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LAW ENFORCEMENT OF *JINAYAT* CASES IN SYAR'IYAH COURT IN ACEH PROVINCE INDONESIA DURING COVID-19 PANDEMIC

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ABSTRACT

This study aims to look at the *jinayat* (criminal) trial both from the regulatory aspect and the application of the rule as a response to the outbreak of the COVID-19 pandemic. Therefore, this study uses two approaches at once, a normative approach to examine the legality of the regulations and a sociological approach to examine the application of the rule in Syar'iyah courts throughout Aceh. This study found that the Supreme Court has issued the Supreme Court Regulation known as *Perma* Number 4 of 2020 as the basic regulation for the implementation of virtual criminal and *jinayat* trials. There is a diversity of practices that lead to legal uncertainty in the application of *Perma* at the Aceh Syar'iyah court. There are several Syar'iyah

courts that have implemented *Perma*. However, there are also many Syar'iyah courts that ignore *Perma* due to unprepared infrastructure. But, there are also some Syar'iyah courts that conduct *jinayat* trials based on the agreement of the parties involved in the trial. In this case, *jinayat* trials are sometimes carried out virtually and sometimes physically present in the courtroom. This study also found that the tendency of *jinayat* cases increased throughout the year 2020 when the pandemic occurred. The increase in *jinayat* cases was caused by two reasons. First, almost all criminal acts regulated in the qanun of *jinayat* are domestic crimes. Second, there was a relatively large deduction amount of the budget for the enforcement of Islamic law, which was then reallocated to prevent the spread of COVID-19.

Keywords: *Qanun, jinayat, Syar'iyah court, COVID-19, virtual trial.*

INTRODUCTION

The COVID-19 pandemic has changed the order of human life (Jones, 2020). Changes occur in health, lifestyle, economic behavior, security and political stability, even in law enforcement (Jennings & Perez, 2020). These changes require humans to adapt rapidly to recent circumstances. The adaptation itself frequently triggers discomfort, irregularity, and crisis; even in certain circumstances, it may also trigger conflict (Reicher & Stott, 2020). To overcome these matters, law enforcement becomes a crucial issue. It is hoped that COVID-19 will not take part in the law enforcement crisis that may worsen the situation.

Unfortunately, law enforcement now becomes a marginalized topic during the pandemic (Jennings & Perez, 2020). Scientists, scholars and researchers are more interested in studying the impact that COVID-19 has had on the health crisis, economic behavior, lifestyles, events, political stability and security (Susanto, 2020). In fact, the impact of COVID-19 on law enforcement is also massive and hazardous.

Since the announcement of the first COVID-19 case in Indonesia by President Joko Widodo on March 2, 2020, the Indonesian government has successively issued epidemic prevention regulations. One of them is Government Regulation No. 21 of 2020 on large-scale social restrictions. Since then, the government officers, including the judiciary, have implemented work from home policy. The policy

has left many public services neglected, including public services of judicial institutions. Consequently, many cases have been postponed.

The Indonesian government is really aware of the quality of public services that is not optimal due to the introduction of large-scale social restrictions. However, the government strongly believes in the “let the welfare of the people be the supreme law” (*Salus populi suprema lex esto*) (Cahyono, 2020), so the implementation of large-scale social restrictions is considered the best option. On the other hand, the legal doctrine requires “let justice be done though the heavens may fall” (*fiat justitia ruat coelum*) (Zagirnyak, 2021). The doctrine requires that the law be enforced under any circumstances. Definitely, this situation has raised a dilemma on the issue of law enforcement during the pandemic era.

This research takes a case study from Aceh Syar’iyah Court in highlighting the dilemma of law enforcement in Indonesia during the COVID-19 outbreak. Aceh Syar’iyah court was chosen as a case study for three reasons. Firstly, the Aceh Syar’iyah court only exists in the Aceh region. Meanwhile, other parts of Indonesia only have religious courts, which are authorized to do Islamic civil cases. Secondly, apart from handling Islamic civil cases, the Aceh Syar’iyah court is also given the authority to adjudicate cases of *jinayat Islam* (Islamic criminal case) as stipulated in Aceh’s qanun (Aceh’s local regulation). Thirdly, the Islamic criminal qanun recognizes the punishment of caning. Caning is often carried out in public places and causes large crowds.

Currently, scholars have carried out studies on law enforcement during the COVID-19 pandemic. Wesley G. Jennings and Nicholas M. Peres did the first research in the article “The Immediate Impact of COVID-19 on Law Enforcement in the United States”, and revealed that serious health risks are present when law enforcement officers have close contact with community members. For protection, a number of health recommendations have been made by the Centers for Disease Control and Prevention (CDC) and other agencies for both the officers and the public. The COVID-19 pandemic has also exposed some key obstacles for law enforcement (Jennings & Perez, 2020).

Second, research was conducted by J. Mitchell Miller and Alfred Blumstein entitled “Crime, Justice and COVID-19 Pandemic: Toward

a National Research Agenda”. According to them, the virus presents experimental conditions allowing for real-world theory tests and observation of the relative effectiveness of practice and policy options under weighty conditions. They also suggest the pandemic presents opportunities for review of various criminal justice, particularly incarceration and policies (Miller & Blumstein, 2020).

Finally, the research conducted by John H. Boman and Owen Galupe entitled “Has COVID-19 Changed Crime? Crime Rates in the United States during the Pandemic”. They found that compared to the pre-pandemic year of 2019, crime – as measured by calls for service to law enforcement decreased markedly. At the same time, crimes such as domestic violence increased because of extended periods of contact between potential offenders and victims (Iv & Gallupe, 2020). The same findings were also found in the research entitled “Impact of Social Distancing during the COVID-19 Pandemic on Crime in Los Angeles and Indianapolis,” which was conducted by a number of scholars (Mohler et al., 2020).

