

Voluntary Submission To Jinayat Law In Aceh

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Abstract: Article 129 of Law No. 11 regarding the Governing of Aceh and Article 5 of Aceh Qanun No.6 regarding Jinayat Law (Islamic penal rules) determine the implementation of Jinayat law in Aceh toward people with other religions as the principle of voluntary submission. The implementation of voluntary submission principle is motivated by legal dualism for non-Muslims in Aceh by embracing in Criminal Code or Jinayat law regulated in conventional criminal law or Jinayat law. Criminal law in territorial principle in both conventional criminal law and Islamic criminal law does not recognize voluntary submission, where the law applies to anyone who is convicted to crime in the area where the criminal law is enforced.

Keywords: voluntarily submission, Jinayat law, Aceh

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I. INTRODUCTION

This article was to analyze the principle of voluntary submission in *Jinayat* law in Aceh. The implementation of *Jinayat* law in Aceh has been the focus of attention in Indonesia, even more popular after providing alternative for non-Muslims to choose Islamic law, one of which is *Jinayat* Law (Islamic Criminal Law). As a province in Indonesia which has been special autonomy, it is authorized to implement Islamic Syaria by emphasizing legal certainty, justice, and benefits for people.

The *Jinayat* Law in Aceh has been implemented based on a juridical principle in Conventional Criminal Procedure, i.e., in Law No. 8 of 1981 regarding the Criminal Code. Facts show that the Criminal Code has not addressed all needed for the reinforcement of *Jinayat* law in Aceh. Article 132 clause (1) in Law No. 11 of 2006 regarding the governing of Aceh reads Syaria Courts, *Jinayah* procedure is one of the highly-required independent law.

The method used in the current research was a normative law or doctrinal legal research. In this research, the law is conceptualized as anything written in the law of books or as norms which regulate how people usually behave¹.

Since the stipulation of Law No. 11 of 2001 regarding special autonomy for Aceh, Aceh has borne the status of the province with special autonomy. Later, the law was replaced by Law No. 11 of 2006 regarding the Governing of Aceh. In the law, one of the reasons for establishing special autonomy in Aceh was to implement and maintain Islamic Sharia as mandated in Law No. 44 of 1999 regarding the implementation of specialty in Aceh.

Based on Law No. 11 of 2006 regarding the Governing of Aceh, it was possible to issue a Qanun regarding the book of *Jinayat* as the implementation of the following articles.

1. Article 125 clause (2); Islamic Sharia as referred to in clause (1) includes religious service, ahwal al-syakshiyah (family law), mu'amalah (civil law), jinayah (criminal law), qadha' (judiciary), tarbiyah (education), dakwah (Islamic religious proselytizing), syiar (dissemination of Islamic teaching) and Islamic defense.
2. Article 128 clause (3); Sharia Court is authorized to examine, try, provide ruling, and settle cases which consists the fields of ahwal al-syakshiyah (family law), mu'amalah (civil law) and jinayah (criminal law) based on Islamic law.
3. Article 128 clause (4); Further stipulation regarding the fields of ahwal al-syakshiyah (family law), mu'amalah (civil law) and jinayah (criminal law) as referred to in clause (3) is regulated by Aceh Qanun

¹Amiruddin and ZainalAsikin, PengantarMetodelogiPenelitianHukum [Introduction to Research Methodology in Law], Jakarta, Raja GrafindoPersada, 2004, p. 118

II. DISCUSSION

Principles and Requirements of Inheritance

Principles of inheritance include a deceased, an heir, and inheritance. According to Usman, there are three elements of inheritance, i.e. a deceased, an heir, and inheritance². The three elements cannot be separated because the absence of one element dismisses the process of inheritance. In the point of view of people in Aceh, the three elements are considered the keys to inheritance³.

The term Islamic criminal law derives from an Arabic phrase *fiqh jinayah*, meaning the law on criminal acts committed by a *mukallaf*, a person obligated by law to discharge a legal duty, as the results of understanding on legal statements in Quran and Hadeeth⁴.

