



NON-MUSLIM SUBMISSION IN ACEH'S QANUN JINAYAT: Deviation or Development of the Principle of Criminal Law?

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ABSTRACT

This article aims to provide legal logic for the permissibility of choosing criminal law for non-Muslims who commit criminal acts regulated in the Aceh Qanun Jinayat based on one of the legal principles raised (endorsement) as the basis for establishing norms in the qanun in question, namely the principle of submission which is actually not recognized in criminal law. The research data are several decisions of the Syar'iyah Court in Aceh against violations of the Qanun Jinayat committed by non-Muslims. It is assumed that the decision is a shift in the principles of criminal law. This problem will be analyzed by observing the basic principles of criminal law, including the principles of the application of criminal law and the politics of criminal law. The results of the study showed that from the point of view of the principles of criminal law which is a compelling law, this submission is a deviation, but from a legal-political perspective, because the birth of permissible provisions in qanuns is a political process, where the demand to apply Islamic Sharia which basically only applies to Muslims, then as a softening of the territorial principle non-Muslims are allowed to vote.

Keywords: Punishment; Submission; Qanun Jinayat

1. INTRODUCTION

Since the enactment of Qanun Number 6 of 2014 concerning Jinayat Law (Qanun Jinayat), starting in 2015 many non-Muslims have been punished with caning. Relatively recent executions, for example on Monday, 8 February 2021, three non-Muslim citizens (2 men and one woman) were caned in public for drinking khamr. The offender stated that they "chose" caning because it is more practical and ends quickly; while imprisonment is longer and suffers more. This information is reinforced by data from the decision of the Syar'iyah Court since 2015 which punished non-Muslims with caning, based on the Qanun Jinayat, especially on the delict of drinking or selling khamr and maisir (gambling). "Choosing" to be punished with a certain penalty is actually contrary to the principle of criminal law, namely "coercion". Likewise, choosing to be punished under a certain legal system (in this context, Qanun Jinayat) is unusual because "submission" to a certain legal system usually only applies to civil law, not criminal law. Its presence in the Qanun Jinayat can be an indicator of a shift in the coercive nature of the criminal law principle.

The provision regarding self-submission in Qanun Jinayat (Number 6 of 2014) is contained in Article 5 sub b which states, "Any non-Muslim person who performs Jarimah in Aceh together with Muslims and chooses and subject himself voluntarily to the Jinayat Law". With this provision, non-Muslims can be subject to Qanun Jinayat in terms of criminal acts committed jointly with Muslims, but they must submit themselves. This provision is actually a derivative and even a repetition of the provisions contained in Law No. 11 of 2006 concerning the Government of Aceh (UUPA). Article 129 paragraph (1) of the UUPA states, "In the event of a jinayah act committed by two or more people together, one of whom is a non-Muslim religion, the offender who is not a Muslim can choose and voluntarily submit himself to the law of jinayah". Because the history of the formation of this law is full of political nuances, which cannot be separated from the constitutional turmoil that occurred at that time, this arrangement can also be considered to contain political tendencies

¹So far, the study of the position of non-Muslims in Qanun Jinayat² shows three directions. First, a study of the perceptions of non-Muslim Acehese society shows diversity; most of them stated that they did not have a problem because the purpose of the Qanun was for the benefit of the people of Aceh. They have no objection to the existence of the Qanun Jinayat. Second, research on Qanun Jinayat norms related to the position of non-Muslims shows diversity. Some of the writings show descriptively that the Qanun applies only to Muslims, unless non-Muslims submit themselves voluntarily so that Islamic law cannot be called coercive on them. Others stated that the existence of articles on non-Muslim legal subjects indicated that there was legal discrimination against non-Muslims or the absence of equality before the law which led to violations of human rights. Third, a review of Qanun delicts committed by non-Muslims; most indicated that the subjects preferred to be processed by Qanun over the national Criminal Law (KUHP) due to practical considerations and lighter sentences. The three directions of this research do not appear to be in-depth and tend to be in pros or cons; have not seen the position of non-Muslims in relation to the principles of criminal law which should not recognize self-submission and the position of Qanun as a sub-system within the national legal system so that its formulation is heavily influenced by legal political considerations.

Another study related to submission was conducted by Mahmudin which illustrated that the tendency of non-Muslims to submit is because the punishment in the Qanun Jinayat is instantaneous and judges generally imposed canings³. Similar research was also conducted by Abdul Halim. The findings also only illustrate that the application of Qanun Jinayat is not always negative for non-Muslims and they choose Qanun Jinayat because it is practical and straightforward⁴. The impression here is that from the several research results traced, there has been no study of how the application of public and coercive criminal law privileges allows criminal law violators to choose. There is an impression that the Qanun Jinayat is synonymous with caning so the self-submission occurred because they wanted to be subjected to caning. Therefore, the purpose of this study is to see how the concept of self-submission in criminal law (Qanun Jinayat) and how self-submission is seen from the perspective of legal politics in Aceh.

2. RESEARCH METHOD

As mentioned above, this theme was raised because the expert's study of the existence of non-Muslims in Aceh was limited to descriptions that were approached by the norms of the Qanun itself, both seen from the principles of criminal law and legal politics. This article tries to look at this problem from the point of view of the character of criminal law itself, namely its characteristics and criminal principles. Thus, the research belongs to normative juridical research, how the principle is transformed into the norm. The main data in this study are secondary data obtained through a qualitative study process which originates from primary legal materials in the form of legislation, secondary legal materials in the form of literature studies (books, journals), and tertiary legal materials in the form of dictionaries and encyclopedias. The main data observed is the decision of the Sharia Court (Religious Court in Aceh) regarding non-Muslim perpetrators who chose to proceed with the criminal case he carried out with the Qanun Jinayat. This data is mapped in such a way, then analyzed using the concepts of criminal law and legal politics.

