sup>25</sup>

## 2. The Place of the Caning Procession

The place of the caning execution is usually in a mosque or other public places such as the Art Building in Central Aceh. Based on article 30(1), Whipping Uqubat is carried out in an open place and could be seen by those present.<sup>26</sup> There were two places observed in this paper first the Jantho mosque and the second Teuku Umar mosque.

There are several differences between these two places: first, the Jantho mosque located in Jantho (the capital city of Aceh Besar Regency), which is far from the settlements and crowds. Consequently, at the time of execution on 11 September 2017, the number of audience who attended was small. Some journalists were present and reported the execution. Second, the Teuku Umar mosque was located in the city center;

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<sup>23</sup> Ibid, p. 44.

<sup>24</sup> Daly, Kathleen. "Restorative Justice in Diverse and Unequal Societies", (*Law in Context: A Socio-legal Journal* (2000). Vol. 17, No. 1: 167-168.

<sup>25</sup> Ocktoherrinsyah, "Tujuan Pemidanaan dalam Islam." *Jurnal In Right: Jurnal Agama dan Hak Asasi Manusia*, 2017). Vol. 1 No. 1: 34.

<sup>26</sup> Article 30 of the Governor of Aceh Regulation Number 05 Year 2018 Concerning the Implementation of Jinayat Procedure Law.

therefore, more viewers were present at this execution, either purposefully or accidentally.



**Picture 1** shows the front side of the permanent stage prepared by the committee for the whip legal procession on 11 September 2017, at the Teuku Umar Mosque, Setui, Banda Aceh. Photo was taken by Ismar Ramadani.



**Picture 2** shows the right side of the stage: a high school student passed by, a boy was on his bicycle, a man starred at the stage. Some officers stood and several guests have filled the VIP seats behind the stage before the whip legal procession was conducted at Teuku Umar mosque, Setui, Banda Aceh. Photo is taken by Ismar Ramadani.

### **3. The Time of the Caning Procession**

Caning is usually conducted on Friday. According to Marzuki, the head of the investigative section of public order enforcers and sharia police, many people performed Friday prayers, therefore, the caning

execution is often held after Friday prayers at the mosque.<sup>27</sup> However, not all executions take place on Friday. A case in point is the caning of gay couples which was carried out on Tuesday, 23 May 2017. For the time, it is usually between after the midday prayer and before the afternoon prayer (14.00-15.30 western Indonesian time).

#### 4. The Procedure of Caning Execution

This section discusses the caning procession in two places: Raya Jantho mosque of Aceh Besar and Teuku Umar Mosque of Banda Aceh. The stage used for caning execution in Masjid Raya Jantho is made permanently even though it is smaller than the usual non-permanent execution stage. In front of the stage, there was a pink tent and chairs intended for the VIP guests, two sound systems, loudspeakers, and banners that reads "We Increase the Community Awareness through the Implementation of Sharia Islam in Aceh Besar District."



**Picture 3** shows the permanent stage in Jantho: three children were waiting for the execution on Friday, 25 August 2017. Photo is taken by Ismar Ramadani.

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<sup>27</sup> Interview with The head of the investigative section of public order enforcers and Sharia Police In Banda Aceh on August 16, 2019.

In the banner, there are three logos: the sharia police logo, the investigative section of public order enforcers' logo, and the Prosecutor's Office logo. Around the stage, there was a barrier from the white rope that could limit the space from the public to enter. Some government officials were present to witness the execution. They shook hands with each other when they first met and did not forget to take a picture, sometimes selfie picture. The sharia police, especially the female officers, prepared cake boxes to be distributed. They also tidied up the seats so that they were quite neat and reprimanded people who wanted to sit in the VIP seats. Many people wanted to sit in the VIP seats to avoid the heat of the sun.<sup>28</sup> The public was prohibited to sit on the VIP seats because of the limited number of seats for the government officials; there were about 50 seats only.

