



Ngaming Customary Sanctions in the Resolution of Physical Violence Crimes In Gayo Lues: An Islamic Criminal Law Perspective

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Abstract: *Physical violence is an act that causes pain, injury, or serious wounds. In the Gayo Lues community, there is a customary law that regulates sanctions against perpetrators of physical violence. Adat Ngaming, one of the customs of Gayo Lues, regulates the types and levels of sanctions and the weight of the sanctions according to the purpose of forming a law. This research examines how the Ngaming customary sanctions resolve physical violence cases according to the customary law of the Marpunge Raya settlement and the review of Islamic criminal law on Ngaming customary sanctions for perpetrators of physical violence in the Marpunge Raya settlement. This research uses the empirical legal research method through library and field data collection techniques. The research results show that Ngaming customs impose sanctions on perpetrators of physical violence crimes according to the type and severity of the actions committed by the perpetrator. Violence to the head that causes a lot of bleeding (blood flowing out) is compensated with one goat, and the bleeding wound is treated (luke besalin) until healed. If the blood flows a little (does not stream), it is compensated with a chicken, and the bleeding wound is treated (luke besalin) until it is healed. The Ngaming customary sanction is by the sanctions regulated in Islamic criminal law, where wounds on the head that bleed (al-Damiyah) and wounds on the head that do not bleed (ghair al-Damiyah) are subject to legal sanctions. For physical violence on objects other than the head and face, the penalty is to pay for medical expenses until recovery, which is not regulated in Islamic criminal law because violence on objects other than the head and face has different penalties, namely, ja'ifah wounds and non-ja'ifah wounds. The penalty for a ja'ifah wound is one-third of the diyat, while the penalty for a non-ja'ifah wound is qishash.*

Keywords: Sanction, Ngaming Tradition, Dispute Resolution, Physical Violence, Islamic Criminal Law

Abstrak: Kekerasan fisik adalah perbuatan yang mengakibatkan rasa sakit, cidera, atau luka berat. Di masyarakat Gayo Lues terdapat hukum adat yang mengatur tentang sanksi terhadap pelaku kekerasan fisik. Adat Ngaming salah satu adat Gayo Lues mengatur jenis dan tingkatan sanksi serta bobot sanksi sesuai tujuan dibentuknya suatu hukum. Penelitian ini mengkaji tentang bagaimana sanksi adat *ngaming* dalam menyelesaikan kasus kekerasan fisik menurut hukum Adat kemukiman Marpunge Raya dan tinjauan hukum pidana Islam terhadap sanksi adat *ngaming* bagi pelaku tindak pidana kekerasan fisik di kemukiman Marpunge Raya. Penelitian ini menggunakan metode penelitian hukum empiris melalui teknik pengumpulan data kepustakaan dan data lapangan. Hasil penelitian menunjukkan bahwa adat *Ngaming* menetapkan sanksi terhadap pelaku tindak pidana kekerasan fisik sesuai dengan jenis dan tingkatan perbuatan yang dilakukan pelaku. Kekerasan pada bagian kepala dan banyak mengeluarkan darah (darah keluar secara mengalir) ditebus satu ekor kambing dan luka yang berdarah diobati (*luke besalin*) sampai sembuh. Apabila darah keluar sedikit (tidak mengalir), diganti dengan seekor ayam dan luka yang berdarah diobati (*luke besalin*) sampai sembuh. Sanksi adat *Ngaming* sesuai dengan sanksi yang diatur dalam hukum pidana Islam bahwa luka di kepala yang mengalir darahnya (*al-Damiyah*), dan luka di kepala yang darahnya keluar tidak mengalir (*ghair al-Dami'ah*) dikenakan sanksi *hukumah*. Sedangkan kekerasan fisik pada objek selain kepala dan wajah, sanksinya ialah membayar biaya pengobatan sampai sembuh tidak diatur dalam hukum pidana Islam, karena kekerasan di objek selain kepala dan wajah dibedakan sanksinya, yaitu luka *ja'ifah*, dan luka non-*ja'ifah*. Luka *ja'ifah* sanksinya ialah sepertiga diyat, sedangkan luka non-*ja'ifah* sanksinya ialah *hukumah*.

Kata Kunci: Sanksi, Tradisi Ngaming, Penyelesaian Sengketa, Kekerasan Fisik, Hukum Pidana Islam

A. Introduction

Physical violence in the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence Article 6 states that physical violence is an act that causes pain, illness, or serious injury.¹ There are customary regulations in the Marpunge Raya Settlement, Putri Betung District, and Gayo Lues Regency, which define physical violence by the definition of abuse found in legal and criminal law dictionaries used in Indonesia. In the legal dictionary, abuse is the act of hurting, torturing, or damaging a person's health.² Whereas in Indonesian Criminal Law, assault is causing injury or harm to a person's body.³ Similarly, the definition of assault in the Indonesian Penal Code (KUHP) is intentionally causing pain or injury.⁴

¹Law of the Republic of Indonesia Number 23 Article 6 of 2004 concerning the Elimination of Domestic Violence.

²Oxford Paperback Reference, *Oxford Dictionary of Law, Oxford Paperback Reference*, vol. 20, 2003; Sudarsono, *Kamus Hukum*, ed. III (Jakarta: Rineka Cipta, 2002), 34.

³Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008); Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)* (Bandung: Citra Aditya Bakti, 2014); Olga Plockaya, "Customary Law Experience of Crime Prevention in the Customary Law of the Permian Peoples," *Russian Journal of Criminology* 13, no. 2 (2019): 354–64.

⁴Suryani Lidya Widayati, "Criminalization of Decency in The Criminal Code Bill from Moral Perspectives," *Negara Hukum* 9, no. 2 (2018): 181–98; Anis Widyawati, "Criminal Policy of Adultery in

Meanwhile, according to Islamic Criminal Law, assault or physical violence is referred to as *jinayah' ala ma duna al-nafs*, which means a crime against others besides the soul. Abdul Qadir Awdah quotes them to explain the meaning of *jinayah' ala ma duna al-nafs*, or crimes against the soul, which refers to any act of harming another person's body, but not to the extent of their essence. His soul, and in line with the definition put forth by Wahbah Zuhaili, the crime of assault is any violation of the laws of the human body, whether it involves taking or removing body parts, injuring, or hitting. In contrast, the soul or life remains unaffected.⁵ The meaning of the definition of torture above is any kind of unlawful act that injures or damages the human body, such as wounding, beating, strangling, cutting, and choking.

