

History of Islamic Criminal Administration and Its Influencer on the Management of Cases in Aceh

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Abstract

As a perfect religion, the teachings of Islam clearly regulate various aspects of human life. Law enforcement and justice are a part of life that is also regulated and received attention in Islamic teachings. This includes the issue of criminal law regulated through Al-Ahkam al-Jinayah (Islamic criminal law). Speaking of Islamic Criminal Law, it is closely related to administrative affairs, for example when there are criminal cases, it requires recording, disposition, and lowering the articles against the sanctions that will be imposed. Everything goes through an administrative process that is vital in determining the outcome of the case. Departing from the above facts, this research seeks to find a correlation between the history of Islamic criminal administration and the implementation in modern-day Aceh. This research is included in the literature study with a qualitative approach, the methodology used is a descriptive analysis study. The results of the study concluded that the administration of Islamic criminal cases in Aceh is each very connected with the administrative values of the Rasulullah and Sahabat period, as for the reason because Aceh has Qanun Jinayat which makes it not rigid to positive law (General Criminal).

Keyword; Administration, Islamic Crime, Aceh

Abstrak

Sebagai agama yang sempurna, ajaran Islam mengatur secara jelas berbagai aspek kehidupan manusia. Penegakan hukum dan keadilan merupakan bagian kehidupan yang juga diatur dan mendapat perhatian dalam ajaran Islam. Termasuk di antaranya masalah hukum pidana yang diatur melalui *Al-Ahkam al-Jinayah* (hukum pidana Islam). Berbicara Hukum Pidana Islam erat kaitannya dengan urusan administrasi, sebagai contoh ketika ada perkara-perkara pidana dibutuhkan pencatatan,

disposisi, dan penurunan pasal-pasal terhadap sanksi yang akan dijatuhkan. Semuanya melalui proses administrasi yang sangat vital dalam menentukan hasil gelar perkara. Berangkat dari kenyataan di atas, penelitian ini berusaha untuk mencari korelasi antara sejarah administrasi pidana Islam dengan implementasi di Aceh masa modern. Penelitian ini termasuk dalam studi pustaka dengan pendekatan kualitatif, metodologi yang digunakan adalah studi analisis deskriptif. Hasil penelitian menyimpulkan bahwa administrasi perkara pidana Islam di Aceh masing sangat terkoneksi dengan nilai-nilai administrasi masa Rasulullah dan Sahabat, adapun alasannya karena Aceh memiliki Qanun Jinayat yang membuatnya tidak kaku terhadap hukum positif (Pidana Umum).

Kata Kunci; Administrasi, Pidana Islam, Aceh

Introduction

Administration is one of the branches of social science that characteristically studies administration as a phenomenon of modern society. Administration has basically existed since thousands of years ago. By the time the peoples lived nomadic lives, they were already carrying out administration. Administration as a science only developed at the beginning of the 19th century. Although the age of administration has been long, but administration is still an eye-catching study, because some of the cases that occur at this time are widely associated with irregularities in administrative activities.¹

Basically, administrative science grows and develops in line with human mindset, not only limited to administrative science but also as a job or profession that must be carried out as it should be. The administrative process, both systematically and manually personal, is expected to be able to answer the challenges of professionalism that have begun to be rare in the cotemporary era. The administration itself essentially functions to regulate and organize the division of labor in various shades of a particular institution. The art of administration can be seen from the diversity of applications of administrative values that are not always equivalent between one company and a company even though they are sourced from the same parent company.

For democracies, state administrative law is a tool for state officials and people who have an equal position in government. Democracy will create prosperity, where the law for a democratic state as a political construction that performs its function as a means of improving the welfare of society.² State Administrative Law is a part of public law which is a branch of constitutional law. The HAN regulates the actions, activities, and decisions carried out and taken by state organizers both government agencies and also state officials. The HAN itself also contains all regulations related to the way government organizers carry out their duties. In State Administrative Law there are several functions, namely:

¹ Lina Marliani, "Definisi Administrasi Dalam Berbagai Sudut Pandang," *Dinamika; Jurnal Ilmiah Ilmu Administrasi Negara* 5, no. 4 (2018): 17–21, <http://dx.doi.org/10.25157/dinamika.v5i4.1743>.

² Kukuh Sudarmanto, "Hukum Administrasi Dan Sistem Peradilan Di Indonesia Yang Berkeadilan Sesuai Asas-Asas Pancasila," *Jurnal Ius Constituendum* 6, no. 2 (October 17, 2021): 407, <https://doi.org/10.26623/jic.v6i2.4110>.

normative function, instrumental function, and function as legal guarantee. State administrative law also plays a role in the form of accountability and supervision of both internal supervision and external supervision, both of which synergize in developing good and optimal government administration.³

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Speaking of Islamic Criminal Law, the administration also plays its role considering that criminal issues require a system and management in actualizing sanctions. Not only that, administration sometimes becomes mediation for a case that can be designed in such a way as to obtain leniency or sentencing. Today, administrative attributes are the tender offerings of political elites to engineer cases both objective and loaded with the value of criminalization.