The caning execution at the Tengku Umar mosque took place on 11 September 2017. The non-permanent stage was set up in the southern part of the mosque with a roof and VIP seating of around 50 chairs with two wooden tables in the front. The VIP seats were occupied by the sharia police officers and the Prosecutor's Office and performers, including the elected mayor of Banda Aceh, Aminullah. Around the stage, a fence was installed with two accesses, the first was a small gate, the second, part of the mosque's yard, was directly connected to the mosque's room, from where the convicted and the event committee accessed the stage.<sup>29</sup> In addition to the VIP guests, journalists, health workers, and YARA (legal aid organizations) were allowed to be near the stage area. There was a separation of standing places between

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<sup>28</sup> Observation in Jantho Aceh Besar, Aceh, on August 25, 2017.

<sup>29</sup> Observation in Teuku Umar Mosque, Banda Aceh, Aceh, on September 11, 2017

male and female spectators. The officers also announced that children (under 18 years) should not witness the execution. Most children abode by the rule but there were a few children who continued to watch from a distance. In general, the implementation of the caning “*uqubat*” in Teuku Umar mosque, Banda Aceh, was more orderly and directed than that of in Jantho.

## **C. Caning Execution and the Gap between the Ideal and the Reality**

### **1. Caning execution as the Show Off of State Power**

The caning punishment is a venue for the state to show power in giving punishment to citizens. This show off power can be seen from: first, the rules and procedures for the execution of caning laws such as Standard Operating Procedures (SOPs) regarding spatial settings, invitations, and event schedules. Second, the presence of officials as the state representatives is considered not only as of the government's commitment to sharia enforcement policies but also as part of political promises. For example, Aminullah, the Mayor of Banda Aceh, has used this stage to prove his campaign promises. Third, the state glorifies the number of caning executions as a part of the achievement of The Qanun Jinayat implementation.

In each caning law execution, there were four government agencies involved, namely; first, Sharia Police and the public order enforcers (*Satuan Polisi Pamong Praja*) or well known as Sharia Police, who were responsible for preparing the ceremonies. Second, the police officers who were present to help secure the caning procession. Third, the Health Service who was tasked examining convicts before and after the caning execution and ensuring that there were no convicts who experienced health problems. Four, the Prosecutor's Office who was responsible for guiding the core program by reading court decisions, summoning

the convicted, and directing the caning execution. Besides, there was an executioner from the sharia police who was chosen to execute the convicts. According to Marzuki, the head of the investigation section of public order enforcers, the selected executioner was someone who was mentally and physically strong. All sharia police members have the opportunity to become executioners and those who were selected to become executioners were officers that met the criteria set out in Aceh Governor Regulation number 10/2015.<sup>30</sup> The identity of the executioner was kept secret by covering all parts of his body including his face.

Before performing the task, the executioner received training or direction in how to do the whipping. The training was conducted in Banda Aceh, but there was no news about it and the information about this activity also closed because the executor's identity withheld. Usually, there were more than one executioner in the implementation of the caning sentence; if one person was exhausted or could no longer carry out the execution, he would be replaced by another executioner. In addition, the caning execution was also attended by Ulama (Muslim scholars). The ulama were among the VIP guests and one of them gave "*tausiah*" (Islamic motivation) as part of the ceremony. Sometimes, the sharia police provided one of their members to give *tausiah*, and there was no specific format regarding the contents of the *tausiah*.<sup>31</sup>

The state was present to show their power through the presence of government officials as the VIP guests. According to one sharia police officer in Jantho City, inviting government officials was part of the SOPs

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<sup>30</sup> Article 48, Aceh Governor Regulation Number 05 Year 2018 Regarding the Implementation of Jinayat Procedure Law.

