

THE IMPLEMENTATION OF THE PUNISHMENT OF WHIPPING IN ACEH FROM A LEGAL AND HUMAN RIGHTS PERSPECTIVE

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Abstract

The special autonomy authority of the Province of Nanggroe Aceh Darussalam in Indonesia in the enforcement of Islamic criminal law is considered controversial with regard to the formalization of the enforcement of Islamic law by making the punishment ('uqubat) of whipping the main crime. The use and application of whipping by certain groups are seen as a form of cruelty, torture, contrary to the sense of legal justice, and a violation of human rights in Aceh. The authors will discuss the punishment of whipping from a legal and human rights perspective. The results of the author's research found that how the law in Indonesia and related Islamic law regulates the whipping punishment applied in Aceh, as well as discusses and analyzes human rights theories in relation to the whipping punishment in force in Aceh. Based on research, the authors conclude that whip punishment in force in Aceh has been referred to the sources of Islamic law then concretized to Qanun and confirmed by the Supreme Court ruling, and still pay attention to things that do not violate human rights.

Keywords: Whipping, Human Rights, Nanggroe Aceh Darussalam

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INTRODUCTION

Nanggroe Aceh Darussalam (NAD) is the only province in the Republic of Indonesia that is based on legislation - the special autonomy law obtains full authority to run the Islamic Shari'a (Herdiyanti, 2015). The Government of the Republic of Indonesia through Law Number 18 of 2001 concerning Special Autonomy for the Province of Nanggroe Aceh Darussalam which later became the Province of NAD, in addition to giving the authority to carry out Islamic law, it also provides a legal basis for sharia courts in Aceh Province (Surbakti, 2010). This law also contains the assertion that the authorities enforce Sharia Law as an integral part of the special autonomy granted by the central government in accordance with the

special needs of regions and communities in the province.

This authority was followed up by the establishment of a number of regional regulations known as "qanuns." Especially for the sake of enforcing Islamic criminal law, for example, there are a number of qanuns that have been ratified as sources of material law. One of them is Qanun Number 6 of 2014 concerning Jinayat Law. Qanun 6/2014 regulates the 'Uqubat (punishment) in the form of Hudud (whip) to the perpetrators of Jarimah which consists of 10 types of crimes, as follows:

- a. Khamar (Alcohol);
- b. Maisir (Gambling);
- c. Khalwat (Non-Muhrim Spouse);
- d. Ikhtilath (Intimate);
- e. Adultery;

- f. Sexual harassment;
- g. Rape;
- h. Qadzaf (Slander of Zina without witnesses at least 4 people);
- i. Liwath (Gay); and
- j. Musahaqah (Lesbian).

The concept of the protection of Human Rights is very much discussed at this time, even in countries where the majority of Muslims are Muslim, so that the concept of humanity is used as a benchmark in every law formation. Many think that the sanctions contained in Islamic punishment are very cruel and inhumane, for example the qīṣāṣ punishment which is considered a form of retaliation, the punishment of cutting off hands for thieves, whipping, and stoning for adulterers, and so on. Even the urge to abolish the whipping punishment continues to emerge, both from international and national institutions, such as the Institute for Criminal Justice Reform (ICJR). ICJR called on the government to end the whipping of the Qanun Jinayah or Islamic criminal law in Aceh (ICJR, 2021). Apart from violating human rights and creating dualism in law enforcement in Aceh, Qanun Jinayah is also considered to be inconsistent with international law and national criminal law.

20 years since the enactment of Law Number 18 of 2001 which is the legal umbrella for the enforcement of Islamic law in the Province of Nanggroe Aceh Darussalam (NAD), until now there is still controversy regarding the enforcement of Islamic law in Aceh.⁶ This controversy is related to the formalization of the enforcement of Islamic law. by making the punishment ('uqubat) of whipping the main punishment. The use and application of whipping by certain groups is seen as a form of cruelty, torture, contrary to the sense of legal justice and a violation of human rights in Aceh .

Therefore, because of the conflict that claims that the whipping punishment applied in Aceh violates human rights, I am interested in choosing and discussing this topic and studying more about the Whipping

Punishment from a Legal and Human Rights Perspective.

Based on the introduction that has been described, the main problem studied in this paper is how to apply the whipping punishment in the context of the enforcement of Islamic law in the Province of Nanggroe Aceh Darussalam (NAD) in terms of law and human rights.

METHOD

This type of research is descriptive analytical. It is intended that the results of research can provide a complete description as a whole and can describe the results of the analysis of a problem being researched. To be able to achieve a comprehensive and descriptive research, this research is carried out with normative-empirical legal research that refers to the written regulations that apply in Indonesia, and is supported by the results of interviews with related parties. The type of data in this study is secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Then this research uses an approach to legal systematics, namely an approach to the legal materials that are collected. The data analysis is qualitative in nature. Processing of legal materials in this study uses a deductive method, where this research draws a conclusion from general problems to specific problems.