Aceh is a region in Indonesia that has differences in the context of administration and criminal law. Helsingki's MoU as a lighter for the distinction makes Aceh more unique and worthy of study.⁴ This article seeks to find relevance between the history of the Criminal Administration and criminal cases in Aceh. This article is classified as a literature research with a qualitative approach. The methodology used is the study of descriptive analysis by making various scientific journals as references. The reference source used as a reference is the result of scientific publications for the last 3 years.

Multi-Perspective Administration

Etymologically the term administration comes from English, from the word Administration whose infinitive form is administer. The word Administration also comes from the Dutch language, namely Administratie which has the meaning of including stelselmatige verkrijging en verwerking van gegeven (administration), bestuur (management of people's activities), beheer (management of resources, such as financial, personnel, warehouses). So administration etymologically is an activity oriented to the realm of administration, management, structural human activities related to financial, personal, resource management and so on.⁵

³ Vicky Zaynul Firmansyah and Firdaus Syam, "Penguatan Hukum Administrasi Negara Pencegah Praktik Korupsi dalam Diri Pemerintahan Indonesia," *Integritas : Jurnal Antikorupsi* 7, no. 2 (April 5, 2022): 325–44, <https://doi.org/10.32697/integritas.v7i2.817>.

⁴ Selvia Junita Praja and Wia Ulfa, "Implementasi Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat Di Kota Banda Aceh Provinsi Aceh," *Jurnal Kebijakan Pemerintahan* 3, no. 1 (June 30, 2020): 11–20, <https://doi.org/10.33701/jkp.v3i1.1071>.

⁵ M. Anzaikhan, "Hakikat Administrasi Pemerintahan Islam," *Al-Ijtima'i: International Journal of Government and Social Science* 5, no. 1 (October 30, 2019): 56–80, <https://doi.org/10.22373/jai.v5i1.465>.

In terminology, administration is the whole process of implementing decisions that have been taken and the implementation of them is generally carried out by a group of human beings (two or more people) to achieve a predetermined goal. The group here can be government, public, private, or civil works. So, Government administration is the governance in making decisions and actions by government agencies or officials related to state interests which includes the functions of regulation, service, development, empowerment, and protection.⁶

Administration has a sense in a broad sense and a narrow sense. In a narrow sense administration is often interpreted as administrative activities. Administration is essentially a job of information control. Administration is also often interpreted as activities related to writing/taking notes, duplicating, storing, or what is known as clerical work. Administration in a broad sense is defined as cooperation. The term administration relates to cooperative activities carried out by a human being or a group of people so that the desired goals are achieved. Cooperation is a series of activities carried out by a group of people jointly, regularly and directed based on the division of tasks in accordance with mutual agreement.⁷

In the context of Islamic Crime, administration is a series of processes that connect bureaucratic affairs (correspondence) with themes related to the implementation of criminal acts. Both those that are positive institutions and Islamic institutions. Criminal administration usually begins with a victim's or witness report, and the breaking point is the execution of a sentence or sanction packaged in an administrative frame. Criminal administration is very flexible, depending on the subject and object that plays its role. Even judges themselves can have a different understanding in interpreting administrative texts related to the settlement of cases.

Administrative Developments

The development of administration since the past until now, has experienced several periods / phases of development. Starting from administration as an art to administration as a science. Administration as an art arises together with the emergence of human civilization, obviously since man is cultured by developing his creation/reason, his sense/art, his nature/will, and the existence of cooperation between two or more people in order to achieve goals. Meanwhile, administration as a science is a relatively new phenomenon of modern society, that is, it only developed at the beginning of the 19th century. Administration as a science includes "applied science" because its expediency only exists if principles, postulates, formulas are applied to improve the quality of various lives of the nation and state.⁸

⁶ Anzaikhan.

⁷ Ulber Silalahi, "Relevansi Semangat Birokrasi Lokal Tradisional Dalam Merevitalisasi Birokrasi Lokal Modern Indonesia Di Era Otonomi Daerah: Kasus Birokrasi Dalam Masyarakat Tradisional Batak Toba Di Sumatera Utara," *Jurnal Administrasi Publik* 1, no. 1 (2002): 25–50, <https://journal.unpar.ac.id/index.php/JAP/article/view/1505>.

⁸ Marliani, "Definisi Administrasi Dalam Berbagai Sudut Pandang."

No one knows for sure when administrative practice was first implemented, what exists is an administrative term first coined by administrative experts. If you look at the treasures of the Ancient Greeks, even further, namely the Ancient Egyptian period, there are actually administrative values in the daily life of the community.⁹ No one knows for sure when administrative practice was first implemented, what exists is an administrative term first coined by administrative experts. If you look at the treasures of the Ancient Greeks, even further, namely the Ancient Egyptian period, there are actually administrative values in the daily life of the community.