The essence of the various definitions of torture above, whether according to legal dictionaries, the Criminal Code (Kitab Undang-undang Hukum Pidana), or the definition of torture according to Islamic Criminal Law, has similarities and resemblances, namely, actions that cause injury and pain. This is also due to the conditions or incidents in several cases in the Marpunge Raya settlement, Putri Betung District, Gayo Lues Regency.

Thus, in Islamic Criminal Law, acts of physical violence or *jinayah' ala ma duna al-nafs* are included in the *jarimah qishash* and *diyat*. *Qisas* is defined as punishing the convict, which is the same as the crime committed against the victim, life for life, and bodily parts for bodily parts.⁶ *Qishash* is a form of punishment for perpetrators of crimes against life and body parts committed intentionally. *Diyat* is a punishment imposed on the perpetrator of a crime with the same object (life and body parts) but committed unintentionally.⁷

Thus, perpetrators of physical violence may be given a punishment commensurate with the crime committed against the victim. This is by the word of Allah SWT in the Qur'an, Surah al-Maidah, verse 45.

Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (2020); I. Dewa Made Suartha, I. Dewa Agung Gede Mahardika Martha, and Bagus Hermanto, "Between Mental Illness, Criminal Policy Reform, and Human Rights: Discourse on Reformulation of The Article 44 Indonesia Criminal Code," *International Journal of Criminal Justice Sciences* 17, no. 1 (2022).

⁵Abd al-Qadir 'Awdah, *Al-Tasyri' Al-Jina'i Al-Islami: Muqaranan Bi Al-Qanun Al-Wadh'i*, 8th ed., vol. II (Beirut: Dar al-Muassasah, 2016); Abu Ya'la Muhammad bin Husein al-Farra, *Al-Ahkam Al-Sulthaniyyah* (Beirut: Dar al Kutub al-'Ilmiyyah, n.d.); Wahbah Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh, Juz VII*, IV (Dimasyq: Dâr al-Fikr al-Mu'âshir, 2002); Qadeer Alam, "The Qisas and Diyat Law in Pakistan: Prosecution of Offence of Murder," *Islamic Studies* 58, no. 4 (2019); Muhammad Ishom, "THE CONTINUITY AND CHANGE OF DIYAT AS AN ALTERNATIVE TO ISLAMIC CRIMINAL SANCTIONS IN UNDANG-UNDHANG BANTĒN DURING THE 17th - 18th CENTURIES," *Jurnal Ilmiah Islam Futura* 23, no. 1 (2023).

⁶Muhammad Syahrur, *Al-Kitab Wa Al-Qur'an: Qira'ah Mu'asharah* (Qahirah: Sina li al-Nasyr wa al-Ahalli, 1992); Muhammad bin Ahmad bin Rusyd Al-Qurtubi, *Bidayat Al-Mujtahid*, II (Maktabah wa Matba'ah Taha, n.d.); Evan Gottesman, "The Reemergence of Qisas and Diyat in Pakistan," *Columbia Human Rights Law Review* 23 (1992).

⁷Dedy Sumardi, *Hudud Dan HAM: Menelusuri Hudud Yang Disyariatkan Dan Hudud Yang Difikhkan* (Banda Aceh: Dinas Syariat Islam Aceh, 2011); Muhammad Abu Zahrah, *Al-Jarimah Wa Al-Uqubah Fi Al-Fiqh Al-Islami*, ed. Muhammad Rafiki, V, vol. V (Kairo: Maktabah Tawfiqiyah, 2014); Rai Muhammad Khan and Khurshid Iqbal, "The Rule of 'Death as the Normal Penalty for Murder': A Case Study of the Qisas and Diyat Law in Pakistan," *Islamic Studies* 58, no. 2 (2019).

The essence of the various definitions of abuse above, whether according to legal dictionaries, the Criminal Code (Kitab Undang-undang Hukum Pidana), or the definition of abuse according to Islamic Criminal Law, has similarities and resemblances, namely, actions that cause injury and pain. This is also due to the conditions or incidents in several cases in the Marpunge Raya settlement, Putri Betung District, Gayo Lues Regency.

Thus, the perpetrator of physical violence may be given a punishment commensurate with the crime committed against the victim. This is by the word of Allah SWT in the Qur'an, Surah Al-Maidah, verse 45.

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: And We have decreed upon them in it (the Torah) that a soul is (punished) for a soul, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and wounds (also) have Qisas. Whoever forgives (the right of retaliation), then forgiving it becomes an expiation for him. Whoever does not judge by what Allah has revealed is a wrongdoer.

According to the above verse, every act someone commits against another person's soul must be reciprocated according to what they have done. Killing must be met with killing, injuring must be met with injuring, every wound of violence has its qisas.

Abuse or physical violence often occurs in society, both in urban and rural communities. If it happens in the Gayo region, the case is usually handled by the village apparatus known as *Jema Opat/Si Opat*, which consists of four elements: *saudere* (the community), *Urang Tue* (the father), *Pegawe* (the religious figure), and *penghulu* (the village head). Because customary criminal law is an event or act that disturbs the balance of society, causing a reaction from the community, that balance must be restored. Restoration must be carried out with a fine or with a customary ceremony. Thus, balance can be restored.⁸

Law Number 11 of 2006 on the Government of Aceh has also provided a stronger foundation for resolving legal cases in the community through customary law with the establishment of Aceh Qanun Number 9 of 2008 on the Development of Customary Life and Customs. Article 13 of Qanun Number 9 of 2008 states customary institutions can resolve disputes/controversies through Customary Law and Traditions. Article 13 paragraph (1) includes: (1) Domestic disputes; (2) Disputes with family related to *fara'id*; (3) Disputes among residents; (4) *Khalwat*/immorality; (5)

⁸Christiaan Snouck Hurgronje, *Aceh: Adat Istiadatnya* (Jakarta Indonesia: Indonesian Netherlands for Islamic Studies, 1996); Rikardo Simarmata, "The Enforceability of Formalised Customary Land Rights in Indonesia," *Australian Journal of Asian Law* 19, no. 2 (2019); Badruzzaman Ismail, *Principles of Customary Law* (Kota Banda Aceh: Aceh Traditional Council, 2009); Eka Srimulyani, "Islam, Adat, and the State: Matrilocality in Aceh Revisited," *Al-Jami'ah: Journal of Islamic Studies*, 2010.