RESULTS AND DISCUSSION

1. Legal Analysis

In the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights Article 1 it is also stated that:

"Human Rights is a set of rights attached to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law, government and everyone for the respect and protection of human dignity. "

Then in the Universal Declaration of Human Rights ratified on December 10, 1948 in article 5, it is stated that:

"No one shall be tortured or cruelly treated, treated or punished inhumanely or humiliated."

This article is the basis of reference for opponents of the Aceh whipping law to express strong criticisms of the implementation of the whipping law. Since Aceh was proclaimed as the State of Shari'a and the implementation of the whipping law several years ago, various challenges and obstacles have continued to come to the implementation of Islamic law in Aceh, both from non-Muslims and from secular Muslims. The protests are given for various reasons that have been mentioned above.

The most controversial issue in the implementation of Jinayat Qanun in Aceh are the rules concerning the 'uqubat whip. If collected, there are some reactions from the public about the 'uqubat this whip. For example, rejecting the Qanun jinayah which still includes punishments that are considered to violate Human Rights and degrade human dignity, this group is usually represented by human rights activists. According to them, the provisions of corporal punishment such as flogging contrary to international human rights and the laws that exist in Indonesia, especially Law of the Republic of Indonesia No. 39 of 1999 concerning Human Rights (Adan, 2009).

The process of execution of the whipping is carried out by really paying attention to the aspects of justice, safety and health of the convict. This means that the execution of the whipping is not carried out at will, because if it is seen based on the Governor's Regulation Number 10 of 2005 concerning Technical Instructions for the Implementation of Uqubat Whips. The implementation of the punishment of whipping (uqubat) is

carried out based on a number of provisions, some of which serve as guidelines for the implementation of whipping, namely:

- a. The whipping was carried out by Wilayatul Hisbah (WH)
- b. In a place where the public can see it, the Prosecutor and a doctor appointed by the Ministry of Health will be present
- c. The whipping is carried out all over the body, except for the head, face, neck, chest and genitals
- d. The level of lashes doesn't hurt
- e. Convicted male whipped in a standing position without being tied up
- f. Convicted woman whipped in a sitting position and covered with a cloth over her
- g. Pregnant woman whipped 60 days after giving birth
- h. If it is dangerous for the convict to be lashed according to the doctor's opinion, then the rest of the lashes are postponed until a time that allows.

If you pay close attention to the procedure for implementing the whipping punishment as above, it is clear that the standard procedure has carefully considered aspects of legal justice and human rights. The delegation of execution authority to the wilayatul hisbah officer under the control of the prosecutor's office demonstrates respect for the legality of the execution authority and proficiency in carrying out whipping.

Execution in public shows a philosophical motive to embarrass the perpetrator for his unlawful act, and with the perpetrator's willingness to undergo execution, it allows him to have a respectable way to reintegrate into society without fear of criminal stigma (Conceptually, this is in line with the philosophical construction of the Reintegrative Shaming theory as proposed by John Braithwhite)

(Braithwaite, 1989). This process is still accompanied by the presence of medical personnel, who show concern for the health and safety aspects of the soul and body of the convict. The existence of limits on the target area for whipping on the convict's body shows respect for the future life of the convict. Whips are expected to only provide temporary physical pain and do not cause permanent injury, especially to exposed body parts. The effects of whiplashes are indeed more emphasized on the psychological or psychological aspects of the convict in the form of a sense of deterrence and a commitment to improve themselves so that they are able to control themselves and do not violate the law again in the future.

Respect for the values of justice and human rights law as a whole discriminate treatment of convicted male and female convicts, confirming that there is respect for the different conditions in between. In this case the equal treatment of convicted men and women convicted of it will cause a very fundamental injustice. Likewise with the rules imposed on a convicted woman who is pregnant, a stay of execution for the convicted criminal whips pregnant women reflecting respect for the values of justice and human rights law in its entirety.

Therefore, essentially the imposition and execution of criminal offenders whip shari'ah at Islam has been in accordance with the value of legal justice in both the human relationship with God, as well as in human relations. This is because the whipping punishment is something that has been closely attached to the provisions of Islamic law itself, and when viewed from the achievement of the goals of criminal punishment and whipping, whipping has proven to be more effective, because there are no cases of repetition of criminal acts committed by former

sentenced to whipping. The situation is quite the opposite when compared to convicts of confinement or fines (Suparyanto & Mu'ammam, 2015).

In various types of criminal offenses shari'ah at Islam perpetrators sentenced to imprisonment or a fine, it turns out the numbers recidive is very high. Viewed from this side, it appears that the success of law enforcement to achieve goodness for the convict is actually more successful in cases where the perpetrator is subject to whipping.

