Perspective on regulation of caning in the preparation of the criminal law code (KUHP) in the future

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ABSTRACT

This writing aims to understand the reality of norms regarding the regulation of caning in qanuns or local regulations in the Province of Nanggroe Aceh Darussalam, then to explain how the weaknesses and advantages of regulation of caning as positive law, then to examine the perspective of regulation of caning in the Book of Laws Penal Code (KUHP) in the future as one type of alternative punishment that can be imposed by judges. As for the formal criminal law, it is regulated in the provisions of the Governor of Aceh Regulation Number 10 of 2005 concerning Technical Instructions for Implementation of the Caning Law. This caning punishment is felt to be able to deter the convict because it creates a greater embarrassment effect, resocializes the convict in society and is expected to be able to reduce the crime rate. Caning is a type of punishment that is physically painful. The emergence of many cons regarding its existence because the punishment of caning is considered to tend to degrade human dignity and it is everyone's right to be free from torture. Article 1 paragraph (3) provides a strong legal basis for unwritten laws that live in society regarding the application of customary criminal law. This is solely to fulfill the sense of justice that lives in a certain society. Whereas Article 1 paragraph (4) places caning as a source of material law. So the judge has the authority to multiply the laws that live in society and pass a criminal sentence based on his convictions.

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1. INTRODUCTION

Criminalization is a problem that is often in the public spotlight because it is a barometer of justice in criminal law and its enforcement. The affairs of justice in law enforcement or in sentencing are not a matter of the tastes or feelings of the public prosecutor or judge based on their legal authority, but matters of social justice which need to have clear, firm and measurable instruments.

The term punishment comes from the word straf which is a term that is often used as a synonym for the term criminal. However, it is necessary to limit the meaning of punishment which is a more specific term, by showing its distinctive characteristics or characteristics. To provide a broader picture with regard to crime, consequently, the imposition of criminal sanctions becomes a parameter of justice in resolving cases of violations of criminal law. However, not all scholars agree that the nature of crime is the giving of sorrow or suffering, this was expressed by Hulsman who stated that criminal law is calling for order.

Criminal law essentially has two main objectives, namely to influence behavior and to resolve conflicts. Criminal law in a comprehensive manner must contain provisions regarding material criminal law, namely containing descriptions of regulated criminal acts, who can be punished and the amount of punishment imposed. to lawbreakers, apart from that criminal law must also regulate formal criminal law, namely regarding criminal procedural law. One of the main problems of criminal law is regarding the concept of sentencing purposes and to know comprehensively about the objectives of this sentencing must be linked to streams in law criminal.

These streams are classical, modern (positive) and neo-classical, each of which differs from one another through its own characteristics which are closely related to the conditions in which these schools grew. Mass actions in voicing aspirations are often colored with destruction

against public facilities, take the law into their own hands against suspects in theft and road collisions, as well as persecution and murder with a background of personal grudges. In essence, people are very angry with law enforcement in this country. In addition, national laws passed through a democratic process (legislation) are considered to be unreliable (not firm) in responding to people's concerns about the increasing prevalence of gambling, pornography, theft, and so on in society.

Today criminal law issues are widely discussed and under the spotlight, both in theory and in practice and there is even an attempt to compile a National Criminal Code. This effort is aimed at overcoming various weaknesses and deficiencies in the current Criminal Code (KUHP), which are relics of the colonial era and are still used as material criminal law until now. However, it turns out that many of the provisions in it are no longer in accordance with the soul and spirit of Pancasila and the 1945 Constitution as well as with the current situation and condition of society.

The reform of the national criminal law (criminal law reform) which had started in 1963 was not at all intended to produce a 'patchwork' Criminal Code. The renewal is expected to form a national Criminal Code that has an Indonesian personality that respects religious and customary values, is modern in nature and conforms to international values, standards and principles as well as trends recognized by civilized nations in the world. Perspectives regarding the reality of norms in NAD that regulates the punishment of caning makes a positive contribution to the development of national criminal law because its existence provides space for legal certainty that places religious law as a source of law that can be explored in the hope of being able to create a sense of justice for society.