Disputes over property rights; (6) Theft within the family (petty theft); (7) Disputes over shared property; (8) Petty theft; (9) Theft of livestock; (10) Violations of customs regarding children, agriculture, and forests; (11) Maritime disputes; (12) Market disputes; (13) Minor assault; (14) Forest burning; (15) Harassment, defamation, incitement, and slander; (16) Environmental pollution (minor scale); (17) Threatening; (18) Other disputes that violate customs and traditions.⁹ Customary cases that fall outside the authority of the customary institution, even if they occur within the jurisdiction of customary law, such as murder, adultery, rape, drug offenses, serious theft, kidnapping, and so on, which are categorized as serious crimes, must be immediately reported to the police by the Geuchik as a member of the customary institution.

Article 13, paragraph (2) of Aceh Qanun Number 9 of 2008 states: "The resolution of customary disputes and customs as referred to in paragraph (1) is resolved in stages." Article 14 paragraph (1) states: "Settlement through customary law as referred to in Article 13 paragraph (2) includes settlement through customary law in Mukim and settlement through customary law in Laot." Based on the wording of the above article, the resolution of customary disputes and conflicts must be made step by step, meaning that law enforcement officers first allow resolving disputes/conflicts through family means. Still, if it is not resolved, it proceeds to the next stage, which is resolved through village courts/customary courts. Based on this, traditional institutions have full authority to resolve customary disputes or conflicts within the community. The resolution of these disputes can be processed peacefully, based on the parties' agreement, in an easy, simple, and quick way, resulting in a decision that can be accepted by the parties concerned.

Kemukiman or *Mukim* in the Qanun of Gayo Lues Regency Number 2 of 2012 concerning mukim governance in Chapter 1, article 1, paragraph 7 is explained as a legal community unit in Gayo Lues Regency consisting of a combination of several villages with specific territorial boundaries and its wealth, directly under the Camat and led by the Head of *Mukim*.¹⁰ In Article 2, it is explained that a mukim serves as a governmental unit that oversees several villages, which are directly under and accountable to the sub-district head (camat).¹¹ The Marpunge Raya settlement comprises six villages: Pintu Gayo Village, Marpunge Village, Jeret Onom Village, Kute Lengat Village, Singah Mulo Village, and Meloak Due Village. The Marpunge Raya settlement is in the Putri Betung District, Gayo Lues Regency.

In the Marpunge Raya settlement, Putri Betung District, Gayo Lues Regency, acts of physical violence often occur not only among adults but also among children. Many factors can lead to such acts of physical violence, such as uncontrolled emotions and

⁹Aceh Qanun Number 9 Article 13 of 2008 on the Development of Customary and Traditional Life

¹⁰Gayo Lues Regency Regulation Article 1 Paragraph 7 of 2012 on Settlement Governance.

¹¹Gayo Lues.

excessive ego, making it difficult for anyone to back down, often arising from trivial matters like excessive teasing, which can provoke feelings in one of the parties.

One of the cases of physical violence due to a criminal act committed by R (43 years old) against J (63 years old) that occurred in Singah Mulo village, Putri Betung sub-district, Gayo Lues district, involved R committing violence against J, which resulted in J being rushed to the nearest health center. This happened because the two had a disagreement, where J claimed that R's family were descendants of petube (people who use black magic, witchcraft, and sorcery), which made R angry, and he assaulted J by throwing a brick that hit J's head. In this case, the village chief of Singah Mulo immediately calmed the situation. It separated the two and attempted to resolve the case through familial means first, but there was no result. Therefore, it was resolved through the village customary court using deliberation/consensus by the *Siopat* institution of Singah Mulo village, which includes the *Penghulu, Jema Tue, Pegawe, and Saudere*. It is not finished here; party R again sued J for defamation. Still, upon reaching the police, the case was returned to the village again because the issue had been resolved previously, and the village's customary institution reconciled both parties again.¹²

Second, an assault also occurred in Kampung Marpunge, which is one of the villages in the Marpunge Raya settlement. The case of violence happened at the market in Marpunge village, which the community usually calls Pekan Marpunge. The incident occurred to one of the residents, A (32), and the victim was a man named AY (47), a meat seller coming to sell at the Pekan Marpunge. The case occurred because the meat seller brushed against A's car, causing scratches. Since AY refused to take responsibility, A, the car owner, resorted to violence by hitting AY, causing him to fall into a ditch by the roadside of the Marpunge market. Seeing the commotion, the village chief of Kampung Marpunge approached the residents and brought them to the village chief's office to resolve the matter according to customary law. The case was resolved through the village customary court.

Nowadays, customary criminal law regulates sanctions for perpetrators of physical violence, namely in the PERDES (*Reusam*) from the village of Marpunge Pintu Gayo No/Ist/ /Pg/2022. Regarding Population, Article 3 explains that if there is a fight and bleeding from the neck upwards, the perpetrator must pay a fine (*naik rayoh/ngaming*), cover the medical expenses, and make peace according to the agreement of both parties.¹³

Naik Rayoh means that a fine in the form of sacrificing one goat will be imposed if the injury caused by the perpetrator is from the neck upwards. In the Gayo customary law, the resolution of cases of assault or physical violence is called *Ngaming*. This means that the perpetrator who has injured their opponent must pay in the form of money or goods in a certain amount to the injured party as compensation for a complete set of clothing plus a chicken, a goat, or a buffalo, depending on the location

¹²Interview with Samsul Bahri, Headman/Head of Singah Mulo Village, on February 5, 2022.

