



LAW ENFORCEMENT AGAINST DISSEMINERS OF DISHONOUR CONTENT ON SOCIAL MEDIA (Case study the distribution of recordings of caning processions in Aceh)

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ABSTRACT

Responding to the phenomenon of defamation during the execution of caning sentences, the Aceh Government limited the place where caning sentences were carried out from initially being carried out in public places and then being transferred to detention centres or correctional institutions. This rule is stated in Governor's Regulation Number 5 of 2018. The aim of moving the place of execution to a detention centre is to protect the rights of the convict so that it does not spread on social media. With the issuance of Gubernatorial Regulation no. 5 of 2018, of course there are legal implications regarding whether or not to record the caning procession. If caning is considered a disgrace, then those who spread caning can be charged under the ITE Law on defamation, but this phenomenon continues to occur and there are no calls from law enforcers to prohibit it. Thus, researchers feel it is necessary to examine the legal certainty regarding the dissemination of recordings of caning processions on digital media, and what the view of Islamic law is regarding the dissemination of recordings of caning processions on digital media. This research is entirely qualitative research (qualitative approach) using a normative juridical approach or library research. From the results of the research, it was concluded that there is no clear prohibition on the distribution of caning punishments either in the governor's regulation or in the qanun, so the law is permissible. The perpetrator also cannot be charged under the ITE Law because the execution is open to the public. However, victims may report to the authorities if they feel that the news conveyed does not match the facts or attacks their honour. This is also not prohibited in Islam, because it is classified as permissible backbiting, with the aim of making the perpetrators feel embarrassed and have a deterrent effect and warning for others

Keywords: Caning, ITE Law, Spreading Dishonour

1. Introduction

In 2018, the Aceh Government issued a regulation regarding the provisions for the execution of caning sentences. Executions which were originally carried out in public places such as mosque grounds, fields and other public places were moved to state detention centers. This regulation was issued through Gubernatorial Regulation Number 5 of 2018. (Aceh Gubernatorial Regulation, 2018) Of course this raises views of the pros and cons among the people of Aceh. Some parties support Gubernatorial Regulation Number 5 of 2018, and some reject it. Most of those who refused to implement the gubernatorial regulation were Acehnese ulama who in fact are religious leaders and role models for the people of Aceh. (Iqbal & Kabir, 2020)

Irwandi Yusuf, as Governor at that time, stated that the aim of moving the implementation of caning punishments to correctional institutions was to minimize the spread of caning punishment processions. Irwandi believes that the spread of the caning procession could cause the convict to be embarrassed and have to endure social law for the rest of his life. Nova Iriansyah, Deputy Governor at that time, also expressed a similar view. He stated his intention to revise the procedures for carrying out flogging in Aceh by transferring the implementation of the punishment to a correctional institution environment, so that no recording or dramatization could occur. (bbc indonesia, 2018)

Implicitly, Gubernatorial Regulation No. 5 of 2018 wants to protect the rights of convicts who receive caning to avoid life-long social punishment. This opinion has positive value but is opposed by the Acehese Ulama because it is considered to eliminate the deterrent effect of punishment itself. However, to this day Gubernatorial Regulation No. 5 of 2018 has not been realized. In reality, in the field, caning is still carried out in the open. With the issuance of Gubernatorial Regulation Number 5 of 2018, of course there are legal implications regarding the legal provisions regarding the distribution of recordings of caning processions. On the one hand, those spreading recordings of caning processions can be charged under the Information and Electronic Transactions Law (UU ITE) if caning is considered a disgrace that could harm an individual's reputation. However, this phenomenon continues to occur and there are no calls from law enforcement to ban it. Videos of the caning procession can easily be accessed on social media and can even be used as content by some content creators.

Based on the background above, the researcher wants to examine the legal certainty regarding the distribution of recordings of caning processions on digital media, and what is the view of Islamic law regarding the distribution of recordings of caning processions themselves?

2. Method Research

This research is entirely qualitative research, which is a data analysis method to examine and produce analytical descriptions of data. The data that has been collected is then explored or described in narrative form. This research uses a normative juridical approach or library research. (Soejono Soekanto dan Sri Mamuji, 2004)

In this approach, researchers carry out a review of literature relevant to the problem under study, applying a rationalistic paradigm. This approach emphasizes the use of scientific arguments based on the results of literature reviews and the results of researchers' thoughts on a problem using an induction mindset (from specific to general cases). (Imam Suprayogo dan Tabrani, 2003) The data sources used in this research are entirely secondary legal materials obtained from books, journals, research reports, as well as case news taken from both print and online media.

