

The Impact of Human Rights Principles on the Criminal Act of Caning: Asymmetric Decentralization Insight



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ABSTRACT

The implementation of caning punishment in Aceh highlights the challenges of balancing regional autonomy with national and international human rights obligations. This study examines the extent to which human rights principles influence the execution of caning punishment within an asymmetric decentralized system. Using a normative juridical methodology, the research incorporates conceptual, legislative, and comparative approaches. A key comparison is drawn between the implementation of caning in Aceh, Indonesia, and Malaysia, where sharia law also informs the legal system. The findings reveal that caning in Aceh is often excessive, discriminatory, and perpetuates a culture of violence. Unlike Malaysia, where caning is conducted privately within prison facilities to protect the dignity of the accused, Aceh carries out the punishment publicly, emphasizing deterrence and transparency. The study underscores the need for reform, including stricter oversight, alternative rehabilitative punishments such as social work or legal education, and enhanced public and legal awareness of the balance between sharia law and human rights. By adopting a more regulated approach, Aceh can uphold its cultural and religious identity while aligning with human rights standards, ultimately improving Indonesia's international reputation and fostering a more just and humane legal system.



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1. Introduction

The legal basis for the Indonesian State's obligations to defend human rights within the Indonesian nation will not be disregarded in the discussion. Human rights acknowledge various forms of protection, or what is commonly referred to as "protection," in the context of the protection of special groups, as is also

necessary for all individuals.¹ Nevertheless, it is important to note that several principles, including non-discrimination, govern the promotion and protection of human rights for all. This principle must be developed initially, as it is a fundamental concept for advancing and safeguarding human rights. In addition to the principle of non-discrimination that must be implemented in promoting and protecting specific groups, it is essential to acknowledge that there is an endeavor to eradicate violence.² Anti-violence is a concern of the international community and Indonesia in promoting and preserving human rights for all citizens, similar to the principle of non-discrimination. Particularly concerning the principle of Human Rights (HAM), the punishment of caning, a form of penal sanction in Indonesia, remains a subject of debate. The punishment is predominantly administered in Aceh Province, which has a unique level of autonomy in applying Islamic law. Through asymmetric decentralization, Aceh is granted the authority to establish its legal policies, which includes the imposition of caning as a penalty for sharia violations.³

Nevertheless, this penalty is frequently criticized for inconsistency with international human rights standards, prohibiting inhumane or dehumanizing treatment and upholding human dignity. The political-legal reality in Aceh demonstrates that the implementation of qanuns, which are inspired by Islamic sharia, has been embraced in a philosophical, sociological, and legal sense. The numerous qanuns demonstrate this approval that the Aceh Government has issued to incorporate Islamic sharia into all facets of Aceh's political and social life.⁴

Nevertheless, the implementation of qanuns that implement Islamic sharia, such as Jinayah law, is not without criticism. Nonetheless, the judge is allowed to determine the nature of the punishment through the imposition of it.⁵ The subsequent table illustrates the quantity of caning sentences:

¹ Tejal Jesrani and Daimiris Garcia, 'Gendered SLAPPs: Addressing Criminal Prosecutions against Exposers of Sexual and Gender-Based Violence under International Human Rights Law', *International Journal of Law, Crime and Justice*, 80 (2025), 100729 <https://doi.org/10.1016/j.ijlcj.2025.100729>

² Ming Hsin Lin, 'Pricing Regime Choices for International Airports: A Rationale for the Non-Discrimination Principle', *Economics of Transportation*, 31 (2022), 100271 <https://doi.org/10.1016/j.ecotra.2022.100271>

³ Victoria F. Keeton and others, 'Latina Women's Perinatal Experiences and Perspectives Around Discrimination, Anti-Immigrant Policies, and Community Violence', *Journal of Obstetric, Gynecologic & Neonatal Nursing*, 53.6 (2024), 635-647.e1 <https://doi.org/10.1016/j.jogn.2024.07.007>

⁴ Khudzaifah Dimiyati and others, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 <https://doi.org/10.1016/j.heliyon.2021.e07865>

⁵ Erlan Wijatmoko, Armaidly Armawi, and Teuku Faisal Fathani, 'Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia', *Heliyon*, 9.11 (2023), e21280 <https://doi.org/10.1016/j.heliyon.2023.e21280>

Table 1. Punishment for Criminals

Types of Crime	Maximum Caning Punishment	Maximum Fine Amount	Maximum Prison Sentence	Article	Repetition of criminal acts
Wine	40x	400 grams of gold	40 months	Article 15	2 x threat of punishment
Maisir	12x	120 grams of gold	12 months	Article 18	2 x threat of punishment
Seclusion	10x	100 grams of gold	10 months	Article 23	2 x threat of punishment
Ikhtilath	30x	300 grams of gold	30 months	Article 28	2 x threat of punishment
Adultery	100x	120 grams of gold	12 months	Article 33	2 x threat of punishment
Sexual harassment	45x	450 grams of gold	45 months	Article 47	
Rape	125-175 x	1.250-1.750 grams of gold	175 months	Article 48	2 x threat of punishment

Source: processed by the Author

This table displays the utmost penalties for a variety of crimes, such as adultery, sexual harassment, rape, seclusion, adultery, gambling (Maisie), and wine consumption. The punishment for each infraction is a combination of imprisonment, gold fines, and lashes, with the severity of the sentence varying. Seclusion is the infraction that carries the least severe penalty, with a maximum penalty of 10 lashes, a fine of 100 grams of gold, and 10 months in prison. In contrast, the most severe penalty for rape is 175 months in prison, a fine of 1,250–1,750 grams of gold, and 125–175 lashes. In general, the duration of the prison sentence, the number of lashes, and the gold acceptable increase in proportion to the severity of the crime.⁶ For instance, sexual harassment is subject to a more severe penalty than adultery, even though the number of lashes is lower. However, the fine is significantly higher, and the prison term is substantially longer.⁷

Furthermore, certain offenses, including seclusion, Maisie, wine, *ikhtilath*, adultery, and rape, carry the potential for double punishment if they are committed on multiple occasions. Additionally, each category of criminal activity is regulated by a distinct article of the law.⁸ For instance, Article 48 governs rape.

⁶ A H Asari Taufiqurrohan, Dwi Edi, and Ong Victoria, 'The Regulation on Sexual Harassment in ASEAN Workers: Evidence from Several Countries', *Journal of Human Rights, Culture and Legal System*, 4.2 (2024), 538–68 <https://doi.org/https://doi.org/10.53955/jhcls.v4i2.198>

⁷ Fadhilah Fadhilah, 'The Role of Qanun in the Implementation of Islamic Family Law in Sharia-Based Countries: Challenges and Opportunities', *Journal of Nafaqah*, 1.1 (2024) <https://doi.org/10.62872/e91k2e60>

⁸ Willy Naresta Hanum, 'Dialectical Developing Optimal Approaches for Investigating Dialectical', *Jurnal Justice Dialectical*, 2.2 (2024), 106–20 <https://doi.org/https://doi.org/10.70720/jjd.v2i2.53>

Consequently, this table demonstrates a punishment system that modifies the severity of each offense by combining imprisonment, fines, and caning.⁹

Even though regional regulations legally sanction the caning punishment, human rights organizations, both domestic and international, frequently criticize it. This punishment is deemed to violate fundamental human rights principles, particularly those that pertain to the right to be treated humanely and free from torture by certain parties. This matter presents a legal quandary arising from the state's obligation to maintain human rights standards guaranteed by the constitution and international agreements with respect to regional autonomy.¹⁰

The advantages and disadvantages of the opinions concerning the implementation of the Qanun Jinayah are contingent upon the perspectives of each party. Those who support or concur with the implementation of the Qanun Jinayah contend that the legal foundation for the Qanun is the special status of Aceh, as specified in Law No. 11 of 2006. Islam has been the Acehnese people's traditional religion, both in philosophy and sociology.¹¹ Furthermore, the fact that the majority of the population in Aceh is Muslim is regarded as evidence that the full implementation of Islamic Sharia is the most effective approach for the future of Aceh, both socially and politically. Aceh's Islamic identity is regarded as having greater significance in identity politics than other provinces in Indonesia. Implementing *jinayat* law in Aceh is predicated on the principles of Islam, legality, justice, balance, welfare, the preservation of human rights, and community education. Generally, the objectives established by sharia, which are the welfare of humans in the world and the hereafter, are inextricably linked to the implementation of qanun *jinayat* in Aceh.¹²