¹³Village regulation (Reusam) Marpunge Pintu Gayo No/Ist/ /Pg/2022 Article 3 on Population.

of the injury on the body. A chicken is sufficient for the peace settlement for those injured in the hand or foot, a goat for those wounded in the body, and a buffalo for those injured in the head. The chicken, goat, or buffalo is slaughtered to be eaten together during peace. The blood of the injured person is replaced with the blood of the animal, by smearing and wetting the entire wounded body using the roots and leaves of the celala tree, the stem of the teguh tree, and the bebesi tree (which are types of wild plants used in the ceremony). This ceremony is called *pedamen* (peace) or *upacara menyalin* (ceremony of changing clothes and blood) of the sufferer.

The customary provisions and sanctions for physical violence or abuse discussed above specifically apply to the Marpunge Raya settlement and the villages within it, meaning that customary law provisions do not apply to other villages outside the Marpunge Raya settlement. Thus, the sanctions for perpetrators of physical violence range from the highest, which is compensated with one goat, to the lowest, one chicken. So, the author wants to examine the issue related to customary sanctions for perpetrators of physical violence in the Marpunge Raya settlement because the crime of assault has been regulated in Islamic Criminal Law but is not applied in that village, and there is a significant difference between the punishments or sanctions regulated in Islamic Law and Customary Law. The differences in the types of sanctions and their weights will affect the purpose of forming a law.

Even the customary law of the Marpunge Raya settlement, which regulates sanctions for perpetrators of physical violence, provides a significant opportunity for the community to commit acts of physical violence, especially for those with high incomes or strong economic status, to engage in such actions, with light and easily executable sanctions (punishments) ranging from the smallest, one chicken, to the largest, one goat.

Considering the above issues, the author is researching *ngaming* customary sanctions to resolve physical violence crimes in Marpunge Raya Settlement, Putri Betung district, Gayo Lues Regency.

B. Forms of physical violence in the Marpunge Raya settlement

It seems there is no text to translate. Please provide the text you'd like me to translate, and I'll be happy to help! Based on the observation results, the author found data on the number of physical violence crimes in the Marpunge Raya settlement from 2018 to 2022. The author collected the data from the Marpunge Raya settlement. The number of cases from the research results includes various forms of physical violence, and the number of cases can be seen in the table below:

No	Year of Report	Case	Age	Chronology
1.	2018	Physical violence	7/9	There has been an incident of physical violence by F against N due to a fight at school.
2.	2019	Physical violence	13/13	There has been an incident of physical violence by R against M because M won a football game and mocked R for losing. R got angry and hit M with a stick, a piece of a broken chair.
3.	2019	Physical violence	43/63	There has been a case of physical violence by R against J due to a disagreement that escalated into mockery and accusations, and the loss of emotional control in the conflict resulted in injuries.
4.	2022	Physical violence	32/47	There has been a case of physical violence involving A, and the victim is AY. This happened because one of them scratched the other's car, causing a dent.

From the table above, four cases have occurred in the field from 2018 to 2022. In these four years, four cases have been recorded, and the details of these cases are as follows:

1. In 2018, there was 1 (one) case of physical violence committed by a minor in the form of a fight between F and N. The fight between them started from a quarrel that escalated into mutual taunting, and F, angered by N's taunts, threw a stone at N, hitting him above the eye and causing a wound that bled. N was rushed to the nearest health center. N's parents were displeased with F's actions and reported the case to the village head (*penghulu*) of Singah Mulo. After bringing both parties together, a deliberation was held where F apologized to N, promising not to repeat the act, and fulfilled the customary punishment given to him, which was *ngaming*. Within 3 months, the punishment was completed by N's family, and the case was resolved peacefully.
2. In 2019, there were 2 cases, one involving R and M. The violent incident occurred because M won a football game and mocked R for losing. R got angry and hit M with a stick (a piece of a broken chair). M was injured on the head but did not bleed; however, he had a bump and bruise on his head. The school called both students' parents and suggested that the case be resolved amicably with an apology and treatment until the injury healed.
3. In 2019, there was also a case of physical violence due to a criminal act committed by R (43 years old) against J (63 years old) that occurred in Singah Mulo village, Putri Betung sub-district, Gayo Lues district, with the violence committed by R against J resulting in J being rushed to the nearest community health center. This happened because the two had a different opinion, where J said that R's family were descendants of *petube* (people who use black magic, witchcraft, and sorcery), which made R angry. He assaulted J by throwing a brick that hit J's head. In this case, the village chief of Singah Mulo immediately calmed the situation. It

separated the two and attempted to resolve the case through familial means first, but there was no result. Therefore, it was resolved through the village customary court, through deliberation/consensus by the *Siopat* institution of Singah Mulo village, which includes the *Penghulu, Jema Tue, Pegawe, and Saudere*. Not finished here, party R again sued J for defamation, but upon reaching the police, the case was returned to the village because the issue had already been resolved previously, and the village customary institution reconciled both parties again.¹⁴

4. In 2022, precisely during the holy month of Ramadan, a case of assault also occurred in Kampung Marpunge, which is one of the villages in the Marpunge Raya settlement. The case of violence happened at the market located in Kampung Marpunge, which the community usually refers to as *Pekan Marpunge*. The incident occurred to one of the residents, A (32), and the victim was a man named AY (47), a meat seller coming to sell at the *Pekan Marpunge*. The case occurred because the meat seller accidentally brushed against A's car, causing scratches. Since AY refused to take responsibility, A, the car owner, resorted to violence by hitting AY, causing him to fall into a ditch by the roadside of the *Marpunge* market. Seeing the commotion, the village chief of *Kampung Marpunge* approached the residents and took them to the village chief's office to resolve the matter through customary law. The case was resolved through the village customary court.

From the cases above, the author only took a sample from one of the villages in the Marpunge Raya settlement, namely Singah Mulo village.

