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Reconstruction of the Policy on the Implementation of Caning Punishment in Aceh Based on Restorative Justice

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Abstract:

The implementation of caning punishment in Aceh is regulated within the special legal framework of Qanun Aceh Number 6 of 2014 on Jinayat Law. Caning is not a sanction for every jarimah: the Qanun distinguishes *hudud*, for which caning is prescribed in fixed forms, from *ta'zir*, where caning is one of several alternative principal sanctions. This study focuses specifically on the possibility and limits of incorporating restorative justice principles into the implementation of caning, without altering the fixed legal character of *hudud* sanctions or displacing Aceh's own customary dispute-resolution mechanisms. The study employs normative legal research using statutory, conceptual, and comparative approaches. Primary legal materials consist of the 1945 Constitution, Law Number 11 of 2006 concerning the Government of Aceh, Law Number 1 of 2023 concerning the Criminal Code, Qanun Aceh Number 6 of 2014 concerning Jinayat Law, Qanun Aceh Number 7 of 2013 concerning Jinayat Procedural Law, and relevant judicial materials. Secondary materials consist mainly of recent national and international journal articles and scholarly books. The analysis shows two principal normative limitations: the existing implementation does not provide a structured restorative assessment of harm and accountability, and it does not clearly distinguish cases in which restorative measures can operate alongside *ta'zir* sanctions from cases involving fixed *hudud* sanctions. The study proposes a policy reconstruction framework based on four elements: classification of the applicable sanction, restorative assessment for eligible *ta'zir* cases, recognition of direct victims without creating artificial victims in victimless offenses, and coordination with existing customary mechanisms. The framework positions restorative justice as a supplementary mechanism for repair, accountability, restitution where legally available, and social reintegration, rather than as a means of modifying *hudud* punishment.

Keywords: Aceh; Caning Punishment; Restorative Justice; Qanun Jinayat; Islamic Criminal Law.

INTRODUCTION

Aceh is the only province in Indonesia granted special autonomy to implement Islamic law formally under Law Number 11 of 2006 concerning the Government of Aceh. This authority includes the implementation of Islamic criminal law (jinayat), which is regulated principally through Qanun Aceh Number 6 of 2014 concerning Jinayat Law and Qanun Aceh Number 7 of 2013 concerning Jinayat Procedural Law. Within this framework, caning (*uqubat* cambuk) is one form of judicial sanction, but it is not imposed for every jarimah. Article 4 of Qanun Aceh Number 6 of 2014 distinguishes *uqubat hudud* from *uqubat ta'zir*. *Hudud* caning is fixed by the Qanun, whereas *ta'zir* includes caning, fines, imprisonment, and restitution as principal sanctions. The distinction is essential because the scope for restorative justice is not the same for fixed *hudud* sanctions and discretionary *ta'zir* sanctions.

The central problem examined in this article is therefore not whether Aceh should retain or abolish caning, nor whether Islamic criminal law should be measured against a Western human-rights framework. The narrower issue is whether the implementation of caning can incorporate restorative justice in a way that is legally coherent with Qanun Jinayat. Restorative justice is concerned with the

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harm caused by crime, the responsibility of the offender, the participation of persons directly affected, and the repair of relationships or losses where repair is possible. These elements cannot simply be imposed uniformly on every jarimah. In offenses with identifiable direct victims, such as sexual violence or rape, the restorative dimension may include victim participation, acknowledgment of harm, restitution where legally available, and measures supporting recovery. In offenses without an identifiable direct victim, restorative policy should instead address public or community harm without inventing a victim category that the law does not recognize.

Literature Review and Research Gap

Previous studies on caning in Aceh have predominantly addressed its legal legitimacy, the relationship between Qanun Jinayat and national law, the public controversy surrounding caning, or its compatibility with human-rights discourse. More recent studies have begun to examine restorative justice in Islamic criminal law, including the concepts of ishlah, forgiveness, restitution, and victim participation. However, these studies generally discuss restorative justice at the level of Islamic criminal-law principles or general criminal justice reform rather than the specific implementation of caning under Qanun Aceh Number 6 of 2014. International restorative-justice scholarship also emphasizes that restorative practices must be adapted to institutional, cultural, and offence-specific contexts rather than treated as a uniform procedure (Marder & Rossner, 2021; Zhang, 2021; Marder, 2022; Hobson & Payne, 2022; González & Schiff, 2023).