In the realm of administration, in the narrow sense that if administration means correspondence, then Islam has also implemented it when the companions are instructed to record quranic verses on date palm fronds, animal skins or other items. More broadly, the application of administration is increasingly obvious when Islam has gained power, the existence of power requires rules to regulate the course of government, the process certainly cannot run well without the function and role of administrative values in it. So the significance of Islam referred to here is the linkage or reciprocal relationship in an effort to explore and explore the values between Islamic administration and government.¹⁰

The writing of the Qur'anic verses itself basically contains an administrative context. History has recorded, that the writing of verses and hadiths has a very dynamic administrative movement. Writing the Quran and hadith for example, initially the Prophet forbade the writing of hadith so as not to mix with verses of the Quran.¹¹ Likewise, during the Badr war where many Muslims as hafidz were killed. Making the Quran more intensely written and even uniformed and recorded in the time of friends. This is one of the proofs that administrative content has always existed even since the days when writing has not become a routine.

In the context of government, there were many cases in the time of the Prophet that had administrative content. For example, when he wanted to get support from various regions, the Prophet sent letters of a political and spiritual religious nature. Likewise, in the Hudaibiyah treaty, administrative values run in such a way as to govern society and government between Muslims and non-Muslims. In the Islamic Criminal orientation, sanctions and punishments against society were also written by some friends. When the Prophet declared certain sanctions and rules, it was not uncommon for friends to record them and make them a rule that was believed to be common.¹² The recording is clear evidence that the value of criminal administration dates back to the time of the Prophet.

⁹ Ahmad Zayyadi, "Kontribusi Turki Dan Mesir Terhadap Sejarah Pembaruan Hukum Keluarga Islam Di Indonesia," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 1 (June 1, 2020): 47, <https://doi.org/10.19105/al-manhaj.v2i1.3115>.

¹⁰ Anzaikhan, "Hakikat Administrasi Pemerintahan Islam."

¹¹ Syarif Hidayatullah, "Gagasan Islam Nusantara Sebagai Kearifan Lokal di Indonesia," *Panangkaran: Jurnal Penelitian Agama dan Masyarakat* 3, no. 1 (August 13, 2020): 1, <https://doi.org/10.14421/panangkaran.2019.0301-01>.

¹² Lukman Arake, "Al-Muwathanah Concept for Non Muslims in Islamic Majority Countries Siyasa Fikih Perspective," *International Journal on Advanced Science, Education, and Religion* 2, no. 1 (March 29, 2019): 35-47, <https://doi.org/10.33648/ijoaser.v2i1.26>.

History of Islamic Criminal Law

As a perfect religion, the teachings of Islam clearly regulate various aspects of human life. Law enforcement and justice are a part of life that is also regulated and received attention in Islamic teachings. This includes the issue of criminal law regulated through Al-Ahkam al-Jinayah (Islamic criminal law). Islamic criminal law is growing faster than conventional criminal law. According to Abdul Qadir Audah in *At-Tasyri al-Jinai al-Islamy Muqaran bil bil Qanunil Wad'iy*, conventional criminal law is like a newborn baby, growing up small and weak and then growing up and getting stronger little by little.¹³

Speaking of the history of criminal law, it is inseparable from the history of the birth of Islamic law, as for the reason because Islamic criminal law itself is part of other Islamic laws such as Islamic Family Law, Sharia Economic Law, Islamic Constitutional Law, and so on. The history of the development of Islamic law can be seen since the arrival of Islam to the archipelago. Islamic law has become part of people's lives culturally and socially. Since Islam came to Indonesia in the 7th century AD, its spread was so rapid that in the 13th and 14th centuries AD it was recognized as a political force that could disrupt the existence of customs slowly until it was recorded that several kingdoms applied Islamic law in the government system.¹⁴ Islamic law is a law that has a definite source from the Islamic religious part. As a legal system, Islamic law cannot and cannot be confused with the four legal systems above, which are generally formed from people's habits, the results of human consensus and culture somewhere at a time.¹⁵

Mustafa Zarqa, as quoted in *the Encyclopaedia of Islam*, divided the growth and development of Islamic law into seven periods. First, the period of treatises, namely during the life of the Prophet Muhammad SAW. Second, the period of al-Khulafa ar-Rasyidun (the four main caliphs) until the middle of the first century Hijri. Third, from the middle of the first century hijri to the beginning of the second century Hijiriyah. Fourth, from the beginning of the second century Hijri to the middle of the fourth century Hijiriyah. Fifth, from the middle of the fourth century Hijri until the fall of Baghdad in the middle of the seventh century Hijri. Sixth, from the middle of the seventh century Hijri until the emergence of Majallah al-Ahkam al-Adliyah (Codification of Islamic Civil Law) in the time of the Usmani Turks. Seventh, from the advent of codification to the modern era.¹⁶

When we look at the history of the past, we will find related facts about Islamic law. Islam is spread by peaceful means not by force let alone by the sword. Islam enters in harmony with the local culture, Islam does not make radical and sporadic changes, even Islam is used as a stabilizer if the political situation is experiencing instability due to power struggles between several circles.¹⁷

¹³ <https://www.republika.co.id/berita/ly83mw/mengenal-sejarah-hukum-pidana-islam>

¹⁴ Jefik Zulfikar Hafidz, "Sejarah Hukum Islam di Indonesia: Dari Masa Kerajaan Islam Sampai Indonesia Modern," *Tamaddun: Jurnal Sejarah dan Kebudayaan Islam* 9, no. 1 (2021): 159–84, <http://dx.doi.org/10.24235/tamaddun.v9i1.8087.g3804>.