C. Provisions of Ngaming Customary Sanctions in the Resolution of Physical Violence Criminal According to the Customary Law of the Marpunge Raya Settlement

In Customary Criminal Law, several rules must be followed to maintain balance in community life. Speaking of rules, if they are violated, there are provisions to retaliate against the actions, there are rules to be followed, and there are sanctions in their implementation if these rules have been violated and have disrupted the balance of society. In this case, customary criminal law itself is an event or act that disrupts the balance of society, causing a reaction from the community. Thus, the balance must be restored. Restoration must be carried out with fines or traditional ceremonies to restore balance.¹⁵ One of the actions considered very disturbing to the community is the act of physical violence/assault. The crime of physical violence is an act or deed/injury that causes wounds but does not result in the loss of someone's life. Regarding the definition of physical violence and the provisions for its sanctions in the customary law of Singah Mulo village, Marpunge Raya settlement, they are as follows:

¹⁴Interview with Samsul Bahri, Headman/Head of Singah Mulo Village, on February 5, 2022.

¹⁵Ismail, *Principles of Customary Law*; A. Hasjmy, *Adat Aceh Dalam Sejarah* (Jakarta: Beuna, 1982); T. Djuned, "Pengaruh Hukum Islam Terhadap Pembentukan Hukum Adat Aceh," in *Dinamika Sejarah Dan Globalisasi*, ed. Darni M.Daud (Banda Aceh: Syiah Kuala University Press, 2005).

1. The definition of physical violence crimes according to the Customary Law of Kampung Singah Mulo, Kemukiman Marpunge Raya

According to the customary law in the Marpunge Raya settlement, the definition of physical violence as a criminal act is explained by the mukim in an interview on November 11, 2022, as acts of violence such as assault, fighting, and injury committed by someone until it causes bruises, wounds, and bleeding from a person's body.¹⁶ Based on the definition of physical violence according to the interview results above, what is meant by physical violence, according to the customs in the Marpunge Raya settlement, is an act that causes wounds, bruises, and even bleeding from a person's body.

2. Traditional sanctions for perpetrators of physical violence in the Customary Law of Singah Mulo village. The settlement of Marpunge Raya. The sanctions imposed by customary law on acts of physical violence in the customary law of the Marpunge Raya settlement are as follows, as explained in interviews with important figures in the community. First, it was said by Mr. Mukim Marpunge Raya, who mentioned the sanctions for the perpetrators of physical violence above during an interview on November 11, 2022, which explained;

The punishment for perpetrators of physical violence in the Marpunge Raya Settlement is *Ngaming*, which means that if the physical violence occurs on the head and causes significant bleeding (the blood flows out), it is compensated with one goat. The bleeding wound is treated (*luke besalin*) until healed. If the bloodshed is minimal and does not flow, replacing it with a chicken is sufficient, and the bleeding wound (*luke besalin*) will be treated until healed. As for the handover and the process of handing over the animal, it depends on the agreement between the perpetrator and the victim, which is usually given a maximum period of 6 months from the deliberation decision, according to local customs. Meanwhile, actions that only cause pain or bruises but do not result in bleeding wounds are subject to a sanction of medical treatment only, with the cost of the treatment being borne by the perpetrator until recovery.¹⁷

Second, the village head (*Penghulu*) of Singah Mulo village also explained how the sanctions and the process of implementing/issuing sanctions against perpetrators of physical violence through his interview as follows: The head of Singah Mulo village on November 8, 2022, stated that:

The sanction for perpetrators of physical violence/abuse or fighting is *Ngaming*, which means that if someone/perpetrator commits acts of violence such as hitting, brawling, or abuse, resulting in injury. If the wound affects the head and causes blood to flow, the penalty is to atone for it with a goat, whereas if it affects other parts of the body, the penalty is a chicken

¹⁶Interview with Hasan Saleh, Head of Marpunge Raya Village, on November 11, 2022.

¹⁷Interview with Syamsuddin, Community Leader of Marpunge Raya Village, on November 11, 2022.

to atone for the head or other parts that cause blood but do not flow. The animal is shared in a communal meal (*kenuri naik rayoh*), which is attended by the parties involved, such as the perpetrator and the victim, as well as the village chief (*penghulu*), religious figure (*pegawe*), elders (*sudere*), and community leaders (*urang tue*), who offer prayers for the safety and well-being of the parties involved. The purpose of imposing this sanction is to prevent the act from being repeated. If it is only a bruise or a wound that does not bleed and only causes pain, then it is sufficient to treat it, and the perpetrator will bear the treatment costs. However, if the perpetrator repeats the act, sanctions will be imposed per the agreement reached in the previous deliberation.¹⁸

Third, it was also explained by Mr. *Pegawe*/Imem from Singah Mulo village, who also explained in his interview on November 9, 2022, that he said the following:

One goat is penalized for the part from the neck upwards, which is the head, if it bleeds a lot until it flows. If it bleeds but does not flow (only drips), then a penalty/fine of one chicken is imposed. However, if it is only a minor injury like a bruise, it is sufficient to bear the medical expenses.¹⁹

From the above, it can be seen that the customary sanction imposed on the perpetrator of the physical violence crime is in the form of "one goat and one chicken, and the wounds experienced by the victim due to the physical violence are treated until healed." If the perpetrator repeats the crime (recidivism), the sanction applied will be based on the previous peace agreement (the first peace agreement).

Based on the explanation above, it can be concluded that the *Ngaming* sanction is used as an alternative in handling cases of physical violence, where if the wound is on the head or from the neck upwards, a fine of one goat is imposed if the wound bleeds profusely (flows). The wound is treated until it heals. Wounds on the head that bleed but not much (only dripping) and on other parts of the body are subject to a penalty of one chicken and treatment until the wound heals. However, if it is only a wound or bruise that does not bleed, it is sufficient to treat the wound, and the perpetrator will bear the cost. And if the act is repeated, sanctions will be imposed as per the agreement reached in the previous negotiations between both parties.