1 Ali Abubakar and Zulkarnain Lubis, *Hukum Jinayat Aceh*, I (Jakarta: Prenada Media Group, 2019).

2 Syamsul Bahri, "Inkonsistensi Hukum Penerapan Hukuman Cambuk Terhadap Non-Muslim Di Aceh," no. April (2018): 866–78; Nurrohman Syarif, "Transformation and Reformation of Islamic Criminal Law; The Study on Aceh Qanun Jinayat and Its Impact To Woman and Non-Muslim," *Jurnal Dinamika Hukum* 19, no. 2 (2019): 423–48; Abdul Halim, "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh," *Human Rights Review*, no. 0123456789 (2022), <https://doi.org/10.1007/s12142-021-00645-x>; Salman Abdul Muthalib et al., "Public Services for Non-Muslims in Aceh: Non-Muslim Rights in The Application of Islamic Sharia Law," *Res Militaris* 12, no. 2 (2022): 85–101; Hasnul Arifin Melayu, Md Zawawi bin Abubakar, and Norruzeyati binti Che Mohd Nasir, "Minorities in the Shari'a Territory: The Position of Non-Muslim in Aceh's Jinayat Law," *Legitimasi, Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (2021), <https://jurnal.ar-raniry.ac.id/index.php/legitimasi/article/view/10521>.

3 Mahmuddin et al., "Enforcement of Jinayat Law for Non-Muslims in Aceh," *JHP Jurnal Hukum Dan Peradilan* 11 (2022): 21–42.

4 Halim, "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh."

3. RESULTS AND DISCUSSION

3.1 Self-Submission and Criminal Law Principles

Self-submission or choice of law is a theory of choice of rules for legal conflicts which is widely used as a specific *ex ante* regulation. This theory, among others, was put forward by Carl von Savigny; based on the single organizing principle of ‘voluntary submission’ as a reflection of one’s choices. Historically, self-submission has been one of the most troubling areas of private international law in Anglo-Common Law jurisdictions. Disputing parties must be able to choose the law that governs them, subject to procedural safeguards. If there is no explicit agreement, the court must apply rules that facilitate the choice of parties or that choose the law to which the parties are likely to contract. Self-submission is one of the most confusing areas of law to determine which law applies to a dispute; usually between countries. Accordingly, over the last half-century, the issue of choice of law in torts has dominated academic writing in private international law in the US and has also attracted considerable interest in other common law jurisdictions.

There are four reasons for the emergence of this theory of self-submission, namely, first, legal issues between countries, generally related to international trade. Article 4 of the Hague Principles contains Choice of Law in International Commercial Contracts regarding Tacit Choice of the law governing the contract. The application of Article 4 may be limited in practice given the scarce number of cases of silent choice found. Second, cross-border interstate legal conflicts, for example in British private international law rules relating to cross-border assignments.⁵ Since 1994, Canada, the United Kingdom, and Australia have adopted new legal options for cross-border torts that focus on the application of the law where the tort occurred (the *lex loci delicti*); leave some specific rules that refer to the law of the forum (the *lex fori*) and *lex loci delicti*. Third, legal conflicts due to the occupation of one country over another, for example, Israel’s occupation of Palestine. Israeli courts put forward various arguments to reject and oppose the application of *lex loci delicti*. Whereas, according to international law, the occupied territory forms a separate jurisdictional entity from that occupying power, but at the same time is controlled and regulated by the authorities until an international settlement is reached. Fourth, a country that has several regulations that allow people to choose what they like. China, for example, provides a choice of law rule for general damages, maritime damages, and limitation of liability for maritime claims as well as damages arising from civil aircraft through the General Principles of the Civil Law of the People’s Republic of China of 1986 (GPCL), Maritime Act of the People’s Republic of China of 1992 and Act of the People’s Republic of China on Civil Aviation of 1995.

Self-submission is generally known in the area of civil law; related to a lawsuit for material losses suffered by a particular person, institution, or country. The explanation above is sufficient reason for this statement. However, self-submission/choice of law—although not exactly the same—actually also occurs in the area of criminal law, namely in international criminal law. The principles of international criminal law are found in the form of international agreements whose substance regulates international crimes, for example, the 1948 Genocide Convention, the 1973 Apartheid Convention, the 1977 European Convention on Combating Terrorism, and others. The term international crime denotes criminal events that are international in nature, or that cross national borders, or that involve the interests of two or more countries. Because the incident was so large, for example, the number of victims such as the cases of Myanmar⁶, the Soviets in Lithuania⁷, and the Chinese in Uyghurs⁸, then the international community, both individuals and countries can apply to the International Court of Justice. With this submission to this court, the judicial process with the legal system

5 Alison Xu, “A New Solution Concerning Choice-of-Law for the Assignment of Debts,” *International and Comparative Law Quarterly* 70, no. 3 (2021): 665–96, <https://doi.org/10.1017/S0020589321000166>.

6 Patrícia Nabuco Martuscelli, Bayes Ahmed, and Peter Sammonds, “Defying Genocide in Myanmar: Everyday Resistance Narratives of Rohingyas,” *Journal of Genocide Research*, 2022, <https://doi.org/10.1080/14623528.2022.2078074>.