Almost all research on law enforcement during a pandemic comes from the perspective of developed countries with well-established legal systems. All these research do not specifically address the enforcement of law in the judiciary system. In addition, these studies do not examine the impact of COVID-19 on the Shariah legal system. In fact, Shariah law began to develop in most Muslim countries in the Southeast Asia region, as happened in Brunei Darussalam, most areas in Malaysia and Aceh in Indonesia (Putrijanti, 2021).

This article aims to examine *jinayat* law enforcement at Aceh Syar’iyah court during the COVID-19 outbreak. For that purpose, the study seeks to answer the following three questions. First, what regulations have been issued to ensure the continuity of trials during the pandemic at the Aceh Syar’iyah court? Second, how does the Aceh Syar’iyah court carry out these rules in Islamic criminal code trials? Third, has COVID-19 caused *jinayat* cases to increase or decrease compared to the years before the COVID-19 pandemic?

RESEARCH METHOD

This research is qualitative research that applies both normative approach and socio-legal approach. Data for this research were

obtained through literature study by reviewing a number of books, articles, journals, research reports, and legislations. At the same time, an empirical study was conducted by direct observation of judicial practices that occurred at Aceh Syar'iyah courts in the age of the COVID-19 pandemic.

The normative approach was used to find and analyze various regulations that have been issued by the government in regulating virtual criminal trials during COVID-19. This approach was also used to examine the extent to which these regulations are in line with the principles of criminal procedural law which are applied in Indonesia. Meanwhile, the socio-legal approach was used to scrutinize the application of the law of *jinayat* trial in Aceh Syar'iyah courts as well as the increase or decrease in *jinayat* cases during the pandemic era.

FINDING AND DISCUSSION

Aceh Syar'iyah Court in Indonesia Justice System

The body that has the power to implement judicial power in Indonesia is the Supreme Court which manages four judicial systems, namely the judicial system of the general court, administration court, military court, and religious court (Butt, 2019). In the Indonesian context, as the biggest Muslim nation in the world, the religious court has an important role in settling legal disputes for Muslims, who are the majority of Indonesian citizens.

In line with the reformation that takes place in the state administration, the justice system in Indonesia has changed over time. According to Presidential Decree Number 11 of 2003, the name of the religious courts in Aceh province has been changed to Syar'iyah court. Judicial power in Aceh territory is conducted by District Court in the general judiciary system, State Administration Court in the state administration judiciary system, Syar'iyah Court in the religious judiciary system, and Military Court in the military judiciary system (Sufiarina, 2015).

As a predecessor of the Religious High Court, the relative competence of Aceh Syar'iyah courts encompasses the whole jurisdiction of Aceh. Currently, Syar'iyah courts exist in 23 cities/regencies of Aceh, as indicated in Table 1.

Table 1

Syar'iyah courts in Aceh at City/Regency Level

No	Syar'iyah courts at the Municipality/ Regency Level	Jurisdiction
1	Banda Aceh Syar'iyah Court	Banda Aceh Municipality
2	Sabang Syar'iyah Court	Sabang Municipality
3	Sigli Syar'iyah Court	Pidie Regency
4	Meuredeu Syar'iyah Court	Pidie Jaya Regency
5	Bireuen Syar'iyah Court	Bireuen Regency
6	Calang Syar'iyah Court	Aceh Jaya Regency
7	Meulaboh Syar'iyah Court	West Aceh Regency
8	Lhokseumawe Syar'iyah Court	Lhokseumawe Municipality
9	Lhoksukon Syar'iyah Court	Lhoksukon Regency
10	Suka Makmue Syar'iyah Court	Nagan Raya Regency
11	Blang Pidie Syar'iyah Court	Southwest Aceh Regency
12	Idi Syar'iyah Court	East Aceh Regency
13	Langsa Syar'iyah Court	Langsa Municipality
14	Tapak Tuan Syar'iyah Court	South Aceh Regency
15	Takengon Syar'iyah Court	Central Aceh Regency
16	Simpang Tiga Redelong	Bener Meriah Regency
17	Blangkejeren Syar'iyah Court	Gayo Lues Regency
18	Subulussalam Syar'iyah Court	Subulussalam Municipality
19	Kuala Simpang Syar'iyah Court	Aceh Tamiang Regency
20	Sinabang Syar'iyah Court	Simeulue Regency
21	Kutacane Syar'iyah Court	Southeast Aceh Regency
22	Singkil Syar'iyah Court	Aceh Singkil Regency
23	Jantho Syar'iyah Court	Aceh Besar Regency

Source: Aceh Syar'iyah Court (2022).

Each court system that exists under the supervision of the Supreme Court has its own separate competence. The Aceh Syar'iyah court's relative competence, in particular, is similar to the competence of the religious court in other Indonesian provinces, which is derived from Article 49 of the Law Number 3 of 2006. Besides, Aceh Syar'iyah court has additional competencies to implement Shariah law. The Law Number 11 of 2006 on the governance of Aceh makes a broader competency for Aceh Syar'iyah court. In order to regulate the additional powers granted by Law Number 11 of 2006, the provincial government of Aceh regulates it in qanun. In this context, the qanun aims to regulate the special autonomy application related to issues

existing under the Aceh government's authority (Suma et al., 2020). Article 128 verse (1) of Law Number 11 of 2006 clearly defines the position of the Aceh Syar'iyah court in the Indonesian justice system as follows: "The Aceh Syar'iyah court is part of the national justice system within the system of religious courts implemented by the Aceh Syar'iyah court which is free from influence from any party whatsoever."