D. Resolution and Basis of Customary Law for Acts of Physical Violence According to the Customary Law of Singah Mulo Village, Marpunge Raya District

The event for the administration/resolution of sanctions against perpetrators of physical violence, as previously explained, is carried out with a *kenduri (naik rayoh)* communal meal, where the involved parties are present, such as the perpetrator,

¹⁸Interview with Haswadi, a resident of Singah Mulo Village, on November 8, 2022; Interview with Khairul Anwar, a resident of Singah Mulo Village, on November 8, 2022; Interview with Rosdiana, a resident of Singah Mulo Village, on November 8, 2022

¹⁹Interview with Hasan Basri, a religious leader from Singah Mulo Village, on November 9, 2022.

victim, residents, the village chief (*penghulu*), religious figure (*pegawe*), elders (*sudere*), and community leaders (*urang tue*), referred to as the *Jema Opat* customary institution. The implementation is carried out by holding a prayer asking for safety and goodness, and that the act does not happen again for both the perpetrator and victim, who are reconciled with the broader community.

Regarding the deadline for the payment of fines or compensation from the perpetrator to the victim, it depends on the agreement reached during the deliberation between the victim and the perpetrator, which is generally better if done sooner. Meanwhile, for physical violence that causes pain, such as broken bones, or physical violence that does not cause bleeding, the penalty imposed on the perpetrator is only to pay all medical expenses, with no other fines or compensation.

In the village of Singah Mulo, the punishment or sanction for perpetrators of physical violence, which often occurs everywhere, is governed by only three customary rules as previously implemented: *first*, *Ngaming*, where only wounds affecting the neck and above that cause a significant amount of bleeding (flowing) result in the imposition of a goat and the cost of medical treatment until recovery. *Second*, the sanction is in the form of a chicken, which is imposed if the injury occurs on the head and face, causing bleeding but only a little (not flowing). The cost of treatment until healed, and *third*, the violence affects other parts of the body, objects explicitly other than the head and face.

Regarding the above matter, which serves as the legal basis for the imposition of sanctions or fines as applied in the Marpunge Raya Settlement in general and Singah Mulo Village in particular, the Marpunge Raya settlement explained in an interview on November 11, 2022, that:

The fine of one goat and one chicken imposed on the perpetrator of physical violence above refers to customs that have existed since the time of our ancestors and have been passed down through generations until now. However, in the past, the most significant penalty was for four-legged animals such as goats, cows, buffalo, or oxen. However, over time, and with many people in the past being unable to meet the requirement, if the largest animal was a cow, ox, or buffalo, it was reduced to a goat, which was not too difficult to obtain. As a result, it has been passed down to the present day that the largest animal in that penalty is now a goat.²⁰

Next, the above matter was also mentioned by the *Penghulu* of Singah Mulo, namely;

The sanctions currently in effect or being applied in this village (Singah Mulo) are regulations derived from the ancient Gayo customary law, which essentially exist but are unwritten. Until now, I (the village head) in the village of Singah Mulo, along with the officials, elders, and the entire village apparatus and community here (in the town of Singah Mulo), still adhere to and uphold the customary law that has been in effect since ancient times.²¹

²⁰Interview with Syamsuddin, Community Leader of Marpunge Raya Village, on November 11, 2022.

²¹Interview with Samsul Bahri, Headman/Head of Singah Mulo Village, on November 8, 2022.

This was also stated by the village head of Singah Mulo in an interview on November 9, 2022, as follows;

The sanctions we have been using or applying to address physical violence in the village of Singah Mulo are the *Ngaming* sanctions, which are customary laws that have existed since ancient times and have been passed down through generations until now. Through deliberation and consensus, we still agree and consent to use these sanctions. We resolve this if the parties involved are willing to be reconciled and accept the agreed-upon sanctions. If the parties involved do not wish to resolve the matter peacefully, we will hand over the case to the authorities (POLSEK Putri Betung sub-district).²²

Based on the explanations from several customary leaders mentioned above, it can be understood that the basis or principle for establishing customary law applied in Kampung Singah Mulo, which regulates sanctions for physical violence crimes, existed and was used in Gayo customary law in the past. Its enforcement has been passed down through generations until now. There is a Gayo proverb that says, "*ken kul le enti galak, ken kucak ke enti geli*," which means the big one does not happy (when the victim is compensated with something big like a cow or buffalo, they are forbidden from being happy or joyful), and for the small one, do not hate (when the victim is compensated with something small like a chicken or similar, they are forbidden from feeling hate or anger and resentment). This led to a mutual agreement that a wound that bleeds profusely from the head is compensated with one goat, and a wound on the head that bleeds but does not flow or only drips is compensated with one chicken. The difference is that the earlier Gayo customary law regulating sanctions for physical violence was applied in an unwritten (uncodified) manner.

The above sanction is applied if both parties wish to resolve the case calmly, that is, through peaceful means, and both parties are willing to pay the fine and carry out the sanctions as applied above. However, suppose the disputing parties do not agree to be reconciled or resolved in the village with the existing customary sanctions. In that case, the disputing parties will be handed over to the authorities, namely the police precinct that handles the area.

E. Review of Islamic Criminal Law on Customary Criminal Sanction Provisions for Perpetrators of Physical Violence in the Customary Law of Kemukiman Raya

1. Review of Islamic Criminal Law on Perpetrators of Physical Violence Crimes

In Islamic Criminal Law, a crime (*delict, jarimah*) is defined as an action prohibited by Sharia. According to Abdul Qadir Awdah, the definition of *jinayah* is a term for actions prohibited by syara', whether these actions concern the soul, property, or others. Therefore, every crime committed will be sanctioned/punished according to

²²Interview with Hasan Basri, a religious leader from Singah Mulo Village, on November 9, 2022.

the act. In Islamic Criminal Law, crimes viewed from the perspective of their punishments are divided into three parts: *hudud*, *qishash*, *diyat*, and *ta'zir*.²³