7 Dovile Sagatiene, “The Debate about Soviet Genocide in Lithuania in the Case Law of the European Court of Human Rights,” *Nationalities Papers* 49, no. 4 (2021): 776–91, <https://doi.org/10.1017/nps.2020.56>.

8 Adrian Zenz, “End the Dominance of the Uyghur Ethnic Group’: An Analysis of Beijing’s Population Optimization Strategy in Southern Xinjiang,” *Central Asian Survey* 40, no. 3 (2021), <https://doi.org/10.1080/02634937.2021.1946483>.

which refers to *lex loci delicti* is denied. Based on the description above, in principle submission is recognized in civil law. Meanwhile, in terms of criminal law, this is an exception, because criminal law is public law.

One of the features or fundamental differences of criminal law when compared to other fields of law is the sanctions and these sanctions can be imposed. Things like this can be understood from the definition of criminal law which in general states that “Criminal law consists of norms that contain obligations and prohibitions accompanied by a sanction in the form of punishment, namely a special suffering. Thus it can also be said, that criminal law is a system of norms that determine which actions must be carried out and abandoned and these violations are followed by criminal sanctions. In the lesson on basic criminal law, it also introduced that in criminal law there is the state’s right to impose punishment, namely through the division of criminal law into Objective Criminal Law (*Ius Poenali*) and Subjective Criminal Law (*Ius Poeniendi*). *Ius poenali* is what is meant by the right of the state or state apparatus to punish based on objective criminal law.

Commonly known, based on the understanding and special nature of criminal law, the enforcement of criminal law is absolutely the authority of the state, not giving citizens the right to choose a settlement in a certain way or punishment. Even if there is an alternative sentence or punishment with the formula “prison sentence or fine”, then the sentence imposed is the judge’s choice, not the choice of the suspect. An old issue in criminal law, namely peaceful settlement or peace, which is now known as restorative justice, is a separate issue. In criminal law, even though there is reconciliation made by the parties—in this case, there has been an agreement between the victim and the perpetrator—however, from the perspective of criminal law, this reconciliation is not an eradication of crime, but only a consideration for the judge to determine the severity of the sentence. There is a lot of writing on this topic because it is considered that this peace is the solution that is most in accordance with the character of the Indonesian nation. But in reality, it is still very thick with the principle of legality.

The provisions in the Aceh Qanun seem to provide an opportunity the criminal law can be chosen by submission. Article 5 of the Aceh Qanun Number 6 of 2014 concerning Jinayat Law states that the Aceh Qanun applies to a. A person who is Muslim who performs *jarimah* in Aceh; b. Any non-Muslim religious person who performs *jarimah* in Aceh together with Muslims and voluntarily chooses and submits to qanun jinayat; c. non-Muslim religious people who practice *jarimah* in Aceh which are not regulated in the Criminal Code (KUHP) or criminal provisions outside the Criminal Code, but are regulated in this qanun; and d. Business entities conducting business activities in Aceh.

In point 2 of Article 5, it states “every non-Muslim person who performs *jarimah* in Aceh together with Muslims and voluntarily chooses and submits himself to the Qanun Jinayat”, indicating that there is leniency or flexibility in the criminal law which seems to be applied only when there is submission. This is contrary to one of the important principles in criminal law, namely the territorial principle⁹. This principle is a protection for the community where the crime occurred because it is the community that most feels the consequences of the crime that occurred. So this territoriality is not only related to the relative authority of the court related to *locus delicti*, but most important thing is related to the law that applies in a certain area. The law here is defined as a whole of the rules of criminal law, both material criminal law which contains provisions for acts that can be punished and types of punishment that can be imposed, as well as formal legal provisions or procedures regarding the absolute authority to adjudicate.

Locus delicti is the “scene of the crime”. It is a general understanding that the theory of *locus delikti* is divided into three, namely the theory of material action, the theory of instruments, and the theory of consequences¹⁰. This theory is easier to apply to materially formulated delicts. Because of this, there is a legal loophole because the consequences do not occur in the same place as the action taken based on the instrument theory (*leer van instrument*). *Locus Delicti* is determined by the tool used, and with that tool the crime is resolved. The theory of this instrument is very meaningful in crimes where the *modus operandi* is sophisticated or occurs across borders. Finally, based on the theory of consequences, *locus delicti* is based on the consequences of a crime. According to this teaching, what is considered *locus delicti* is the place where the “result” of the crime arises.

9 Harkristuti Harkrisnowo, “Jurnal Hukum Pidana & Kriminologi” 1, no. 1 (2020): 34–58.

10 Rahmawati, “Penentuan Tempus Dan Locus Delicti Dalam Cyber Crime” 3, no. 1 (2020): 94–104.

The connection with this discussion is in terms of the consequences caused by a crime at the place where the crime occurred. This is of course closely related to the victim of a crime. The intended victim is a victim in a broad sense, namely the destruction of the social order. Acehnese people who are thick with religious nuances that underlie values in behavior will be disturbed by someone's actions that are contrary to these values. Therefore, supposedly, to maintain balance in an area, it is necessary to follow the law in that area. There is a special order there and if that order is disrupted, there is also a way to restore it, namely by imposing certain sanctions in certain ways. The order that is contained in the norms comes from the values that are adhered to and are ingrained in the community concerned.