2. METHOD

In preparing this scientific work in order to get results that are close to perfection, the authors use several research methods as follows. The research conducted by the authors in this writing uses a normative approach. The normative approach is carried out by studying the problem in terms of the aspects of legislation, examining various literature and other secondary data sources, so that a strong and objective basis is obtained in expressing opinions in written form. Research using the normative approach method can be carried out using only study documents or library materials, namely by using secondary data.

Data were obtained from statutory regulations, both sources of Indonesian positive law, the Draft Criminal Code (RUU KUHP), books and articles related to the perspective of regulation of caning in positive law in the future. The method used in the collection of materials is a literature study, namely by collecting various legal bases from positive law provisions, supporting books, articles, papers and other materials, especially regarding the punishment of caning, so as to obtain an objective and proportional basis in providing analysis.

The data analysis method used to analyze the material is to use the content analysis method, which examines the material in terms of positive law and the Draft Law on the Criminal Code (RUU KUHP), especially those that regulate caning punishment, so that a perspective solution is obtained. regulation of caning punishment in the Criminal Code in the future. in this study located in aceh which still uses local law and one of the punishments in this area is caning, with caning carried out by following Islamic religious law in Aceh-Langkat, Teungku Daud Beureueh in Kutaraja (now Banda Aceh).

3. RESULTS AND DISCUSSION

The results of the research that describe the law that is carried out by regulation of caning punishment is a fact of the existence of caning which is held by policy makers to be arranged in a regulation or law. Caning punishment in Nanggroe Aceh Darussalam is one of the applications of the law based on religious law which, although now it is not permissible to do so, is still carried out in several areas of Aceh who feel that the applicable law is correct, the law that was in effect in Aceh at that time was applied for the reason so that the people of Aceh do not act casually by looking back at the long history of efforts to implement Islamic law in Aceh. Another meaning of caning is qanum, qanun comes from Arabic with the origin of the word qanuun.

Table 1. Definition of qanun from various circles.

Version	definition
government	Specific Qanuns are NAD provincial regulations as the implementation of certain articles in the Law on Governing Aceh Provincial Qanuns are provincial regional regulations in the framework of implementation authority as stipulated in the laws and regulations
NGO	Qanun is a regional regulation formed by DPRD as regional legislature with the approval of the Governor in the context of implementing regulations legislation
Malaikul Saleh University	Qanun is a regional regulation as the implementation of the Law in NAD in the framework of administering NAD Government
IAIN Ar-Raniry	Qanuns are statutory regulations made by the governor with the DPRD with the approval of the Wali Nanggroe Institute in the framework of implementation of the Law on Governing Aceh
Shah Kuala University	Specific Qanuns are NAD provincial regulations as the implementation of certain articles in the Law on Governing Aceh Provincial Qanuns are provincial regional regulations in the context of exercising authority as stipulated in statutory regulations

It is feared that the use of the term qanun will confuse the non-communityb ecause it would create confusion, the word Quanum was replaced with caning. Caning, which is regulated as a type of punishment in positive law in NAD Province, was born as a living law in society. The implementation of this caning law is the implementation of Islamic law in Aceh

3.1 Weaknesses And Advantages Of Caning

Criminal which is a type of crime that punishes physically, of course, will encounter pros and cons as a discourse in the world of law, because many types of punishment that cause physical suffering have been abandoned. However, the current developments in punishment are felt to be too weak to create a deterrent effect. A punishment is said to be effective if the goal to be achieved by the punishment has been achieved.

Many convicts who have served prison terms become recidivists for crimes that are more sophisticated or more serious than before. Prison is an effective learning for convicts to develop skills or abilities in committing crimes through their association with fellow convicts. Meanwhile, fines are more profitable for people who can afford them, because for those who can't afford them, the amount of fines is a burden or a problem, so they tend to accept another type of punishment, namely the crime of deprivation of liberty. so with that the caning law which was carried out initially only among the public was finally followed by the government and apparatus so that it remained in accordance with the applicable norms with the aim of: preventing the commission of criminal acts by enforcing legal norms for the protection of society; socialize the convict by conducting training so that he becomes a good and useful person; resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in society; and release the guilt of the convict.