In contrast, opponents of Qanun Jinayah believe that implementing Islamic criminal law should consider philosophical, sociological, and legal aspects. In this context, the legal aspect is particularly prominent. To thoroughly examine the legal aspect, it is necessary to closely consider the order of the applicable laws and regulations within the territory of the Unitary State of the Republic of Indonesia. The 1945 Constitution serves as the fundamental source of law in Indonesian legislation, as stipulated in Law No. 12 of 2011. In addition, it necessitates

⁹ Sehat Ihsan Shadiqin and Eka Srimulyani, 'THE CONTESTED AUTHORITIES: Institution and Agency in the Enforcement of Sharia Law in Aceh, Indonesia', *Journal of Contemporary Islam and Muslim Societies*, 5.2 (2022), 198 <https://doi.org/10.30821/jcims.v5i2.10601>

¹⁰ Farkhani Farkhani and others, 'Legal Protection of Minority Rights: Study on the Implementation of Qanun Number 6 of 2014 Concerning the Jinayat Law in Langsa City, Aceh Special Region Province', *Al-Manahij: Jurnal Kajian Hukum Islam*, 2023, 215–32 <https://doi.org/10.24090/mnh.v17i2.7897>

¹¹ Hendro Widodo, 'Applying Restorative Justice to Resolve Minor Assault Cases', *Jurnal Justice Dialectical*, 2.2 (2024), 98–105 <https://doi.org/https://doi.org/10.70720/jjd.v2i2.52>

¹² Faradilla Fadlia and others, 'Deterring or Entertaining? Can the Caning Punishment Execution in Aceh Meet Its Objective?', *Mazahib*, 2020, 41–78 <https://doi.org/10.21093/mj.v19i1.2055>

harmonizing and synchronizing numerous other rules and regulations to prevent the Qanun from causing any issues following its implementation.¹³

Furthermore, the opposing party advocated for caning as a form of torture that contravenes the Indonesian Constitution, which guarantees that all individuals are protected from degrading treatment and torture. The principles of justice, dignity, and compassion are among the Human Rights principles that are deemed to oppose caning. Humanitarian values that are fundamental to human rights have been violated by caning, which is a form of torture against humanity.¹⁴ In formal legal terms, the regulation of Islamic Sharia in Aceh is predicated on Law Number 44 of 1999, which pertains to the Implementation of the Special Status of the Special Region of Aceh Province, and Law Number 11 of 2006, which relates to the Government of Aceh. As a result of these two laws, the Special Region of Aceh Province is well-positioned to implement Islamic Sharia. This suggests that Aceh's state policy incorporates Islamic law. It is not entirely exempt from the state's responsibility in its execution.¹⁵

The implementation of Islamic Sharia in the context of state law is further acknowledged in Law Number 11 of 2006, which pertains to the Government of Aceh. This Law has transformed Islamic Sharia into national Law, enhancing awareness of Islamic Law and compiling legal materials, institutions, and law enforcement apparatus.¹⁶ Law Number 11 of 2006 serves as the legal framework for the implementation of Islamic Sharia in Aceh, as evidenced by the nuanced regulations on Qanuns, the Prosecutor's Office Islamic Court, the Police, the *Wilayatul Hisbah* Police, and other Islamic law regulations.¹⁷ Concurrently, caning is classified as a form of torture and other cruel, inhumane, or degrading treatment or punishment under the CAT (Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment). Numerous normative textual rules in religion can be employed as a foundation for enforcing human rights without observing how the normative basis is put into practice by its adherents in a historical context. Although there is no conflict between religion and Human

¹³ Junaidi Junaidi, Muhammad Rusdi Bin Muhammadiyah, and Muhazir Muhazir, 'Revitalisasi Penerapan Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat Di Kota Langsa Aceh', *Al-Manahij: Jurnal Kajian Hukum Islam*, 14.1 (2020), 147–60 <https://doi.org/10.24090/mnh.v14i1.3261>

¹⁴ Khamami Zada, 'Sharia and Islamic State in Indonesia Constitutional Democracy : An Aceh Experience', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.1 (2023), 1–17 <https://doi.org/https://doi.org/10.18326/ijtihad.v23i1.1-18>

¹⁵ Muzakkir, 'The Effectiveness of Aceh's Jinayat Qanun on Crime Rates in the Community in a Review of Legal Socialization', *Al-Manahij: Jurnal Kajian Hukum Islam*, 2022, 255–68 <https://doi.org/10.24090/mnh.v16i2.6643>

¹⁶ Azka Amalia Jihad and others, 'The Role of the Supervisory Board in the Development of Sharia Cooperatives in Aceh After the Enactment of the Sharia Financial Institutions Law', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8.2 (2024), 1054 <https://doi.org/10.22373/sjhk.v8i2.19610>

¹⁷ Hudzaifah Achmad Qotadah, Ali Abdul Wakhid, and Is Susanto, 'Problems With the Implementation of Qanun Aceh Number 6 of 2014 Concerning Jinayat Law', *Analisis: Jurnal Studi Keislaman*, 22.1 (2022), 111–32 <https://doi.org/10.24042/ajsk.v22i1.6556>

Rights in their normative aspect, there are distinctions between them. The distinction is in the initial thought, which subsequently generates distinct concepts. International Human Rights are based on humanitarian values or on humanity (anthropocentric). In contrast, religious circles prioritize revelation over human reason and are oriented toward God (theocentric).¹⁸

The disparities in applying Law between Aceh and other regions in Indonesia suggest an imbalance in the national legal system from the perspective of asymmetric decentralization. The same punishment is not enforced in numerous areas of Indonesia, while caning is still publicly performed in Aceh. The question of whether the Indonesian legal system can accommodate the diversity of regional laws without compromising the fundamental principles of human rights is raised. Additionally, the psychological and social consequences of caning must be considered. The individual being punished may experience humiliation and degradation of dignity due to the public execution of this penalty.¹⁹

Nevertheless, the numerous obstacles encountered in reconciling human rights principles with sharia law in Aceh underscore the necessity of a more equitable approach to applying Law in Indonesia. The central government is confronted with the challenge of ensuring that regional policies are consistent with the human rights commitments that have been established at the national and international levels while also respecting regional autonomy.²⁰ In the context of a pluralistic nation like Indonesia, this debate underscores the intricacy of the relationship between international standards, regional Law, and national Law. Ismail et al.'s prior research has highlighted critical rights, including the right to legal representation, the right to be informed of allegations, the right to be free from torture and inhumane treatment, and the presumption of innocence. The impact of international human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), on the development of national policies and practices is investigated. Furthermore, the investigation investigates contemporary concerns, including the influence of technological advancements on the right to privacy, unjust convictions, and discrimination.²¹

¹⁸ Muhibbuthabary and others, 'The Implementation Of The Caning Law In Aceh Following The Enactment Of The Aceh Qanun Number 6 Of 2014 Concerning The Jinayat Law: Is It More Effective?', *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 8.2 (2023) <https://doi.org/10.22373/petita.v8i2.210>

¹⁹ Azhari Yahya and others, 'Legal Study of Building Sharia-Based Investment in Aceh: The Challenges After the Enactment of the Qanun of Sharia Financial Institution', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7.2 (2023), 959 <https://doi.org/10.22373/sjhk.v7i2.17653>

²⁰ Abdul Manan and Cut Intan Salasiyah, 'Evaluating the Implementation of Sharia in Aceh, Indonesia', *Jurnal Ilmiah Peuradeun*, 9.3 (2021), 549 <https://doi.org/10.26811/peuradeun.v9i3.593>

²¹ Muhammad Rio Fariza, Andre Noevi Rahmanto, and Pawito Pawito, 'Respecting Sharia Or Obscuring Identity? Non-Muslim Women Wearing Hijab In Aceh From The Perspective Of The Majority', *Penamas*, 37.2 (2024), 198–210 <https://doi.org/10.31330/penamas.v37i2.795>