In Islamic Criminal Law, the punishment for perpetrators of assault/physical violence is the principal punishment, which is *qishash*. It is defined as punishing the convicted person in the same way as the crime committed against the victim, life for life and bodily parts for bodily parts.²⁴ *Qishash* is a form of punishment for perpetrators of crimes against life and body parts that are committed intentionally. In contrast, *diyat* is a punishment imposed on the perpetrator of a crime with the same object (life and body parts) but done unintentionally.²⁵ However, if the victim's family forgives the perpetrator's actions, the *Qishash* punishment can be reduced to a *diyat* fine. The *qishash/diyat* punishment for perpetrators of physical violence/assault in Islamic Criminal Law is by the words of Allah SWT in Surah al-Maidah verse 45 as follows :

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ
بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ
الظَّالِمُونَ

Meaning: We have decreed for them (the Children of Israel) in it (the Torah) that life is (punished) with a life, an eye with an eye, a nose with a nose, an ear with an ear, a tooth with a tooth, and wounds (also) have retribution (equal punishment). Whoever forgives (their right of qisas) then becomes an expiation for them. Whoever does not judge by what Allah has revealed is a wrongdoer.

The book of *al-Shahihain* about the story of the broken incisor of Ar-Rubayyi', the Messenger of Allah, peace be upon him, said, "According to the Book of Allah, *qishash* must be carried out."²⁶ It means that a person is subjected to *qishash* punishment for taking another person's life, and it is also applied for damaging/removing body parts and causing wounds to another person's body. All matters that necessitate the implementation of *qishash* due to the damage to body parts or causing wounds are those that make qisas obligatory for the person who takes

²³Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (England: Oneworld Publications, 2008); Abdul Rahman Bin Awang, "Diyah (Blood Money) as Substitution to Capital Punishment: An Attempt towards Harmonisation between Shari'ah and Malaysian Penal Code," *Australian Journal of Basic and Applied Sciences* 6, no. 11 (2012); Khamami Zada, "Politik Pemberlakuan Syariat Islam Di Aceh Dan Kelantan (1993-2014)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 10, no. 1 (2015); Jasser Auda, *Maqasid Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. I (London: IIIT, 2007).

²⁴Abd al-Qadir 'Awdah, *Al-Tasyri' Al-Jina'ly Al-Islamiy: Muqaranah Bi Al-Qanun Al-Wadh'ly*, I (Bayrūt: Muassasah al-Risālah, 1997).

²⁵'Awdah.

²⁶Abu 'Abd Allah bin Muhammad bin Isma'il Al-Bukhari, *Sahih Al-Bukhari, Juz IV* (Beirut: Dar Sa'ab, n.d.); Imām Muslim al-Naysabūrīy, "Ṣaḥīḥ Muslim," n.d., 1324–1324.

another person's life. If *qishash* against the above body parts is forgiven and the punishment is changed to *diyat* (compensation), the Prophet's hadith states as follows:

Meaning: From Abu Bakar Ibn Muhammad Ibn Amar Ibn Hazem, from his father, from his grandfather Radliyallaahu 'anhu that the Prophet Shallallaahu 'alaihi wa Sallam once sent a letter to the people of Yemen and in the hadith it is mentioned 'That whoever intentionally kills a believer, he must be killed, except if the heirs of the deceased are willing; the blood money (*diyat*) for killing a soul is one hundred camels; if the nose is completely cut off, there is a *diyat* for it; two eyes have a *diyat*; the tongue has a *diyat*; two lips have a *diya*; the genitals have a *diyat*; two testicles have a *diyat*; the backbone has a *diyat*; one leg has half a *diyat*; the crown of the head has one-third of a *diyat*; a deep wound has one-third of a *diyat*; a blow that dislocates a bone has fifteen camels as *diyat*; each finger of the hands and feet has ten camels as *diyat*; a tooth has five camels as *diyat*; a wound that exposes the bone has five camels as *diya*; a man who is killed for killing a woman, for someone who usually uses gold, can pay one thousand dinars.'"Narrated by Abu Dawood in mursal hadiths, Nasa'i, Ibn Khuzaimah, Ibn al-Jarud, Ibn Hibban, and Ahmad. They disagreed about the authenticity of the hadith."

Based on the above hadith, it can be understood that if the victim or the victim's guardian forgives the perpetrator of the assault, the *qishash* punishment is annulled (the *qishash* punishment is not applied) and replaced with *diyat*. Regarding the punishment for acts of physical violence, the objects are the head and face, which in Islamic law are called *syajaj*. *Syajaj* suffers injuries to the face and head. The injuries varied from mild to severe, but in the verses and hadiths mentioned above, the author did not find details about the punishment for *syajaj*. However, the author found the punishment for *syajaj* according to the opinion of Imam Abu Hanifah. Imam Abu Hanifah classified physical violence crimes into 11 (eleven) types, one of which is *al-Dami'ah*, which is a wound that bleeds but does not produce blood, and *al-Damiyah*, which is a bleeding wound. Both types of *syajaj* fall under the category of *syajaj mudhihah* (wounds that penetrate the skin protecting the bone, exposing the bone even if only with the tip of a needle). The punishment for *syajaj* for physical violence is qisas or *diyat*. The eleven types of qisas punishments for a *syajaj* proposed by Imam Abu Hanifah are only one type of qisas punishment that the *fuqaha'* (jurist) agree to impose *qishash* on, namely the *mudhihah* type.²⁷

The punishment of *diyat* imposed on *Syajaj* for the crime of physical violence is *diyat ghair al-kamilah*, or called *irsy* (compensation). The scholars agree that for the types of *Syajaj* under *mudhihah*, only the law applies, meaning the amount of compensation is determined by the judge, including the type of *Syajaj al-Dami'ah*, which is a wound that bleeds but does not flow, and *Syajaj al-Damiyah*, which is bleeding from the wound.

²⁷Al-Bukhari, *Sahih Al-Bukhari, Juz IV*; Imām Muslim al-Naysabūrīy, "Ṣaḥīḥ Muslim."