Territorial protection through the territorial principle is very necessary. The protection of this area focuses on the area where the action occurred, not looking at who did it. In the Criminal Code, this is expressly stated, namely in Article 2: "Criminal provisions in Indonesian law apply to anyone who commits a crime in the territory of Indonesia". So important is this principle, in Article 3 of the Criminal Code it is further expanded: "Indonesian criminal regulations can be applied to any person abroad who commits a crime in an Indonesian boat (*vaartuig*). The meaning of Article 3 of the Criminal Code is an expansion of the territory, namely Indonesian ships, wherever they are, are Indonesian territory, meaning that anyone who commits a crime on board an Indonesian ship will still be subject to Indonesian law. If it is related to the Aceh Qanun, then anyone who commits a crime in the Aceh region must be subject to the Aceh Qanun.

In the implementation of self-submission within the Aceh Sharia Court can be seen that the tendency of the judge in his decision is to apply caning. This can be seen in the sample cases in the following table:

Table 1. Sample of Delicts and Punishments for Non-Muslims in Aceh

No	Sharia Court	Number	Jarimah	Religion	Punishment
1.	Takengon	1/JN/2016/Ms.Tkn	Khamar	Christian	Caned 28 times
2.	Kutacane	33/JN/2016/Ms.Kc	Maisir	Christian	Caned 8 times
3.	Jantho	1/JN/2017/Ms.Jth	Maisir	Buddha	Caned 9 times
4.	Sabang	12/JN/2017/Ms.Sab	khalwat	Christian	Fine of 30 grams of gold
5.	Banda Aceh	33/JN/2017/Ms.Bna	Khamar	Christian	Caned 40 times
6.	Banda Aceh	6/JN/2018/Ms.Bna	Maisir	Christian	Caned 8 times
7.	Lhokseumawe	10/JN/2018/Ms.Lsm	Khamar	Christian	Caned 20 times

Source: *Directory of Decisions of the Indonesian Supreme Court and the Position of Non-Muslims and Qanun Jinayat*¹¹

The data illustrates that of the several types of punishments in the Qanun Jinayat, none of them impose prison sentences on non-Muslims who submit themselves. Meanwhile, in the Qanun Jinayat, caning is not the only punishment. There are several types of punishments in the Qanun Jinayat (Number 6/2014), namely as stipulated in Article 4 paragraph (4): caning, imprisonment, fines, and restitution. In its formulation, it is also not single, except hudud, but alternative and cumulative alternatives (and/or). An example of a criminal formulation in the Qanun Jinayat can be seen in Article 18 of Qanun Number 6 of 2014 concerning Maisir or Gambling "everyone intentionally commits *jarimah Maisir* with a maximum bet value and/or profit of 2 (two) grams of pure gold, shall be punished with *uqubat ta'zir* of caning a maximum of 12 (twelve) times or a fine of up to 120 (one hundred and twenty grams of pure gold) or imprisonment for a maximum of 12 (twelve) months".

Based on the provisions of Article 18 above, there is an alternative punishment between caning, fines, and imprisonment. In addition to the alternative formulation of criminal law, the Qanun Jinayat also contains an alternative cumulative (and/or) formulation. This means that nothing is singular, except in hudud. An example of hudūd is drinking khamr, which is punishable by 40 (forty) caning. In the case above, hudūd is indeed imposed on non-Muslims, namely in Decision 33/JN/2017/Ms.Bna the punishment is 40 caning and there really is no other choice, for drinking khamar. However, in decision 1/JN/2016/Ms.Tkn with 28 caning

11 Ali Abubakar, *Kedudukan Non-Muslim Dalam Qanun Jinayat*, ed. Muhammad Maulana, I (Banda Aceh: Dinas Syariat Islam Aceh, 2020).

and decision 10/JN/2018/Ms.Lsm with 20 caning, it is certain that they are not hudud and the punishment is alternative in the sense that they are not the only caning. As stipulated in Article 16 paragraph (2) "...buying, bringing/transporting or gifting intoxicants...threatened with 'Uqubat Ta'zir caning a maximum of 20 (twenty) times or a fine of up to 200 (two hundred) grams of pure gold or imprisonment a maximum of 20 (twenty) months". As for the restitution penalty, there has been no decision imposing a crime in relation to the presence of non-Muslims who jointly carried it out with Muslims, so there has been no decision that has punished restitution.

3.2 Self-Submission in the Political Perspective of Criminal Law

Legal politics can be interpreted in two ways, namely first it can be understood from the meaning of the words "politics" and "law" (divergence), and then combining the two terms (convergence). The second is to translate directly into one compound word unit. The term legal politics has a broader meaning than legal policy, law formation, and law enforcement. That means, as a sentence, understanding legal politics is an independent activity¹².

Sopiani and Zainal Mubaroq cite the opinion of Mahfud MD who argues that legal politics includes: First, legal development with the aim of making and updating legal materials so that they can fulfill or conform to needs. Second, the implementation of these legal provisions and including the affirmation of institution functions and the development of law enforcers. As a rule-of-law country, the formation of laws and regulations cannot be separated from legal politics. According to M. Mahfud MD, legal politics is the official policy (legal policy) of the state regarding laws that will be enforced or not enforced, in other words; make new rules or revoke old rules, to achieve state goals.¹³.

Based on this, legal politics is principally a state policy regarding the law to aspire to (*ius constuendum*) and the existing law (*ius consstutum*). The word "policy" in Mahfud's opinion is related to the necessity of having a "systematic, detailed and fundamental strategy and planning. In the process of formulating and determining the law, both what has been done and what will be done. Legal politics must submit to legislative authority to state administrators, but must not ignore the values prevailing in society. Thus legal politics implies the meaning of how to make good law. In fact, the law must function as a protector of human interests in society. Law enforcement must fulfill three elements, namely legal certainty (*rechtssicherheit*), justice (*gerechtigkei*t), and expediency (*zweckmassigkeit*)¹⁴.