Weaknesses and advantages of flogging regulation must be directly proportional to the aspirations of social justice and legal certainty that grow in the midst of people who choose this type of punishment, with the hope that its implementation will become a valuable lesson for renewing the condition of Indonesian law nationally, especially criminal law. The setting of caning punishment is

aimed at reducing the crime rate in society. Regulating the punishment of caning must prioritize a fast and low-cost judicial process. Reducing the state's burden through the existence of a prison sentence that must be paid for can be suppressed by the existence of this punishment. Caning punishment has an advantage because the punishment of caning was born through law that lives in society as a cultural and customary value, even religion, whose implementation will be strictly controlled by indigenous peoples, caning provides punishment that is fast and inexpensive, and reduces the state's burden on financing prison sentences. As well as the convict being able to remain in the midst of society to re-socialize and take care of the family's livelihood before being executed, the embarrassment effect caused by caning is far greater than the pain experienced due to lashing so it is believed that this crime has a more effective deterrent effect. The existence of caning has reduced the existing crime rate in society, and is believed to be able to reduce the spread of social diseases such as gambling, drinking and adultery.

3.2 Perspective on the Criminal Procedure of Caning in the Book of Laws Criminal Law (KUHP) in the Future

The Criminal Code is the main source of law that strictly regulates the types of punishment that can be imposed. Basically the law of whipping is not included in the KHUP law because in book I it is the main reference for everything provisions governing sentencing. However, the Criminal Code does not have the right to prohibit regional regulations, so it is accompanied by legal cantuk punishment regulations implemented on the basis of the law on regional autonomy specifically for the city of Aceh. Although in the explanation it is stated that qanun is another designation for regional regulations, but different from the Perda.

The Perdasi which expressly cannot overrule statutory regulations, in the General Elucidation states that the Qanun of the Province of Nanggroe Aceh Darussalam is a Regional Regulation of the Province of Nanggroe Aceh Darussalam which can overrule other laws and regulations by following the principle of lex specialis derogat lex generalis. in the current caning law due to criminal caning by using local customary obligations or with obligations based on laws that live in society. then with that the law of caning can be carried out with a social agreement in a society to be used in sentencing against problems that they agree with.

So that the punishment of caning becomes a law that lives in society, which allows the judge to impose a sentence in the form of additional punishment on the accused with the aim of restoring balance in a society that is disrupted due to the commission of a crime and becomes a unique unit of a society, it is possible to use it as a punishment for members of indigenous peoples who have violated the law. Caning must be placed as a habit to solve legal problems in society, caning must also become a culture and custom used by indigenous peoples to punish their members who violate criminal provisions.

4. CONCLUSION

Caning is a type of crime which is a source of material law. As for regulation of norms in a concrete way it has been regulated in the Province of Nanggroe Aceh Darussalam (NAD) through the provisions of Law No. 18 of 2001 concerning Special Autonomy which has the authority to implement Islamic law, one of which is realized by the application of caning. reducing the criminal acts of gambling, drinking and adultery, by looking at the publication of the qanun which regulates caning in NAD and the embarrassing effect caused by caning is far greater than the pain experienced by caning so it is believed that this crime creates a more effective deterrent effect and the existence of the Draft Criminal Code Law (RUU KUHP) which regulates the fulfillment of local customary obligations and/or obligations according to the living law in article 64 paragraph (1) point e provides a great opportunity for the application of caning punishment, if indigenous peoples agreed to carry out the punishment of caning or mas society revives the crime as law for each person in the community.

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Carry out detailed monitoring of the regulation of caning in NAD Province, and compare it with the criminal provisions in the current Criminal Code, so that we find a legal product that is closer to the people's sense of justice as an effort to reform Indonesian criminal law, Strengthen the authority of law enforcement officials and continue to provide support for law enforcement in a clean,

straightforward, firm and indiscriminate manner and free from KKN practices. Because upholding the law will support the creation of order and security in society and stable security conditions support law enforcement efforts, make statutory provisions at the regional level that can minimize societal ills, such as making local regulations against prostitution, regulations against immorality or local regulations on alcohol and implement the regulation consistently.

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