The previous research emphasizes the necessity of ongoing reform and robust oversight mechanisms to guarantee that criminal proceedings are consistent with human rights principles, thereby fostering a fair and equitable justice system.²² In the interim, Kanwel et al.'s research emphasizes the diverse methods by which illicit behavior intersects with fundamental human rights principles by analyzing case studies, legislative measures, and international conventions. The research delves into the obstacles that arise when the protection of civil liberties is balanced with the imperatives of law enforcement, underscoring the necessity of a nuanced approach that respects human dignity in the pursuit of justice. Furthermore, the article examines the legal system's position in promoting accountability for human rights violations committed through criminal means and addressing systemic injustice.²³ Subsequently, research conducted by Abdusaidova Gulrukhsorabegim Komiljon Kizi demonstrates that safeguarding human rights in criminal proceedings is paramount for any justice system dedicated to preserving the rule of law and accountability. Systemic deficiencies, inadequate legal representation, and varying commitment to international standards across jurisdictions are critical challenges ensuring protection. Consequently, it is imperative to establish a robust mechanism that will enhance the preservation of human rights in criminal justice. This will ultimately contribute to a more equitable and just legal framework that maintains public confidence in the rule of law and human dignity.²⁴

Although human rights protection is of the utmost importance, criminal law enforcement, which includes practices such as caning, frequently reflects broader social and legal challenges. The ongoing dialogue and reform necessary to align criminal law with human rights principles are essential, as the balance between upholding justice and preserving individual freedoms remains a critical issue.²⁵ Consequently, conducting a more thorough examination of the implementation of caning and its influence on human rights principles in the context of asymmetric decentralization is crucial. This investigation examines the legal, social, and human rights implications of the implementation of caning in Aceh. Additionally, it will examine the potential implementation of mechanisms to ensure that the regional legal system is based on universally recognized human rights principles. In respecting regional autonomy and guaranteeing human rights protection for all

²² Fatbardha ISMAILI and Shkelqim SULEJMANI, 'HUMAN RIGHTS AND CRIMINAL PROCEDURE', *International Journal of Legal Sciences-JUSTICIA*, 12.21-22 (2024), 364-68 <https://doi.org/10.62792/ut.jus.v12.i21-22.p2790>

²³ Sidra Kanwel, Muhammad Imran Khan, and Usman Asghar, 'In the Shadow of Justice: Human Rights Implications of Criminal Acts', *Journal of Asian Development Studies*, 13.1 (2024), 578-85 <https://doi.org/10.62345/jads.2024.13.1.48>

²⁴ Abdusaidova Gulrukhsorabegim Komiljon Kizi, 'Human Rights Protection In Criminal Procedure: A Scientific Examination', *International Journal of Business, Law and Political Science*, 1.9 (2024), 73-76 <https://doi.org/10.61796/ijblps.v1i9.208>

²⁵ Husni Jalil, Teuku Ahmad Yani, and Andri Kurniawan, 'Public Participation Model In The Preparation Of Sharia-Based Aceh Qanun: Special Focus On The Role Of The Ulama', *IIUM Law Journal*, 30.2 (2022), 280-307 <https://doi.org/10.31436/iiumlj.v30i2.672>

Indonesian citizens, this study can contribute to formulating fairer and more balanced legal policies by comprehending these dynamics.

2. Research Method

The normative juridical method employed in this research is legal research, which investigates legal norms in laws and regulations, legal doctrines, and conceptions related to human rights and asymmetric decentralization. In this investigation, comparative, statutory, and conceptual methodologies were implemented.²⁶ The conceptual approach is implemented by investigating the concepts of caning, asymmetric decentralization, and human rights within the framework of national and international law.²⁷ At the same time, the statute approach is employed to examine legal regulations concerning the implementation of caning in regions that implement asymmetric decentralization, such as the Qanun in Aceh, as well as national laws and regulations concerning human rights. Furthermore, a comparative approach is employed to compare the implementation of caning in Indonesia with other countries that have human rights and decentralization systems that are either similar or dissimilar. The policies of Malaysia are comparatively examined in this research.²⁸ Initially, Malaysia employed a dualistic legal system that integrated national common law with Islamic law, which is enforced at the state level. This system is comparable to Indonesia's asymmetric decentralization, particularly in Aceh. Secondly, Malaysia also employs flogging as a form of punishment in its legal system, as evidenced by the national criminal code and sharia law in several states, including Terengganu and Kelantan.

3. Results and Discussion

The Impact of Human Rights Principles on Caning Punishment in Aceh Under Asymmetric Decentralization

The essence and soul of the implementation and/or implementation of regional autonomy is decentralization; regional autonomy will operate effectively with devolution and vice versa.²⁹ According to Article 18, paragraph (1) of the 1945

²⁶ Ahmad Dwi Nuryanto, Reza Octavia Kusumaningtyas, and Bukhadyrov Habibullo, 'The Imperative of Social Justice on the Insolvency and Workers ' Wage', *Journal of Sustainable Development and Regulatory Issues*, 2.3 (2024), 209–32 <https://doi.org/10.53955/jsderi.v2i3.50>

²⁷ Abdul Kadir Jaelani and Reza Octavia Kusumaningtyas, 'The Interests and the Conflict Vortex in Wadas Village: A Karl Marx Perspective', 2024, pp. 42–48 https://doi.org/10.2991/978-2-38476-315-3_8

²⁸ I Wayan Wahyu Wira Udytama and others, 'Analysis of Breach of Contract Dispute Resolution Through Litigation and Non-Litigation Pathways', in *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)*, 2024, pp. 654–59 https://doi.org/10.2991/978-2-38476-315-3_89

²⁹ Nursiti Nursiti, Roslaini Ramli, and Anta Utami, 'Criminalization of Child Victim of Rape in Qanun Jinayat (Study of the Lhoksukon Sharia Court Decision Number 10/JN/2020/MS-LSK)', in *Proceedings of the 1st International Conference on Gender, Culture and Society, ICGCS 2021, 30-31 August 2021, Padang, Indonesia* (EAI, 2022) <https://doi.org/10.4108/eai.30-8-2021.2316380>

Constitution of the Republic of Indonesia, "the territory of the Unitary State of the Republic of Indonesia is divided into autonomous regions, namely provincial regions and district/city regions, each of which is regulated by law." Paragraph (5) further elucidates that "regional governments exercise the broadest possible autonomy, except for government affairs that are determined by law to be the affairs of the central government."³⁰ The decentralization, deconcentration, and assignment tasks principles of the provincial regional government, which are expected to encompass all actions of regional governments in fulfilling their responsibilities to enhance the welfare of the regional people and the Indonesian people in general, can be used to implement regional government in a unitary state in the form of a republic. Regional autonomy has the potential to enhance the acceleration of regional competitiveness, stimulate regional innovation and creativity, particularly in the realm of public services such as health, education, and administration, and foster greater community engagement. Additionally, regional autonomy can enhance government officials' accountability and responsiveness, enabling them to improve the well-being of their communities.³¹

Decentralization is a strategic alternative that can be implemented in all regions to prevent regional disappointment with the central government. Additionally, it can avoid regional conflicts in the center, such as those in Aceh at that time and in Papua, which sought to secede from Indonesia. Asymmetric decentralization is the solution to the predicament in Indonesia, as decentralization in all provinces cannot be implemented evenly in each region.³² The application or transfer of special authority exclusively granted to specific areas within a country is known as asymmetric decentralization. After December 26, 2004, a natural catastrophe caused a tsunami and resulted in the loss of over 112,000 lives in Aceh, and the implementation of Asymmetric Decentralization in Banda Aceh commenced.³³ The city was devastated at that time. This is when the armed conflict between the government and the Free Aceh Movement begins to subside. In 2005, Helsinki, Finland, achieved peace by signing a memorandum of understanding, or Helsinki MOU. Subsequently, Law Number 11 of 2006 was enacted to govern Aceh. At that time, the Aceh Government and the Regency/City were granted the authority to