¹⁵ Nurul Husna, "Hukum Jinayah Antara Aplikasi Dan Sejarah," *Legalite : Jurnal Perundang Undangan dan Hukum Pidana Islam* 2, no. 1 (November 14, 2017): 74–94, <https://doi.org/10.32505/legalite.v2i1.296>.

¹⁶ Republika

¹⁷ Husna, "Hukum Jinayah Antara Aplikasi Dan Sejarah."

According to Audah, Islamic law, including Islamic criminal law, was passed down to Prophet Muhammad SAW in a short period of time, starting from the apostolic period of Prophet Muhammad SAW and ending with his death or ending when Allah Almighty sent down His word; *"On this day I have perfected your religion for you, and I have sufficed My favors for you, and I have made Islam my religion.."* (QS Al-Maidah: 3). Islamic law is for all human beings of different personalities, different customs, traditions, and histories. In short, Islamic law is the law for the whole family, kabilah, society, and state.

Meanwhile, conventional laws are created by a society according to the needs in regulating life between them. Thus, conventional law can develop rapidly while the order of society also develops and advances rapidly. Legal experts agree that the beginning of the development of conventional law began with a family and a kabilah. Like a family law headed by a family head, a kabilah law is headed by a chief or kabilah. This law continued to develop until it finally formed a state that was a union between family and kabilah laws, where the laws of the inter-family or the laws of the interfamily differed from each other. This is where the role of the state is to establish a law that must be obeyed by all individuals, families, and caravans that fall into the territory of a legal state even though the laws of each country are usually different.

Differences between states continued until the end of the 18th century AD (French Revolution) when the emergence of philosophical, scientific and social theories. Since then conventional law has undergone great developments, among which it stands on a foundation that previous conventional laws did not have. According to Audah, in contrast to conventional law, Islamic law was born perfectly, there are no flaws in it; is comprehensive, that is, punishing every circumstance and no circumstance that escapes its law; covers all matters of individuals, societies, and countries.¹⁸

Islamic law regulates family law, interindividual relations, drafting laws, administration, politics, and everything related to society. Islamic law also regulates relations between countries in a state of war and peace. Islamic law was made not to be influenced by the development and change of time, which did not demand a change in its general rules and basic theories. Therefore, the entire basic rule consists of general and flexible nas-nas that can punish any new conditions and cases even if the opportunity for occurrence is not possible.

Islamic law entered the archipelago together with the entry and development of Islam in Indonesia. The institutionalization of Islamic law was first carried out by Muslim merchants. Then the increase in the effectiveness of its stewardship was carried out by the scholars. The first book of Islamic law that spread throughout the archipelago was *Shirat al- Mustaqim* written by the great scholar Nur al-Din. Furthermore, this book was commented on by scholars and mufti from Banjarmasin. Meanwhile, in the kingdoms of Demak, Jepara, Tuban, Gresik, Ampel and Mataram spread the book on Islamic law with the title *Sajinat al-Hukm*. Islamic law grows and develops along with the growth and development of Islamic society.

¹⁸ Republika.

Then its effectiveness was confirmed by the establishment of Islamic kingdoms and sultanates. Before the Dutch established their power in Indonesia, Islamic law as a legal system existed in society, growing and developing in addition to the customs or customs of the population inhabiting the archipelago. Islamic law can grow and develop in addition to customary law, because custom is one of the sources of Islamic law. The binding force of Customary law according to Islamic law is the same as the binding force of sharia against Muslims. Customary Law as long as it does not conflict with Shari'a is one of the elements of Islamic law. According to Subardi, there is evidence that shows that Islamic law is rooted in the consciousness of the archipelago's archipelago and has a normative influence in Indonesian culture. The influence is peaceful penetration (penetration pasifique), tolerant, and constructive.

The penetration process carried out by the colonizers into Indonesian society, which existed at that time, resulted in changes in the structure of Indonesian society. The penetration process is carried out gradually, so that it deepens. Those stages are:

1. The first stage (1600-1800) was passed in the form of contracts between merchants and kings so that the treaty was at once a treaty with the kings. This situation took place at the beginning of the 17th century and the level of infiltration only reached the upper layers of Indonesian society.
2. When then the politics of the colonial government around 1800 shifted towards the use of foedal structures for economic purposes, the penetration stage began to enter an even lower level, namely the provincial level (1830). Various agreements were carried out in the form of contracts with the regents.
3. In the middle of the 19th century (1870), penetration began to go deeper into the village level in the form of agreements entered into between the resident and the village head. The agreement was entered into in order to utilize the pattern of the foedal community to carry out the cultur stelsel, as a substitute for the failed system of landelijk stelsel.