Religious courts, as stipulated in Law No. 7 of 1989, are only authorized to handle dispute settlement in Islamic private law cases among Muslims within these five domains: matrimony, legacy, grants, testaments, and endowments. Law No. 3 of 2006, which amended Law No. 7 of 1989 expands the competence of religious courts (Azhar & Md. Nor, 2019).

In Article 49, the competencies have been added to matters of the adoption in Islamic law, zakat (alms), infaq and shadaqah (Islamic charity), the Islamic economic bank, Islamic finance, Islamic finance institution for pension fund, Islamic fund, Islamic microfinance institution, Islamic business, Islamic security, Islamic mortgages, Islamic insurance, and Islamic reinsurance. In addition, Syar'iyah court also has the authority to settle property rights disputes among Muslims, resolve disputes over qibla direction and prayer times and the last is giving testimony in determining the start of the month in the Islamic calendar (Melayu, 2012).

Even though the Syar'iyah court is the implementer of religious jurisdiction in Aceh territory, it has gained the rights of other authorities related to enforcing and implementing the shariah. Therefore, the competence of Syar'iyah court in Aceh is not only limited to the settlement of the cases as mentioned above; it also includes the examination of other cases related to Shariah matters which are provided in qanun such as *khamar* (alcoholic beverages), *maisir* (gambling) etc.

Aceh Syar'iyah court has a number of authorities, such as investigating, hearing, arbitrating, and resolving conflicts within the scopes of ahwal al-syakhsiyah (Islamic family jurisprudence), mu'amalah (Islamic private jurisprudence), as well as jinaya (Islamic criminal jurisprudence) (Helmi, 2020). The authorities that the Aceh Syar'iyah court has in the fields of ahwal al-syakhsiyah and

mu'amalah are granted to the religious court by Article 49 of Law No. 7 of 1989 concerning religious court. However, the authority in the field of jinayat is excluded from the list of authorities given to the religious court. It means that the Aceh Syar'iyah court's absolute authority is the religious courts' authority, based on Article 49 of the law on religious court with authority in the jinayat added, as regulated in the Aceh's Islamic Qanun (Suma et al., 2020). The competencies of Aceh Syar'iyah court in the field of jinayat are as follows: (1) aqidah (faith), ibadah (worship) and syiar Islam as regulated in Qanun Number 11 year 2002; (2) The management of zakat as stated in the Qanun of Aceh Number 7 of 2004; (3) Khamar (alcoholic beverages based on Aceh's Qanun No. 12 of 2003; (4) maisir (gambling) stated in Aceh's Qanun Number 13 of 2003, and (5) khalwat (being in close proximity to members of the opposite sex in a private space) based on Aceh's Qanun Number 14 of 2003 (Feener, 2013). Lastly, in order to strengthen and improve the Islamic criminal code as stated in Aceh's Qanun Number 6 of 2014 concerning the Islamic Criminal Code (jinayat) that has amended the last three qanuns mentioned.

Aceh's Islamic Criminal Qanun regulates ten types of offence (*jarimah*), namely (1) *khamar (liquor)*, (2) *maisir (gambling)*, (3) *khalwat (sexual abuse)*, (4) *zina* (making love between unmarried men and women), (5) *ikhtilath* (intimate acts between unmarried men and women), (6) sexual harassment, (7) rape, (8) *qadzhaif* (accusing someone of rape), (9) *liwath* (sodomy) and (10) *musahaqah* (lesbian sex).

In Aceh, the only form of *hudud* (a fixed punishment described in the Quran and hadith) permitted is caning. Other Islamic law punishments described in the Quran and hadith (a report of the sayings or actions of Prophet Muhammad PBUH), such as stoning and amputation, were not allowed in Aceh's Islamic Criminal Code passed in 2014. Some offences are subject to *ta'zir* (an optional punishment handed down at the discretion of the judges, including restitution, fines and other forms of social sanction).

Interestingly, from the 24 Aceh's Qanuns, which include Regional Regulations, Governor Regulations (*Peraturan Gubernur*), and Governor Instructions (*Instruksi Gubernur*), only four Aceh's Qanuns (13%) directly govern Islamic criminal law. These include two qanuns, namely: Aceh's Qanun No. 7 of 2013 on Islamic criminal procedure code, Aceh's Qanun No. 6 of 2014 on Islamic criminal code. The remaining two relate to governor regulations, namely Aceh's Governor Regulation No. 10 of 2005 on technical instruction

for the implementation of canning punishment, and Aceh's Governor Regulation No. 5 of 2018 on implementation of Islamic criminal procedural code. On the other hand, the remaining 20 qanuns (87%) regulate non-Islamic criminal law matters.

Table 2

Aceh Syar'iyah Court Absolute Competence

No	Competence Area	Basis
I	Islamic Family Law	<ol style="list-style-type: none"> 1. Marriage 2. Inheritance 3. Testaments 4. Grants 5. Endowments 6. Zakat 7. Infaq 8. Shadaqah
		<ol style="list-style-type: none"> 1. Law No. 3 of 2006 on the Amendment to Law No. 7 of 1989 regarding Religious Court. 2. The Qanun of Aceh, No. 7 of 2004 on Zakat Management.
II	Islamic Private Law	<ol style="list-style-type: none"> 1. The Islamic economic bank 2. Islamic finance 3. Islamic finance institution for pension fund 4. Islamic fund 5. Islamic microfinance institution 6. Islamic business 7. Islamic security 8. Islamic mortgages 9. Islamic insurance 10. Islamic reinsurance 11. Property rights disputes among Muslims. 12. Resolving disputes over qibla direction and prayer times. 13. Giving testimony of determining the start of the month in the Islamic calendar.
		Law No. 3 of 2006 on the Amendment of Law No. 7 of 1989 regarding Religious Court.