2. Human Rights Analysis

The formulation of human rights in UN documents that were later adopted by the positive law in Indonesia explains Human rights are rights that have been obtained by every human being as a consequence of being born as a human.

John Locke stated that human rights are rights that are given directly by God the Creator as natural rights. Therefore, no power in the world can uproot it. This right is very basic in nature (fundamental) for human life and life and is a natural right that cannot be separated from human life.

Human rights in the western version are anthropocentrism which emphasizes individual rights and releases humans from their separate setting with God. Whereas in Islam, human rights are theocentric which have divine nature. In this sense, humans work in accordance with the awareness and obedience to God, and that human rights are a gift from God, and everyone is responsible to God (Effendi, 1944).

The western view says that punishment in Islamic criminal law violates human rights, due to a fundamental difference in the way they view human rights themselves. In the opinion of Saifuddin Bantasyam (Expert on International Law and Human Rights at Syiah Kuala University in Aceh) the application of whipping in the Qanun

Jinayah in Aceh from a human rights perspective does not violate at all, because it is only a difference in perspective. Regarding the pain and suffering in the execution of the sentence, it arises from or because of legal sanctions that are carried out correctly, fairly and based on sufficient evidence, accompanied by respect for the rights of the accused.

The implementation of whipping in Aceh for some groups is a step forward in the context of concretizing the application of Islamic law which the Acehnese people have been fighting for a long time. However, for some others, the implementation of whipping is considered counterproductive on the grounds of efforts to enforce Human Rights in Indonesia. There needs to be a clear definition of what constitutes a human rights violation. According to Amin Suma (Shariah law expert from Syarif Hidayatullah State Islamic University), an action can be seen as a violation of human rights if the action is directed at an innocent person. The application of whipping is a reward for people who are proven guilty and there are rules of the game. That one of the conditions, the punishment must be individual. This implies that punishment must be carried out on the perpetrator who commits the crime itself and may not affect other people who have not committed a violation. And this condition is one of the foundations and principles upheld in Islamic law.

Chairman of the Aceh Muslim Ulama Consultative Council Ibrahim, the application of the whipping punishment is something that is justified by Islam and approved by the Indonesian Supreme Court. Therefore, there is no reason to view the whipping as a violation of human rights. Based on the results of the discussion by the Aceh Ulama Consultative Assembly (MPU) with

experts in the field of Human Rights, including a German citizen who participated in drafting the convention on Human Rights in the United Nations (UN), which contains one of the following: One item is that a provision agreed upon by the community together with certain processes such as a deliberation meeting, concluded that the qanun does not violate human rights (Rahmawati, 2017).

CONCLUSION

The application of the whipping law in Aceh is not a violation of human rights. Because the implementation process has been very concerned about the safety and rights of the convict. The pain suffered by the convict in whipping does not cause permanent injury but is only temporary. Because in the application of the whipping punishment, it prioritizes the psychological or psychological effects of the convict rather than the effects of pain or physical. The parties who disputed the whipping punishment which was considered a violation of human rights did not understand the concept and application of Islamic law in Aceh.

The whipping punishment that applies in Aceh already refers to the sources of Islamic law, namely the Qur'an and the Hadith of the prophet Muhammad SAW. then concreted through Qanun while still paying attention to the needs of the Acehnese people and still paying attention to things that do not violate human rights. Therefore whipping is something that is allowed in Islam and also approved by the Indonesian Supreme Court, so there is no reason to say that the whipping violates Law and Human Rights.

Injustice in the application of Islamic law, especially in criminal punishment whip is not derived from the substance of the rule of law and penal flogging meted out to violators of Islamic law, but instead arise and felt by the community originate from the discriminatory law enforcement. Islamic law

enforcement officers are only limited to being able to arrest and process perpetrators of sharia violations from among the small people but are unable to reach perpetrators of Islamic law violations from officials and businessmen.

The enforcement of Islamic law in general and the application of whipping do not conflict with the values of legal justice and human rights. However, related to the limitations of human capacity in mobilizing the work of the law, there has been a practice of "selective" law enforcement. Discriminatory law enforcement occurs when law enforcement officers act repressively against perpetrators of law violations from certain groups but are permissive to perpetrators of law violations from other groups. In terms of the application of whipping, law enforcement officers apply harshly to perpetrators of violations with weak socio-political and economic backgrounds, on the other hand law enforcement officers turn a blind eye to perpetrators of violations with high socio-political and economic backgrounds.

This situation is a signal for all role holders in the process of enforcing Islamic law in the Province of Nanggroe Aceh Darussalam (NAD) to make serious efforts to enforce Islamic law in a more just manner. Without anticipatory action, the enforcement of Islamic law in the foyer of Mecca will fail.

Indonesia through the government of Aceh and the authorities held a flogging is expected to further tighten and reinforce the rules during the execution of the whip, so that the implementation of the whip in accordance with the objectives of the Shari'ah itself.

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