Legal politics is an important part of legal studies in Indonesia, because there are several things, namely (1) that legal politics can cover various aspects of national and state life, for example, politics, economics, social, and culture; (2) related to *ius constitutum* or positive law; (3) related to the *ius operatum*; (4) legal politics is also related to *ius constituendum*¹⁵. In general, it can be said that legal politics is an attempt to establish rules that are accepted by the majority of citizens, to bring society to a harmonious life. Efforts to achieve a good life include various activities, including the process of determining system goals, as well as the means to achieve these goals. Politics in a state is related to issues of power, decision-making, public policy, and allocation or distribution¹⁶. Thus, the notion of legal politics is the process of forming and implementing a political law in national legislation¹⁷.

12 Elfia Farida, "Arti Dan Ruang Lingkup Politik Hukum Dalam Taksonomi Ilmu," *Qistie* 12, no. 1 (2019): 85–102, <https://doi.org/10.31942/jqi.v12i1.2708>.

13 Sopiani Sopiani and Zainal Mubaraq, "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 146, <https://doi.org/10.54629/jli.v17i2.623>.

14 Sopiani and Mubaraq.

15 Hariman Satria, "Politik Hukum Tindak Pidana Politik Uang Dalam Pemilihan Umum Di Indonesia," *Jurnal Antikorupsi Integritas* 5, no. 1 (2019): 1–14, <https://doi.org/10.32697/integritas.v5i1.342>.

16 M Budiarto, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2019).

17 Hariyanto Hariyanto, "Politik Hukum Dalam Legislasi Nasional," *Yudisia : Jurnal Pemikiran Hukum Dan Hukum Islam* 13, no. 2 (2022): 297, <https://doi.org/10.21043/yudisia.v13i2.16206>. the product of legislation is a work that is normative. So that everything that is normative is open to legal deviations. This potential deviation from the law will create what is called a legal error (legal gap

Criminal law politics which is part of legal politics in general, of course, means how to make good criminal law rules. Related to this legal politics, several terms are known in criminal law, namely criminal policy (penal policy), criminal politics, criminal law politics¹⁸ and even associated with social policy. As it is known that social policy is all rational efforts to achieve the welfare and protection of society. So the social policy also includes social welfare and social defense policies. That is, the political goal of criminal law is to realize social welfare and social defense policies.

Another term that often appears in the politics of criminal law is “restructuring” which means rearrangement; relating to rearranging the building of the Indonesian criminal law system. Another term is “reconstruction”, namely rebuilding the national criminal law system. Both of these terms are closely related to issues of law reform and law development, especially those related to reform/development of the criminal law system (penal system reform/development or what is often referred to briefly as penal reform). If it is related to the legal system which consists of legal substance, legal structure, and legal culture, the reform of the criminal law system (penal system reform) must cover the whole in a balanced manner¹⁹.

Criminal law arises because there is a crime that must be overcome. The existence of the terms criminal policy and social policy in the politics of criminal law is for the prevention of these crimes, where there must be integration of the two policies²⁰. In the pattern of the relationship between penal policy and crime prevention efforts, crime prevention and overcoming it must be carried out through an integral approach and there must be a balance between penal and non-penal. Prevention of crime utilizing penal is a penal policy (penal law enforcement policy), whose functionalization goes through several stages such as stages of formulation (legislative policy), application (judicative policy), and execution (administrative policy). In a sense, criminal law policies can cover the scope of policies in the field of material criminal law, the field of formal criminal law, and the field of criminal implementation. Crime prevention can be carried out through the penal route (criminal law) through the criminal justice system and the non-penal route (not/outside criminal law). So the penal route must be accompanied by a non-penal route. One of the non-penal routes to overcome these problems is through social policy. Social policy is basically a rational policy or effort to achieve public welfare²¹. The purpose of this criminal law policy or politics is of course to realize the goals of legal politics, especially the protection of society to achieve social welfare and social defense.

Therefore, in relation to criminal law policy and social policy, criminal law essentially reflects the cultural values of the society or nation where the law applies. It is the society that wants negative sanctions for unwanted actions. The law is a guide and rule in social life and will always be in accordance with the circumstances of the community concerned. The law is always demanded to be able to provide justice, meaning that the law is always faced with the question of whether the law can achieve this justice. Related to this legal conception, legal politics is defined as an activity that determines patterns and methods of forming laws, oversees the operation of laws, and updates laws for the purposes of the State²². Barda Nawawi and Muladi stated that the politics of criminal law is an arrangement or rational arrangement of efforts to control crime by society. The ultimate goal of criminal law policy is the “protection of the community” to achieve the main goal of “happiness of the citizens”, “a wholesome and cultural living”, “social welfare”, and to achieve “equality”²³.

18 Budi Santoso et al., “KEBIJAKAN HUKUM PIDANA (PENAL POLICY) TERHADAP PELAKU KEJAHATAN DI ANGKUTAN UMUM PADA MASA PADEMI COVID 19 Anggota Kepolisian Republik Indonesia Polda Sumsel, Budi_Santoso@gmail.Com Negara Indonesia Merupakan Negara Hukum Yang Demokratis Dan Berlandaskan Aturan-Aturan,” 2022, 1–24.

19 Basuki Kurniawan, *Politik Hukum Di Indonesia* (Bondowoso: Licensi, 2021).

20 Andika Oktavian Saputra, Sylvester Enricho Mahardika, and Pujiyono Pujiyono, “Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Untuk Mengurangi Overcrowded Lembaga Pemasyarakatan Pada Masa Pandemi Covid-19,” *Jurnal Usm Law Review* 4, no. 1 (2021): 326, <https://doi.org/10.26623/julr.v4i1.3230>.

