

# Legal Connections for the Settlement of Criminal Cases for TNI Soldiers According to Aceh Qanun Number 7 of 2013 with Military Law

Misran Wahyudi,\* Makhrus Munajat,\*\* and Ocktoberrinsyah\*\*

\*Adisutjipto Air Force Base Legal Office Yogyakarta, Indonesia

\*\*State Islamic University (UIN) Sunan Kalijaga Yogyakarta, Indonesia

*Email: misranwahyoe@gmail.com*

**Abstract:** The enactment of Aceh Qanun No. 7 of 2013 on the Law of Jinayat Procedural creates a separate problem for the criminal law enforcement system for TNI soldiers in Aceh. Reason, because the settlement of connectivity cases for TNI soldiers has previously been regulated in Law No. 31 of 1997 on Military Courts, however, Aceh Qanun No. 7 of 2013 also regulates the same thing, but with a different legal substance. The dualism of this arrangement can lead to clashes, Aceh Qanun vis a vis military law. This article analyzes how the law applies to the qanun in resolving connectivity cases for TNI soldiers in Aceh? and how is the law enforcement system? These problems were analyzed objectively using the theory of legal validity, and the theory of law enforcement. The method used is *doctrinal* research which focuses on the results of the study of various secondary data, supported by primary data in the form of interviews with resource persons, and uses a statutory approach and a conceptual approach. The findings of the research, namely: *First*, Aceh Qanun Number 7 of 2013 does not apply binding for every TNI soldier who performs jarimah together with those who are subject to the Aceh Islamic Sharia judiciary. *Second*, law enforcement on connectivity cases involving TNI soldiers is resolved through a splitting mechanism, namely that the perpetrators of the crime who are members of the TNI are resolved through military courts, while the perpetrators of the crime who are civilians are resolved through the Islamic Sharia courts in Aceh.

**Keywords:** *TNI soldiers; legal connectivity; Qanun jinayat; Military law; Aceh.*

**Abstrak:** Berlakunya Qanun Aceh Nomor 7 Tahun 2013 tentang Hukum Acara Jinayat menjadi problematika tersendiri dalam penegakan hukum pidana bagi prajurit TNI di Aceh. Penyelesaian perkara koneksitas bagi prajurit TNI sebelumnya telah diatur dalam Undang-Undang Nomor 31 Tahun 1997 tentang Peradilan Militer, namun Qanun Aceh Nomor 7 Tahun 2013 juga turut mengatur hal yang sama, tetapi dengan substansi hukum yang berbeda. Dualisme pengaturan ini dapat menimbulkan benturan, Qanun Aceh *vis a vis*

hukum militer. Artikel ini menganalisis bagaimanakah keberlakuan hukum qanun tersebut dalam penyelesaian perkara koneksitas bagi prajurit TNI di Aceh dan juga bagaimana pula sistem penegakan hukumnya. Persoalan tersebut dikaji dengan menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Adapun analisisnya dilakukan dengan menggunakan teori validitas hukum dan teori penegakan hukum. Metode yang digunakan adalah *doctrinal reaserch* yang menitikberatkan hasil telaah berbagai data sekunder, dengan didukung data primer berupa wawancara dengan narasumber. Dari kajian dan analisis yang telah dilakukan diperoleh simpulan bahwa: *Pertama*, Qanun Aceh Nomor 7 Tahun 2013 tidak berlaku mengikat terhadap prajurit TNI yang terlibat perkara koneksitas di Aceh. *Kedua*, penegakan hukum terhadap perkara koneksitas yang melibatkan prajurit TNI diselesaikan melalui mekanisme *splitsing*, yakni pelaku jarimah yang merupakan anggota TNI diselesaikan melalui peradilan militer, sedangkan bagi orang sipil diselesaikan melalui peradilan Syariat Islam di Aceh.

**Kata Kunci:** *Prajurit TNI; koneksitas hukum; Qanun jinayat; hukum Militer; Aceh.*

## Introduction

As part of national law, criminal law functions to maintain public order and protect the rights of citizens from violations. Criminal law is the basics and rules adopted by a country in maintaining legal order (*rechtsorde*), namely by prohibiting what is contrary to the law and imposing sorrow on those who violate it.<sup>1</sup> Criminal law is divided into material criminal law and formal criminal law.

*Qanun Jinayat* is part of the pluralism of criminal law in Indonesia and is only enforced explicitly in Aceh Province. The enactment of the *Qanun Jinayat* as part of Islamic law implementation in Aceh Province, Aceh has special privileges and autonomy granted by the central government to the province through Law Number 44 of 1999 concerning the Implementation of Privileges of the Special Region of Aceh and the Law No. Number 18 of 2001 concerning Special Autonomy.

---

<sup>1</sup> Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008), pp. 8-9.

The legitimacy of the implementation of Islamic law in Aceh Province has become even stronger with Law Number 11 of 2006 concerning the Government of Aceh (UUPA). The implementation of Islamic law in criminal law (*jinayat*) is specifically regulated in Article 125 and Article 132 UUPA. Both articles are the basis for developing the *Qanun Jinayat*, which is currently being implemented in Aceh. The provisions of Article 132 of Law Number 11 of 2006 were first followed up with the promulgation of Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedural Law as formal law. Then, the provisions of Article 125 Number 11 of 2006 were followed up with the promulgation of Aceh Qanun Number 6 of 2014 concerning Jinayat Law as a material law. Two qanuns in the national legal system in Indonesia are commonly referred to as the 'Qanun Jinayat Aceh'.

Philosophically speaking, *Qanun Jinayat* enactment in Aceh is to realize justice and the benefit of humanity, especially in Aceh Province. The values contained in Islamic criminal law are inspired into positive law, so that the existence of Islamic law turns into a law that must be obeyed by everyone in Aceh, both civil and military. *Qanun Jinayat* itself, in the order of legislation in Indonesia, if it refers to Law Number 12 of 2011, is equivalent to a Provincial Regulation because it was formed by the Aceh People's Representative Council (DPRA) and Aceh Governor.

Interestingly, in the substance of the Qanun Jinayat, significantly Qanun Aceh Number 7 of 2013 concerning the Jinayat Procedure Code also regulates the connectivity procedural law for TNI soldiers, which is justiciable for military justice. It raises the complexity issues from a juridical perspective because the settlement of connectivity cases for TNI soldiers has previously been regulated in national military law, namely through Article 198 to Article 203 of Law Number 31 of 1997 concerning Military Courts. On the other hand, Aceh's *Jinayat Qanun* also regulates similar points, but in a different legal substance as stated in Article 95 and Article 96 of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law.

Moreover, this dualism arrangement can lead to clashes, *Qanun Jinayat* vis a vis Military Law, primarily both is also based on personality principle and implementation. It opens a big question, which regulation is prioritized in the law enforcement system,

especially for every TNI soldier who conducts *jarimah* in Aceh Province are justiciable of the Judiciary in Islamic Sharia. Based on the last question, this article analyzes 'how the law applies to Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedural Law, which regulates the settlement of connectivity cases for TNI soldiers in Aceh Province. Also, how is the law enforcement system after the enactment of the Qanun?