(continued)

No	Competence Area	Basis
III	Additional	1. Aceh's Qanun No. 11 of 2002 on Islamic Creed, devotion and Symbol.
	Competence: Islamic Criminal Code	2. Aceh's Qanun No. 6 of 2014 concerning Islamic Criminal Code on amendment of Aceh's Qanun No.12, 13 and 14 of 2003 on <i>Khamar</i> , <i>Maisir</i> and <i>Khalwat</i>
	1. Aqidah (Islamic creed)	
	2. Ibadah (Islamic devotion)	
	3. Syiar Islam	
	4. <i>Khamar</i>	
	5. <i>Maisir</i>	
	6. <i>Khalwat</i> ,	
	7. <i>Zina</i>	
	8. Sexual harassment	
	9. Rape	
	10. <i>Liwath</i>	
	11. <i>Musahaqah</i>	

The expansion of the Aceh Syar'iyah court competence in Aceh is understandable based on its broad special autonomy. Three national laws legitimized this special autonomy, namely the Law No. 44 of 1999 on Aceh as special region, which was strengthened by the Law No. 18 of 2001 on special autonomy of the province of Nanggroe Aceh Darussalam and the Law No. 11 of 2006 on governance of Aceh. With the three national laws, Shariah has served as a state law implemented specifically in Aceh (Ichwan et al., 2020). Implementing Shariah law has become legal; therefore, local authorities must enforce it.

Aceh's Qanun No. 11 of 2002 on implementation of Shariah in the area of Islamic creed, devotion and symbol has defined Shariah as Islamic teachings about all aspects of human life. Meanwhile, according to Article 125 of Law No. 11 of 2006, Shariah includes *aqidah* (creed) *ibadah* (devotion), *mu'amalat* (civil law) *ahwal shakhsyiyah* (family law), *qada'* (judicial affairs), *jinayat* (Islamic criminal law), *tarbiyah* (education), *syiar* (symbols), *da'wa* (proselytization), *syi'ar* (symbols), and Islamic defense.

Virtual Criminal Trial Regulations

The Indonesian Supreme Court has made breakthroughs since three years ago in civil, religious, military and state administration cases that utilize technology for trials (Kharlie & Cholil, 2020). For justice seekers, the courthouse is not the only intended destination, but they also could access electronic justice application called e-Court (Muhamad Khair et al., 2021). The legal basis used is the

Supreme Court Regulation No. 3 of 2018 concerning electronic case administration in courts.

The e-Court was designed with various features such as online case registration (e-Filing), payment of online fee payments (e-Payment), and electronic summoning (e-Summons). The application was expected to create services that are more efficient by realizing the principles of simple, fast and low cost of justice (Lupo & Bailey, 2014). Following this breakthrough in the administrative field, the Supreme Court a year later launched a new application called e-Litigation for the general courts, religious courts and state administrative courts (Kharlie & Cholil, 2020).

The e-Litigation was launched as a refinement of the e-Court (Susanto et al., 2020). The recent application is legitimized by Indonesian Supreme Court No. 1 of 2019 on the amendment of supreme court regulation No. 3 of 2018 on electronic case administration and trials in courts. Following the Supreme Court regulation, Chief of the Indonesian Supreme Court issued Decree No. 129 of 2019 as an implementing rule or technical guide of the Supreme Court Regulation No. 1 of 2019.

In March 2020, President Joko Widodo announced the first COVID-19 case in Indonesia (Djalante et al., 2020). Unexpectedly, COVID-19 accelerated the utilization of technology in law enforcement, particularly in trials. To carry out trials via teleconference to protect suspects or defendants from the threat of the spread of COVID-19, the Supreme Court entered into a cooperation agreement with the Ministry of Law and Human Rights and the Attorney General's Office in April 2020. After the agreement was signed, courts, prosecutors and detention centers quickly adapted to holding virtual trials for defendants whose detention period cannot be extended.

The implementation of online criminal trials cannot be based on a cooperation agreement between the three agencies of the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights. This can be understood because the intended criminal case is the judicial truth, while in the civil case, the goal is the procedure of criminal (*formeel waarheid*) (Senjaya, 2021). As reported, the Supreme Court Regulation has regulated online civil trials, as well as criminal case trials. For this reason, the court followed up on the

agreement by issuing Supreme Court Regulation No. 4 of 2020 on electronic administration and trial of criminal cases in courts on September 25, 2020 (Kharlie & Cholil, 2020). The regulation provides legality for the conduct of electronic trials for general criminal cases, military crimes and jinayat (Islamic crime).

The regulation regulates the courtroom electronically in the courtroom in the courthouses, which includes the prosecutor's office, detention center prison or other places determined by the panel of judges, provided that all trial participants must be visible on the monitor screen with a clear display and clear voice. To participate in online trials, investigators, prosecutors, courts, defendants, legal advisors, witnesses, and experts at detention centers and prisons must have a verified account. Meanwhile, administrative documents are also submitted electronically in a court information system stored and managed. The regulation also stated that, although the judge did not directly meet the defendant, witnesses or experts, the statements given by the disputing groups in the electronic trial were confirmed to have the same evidentiary value.