<sup>31</sup> Interview with Sharia Police in Aceh Besar District, Jantho on August 25, 2017

that should be observed *"Indeed, the rules are like that, we must invite government officials in every execution"*.<sup>32</sup> They include the Mayor, Regent, Head of sharia police/the public order enforcers, District Attorney's Office, and the Police. They were served during the ceremony that includes being seated in the front row with luxury wooden chairs and a table with food and drinks.<sup>33</sup>



**Picture 4** shows the VIP seats in Jantho. Sharia Police Women officers were preparing the VIP seats while waiting for the praying jummah conclude before the caning execution on 25 August 2017. Photo is taken by Ismar Ramadani.

Sometimes, The VIP guests would be asked to give a speech. A case in point was the presence of Aminullah, the Mayor of Banda Aceh, during the execution on 19 October 2018. In his speech, Aminullah explained about the implementation of the caning law is in line with the campaign promises that he delivered during the election of regional leaders (*Pilkada*) *"The implementation of the caning sentence today is in line with the vision and mission of my government and we are committed to implementing*

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<sup>32</sup> Interview with Sharia Police in Aceh Besar District, Jantho on August 25, 2017

<sup>33</sup> Interview with Sharia Police in Aceh Besar District, Jantho on August 25, 2017.



*Islamic law in Banda Aceh*".<sup>34</sup> The Islamic Sharia Agency Office, Muzakir, stated that the official was present as a proof of the implementation of caning law because the government has provided the budget for it.<sup>35</sup>

The presence of officials demonstrates the government power because on this occasion it is usual for state officials to present themselves as the committed and responsible parties for the implementation of Islamic law in Aceh. The execution of caning is also viewed as the government achievement in sharia enforcement. This achievement is in line with Aminullah's vision when conducting a political campaign in the 2017 elections namely "*The Realization of the Glorious City of Banda Aceh within the Framework of Sharia*". The government will increase the implementation of Islamic sharia in the areas of strengthening the Aqidah (Islamic faith), ethical behaviors, worship, and Islamic sharia. That is why Aminullah was present after being elected as the Mayor of Banda Aceh at the execution of the caning on 29 October 2018 and used the moment to prove his political promises during the election campaign to support the implementation of Islamic law in Banda Aceh.<sup>36</sup>

## **2. Caning Execution as a Ceremonial Event**

The caning execution arguably looks like a ceremonial event from following situations: first, there

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<sup>34</sup> Aminullah's speech/remarks during the implementation of the caning law in Banda Aceh at Teuku Umar Mosque in Banda Aceh on October 19, 2018.

<sup>35</sup> Interview with Head of Islamic Legal and Human Rights Development, the Islamic Sharia Agency (Dinas Syariah Islam/DSI), Banda Aceh, 2 July 2019.

<sup>36</sup> Putra, Irwansyah, "Eksekusi hukuman cambuk," <https://aceh.antaraneews.com/berita/49470/eksekusi-hukuman-cambuk>.

was a complete stage with loudspeakers. Second, the crowd consisted of the locals, street vendors, children, and journalists. Miko, a journalist, once said: "*the caning law in Aceh is like a concert, there is a stage and loudspeakers*".<sup>37</sup> As a former photographer, he admitted that he has visited the execution of caning several times. That said, he made the conclusion that the process of caning did look like an entertainment stage. It was attended by spectators, either purposefully or accidentally. They generally consisted of men and women, street vendors, tourists from Malaysia, the local and international media, and the researchers. Yet, it is important to note that although there are rules in the Qanun which prohibit children to watch the caning execution, the presence of children was prevalent.

## D. The Spectators and Their Perceptions

### 1. The Children

The Qanun Jinayat prohibits the presence of children in the place of execution based on the article 262(2) of the Procedural Bylaw of Qanun Jinayat. Unfortunately, children were always present in every implementation of the caning sentence.<sup>38</sup>



**Picture 5** shows some children were present on caning execution in Sigli on 16 July 2017. Photo is taken by Oviyandi Emnur.