Several studies regarding *Qanun Jinayat* implementation in Aceh have been carried out, but the relation between Qanun Jinayat and military law is still difficult to find. Ridwan Nurdin, in his writing entitled *The Position of Aceh Qanun Jinayat in the Indonesian National Criminal Law System (Kedudukan Qanun Jinayat Aceh dalam Sistem Hukum Pidana Nasional Indonesia)*, explained that *Jinayat Qanun* and its procedural law in Aceh is part of the Indonesian criminal law system, however, in fact, it regulates many different things and can even violate the above norms.<sup>2</sup> The existing pluralism of criminal law in a national legal system in Indonesia causes the possibility of a clash in each legal norm in between.

Meanwhile, Ahmad Bahiej, who studied the implementation of Qanun Jinayat, stated that the Aceh Jinayah Qanun did not use the precautionary/prevention principle as is commonly used in normative legal studies. The Qanun Jinayat in Aceh does not apply the principle of *lex superior derogate legi inferiori*, but uses the opposite principle, namely, *lex inferiore derogate legi posteriore*.<sup>3</sup> Based on Article 72, every *jarimah* is regulated in the Jinayat Law Qanun and the Criminal Code (KUHP), which applies to the Jinayat Law Qanun.<sup>4</sup> Meanwhile, Parluhutan Sigala, who reviewed the legal provisions for the connectivity examination, stated that the starting point of the Criminal Code Procedure (KUHP) and the Military Criminal Procedure Code should be absolute (limitative and imperative). It implies that if a

---

<sup>2</sup> Ridwan Nurdin, "Kedudukan Qanun Jinayat Aceh dalam Sistem Hukum Pidana Nasional Indonesia", *MIQOT: Jurnal Ilmu-ilmu Keislaman*, Vol. 42, No. 2 (2016), pp. 374-375.

<sup>3</sup> Ahmad Bahiej, "Studi Komparatif terhadap Qanun Aceh", *Asy-Syir'ab: Jurnal Ilmu Syari'ah dan Hukum*, Vol. 48, No. 2 (2014), p. 351.

<sup>4</sup> *Ibid.*

court decision on the connectivity case deviates from the connectivity examination process at the theoretical and normative juridical level, it cannot be justified or "null and void".<sup>5</sup> However, if viewed at the practical level, the splittings mechanism is a rational choice to realize the trial principle in a simple, fast, and low-cost manner.<sup>6</sup>

This article attempts to link the legal validity concerning Aceh Jinayat Qanun with current military law in Indonesia. This study is projected to contribute to developing military criminal law in Indonesia. We use a normative legal research methodology (doctrinal research) that focuses on the results of secondary data, including primary legal materials and secondary legal materials.<sup>7</sup> The primary legal materials consist of the laws and regulations that apply within the TNI and are all closely related to the implementation of the Aceh Jinayat Qanun. In contrast, the secondary legal materials include various scientific works related to the topic of this study. In addition, this article is also based on data from interviews with several informants.<sup>8</sup> Some key figures who became informants in this article are the Legal Head of the Iskandarmuda Kodam (2015-2016), Colonel Chk Agus Hari Suyanto, Head of the Military Court I-01 Banda Aceh, Lt. Col. Chk Agus Husin, an expert on constitutional law who is a former Constitutional Justice, I Dewa Made Palguna, and Commander of the Sultan Iskandar Muda Air Base for the period 2012 to 2014, Colonel Pnb (Pun) Supri Abu.

Also, this study uses a statutory, conceptual, and case approach. Meanwhile, the analysis uses legal principles, concepts, and theory. Legal theory functions to make clear values by legal postulates to their highest philosophical foundation.<sup>9</sup> The legal theory used in this study is the theory of legal validity and law enforcement. Legal validity is the

---

<sup>5</sup> Parluhutan Sagala, "Ketentuan Hukum Acara Pemeriksaan Koneksitas", *ADVOKASI HUKUM & OPERASI: Majalah Advokasi*, Vol. 64 (2021), p. 46.

<sup>6</sup> *Ibid.*

<sup>7</sup> Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007), p. 46.

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2005), p. 165.

<sup>9</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2012), p. 270.

perfection of the basis for applying the rule of law. In this context, a positive legal norm can be straightforward if valid.<sup>10</sup> The law as the basis for every action by law enforcement officials in carrying out their authority must not have the slightest "legal loophole" in it, thus causing it to be invalid.

Meanwhile, law enforcement theory is used to analyze how the process and mechanism of law enforcement against TNI soldiers are involved in criminal cases. In law enforcement theory, it is stated that law enforcement can only be carried out if there are valid legal bases and rules. Thus, law enforcement cannot be carried out if it is based on a set of invalid legal rules because its existence has no legitimacy. The aspect of validity in criminal law greatly determines the passage of a law enforcement process carried out by law enforcement officials because all actions by law enforcement officials must have a legal basis of authority.<sup>11</sup> The actions of law enforcement officials who do not have a basis for their authority will result in human rights violations.

### **In Placing Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law in the Military Law System**

Aceh Province is the only province in Indonesia that is given the authority to enforce the Qanun Jinayat. It is based on Law no. 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh and Law Number 18 of 2001 concerning Special Autonomy and at the same time changing the name of the Province of the Special Region of Aceh to the Province of Nanggroe Aceh Darussalam (NAD). The implication of the special privileges and autonomy of the Aceh Province in law and justice is the establishment of a Syar'iyah Court which has the authority to examine and hear cases of *ahwal al-syakhsbiyah*, *mu'amalah*, and *jinayah* as regulated in the Qanun of NAD Province Number 10 of 2002 concerning Judiciary in Islamic law. Prior to the enactment of Aceh

---

<sup>10</sup> Hans Kelsen, *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif*, terj. Raisul Muttaqien (Bandung: Nusa Media, 2011), p. 11.

<sup>11</sup> Bambang Waluyo, *Penegakan Hukum Di Indonesia*, cet. ke-2 (Jakarta Timur: Sinar Grafika, 2017), p. 210.

Qanun No. 6 of 2014, which is a material law and Aceh's Qanun No. 7 of 2013 as its formal law, in Aceh Province several qanuns have been enacted, namely the Provincial Qanun of Nangroe Aceh Darussalam No. 12 of 2003 concerning *Khamar*, Qanun No. 13 of 2003 concerning *Maisir* (Gambling) and Qanun Number 14 of 2003 concerning *Khalwat* (Seclusion). The three *Jinayat Qanuns*, apart from regulating material law, also regulate formal law or procedural law.

The enforcement of the *Jinayat Qanun*, based on the provisions of Article 5 of Aceh Qanun Number 7 of 2013, applies to law enforcement agencies and people in Aceh. In addition, based on Article 5 letters a, b and c, Aceh Qanun Number 6 of 2014 applies to every Muslim and non-Muslim who submits voluntarily to the *Jinayat Law* when performing *Jarimah* in Aceh together with Muslims. Non-Muslims are also legal subjects of the *Qanun Jinayat* if they commit *Jarimah* in Aceh, which is not regulated in the Criminal Code (KUHP), but is regulated in the *Qanun Jinayat*.