³⁰ Rahayu Subekti and others, 'Solidifying the Just Law Protection for Farmland to Anticipate Land Conversion', *International Journal of Economic Research*, 14.13 (2017), 69–79 https://doi.org/https://serialsjournals.com/abstract/38652_6.pdf

³¹ A. Ilham Saputra and Jum Angriani, 'Implementation of Central and Local Government Relations Through Asymmetric Decentralization', 2023, pp. 788–99 https://doi.org/10.2991/978-2-38476-164-7_72

³² Fabio Fiorillo, Michele G. Giuranno, and Agnese Sacchi, 'Asymmetric Decentralization: Distortions and Opportunities', *Economia Politica*, 38.2 (2021), 625–56 <https://doi.org/10.1007/s40888-020-00211-7>

³³ Gabriel Lele, 'Asymmetric Decentralization, Accommodation and Separatist Conflict: Lessons from Aceh and Papua, Indonesia', *Territory, Politics, Governance*, 11.5 (2023), 972–90 <https://doi.org/10.1080/21622671.2021.1875036>

regulate and administer government affairs in all public sectors except those transferred to the central government.³⁴

As defined in the planning and utilization and its supervision, the government is responsible for implementing public order and security, health care, education, the environment, land, etc. The regional government has been granted the authority to establish regional regulation policies and other regulations to execute autonomy and assistance tasks, as stipulated in the Constitution of the Unitary State of the Republic of Indonesia. Nevertheless, this is distinct from the Province of Aceh, which is distinguished by its distinctive governance and terminology. In Aceh, regional regulations are referred to as Aceh qanun. The Aceh qanun is a form of provincial regulation that governs the implementation of government and the lives of the Acehnese people, as stated in Article 1 number 21 of Law No. 11/2006. The central government has acknowledged the qanun's position.³⁵

Nevertheless, the qanun can be compared to regional regulations; however, it is distinct in that its content must be derived from Islamic law. Nonetheless, its status remains consistent with regional regulations, allowing the qanun to be submitted to the Supreme Court if it violates laws and regulations. Following the issuance of the aforementioned special regulations, the Aceh Government subsequently issued a variety of qanuns that dealt with law, education, economy, justice, politics, society, and culture, among other topics.³⁶

The ratification of Islamic criminal justice, or *qanun jinayat*, is a positive development in Aceh and other regions intended to bolster the regional government administration's efficacy. The procedural law in sharia tribunals is known as *qanun jinayat*. This also pertains to non-Muslims who contravene Islamic law in Aceh.³⁷ The Prosecutor's Office then collaborates with other Sharia law enforcement agencies, including the Sharia Office, *Wilayatul Hisbah*, Police, Aceh Islamic Religious Court Judges, and the Sharia Court, to ensure the successful implementation of the process. The *qanun jinayat*, which governs the use of canes

³⁴ Gabriel Lele, 'Asymmetric Decentralization and the Problem of Governance: The Case of Indonesia', *Asian Politics & Policy*, 11.4 (2019), 544–65 <https://doi.org/10.1111/aspp.12493>

³⁵ Ikramsyah Irwali MA, Wan Zulkifli Bin Wan Hassan, and Mohd Izhar Ariff bin Mohd Kashim, 'The Implementation of Caning Law in Aceh Province, Indonesia: An Overview of The Human Rights Perspectives', *International Journal of Religion*, 5.10 (2024), 3230–36 <https://doi.org/10.61707/bk55xs12>

³⁶ Husni Mubarrak and Faisal Yahya, 'Contestation on Religious Interpretation in Contemporary Aceh Shari'a: Public Caning in Prison as the Case of Study', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), 213–22 <https://doi.org/http://dx.doi.org/10.31958/juris.v22i2.10258>

³⁷ Fatma Ulfatun Najicha and others, 'The Conceptualization of Environmental Administration Law in Environmental Pollution Control', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 87–99 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.55>

for offenses such as adultery, wagering, and the consumption of alcoholic beverages, is one of the most contentious qanuns.³⁸

The principles of life based on Islamic law, which are the firm foundation of Islamic culture in Aceh and the region's significant contribution to the struggle to regain and maintain the country's independence, are the source of the high resilience and fighting spirit. Nevertheless, it is imperative to recognize that Aceh's governance and development implementation has not yet reached its full potential, as it has not yet wholly realized the general welfare, justice, and the improvement, fulfillment, and protection of human rights for the community. This implies that the Aceh Government must be constructed and organized by sound governance principles.³⁹

Indonesian law governs the role of the *qanun jinayat* in Aceh during the criminal law reform process in Indonesia. The legal reform in Aceh Province, which saw the emergence of the qanun to regulate criminal matters, demonstrates that sound law must be in accordance with the community in the region. This also implies that Acehnese law can presently be employed as a model for developing diverse laws in Indonesia, which are still within the scope of Indonesian law.⁴⁰ However, the implementation of the *qanun jinayat* faces various challenges, such as the implementation of caning punishment.⁴¹

This caning punishment is administered publicly to serve as a deterrent to both the perpetrators and the community. The caning punishment is administered by implementing officers who adhere to the sharia court's established number. The quantity of canings administered is contingent upon the nature of the offense. The broader community frequently observes this punishment, which is intended to serve as a cautionary tale to prevent them from committing comparable crimes. Nevertheless, implementing this caning punishment has sparked a debate about Human Rights (HAM) principles. Physical punishment, such as caning, is regarded as a form of cruel, inhumane, and dehumanizing treatment on a global scale. Indonesia has ratified the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which explicitly prohibits this

³⁸ Zainul Fuad, Surya Darma, and Muhibbuthabry Muhibbuthabry, 'Wither Qanun Jinayat? The Legal and Social Developments of Islamic Criminal Law in Indonesia', *Cogent Social Sciences*, 8.1 (2022) <https://doi.org/10.1080/23311886.2022.2053269>

³⁹ Fachrizal Afandi and Ladito Risang Bagaskoro, 'ISLAM AND STATE'S LEGAL PLURALISM: The Intersection of Qanun Jinayat and Criminal Justice System in Indonesia', *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, 19.01 (2024), 1–26 <https://doi.org/10.21274/epis.2024.19.01.1-26>

⁴⁰ Suharno Suharno, 'Aceh's Special Autonomy in the Perspective of Asymmetric Decentralization Policies', *Jurnal Civics: Media Kajian Kewarganegaraan*, 18.2 (2021), 276–85 <https://doi.org/10.21831/jc.v18i2.43607>

⁴¹ Zulfan Zulfan and Muhammad Hatta, 'THE LEGAL POSITION OF CANING PUNISHMENT IN ACEH', *International Journal of Law, Environment, and Natural Resources*, 1.2 (2021), 61–73 <https://doi.org/10.51749/injurlens.v1i2.14>

form of punishment. This presents a conundrum between adhering to international human rights standards and preserving regional autonomy.⁴²

The 1945 Constitution ensures the preservation of human rights for all citizens, including the right not to be treated inhumanely, within the framework of national law. Furthermore, Law Number 39 of 1999, which pertains to human rights, governs the preservation of human dignity in Indonesia. In contrast, the implementation of caning punishment in Aceh is predicated on regional regulations recognized by the national legal system. This results in a conflict between national law and regional policies based on Islamic law.⁴³

From a legalistic perspective, law and justice are identified with laws, meaning they only observe logical or antilogical relationships or in other systematic ways within the entire set of norms. Nevertheless, law enforcement officers do not consistently or disproportionately apply the legal objectivity metric in the context of causality instruction. The process of requesting justice for the community through law enforcement has been inadequate until now, impacting the process. Law enforcement will be accomplished by adhering to equality before the law.⁴⁴

The Institute for Criminal Justice Reform (ICJR) conducted research on October 22, 2016, which concluded that the use of caning punishment in Aceh has become increasingly excessive one year after the *Jinayat Qanun* was implemented. In light of this, the Indonesian Government should abolish the caning law as a form of punishment and revoke or revise the *Jinayat Qanun* (Islamic Criminal Law in Aceh) provisions that permit violations of international and national criminal law. The use of corporal punishment in Indonesia, explicitly caning, is also legitimized by the *Jinayat Qanun*.⁴⁵ In reality, the use of caning is rigorously prohibited by the Indonesian criminal system. The application of caning is also classified as cruel, barbarous, and degrading punishment. Indonesia is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the International Convention against Torture and Cruel, Inhuman or Degrading Treatment or