<sup>37</sup> Interview with respondents on 25 June 2017.

<sup>38</sup> Asmunda, Alfath, "Eksekusi Cambuk di Aceh Masih Ditonton Anak-anak," [https://kbr.id/nasional/03-2019/eksekusi\\_cambuk\\_di\\_aceh\\_masih\\_ditonton\\_anak\\_anak/98983.html](https://kbr.id/nasional/03-2019/eksekusi_cambuk_di_aceh_masih_ditonton_anak_anak/98983.html).

Some children were accompanied by their parents while others were present at their own will. In an interview, the children said that they came to the caning execution out of curiosity. The caning execution was carried out after Friday prayers and this prompted many children, who participated in Friday prayers, to gather in the courtyard of the mosque to witness the caning execution. They stated that they were curious and wanted to see it. One of the children said, *"I am glad to see someone in pain"*.<sup>39</sup> The field observations found that these children watched caning execution while they were running and playing in the mosque's spacious courtyard. They also saw it as an entertainment and felt excited by the pain felt by the convict. Other children even laughed loudly and made jokes with each other. They seemed to enjoy the process of punishment by caning with no fear. A woman once reprimanded them for not laughing at the caning law, *"Hey kid, don't laugh, people are being tortured, why are you laughing! What if you are the one who get punished."* The child paused for a while but then returned laughing, though not as loud as before. Almost all children who watched the caning execution in Jantho on 25 August 2017, were boys [note: it was Friday where male gather for congregational prayer]. The number of children who attended the caning sentence was quite a lot, even reaching 30% of the audience who attended.<sup>40</sup>

The second execution observed by this study was carried out in Teuku Umar Mosque on 11 September 2017. It was located in the downtown and residential areas but the presence of children was not as much as that of Jantho, Aceh Besar. Only a few children were

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<sup>39</sup> An informal interview on the implementation of the caning law in Jantho, Friday, August 25, 2017.

<sup>40</sup> Observation in Jantho Aceh Besar, Aceh, on August 25, 2017.

present with their parents. Besides, sharia police officials announced from the beginning that children under the age of 18 were prohibited from watching this execution. A 17-year-old high school student immediately followed the instructions and moved away from the platform guardrail when he heard the announcement. However, there was a mother who kept carrying her toddler because there was no one to look after her child. Her husband also watched it in a separate place. The officer did not explicitly ask the mother and child to leave the place but warned her that watching the caning execution was not good for her kid. Despite the warning, the mother remained in her place.

The implementation of the caning sentence in Teuku Umar mosque arguably is better than that of in Jantho in terms of the committee. This may be seen from the effort made by the committee to prevent the presence of children during the caning execution. Some officers told the audiences to separate their position between men and women and also reminded parents not to bring their children. While in Jantho, the sharia police gave the announcement that all children has to leave and did not watch the caning execution only after we reminded the shariah police that children were not allowed to be present in this execution.

## **2. The Convict**

The convicts, a woman and man, wore special clothes, generally white, but in each district, the uniform color varied. For example in Aceh Besar, even though it was a white uniform, it was given a black color on the back. According to the head of Sharia Police in Aceh Besar, Rahma Daniati, the addition of black color was intended as a sign where the executioner dropped the caning. This measure was adopted because, on previous caning executions, the executioner was "accused" of wrongly swinging the rattan and hit the neck of the convicted. The sharia

police, thus, could be prosecuted by the convict. After investigation, it turns out that the convict cheated by adding cardboard paper in the back which prompted the executioner missed the target.<sup>41</sup>

Based on the observation, the convicts have prepared themselves for the caning execution. During the caning execution in the Jantho Mosque, Aceh Besar, the convicts have relaxed attitudes. They joked with one another on the bus that transports them from the Aceh Besar prosecutor's office to the mosque where the caning execution was carried out.<sup>42</sup> In the Teuku Umar mosque, Setui Banda Aceh, we found convicts who performed the 'entertaining' actions before the residents present. When the caning was done, the convict raised his hands like a boxer with a smile. This illustrates how the convict saw the whip legal stage as an entertainment stage, instead.<sup>43</sup>