3. Results and Discussion

3.1 Legal certainty regarding the distribution of recordings of caning processions on digital media

Provisions regarding the technical implementation of caning punishments for perpetrators of *jarimah* have been strictly regulated in Aceh Qanun Number 7 of 2013. This Qanun is entirely a provision regarding *jinayat* procedural law. In this qanun it is explained that what is meant by caning is corporal punishment by whipping the convict's body. Responsibility for carrying out caning sentences rests with the prosecutor's office. Caning can only be implemented after a judge's decision. (Taryadi, 2020)

The qanun for *jinayat* events does not regulate the prohibition on recording the caning procession even after the issuance of Governor Regulation Number 5 of 2018. This regulation only revises the place where caning is carried out from being carried out in a public place, to a closed public place, namely a correctional institution (prison). (Pergub Aceh, 2018)

Looking at the aim and purpose of issuing Gubernatorial Regulation No. 5 of 2018 as stated by Irwandi Yusuf who served as Governor of Aceh at that time, it was to avoid defamation of the perpetrator of the finger or the person who was caned. (bbc indonesia, 2018)

Thus, people who record and distribute videos of the caning procession should violate the provisions of the ITE Law because they are considered defamatory. Defamation, in the intended sense, is an unlawful act that damages a person's reputation. These acts may involve the use of words, phrases, or media that are detrimental to the image and dignity of another individual, which can potentially lower their self-esteem. Apart from that, defamation also includes accusations against someone that they have committed negative acts, and this information is disseminated to the wider community. (Shah Rangga, 2015)

The criminal act of defamation has certain elements that must be fulfilled, namely intentional elements, elements that damage a person's honour and good name, as well as elements that involve the action in a public environment. In Indonesia, there are various types of criminal acts that fall into the category of defamation, namely: (Rochman, 2021)

- a) Accusing someone of something in written or broadcast images, in accordance with Article 310 of the Criminal Code.
- b) File a complaint regarding defamation, in accordance with Article 317 of the Criminal Code.
- c) Accuse something verbally in accordance with Article 310 Paragraph 1 of the Criminal Code (KUHP).
- d) Committing slander, in accordance with Article 311 of the Criminal Code and Article 36 Paragraph 5 of Law no. 32 of 2002 concerning broadcasting.
- e) Distributing, transmitting, or creating electronic information and/or electronic documents that are defamatory or insulting, in accordance with Article 27 Paragraph 3 of the Electronic Information and Transactions Law (UU ITE).

In the ITE Law Paragraphs 1 and 2 Article 310 of the Criminal Code it is stated;

1) Any person who deliberately attacks someone's honour or good name by making accusations about something, with the clear intention of making the matter known to the public, is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah. 2) If this is done by means of writing or images that are broadcast, displayed or posted in public, then for written defamation you will be threatened with a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiah.

Based on paragraphs 1 and 2 above, it can be said that distributing a video of the caning procession on digital media with the aim of making it known to the public can be charged under this article if it is considered a disgrace. Provisions regarding disgrace are not regulated separately but are included in the words honour or good name.

The definition of disgrace in the KBBI is shame, disgrace, stain, wrong, or mistake. A person who commits khalwat will feel ashamed when his actions are known by others, likewise if the procession of his punishment is spread, he will feel ashamed and suffer social punishment for the rest of his life because his punishment can be seen by anyone at any time. The perpetrator of the crime should have finished his sentence after being caned without having to receive social punishment for the rest of his life. This reason is the basis for moving the caning punishment to be carried out in prison.

Referring to the existing provisions, the phenomenon of spreading caning punishment processions on social media needs to be considered by who and what the purpose of spreading it is. If it is the press that distributes it for the purpose of reporting, then this is permissible, as is the function of the press as an information medium. (Dahlan Surbakti, 2015)

This is as stated in Article 1 number 1 of Law Number 40 of 1999 concerning the Press ("Press Law"). The press is a social institution and mass communication vehicle that carries out journalistic activities including searching, obtaining, possessing, storing, processing and conveying information in the form of writing, sound, images, sounds and images, as well as data and graphics and in other forms using the media. print, electronic media, and all types of descriptions available. (UU Pers, 1999)

In general, all trials and executions in Indonesia are open to the public, including at the Sharia Court. This principle is regulated in Article 153 paragraph (3) of the Criminal Code. Therefore, the presence of the media to cover a trial or execution and report on it is considered legally valid. Apart from that, coverage related to trials and execution of sentences is also one of the functions of the press. One of the functions mentioned in Article 3 Paragraph 1 of the Press Law is as a provider of information and social control in society.