Administrative and Criminal Relations

Administration is a phenomenon of modern society, where modern society always undergoes changes in life patterns in all fields. This lifestyle is related to how to think and work rationally. And it is this rational way of working that relates to modern science and technology. With the rapid development of science and technology, people's demands and needs for services are increasingly complicated and complex. In addition to the demand for quality services, work efficiency and effectiveness are also required. The existence of limited resources further encourages organizations to cooperate and partner with other organizations. This is done because in meeting diverse human needs cannot be met by one organization or institution alone.¹⁹

For example, the policy of Baitul Mal kampung in choosing people who deserve zakat mal is not always the same between one village and another. In fact, they obtained the same counseling and authority from the higher Baitul Mal side.

¹⁹ Marliani, "Definisi Administrasi Dalam Berbagai Sudut Pandang."

Regardless of subjectivity or not, even objectively there will be no similar administrative management. Some villages judge the poor category from electricity accounts, some from home ownership, some look at the dependent aspect or burden of the head of the family. In reality, even though the criteria for fakir or poor already have indicators, there are still receipts of zakat malls that are considered wrong (inappropriate). Because regarding the problem of the kitchen (personal finances), only the family element itself is the one who understands the disadvantages or advantages best.

Although the administration cannot run perfectly, the role of the administration is very crucial in managing and governing the government system. In some regions in Indonesia, we often hear of victims dying due to jostling in queues for zakat. This sad phenomenon can occur because the organizers do not implement the administrative system properly and correctly. In fact, if administrative values are managed properly, funds from philanthropists can be channeled into the hands of the rightful without having to implement a queuing culture, let alone to the point of taking lives.

In a broad sense, in fact, all knowledge has one absolute similarity, namely both of which are derived from the omniscient, namely Allah Swt. Allah who bestows man is able to think, is able to act on his wishes, and is able to learn knowledge as one of the blessings of Allah Swt. But in a narrow sense, practically the relationship between administrative science and other sciences is inseparable from the extent of the role of science itself in breaking through the boundaries of disciplines that others that have become mainstream in general.

One example of the relationship between administration and criminal law is the existence of various practices in the abuse of authority. Abuse of authority is a word that we often hear as one of the elements behind corruption both in Indonesia and in other countries. In general, the corruption that has occurred so far is carried out by officials who have the authority to be in the place that allows the corruption crime to be carried out. Conceptually, abuse of office authority is the use of opportunity by a person or group of people who are in office by taking a chance because of their position.

According to Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the abuse of authority is if a person or group takes advantage of themselves or others or a corporation, abuses the authority, opportunity or means that exist on him because of his position and harms the state finances or the economy of the state is punishable by imprisonment for life or imprisonment for a minimum of one year and no more than twenty years and fines.²⁰

Before discussing the relationship between administration and legal science, it is necessary to understand the relevance between administration and legal science in general. Administrative law has three functions, namely norms, instruments and guarantees. The normative function that concerns the naming of governing power uses an instrumental function to establish the instrument of government to use the power of governing (*besturen*) to guarantee legal

²⁰ Alya Maya, "Kewenangan Hukum Administrasi Terkait Penyalahgunaan Wewenang Dalam Tindak Pidana Korupsi Di Indonesia," *Jurnal Komunitas Yustisia* 4, no. 3 (2021): 990–96, <https://doi.org/10.23887/jatayu.v4i3.43738>.

protection for the people. Thus, administrative law enforcement is related to issues of legitimacy or issues of authority in carrying out its enforcement instruments which include;²¹

1. Monitoring
2. Using sanctioning authority, which includes;
 - a. coercion of government or coercive actions (Bestuur Dwang)
 - b. Forced money (Publiekrechtelijke dwangsom)
 - c. closure of business premises (sluiting van een inrichting)
 - d. cessation of the company's machinery activities (Buitengebruikstelling van een toestel)
 - e. revocation of permits through reprimand processes, government coercion, closure and forced money

The supervisory authority and the authority to impose sanctions are absolute, that authority must be established either through attribution or delegation except for the sanction of revocation of the Tata Usha Negara Decree (KTUN) as it becomes the inherent authority of the official issuing the KTUN. Administrative sanctions can be formulated cumulatively, both internal and external cumulations. In internal cumulation, two or more administrative sanctions as mentioned above, are applied together in one law. Meanwhile, external cumulating means that administrative sanctions are applied jointly with other sanctions, such as criminal sanctions and civil sanctions..²²

The calculation of sanctions is externally justifiable and does not violate the principle of *Ne bis in idem* because the nature and purpose of administrative sanctions is different from criminal sanctions, while civil is more of a fulfillment of achievements in civil relations carried out by the government in the capacity of a subject of civil law and not a public legal entity. Administrative law enforcement not only concerns a basic understanding of the legitimacy (authority) of granting permits and supervision but also includes imposing sanctions, especially the procedures and competencies of the courts authorized to try them. In this regard, article 4 of Law number 5 of 1986 (LN Number 77 of 1986) concerning the State Administrative Court (Peratun) has affirmed its authority in adjudicating state administrative disputes..²³