Technically, the regulation arranges for court summons a week before the trial is delivered to the electronic domicile by electronic mail, messaging application or short message. Electronic domicile is the domicile of the disputants in the form of a verified electronic mail address and/or cellphone number. Then, the defendant's room in attending the trial may only be attended by the defendant, legal advisers, prison and IT officers. Meanwhile, witnesses and experts can be examined at the prosecutor's office, court or embassy/consulate if they are abroad. Especially for witnesses whose identity, according to statutory regulations, must be kept confidential, information can be conveyed in an audio format that is disguised in their voice or can provide information without the defendant's presence.

Furthermore, the examination of evidence is carried out online because it remains at the public prosecutor's office, except for printed documents that can be scanned. As for evidence other than printed documents, the panel of judges will receive photos or videos of the evidence. For criminal charges, the defense, reply (the responses of the prosecutor or plaintiff to the defendant's arguments in the defense opening statement in civil cases or prosecutor's in criminal cases) and rejoinder (in Indonesian procedural law, the defendant's response to/

or second opportunity to answer the arguments put forward by the plaintiff in civil cases or prosecutor in criminal cases in the reply) are read out before the court according to the procedural law, likewise with decisions that are read out electronically (Roslan et al., 2021).

The signing of a cooperation agreement between three institutions and the issuance of a Supreme Court regulation that regulates online criminal proceedings does not mean that the problem has been resolved. The clash and disharmony between various regulations have become new challenges in the issue of law enforcement, especially in criminal and *jinayat* cases.

To understand the conflict and disharmony of these regulations, this article categorizes the development of the trial virtually into two phases. First is the phase of development of science and technology, which requires the application of technology in all lines of life. The second is the acceleration of technology use caused by COVID-19 in all aspects of life.

In the first phase, the odds are not that much of a problem. Even virtual trials have become the demand of the times. With that, the Indonesian Supreme Court has no other choice except to revise articles contained in the Criminal Procedure Code that allow a trial to have virtually the same legal status as a trial involving physical presence in the courtroom. Moreover, the principles of Indonesian Criminal Procedure Law stipulate that all criminal proceedings must be carried out quickly, at low cost and simply. These three principles are very likely to be realized by implementing a virtual trial (Susanto et al., 2020).

Compared to other countries, Indonesia is late in the use of information technology in court. Indonesian Supreme Court just implemented the e-Court application in 2018, which was then updated with the e-Litigation application in 2019 (Thalib et al., 2018). The Italian Ministry of Justice released Italian Trial Online (TOL/In Italian “Processo Civile Telematico” or PCT) at the end of 2004 and completed in 2005. The system was subsequently tested in seven courts through the establishment of local laboratories composed of public and private experts in informatics, administration, and law with the aim of identifying and solving organizational and technical problems and fostering the system’s adoption (Lupo & Bailey, 2014).

In relatively close proximity, Ontario and British Columbia, two provinces in Canada, have also implemented information technology in their judiciary. Ontario undertook two different projects aimed at developing a unified case management system: the Integrated Justice Project (IJP) in 1996–2003 and the Court Information Management System (CIMS) project in 2009–2013. In comparison to Ontario, British Columbia developed the Justice Information System (JUSTIN) in 2001. JUSTIN is an integrated criminal case management system used in British Columbia’s provincial and superior courts (Lupo & Bailey, 2014).

In the ASEAN (Association of Southeast Asian Nations) region, Singapore and Malaysia have far preceded Indonesia in a move towards realizing the vision of a modern, paperless court system and making e-Justice a reality. The Singapore Judiciary launched the Electronic Filing System (EFS) on March 1st 2000 (Zhurkina et al., 2021). EFS allows court documents to be filed electronically from a lawyer’s office and enables hearings to be conducted using electronic instead of paper documents (Mahaseth & Shifa, 2022). Meanwhile, the e-Court system in Malaysia began in March 2011 with four types of mechanisms, namely video conferencing system, case management system, community and advocate portal system, court recording and transcription system (Muhammad, 2013) Malaysia has also implemented e-Syariah for Syar’iyah courts since 2013 under the Malaysian Sharia Judicial Department (Jabatan Kehakiman Syariah Malaysia) (<http://www.jksm.gov.my/en/>). There are five e-Sharia modules that have been applied in 110 Syar’iyah courts in Malaysia and in 102 locations nationwide (Ariff et al., 2019). The e-Sharia applications are said to be able to standardize the work environment in Syar’iyah court and link all the business processes on a single channel (Roslan et al., 2021; Mohammad, 2020).

Three Agency Cooperation Agreements and Supreme Court Regulation No. 4 of 2020 are not a response to the first phase but to the second phase. Meanwhile, virtual trials for criminal cases encounter juridical obstacles since online trials are not regulated in Law No. 8 of 1981 regarding the Criminal Procedure Code (KUHAP). Otherwise, Articles 154, 159, 160, 167 and 196 of the KUHAP require all those involved, including prosecutors, judges, defendants, witnesses and experts, to be physically present in the courtroom. Apart from that, KUHAP also stipulates that trials should be held in a courthouse and

dress arrangements for judges, public prosecutors, legal advisors and clerks. The same rule is affirmed in Law Number 48 of 2009 on judicial powers, which regulates that a trial is attended by three judges assisted by a clerk and requires the public prosecutor and defendant to attend the trial.

