THE CONTINUITY AND CHANGE OF DIYAT AS AN ALTERNATIVE TO ISLAMIC CRIMINAL SANCTIONS IN UNDHANG-UNDHANG BANTÉN DURING THE 17TH – 18TH CENTURIES

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Abstract
This research emphasizes the shift from the archaic trend of applying corporal punishment to other types of humane punishment in pre-modern periods. This phenomenon occurred not only in the Western world but also in the Eastern and Islamic worlds. One of them was the criminal law contained in the Banten Law (UUB), which was implemented in the Banten sultanate between the 18th and 19th centuries. Islamic criminal law in the form of qisas and hudud sanctions was no longer applied in Banten, but was replaced with more humane fines or diyat sanctions. Was the criminal law reform in the sultanate of Banten influenced by developments in Western law? One of the explanations given in the UUB was that the sultan of Banten employed the view of the Maliki school of thought, which allowed the ruler the right to impose takzir on criminal cases that had been resolved by Islamic law sanctions. The legal case for using diyat sanctions instead of qisas and hudud punishments was more substantial if takzir punishment was employed. This study used data in the form of UUB manuscript (single text) with the code number LOr 5598. The legal texts in UUB were analyzed using a legal social history approach. This study concludes that the application of law in UUB has dogmatic reasons for Islamic criminal law and the interests of siyasa syar'yah.

Keywords: Banten Law; Diyat; Banten Sultanate

Abstrak

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A. INTRODUCTION

Islamic criminal law had been practiced in the archipelago (Nusantara) since the time of the Islamic sultanates. This indication was contained in Undhang-Undhang Bantën (UUB) during the 17th – 18th centuries, which regulated a variety of criminal penalties in the form of diyat fines. The law governed by the UUB was distinct from other Islamic sultanate laws in the archipelago, such as the Melacca Law (UUM). According to the Malacca sultanate’s legal book, edited by Liew Yock Fang, the sources of criminal law in the Malacca sultanate in the 15th and 16th centuries were Islamic law and customary law. Criminal sanctions in UUM included the amputation of hands, feet, lips, intimate organs, body parts, sawing, and the trampling of bodies by elephants, in addition to imprisonment.¹

The threat of punishment regulated in the UUM was greatly different from the material content of the UUB, which completely abolished the criminal sanction of bodily harm. Sultan Abun Nasr Abdul Kahar or Sultan Haji (1672-1687), who led after the golden era of Banten in the era of Sultan Abul Mafahir and Sultan Tirtayasa, pioneered the abolition of criminal sanctions for bodily harm and replaced them with fines. The three Banten sultans underwent a transition period from Hindu-Shiwa to Islam, which was marked by the incorporation of the title of sultan in front of their names. After receiving recognition from the Ottoman Empire, the UUB was officially applied as the constitution of the Islamic sultanate of Banten.

There were several reasons why UUB ought to be incorporated into a constitution or written law. First, in the introduction of the UUB text, it was stated repeatedly that the purpose of the promulgation of UUB was to create and control conditions of security and order within the empire. Second, there was a detailed systematic writing of legal material in the UUB text. Third, general law terms such as kinaun (kanun) and kapidana (criminal) appeared in the UUB text, as well as the term the power to impose criminal sanctions, known as "bumi" (state).

Ayang Utriza Yakin expressed a similar viewpoint in his article “Undhang-Undhang Bantine: A 17th to 18th century Legal Compilation of the Qadi Court of the Sultanate of Bantine”2. Ayang Utriza, without mentioning the UUB Material, explained that the function of the judge/qadi as a mouthpiece for laws had already been practiced during the Banten sultanate era when the qadi with the title Kiyahi Pĕqih Najmuddin did not do ijtihad but only implemented the UUB. This opinion corroborated his previous findings, which he published in an article titled “The Register of the Qadi Court “Kiyahi Pĕqih Najmuddin” of the Sultanate of Banten, 1754-1756 CE” (2015: 365-388). Ayang Utriza criticized Liaw Yock Fang (1976: 178) who argued that the word "kanun" in Malay sultanate laws was only interpreted as written customary law. He criticized Eastern scientists who agreed with Jean Gaudement (1996: 3-16) that all customary laws written before the 7th century lacked a law or constitution. He agreed with Jean-Louis Gazzaniga (1997: 71-80) that written customary law could be judged as law if it was planned, systematic, and comprehensive. UUB was a legal document that considered codification thinking that was systematic, orderly, and planned. As a result, UUB, according to Ayang Utriza, was a type of constitution and law.