An important gap therefore remains. First, the legal literature does not sufficiently distinguish the restorative possibilities for *hudud* and *ta'zir* caning. Second, discussions of victims sometimes assume that every criminal offense has an identifiable individual victim, even though several jarimah regulated by the Qanun primarily concern public or religious order. Third, Acehnese customary mechanisms should not be relabeled as restorative justice; they should be examined on their own legal terms and only compared with restorative principles where similarities are analytically justified. This distinction is particularly important because Article 24 of Qanun Aceh Number 6 of 2014 expressly recognizes that certain khalwat matters within the jurisdiction of customary justice are resolved according to Aceh's customary-law regulations. The contribution of this study is consequently a specific policy reconstruction that differentiates fixed *hudud* sanctions from *ta'zir* sanctions and identifies where restorative measures may lawfully supplement implementation.

Based on this gap, the study addresses two questions: (1) what normative limitations in the current implementation of caning restrict the incorporation of restorative justice principles; and (2) what policy reconstruction can integrate restorative mechanisms into eligible cases without altering fixed *hudud* sanctions or replacing Aceh's existing customary dispute-resolution institutions? The study aims to answer these questions by formulating a legally bounded restorative framework for the implementation of caning in Aceh.

METHODS

This study employs normative legal research. The research treats law as a system of norms and focuses on the interpretation, coherence, and reconstruction of legal rules governing the implementation of *uqubat* caning. Normative legal research is distinguished from empirical legal research: the former examines legal norms and legal materials, while the latter examines law in social practice through field data. Because this study does not collect interviews or statistical field data, the analysis is limited to documented legal materials and does not make empirical claims about actual victim or offender experiences.

Research Approach

The research uses three approaches within normative legal research. First, the statutory approach examines the 1945 Constitution, Law Number 11 of 2006 concerning the Government of Aceh, Law Number 1 of 2023 concerning the Criminal Code, Qanun Aceh Number 6 of 2014 concerning Jinayat Law, Qanun Aceh Number 7 of 2013 concerning Jinayat Procedural Law, and relevant implementing regulations. Second, the conceptual approach examines restorative justice, victim participation,

offender accountability, restitution, ishlah, and the distinction between *hudud* and *ta'zir*. Third, the comparative approach uses recent international restorative-justice literature to identify institutional safeguards and limitations that may inform a context-sensitive reconstruction, without assuming that foreign models can be transplanted directly into Aceh.

Sources of Legal Materials

The sources of legal materials consist of primary, secondary, and tertiary materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2006 concerning the Government of Aceh, Law Number 1 of 2023 concerning the Criminal Code, Qanun Aceh Number 6 of 2014 concerning Jinayat Law, Qanun Aceh Number 7 of 2013 concerning Jinayat Procedural Law, and relevant judicial decisions or official legal materials. Secondary legal materials consist primarily of peer-reviewed national and international journal articles published from 2021 to 2026, together with selected scholarly books. Tertiary materials include legal dictionaries, encyclopedias, and authoritative reference sources used to clarify terminology.

Data Processing and Analysis

The legal materials were processed through four stages: identification and inventory of relevant materials; classification according to the legal issue and type of sanction; interpretation using statutory, conceptual, and comparative reasoning; and qualitative synthesis to formulate prescriptive policy recommendations. The analysis specifically compares the legal characteristics of *hudud* and *ta'zir* caning, identifies the points at which restorative justice is legally compatible with the Qanun, and formulates safeguards against extending restorative mechanisms to matters for which the governing law provides no legal basis.

RESULTS

Scope and Classification of Caning under Qanun Jinayat

For example, drinking khamar is subject to 40 lashes as *uqubat hudud* under Article 15, zina is subject to 100 lashes as *uqubat hudud* under Article 33, and qadzaf is subject to 80 lashes as *uqubat hudud* under Article 57. By contrast, caning for maisir, khalwat, ikhtilath, sexual harassment, rape, liwath, and musahaqah is regulated as *ta'zir*, generally in alternative form with fines and/or imprisonment, subject to the specific statutory provision. This distinction is central to restorative policy. Restorative justice cannot be used as a legal basis to reduce or replace a fixed *hudud* sanction. Its stronger field of operation is within *ta'zir* cases, where the Qanun itself recognizes alternative sanctions and, in some offenses, restitution.