In carrying out its duties, the National Media in Indonesia has a responsibility to pay attention to religious norms and community moral values in reporting events and opinions while still prioritizing the principle of the presumption of innocence. The explanation related to Article 5 Paragraph 1 of the Press Law states that in conveying information, national media must avoid giving judgments and are prohibited from making conclusions about individual mistakes, especially in cases that are still in the trial process. Furthermore, the media is also expected to consider the interests of all parties involved in reporting the news. (Margo Hadi Putra, 2018)

According to the recognized Journalism Code of Ethics as explained in Article 1 of Press Council Regulation Number 6/Peraturan-DP/V/2008, journalists in Indonesia are expected to carry out their duties with independence, and produce news that is accurate, balanced and without malicious intent. In the explanation of the article, it is also stated what is meant by "independent, accurate, balanced and not in bad faith", as follows: (Satino, 2021)

- a. Independent means that journalists act in reporting events or facts based on their personal considerations without interference, pressure or intervention from other parties.
- b. Accurate means that the news conveyed can be relied upon as correct information and in accordance with the facts at the time the event occurred.
- c. Balance means providing equal opportunities to everyone involved in the news or events being reported.
- d. Not acting in bad faith means that the journalist's actions are not driven by malicious intent or with the aim of harming other parties.

Thus, the media is prohibited from conveying information that is inconsistent with the facts proven during the trial or execution process with the intention of demeaning or defaming someone. This aims to prevent the spread of false or misleading news that could damage an individual's reputation or influence public opinion in an incorrect way. The same legal principles also apply to non-press individuals or entities. From a legal perspective, there is no prohibition on individuals writing or reporting what they witnessed in trials and executions as long as the process is open to the public.

However, if the contents of the report can harm other parties by containing statements that can undermine their dignity and defame them, then the person who distributes it can be subject to sanctions in accordance with the provisions contained in Article 27 paragraph (3) of Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE).

Violation of this article can result in a prison sentence with a maximum prison term of 6 years and a fine of IDR 1 billion as regulated in Article 45 paragraph (1) of Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Although the ITE Law does not provide a specific definition of defamation, further explanation of this concept can refer to Articles 310 and 311 of the Criminal Code. In the Criminal Code, there is a clear provision that insulting is included in the offense of complaining. In other words, someone who feels offended or aggrieved by news on social media about themselves that is not in accordance with the facts has the right to report the case to the authorities, such as the police.

According to Prof. Muladi, a professor of Criminal Law from Diponegoro University, his view is that if the information conveyed is the truth, then the news giver can use the defence as a legal argument. (Hukum Online, 2005) However, there are several conditions that need to be met in this context:

1. Submission of Information in the Public Interest: One of the main requirements is that the submission of information must be carried out in the public interest. This means that news givers must have strong reasons related to the interests of the wider community when disseminating the information.
2. Self-Defence: The second condition is that conveying information can also be considered as self-defences. This means that if someone feels personally threatened or harmed and spreads this information as an effort to defend themselves, this can also be used as a legal argument.
3. Revealing the Truth: Third, conveying information must aim to reveal the truth. This means that revealing the truth is the primary goal in the situation.

By looking at the existing provisions, the distribution of caning punishment processions must be reviewed in terms of the purpose of the distribution. If the person distributes it for the purpose of reporting, then they cannot be punished. Moreover, there are no specific regulations governing the prohibition of recording the caning procession in the jinayat procedural law. Based on the principle of legality in criminal law, as stated in Article 1 Paragraph 1 of the Criminal Code, 2023: "No act can be criminalized, except on the strength of criminal regulations in existing legislation, before the act is committed." (KUHP, 2023)

According to this principle, all actions are not considered illegal and cannot be punished unless regulated by applicable law. In Latin, this principle is known as *Nullum delictum nulla poena sine praevia lege poenali*, which can be translated as no criminal act, no punishment without a pre-existing legal rule. (Sri Rahayu, 2014) This principle is more often equated with the principle of non-retroactivity, or the principle that laws and regulations must not apply retroactively. Simply put, this principle says that if there are no rules there can be no punishment. (Moeljatno, 2000)

3.2 Views of Islamic Law on Distributing Footage of Caning Processions on Digital Media

Defamation, slander, accusations and bringing down the dignity of others are prohibited in Islam. Defamation or accusation in Islam is known as *qadzf*. *Qadzf* is divided into two, there are *qadzf* which are punished with *had* or *ta'zir*. *Had* punishment is a punishment that has provisions in Islam, while *ta'zir* punishment is one that is determined by the authorities to provide a deterrent effect. *Qadzf* which is punished with a *had* punishment in the form of flogging is a *qadzf* (accusation) against the perpetrator of adultery if it is not proven. Meanwhile, *qadzf* which is punished with *ta'zir* is *qadzf* with charges other than adultery, but which reduces the dignity of the accused. Imam Jalaludin in his book *Tafsir Jalalain*, divides defamation into 3 (three) parts:

1. *Sukhriyyah* is the behaviour of demeaning other people for certain reasons.
2. *Lamzu* refers to the act of defaming another person by insulting and insulting him.
3. *Tanabuz* is the act of calling someone with derogatory names or harsh words.