2 Yakin.
UUB was properly assessed as a legal-formal law in its time, and it had even become an important document in the history of Islamic criminal law reform, particularly in the archipelago. UUB governed a wide range of fines as an alternative to *qisas* and *hudud* sanctions in Islamic law and to avoid criminal deprivation of liberty (non-custodial sanctions) in Western law. According to a VOC employee's report on 1st December 1671 (Shrieke), *hudud* punishment was strictly enforced before Sultan Haji’s leadership. Shrieke’s viewpoint on the implementation of Islamic law in Banten was later cited by historians such as De Graaf (1970), Milner (1983), Watson Andaya (1992), and Anthonie Reid (1993). Reid went on to say that the sultanate of Banten's Islamic law was based on the Shafi’i school, whose influence could be seen in the fact that *hudud* punishment was so strict and rigid, specifically in the implementation of the law of cutting off hands (*de verminking en amputatie van ledematen*). This condition contrasted with the punishment for criminals during Sultan Haji's reign. Many *hudud* punishments were replaced by fines during Sultan's reign, and even though the *hudud* punishment continued to be used, it was kept confidential. According to UUB, *hudud* punishment must be handed over to the Queen. This information was reinforced by the report of an English trader named Edmund Scott.

It appeared as if UUB was designed for Sultan Haji to distance Banten from Islam and turned to the West after he successfully seized power from his father with the help of the West.\(^3\) It happened because the adage of Western law for tuitously applied a similar law which stated “*Quion potest solver poenam in aere, luat in corpora*”, which means that “whoever is unable to pay must pay off with bodily suffering”, which is the imprisonment and physical sanctions as the substitute of fine. The other adage also stated, “*Quaelibet poena corporalis, quanvis minima, majorest quaelibet poena pecuniaria*”, which means that "however light a corporal punishment is, it will be heavier than a fine".\(^4\) What is important to understand about the UUB is that there was no prison sentence, only the banishment outside the Banten area. The remaining part of UUB punishments only inflicted a deterrent effect on criminals by imposing fines in the form of specific objects or currency.

In Islamic law, the penalty for paying a fine in the form of a certain object or a type of means of payment is called a *diyat*. The fine criminal sanction is a substitute sanction (al-*uqubat al-badaliyat*) for *hudud* sanctions, which are used when there are obstacles to

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\(^3\) Heriyantri Ongkodharma Untoro, *Kebesaran Dan Tragedi Kota Banten* (Jakarta: Yayasan Kota Kita, 2006).
implementing them or reasons that make it fail to apply (saqth), but the perpetrators of the crime are still responsible for paying a fine because they do not obtain forgiveness. The value of perfect diyat (diyat kamilat) is worth the price of 100 cows, whereas the fine criminal sanction in which its value is less than that stipulation (diyat naqisat) is called arsy. The scholars (ulama) typically generalized arsy by only mentioning diyat. Whereas, they divided arsy into two categories: (1) arsy mentioned in Shari'a (arsy miqdar), such as a fine that is equivalent to an injured limb, and (2) arsy not mentioned in Shari'a (arsy ghair miqdar), whose value is determined by the judge (arsy hukumat).

The types of fines (diyat and arsy) were not widely understood by historians of Islamic law, except for the main criminal law which was called hudud. Therefore, this study focuses on the types of fines contained in the UUB, which were better understood as customary criminal law. UUB was a deed of codification of Islamic criminal law that put forward the principle of al-syafaat fi al-hudud, where even though there were demands for upholding hudud in Islamic sharia law, in one of the hadiths of the Prophet Muhammad, he stated: “Ta’afau al-hudud bainakum fa ma balaghani min had faqadwajaba” which means "give forgiveness in hudud issues among you because something that has reached me regarding hudud becomes mandatory" (HR. Abu Dawud, Nasai dan al-Hakim). This hadith was used by Sayyid Sabiq to argue that mitigating hudud punishment is permissible as long as it is not reported to the highest authority. In the era of the Banten Sultanate, the UUB mentioned that "hudud punishment must be handed over to the Queen," while fines were handed over to their subordinates, such as Pakih Najmuddin, who was in charge of religion, and Prince Dipaningrat, who was in charge of customs.

Thus, the legal issue in this study is the continuity and change of the diyat, which was employed in the 17th century AD in the form of UUB as a deed of codification of Islamic criminal law during the Banten Sultanate. The objective of this study is to examine the various types of fines in the UUB as a form of Islamic criminal law reform that was enforced in a way of restorative justice.

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B. DISCUSSION

UUB as Deed of Codification of Islamic Law of the Sultanate of Banten

UUB is still available in the Snouck Hurgronje Collection, Leiden University Library, the Netherlands, as a manuscript with the code LOr 5598. Pigeaud (1968 II: 327) identified this text as a law book in several parts for the first time. The first section includes a law codification deed that was binding on all city residents, from Sultan's family to city residents and slaves. There were differences in the levels of fines and penalties imposed between elements of society in the text of this UUB, and each type of fine was also mentioned in this manuscript. Another section of the manuscript with the code LOr 5598 contains the Lampung regulations for peace and order, which were based on an agreement between the Sultanate and the VOC. Pigeaud (1968 II: 328) believed that the text Cod LOr 5598 was a "handbook" for the sultans' state administration. Meanwhile, Martin van Bruinessen (1995: 171-2) considered MS Cod LOr 5598 as an indicator of the use of the code of law in a similar form to the UUM and laws of other Malay countries.