F. An Islamic Criminal Law Review on the Provisions of Customary Criminal Sanctions for Perpetrators of Physical Violence in the Customary Law of Kemukiman Raya

In the Singah Mulo Customary Law, the penalty for physical violence is not *qishah* but only a fine (*diyath*), which is a head injury to the perpetrator of physical violence, causing bleeding for a goat and no bleeding for a chicken. However, only a head wound that drips is acceptable for a chicken. Then, the perpetrator must also pay all medical expenses for the injuries suffered by the victim until the victim is healed. Thus, it can be said that the customary sanctions in Kampung Singah Mulo, which regulate acts of physical violence occurring in the head, are by Islamic criminal law because the customs of Kampung Singah Mulo only restrict two types of head injuries: those that bleed and those that do not bleed (the blood drips). The sanctions, both in terms of the amount and type of *diyath*, have been agreed upon by the community of Kampung Singah Mulo and are still in effect.

In Islamic law, a head wound that bleeds is called *al-damiyah*, and a head wound that does not bleed is called *al-damiyah*. These two types of head wounds fall under the category of *syajaj* under *mudhihah*, and the scholars have agreed that for the kind of *syajaj* under *mudhihah*, only the *hukumah* applies, which is compensation whose amount is determined by the judge's decision. In Islamic Criminal Law, punishment using objects other than the head and face is called *al-jirah*. *Al-jirah* is an injury to body parts other than the head and face. The main sentence for *al-jirah* for physical violence crimes is *qishash*. If *qishash* cannot be carried out for the crime of *al-jirah* physical violence because it is impossible to exact the same retaliation as the perpetrator did to the victim, then what must be done is *irisy* and punishment. *Al-jirah* sometimes occurs as a minor wound and sometimes as a non-minor wound. For *al-ja'ifah* wound, the *irisy* is one-third of the *diyath*, and according to the hadith of Amr Ibn Hazm, "There is one-third of the *diyath* for a *ja'ifah* wound." And for non-*ja'ifah* wounds, one-third of the *diyath* is given as a legal penalty (compensation for property determined by the judge).²⁸

In this discussion, the author focuses specifically on how sanctions or punishments for acts of physical violence are applied according to customary law in the village of Singah Mulo, Marpunge Raya settlement. The customary law of Kampung Singah Mulo that regulates acts of physical violence with objects other than the head and face, whether the physical violence causes bleeding wounds, fractures, or other types of pain, does not impose any sanctions other than requiring the perpetrator to cover the medical expenses of the victim's wounds until they heal. Thus, the customary law in Kampung Singah Mulo regarding sanctions for physical violence with objects other than the head and face is not governed by Islamic criminal law if the injury is classified as a *ja'ifah* wound. However, injuries classified as non-*ja'ifah* wounds can still be considered by Islamic criminal law because the punishment is *hukmah*

²⁸Wahbah al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, IV, vol. VIII (Damaskus: Dar al-Fikr, 2014).

(compensation determined by the judge). But in the customary law of Kampung Singah Mulo, there is no distinction between *jā'ifah* and non-*ja'ifah* physical violence. Therefore, the author concludes that the customary sanctions for physical violence with objects other than the head and face are not prescribed by Islamic criminal law.

So, the customary law in Kampung Singah Mulo regarding physical violence with objects other than the head and face is not governed by Islamic criminal law if the injury is classified as a minor injury. In contrast, injuries classified as non-minor can still be considered by Islamic criminal law because the punishment is a compensation (*hukumah*) determined by the judge. However, in the customs of Kampung Singah Mulo, there is no distinction between minor and non-minor physical violence. Therefore, the author concludes that the customary sanctions regarding physical violence with objects other than the head and face are not part of Islamic criminal law.

G. Conclusion

The sanction for physical violence in the customary law of Singah Mulo village is the *Ngaming* customary sanction, which states that if physical violence occurs on the head and causes a significant amount of bleeding (the blood flows continuously), it is compensated with one goat and the bleeding wound is treated (*luke besalin*) until healed. If the bloodshed is minimal and does not flow, replacing it with a chicken is sufficient, and the bleeding wound is treated (*luke besalin*) until healed. As for the handover and the process of handing over the animal, it depends on the agreement between the perpetrator and the victim, which is usually given a maximum period according to local customs, namely 6 months from the decision of the deliberation. Meanwhile, actions that only cause pain or bruises but do not result in bleeding wounds are subject to a sanction of medical treatment only, with the cost of the treatment being borne by the perpetrator until recovery.

Whereas actions that only cause pain or bruising but do not result in bleeding wounds, the punishment for such actions is only medical treatment, with the costs borne by the perpetrator until recovery. The punishment for the perpetrators of physical violence mentioned above has meanings and purposes similar to those in Islamic Criminal Law and customary law in Singah Mulo village, Marpunge Raya settlement, which includes fines or head-related punishments causing significant bleeding. The sanctions against the perpetrators of physical violence mentioned above have the same intent and purpose as those in Islamic Criminal Law and customary law in Singah Mulo village, Marpunge Raya settlement, namely sanctions or fines that affect the head and cause significant bleeding. In Islamic Criminal Law, the punishment is the same for head injuries that cause bleeding, called *al-Damiyah*, and head injuries that do not cause bleeding, with the punishment being *hukumah*. Physical violence on objects other than the head and face is only punished by paying medical expenses until recovery, and Islamic Criminal Law does not regulate this because violence on objects other than the head and face is divided into two categories, namely, *ja'ifah* wounds and

non-*ja'ifah* wounds. The punishment for *ja'ifah* wounds is one-third of the *diyat*, while the punishment for non-*ja'ifah* wounds is *hukumah*.

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- Hasan Basri, a religious leader from Singah Mulo Village, on November 9, 2022.
- Hasan Saleh, Head of Marpunge Raya Village, on November 11, 2022.
- Haswadi, a resident of Singah Mulo Village, on November 8, 2022.
- Khairul Anwar, a resident of Singah Mulo Village, on November 8, 2022

Rosdiana, a resident of Singah Mulo Village, on November 8, 2022
Samsul Bahri, Headman/Head of Singah Mulo Village, on February 5, 2022.
Syamsuddin, Community Leader of Marpunge Raya Village, on November 11, 2022.