### **3. The Journalists and Media Contributors**

Journalists and media contributors usually represent printed and online media. The caning execution reports are published in the local, national, and international media such as BBC, DW Indonesia, CNN, The Sun Daily, and Reuters. The implementation of caning sentence in such specific cases as homosexuality and non-Muslim offenders has a strong appeal for international media. A journalist and media contributor, Oviyandi Emnur, said that some of his shots during the execution are used by foreign media in the news *"Yes, there are some photos of the caning*

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<sup>41</sup> Interview with the head of sharia police Aceh Besar in Banda Aceh, on March 10, 2017.

<sup>42</sup> Observation of Jantho Mosque in Aceh Besar on September 11, 2017.

<sup>43</sup> Observation of Teuku Umar Mosque in Banda Aceh, on September 11, 2017.

*law that I took used by foreign media*".<sup>44</sup> A case in point is in the news about the caning sentence in Aceh published by Reuters on 13 July 2018.<sup>45</sup> As a freelance contributor, Oviyandi was not always present in all of the execution, only when he has free time.

#### **4. The Women**

A group of women also attended the caning execution. During the execution in Jantho, Aceh Besar, a mother said that her presence was out of curiosity *"I came here out of curiosity, when I passed in front of the mosque, we saw a crowd, we were curious and chose to come and see. It is the first time I am present at a caning execution."*<sup>46</sup> Another woman stated that she was afraid of seeing the caning law execution, but her curiosity has forced her to keep seeing and following the execution. Several times, she looked away, especially when the rattan hit the back of the convicted *"... I am afraid I do not dare to look but I am curious ... how pitiful the perpetrator whipped 130 times and it looked very painful"*.<sup>47</sup> During the implementation of the caning sentence in the Teuku Umar Mosque, Banda Aceh, a woman said she was interested to see because there was a crowd

*"After praying, I saw a lot of crowds, and there were police, then I decided to see, and I just learned that there would be a caning sentence. I've never seen it before, and I'm interested to see it"*.<sup>48</sup>

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<sup>44</sup> Interview with respondents in Banda Aceh, on September 6, 2018.

<sup>45</sup> Davies, Ed, "Indonesia's Aceh resumes public caning despite pledge to curb access," <https://www.reuters.com/article/us-indonesia-aceh-caning/indonesias-aceh-resumes-public-caning-despite-pledge-to-curb-access-idUSKBN1K31N1>.

<sup>46</sup> Respondent interview in Aceh Besar on March 10, 2017

<sup>47</sup> Respondent interview in Aceh Besar on March 10, 2017

<sup>48</sup> Respondent interview in Banda Aceh on September 11, 2017

Based on the observation, there were differences between male and female audiences. Male visitors were more calm and relaxed when witnessing the execution of a whip and even recorded the event. Meanwhile, the women looked uncomfortable when witnessing the execution; they looked scared, shared the pain, and felt sorry for the perpetrators but still watched the execution by occasionally closing their eyes out of curiosity.<sup>49</sup>

### **5. The Teenagers**

Some High School (SMA) and Vocational High School (SMK) students looked busy attending the caning implementation in Teuku Umar mosque, Banda Aceh, which happened to be close to their school.

*"I came because the caning was carried out near my school and coincided with the afternoon break, so my friends and I decided to watch. This is the first time I have seen it and my teacher also attended it so I just relaxed and did not need to rush back to school".<sup>50</sup>*

When asked what was expected by these students after watching this, they joked with each other: *"Later on if I get caught and get a caning sentence, I know this will be the way the punishment executed".<sup>51</sup>* Another student added that they were just curious and wanted to know how the caning was carried out: *"Watching caning is good so we have a new experience so if asked by people we can answer that we have watched caning".<sup>52</sup>* Several teachers were also seen on the spot.