According to Muslich, *fiqh jinayah* is the study of Islamic law related to Islamic legal codes for prohibited actions (*jarimah*) and their law, based on detailed statements in Quran and hadeeth⁵. The focus of *fiqh jinayah* is generally on two criminal categories and their law.

According to Santoso, Islamic criminal law is understood in the similar contexts as other parts of Islamic law. The law on cutting off hands, for example, is often claimed too harsh and unfair although the sentence is only decided after fulfilling many requirements.

Jarimah is defined by Al Mawardi as actions prohibited by Islamic law with a pre-established punishment found in the Quran⁶. According to Hakim, a crime is considered *jarimah* if the action results in loss for other people of community, either loss of life, property, security, rules, reputation, feeling, or others which should be kept or respected⁷.

Islamic law determines an action as a crime and threatens it with specific punishment to protect the collective interest, the system which builds it to secure moral values and harmony.

Crime is an act which is prohibited by criminal law and threaten with punishment for people who violates it⁸. Islamic criminal law also regulates general regulations related to principles of legality, offender's unaccountability, the attempt of committing *jarimah*, etc.

According to Abubakar, it is also important to make a qanun regarding *Jarimah* of frauds, embezzlement, and forgery to create clean government⁹. A qanun regarding hudud (scripturally prescribed punishments) and codification of procedural law and jinayar into one qanun should be implemented. Furthermore, Abubakar added that making a book of law as codification (although only in certain field) is relatively difficult.

Generally, Islamic law address law norms which regulate social relations in a country and individual interest which should be respected by every person. The obedience to law norms is determined by the quality of faith and sanction, either on earth or in the hereafter for those who violate them, such as lashings.

Punishment in Arabic derives from *Uqubat*, which means following and coming after, that is what is called punishment is because the accused follow the action, and it is done after the action, while linguistically, punishment means the payment for what has been done¹⁰.

Aceh amended Aceh Qanun No. 12, 13, and 14 of 2003 regarding drugs, gambling, and indecency, and replaced them with Aceh Qanun No. 6 of 2014 regarding *Jinayat* law. Qanun No. 6 of 2014 has been amended to add general regulations.

The implementation of the first criminal law is based on conventional criminal procedure, i.e., Law No. 8 of 1981 regarding Criminal Code. However, with the enactment of Aceh Qanun No. 7 of 2013 regarding *Jinayat* procedure in the Criminal Code, the Law No. 8 of 1981 regarding Criminal Code is declared null and void, except it is decided by *Jinayat* procedure. Criminal Procedural law is the formal criminal law which regulates the procedures of initial investigation, investigation, closing address, hearing, and court judgment. The

²RachmadiUsman, *HukumKewarisan Islam dalamDemensiKompilasiHukum Islam*, CV. MandarMaju, Bandung, 2009, p. 62.

³Syahrizal, *HukumAdatdanHukum Islam di Indonesia, RefleksiTerhadapBeberapaBentukIntegrasiHukumdalamBidangKewarisan di Aceh*, YayasanNadiya (Nadiya Foundation, LhokseumaweNanggroe Aceh Darussalam, 2004, p. 212.

⁴Zainuddin Ali, *Hukum Pidana Islam*[Islamic Criminal Law], Sinar Grafika, Jakarta, 2007, Hal. 1.

⁵Ahmad Wardi Muslich, *Pengantar dan Azas Hukum Pidana Islam*[Introduction to Islamic Criminal Law Principle], Sinar Grafika, Jakarta, 2005, Hal. 9.

⁶Al-Mawardi, *At-Tazir fi Asy-Syariah Al-Islamiyah*, Dar Al-Fikri Al-Arabi, 1975, Hal.219.

⁷Rahmad Hakim, *Hukum Pidana Islam* [Islamic Criminal Law], Pustaka Setia, Bandung, 2000, Hal. 17.

⁸Moelyatno, *Asas-asas Hukum Pidana* [Principles of Criminal Law], PT. Bina Aksara, Jakarta, 1986, Hal. 2.