As with administrative law, criminal law enforcement also includes preventive law enforcement in the form of the authority to investigate investigators to find suspects and make light of a criminal act (article of Law No. 8 of 1981 (LN 1981 No. 76) as well as its repressive aspect, namely the imposition of criminal sanctions based on the judge's conviction. In contrast to administrative law which emphasizes the consistency of authority from granting permits, supervision and imposing sanctions, criminal law emphasizes the formulation and granting of sanctions (punishments). This is because in positive criminal material law, the formulation of deliberations is more in the form of the formulation of

²¹ Nina Herlina, "Penerapan Sanksi Administrasi Dalam Hukum Perlindungan Konsumen," *Jurnal Ilmiah Galuh Justisi* 7, no. 2 (November 4, 2019): 190, <https://doi.org/10.25157/justisi.v7i2.2917>.

²² Herlina.

²³ Herlina.

prohabetur or prohibition norms that must be connected with threatened sanctions, so that they can be enforced.²⁴

Positive criminal law has a material law, namely the Criminal Code (KUHP), Law Number 1 of 1946, as a *Lex Generalis* of the rules of criminal rules spread in sectoral law. Based on the principle of *Lex Specialist derogat legi Generali*, the formulation of criminal penalties of the Criminal Code is not enforced if a law has provided for it. On the contrary, the determination of the type of punishment must follow the basic rules listed in the first book (general regulations) of the Criminal Code as long as they are not regulated otherwise by sectoral legislation.²⁵

Criminal law has a formal law, namely the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). In addition to functioning as a guideline for investigations, formal law also regulates the judicial environment of the authorities. Based on article 10 of the Law of the Republic of Indonesia Number 14 of 1970 concerning the Principles of Judicial Power jo article 84 of the Criminal Procedure Code, criminal cases become the absolute authority of the General Court (*incasu* District Court). This led to the consequence that the sentencing of the principal criminal sentence including additional criminal penalties was decided by a District Court judge.²⁶

In article 98 of the Criminal Procedure Code, it is allowed to merge a lawsuit for compensation (civil) into a criminal case that is being tried. The condition of this merger is the act on which the indictment in the criminal case is based on causing harm to another person. (chapters 91-101). The merger, which includes claims for damages for civil (victim) and criminal damages for litigation, was made by the prosecutor in his lawsuit. When talking about administrative and criminal linkages in the context of sanctions, the difference between administrative sanctions and criminal sanctions can be seen from the purpose of imposing sanctions themselves.

Administrative sanctions are aimed at the violation, while criminal sanctions are aimed at the offender by giving punishment. Administrative sanctions are intended for the act of violation to be stopped. The nature of sanctions is *Reparatoir* means restoring the original state. In addition, the difference between criminal sanctions and administrative sanctions is the enforcement of the law. Administrative sanctions are applied by state administrative officials without having to go through judicial procedures, while criminal sanctions can only be imposed by criminal judges through the judicial process.²⁷

As explained in sub-chapter 2, the difference in the nature and purpose of sanctions between administrative and criminal causes a coupling between the two types of sanctions, violating the principle of *Ne bis in idem*. This has led to the construction of the relationship between administrative sanctions and *pidan* is not to cover each other and not to require each other. A person or legal entity, can be

²⁴ Herlina.

²⁵ Herlina.

²⁶ Herlina.

²⁷ A. Wardi Muslich, "Ayat-Ayat Pidana Dalam Al-Qur'an," *Al-Qalam: Jurnal Kajian Islam dan Pendidikan* 18, no. 90-91 (December 31, 2001): 46, <https://doi.org/10.32678/alqalam.v18i90-91.1463>.

convicted without ruling out the possibility of being sentenced to administrative sanctions, and vice versa. The imposition of criminal sanctions by District Court judges, and administrative sanctions by the PTUN in the same case, is not an additional punishment or *accessoires* to each other. The decision of the PTUN is an independent judgment, which does not need to wait for the verdict of another court. The same applies to criminal convictions. Thus, the legal force of two judgments of a court with different absolute competence it is parallel.²⁸

The Dichotomy of Criminal Law and Islamic Criminal Law in Indonesia

Islamic Sharia is not only a symbolism of moral teachings that is carried out ritually, but is a doctrinal pragmatism that must be applied in human life. Islamic law comes from the Quran, while Indonesian law comes from Pancasila and the 1945 Constitution. In Islamic law, adultery is punishable by stoning, while in Indonesia adultery the penalty is imprisonment, so in Islamic law it does not recognize prison, because in prison there is no elimination of sin in exchange for punishment in the afterlife. If in the world the guilty person has been punished according to Islamic law, then in the hereafter the person is no longer processed, because it has been processed in accordance with the provisions in His book, the Qur'an.²⁹

Indonesia, which uses the concept of a legal state, has actually carried out and applied rules related to the administration of government, statehood and society. This aims to create clean, just, prosperous, peaceful, and prosperous government, statehood and community activities. State administrative activities carried out by government officials in their implementation have been regulated by Law Number 30 of 2014 concerning State Administration, Law Number 28 of 1999 concerning Clean and Free State Organizers from Corruption, Collusion and Nepotism and general principles of good governance. This is so that there is no abuse of power / authority possessed in the public interest.³⁰

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²⁸ Herlina, "Penerapan Sanksi Administrasi Dalam Hukum Perlindungan Konsumen."