Based on Article 1 Paragraph (21) of Law Number 11 of 2006 concerning the Government of Aceh, the *Qanun Jinayat* in the national legal system is a statutory regulation similar to a regional regulation that regulates the administration of Aceh government and the lives of the Acehnese people. Apart from being a regional regulation of Aceh province, *Qanun* is also part of Islamic law, which is legislated in the form of a *Qanun* by the DPRA and approved by the Governor of Aceh.<sup>12</sup> The legal substance in the *Qanun Jinayat* is divided into two, namely Aceh Qanun Number 7 of 2013, which contains procedures or procedural laws that refer to law enforcement officials, and Aceh Qanun Number 6 of 2016, which regulates legal subjects (the perpetrators of crime), various types of criminal act (*jarimah*), and criminal sanctions (*'uqubat*). Therefore, by referring to the provisions of Law Number 12 of 2011 concerning the Establishment of Legislations, it can be described that the *Qanun Jinayah* hierarchy is vertically one level below the Presidential Regulation (Perpres).

---

<sup>12</sup> Nurdin, "Kedudukan Qanun", p. 365.

On the other hand, the criminal law enforcement system in military law is formally regulated in Law Number 31 of 1997 concerning Military Courts, Law Number 34 of 2004 concerning the TNI, Law Number 25 of 2014 concerning Military Disciplinary Law, Criminal Code Procedure (KUHP), and formal law in other *lex specialis* specifically regulate TNI soldiers, and TNI wars. The material law is contained in KUHPM, KUHP, and in other *lex specialis* laws, such as the Anti-Corruption Law, the Narcotics Law, and the Child Protection Law. The position of Qanun Jinayat at the same level is the Provincial Local Regulations in the national legal system, and its relation to military law can be seen in the figure below:



Figure 1: Laws and Regulations in The Indonesian National Armed Forces (TNI)<sup>13</sup>

Based on Figure 1, it can be seen no direct relationship between Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedural Law and military law. In military law, the determination of the law that applies to every TNI soldier is the absolute authority of the

<sup>13</sup> It was excerpted from the Legal Upgrading material on the Making of Legal Products for Indonesian Air Force Personnel by the Head of the Indonesian Armed Forces Babinkum, Marine Colonel Effendy Maruapey, which was conveyed in Jakarta on October 14, 2020.



Commander of the Armed Forces. One example is through the TNI Commander's Telegram Letter (ST) Number ST/398/2009 dated 22 July 2009 in conjunction with ST/1648/2019 dated 22 October 2019, which contains a prohibition on soldiers from committing immoral acts of the same-sex relationship (homosexual/lesbian). For soldiers who violate these rules, the provisions of Article 103 paragraph (1) of the Criminal Code can be applied as an act of violating an official order so that the perpetrator is threatened with a maximum imprisonment of 2 years and four months, and can also be sentenced to an additional sentence of dismissal from military service.

### **Dualism in Settlement of Connectivity Cases for TNI Soldiers According to Aceh Qanun Number 7 of 2013 and Military Law**

Qanun Jinayat is part of the subsystem in implementing Islamic law in Aceh, specifically in criminal law. The Jinayat Qanun is legally valid and binding on all Muslims in Aceh Province and non-Muslims who voluntarily submit to the Qanun. This is regulated in Article 5 of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law,<sup>14</sup> and Article 5 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law. The legal provisions in the Aceh Jinayat Qanun, which directly regulates the mechanism for resolving cases within the TNI, are contained in the provisions of Chapter XI of Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedural Law, which is stated in the provisions of Articles 95 and 96, namely in settlement of connectivity cases. Connectivity is a crime committed jointly by those who belong to the general court environment and the military court environment.<sup>15</sup> Legal connectivity is interpreted as a series of laws that jointly regulate the procedures for resolving connectivity cases by those included in the justicial justice of the Islamic Shari'a court and the justiciable military court.

In the formulation of Article 95 paragraph (1) and paragraph (2) regarding Aceh Qanun Number 7 of 2013, then the legal provisions for any military perpetrators of crime are alternative so that if they

---

<sup>14</sup>According to Article 5 of Aceh Qanun Number 7 of 2013, the scope of this *Qanun* applies to law enforcement agencies and to everyone in Aceh.

<sup>15</sup> H.R. Abdussalam dan Adri Desasfuryanto, *Sistem Peradilan Pidana* (Jakarta: PTIK, 2012), p. 35.

violate the *Jinayat Qanun*, they can choose to submit to the Islamic Shari'ah court or remain to justify military justice.<sup>16</sup> This is different from the provisions of Article 95 paragraph (3) of Aceh Qanun Number 7 of 2013,<sup>17</sup> which states that for a military perpetrator of a crime, the legal provisions applied to him are not an alternative, but are mandatory because they use the clause "continue to be tried by the District/City Syar'iyah Court." However, in its implementation, one must fully understand the intent of the clause, which reads "not a military crime." The authority to investigate connectivity cases involving TNI soldiers as regulated in Article 95 paragraphs (4) and (5) is carried out by a Permanent Team consisting of Police Officers and PPNS who are given special authority, and the Military Police formed jointly by the Governor of Aceh, Pangdam Iskandar Muda, Aceh Police Chief (Kapolda) and High Prosecutor General (Kejati) Aceh. The team formation is reorganized with its derivative rules, namely Aceh Governor Regulation Number 05 of 2018 concerning the Implementation of the *Jinayat* Procedural Law as regulated in Article 49.

The legal substance in Articles 95 and 96 of Aceh Qanun Number 7 of 2013 is contrary to what is applicable in the military justice system, as regulated in Articles 198 to 203 of Law Number 31 of 1997 concerning Military Courts. Based on the law, the settlement of connectivity cases can be carried out by courts within the general court environment and courts within the military court environment, depending on the accumulation of losses incurred in the case.<sup>18</sup> In

---

<sup>16</sup> Article 95 paragraph (1) of Aceh Qanun Number 7 of 2013 reads: "Jarimah carried out jointly by those who are included in the Islamic Shari'ah judiciary and military courts who submit themselves to this Qanun, are examined and tried by the Syar'iyah Court. Regency/City". Furthermore, paragraph (2) reads: "In the event that the perpetrators of Jarimah who are subject to military courts do not submit to this Qanun, they are examined and tried in military courts".

<sup>17</sup> The article in question reads: "If the act committed by the Jarimah perpetrator is subject to military justice and is not a military crime, then the Jarimah perpetrator will still be tried in the Regency/Municipal Syar'iyah Court".

<sup>18</sup> Article 198 paragraph (1) of Law Number 31 of 1997 reads: "Criminal acts committed jointly by those who belong to the military judiciary and the general judiciary are examined and tried by the Court in the general court environment, except if according to a decision of the Minister with the approval of the

addition, the legal structure regarding the authority given in legal processes and procedures carried out is inconsistent with military law. Investigations in connectivity cases are different or contrary to the military justice law, which states that the fixed team still consist of Military Police, Military Prosecutor/High Military Prosecutor, and Investigators in the general court environment, according to their respective authorities. The team is still formed by a Joint Decree of the Minister of Defense and Justice. The mechanism that must be followed to determine which cases will be tried through the general court or the military court is very long and will take longer.<sup>19</sup>

The existence of dualism in the rule of law between Aceh Qanun Number 7 of 2013 and military law, which is not in line, needs to be addressed wisely to fully understand each other's basic philosophies in order to develop effective law enforcement. The effectiveness of law enforcement in society is influenced by internal factors related to the substance of the rule of law and external factors outside the substance of the rule of law.<sup>20</sup>

### **The Enforcement of Aceh Qanun Number 7 of 2013 in settlement of Connectivity Cases for TNI Soldiers in Aceh Province**

Basically, a conflict between statutory regulation and other laws and regulations can be interpreted as a conflict of norms.<sup>21</sup> Hans Kelsen explains that a norm that contradicts another is a contradiction. A legal norm can be considered contrary to the norm that determines its creator cannot be declared a valid legal norm because it is considered non-existent.<sup>22</sup>

---

Minister of Justice, the case must be examined and tried by the Court within the military court environment”.