Thus, violations of defamation law can be considered as acts of *qadzf* which are subject to the punishment of *ta'zir*, and the authority to determine the punishment rests with the judges and authorities. This concept also includes one of the principles of *maqashid sharia*, namely protecting the soul, with the aim of protecting individuals from detrimental actions, hurting feelings, or damaging the character of other individuals, in order to create comfort in society. (Mulyono, 2019)

The legal basis for defamation in Islam can be seen from the prohibition in the Al-Qur'an, Surah Al-Hujarat verse 12: "O you who believe, stay away from most prejudices (suspicions), because some of them are sins. And don't look for bad things in people and don't gossip about each other. Is there anyone among you who likes to eat the flesh of his dead brother? Then of course you feel disgusted with him. And fear Allah. Indeed, Allah is the Most Accepting of Repentance, the Most Merciful". (Departemen Agama RI, 2000)

This verse clearly prohibits a Muslim from backbiting and exposing his brother's disgrace. In one of the hadiths mentioned, Rasulullah SAW said: When I was *mi'raj*, I met a people who had copper hooves. they scratched their own faces and chests. I asked: "Who are these people, O Jibril?". He answered: "They are people who eat human flesh (*ghibah*) and tarnish their honour." (HR. Abu Dawud). (Al-Hilali, 2005)

Based on the existing arguments, it can be concluded that exposing one's shame is prohibited behaviour and is haram. However, there are several conditions where opening and spreading disgrace changes from the law to being permissible (*mubah*). Imam An-Nawawi, a great scholar of the Syafi'i School in his book *Riyadhu As-Shalihin* explains that revealing someone's disgrace is an act that is strictly prohibited in religion. However, there are some conditions that are permissible if they are necessary for the purposes of sharia which cannot be achieved without revealing the disgrace. Furthermore, Imam An-Nawawi explained that there are 6 (six) reasons that are permissible for exposing someone's disgrace, namely: (Musthofa Sa'id Al Khin, 1987)

1. Opening disgrace to complain about injustice (*at-tazhallum*)
A person who feels he has been a victim of injustice (injustice) is allowed to complain to the authorities or authorities in order to overcome this injustice. In his complaint, the person will tell about the bad

behavior of *the* party who wronged him, because through this complaint, the truth can be revealed and fair action can be taken. So exposing disgrace like that is permissible.

2. Opening shame to ask for help (*al-isti'ana*)
Asking for help from those in authority or those deemed capable of eradicating evil and inviting experts in immorality to return to the path of Allah SWT.
3. Opening *disgrace* to ask for a fatwa (*istifta'*)
It is permissible to reveal someone's shame with the intention of asking a knowledgeable scholar for a fatwa. For example, if a brother treats me in a detrimental way in this way and like this, what are the legal provisions for me and my brother from a religious perspective? It is said in a hadith that Hindun bint Utbah (Abu Sufyan's wife) asked Rasulullah SAW for a fatwa, regarding her husband who was a bastard who did not provide support for her and her children unless she took it herself from her husband's property. Rasulullah SAW, said, "Take whatever is sufficient for you and sufficient for my child in a ma'ruf manner." (Muslim, 2004)
4. Opening disgrace to warn (*tahdzir*)
The ability to reveal disgrace with the aim of warning Muslims (*at-tahdzir lil muslimin*). Just like what Hadith expert scholars do in revealing the weaknesses of a hadith narrator, with the aim of preventing the information from being spread widely and to prevent errors in understanding the hadith. This act of reproach carried out by hadith scholars is permitted according to *Ijma'* (ulema consensus) because there is an acceptable need in the context of sharia.
5. Revealing the disgrace of people who openly do evil or wicked things.
It is permissible to reveal the shame of people who commit immoral acts openly. Like people who gamble, drink or date openly. Talking about their disgrace is permissible, especially when they are witnesses at trial.
6. Opening disgrace to introduce (*at-ta'rif*)
In Islam, it is permissible to introduce someone using nicknames that refer to their physical features or characteristics, such as 'the blind' or 'the mute,' as long as it is not done with the intention of demeaning or ridiculing them. Giving such nicknames is only intended for neutral identification purposes and not to damage a person's reputation. (Abu Ihsan al-Atsari, 2005)