²⁹ Husna, "Hukum Jinayah Antara Aplikasi Dan Sejarah."

³⁰ Maya, "Kewenangan Hukum Administrasi Terkait Penyalahgunaan Wewenang Dalam Tindak Pidana Korupsi Di Indonesia."

³¹ Husna, "Hukum Jinayah Antara Aplikasi Dan Sejarah."

Implementation of Criminal Administration in Aceh

The specificity of Aceh in the field of law can be seen from Law No. 11 of 2006 concerning the implementation of Islamic Shari'a which was then supported by several institutional wars in Aceh, namely the Shari'a Silam service of the Shari'a court Walayatul Hisbah officials authorized by the Ulema Consultative Assembly, and legal instruments in the form of Qanun. This condition makes Aceh different from other parts of Indonesia where it implements the general criminal law. In recent perpetrators of gambling or obscenity in Aceh, for example, the Aceh government through its local authorities punished the perpetrators with caning, not with imprisonment as is the case in other provinces.

Based on the Supreme Court of the Republic of Indonesia Regulation Number 7 of 2015, the issue of criminal cases in Aceh consists of several elements, including;³² *First*, the Chairman and Deputy Chief Justice. The Chief Justice as the head of the Court is responsible for the administration of cases in the Court. The Chief Justice shall supervise the administration of justice in the Court of Appeal and the Court of First Instance assisted by the Deputy Chief Justice. The Chief Justice appoints the Magistrate as the spokesperson of the court to give an explanation of matters relating to the court. As the executor of the administration of the case, the Chief Justice submits to the Clerk of the Court.

Second, clerkship. The Registrar of the High Court is the administrative apparatus of the state which in carrying out its duties and functions falls under and the responsibility of the Chief Justice of the High Court. The clerkship of the High Court is presided over by the Registrar. The Registrar of the High Court has the task of providing support in the technical and administrative field of the case and completing the papers related to the case. The Clerk of the High Court performs the functions of:³³

1. implementation of coordination, guidance and supervision of the implementation of tasks in providing support in the technical field;
2. implementation of administrative management of civil cases;
3. implementation of administrative management of criminal cases;
4. implementation of administrative management of special cases;
5. implementation of case administration management, presentation of case data, and transparency of cases;
6. implementation of financial administration in technical and financial programs of cases established based on laws and regulations, minutation, evaluation and administration of clerkship;
7. technical guidance of clerkship and vocational affairs, and;
8. performance of other functions conferred by the Chief Justice of the High Court.

Third, the Young Clerk of Civil Affairs. The Young Clerk of Civil Affairs has the task of carrying out the administration of cases in the civil field. *Fourth*, the Young Clerk of Criminal Justice. The Young Criminal Registrar has the task of

³² Mariadi, "Pelaksanaan Syariat Islam Pada Qanun Nomor 11 Tahun 2002 Bidang Aqidah, Ibadah, Dan Syiar Islam," *Legalite : Jurnal Perundang Undangan dan Hukum Pidana Islam* 3, no. II (December 31, 2018): 113–54, <https://doi.org/10.32505/legalite.v3iII.1106>.

³³ <https://dilmil-aceh.go.id/artikel-e-jurnal/kepanitraan>

carrying out the administration of cases in the criminal field. The Young Criminal Registrar performs the functions of::

1. the conduct of examination and review of the completeness of the appeal case file;
2. the implementation of the examination and review of the completeness of the criminal case file;
3. implementation of registration of appeal cases;
4. implementation of registration of criminal cases;
5. the implementation of the distribution of appealed cases that have been registered to be forwarded to the Chief Justice on the basis of the Determination of the Appointment of a Panel of Judges from the Chief Justice of the High Court;
6. the implementation of the distribution of cases that have been registered to be forwarded to the Chief Justice based on the Determination of the Appointment of a Panel of Judges from the Chief Justice of the High Court;
7. the implementation of the counting, preparation and delivery of the detention determination, extension of detention and suspension of detention;
8. the implementation of the re-receipt of the case file that has been decided and terminated;
9. the execution of the delivery of a copy of the judgment of the High Court along with the case file of bendel A to the appellant's court;
10. the implementation of the storage of case files that do not yet have permanent legal force;
11. the implementation of the submission of case files that already have permanent legal force to the Young Registrar of Law;
12. implementation of administrative affairs of the registrar, and;
13. performance of other functions conferred by the Registrar.