<sup>19</sup> See Pasal 199 s.d. Pasal 202 Undang-Undang Nomor 31 Tahun 1997.

<sup>20</sup> Oktoberrinsyah, “Kanun Jenayah Syariah Brunei Darussalam 2013 dan Relevansinya dengan Delik Agama dalam RUU KUHP Indonesia”, *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, Vol. 51, No. 1 (2017), p. 99.

<sup>21</sup> Hans Kelsen, *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif*, terj. Raisul Muttaqien (Bandung: Nusa Media, 2011), p. 295.

<sup>22</sup> *Ibid.*

According to Frans Magnis Suseno regarding the concept of chain of validity, Dede Gede Atmaja also links validity with legality as the criteria for legitimacy, namely the validity of authority in accordance with the rules.<sup>23</sup> Justice in criminal law is very closely related to the principle of legality. Based on the principle of legality, determining the existence of criminal acts may not use an analogy (figuratively)<sup>24</sup>. However, it must be based on validity in formal and material legal provisions not to open up legal loopholes in the law enforcement process. In this context, according to us, a fundamental legal loophole actually comes from the legal factor itself. The better a legal regulation, the more likely it is to enforce it, and vice versa. The worse a legal regulation is, the more difficult it is to enforce it.<sup>25</sup> In general, a good rule is a law that applies juridically, sociologically, and philosophically.<sup>26</sup>

Indonesia adheres to a civil law system with the primary characteristic of codifying legal rules systematically. The civil law system is based on a strictly centralized hierarchical structure and theoretically implements an integrated legal system.<sup>27</sup> Legal norms in a certain legal system obtain their validity from the highest basic norm (*groundnorm*),<sup>28</sup> as explained by H.L.A Hart as follows:

The criteria for legal validity or legal sources are supreme if the regulations identified by reference to them are still recognized as system regulations, even if they conflict with regulations identified by reference to other criteria. In contrast, the regulations identified concerning other criteria

---

<sup>23</sup> Dede Gede Atmaja, *Filsafat Hukum Dimensi Tematis & Historis* (Malang: Setara Press, 2013), p. 56.

<sup>24</sup> Moeljatno, *Asas-Asas*, p. 27.

<sup>25</sup> Edi Warman, "Paradoks Penegakan Hukum Pidana dalam Perspektif Kriminologi di Indonesia", *Jurnal Kriminologi Internasional*, Vol. 8, No. 42 (2012), p. 42.

<sup>26</sup> *Ibid.*

<sup>27</sup> Khaled M. Abou El Fadl, *Atas Nama Tuhan: Dari Fikih Otoriter ke Fikih Otoritatif*, terj. R. Cecep Lukman Hakim (Jakarta: PT Serambi Ilmu Semesta, 2003), p. 17.

<sup>28</sup> W. Friedmann, *Teori & Filsafat Hukum: Idealisme Filosofis & Problematika Keadilan Susunan II* (Jakarta: PT RajaGrafindo Persada, 1990), p. 171.

are not recognized if it conflicts with the regulations identified with reference to the highest criteria.<sup>29</sup>

Philipus M. Hadjon explained that in resolving normative conflicts, legal prevention is used, including the principle of *lex superior derogate legi inferiori*, the principle of *lex specialis derogate legi generalis*, and the principle of *lex posterior derogate legi priori*. The three principles of prevention are used to analyze which legal regulations apply more priority if there is more than one legal rule in a legal system that regulates the same matter. First, the principle of *lex superior derogate legi inferiori* or laws that have a higher position override the laws below them. Referring to the provisions of Article 7 of Law Number 12 of 2011 concerning the Establishment of Legislation, the position of legislation in Indonesia from the highest to the lowest is from the 1945 Constitution to Regency/City Regional Regulations. Based on this principle, it is clear that the provisions of Law Number 31 of 1997 constitute a formal criminal law that has a higher position than Aceh Qanun Number 7 of 2013.

Second, the principle of *lex specialis derogate legi generalis* is that special rules override general rules. Both the Aceh Jinayat Qanun and Law No. 31/1997 are special regulations. Although the Aceh Qanun Jinayat is a *lex specialis* as part of the mandate of the distinctive and special autonomy law and the LoGA which is given to the Aceh Government to implement Islamic law, the provisions of Law Number 31 of 1997 and the Criminal Code are more specific with a higher position. Moreover, the provisions in the Qanun Jinayat, which regulates the connection case for TNI soldiers, the submission of a military court justiciable to the Islamic Shari'ah court is the only alternative (voluntarily). It is different from the submission of a military person to a military court justifiable: absolute and coercive. The existence of the provisions of Article 2 of the Criminal Procedure Code<sup>30</sup> has indirectly qualified all criminal acts that are not regulated

---

<sup>29</sup> H.L.A Hart, *Konsep Hukum*, terj. M. Khozim (Bandung: Penerbit Nusa Media, 2013), p. 164.

<sup>30</sup> Article 2 of the Criminal Procedure Code reads: "Against criminal acts not listed in this law, committed by persons who are subject to the authority of the Military Courts, general criminal law shall be applied, unless there is a deviation from the law."

in the Criminal Procedure Code as military crimes<sup>31</sup> so that the provisions of Article 95 paragraph (3) of Aceh Qanun Number 7 of 2013 can be set aside. Therefore, applying the rule of law in the Criminal Code for TNI soldiers takes precedence over the provisions in the material Qanun Jinayat. At the level of authority following the trial of every criminal act committed by TNI soldiers, it is clearly regulated in the provisions of Article 9 point 1 of Law Number 31 of 1997.<sup>32</sup>

Based on the principle of *lex specialis derogate legi generalis*, it is necessary to review the limits of authority in the law used as a reference. Aceh Qanun Number 7 of 2013 is a mandate from Law Number 11 of 2006 concerning the Government of Aceh (UUPA) and also refers to Law Number 32 of 2004 concerning Regional Government. Article 7 paragraph (1) and paragraph (2) of Law Number 11 of 2006, as well as Article 10 of Law Number 32 of 2004 have explicitly stipulated that defense affairs are the authority of the central government. Therefore, the substance of the provisions of Article 95 and Article 96 of the Aceh Qanun Number 7 of 2013 is actually contradictory to the legal provisions that are the reference.

Thus the Aceh Qanun Number 7 of 2013, especially in the provisions of Article 95 and Article 6, has regulated something outside its authority. On the other hand, Law Number 31 of 1997 is still in effect based on Article 65 of Law Number 34 of 2004 concerning the Indonesian National Army. In addition, military law is fostered to support defense interests, while defense interests are the affairs of the central government, not the affairs of regional governments.