Thus, it can be concluded that not all acts of exposing other people's disgrace are generally prohibited in Islam. There are several conditions that allow this, especially when there are certain reasons that have a positive impact. The permissibility of exposing disgrace can apply because there are certain "*illat*" (reasons) which are exceptions to the prohibition. However, it should be remembered that if the "*illat*" or reason no longer exists, then the act of exposing one's shame is prohibited again, in accordance with the basic law, namely haram. Apart from that, the ability to reveal disgrace can also be applied in emergency or forced situations. Therefore, it is important to understand that the ability to reveal disgrace must be measured according to the level of compulsion and need that exist in a particular situation.

In Islamic law, the determination and implementation of punishment has its own goals and guidelines among others; (Abdul Qadir Audah, 2009)

1. Prevention
Prevention in this context refers to efforts to prevent someone who has committed a violation of the law (*jarimah*) from repeating the violation. Apart from that, prevention is also an effort to prevent other people from doing the same thing. This is based on the belief that the punishment given to the perpetrator of Jarimah can also be an example for other people who are thinking about committing similar acts. Punishment can function as a preventive measure, namely to prevent previous violations from occurring, and also as a repressive action, namely to take action against violations after they occur.

2. Education and Improvement

Providing punishment also functions to provide education for the perpetrator of the offense so that he regrets his actions and in the end he is willing to repent. This reflects the concern in Islam for the perpetrator's self-improvement. Through punishment, the hope is that the perpetrator will realize that he must stay away from unlawful acts not only because of fear of punishment, but also because of a strong inner urge to stay away from wrongdoing, in the hope of gaining the pleasure of Allah SWT.

3. Community Benefit

Providing punishment for law violators is not a form of revenge, but is for the interests and welfare of the perpetrator. The punishment regulated in the Shari'a is an act of God's mercy towards His servants to provide goodness to His servants. So, law enforcement officers should have the intention in carrying out punishment to provide an opportunity for repentance (*ihsan*) and mercy to the perpetrator.

In Islamic criminal law, there are two theories known as the theory of punishment (*bayarir*) and the theory of prevention (*zawajir*). The responsir theory emphasizes that every criminal act will receive sanctions as a consequence of the action, while the *zawajir* theory emphasizes anticipatory action to prevent other members of society from committing similar criminal acts or other legal violations that could result in punishment. The term "answer" refers to giving punishment commensurate with the perpetrator of the crime, with the aim of providing a deterrent effect. The *zawajir* concept aims to prevent crime against society and the perpetrators of crime themselves. Therefore, in this theory, punishment is determined with the intention of providing proportional retribution for actions that harm other people's rights, as well as as a preventive measure. (Makhrus Munajat, 2009)

One of the aims of carrying out caning in open or public places is to have a deterrent effect, besides that it can also be a preventive measure for the public who witness it. The deterrent effect of caning is a feeling of shame. In creating an immediate deterrent effect, the most obvious impact is the pain and shame felt because the punishment is given in front of many people. Punishment with this pattern is considered very effective in providing education for the perpetrator and the people who witness it. (Asdiana, 2020)

The implementation of caning in public places is even more effective in achieving the goals of punishment. For people who record and distribute the caning procession with the aim of reporting or educating the public so that they do not commit crimes, whether it be adultery, mistress, or gambling, this is classified as a permissible spread of disgrace and the perpetrator cannot be charged under the ITE Law because what is reported is a fact and not closed to the public.

However, if the perpetrator who spreads the news creates a special narrative with the aim of attacking honour or defamation, then the victim may report it to the authorities because defamation cases are included in the offense of complaint (Hutaepa, 2023).

4. Conclusion

Based on results and discussion, it can be concluded that:

1. Gubernatorial Regulation No. 5 of 2018, does not mention a prohibition on recording the caning procession, only moving the place of caning execution from a public place to a detention centre or detention centre branch. In this way, their law is still permissible because there is no clear prohibition, even though the philosophical basis for transferring flogging executions to detention centres is with the aim of minimizing the spread of flogging processions by the public for the reason of avoiding defamation.
2. The spread of caning executions cannot also be charged under the ITE Law if it is carried out for informational or educational purposes, because caning executions are open to the public. However, victims may report to the authorities if they feel that the news conveyed does not match the facts or attacks their honour.

3. The distribution of whipping punishments is also not prohibited in Islam, because it is a permissible spread of disgrace (*ghibah*), with the aim of making the perpetrator of the fingering feel ashamed and have a deterrent effect and become a lesson for others. This is also in line with the aim of punishment.

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