Fifth, Special Young Clerk. The Special Young Clerk has the task of carrying out the administration of cases in the field of special cases, including corruption cases and other special cases in accordance with the provisions of the applicable laws and regulations. The Special Young Clerk performs the functions of:

1. the implementation of the examination and review of the completeness of the special case file;
2. implementation of registration of special cases;
3. the implementation of the distribution of special cases that have been registered to be forwarded to the Chief Justice on the basis of the Determination of the Appointment of the Panel of Judges from the Chief Justice of the High Court;
4. the implementation of the counting, preparation and delivery of the determination of detention, extension of detention and suspension of detention for special criminal cases;
5. the implementation of the re-receipt of the case file that has been decided and terminated;
6. the execution of the delivery of a copy of the judgment of the High Court along with the case file of bendel A to the appellant's court;

7. the implementation of the storage of case files that do not yet have permanent legal force;
8. the implementation of the submission of case files that already have permanent legal force to the Young Registrar of Law;
9. implementation of administrative affairs of the registrar, and;
10. performance of other functions conferred by the Registrar.

Sixth, Young Law Clerk. The Young Law Clerk has the task of collecting, processing and presenting case data, public relations, structuring case archives and reporting. *Seventh, Secretariat.* The Secretariat of the High Court is the administrative apparatus of the state which in carrying out its duties and functions is subordinate to and responsible to the Chief Justice of the High Court. The Secretariat of the High Court is presided over by the Secretary. The Secretariat of the High Court has the task of carrying out the provision of support in the fields of administration, organization, finance, human resources, and facilities and infrastructure within the High Court.

Eighth, Planning and Staffing Section. The Planning and Personnel Department has the task of carrying out planning, program, budget, staffing, organizational and governance affairs, as well as managing information technology. *Ninth, the Program Plan and Budget Subsection.* *Tenth, Personnel and Information Technology Subdivision.* *Eleventh, General And Financial Section.* *Twelfth, Thirteenth, Administrative and Household Subdivisions.* *Fourteenth, Fifth Subdivision of Finance and Reporting* The Finance and Reporting Subdivision has the task of carrying out the preparation of materials for financial management, treasury, accounting and verification, management of state property, and financial reporting, as well as the implementation of monitoring, as well as the preparation of reports.

Furthermore, regarding caning is a continuation of the administrative procedures that have been completed. Caning is a punishment that has been established in the Aceh government. In the Aceh region, it still applies the law of flogging to its citizens who violate Islamic law, especially perpetrators of adultery. listed in Qanun Aceh number 6 of 2014 concerning the Jinayat Law, Aceh is part of the Republic of Indonesia with special privileges and autonomy. In the formulation of human rights in the UN document which was later adopted by positive law in Indonesia, it is explained that human rights are rights that have been obtained by every human being as a consequence of being born into a human being.

John Locke stated that human rights are rights granted directly by God Almighty as natural rights. Therefore, no power in the world can revoke it. In Law Number 39 of 1999 concerning Human Rights Article 1 it is also stated that: *"Human Rights (HAM) is a set of rights inherent in the nature and existence of man as a creature of God Almighty and is His grace that must be respected, upheld, and protected by the state, law, government and everyone for the honor and protection of human dignity and dignity."*

Since Aceh was proclaimed as the Land of Shari'a and the implementation of the caning law a few years ago, many challenges have come to the implementation

of Islamic law in Aceh, both from non-Muslims and from secular Muslims.³⁴ The protests were given for a variety of reasons already mentioned above. The most controversial issue in the implementation of Qanun Jinayat in Aceh is the provision of the whipping uqubat. When collected, there was some reaction from the public about this whipping uqubat. Such as, rejecting Qanun jinayah which still lists punishments that are judged to violate human rights and degrade the dignity of humanity, this group is usually represented by human rights activists. Provisions for corporal punishment such as caning are contrary to international human rights and existing laws and regulations in Indonesia, especially Law No. 39 of 1999 concerning Human Rights.

Even so, the format of caning still exists in Aceh, this is inseparable from the character of Aceh's higher institutions which are still serious about showing the value of the specificity of their region as an Islamic sharia area. This shows that Aceh's relevance to the classical Islamic criminal administration system is very close. What Aceh is trying to practice is actually trying to build Islamic treasures with traditional Islamic nuances.

Conclusion

The history of Islamic Criminal administration cannot be separated from the history of Islamic Law as the main domain of Islamic studies. The Islamic administration of the classical period has very far differences with the Islamic administration of modern times, one of the most striking is the existence of an online-based administrative system (IT) that has certainly never existed during the time of the Prophet. Even so, past administrative values still influence the development of modern administration, especially those oriented towards Islamic criminal law. The administration of Islamic criminal cases in Aceh is each very connected to the administrative values of the Rasulullah and Sahabat period, as for the reason because Aceh has Qanun Jinayat which makes it not rigid to positive law (General Criminal).

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³⁴ Abdul Manan, "Acceptance of the Implementation of Islamic Sharia Laws in West Aceh, Indonesia," *KnE Social Sciences*, November 11, 2020, <https://knepublishing.com/index.php/KnE-Social/article/view/7919>.

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