Third, the principle of *lex posterior derogate legi priori* or the new regulation rule outs the old regulation. According to this principle, the Aceh Qanun Number 7 of 2013 as a formal law which is the mandate

---

<sup>31</sup> Joko Purnomo, "Pembaharuan Hukum Pidana Militer Merupakan Keniscayaan", *ADVOKASI HUKUM & OPERASI: Majalah Advokasi*, Vol. 58, 2019, pg. 8.

<sup>32</sup>The article in question reads: "The court within the Military Court has the authority to: 1. To try a criminal act committed by a person who at the time of committing a crime, is: a soldier; etc".

of Article 132 paragraph (1) of Law Number 11 of 2006, cannot override Law Number 31 of 1997 because the considerations "considering/*menimbang*" and "in view of/*mengingat*" the Aceh Qanun Number 7 of 2013 never included Law Number 31 of 1997, and only the KUHAP included in the Preamble.<sup>33</sup> According to the Head of Military Court I-01 Banda Aceh, Lieutenant Colonel Chk Agus Husin, the Jinayat Law and Aceh Qanun Number 6 of 2014 concerning Jinayat Law are not binding in the criminal law enforcement system for TNI soldiers in Aceh Province.<sup>34</sup> Although in accordance with the provisions of Article 5, the two Qanuns above apply to everyone in Aceh, the law that applies to TNI soldiers has explicitly been regulated in Law Number 31 of 1997. Concerning absolute authority in prosecuting every TNI soldier who commits crimes criminal law, Agus Husin further explained:

There has the authority to adjudicate TNI soldiers that is the court within the military judiciary as the implementing agency for judicial power based on Article 8 paragraph (1), Article 9 paragraph (1) letters a, b, c, d, and paragraph (2), paragraph (3), as well as Article 10 letters a and b of Law Number 31 of 1997 concerning Military Courts, so that TNI soldiers can only be tried in a military court environment, unless the law regulates separately, such as cases of connectivity and human rights violations.<sup>35</sup>

Meanwhile, determining the priority of legal norms in the legal system is equally based on its specific purposes, namely between the provisions in Aceh Qanun Number 7 of 2013 and Law Number 31 of 1997 and the Criminal Code. Those regulate law enforcement for every TNI soldier, when it is viewed from the framework of constitutional law applicable in Indonesia, as I Dewa Gede Palguna stated:

---

<sup>33</sup> The consideration in Aceh Qanun Number 7 of 2013 in letter c reads: "that the rules contained in the Criminal Procedure Code (KUHAP) have not fully met the needs of jinayat law enforcement in Aceh".

<sup>34</sup> Interview with Head of Military Court I-01 Banda Aceh, Lt. Col. Chk Agus Husin, on Tuesday 16 February 2021.

<sup>35</sup> *Ibid.*

From the constitutional law perspective, *Qanun* cannot override the provisions of the law, including the Criminal Procedure Code. Not only because laws are hierarchically higher in position than qanuns but also because the laws related to this matter are specialist in nature, namely those that only apply to the "military world" and in courts within the military courts. The fundamental essence of the legal validity of the Jinayat Qanun is related to the defense aspect. It needs to be seen from another point of view, namely the regional autonomy law. If viewed from the perspective of regional autonomy, in particular Aceh, defense affairs are still a central matter, so that in this case, the law applies.<sup>36</sup>

Based on the study and analysis above, it can be stated that the provisions in Articles 95 and 96 of Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedural Law are not binding on every TNI soldier in settlement of connectivity cases involving TNI personnel together with those who submit to the judiciary Islamic Shari'ah. TNI soldiers remain subject to military law, whose structure and legal substance are different from the legal system of the Islamic Shari'ah judiciary in Aceh.

The disharmony between the legal provisions in the Aceh Qanun Number 7 of 2013 and the military law regarding the settlement of connectivity cases for TNI soldiers in Aceh Province shows the lack of coordination between the drafting of the Qanun and the TNI apparatus in Aceh. As expressed by the former Commander of the Sultan Iskandar Musda Air Force Base in 2012 to 2014 who was never involved in discussing the draft material for the Aceh Jinayat Qanun, nor was there any socialization.<sup>37</sup> It is undeniable that regional autonomy in the field of legislation undeniably, regional

---

<sup>36</sup> Special interview with former Constitutional Court Justice of the Constitutional Court (MK) for the 2003-2008 period and the 2015-2020 period I Dewa Gede Palguna, on Monday 22 February 2021.

<sup>37</sup> Interview with the former Commander of the Sultan Iskandar Muda Air Base for the period 2012-2014 Colonel Pnb (Ret.) Supri Abu, on Monday 15 February 2021 and on Friday 27 February 2021.



egos emerged, which could harm the national interest.<sup>38</sup> Therefore, it is worth appreciating the relevant stakeholders who have drafted a joint decision.<sup>39</sup> Its FOURTH dictum reads: The implementation of Aceh Qanun Number 6 of 2014 concerning Jinayat Law against Members of the Indonesian National Armed Forces will be further coordinated with the relevant agencies.

### **Law Enforcement of Connectivity Cases for TNI Soldiers in Aceh Province After the Enactment of *Qanun Jinayat***

Law enforcement is the process or method of enforcing or actually functioning legal norms.<sup>40</sup> Ideally, the purpose of the law is to ensure the happiness of the community in order to realize the values of justice, legal certainty, and benefit. Gustav Radbruch explained that the purpose of the law is to obtain three points: legal certainty, justice, and expediency.<sup>41</sup> The three elements in the enforcement are symmetrical, constitute a complete and unified whole, and are inseparable in a criminal justice system. Law enforcement is established to protect justice seekers (*justisiabelen*) from arbitrary actions. Of the three principles in law enforcement if simplified into two principles, namely the principle of justice and the principle of expediency because the principle of legal certainty is also called the principle of procedural justice.<sup>42</sup>

---

<sup>38</sup> Attachment of Presidential Regulation Number 8 of 2021 concerning General Policy of State Defense for 2020-2024 at point 7.

<sup>39</sup> FOURTH Dictum Draft Joint Decree of the Governor of Aceh, Wali Nangroe, Chairman of the Aceh People's Representative Council, Head of the Aceh Regional Police, Head of the Aceh High Prosecutor's Office, Commander of the Regional Military Command Iskandar Muda, Chairman of the Aceh Ulema Consultative Assembly, Chairman of the Aceh Sharia Court, Chairman of the Aceh Customary Council, Chairman of the Banda Aceh High Court and Head of the Regional Office of the Ministry of Law and Human Rights dated January 25, 2021 regarding Strengthening Enforcement of Aceh Qanuns regarding Jinayat (Criminal Law).

<sup>40</sup> Samsul Wahidin, *Politik Penegakan Hukum di Indonesia* (Yogyakarta: Pustaka Pelajar, 2017), p. 36.

<sup>41</sup> *Ibid.*, p. 50.

<sup>42</sup> *Ibid.*, p. 51.