21 Suzanalisa, “Kebijakan Hukum Pidana Dalam Pemberantasan Tindak Pidana Prostitusi Online Di Indonesia,” *Legalitas X*, no. 1 (2018).

22 Anita, “Politik Hukum Dalam Penegakan Hukum Di Indonesia,” *Jurnal Program Magister Hukum FHUI* 1, no. January (2022): 36, <https://scholarhub.ui.ac.id/dharmasisyaAvailableat:https://scholarhub.ui.ac.id/dharmasisya/vol1/iss4/36>.

23 Vivi Ariyanti, “Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia,” *Jurnal Yuridis* 6, no. 2 (2019): 33–54.

Based on the explanation put forward by the legal experts above, it can be concluded that legal politics are laws or norms produced by the state/rulers including parliament regarding legal orientation which cannot be separated from the configuration of power at that time. However, it should also ideally pay attention to the development of society. The people of Aceh at that time and also before wanted the application of Islamic law in Aceh. Akhyar said that the people of Aceh demanded the implementation of Islamic Sharia law in the Aceh region. Because Islamic Sharia is a series of religious norms that are imperative for them, in which Islamic Sharia obliges its adherents to carry out all their religious teachings thoroughly, integrally, and comprehensively, in all aspects of life, including the people of Aceh²⁴. There are concerns about the application of Islamic Sharia through the Qanun Jinayat to all people in Aceh, this is dealt with by self-submission²⁵.

Legal politics is very decisive in the formulation of norms so that these norms can fulfill the basis for the enactment of statutory regulation, namely the philosophical, sociological, and juridical basis. Certain conditions in society certainly do not occur spontaneously apart from the values shared by the community concerned, but are still based on the adopted philosophy and its development is the sociological foundation that makes the statutory regulations enforceable. Self-submission to the Qanun Jinayat law must be linked to the objective of enforcing Islamic Sharia which has already taken place, even as a mandate from the constitution.

The self-submission in the Qanun jinayat law, as mentioned earlier, is a derivative of Law No. 11 of 2006, even the article of Qanun jinayat law regarding self-submission is almost the same as the formulation in Law No. 11 of 2006 concerning the Aceh government. Article 129 of Law Number 11 of 2006 concerning the Government of Aceh, which in paragraph (1) states that: "In the event that a jinayah act is committed jointly by two or more people, one of whom is a non-Muslim religion, the offender who is not a Muslim can choose and voluntarily submit himself to the jinayah law". Based on this provision, it can be said that the legal basis for self-submission is not the Qanun jinayat law, but Law Number 11 Year 2006. Provisions like this will also be related to the authority of the Syar'iyah Court to try non-Muslims in Aceh because the jinayat trial process will be carried out through the Sharia Court.

Basically, the Sharia Court is stated as a court for people who are Muslim and the person is in Aceh, this is a provision of Law 11/06 Article 128 paragraph (2). The official explanation of this article states "What is meant by every person who is a Muslim in this provision is anyone who is a Muslim regardless of nationality, position and status". Whereas in the General Explanation, which was quoted above, the Islamic personality principle is clearly stated. With the above editorial, it can be stated that the law clearly stipulates the principle of Islamic personality and also the territoriality of Aceh as the basis for the implementation of sharia in Aceh. The authority of the court is limited to a person of Muslim religion who violates and is in Aceh, and who carries out legal actions in Aceh in the three areas that are the authority of the Sharia Court, regardless of whether he is a permanent resident or an outsider visiting temporarily. As for Acehnese Muslims who commit jinayah acts outside Aceh, then according to Article 129 paragraph (3) (Law 11/06), the Criminal Code applies to them, not sharia law. As for civil matters, it is not clearly stated, but according to the author, it still does not apply, because legal actions carried out outside Aceh are not within the authority of the Sharia Court.

On the other hand, because it is stated that it applies only to Muslims who are in Aceh, then expressly, it certainly does not apply to non-Muslims who are in Aceh, whether they are Acehnese residents or outsiders who only come to visit Aceh. However, Law 11/06 as stated in Article 129 paragraphs (1) and (2), provides two exceptions to the provisions in Article 128 paragraph (2). First, if a jinayah act is committed by two or more people together, some of whom are not Muslim, then the perpetrators who are not Muslims can choose and voluntarily submit themselves to jinayah law. Second, if a non-Muslim person commits a jinayah act and the act is not regulated in the Criminal Code or criminal provisions outside the Criminal Code, then the jinayah law applies to that person.

This provision is an exception or addition to the provisions in Article 128 above so that the Court has the authority to adjudicate non-Muslims. The Court's authority seems to have had to be added because it takes into account the principle of justice and can be said to fill a legal vacuum. This means that if there are people who

24 Ahyar Ari Gayo, *Penerapan Hukuman Cambuk Di Aceh Dalam Perspektif Hak Asasi Manusia*, ed. Muhaimin, Balitbangkumham Press, 1st ed., vol. 1 (Jakarta: Balitbangkumham Press, 2020).