⁴² Nana Mardiana and Emy Rosnawati, 'Juridical Overview of the Application of the Caning Law in the Province of Nanggroe Aceh Darussalam from the Human Rights Perspective', *Indonesian Journal of Law and Economics Review*, 17 (2022) <https://doi.org/10.21070/ijler.v17i0.824>

⁴³ Abdul Halim, 'Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh', *Human Rights Review*, 23.2 (2022), 265–88 <https://doi.org/10.1007/s12142-021-00645-x>

⁴⁴ Khairuddin Hasballah, Dhaiful Mubarrak, and Saddam Rasanjani, 'Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City', *El-Ussrah: Jurnal Hukum Keluarga*, 6.2 (2023), 249 <https://doi.org/10.22373/ujhk.v6i2.8612>

⁴⁵ Andri Winjaya Laksana, Akhmad Ikraam, and Anila Robbani, 'Dialectical The Liability of Criminal Law for Perpetrators of Goods Embezzlement Dialectical', *Jurnal Justice Dialectical*, 2.2 (2024), 70–83 <https://doi.org/https://doi.org/10.70720/jjd.v2i2.50>

Punishment (CAT), which prohibit torture and other cruel, inhuman, or degrading treatment. Caning and other forms of cruel punishment violate this prohibition.⁴⁶

Risman was one of 38 individuals who were executed with caning at the Baitul Makmur Grand Mosque in Meulaboh, West Aceh, on February 12, 2016. The ICJR also discovered violations in administering the caning sentence because it was administered more than the court's decision (Risman's case). Risman was required to endure five lashes; however, the executor administered them six times. ICJR also discovered numerous violations during the execution of the caning. It was discriminatory as it did not apply to specific individuals who held positions.⁴⁷

The public display of the caning sentence also contributed to the development of a culture of violence in Acehese society. The Acehese people at all levels are encouraged by the ICJR to continue to monitor the implementation of the *Jinayat Qanun*, which is rife with violence, discrimination, and violations. Requests that the Indonesian populace also supervise the execution of the *Jinayat Qanun*. Requests that international organizations continue to monitor and take action to prevent the caning sentence, particularly the *Jinayat Qanun*, which results in violence and discrimination against the community, particularly women, children, and the LGBT community.⁴⁸ Furthermore, the central government plays a significant role in ensuring that regional regulations follow national and international legal principles. Finding a balance between dedication to protecting human rights and respect for regional autonomy is one of the primary obstacles. As an outcome of asymmetric decentralization, the caning penalty in Aceh is a consequence of the special authority granted to regions to enforce Islamic law. Nevertheless, its implementation remains contentious, particularly regarding human rights principles.⁴⁹

To ensure that the laws enforced reflect the appropriate balance between the protection of human rights and regional autonomy, the central and regional governments must collaborate to find a more equitable solution consistent with

⁴⁶ Muhammad Syarif and others, 'A Juridical Analysis of the Caning Implementation in Aceh Prisons and Its Relations to Islamic Laws', *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*, 6.1 (2022), 59 <https://doi.org/10.30659/jua.v6i1.35697>

⁴⁷ Sumardi Efendi, 'Transformation of Islamic Criminal Law in Modern Society in Aceh', *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam*, 5.2 (2024), 41 <https://doi.org/10.58836/al-qanun.v5i2.21513>

⁴⁸ Burhanudin Harahap, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, 'Non-Muslims and Sharia-Based Regional Government: Comparison between Aceh, Indonesia and Selangor, Malaysia', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 18.2 (2023), 364–91 <https://doi.org/10.19105/al-lhkam.v18i2.10456>

⁴⁹ Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)', *QIJIS (Qudus International Journal of Islamic Studies)*, 7.2 (2020), 301 <https://doi.org/10.21043/qijis.v7i2.4974>

humanitarian principles.⁵⁰ The application of punishment must consider the principles of justice and welfare from the perspective of Islamic law. Some academics contend that physical punishment, such as caning, must be administered with caution and should not harm society or individuals.⁵¹ Consequently, it is imperative to establish a legal framework that is more adaptable and prioritizes social justice within the framework of Sharia law in Aceh. Additionally, it is crucial to increase public awareness regarding the consequences of caning and the potential for the legal system to adapt to a more equitable approach. Aceh's policies must incorporate legal and human rights education to ensure the community comprehends its rights and responsibilities according to the relevant legal framework.⁵²

The Legal Framework of Caning in Malaysia

Sharia law is the primary regulatory framework for caning punishment in Malaysia, and it is enforced at the state level due to the country's dual legal system. This system distinguishes between federal and state jurisdictions, with Islamic law falling under the jurisdiction of the state. In the Malaysian context, caning is subject to specific regulations and interpretations and is anchored in Islamic principles as punishment. Religious and legal frameworks and public misconceptions influence the enforcement and perception of this penalty. The implementation of caning punishment is subject to the jurisdiction of each state, which is responsible for enforcing Sharia criminal laws, including those related to caning.⁵³

Particularly in the context of human rights and Islamic law, the practice of caning as a form of punishment has been the subject of substantial debate in Indonesia and Malaysia. Although the legal frameworks and cultural perspectives of both nations are similar, there are significant disparities in their approaches to implementing caning as a punitive measure.⁵⁴ Indonesia's Approach to the Law on Canning in the province of Aceh in Indonesia, caning is enforced as a form of

⁵⁰ Abdul Kadir Jaelani, 'Halal Tourism Sector and Tax Allowance Policy: A Case Study Observed from Normative Problems to Effective Implementation', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.2 (2023), 185–210 <https://doi.org/https://doi.org/10.18326/ijtihad.v23i2.185-210>

⁵¹ Khairil Akbar and Sumardi Efendi, 'Criminal Law And Human Rights: A Study On The Principle Of Human Rights Protection In Aceh Qanun No. 6 Of 2014 On Jinayat Law', *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial*, 14.2 (2024), 197 <https://doi.org/10.22373/dusturiyah.v14i2.25541>

⁵² I.G.A.K. Rachmi Handayani, Lego Karjoko, and Abdul Kadir Jaelani, 'Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia', *Bestuur*, 7.1 (2019), 36–46 <https://jurnal.uns.ac.id/bestuur/article/view/42700>

⁵³ Shanon Shah, 'Living Sharia: Law and Practice in Malaysia by Timothy P. Daniels', *Religions of South Asia*, 13.2 (2021) <https://doi.org/10.1558/rosa.19313>

⁵⁴ Tobi Angel Kolawole and Helen Ting M. H., 'Sharia Politics in Nigeria and Malaysia: Governance, Islamization and Human Rights', *Journal of Politics and Law*, 15.3 (2022), 25 <https://doi.org/10.5539/jpl.v15n3p25>

punishment by Islamic Sharia law. The Qanun Jinayah serves as the legal foundation for caning punishment, delineating the procedures and provisions for its execution. Initially, caning was performed in public spaces, such as mosque courtyards. However, this practice was criticized for its potential to cause trauma to witnesses, particularly children. The Aceh government issued Governor Regulation No. 5/2018 in response to human rights concerns. This regulation mandates that caning be conducted in correctional institutions.⁵⁵

In Malaysia, caning is also implemented under Islamic Sharia law; however, the approach is significantly different from that of Indonesia. Malaysian law permits caning as a form of punishment for specific offenses; however, it is typically administered in prisons, where it is conducted secretly. This approach is regarded as a more dignified and humane form of punishment, as it mitigates the risk of psychological trauma to witnesses and eschews public caning. The Malaysian government has been subjected to criticism for its management of caning cases, particularly those involving non-Muslims or foreigners. Nevertheless, initiatives have been implemented to inform the public about the appropriate implementation of caning under Sharia law, to address concerns regarding its cruelty, and to eradicate misconceptions.⁵⁶

Table 2. Comparison of Implementation of Caning Punishment in Aceh, Indonesia and Kelantan, Malaysia