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<sup>49</sup> Observation in Banda Aceh on September 11, 2017

<sup>50</sup> Respondent interview in Banda Aceh on September 11, 2017

<sup>51</sup> Respondent interview in Banda Aceh on September 11, 2017

<sup>52</sup> Respondent interview in Banda Aceh on September 11, 2017

## 6. The Men

The audience, especially in the Teuku Umar Mosque, was separated between men and women. This was different from that of in Jantho; the separation was not strictly defined. Several men sat inside the Jantho mosque and chose to see the execution from inside the mosque building. While sitting relaxed with his friends, one of the men conveyed the reason why he was not too enthusiastic about the execution *"... why should it be shown in front of the public, the sin will be borne by itself"*.<sup>53</sup> On another occasion, a man said that the caning law was more like an entertainment show, except because someone was sentenced: *"like a music concert, there is a sound system, stage, loudspeakers, arrangement of events and VIP seats ... the caning is no different from a music concert ... but the most problem is that many children watch the execution ... it's dangerous that I don't know the future of those children"*.<sup>54</sup>

## 7. The Street Food Vendors

The street food vendors were those who peddle food or drinks at the whipping event. In Jantho, street vendors might not be seen because of the small number of spectators and caning law enforcement venues far from the center of the crowd and settlements. Yet, several food vendors were present at the caning execution in the Teuku Umar mosque.

A man selling cold drinks said that he happened to pray *dhuhr* in the mosque this afternoon and saw the crowd. Because there were potential buyers, he stayed in the courtyard of the mosque. He admitted that this was the first time he was present at the execution and sold drinks. In addition, there were also several other sellers such as dumplings and small snacks. One of

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<sup>53</sup> Respondent interview in Aceh Besar on September 11, 2017.

<sup>54</sup> Respondent interview In Banda Aceh on September 6, 2018.



them said that he was not too concerned with the whipping procession. He only saw many people gathered and this became a good opportunity for his wares. When we asked if he was curious and he answered that he was not interested in what was happening.<sup>55</sup>

Common street vendors were present when there was a crowd; therefore, the caning procession looked like an entertainment program in general. Someone who was present during the caning execution on 23 May 2017 said, *“this is the first time, I am attending the caning persecution, for me, it looks like a crowd, because there are so many people gathered, jostling and there are street vendors.”*<sup>56</sup> The presence of street vendors in the execution is perceived by people who attended the caning as an entertainment just like other public events.

### **E. The Caning Execution: Detering or Entertaining?**

The implementation of the caning sentence has become a polemic in the community. This debate arises because the caning execution is displayed in front of the public. The Qur'an of the An-Nur Verse 2 mentions about public execution of adultery which is, then, interpreted that the caning sentence for adultery must be witnessed by a group of godly.<sup>57</sup> The aim of public execution is to provide a deterrent effect for the perpetrators as well as lesson-learnt for the public. However, the implementation of the caning sentence in Aceh becomes less relevant to its intended purpose when the government has mistreated its procedure to be no more than an entertainment as perceived by many spectators of the execution.

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<sup>55</sup> Observation and Respondent interview in Banda Aceh on September 11, 2017

<sup>56</sup> Respondent interview In Banda Aceh on May 23, 2017.

<sup>57</sup> Umma. “Surat An Nur Ayat 2, Arab Latin, Arti, Tafsir dan Kandungan.” <https://umma.id/post/surat-an-nur-ayat-2-arab-latin-arti-tafsir-dan-kandungan-297662?lang=id>, accessed 16 May 2020.