⁹Al-Yasa' Abubakar, *Syariat Islam di Provinsi NAD Paradigma Kebijakan dan Kegiatan* [Islamic Law in Aceh Province: The Paradigm of Policy and Activity], Dinas Syariat Islam Provinsi NAD, Banda Aceh, 2006, Hal. 201-204.

¹⁰Ahmad Wardih Muslich, *Op.Cit.* Hal. 136.

process is conducted by state officials, so criminal procedural law regulates how the country through its officials exercise their right to convict a defendant.

The implementation of *Jinayat* law in Aceh requires conventional criminal law, both substantive and procedural laws. There are some concepts required in implementing *Jinayat* procedural law such as detention, proof, investigation, prosecution, and verdict. Aceh Qanun has accommodated those criminal law concepts.

The concept of voluntary submission has been implemented by non-muslim in Aceh, and the judge chose lashings although there are other alternatives prescribed in Aceh Qanun No. 6 of 2014 regarding *Jinayat* law. The selection of lashing as the punishment for a non-muslim is questionable, whether it was appropriate for a non-muslim while the Qanun has provided alternative punishments such as imprisonment and fine.

Voluntary submission in Islamic Crime Law

Islamic law determines certain acts as crime and the offender is subject to certain punishment to protect collective interests and system. Islamic criminal law also regulates general regulations regarding judiciary crime related to the concept of legality, offender's unaccountability, and attempt to commit *jarimah*, etc.

Generally, Islamic law contains legal norms which regulate social life and individual interest which needs to be respected by anybody. The obedience to law norms is determined by the quality of faith and sanction, either on earth or in the hereafter for those who violate them, such as lashings.

Article 129 of Law No 11 of 2006 provides the concept of voluntary submission in the implementation of *Jinayat* law for a non-muslim. The Article 129 of Law No 11 of 2006 reads:

1. In the event of a criminal act (*jinayah*) committed jointly by two or more persons, among whom are one or more non-Muslims, the alleged non-Muslim perpetrator(s) may choose to submit themselves to *jinayah* law.
2. Any non-Muslim person committing a criminal act (*jinayah*) that is not governed by the National Criminal Code or by criminal provisions outside the National Criminal Code shall have *jinayah* law applied to his/her case.
3. Acehese residents committing a *jinayah* criminal act outside Aceh shall be subject to the provisions of the National Criminal Code.

Furthermore, in Article 5 of Aceh Qanun No. 6 of 2014 emphasizes that the Islamic law is applicable for:

- (1) Any Muslim commits *jarimah* in Aceh;
- (2) Any non-Muslim commits *jarimah* with a Muslim and chooses to submit to *Jinayat* law voluntarily;
- (3) Any non-Muslim commits *jarimah* which is not regulated by the National Criminal Codes or criminal regulation outside the scope of the National Criminal Code, but it is addressed by this Qanun;
- (4) Business activities in Aceh.

The provisions above shows that the *Jinayat* law is given to a non-Muslim involve the concept of voluntary submission only if the *jarimah* was committed together with a Muslim (Article 5, paragraph (2)). The concept of voluntary submission in Public Law, including criminal law, has never been implemented or recognized, while this concept is a part of Civil Law in dividing the categories of citizens regarding their civil rights. In Article 5 paragraph (3), *Jinayat* law also applies to a non-Muslim who runs a business in Aceh, which is not regulated in either Criminal Code and Civil Code.

Article 129 paragraph (3) also explains that *Jinayat* Law is not valid outside Aceh, so that the principle of personality/nationality cannot be implemented as prescribed on Criminal Law policy in Indonesia.

Acehnese people consist of multicultural individuals, which is evident from the equal rights to embrace a certain religion other than Islam, as regulated in Article 129 paragraph (1) of Law No 11 of 2006 regarding the Governing of Aceh and Article 5 paragraph (2) of Aceh Qanun No. 5 of 2014 regarding *Jinayat* Law.

According to Soekarto and Mamuji, normative law research is research conducted to study literature or secondary data. This research covers studies on principles of law, systematics of law, vertical and horizontal synchronization, comparative law, the history of law, and positive law inventory¹¹.