Aspect	Aceh, Indonesia	Kelantan, Malaysia
Legal Foundation	Qanun Jinayah No. 6 of 2014	Sharia Criminal Misconduct Enactment No. 2 of 1985
Types of Violations	Adultery, gambling, alcohol, khalwat, and sexual harassment	Adultery, introduction to adultery, sodomy, and alcohol
Implementation Procedure	Open in public places involving the community	Held in a closed place, usually in a prison or official location.
Number of Caning Punishments	3-100 times depending on the type of violation	Maximum 6-80 times depending on the type of violation
Transparency Principle	High (involving the public in execution)	Low (privacy is a priority)
Privacy Principle of the Actor	Low (public execution may involve social stigma)	High (certain executions to protect the dignity of the perpetrator)

Source: processed by the Author

⁵⁵ Fajri Matahati Muhammadin and others, 'Lashing In Qanun Aceh And The Convention Against Torture: A Critical Appraisal', *Malaysian Journal of Syariah and Law*, 7.1 (2019), 11–24 <https://doi.org/10.33102/mjssl.v7i1.173>

⁵⁶ Nor 'Adha Ab Hamid and others, 'The Law Enforcement of Moral Offenses in Malaysia: The Study in Sharia Criminal Enactment', *Advanced Science Letters*, 24.7 (2018), 4886–88 <https://doi.org/10.1166/asl.2018.11224>

As the table shows, Aceh prioritizes community engagement by employing explicit punishments in public areas. This method is founded on the principle of transparency to serve as a deterrent to the community. Nevertheless, this public execution also infringes upon the privacy of the perpetrators and generates social stigma. In contrast, Kelantan employs closed caning as a form of punishment to safeguard the dignity of the perpetrators. This indicates a reverence for privacy that is more consistent with human rights principles.⁵⁷ Nevertheless, the level of transparency and public access to the punishment implementation procedure is reduced in Kelantan due to the closed implementation. This table demonstrates that, even though both regions have a robust sharia legal foundation, the implementation of caning punishments is influenced by their respective social and cultural contexts and efforts to balance the principles of human rights protection and good governance.⁵⁸

Aceh has an internal reporting mechanism that ensures the caning punishment implementation procedure complies with Qanun Jinayah No. 6 of 2014. This mechanism is responsible for accountability. Nevertheless, the implementation of public audits on the execution of caning punishment is still restricted. The potential for social stigma against the perpetrators is one of the challenges that transparency presents in implementing punishment in Aceh. Conversely, Kelantan emphasizes administrative accountability using structured internal supervision. The privacy of the perpetrators is underscored by the implementation of punishment in a confined space, while the public is granted less access to monitor the process. Aceh exhibits a high level of transparency when implementing public caning sentences. This method is designed to induce a deterrent effect on the public by promoting transparency in information.⁵⁹ However, this transparency is frequently criticized by a variety of parties due to the perception that it infringes upon human dignity, mainly when the punishment is administered in the presence of children and other vulnerable groups. The implementation of caning punishment in a confined space in Kelantan is by the privacy of the perpetrators; however, the public has limited access to information regarding the punishment's implementation, which has caused criticism.⁶⁰

⁵⁷ Muhammad Arafat and Asmuni, 'Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia', *AL-SULTHANIYAH*, 14.1 (2025), 45–68 <https://doi.org/10.37567/al-sulthaniyah.v14i1.3577>

⁵⁸ Faisal Bin Husen Ismail and Jasni Bin Sulong, 'The Development and Obstacles in Applying the Islamic Criminal Law in the State of Kelantan, Malaysia', *International Journal of Academic Research in Business and Social Sciences*, 8.4 (2018) <https://doi.org/10.6007/IJARBS/v8-i4/4074>

⁵⁹ Faisal Husen Ismail and others, 'Vigilantism among the Community in Aceh Against the Accused of Violating the Shariah Criminal Law', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 17.2 (2022), 531–53 <https://doi.org/10.19105/al-lhkam.v17i2.6751>

⁶⁰ Yusna Zaidah and Raihanah Abdullah, 'The Relevance of Ihdad Regulations as a Sign of Mourning and Human Rights Restriction', *Journal of Human Rights, Culture and Legal System*, 4.2 (2024), 422–48 <https://doi.org/https://doi.org/10.53955/jhcls.v4i2.229>

Additionally, Aceh actively engages the community in implementing and socializing Sharia law, which includes using canes for community participation. Religious activities, seminars, and community forums facilitate this socialization. However, the impact of this participation is frequently ceremonial. Despite its high level, it does not involve a comprehensive assessment of the efficacy of law enforcement—the closed character of the implementation in Kelantan results in a lower level of community participation. Nevertheless, Kelantan is currently advocating for a socialization initiative.⁶¹

Based on religious education to increase public awareness of the significance of implementing sharia law. Aceh has been severely criticized for its implementation of public caning in the context of human rights protection. International organizations were the primary source of this criticism, as they believed that public executions were in violation of human dignity and could result in distress for both the perpetrators and the public. Conversely, Kelantan is more regarded for its adherence to human rights because the punishment is administered in secret to safeguard the privacy of the perpetrators. Nevertheless, this method presents obstacles in terms of public accountability and transparency.⁶² The data analysis indicates that Aceh is exceptional in transparency and public participation. At the same time, Kelantan is distinguished by its administrative accountability and preservation of the privacy of the perpetrators. Even though both regions have tried to incorporate the principles of good governance into the implementation of caning, there is a discrepancy between legal norms and their practices, particularly in applying human rights values to mitigate the negative social impacts on the perpetrator and their family.⁶³

Nevertheless, the confined implementation has been criticized due to the lack of transparency and community involvement in the monitoring process. The implementation of caning punishment in Kelantan is generally viewed favorably by the public, mainly because the closed approach is regarded as more humane and respects the perpetrator's privacy. Nevertheless, there are apprehensions that the absence of transparency may erode public confidence in the legal system's justice. This perception suggests that the confined implementation has not entirely satisfied the community's expectations for a balance between the perpetrator's privacy and the information's transparency.⁶⁴

⁶¹ Manan and Salasiyah.

⁶² Muhammad Arafat and Asmuni.

⁶³ Adi Syahputra Sirait and others, 'Assessing Criminal Penalties in Marriage Law: A Comparative Study of Policy Frameworks within Indonesian and Malaysian Legislation', *Al-Manahij: Jurnal Kajian Hukum Islam*, 2024, 255–70 <https://doi.org/10.24090/mnh.v18i2.11208>

⁶⁴ Abnan Pancasilawati, 'Studi Komparatif Implementasi Hukuman Cambuk Di Aceh Dan Kelantan Good Governance Dan Hak Asasi Manusia', *Fikruna: Jurnal Ilmiah Kependidikan Dan Kemasyarakatan*, 6.2 (2025), 227–43 <https://doi.org/10.56489/fik.v6i2.314>

Aceh and Kelantan exhibit distinct methodologies concerning their contributions to Sharia objectives. The public deterrent effect is more prominent in Aceh, whereas Kelantan is more concerned with protecting individual dignity. The implementation of sharia law can accommodate each region's social and cultural context, as these differences suggest, while universal values remain intact. Policy reforms must be implemented in both areas to enhance the efficacy of caning. A public implementation approach can be combined with a rehabilitative approach in Aceh to mitigate the effects of social stigma. Community involvement in indirect supervision, such as structured public reporting, can enhance transparency in Kelantan. To improve comprehension of the significance of reconciling the objectives of sharia law and human rights protection, it is also necessary to implement community education programs and provide training to law enforcement officers.⁶⁵

These policy reforms can be used as a compromise to address the enforcement of sharia law in Aceh and Kelantan and to address human rights concerns. Aceh can maintain public deterrence and mitigate the negative social impact by incorporating rehabilitative measures. In the meantime, Kelantan can improve public trust by establishing structured supervision mechanisms that do not violate the privacy of the perpetrators. Periodically, it is imperative to thoroughly assess the efficacy of these reforms and implement any necessary modifications. Additionally, it is essential to foster collaboration among human rights organizations, legal experts, and religious scholars to guarantee that the implementation of sharia law accords with ethical and humanitarian principles. Through these endeavors, Aceh and Kelantan can serve as a model for the harmonious coexistence of Islamic law and contemporary human rights standards.