25 Gayo.

make mistakes or violations they must be punished. People who make mistakes, should not be let go just like that. If two sentences can be chosen to be imposed, then for the sake of justice considerations, the offender is given permission to choose the law that he thinks is the fairest or the best/beneficial for him. But when there is no choice of law, then he must be punished the same as a Muslim who commits the same crime

Studies in criminal law are often associated with the effectiveness of criminal law in dealing with crime in general, which basically cannot rely purely on criminal law. Sudarto's opinion, which is often repeated in dealing with criminal acts, includes, among other things, that such countermeasures cannot only be realized utilizing legal rules²⁶; in this case criminal law with the power of sanctions. The scope of criminal law is limited. Efforts to eradicate crime can indirectly be carried out by actions in the political, economic, educational, and other areas; strengthening the existence of this principle of submission is one of the efforts in tackling this crime.

From the historical context of efforts to enforce Islamic Sharia in Aceh, this has been done since the early days of independence. From the available documents, this effort is well recorded, and there is even a regional regulation on Islamic Sharia which the enforceability is not approved by the central government²⁷. There are also other pieces of legislation, apart from Law No 11/2006 on the Governance of Aceh. This means that the issuance of qanuns on Islamic Sharia is also related to other laws. In 1999, Aceh was designated as a special region through Law No. 44 of 1999 concerning the Administration of the Privileges of the Special Province of Aceh. This law provides a juridical basis for the exercise of privileges in the areas of (a) the implementation of religious life; (b) the Implementation of customary life; and (c) the role of Ulama in establishing regional policies. Based on Law No. 44 of 1999, the Aceh region can carry out privileges in the field of Islamic law and the implementation of customs or customary laws that live and develop in Acehnese society. After this too, namely before the issuance of Law No. 11/06, there is Law no 18 of 2001 known as the Nanggroe Aceh Darussalam Law. The existence of these laws has spawned several Sharia Qanuns (before Qanun Jinayat), namely the enactment of Islamic Sharia through Law Number 44 of 1999 concerning the Privileges of Aceh and Law No. 18 of 2000 concerning Special Autonomy for Aceh which was later replaced by Law No. 11 of 2006 concerning the Governance of Aceh. Based on this Law, Qanun Numbers 12, 13, and 14 of 2003 concerning Khamar, Maisir, and Kahlwat were born. Even though basically Muslims in general wanted to implement Islamic Sharia long before the implementation of the Law. Now this Qanun has been merged into Qanun number 6 of 2014 concerning Jinayah which has been effective since 28 October 2015.

Based on the description above, the phenomenon of self-submission in Qanun Jinayat Aceh can be seen from three mutually reinforcing factors, namely starting with legal politics which means how to make good laws, namely fulfilling a philosophical foundation (*filosofische grondslag*) which means according to the view of the life of a community. Second, juridical (*juridische grondslag*), which means that the production has a basis of authority and is in accordance with the legal system. Third, sociological (*sociologische grondslag*), which means that it can apply properly and can be properly enforced, or in other words in accordance with the general belief or legal awareness of the community, then this principle of self-submission can be considered to fulfill or be in accordance with the conditions at that time. Another factor, in the people of Aceh who since independence have wanted the implementation of Islamic Sharia, there are concerns about the possibility of rejection of Islamic Sharia as a result of other broader concerns, namely the application of Islamic law in the Qanun Jinayat to non-Muslim²⁸. Because of this, the arrangement for self-submission in Qanun Jinayat is a good arrangement and it can be said to be an exception to the territorial principle in criminal law. With this submission, the people of Aceh will think that the Islamic Sharia which is partly contained in the Qanun Jinayat will apply to non-Muslims who submit themselves, while non-Muslims will assume that Qanun Jinayat can only apply to them by submitting themselves first.

26 Fuzi Narindrani, "Penyelesaian Korupsi Dengan Menggunakan Restoratif Justice (Corruption Settlement Using Justice Restoratives)," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 605–17.

27 Abubakar and Lubis, *Hukum Jinayat Aceh*.

28 Gayo, *Penerapan Hukuman Cambuk Di Aceh Dalam Perspektif Hak Asasi Manusia*.

4. CONCLUSION

The choice of criminal law for non-Muslims who commit criminal acts stipulated in the Aceh Qanun Jinayat based on the principle of self-submission is not recognized in criminal law and is a deviation from the nature of public and coercive criminal law. However, from the political perspective of criminal law, the self-submission rule is actually good as an exception to the territorial principle and does not force the enactment of the Qanun Jinayat on non-Muslims. Self-submission is formulated as an exception, however, in its implementation, the Jinayat Qanun is identified with the punishment of caning, even though the punishments in this qanun consist of caning, imprisonment, and fines. These three forms of punishment are the choice of the judge in his consideration. Therefore, it is hoped that in applying criminal sanctions to non-Muslims, the public prosecutor and judges should look at the effectiveness of these criminal sanctions.