Positive law inventory is a fundamental introducing activity. Before finding out the law norm based on evidence, it is significant to find out the positive law in effect. The activity of positive law inventory is a critical identification process which is logical and systematic. It is usually a step in a series of a complete research process¹².

In article 5 of Aceh Qanun No. 6 of 2014 regarding *Jinayat* Law, this Qanun is valid not only for any Muslim who commits *jarimah* in Aceh, however, it is also enforceable to a non-Muslim who commit *Jarimah* in

¹¹SoerjonoSoekantodan Sri Mamudji, PenelitianHukumNormatif: SuatuTinjauanSingkat [Normative Law Research: A Brief Review], Jakarta, Raja GrafindoPersada, 2004, p. 13-14

¹²AmiruddindanZainalAsikin, Op cit, p. 120-121

Aceh with a Muslim and chooses to voluntarily submit to *Jinayat* Law and to any non-Muslim who commits Jarimah which is not covered in the National Criminal Code or provisions outside it, but it regulated in this Qanun.

Punishment in Arabic derives from Uqubat, which means following and coming after, that is what is called punishment is because the accused follow the action, and it is done after the action, while linguistically, punishment means the payment for what has been done¹³.

Based on the definition above, it can be concluded that punishment is a suffering or inconvenient result given in purpose by authorized officials to any person with proper jurisdiction for committing violations regulated in the prevailing rules and regulations. Therefore, punishment is one of the actions given by Islamic law, convicted by predefined punishment as the payment for acts to protect community interest and harmony, and to protect individual interest.

Article 129 of Law No 11 of 2006 and Article 5 of Aceh Qanun have provided the secondary link to provisions in the National Criminal Code if the *Jinayat* is committed by an Acehnese person outside Aceh, but the crime is not regulated in the National Criminal Code. Therefore, the provisions in Aceh Qanun are legally applicable for non-Muslim. Based on this provision, *Jinayat* Law is not only enforceable to a Muslim, but it is also determined by the location, i.e. in Aceh.

Furthermore, it is possible for a non-Muslim to choose to submit to *Jinayat* law. This submission shall be voluntary so that it cannot be forced if a non-Muslim perpetrator to choose the National Criminal Law. There are four types of submission, i.e.:

1. Complete submission
2. Partial completion
3. Submission for certain crime
4. Pre-supposed submission

The voluntary submission in *Jinayat* Qanun can be categorized as partial submission because a non-Muslim Acehnese citizen can be convicted with Islamic law for acts categorized as *Jinayat*.

However, the choice to submit should be firm, not tacit, predicted or hypothesized by the Sharia court because the voluntary submission is in the scope of criminal law, where the punishment is not light and different to crimes in the National Criminal Code. This submission cannot be implemented passively, i.e., applicable only if there is no objection then it can be considered an agreement. However, a voluntary submission should only be valid if a perpetrator actively submits to the law, such as in writing.

An attempt to reform the criminal law is covered in the field of penal policy, which is a part of law enforcement policy and social policy, which means that the reformation is:

- a. That it is a part of a policy to upgrade legal substance in optimizing legal enforcement.
- b. That it is a part of a policy to eradicate and prevent crime to protect the citizen.
- c. That it is a part of a policy to solve social problems to achieve national objectives, i.e., social defense and social welfare.

It has been discussed that the reorientation and reevaluation of concepts, basic ideas, sociophilosophy, sociopolitics, and sociocultures become an idea in criminal policy.

III. CONCLUSION

It has been discussed that the implementation of the concept of voluntary submission in *Jinayat* law in Aceh and the concept of conventional criminal law is related to the voluntary submission. Generally, voluntary submission is the enforcement of *Jinayat* law to a non-Muslim in Aceh by choice. A non-Muslim perpetrator may choose to be given punishment based on *Jinayat* law or the National Criminal Code. The conventional and *Jinayat* laws still recognize the territorial principle, which states that those who commit crime would involuntarily submit to law prevailed in the area. In Aceh, the territorial principle is restricted to only voluntarily submission in *Jinayat* law.

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¹³Ahmad Wardih Muslich, *Op.Cit.* p. 136.

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