The law enforcement system in Indonesia was built to realize the national state's main goals, which were formulated in the Preamble to the 1945 Constitution.<sup>43</sup> The modern state ideology places crime as a tool to achieve state goals. There is to achieve the realization of public order to protect every Indonesian citizen's rights from every criminal.<sup>44</sup> To protect citizens from all crimes, an integrated law enforcement system is needed, known as the criminal justice system. The criminal justice system is a system in society to deal with crime.<sup>45</sup> In an effort to tackle crime, there are four institutions as the primary components of the crime control system: the police, prosecutors, courts, and correctional institutions.

The criminal justice system in Indonesia is formed in an integrated manner in the *integrated justice system*. The criminal justice system has three main objectives: a) preventing people from becoming victims, b) punishing criminals in society fairly, and c) making efforts to prevent criminals from repeating their crimes.<sup>46</sup> In other words, the criminal justice system is a means to tackle crimes that occur in everyday life that can cause disorder and insecurity.<sup>47</sup>

In line with the primary objective of the criminal justice system, the state, through law enforcement apparatus, in convicting a person who has been legally and convincingly proven to have committed a criminal act (*delik/jarimah*) must pay attention to two aspects, namely justice and expediency aspects. The justice aspect in sentencing means that the punishment imposed on the perpetrators of crimes is carried out proportionally.<sup>48</sup> Meanwhile, the expediency aspect in sentencing in the contemporary era is intended so that the purpose of sentencing is not in vain. Jeremy Bentham, in utilitarianism theory, explains that

---

<sup>43</sup> S.R. Sianturi, *Hukum Penitensia di Indonesia* (Jakarta: Babinkum TNI, 2014), p. 43.

<sup>44</sup> Siwanto Sunarso, *Viktimologi dalam Sistem Peradilan Pidana* (Jakarta: Sinar Grafika, 2012), p. 30.

<sup>45</sup> Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana Prenada Media Grup, 2010), p. 3.

<sup>46</sup> *Ibid*

<sup>47</sup> Abdussalam dan Andri Desasfuryanto, *Sistem Peradilan*, p. 430.

<sup>48</sup> Atmadja, *Filsafat Hukum*, p. 112.

the main benefit of imposing punishment is to prevent and provide a deterrent effect to criminals so that they do not repeat their violations or crimes.<sup>49</sup> Because of the mistake, a person can be punished with two conditions that must be fulfilled: the presence of a forbidden outward act (*actus reus*) and an evil/despicable inner attitude (*mens rea*).<sup>50</sup> A person who is found guilty of committing a crime must be proven in a trial by tracing the material truth and must be endeavored with perfect evidence.<sup>51</sup>

The concept of punishment in the Aceh Jinayat Qanun follows punishment in the Qur'an and hadith. Islamic criminal law is God's shari'a, which benefits human life, both in this world and in the hereafter (afterlife).<sup>52</sup> The term benefit can be understood and simplified into a principle commonly referred to as the principle of benefit to protect the main purpose of the revelation of Islamic law, namely to protect religion, life, mind, descendants, and property.

In Islamic law, the imposition of punishment for an action is based on the consideration that the action threatens or damages the health of the body, mind, property, soul, and public peace.<sup>53</sup> The purpose of punishment in Islam is retaliation for evil deeds, prevention of the possibility of a similar crime occurring, and protection of victims' rights.<sup>54</sup> There is intended to benefit the people and prevent injustice or harm.<sup>55</sup>

In contrast to the concept of law enforcement for civil society, law enforcement within the TNI prioritizes a balance between legal interests and military interests. Therefore, law enforcement within the TNI has different characteristics from the general public. The

---

<sup>49</sup> *Ibid.*, pp. 112-113.

<sup>50</sup> Barda Nawawi Arief, *Perbandingan Hukum Pidana* (Jakarta:Rajawali Pers, 2013), p. 36.

<sup>51</sup> Agus Takariawan, *Hukum Pembuktian dalam Perkara Pidana di Indonesia* (Bandung Barat: Penerbit Pustaka Reka Cipta, 2019), p. 23.

<sup>52</sup> Zainuddin Ali, *Hukum Pidana Islam* (Jakarta: Sinar Grafika, 2012), p. 1.

<sup>53</sup> Makhrus Munajat, *Hukum Pidana Islam di Indonesia*, (Yogyakarta: Akademik UIN Sunan Kalijaga, 2008), p. 8.

<sup>54</sup> *Ibid.*, p. 11.

<sup>55</sup> *Ibid.*

characteristics of the military judiciary in enforcing criminal law is to apply the concept of a balance between the principle of legal interest and the principle of military interest so that a judicial institution (authority) is needed with a special format that puts forward the values that apply in military life. The trial format in the military justice system in a country has a special format, as stated by Jeffry A. Rockwell and colleagues, as follows:

A military accused may elect to be tried by a military judge alone or by a panel of court members (the military equivalent of the civilian jury). All panel members must be senior in rank to the accused. In either case, the trial will consist of two major portions: (1) findings (guilt/innocence determination) and, in the event of a conviction at findings, (2) sentencing.<sup>56</sup>

In line with Rockwell et al., Indonesia's military criminal justice system is a special criminal justice system with the legal subject being active members of the TNI (military) regardless of religious background and applies nationally. The military justice system is built based on three main principles: the principle of unity of command, the principle of command responsibility for their subordinates, and the principle of military interests<sup>57</sup>. Based on three principles, military justice has different characteristics from general criminal justice, both in its legal structure, legal substance, and legal culture.

The military criminal justice system is carried out in a separate legal structure, and its jurisdiction is adjusted to the division of the military command area. In resolving cases against TNI soldiers, the role of a unit commander cannot be ruled out. Even in certain circumstances (war/battle), it is prioritized over other law enforcement officers, namely the Military Police, Military Prosecutor, and Military Judges.<sup>58</sup>

---

<sup>56</sup> Jeffry A. Rockwell, Bryan D. Watson dan Jenny A. Liabenow, *Chapter Five: Criminal and Military Justice in The Military Commander and The Law* (Alabama: Air University Press, 2019), p. 140.

<sup>57</sup> Sekretariat Umum Mabes TNI, *Undang-Undang Bidang Pertahanan Keamanan (Hankam) 1997*, (Jakarta: Mabes TNI, 1999), pp. 246-247.

<sup>58</sup> Sianturi, *Hukum Pidana Militer*, p. 54.

The basic philosophy of establishing military courts as separate courts is that military courts must still function even in an emergency, even though the general courts are no longer functioning.<sup>59</sup> History in several countries, including Indonesia, has noted that military courts since the early 20th century have worked well, effectively, and efficiently so that they deserve to be used as examples as stated by John H. Wigmore:

...that most needed measure for State criminal justice today is centralized supervision under a chief judicial superintendent; that is the measure not only itself brings vast improvement in efficiency, but that it alone will enable other measures to work well; that the Federal military justice already possesses this and several other features well worth imitation, and that civilian justice input on the defensive to take a lesson in becoming efficient by adopting the features.<sup>60</sup>

Law enforcement for TNI soldiers is essential to achieve legal certainty while still considering the principle of expediency and justice to fulfill legal interests, public interests, and military interests.<sup>61</sup> Meanwhile, the nature of criminal law enforcement (*jinayat*) in the Islamic Shari'ah justice system prioritizes the balance between *taddabur* principle, in addition to the three main principles in law enforcement that apply in general, namely the principle of legal certainty, the principle of justice and the principle of benefit. The *Taddabur* principle is the principle of learning to the community, namely so that the public knows the prohibited actions and believes them to be evil deeds that must be avoided, knows the sanctions (*'uqubat*) if violated, and can understand the existence of balanced protection for the perpetrators of the finger and also the community.<sup>62</sup>

---

<sup>59</sup> *Ibid.*, p. 55.