Originally, the government set up the public execution of caning sentence to provide a sense of shame and deterrent effect.<sup>58</sup> This was confirmed by the Head of the Islamic Sharia Agency, Syahrizal Abbas *"that is the rules in sharia law; the main objective of the Qanun Jinayat is not to punish people or hurt people, the main objective is to educate, learn and raise awareness of the community"*.<sup>59</sup> This is in line with what Marzuki (The head of the investigative section of public order enforcers and Sharia Police) said: *"The implementation of caning law held on a stage or open place because the Qanun mandates the implementation of the Jinayat law in the open and could witness by others."* Thus, public execution is pursuant to the principle of *tadabbur* in the Islamic criminal law, namely sentencing is aimed at instilling education to the crowd; it became a therapeutic shock that caused a deterrent effect".<sup>60</sup>

According to the deterrent effect theory, the object of punishment prevented people who had committed or had evil intentions to commit a crime. This theory supports the punishment of offenders so that committing a crime was something that was bad for the offender.<sup>61</sup> The main purpose of punishment is to prevent acts of crime; therefore, Islamic criminal law provides very severe penalties for the offenders in order to achieve this objective. However, the severe sentences are also followed

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<sup>58</sup> Freener, Michael R, "Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia," Oxford Islamic Legal Studies (New York: Oxford University Press, 2014): 1-3.

<sup>59</sup> Interview with Head of the Aceh Islamic Sharia Agency In Banda Aceh on August 14, 2019.

<sup>60</sup> Interview with The head of the investigative section of public order enforcers and Sharia Police In Banda Aceh on August 16, 2019.

<sup>61</sup> Waqas, Muhammad., and Qaiser Humdia, "A Comparative Analysis of Punishments Awarded in Islamic Legal System and Western Legal System," International research journal of social sciences (2014): 52.

by a very difficult procedure for convicting a criminal offender.<sup>62</sup> The scholars agree that the *hudud*<sup>63</sup> punishment must be avoided or cancelled if there was a doubt or uncertainty in the trial (*shubha*).<sup>64</sup> The Prophet Muhammad firmly stated: “*Avoid hudud from Muslims as much as you can. If there is a way out, then free him (the perpetrator), for the Imam to err in pardoning is better than to err in punishment*”.<sup>65</sup>

Imprisonment is the kind of punishment which is least approved in Islam. Being in the middle of the community is the best place to reform the behavior of offenders compared to that of prison. However, the main purpose of imprisoning the offender is contrary to what happens on the ground. When the criminal is in prison, he or she might not be ashamed of crimes that he or she has committed because they are in the criminal environment.<sup>66</sup> This argument is supported by a study that shows that behavior reformed programs in prisons were not effective except if the perpetrator was serving the sentence for a long period of time.<sup>67</sup>

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<sup>62</sup> Waqas, Muhammad., and Qaiser Humdia, “A Comparative Analysis of Punishments Awarded in Islamic Legal System and Western Legal System,” *International research journal of social sciences* (2014): 52.

<sup>63</sup> See Alfitri, “Can the Requirements of Shariah Law regarding Criminal Punishments be Interpreted in a Way that is Compatible with the ICCPR and Cat,” *Indonesian Journal of International Law*, Vol. 7, No. 1 (2009): 104.

<sup>64</sup> Alfitri, “Konflik Hukum antara Ketentuan Hukum Pidana Islam dan Hak-Hak Sipil? Telaah Konsep HAM dan Implementasi Ratifikasi ICCPR dan CAT di Indonesia,” *Jurnal Konstitusi*, Vol. 7, No. 2 (2010): 109.

<sup>65</sup> Sidahmed, Salam, Abdel, “Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women,” *British Journal of Middle Eastern Studies* (2001): 193.

<sup>66</sup> *Ibid*, p. 52.