The researchers found that the procedural provisions in KUHAP are general provisions (*lex generalis*) for law enforcement in normal circumstances. Meanwhile, the Three Agencies Cooperation Agreement and Supreme Court Regulation No. 4 of 2020 are special provisions (*lex specialist*) for law enforcement in the COVID-19 pandemic situation. In legal doctrine, it is stated that “*necessitas non habet legem*” (necessity has no law) (Zagirnyak, 2021), a maxim meaning that the violation of a law may be excused by necessity. According to the principles of Indonesian criminal law, the meaning of necessity is interpreted as force majeure (Dutch: *overmacht*). Furthermore, according to KUHAP, there are three situations that are categorized as a necessity of force majeure. First, force majeure caused by natural disasters. Second, the force majeure caused by riots. Third, force majeure as a ramification of the pandemic. The COVID-19 outbreak has resulted in the interests and compelling circumstances to rearrange the procedure for criminal and *jinayat* proceedings. In such a situation, the issuance of Supreme Court Regulation No. 4 of 2020 and the agreement is understandable.

Moreover, Article 50 of KUHAP has a provision that investigations must be immediately delegated to the public prosecutor and prosecution must be immediately transferred to the court and trial examination must be resolved by the court. For this reason, the Supreme Court must make an innovation that basically does not change the provisions in KUHAP, namely trial examinations without placing judges and clerks, public prosecutors, defendants, legal advisers, witnesses and experts in one courtroom. However, all those involved in the trial are connected to each other, either by teleconference or through other manners of communication. Thus, judges and clerks are in one courtroom. Then, the public prosecutor, the accused, the legal advisor, the witnesses and the experts are present virtually at the trial in different networks and places at the same time.

The conflict between the rules does not only occur in Indonesia. Developed country, such as the United States of America, is also

inseparable from the issue, although it has been revealed by the Administrative Office of the United States Courts that many courts across the state have utilized video conferences for different purposes since 1998 (Lumbanraja, 2020). The fact does not guarantee that there are no regulatory problems, particularly its implementation during a pandemic.

Since the outbreak of COVID-19, the US Government has practiced The Coronavirus Aid, Relief and Economic Security Act (Cares Act). The Cares Act is one of the public law instruments that implement fiscal stimulus policies and give permission to use video conferences in handling particular cases in court when it is urgently needed. Telephone conference or video conference is only allowed in particular criminal cases and juvenile crimes. Thus, all the trials that take place in the courtroom and courthouses during the pandemic are suspended by the Supreme Court of the US Government (Babcock & Johansen, 2011).

The termination of the trial that presents all those involved in the courtroom has delayed the enforcement of many criminal cases in the federal states of America. Although the US Supreme Court has issued a decision on the implementation of the trial virtually, the application also raises various problems. These problems include the incompatibility of the rules regarding virtual court issued by the Federal Rule of Criminal Procedure with the US Supreme Court Decision. On the other hand, the inconsistency of the rules raises further problems, namely the absence of standardization of the implementation of virtual trials in federal states (Babcock & Johansen, 2011). These problems raise the opinion of some legal experts that the trial that took place during the pandemic was unconstitutional.

The Implementation of Regulations in Aceh Syar'iyah Court

Apart from adhering to the Criminal Procedure Code, in proceeding with the *jinayat* case, the Aceh Syar'iyah court is also guided by Qanun No. 7 of 2013 concerning the *jinayat* procedure law. As in the Criminal Procedure Code, there are no rules in the *jinayat* procedure law that justify *jinayat* trials being held virtually. In fact, Article 222 states that the *jinayat* trial is held in the court building by physically presenting all those involved in the courtroom. The absence of these

regulations made 23 Syar'iyah courts at the municipality/regency level throughout Aceh go through uncertainty in enforcing the *jinayat* law at the beginning of the pandemic. This was especially so when Circular Letter No. 5 of 2020 was published by the Supreme Court concerning work from home during the pandemic and disciplinary punishment for judicial institutions that violate provisions.

The uncertainty in enforcing *jinayat* law has not ended despite the convention of collaboration between the Attorney General, the Supreme Court, and the Ministry of Law and Human Rights regarding the implementation of trials via teleconference. Even after the issuance of Supreme Court Regulation No. 4 of 2020 regarding electronic criminal trials, there are three *jinayat* law enforcement practices that further explain legal uncertainty in enforcing *jinayat* law in Syar'iyah courts in 23 and districts throughout Aceh.

The first is the practice of enforcing *jinayat* laws virtually. *Jinayat* law enforcement virtually refers to Supreme Court Regulation No. 4 of 2020. This judicial practice is found in the Syar'iyah courts located in big cities in Aceh province with a high level of *jinayat* law violations, but have adequate facilities and infrastructure and are supported by good internet networks connectivity such as Banda Aceh Syar'iyah Court, Jantho Syar'iyah Court, Takengon Syar'iyah Court, Meulaboh Syar'iyah Court, Lhokseumawe Syar'iyah Court, Langsa Syar'iyah Court and Kuala Simpang Syar'iyah Court. In an interview with Siti Salwa, the Chairman of Jantho Syar'iyah Court said, after the issuance of Supreme Court Regulation No. 4 of 2020, all *jinayat* trials at Jantho's Syar'iyah Court are conducted virtually and facilities and infrastructure at Jantho Syar'iyah Court support the trials conducted virtually.