Problems in the Implementation of Caning Punishment

The principal problem is not the existence of caning as such, but the absence of a sufficiently differentiated restorative framework for its implementation. The current legal structure specifies the offense and sanction but does not establish a general restorative assessment that asks whether harm to a direct victim can be acknowledged, whether the offender can undertake meaningful repair, whether restitution is legally available, or whether post-sentence reintegration measures should be coordinated. Without such differentiation, restorative justice risks becoming a general label rather than a legally operational principle.

A second problem concerns the concept of the victim. The person who receives the caning is the offender, not the victim. The relevant victim, where one exists, is the person harmed by the underlying jarimah. Some offenses regulated by the Qanun, such as rape and sexual harassment, have identifiable direct victims; other offenses may primarily concern public order or religious norms and may not have an individual victim in the same sense. The reconstructed policy therefore should not automatically assign victim status to a particular person. Instead, it should identify the type of harm involved individual, familial, or community/public and select an appropriate restorative response. The Qanun itself already recognizes restitution in specified circumstances, including rape and qadzaf, which demonstrates that repair of legally recognized harm can operate alongside *uqubat*.

Customary Law and Restorative Justice

Acehnese customary dispute resolution should not be treated as a translated form of restorative justice. Customary institutions have their own authority, procedures, terminology, and legal basis. Nevertheless, some customary practices such as deliberation, settlement, compensation, and restoration of social harmony may be analytically compared with restorative-justice principles. The appropriate approach is therefore not to force the concept of restorative justice into customary law, but to preserve the integrity of customary mechanisms while identifying lawful points of coordination with formal jinayat proceedings. This approach is consistent with Article 24 of Qanun Aceh Number 6 of 2014, which expressly recognizes the settlement of certain khalwat matters within customary jurisdiction under the applicable Aceh customary-law framework.

The practical implication is that restorative justice should operate as a legally bounded supplementary approach, not as a replacement for customary law or for the fixed requirements of *hudud*. For *ta'zir* cases with identifiable harm, a restorative assessment may consider voluntary dialogue, acknowledgment of harm, restitution where authorized, apology, rehabilitation, and reintegration. For offenses without a direct victim, the assessment should focus on accountability, community repair, education, and prevention rather than constructing an artificial victim-offender settlement.

A Policy Reconstruction Framework for the Implementation of Caning

The proposed reconstruction is a policy framework rather than a variable-based research model. It provides a sequence of legal filters and institutional safeguards for deciding when restorative measures may supplement the implementation of caning. The first filter is classification: the competent authority must identify whether the sentence is *hudud* or *ta'zir*. The second is harm assessment: the authority identifies whether the offense involves a direct victim, family harm, or primarily public/community harm. The third is restorative eligibility: restorative measures may be considered only where they have a legal basis, are voluntary for participants, do not obstruct the judicial process, and do not alter a fixed *hudud* sanction. The fourth is implementation and follow-up: any restorative agreement or support measure must be documented, supervised by the competent institution, and followed by appropriate rehabilitation, restitution, or reintegration measures where legally available.

The framework can therefore be stated in four operational components: (1) sanction classification between *hudud* and *ta'zir*; (2) identification of the actual harm and the persons directly affected; (3) restorative measures appropriate to the legal category, including victim participation and restitution where legally authorized; and (4) institutional coordination among the Mahkamah Syar'iyah, prosecutors, relevant Islamic-law authorities, correctional institutions, and customary institutions when a matter falls within their lawful jurisdiction. The framework does not authorize an institution to reduce, increase, or replace a *hudud* sanction through restorative agreement. Its function is to make the implementation of *ta'zir* caning more responsive to harm, accountability, and social repair while preserving the normative structure of Qanun Jinayat.

DISCUSSION

Caning and Restorative Justice within the Islamic Criminal-Law Framework

The findings should be understood within the normative structure of Islamic criminal law rather than through a general claim that modern criminal law should reshape Islamic law. *Hudud* sanctions are normatively distinguished by their fixed character, while *ta'zir* provides the lawful field for authority-based discretion within the limits established by the Qanun. Accordingly, the relevant policy question is not whether contemporary restorative justice can modify Islamic law generally, but whether restorative elements can be developed within the discretionary and procedural space that Qanun Jinayat itself provides. This distinction avoids extending a *ta'zir*-oriented policy argument to *hudud* sanctions.