Strengthening Human Rights Principles in the Criminal Act of Caning

The conclusion that the legal field must be distinguished from the moral field, even though the conflict between Natural Law Theory and Legal Positivism was discussed, is that the law cannot maintain its legitimacy if it is disconnected from the fundamental demands of a just life that is by human dignity.⁶⁶ The essence of law is characterized by the intention to ensure social solidarity, freedom, and justice. Nevertheless, the purpose itself is not a component of positive law. A prepositive norm requires that the law be consistent with human dignity. These fundamental rights enable the realization of prepositive moral obligations in

⁶⁵ Wan Mohd Amjad Wan Halim and Rohani Desa, 'Analysis of Hifz Al-Nafs' (Protection of Life) Achievements on the Shariah Criminal Offenses Enactment in Malaysia Based on the Fuzzy Delphi Method', *International Journal of Academic Research in Business and Social Sciences*, 12.5 (2022) <https://doi.org/10.6007/IJARBS/v12-i5/13239>

⁶⁶ Bambang Ali Kusuma, 'Establishment of Indonesian Maritime Power: Regulation of Transnational Organized Crime on Illegal, Unreported, and Unregulated (IUU) Fishing', *International Journal of Criminal Justice Science*, 16.2 (2021), 251–266 <https://doi.org/https://doi.org/10.5281/zenodo.4756074>

positive law.⁶⁷ The Natural Law Theory advocates for the basic demands of human dignity, which are embodied in human rights. However, these demands can be incorporated into positive law as fundamental norms, as they are formulated as concrete and operational rights or obligations, and all other legal norms must not conflict with them. Consequently, the requirements of Legal Positivism are satisfied, as judges are permitted to employ only positive legal norms when making decisions. From this, it is evident that the greater the inclusion of the fundamental demands of justice and human dignity as basic rights in positive law, the more certain it is that the law is indeed just and by human dignity.⁶⁸

Human Rights (HAM) are fundamental principles universally acknowledged as essential for the protection, dignity, and freedom of all individuals from inhumane treatment. The principles of human rights, such as the prohibition of unjust and cruel treatment, must be considered when applying punishment in the context of criminal law.⁶⁹ Nevertheless, Islamic law-based legal systems, such as those in Aceh, caning is still used as a punishment for specific infractions. Consequently, it is imperative to enhance the principles of human rights in the implementation of caning punishment to ensure that it is consistent with national and international legal standards.

Evaluating its implementation mechanism is one of the primary components of bolstering human rights principles in the criminal act of caning. At present, the application of caning punishment in Aceh is conducted in public, which can potentially infringe upon the rights of individuals, particularly those entitled to protection from degrading treatment and dignity.⁷⁰ Physical punishment, such as caning, is classified as a form of torture or inhumane punishment in a variety of human rights studies. Consequently, it is imperative to reevaluate the practice of administering this penalty in terms of its procedure and its effect on the individual being punished.⁷¹

One of the aspirations of the Acehnese people, which is to preserve their identity, is fulfilled by the implementation of Islamic law. The identity of Aceh has

⁶⁷ Yusif Mamedov, 'Islamic Criminal Procedure Law: Human Rights Issues', *Grani*, 23.10 (2020), 47–57 <https://doi.org/10.15421/172092>

⁶⁸ Cecep Mustafa and Rita Komalasari, 'Harmony Unveiled: Sharia Law and Human Rights in Dubai's Justice', *Jurnal Alwatzikhoebillah : Kajian Islam, Pendidikan, Ekonomi, Humaniora*, 10.2 (2024), 272–84 <https://doi.org/10.37567/alwatzikhoebillah.v10i2.2725>

⁶⁹ Isoni Muhammad Miraj Mirza, Rudi Natamiharja, and Jalil Alejandro Magaldi Serna, 'Social Transformation of International Human Rights Law Through Indonesian Constitutional Court', *Uti Possidetis: Journal of International Law*, 4.3 (2023), 439–71 <https://doi.org/10.22437/up.v4i3.25721>

⁷⁰ Kanwel, Imran Khan, and Asghar.

⁷¹ Md. Mahabub Ul Alam Khan, Rupa Nur, and Md. Sulaeman, 'The Islamic Origins of Human Rights: Alignments with Bangladesh's Legal Framework and Policy Suggestions for Legislators', *Journal of Policy & Governance*, 04.01 (2024), 31–46 <https://doi.org/10.33002/jpg040102>

been established through a lengthy historical journey, which Islam characterizes. Implementing Islamic law has been a demand of the Acehnese people since the early days of independence. It is also claimed that Islamic law encourages the Acehnese people to defend the archipelago by fostering the sentiment of nationalism. The conflict between Aceh and the center transpired due to the neglect of these requirements.⁷²

In the context of the relationship between the practice of human rights and the implementation of Islamic law in Aceh, there are numerous approaches to dividing the responsibilities of regulating Sharia into three categories: the first category includes Sharia practice, which is under the control of each individual, the second category is charity, which is under the control of the community, and the third category is charity, which is under the power of the state or government.⁷³ The state is explicitly responsible for the regulation of certain Islamic teachings, including larceny and alcohol consumption. The community regulates certain aspects, including purchasing and selling, Eid prayers, zakat fitrah, and alms.⁷⁴ However, the *sunat tahajjud* prayer is also controlled by individuals. However, some areas are unclear regarding who should be in charge. For instance, there are issues of marriage, family support, and the obligation to pray in congregation at the mosque, among others. We must contemplate, reflect, and determine which Islamic teachings are unclear. We will be supervised by the state, which will be handled by the community, and which will be handled by individuals alone. Suppose we fail to transfer this control matter properly. In that case, we will encounter challenges, adopt an excessive attitude that is inconsistent with the principles of Islam, and, by the terms we are currently studying, will be in direct opposition to and in violation of human rights.⁷⁵

In Aceh, the term "Qanun Aceh" refers to all legislative products jointly formulated by the executive and legislative branches (Governor and DPR). Nevertheless, Qanun Aceh, which pertains to Sharia, exhibits unique characteristics and distinctions from Qanun Aceh, which governs the implementation of government. Regarding government implementation, Qanun Aceh generally occupies the same position as Regional Regulations (*Perda*).

⁷² Faleh Salem Alkahtani, 'The Protection of Human Rights in Saudi Counter-Terrorism Laws', *Arab Journal of Forensic Sciences and Forensic Medicine*, 2016 <https://doi.org/10.12816/0033140>

⁷³ Arsyad Aldyan and Abhishek Negi, 'The Model of Law Enforcement Based on Pancasila Justice', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 178–90 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.51>

⁷⁴ Abdul Wahab, Bambang Setiaji, and Magomed Tazhdinov, 'Zakat Maal Management and Regulation Practices: Evidence from Malaysia, Turki and Indonesia', *Journal of Human Rights, Culture and Legal System*, 4.2 (2024), 569–92 <https://doi.org/https://doi.org/10.53955/jhcls.v4i2.204>

⁷⁵ Akbar and Efendi.