<sup>60</sup> John H. Wigmore, "Some Lessons for Civilian Justice to Be Learned from Military Justice", *Journal of the American Institute of Criminal Law and Criminology*, Vol. 10, No. 2 (1919), p. 175.

<sup>61</sup> Putusan Pengadilan Militer II-11 Yogyakarta Nomor: 81-K/PM II-11/AU/XII/2017 tanggal 26 Februari 2018, pp. 46-47.

<sup>62</sup> Decision of the Blangkejeren Syariaah Court Number 18/JN/2018/MS.Bkj dated December 7 2018, p. 17.

Concerning law enforcement against TNI soldiers who conduct fingerings with those not included in the justiciable military court after the *Qanun Jinayat* in Aceh, Agus Hari Suyanto explained that the case settlement could be done through military discipline law, military court, and could also be done separately (*splitsing*) in each existing court.<sup>63</sup> Enforcement through military disciplinary law can be carried out on minor offenses that do not meet the elements of a criminal act. Meanwhile, the settlement through military court is carried out for violations that meet the elements of a criminal act, and the threat is quite heavy. Also, for the connectivity case in the Aceh Qanun, it would be better if the settlement was carried out separately (*splitsing*) in each general court and military court in accordance with the provisions of the procedural law applicable to the two criminals. The criminals from civilian circles were tried at the Syar'iyah Court, Banda Aceh, while the criminals from the military were tried at the Banda Aceh Military Court.<sup>64</sup>

In practice, law enforcement against every TNI soldier who commits a connection case with those included in the judiciary of the Islamic Sharia court is carried out through a *splitsing* mechanism.<sup>65</sup> An example is a case on behalf of the defendant's initial PHA, which was tried at the Military Court I-01 Banda Aceh and had BHT<sup>66</sup>. In this case, the defendant was charged with committing a criminal act "intentionally violating decency" as stipulated in Article 281 of the Criminal Code and based on the Military Court Decision I-01 Banda

---

<sup>63</sup> Interview with the former Head of Legal for the Regional Military Command (Kodam) Iskandar Muda for the 2015-2016 period, Colonel Chk Agus Hari Suyanto, on Monday 28 June 2021.

<sup>64</sup> Interview with the former Head of Legal for the Regional Military Command (Kodam) Iskandar Muda for the 2015-2016 period, Colonel Chk Agus Hari Suyanto, on Monday 28 June 2021.

<sup>65</sup> An example of this splits mechanism can be seen in the Military Court Decision I-01 Banda Aceh Number 50-K/PM. I-01/AD/VI/2020 dated July 14, 2020 on page 24 is described as follows: that it is true that at around 13.40 WIB the Defendant was handed over to Pomdam IM to be processed according to applicable legal provisions while Witness-1 was legally processed by the Provincial Satpol PP/HW Aceh.

<sup>66</sup> Interview with Head of Military Court I-01 Banda Aceh, Lt. Col. Chk Agus Husin, on Tuesday 16 February 2021.

Aceh: Number 50-K/PM. I-01/AD/VI/2020, dated July 14, 2020, the defendant was sentenced to imprisonment for 5 (five) months reduced while in temporary detention.<sup>67</sup>

The settlement mechanism was not carried out against the defendant in order to protect military interests, because if he were tried in a connected manner at the Syar'iyah Court of Banda Aceh with Witness-1 as the primary opponent in the case, the defendant would only be sentenced to a maximum of 30 (thirty) *'uqubat* whipping/caning as the maximum threat of *Jarimah Ikhtilath*, which is the equivalent of Article 281 of the 1st Criminal Code. Theoretically, the mechanism for checking connectivity is in favor of the accused.<sup>68</sup> Moreover, the Islamic Shari'a justice system in Aceh prioritizes caning rather than imprisonment, which is very light for an individual in the TNI. It is consistent with Rosmani Daud's opinion about why non-Muslims prefer the caning punishment because the Criminal Code, which offers a prison sentence or imprisonment, is longer than the punishment offered by the Qanun with several whippings.<sup>69</sup> In addition, civilian judges are not authorized to impose additional penalties in the form of dismissal from military service to military personnel who violate the law according to the judge's assessment. It is no longer suitable to be maintained as a TNI soldier.

In consideration of the fact that military law was developed to support the implementation of national defense, the concept of law enforcement will not abandon two important principles, namely, the principle of military interests and the principle of unity of command. There is a balance between the principle of unity of command and prosecution in military justice by still upholding the rule of law. Therefore, law enforcement officials authorized to take action against criminal cases committed by every TNI soldier in all regions in Indonesia, including Aceh Province, must be equal and fair. In the end, what needs to be encouraged is professionalism and attitude in

---

<sup>67</sup> Military Court Decision I-01 Banda Aceh: Number 50-K/PM. I-01/AD/VI/2020 dated 14 July 2020.

<sup>68</sup> S.R. Sianturi, *Hukum Pidana Militer di Indonesia* (Jakarta: Babinkum TNI), p. 43.

<sup>69</sup> Winanda Fikri Panemiko, *Non Muslim dan Proses Berperkara di Mahkamah Syar'iyah Banda Aceh*, (Jakarta: Skripsi UIN Syarif Hidayatullah, 2019), p. 75.

the Islamic Shari'ah judiciary in the Aceh Province and the military judiciary institution, which both culminate in the Supreme Court of the Republic of Indonesia.

## Conclusions

Based on the study result, the following conclusions are obtained. First, the enactment of Aceh Qanun Number 7 of 2013 is a mandate from Law Number 11 of 2006 concerning the Government of Aceh (UUPA), and in the provisions of Article 7 paragraph (1) and paragraph (2), it has clearly been determined the limits of the public sector that can be regulated, except the affairs of the central government. Hence, the Aceh Qanun Number 7 of 2013, especially in the provisions of Article 95 and Article 6 has regulated the matter outside its authority because military law is fostered to support defense interests. Therefore, the provisions of Article 95 and Article 96 of Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedural Law, which explicitly regulates connectivity cases, are not binding on every TNI soldier to settle connectivity cases remain subject to the national military justice system.

Second, law enforcement against every TNI soldier who commits *Jarimah* who is included in the justice of the Islamic Sharia court carried out through a *splitsing* mechanism (separate court) in each general court and the military court under the provisions of the procedural law that apply to both criminals. Civil people who committed crimes were tried in the Syar'iyah Court, while several from the military were tried in the Military Courts. This was done to protect the interests of the military and not for the interests of military personnel. If it is carried out using a connectivity check mechanism, then individual TNI soldiers as criminals will benefit because their sentences can be lighter. After all, civilian judges are impossible and do not have the authority to impose additional crimes on the military, such as dismissal from military service. The additional sentence is only the jurisdiction of military judges.