The second practice is the enforcement of *jinayat* laws that have not been practiced virtually. This research found that *jinayat* trials that are conducted in a physical presence in the courtroom usually occur in Syar'iyah courts located in remote small cities, do not have high cases of shariah violations and lack internet facilities such as Sabang Syar'iyah Court, Simpang Tiga Redelong Syar'iyah Court, Blangkejeren Syar'iyah Court, Kutacane Syar'iyah Court, Calang Syar'iyah Court, Suka Makmue Syar'iyah Court, Blang Pidie Syar'iyah Court, Bireuen Syar'iyah Court and Sinabang Syar'iyah

Court. When asked why Kutacane Syar'iyah Court does not implement virtual *jinayat* trials as stipulated in Supreme Court Regulation No. 4 of 2020, Heni Nurliana, Chairperson of Kutacane Syar'iyah Court, replied that bad internet connection and no support for the provision of electronic equipment to support virtual trials are the main reasons for the Supreme Court Regulation not being implemented. The information given by Heni Nurliana was validated by other heads of Syar'iyah courts that fell into this category.

What is interesting is the third practice. The practice of blended court between virtual trials and physical presence trials in the courtroom depends on mutual agreement between Syar'iyah court judges, prosecutors and the Regional Office of the Ministry of Justice and Human Rights. The practice of blended court is found at Sigli Syar'iyah Court and Calang Syar'iyah Court. According to Indra Suhardi (Judge of Sigli Syar'iyah Court) and Zahrul Bawadi (Judge of Calang Syar'iyah Court), the blended court practice applied in the two Syar'iyah court institutions is the wisest way in a pandemic situation. On the one hand, they are required to comply with the Supreme Court Regulations, which regulate virtual trials, but on the other hand, limited facilities and infrastructure, as well as bad internet networks, do not allow them to conduct virtual trials. The method of agreement between institutions was adopted because of the same obstacles faced by the prosecutor's agency and the Regional Office of the Ministry of Law and Human Rights in Sigli and Aceh Jaya District.

Chief Justice of the Aceh Syar'iyah court, Rosmawardani admitted that the lack of infrastructure, facilities and poor internet connection were the main obstacles to the implementation of the Supreme Court Regulation No. 4 of 2020. She emphasized that it should have been after the issuance of the Supreme Court Regulation No. 4 of 2020 all *jinayat* trial practices refer to these regulations, so she deeply regrets *jinayat* judicial practices that are not in accordance with the provisions. According to her, the lack of infrastructure, facilities and poor internet connection are the responsibility of the Aceh Provincial Government. This refers to the *jinayat* case, which is an additional authority attached to the Aceh Syar'iyah courts as a result of the special autonomy granted by law to the Aceh Provincial Government to implement Islamic Shariah throughout Aceh.

Varying judicial practices during the pandemic did not hinder *jinayat's* trial at the municipality/regency level Syar'iyah court. The statistical

data obtained reveal that *jinayat* cases in 2020 increased from the previous year. There were 281 *jinayat* cases that were submitted to 23 Syar'iyah courts at the municipality/regency level throughout Aceh Province. 269 of these cases were resolved and were legally binding in the same year. The distribution of these cases is presented in Table 3.

Table 3

2020 Jinayat Case Statistics

No	Syar'iyah Courts	Number of Cases	Court Judgment
1	Banda Aceh	28	28
2	Sabang	1	1
3	Sigli	16	16
4	Meuredeu	2	2
5	Bireuen	4	4
6	Calang	6	6
7	Meulaboh	14	12
8	Lhokseumawe	11	11
9	Lhoksukon	16	15
10	Suka Makmue	5	5
11	Blang Pidie	3	3
12	Idi	19	15
13	Langsa	10	10
14	Tapak Tuan	17	17
15	Takengon	23	23
16	Simpang Tiga Redelong	8	8
17	Blangkejeren	4	4
18	Subulussalam	11	11
19	Kuala Simpang	26	26
20	Sinabang	8	8
21	Kutacane	12	12
22	Singkil	12	12
23	Jantho	25	21
Total		281	269

Source: Aceh Syar'iyah court.

Statistically, compared to 2019, *jinayat* cases in 2020 experienced an insignificant increase. In 2019, there were 267 *jinayat* cases that were submitted to 23 Syar'iyah courts scattered throughout the Aceh region. 260 cases received court judgment, as shown in Table 4.

Table 4

2019 Jinayat Case Statistics

No	Syar'iyah Courts	Number of Cases	Court Judgment
1	Banda Aceh	68	68
2	Sabang	0	0
3	Sigli	24	24
4	Meuredeu	3	3
5	Bireuen	4	4
6	Calang	0	0
7	Meulaboh	11	11
8	Lhokseumawe	8	6
9	Lhoksukon	17	16
10	Suka Makmue	9	9
11	Blang Pidie	4	4
12	Idi	9	9
13	Langsa	9	9
14	Tapak Tuan	1	1
15	Takengon	11	11
16	Simpang Tiga Redelong	4	4
17	Blangkejeren	5	5
18	Subulussalam	3	1
19	Kuala Simpang	30	30
20	Sinabang	1	1
21	Kutacane	6	6
22	Singkil	16	16
23	Jantho	24	22
	Total	267	260

Source: Aceh Syar'iyah court (2019).