Typically, the regulation of *jinayah* (criminal) material is the primary distinction between Qanun Aceh and *Perda*.⁷⁶

The Aceh Qanun is authorized to regulate the punishment of flogging for criminal perpetrators by this specificity. The punishment of flogging, which is regulated in the qanun, is the outcome of *ijtihad* and has transformed into a national positive law. Consequently, its enforcement necessitates the involvement of state power through law enforcement officers, including the police, prosecutors, sharia courts, advocates, and other relevant institutions.⁷⁷

The fundamental legal reform issue is the relationship between justice and law enforcement. This is because legal regulations and laws are intended to be equitable but are frequently not. There is a legal reform mechanism to mitigate the non-dynamic nature of a law; however, it is a challenging endeavor to update a law through the legislative process or the contextualization process by judges.⁷⁸ Undeniably, the legislative process is also a manifestation of the political struggle process. Producing a new law is a time-consuming process that necessitates the endeavors of groups with varying visions and missions to reach an agreement. This is evident in the endeavors to establish qanun as *jinayat* law. There are still advantages and disadvantages to its implementation, as Aceh is home to a significant number of Christians in addition to Muslim communities.⁷⁹

Sharia law is not solely focused on punishment from the Islamic perspective; it also promotes the principles of justice, *rahmatan lil 'alamin* (compassion for all nature), and social welfare. According to several scholars, implementing punishment in Islam must be based on the *maslahat* (righteousness) of both individuals and society; if a punishment results in more injury (loss) than benefit, it is necessary to make modifications to ensure that it is consistent with the Islamic principles of justice.⁸⁰ Indonesia has ratified various international human rights instruments, including the Convention Against Torture (CAT), in a legal sense. This convention requires abolishing all forms of punishment that denigrate or torture human dignity. Therefore, to avoid potential conflicts with Indonesia's

⁷⁶ Hajed A. Alotaibi, 'The Challenges of Execution of Islamic Criminal Law in Developing Muslim Countries: An Analysis Based on Islamic Principles and Existing Legal System', ed. by Francis D. Boateng, *Cogent Social Sciences*, 7.1 (2021) <https://doi.org/10.1080/23311886.2021.1925413>

⁷⁷ Nasrullah Nasrullah, Carissa Shifa Novendra, and M. Farel Reyhan, 'The Challenges Of Islamic Criminal Law Implementation In Aceh Shariah Court', *Diponegoro Law Review*, 9.1 (2024), 121–35 <https://doi.org/10.14710/dilrev.9.1.2024.121-135>

⁷⁸ Yahyanto Yahyanto, 'The Contribution of Human Rights in Thinking on Renewing The Book of Law of Criminal Events (KUHP)', *Justicia Islamica*, 16.2 (2019), 395–426 <https://doi.org/10.21154/justicia.v16i2.1723>

⁷⁹ Putri Ramadhani, 'Islamic Criminal Law's View on The Crime of Attempted Rape', *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam*, 4.2 (2023), 40 <https://doi.org/10.58836/al-qanun.v4i2.21472>

⁸⁰ Fauzah Nur Aksa, T Saifullah, and Al Farabi, 'The Implementation of Qanun Jinayat in Aceh', *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, 8.1 (2023) <https://doi.org/10.22515/alakhkam.v8i1.5896>

international obligations, the implementation of caning punishment in Aceh must be modified to align with the state's recognition of human rights standards.⁸¹

Although it is imperative to reinforce human rights principles in the criminal offense of caning, it is also crucial to consider the broader implications of human rights protection in criminal law. This encompasses preserving public confidence in the rule of law by ensuring the legal system maintains a balance between effective law enforcement, individual safety, and impartiality.⁸² The development of alternative punishments more oriented toward rehabilitation than physical punishment is a concrete step in strengthening the principle of human rights in the crime of caning. For instance, sanctions may be implemented on violators through community service, penalties, or coaching programs based on religious and social education. This method is more humane and more effective in fostering legal and moral awareness among violators without compromising their dignity or mentality.⁸³

Furthermore, the principle of human rights in the criminal act of caning can be fortified by enhancing the awareness of the community and law enforcement officers regarding the significance of maintaining a balance between Sharia law and human rights. Local governments and religious leaders must provide the community with more comprehensive legal education and indoctrination to ensure that they comprehend the fundamental rights of individuals within the relevant legal system.⁸⁴ Consequently, a unified understanding of the significance of human rights in applying sharia law will be established. The central government also plays a significant role in assuring that regional laws, including those in Aceh, are consistent with the human rights principles guaranteed by the constitution. The monitoring mechanism for implementing the Qanun Jinayat must be enhanced to ensure that human rights are not violated. The central government must promote the revision or modification of policies to be more consistent with national and international human rights standards if indications of violations are discovered.⁸⁵

⁸¹ 'Criminalization toward LGBT Community and Its Implementation through the Aceh Qanun in Indonesia', *Indian Journal of Forensic Medicine & Toxicology*, 2020 <https://doi.org/10.37506/ijfmt.v14i3.10717>

⁸² Nasrullah, Novendra, and Reyhan.

⁸³ Said Mayzar Mulia and Ismail, 'Evaluation of Policies on Aceh Qanun Regulation', *Britain International of Humanities and Social Sciences (BloHS) Journal*, 2.1 (2020), 271–77 <https://doi.org/10.33258/biohs.v2i1.188>

⁸⁴ Chahayu Astina, 'Optimization Of Locally-Generated Revenue Of Aceh Timur Through Sharia Tourism Development', *Ihtiyath: Jurnal Manajemen Keuangan Syariah*, 4.1 (2020) <https://doi.org/10.32505/ihtiyath.v4i1.1796>

⁸⁵ Cecep Mustafa and Rita Komalasari, 'Gender Equality in the Criminal Justice System in Dubai: Between Sharia and Human Rights', *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah*, 10.1 (2024), 52–62 <https://doi.org/10.37567/shar-e.v10i1.2726>

A cultural approach is also a significant factor in reinforcing the human rights principle in the criminal act of caning, in addition to legal and policy considerations. Although Acehese society is characterized by robust Islamic principles, its comprehension of human rights is frequently inadequate. Consequently, it is imperative to try to reconcile the Islamic values that the community has adopted with the universally recognized human rights principles. The community can comprehend that respect for human rights is not a rejection of Islamic law but rather a component of implementing the values of justice in Islam with the appropriate approach.⁸⁶

Aceh must continue to consider the dynamics of law at the national and global levels as a component of the national legal system. Enhancing the principle of human rights in the criminal act of caning does not entail the abolition of the fundamental principles of the sharia law enforced in Aceh; instead, it involves pursuing a more equitable and humanitarian interpretation. The principles of human rights and sharia law can coexist without resulting in significant value conflicts by modifying the punishment system to be more oriented towards rehabilitation, increasing legal education, and strengthening supervision of its implementation.⁸⁷

These measures will not only enhance Indonesia's reputation as a force for human rights enforcement in the global community but also establish a legal system that is more equitable and consistent with universal human values. Consequently, all stakeholders must maintain a collective cognizance to guarantee that the law's implementation in Aceh is consistent with the human rights principles upheld at the national and international levels while preserving its identity.

4. Conclusion

In Aceh, the caning debate indicates the difficulties of reconciling regional autonomy with national and international human rights obligations. In Aceh, the implementation of qanun as a form of asymmetric decentralization frequently leads to the reinforcement of a culture of violence and the imposition of excessive, discriminatory punishment practices. The legal systems of Malaysia and Indonesia exhibit fundamental distinctions in their approaches to caning under sharia. Malaysia implements it in a confined environment to safeguard the offender's privacy and mitigate the psychological impact on the community. In contrast, Aceh does so openly to ensure transparency and a deterrent effect. To balance

⁸⁶ Abdullahi Ahmed An-Na'im, 'Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1', in *Asian Perspectives on Human Rights* (New York: Routledge, 2021), pp. 31–54 <https://doi.org/10.4324/9780429033674-5>

⁸⁷ Justin J. Gengler, Bethany Shockley, and Michael C. Ewers, 'Refinancing the Rentier State: Welfare, Inequality, and Citizen Preferences toward Fiscal Reform in the Gulf Oil Monarchies', *Comparative Politics*, 53.2 (2021), 283–317 <https://doi.org/10.5129/001041521X15903211136400>

Sharia law and contemporary ethical and humanitarian standards, Aceh requires a rehabilitative approach and a more stringent level of public supervision, similar to Kelantan. More educational alternatives, such as legal education or social work, must be incorporated into the reforms of the implementation of this punishment mechanism. Furthermore, it is imperative to enhance the comprehension of the equilibrium between human rights and sharia among the public and law enforcement. Islamic justice can be reconciled with universal human rights by adopting a more inclusive approach to law, policy, and culture. Aceh can preserve its identity while simultaneously upholding the principles of human dignity and justice. This reform not only fortifies a legal system that is more equitable and compassionate, but it also enhances Indonesia's international reputation as a nation that prioritizes human rights.

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