## Acknowledgement:

This article is a scientific paper that is an integral part of the final dissertation results, entitled "The Complexity of Enforcement of the



*Qanun Jinayat* in the Criminal Law Enforcement System for TNI Soldiers in Aceh Province", and is prepared to be submitted as a prerequisite for obtaining a Doctorate degree at the Postgraduate State Islamic University (UIN) Sunan Kalijaga Yogyakarta.

### Bibliography

- Abdussalam, H.R. dan Adri Desasfuryanto. *Sistem Peradilan Pidana*. Jakarta: PTIK. 2012.
- Ali, Zainuddin. *Hukum Pidana Islam*. Jakarta: Sinar Grafika. 2012.
- Arief, Barda Nawawi. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta: Kencana. 2008.
- \_\_\_\_\_. *Perbandingan Hukum Pidana*. Jakarta: Rajawali Pers. 2013.
- Atmaja, Dewa Gede. *Filsafat Hukum Dimensi Tematis & Historis*. Malang: Satara Press. 2013.
- Atmasasmita, Romli. *Sistem Peradilan Pidana Kontemporer*. Jakarta: Kencana Prenada Media Grup. 2010.
- Auda, Jasser. *Membumikan Hukum Islam Melalui Maqasid Syariat*. Terj. Rosidin dan Ali Abd el-Mun'in . Bandung: Mizan Media Utama. 2015.
- Bahiej, Ahmad. "Studi Komparatif Terhadap Qanun Aceh". *Asy-Syir'ab: Jurnal Ilmu Syari'ah dan Hukum* 48, no. 2, (2014).
- Berutu, Ali Geno. "Penerapan Syariat Islam Aceh dalam Lintas Sejarah". *Istinbath: Jurnal Hukum* 13 no. 2, (2016).
- Braithwaite Jhon, V. Braithwaite, M. Cookson, dan L. Dunn. *Anomie and Violence: Non-truth and Reconciliation in Indonesian Peacebuilding*. Australia: ANU Press. 2010.
- Fadl, Khaled M. Abou El. *Atas Nama Tuhan: Dari Fikih Otoriter Ke Fikih Otoritatif*. Terj. R. Cecep Lukman Yasin. Jakarta: PT Serambi Ilmu Semesta. 2003.
- Friedmann, W. *Teori & Filsafat Hukum: Idealisme Filosofis & Problematika Keadilan Susunan II*. Jakarta: PT RajaGrafindo Persada. 1990.

- Hadjon, Philipus M. dan Tatiek Sri Djatmiati. *Argumentasi Hukum*. Yogyakarta: Gadjah Mada University Press. 2009.
- Hart, H.L.A. *Konsep Hukum*. Terj. M. Khozim. Bandung: Penerbit Nusa Media. 2013.
- Ibrahim, Johnny. *Teori & Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing. 2007.
- Kamarusdiana. “Qanun Jinayat Aceh Dalam Perspektif Negara Hukum Indonesia”. *AHKAM* 16, no. 2, (2016).
- Kelsen, Hans. *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif*. Terj. Raisul Muttaqien. Bandung: Nusa Media. 2011.
- Mabes TNI, Sekretariat Umum. *Undang-Undang Bidang Pertahanan Keamanan (Hankam) 1997*. Jakarta: Mabes TNI, 1999.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Prenada Media. 2005.
- Moeljatno. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta. 2008.
- Munajat, Makhrus. *Hukum Pidana Islam di Indonesia*. Yogyakarta: Akademik UIN Sunan Kalijaga. 2008.
- Nurdin, Ridwan, “Kedudukan Qanun Jinayat Aceh dalam Sistem Hukum Pidana Nasional Indonesia”, *MIQOT: Jurnal Ilmu-ilmu Keislaman* 42I, no. 2, (2016).
- Ocktoberrinsyah. “Kanun Jenayah Syariah Brunei Darussalam 2013 dan Relevansinya dengan Delik Agama dalam RUU KUHP Indonesia”, *Asy-Syir'ab: Jurnal Ilmu Syari'ah dan Hukum*, Vol. 51, no. 1, (2017).
- Opwis, Felicitas. *Maslaha and the purpose of the law: Islamic discourse on legal change from the 4th/10th to 8th/14th century*. Leiden-Boston: Brill. 2010.
- Panemiko, Winanda Fikri. “Non Muslim dan Proses Berperkara di Mahkamah Syar'iyah Banda Aceh.” *Skripsi*. Jakarta: UIN Syarif Hidayatullah. 2019.
- Purnomo, Joko. “Pembaharuan Hukum Pidana Militer Merupakan Keniscayaan”. *ADVOKASI HUKUM & OPERASI: Majalah Advokasi* 58, (2019).
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: PT Citra Aditya Bakti, 2012.

- Rockwell, Jeffry A. Bryan D. Watson dan Jenny A. Liabenow, “Criminal and Military Justice” dalam *The Military Commander and The Law*. Alabama: Air University Press. 2019.
- Sagala, Parluhutan. “Ketentuan Hukum Acara Pemeriksaan Koneksitas”, *ADVOKASI HUKUM & OPERASI: Majalah Advokasi* 64, (2021).
- Sianturi, S.R. *Hukum Pidana Militer di Indonesia*. Jakarta: Babinkum TNI. 2010.
- \_\_\_\_\_. *Hukum Penitensia di Indonesia*. Jakarta: Babinkum TNI, 2014.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: Penerbit UI Press, 2010.
- Sunarso, Siswanto. *Viktimologi dalam Sistem Peradilan Pidana*. Jakarta: Sinar Grafika. 2012.
- Sunggono, Bambang. *Metode Penelitian Hukum*. Jakarta: PT Raja Grafindo Persada. 2006.
- Takariawan, Agus. *Hukum Pembuktian dalam Perkara Pidana di Indonesia*. Bandung Barat: Penerbit Pustaka Reka Cipta. 2019.
- Wahidin, Samsul. *Politik Penegakan Hukum di Indonesia*. Yogyakarta: Pustaka Pelajar. 2017.
- Waluyo, Bambang. *Penegakan Hukum di Indonesia*. Jakarta Timur: Sinar Grafika. 2017.
- Warman, Edi. “Paradoks Penegakan Hukum Pidana dalam Perspektif Kriminologi di Indonesia”, *Jurnal Kriminologi Internasional*, Vol. 8, no. 42, (2012).
- Wigmore, John H. “Some Lessons for Civilian Justice to Be Learned from Military Justice.” *Journal of the American Institute of Criminal Law and Criminology* 10, no. 2, (1919).
- Interview with Head of Military Court I-01 Banda Aceh, Lt. Col. Chk Agus Husin, on Tuesday 16 February 2021.
- Special interview with former Constitutional Court Justice of the Constitutional Court (MK) for the 2003-2008 and 2015-2020 periods, I Dewa Gede Palguna, on Monday, February 22, (2021).
- Interview with the former Head of Legal for the Regional Military Command (Kodam—*Komando Daerah Militer*) Iskandar Muda

for the 2015-2016 period, Colonel Chk Agus Hari Suyanto, on Monday 28 June 2021.

Interview with the former Commander of the Sultan Iskandar Muda Air Base for the period 2012-2014, Colonel Pnb (Ret.) Supri Abu, on Monday 15 February 2021.