The increase in jinayat cases during the pandemic contrasts with the decline in the number of criminal cases in general, as shown in various studies. In their research, John H. Boman and Owen Gallupe (2022) found crime, as measured by calls for service to law enforcement, decreased markedly compared to the pre-pandemic year of 2019 (Iv & Gallupe, 2020). The same findings can also be found in research conducted by George Mohler and colleagues (2020). In their article, they concluded that social distancing seems to have a strong association with the rate of crime during the pandemic. Residential burglary, for example, declined in number because many people stayed at home, thus guarding their property (Mohler et al., 2020). Meanwhile, Stickle

and Felson (2020) illustrated the dramatic impact of the pandemic on rising crime rates. In their view, the COVID-19 pandemic in the year of 2020 created tremendous effects that never existed before. One effect of this was a dramatic decline in crime rates all over the world, which seems to have a correlation with the governments' order to stay at home (Stickle & Felson, 2020). A description and findings that are similar to these studies can also be found in Matthew P. J. Ashby's article entitled "Initial evidence on the relationship between the coronavirus pandemic and crime in the United States" (Ashby, 2020).

However, these studies found certain criminal acts did increase significantly during the outbreak. Iv and Gallupe (2020) noted that for serious crimes that commonly do not involve accomplices (e.g., homicide and intimate partner violence), the trend was either upward or constant. In comparison, Matthew P. J. Ashby also noted that the rates of residential burglary in some cities declined while the rates of non-residential burglary changed only slightly. In some cities, there were also reductions in the number of motor vehicle thefts, while the theft patterns themselves were changing from the usual pattern (Ashby, 2020). George Mohler also reported that certain criminal acts (e.g., domestic abuse) were on the rise because of the long and frequent contact between the victims and potential offenders (Mohler et al., 2020). The same phenomenon also occurred in Indonesia. COVID-19 caused the crime rate in Indonesia to decline; however, certain crimes, such as domestic violence, rose due to the rising frequency of contact between the victims and potential offenders. Ten offence types (*jarimah*) stipulated in Aceh's Qanun are *jinayats* related to public morality law which have similarities to domestic violence. Eight of these involve forms of consensual and non-consensual sex. They include *zina*, *khalwat*, *ikhtilath*, *qazhaf*, *musaqah*, *liwat*, rape and sexual harassment. The two remaining criminal offences are *khamar* and *maisir*).

The increase in *jinayat* cases was confirmed by Zahrul Bawadi (Judge of Calang Syar'iyah Court). He explained that *jinayat* violations could be lesser than what is happening now if only the budget for enforcing *jinayat* laws had not been reallocated for handling the pandemic. Referring to Article 127 Paragraph 3 of Law No. 11 of 2006, the governance of Aceh states that the Central Government, Aceh Government and regional/municipal governments provide funding and other necessary aids for the application of Islamic law. In Article

10 Paragraph 2 of Qanun No. 8 of 2014 concerning the principles of Islamic Shariah, it is explicitly stated that at least 5 percent of the total Aceh regional budget must be allocated for the enforcement of Islamic Shariah. However, during the pandemic, regencies/municipalities in Aceh Province were found to have budgeted less than 5 percent of the total budget for enforcing Shariah. Lack of budget support definitely rendered *jinayat* law enforcement ineffective during the pandemic.

CONCLUSION

In response to the COVID-19 outbreak, the Ministry of Law and Human Rights, the Attorney General's Office, and the Supreme Court signed a joint agreement regarding the conduct of trials via teleconference. The collective agreement is relevant in so far as it relates to the conduct of civil proceedings. This is because what is intended in a civil trial is formal truth. While the truth sought in a criminal trial is material truth. Therefore, the teleconference criminal trial arrangements are inadequately regulated by the mutual agreement between the three institutions.

This legal weakness prompted the Supreme Court to issue *Perma* Number 4 of 2020 concerning administration and trial of criminal cases in courts electronically. This regulation regulates the conduct of criminal, *jinayat* and military trials virtually.

Although there are rules that allow *jinayat* trials to be held virtually, in practice, there are variations in the practice of *jinayat* trials at the 23 districts/cities of Syar'iyah courts throughout Aceh Province. This diversity of practices has to some extent caused uncertainty in the enforcement of the *jinayat* law in Aceh. The diversity of enforcement practices can be divided into three categories. First, the Syar'iyah court, which consistently carries out virtual *jinayat* trials, as determined in *Perma* No. 4 of 2020. The practice is usually carried out by the Syar'iyah courts in urban areas that have been equipped with adequate infrastructure such as Banda Aceh Syar'iyah Court and Jantho Syar'iyah Court.

Second, the Syar'iyah courts runs the trial by physically presenting the parties in the courtroom. This practice is usually carried out by the Syar'iyah courts located in remote areas that do not have adequate facilities, such as Subulussalam Syar'iyah Court and Kutacane

Syar'iyah Court. Third, the Syar'iyah courts run *jinayat* trials based on the agreement of the parties, namely, judges, prosecutors and the prison's official (Department of Law and Human Rights) where the defendant is being held. This type of practice happens in the Syar'iyah Court of Sigli and the Syar'iyah Court of Aceh Jaya. In both courts, sometimes trials take place virtually and sometimes physically in the courtroom. It depends on the agreement of the parties.

During the pandemic, cases of *jinayat* in Aceh tended to increase from 267 cases in 2019 to 281 cases throughout 2020. The increased number of *jinayat* cases during the COVID-19 pandemic can be understood due to two factors. First, *jarimah* which is regulated in the Qanun of *Jinayat* is a domestic crime such as seclusion, adultery, and others. This crime shows an increasing trend during the pandemic compared to ordinary crimes such as murder, stealing and so on. Second, a large deduction of the budget for the enforcement of Islamic law was made for the prevention of COVID-19. This condition has caused many cases of *jinayat* to be neglected. It is predicted that this budget reallocation may cause the rate of *jinayat* violations even to be higher in the future.

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