Restorative Justice and the Limits of the *Hudud–Ta'zir* Distinction

The distinction between *hudud* and *ta'zir* produces a clear boundary for restorative reconstruction. For *hudud* caning, the number and form of the sanction are fixed by the Qanun. Restorative justice therefore cannot be used to negotiate the amount of caning or to convert the *hudud* sanction into another sanction. For *ta'zir* offenses, however, the Qanun provides alternative sanctions and, in specified circumstances, restitution. This creates a more defensible legal space for restorative considerations, particularly where there is a direct victim and the law recognizes compensation or restitution. The appropriate approach is thus differentiation rather than generalization.

Victim Participation, Accountability, and Social Repair

Restorative justice requires a precise identification of who has been harmed and what restoration means in the particular case. International scholarship emphasizes that restorative practice is context-sensitive and must account for accessibility, institutional culture, community legitimacy, victim voice, and risk (Marder & Rossner, 2021; Marder, 2022; Hobson & Payne, 2022; Pemberton, 2024; Shapland et al., 2024). In the Aceh context, this means that the offender receiving caning should not be described as the victim. Where a direct victim exists, the victim's interests may include acknowledgment, safety, restitution, apology, and recovery. Where the offense is primarily victimless or concerns public order, restoration should instead address community harm, accountability, education, and prevention. This distinction makes the proposed framework more precise and avoids importing a generic victim-offender template into every jinayat case.

Policy Reconstruction: A Legally Bounded Restorative Framework

The reconstruction proposed here is deliberately narrower than a general reform of Islamic criminal law. It consists of a legally bounded sequence: classification of the sanction; identification of the harm and affected persons; assessment of restorative eligibility; and implementation with institutional oversight. In *ta'zir* cases, the assessment may support voluntary dialogue, acknowledgment of responsibility, restitution where provided by law, apology, rehabilitation, and reintegration. In matters falling within recognized customary jurisdiction, the customary mechanism should be applied according to its own legal rules rather than renamed as restorative justice. Formal institutions should coordinate only to the extent permitted by law. For *hudud* cases, restorative measures may accompany lawful support and relational repair but may not change the fixed *uqubat*.

The novelty of this study is therefore specific and legally delimited. First, it identifies the *hudud–ta'zir* distinction as the threshold test for restorative intervention. Second, it replaces the generic notion of a 'victim' with a harm-based classification that distinguishes direct victims from community or public-order harm. Third, it separates Acehnese customary dispute resolution from restorative justice as distinct normative institutions while permitting principled comparison and lawful coordination. Fourth, it converts these distinctions into four operational policy components rather than presenting an abstract model. The resulting framework provides a concrete basis for future drafting of implementing guidelines or standard operating procedures for restorative measures in eligible *ta'zir* cases.

CONCLUSION

This study concludes that caning under Qanun Aceh Number 6 of 2014 is not a uniform sanction for all jarimah. The Qanun distinguishes fixed *hudud* caning from *ta'zir* sanctions in which caning is one of several alternative forms of punishment. The principal weakness identified by this study is the absence of a differentiated restorative framework that explains when and how restorative principles may supplement the implementation of caning. The concept of victim must also be used carefully: the person receiving the caning is the offender, while the relevant victim, where one exists, is the person harmed by the underlying jarimah.

The study proposes a legally bounded policy reconstruction framework with four components: classification of *hudud* and *ta'zir* sanctions; identification of actual individual, familial, or community harm; restorative measures for legally eligible cases, including victim participation and restitution

where authorized; and institutional coordination that respects the separate legal authority of customary mechanisms. The framework does not seek to modify fixed *hudud* sanctions or to replace Acehnese customary law with a foreign restorative template. Its contribution lies in specifying the legal boundary and operational sequence through which restorative justice can supplement *ta'zir* implementation in a manner consistent with Qanun Jinayat.

Conflict of Interest

All authors state that there is no conflict of interest.

Use of artificial intelligence (AI)

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