REFERENCES

- Abubakar, Ali. *Kedudukan Non-Muslim Dalam Qanun Jinayat*. Edited by Muhammad Maulana. I. Banda Aceh: Dinas Syariat Islam Aceh, 2020.
- Abubakar, Ali, and Zulkarnain Lubis. *Hukum Jinayat Aceh*. I. Jakarta: Prenada Media Group, 2019.
- Anita. "Politik Hukum Dalam Penegakan Hukum Di Indonesia." *Jurnal Program Magister Hukum FHUI* 1, no. January (2022): 36. <https://scholarhub.ui.ac.id/dharmasisyaAvailableat:https://scholarhub.ui.ac.id/dharmasisya/vol1/iss4/36>.
- Ariyanti, Vivi. "Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia." *Jurnal Yuridis* 6, no. 2 (2019): 33–54.
- Bahri, Syamsul. "Inkonsistensi Hukum Penerapan Hukuman Cambuk Terhadap Non-Muslim Di Aceh," no. April (2018): 866–78.
- Budiarjo, M. *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia Pustaka Utama, 2019.
- Farida, Elfia. "Arti Dan Ruang Lingkup Politik Hukum Dalam Taksonomi Ilmu." *Qistie* 12, no. 1 (2019): 85–102. <https://doi.org/10.31942/jqi.v12i1.2708>.
- Gayo, Ahyar Ari. *Penerapan Hukuman Cambuk Di Aceh Dalam Perspektif Hak Asasi Manusia*. Edited by Muhaimin. *Balitbangkumham Press*. 1st ed. Vol. 1. Jakarta: Balitbangkumham Press, 2020.
- Halim, Abdul. "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh." *Human Rights Review*, no. 0123456789 (2022). <https://doi.org/10.1007/s12142-021-00645-x>.
- Hariyanto, Hariyanto. "Politik Hukum Dalam Legislasi Nasional." *Yudisia : Jurnal Pemikiran Hukum Dan Hukum Islam* 13, no. 2 (2022): 297. <https://doi.org/10.21043/yudisia.v13i2.16206>.
- Harkrisnowo, Harkristuti. "Jurnal Hukum Pidana & Kriminologi" 1, no. 1 (2020): 34–58.
- Kurniawan, Basuki. *Politik Hukum Di Indonesia*. Bondowoso: Licensi, 2021.
- Mahmuddin, Mansari, Khairuddin, Ahmad Fikri Aslami, and Mul Irawan. "Enforcement of Jinayat Law for Non-Muslims in Aceh." *JHP Jurnal Hukum Dan Peradilan* 11 (2022): 21–42.
- Martuscelli, Patrícia Nabuco, Bayes Ahmed, and Peter Sammonds. "Defying Genocide in Myanmar: Everyday Resistance Narratives of Rohingyas." *Journal of Genocide Research*, 2022. <https://doi.org/10.1080/14623528.2022.2078074>.
- Melayu, Hasnul Arifin, Md Zawawi bin Abubakar, and Norruzeyati binti Che Mohd Nasir. "Minorities in the Shari'a Territory: The Position of Non-Muslim in Aceh's Jinayat Law." *Legitimasi, Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (2021). <https://jurnal.ar-raniry.ac.id/index.php/legitimasi/article/view/10521>.
- Muthalib, Salman Abdul, Masrizal, Irwan Abdullah, M. Yusuf, and Hasnul Arifin Melayu. "Public Services for Non-Muslims in Aceh: Non-Muslim Rights in The Application of Islamic Sharia Law." *Res Militaris* 12, no. 2 (2022): 85–101.

- Narindrani, Fuzi. "Penyelesaian Korupsi Dengan Menggunakan Restoratif Justice (Corruption Settlement Using Justice Restoratives)." *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 605–17.
- Rahmawati. "Penentuan Tempus Dan Locus Delicti Dalam Cyber Crime" 3, no. 1 (2020): 94–104.
- Sagatiene, Dovile. "The Debate about Soviet Genocide in Lithuania in the Case Law of the European Court of Human Rights." *Nationalities Papers* 49, no. 4 (2021): 776–91. <https://doi.org/10.1017/nps.2020.56>.
- Santoso, Budi, Anggota Kepolisian, Republik Indonesia, and Polda Sumsel. "KEBIJAKAN HUKUM PIDANA (PENAL POLICY) TERHADAP PELAKU KEJAHATAN DI ANGKUTAN UMUM PADA MASA PADEMI COVID 19 Anggota Kepolisian Republik Indonesia Polda Sumsel , Budi_Santoso@gmail.Com Negara Indonesia Merupakan Negara Hukum Yang Demokratis Dan Berlandaskan Aturan-Aturan," 2022, 1–24.
- Saputra, Andika Oktavian, Sylvester Enricho Mahardika, and Pujiyono Pujiyono. "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Untuk Mengurangi Overcrowded Lembaga Pemasyarakatan Pada Masa Pandemi Covid-19." *Jurnal Usm Law Review* 4, no. 1 (2021): 326. <https://doi.org/10.26623/julr.v4i1.3230>.
- Satria, Hariman. "Politik Hukum Tindak Pidana Politik Uang Dalam Pemilihan Umum Di Indonesia." *Jurnal Antikorupsi Integritas* 5, no. 1 (2019): 1–14. <https://doi.org/10.32697/integritas.v5i1.342>.
- Sopiani, Sopiani, and Zainal Mubaraq. "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 146. <https://doi.org/10.54629/jli.v17i2.623>.
- Suzanalisa. "Kebijakan Hukum Pidana Dalam Pemberantasan Tindak Pidana Prostitusi Online Di Indonesia." *Legalitas X*, no. 1 (2018).
- Syarif, Nurrohman. "Transformation and Reformation of Islamic Criminal Law; The Study on Aceh Qanun Jinayat and Its Impact To Woman and Non-Muslim." *Jurnal Dinamika Hukum* 19, no. 2 (2019): 423–48.
- Xu, Alison. "A New Solution Concerning Choice-of-Law for the Assignment of Debts." *International and Comparative Law Quarterly* 70, no. 3 (2021): 665–96. <https://doi.org/10.1017/S0020589321000166>.
- Zenz, Adrian. "End the Dominance of the Uyghur Ethnic Group': An Analysis of Beijing's Population Optimization Strategy in Southern Xinjiang." *Central Asian Survey* 40, no. 3 (2021). <https://doi.org/1.1080/02634937.2021.1946483>.