<sup>67</sup> RCP. *Crime Courts and Confidence. Report of an independent inquiry into alternatives to prison. Rethinking crime and punishment.* (London: Esmee Fairbairn Foundation, 2004). Also see:

In Islamic criminal law, the treatment of ex-convicts is considered important to reform the behavior of offenders. Referring to the western legal system, the basic rights of ex-convicts are taken out, such as not being able to participate and not having voting rights in. Islamic criminal law strongly opposes this because the negative stigma against offenders is not inherent for life in ex-convicts. After the sentence is handed down, the ex-convicts must be treated as an innocent person because they have received punishment for their mistakes.<sup>68</sup> Islamic criminal law sees the punishment not as an obstacle to their economic and social progress in the future. This treatment is believed to provide great lessons in reforming the behavior of ex-convicts. For example, the Prophet Muhammad forbids the community to embed a bad name for two friends who have confessed the sin of adultery and have been sentenced to death by throwing stones.<sup>69</sup>

In addition to the deterrent effect, the implementation of the caning sentence in Aceh also does not prioritize reforming the behavior of ex-convicts. An interview with the head of police officer in Aceh Besar, Rahma Daniaty, reveals that "*tausiah*" (Islamic motivation) delivered by ulama before the execution might not be effective.<sup>70</sup> It also does not lead to returning the defendant to the community as an innocent person after serving his sentence. The stakeholders and executors only emphasize punishment to provide a deterrent effect and do not prioritize the importance of removing negative

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Shazia, Naseem Akhter, and Ainee Rubab. "Punishment From Islamic Perspective." *FWU Journal of Social Sciences*, (2015): 53.

<sup>68</sup> Ibid, p. 52.

<sup>69</sup> Waqas, Muhammad., and Qaiser Humdia, "A Comparative Analysis of Punishments Awarded in Islamic Legal System and Western Legal System," *International research journal of social sciences* (2014): 52-53.

<sup>70</sup> Interview with Sharia Police in Aceh Besar District, Jantho on September 11, 2017.

stigma for the perpetrators after the caning execution. The deterrent effect for the community is also lacking when the caning procession took place.

The phenomenon of audiences recording the process of caning was one example of the lacking deterrent effect. One of the men recorded the execution of the caning sentence using a cellphone in the courtyard of the Jantho Mosque. When we asked what the recording was for, he answered that it was only for private collections.<sup>71</sup> This shows that the community only saw that the offender has the right to be flogged and then publicly humiliated; the spectator could share documentation with others without taking the execution of the caning as a lesson learned. If the execution is aimed to punish and eliminate the negative stigma of the defendant, then, anyone present did not need to record the whip legal procession. The spectators sometimes screamed and cursed at the convicts.<sup>72</sup>

## **F. Conclusions**

The existence of caning sentence in Aceh has been viewed differently by the different elements of Acehnese society. First, on the one hand, the government sees this caning punishment in the interests of their political agenda. To them, the implementation of Islamic criminal law is not only an effort to maintain the morality of the people of Aceh under sharia but also an achievement of their regime that could be used for winning the votes in the local election. Second, on the other hand, people have different views: some said the execution of the caning sentence has a deterrent effect for the society, other thought that it was no more than an entertainment. Interestingly, some have even viewed this as

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<sup>71</sup> Observation of Jantho Mosque in Aceh Besar on September 11, 2017.

<sup>72</sup> Informal observations on the implementation of the gay couple whip law, at Masjid Syuhada Rukoh, Banda Aceh on May 23, 2017.

discrimination against the middle and lower classes of the society in Aceh.

The caning execution which is unable to restore the sanctity of offenders amid society could have discriminatory impacts on the ex-convicts in the community. In some cases, even violators who were subjected to caning had to leave their villages because they got ridicule from the surrounding community. In Central Aceh, there was a case of a woman who violated the Qanun, then was divorced by her husband for being considered of having tarnished the family's good name.<sup>73</sup> That being said, the execution of caning sentence, and the implementation of Islamic criminal law in general, in Aceh should be reviewed.

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<sup>73</sup> Informal interview with Center for Integrated Services for Empowering Women and Children (P2TP2A) on May 21 2019.

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