The UUB contains a summary of laws enacted from the reign of Sultan Abun Nasr Abdul Kahhar Sultan Haji (1672-1687) to the reigns of Sultan Abulfathi Muhammad Shifa Zainul Arifin (1733-1747). These guidelines can be found in one of the paragraphs of the Banten Law, which states:

“Pingeting kang undang2 kanjeng Sultan Marhum Sultan Haji Abu al-Nashr Abdul Qahar dumateng ingkang putra kanjeng Sultan Marhum Sultan Abul Mahasin Muhammad Zainul Abidin maka dumateng ing Kanjeng Sultan Abdul Fatah Muhammad Syifa’ Zainul Arifin….” (UUB: 79)

UUB was created to meet the growing needs of the Banten sultanate's population, as well as the complexities of its social problems. The sultan of Banten recorded the number of residents living in Surosowan in 1694, and it was reported that there were approximately 31,848 people of various ethnic groups living in the city.7

Material Law in UUB

UUB material law was made up of 5 (five) legal regulations: special criminal acts, general criminal acts, customs law, slavery law, and agrarian law.

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Special Criminal Acts

Special criminal acts mentioned in the UUB were actions that were disrespected by the sultan and officials because they disrupted the comfort, order, security, and honor of the sultan's government, such as fighting, hate speech, and so on. UUB frequently includes articles prohibiting fighting and other specific criminal acts. Four articles in the UUB prohibit fights that directly disturb the comfort of royal officials (UUB: 1-3). Then, in the middle of the UUB, two articles reiterate the legal threat of fighting that can disrupt the peace of the village and sub-village levels, which are referred to as "pambekel" (UUB: 20-23). In addition to fighting, the UUB also regulates the following types of actions that can be classified as disturbing public order: First, people from the ordinary community group who ride horses recklessly in the square (UUB: 5 and 28); Second, people from the ordinary community group who carry keris (and other sharp weapons) - except lebai who have conducted pilgrimage, Keling people, Gujarati people, English people, French people, Dutch people, Chinese people, Malay people, Makassar people. In addition, this social group of the ordinary community can be considered as disturbing public order if they take out keris and other sharp weapons as well as other firearms ammunition from within its framework (UUB: 6, 7, 8); Third, men from the ordinary community group who drag women in public (UUB: 7); Fourth, ordinary men and women from groups other than noble families who speak harshly in public (UUB: 7-12); Fifth, anyone from any group who ignores or fails to respond to the commotion and riots in the Surosowan area (UUB: 7-12). (UUB: 12-14).

UUB also includes events that can jeopardize security, such as fire and tigers entering the village. Danger signs were prepared for the community to be watchful in dangerous situations, such as the beating of the drum (bedug) in succession as a sign of a fire and the beating of the musical instrument Bende Si Tenda sabanging Sri Manganti as a sign that a tiger has entered the village (UUB: 15). The UUB also stipulates formal provisions for dealing with rumbles and riots that threaten public order, such as: (a) everyone who directly witnesses the commotion and riots must take part in dealing with them; (b) Nayaga and Punggawa who are close to the incident must leave their post of duty wearing full uniform; (c) Ministers and princes remain in their posts in a ready position in the escort of their subordinates to await orders from the sultan; and (d) bodyguards must accompany and guard the ministers, princes, nayaga, and their immediate superiors (UUB: 12-14).
These regulations had been in place since Sultan Haji's reign as a preventive measure to create stability, security, order, and defense of the empire. According to the UUB, if there was a war one day, the nayaga and punggawa were required to be present at the palace and beat the Gongs and Kendang as a sign of a war attack. Similarly, the nayaga, courtiers, and ministers who lived in the Tepis Wiring area were required to gather in the square. The bodyguards had to approach and accompany each of their superiors. If they did not appear immediately, they and their families were arrested on suspicion of being defectors.

**General Criminal Acts**

UUB distinguished between special types of criminal acts, such as actions that the sultan and nobles despised, and general criminal acts that caused massive civil disorder. If special criminal acts were described in a series of locations that denoted elite areas, such as the paseban of the noble families, then general crimes were likely to be applied to crimes committed in public places. The potential for crime in public places was enormous, such as in the Karangantu area, which De Houtman envisioned as a port as well as Java's second largest market after Sunda Kelapa Harbor.

In order to guarantee security and order in public areas, Sultan Haji issued a law threatening acts that were classified as general crimes, such as: (a) seizing other people's ships (UUB: 35-36); (b) stealing other people's things (UUB: 36); (c) stealing, seizing, controlling other people's goods and slaves (UUB: 45-46); (d) killing other people (UUB: 39); (e) committing adultery and homosexual relations (UUB: 40); and (f) using opium and tobacco (UUB: 42).

**Custom Law**

UUB regulated customs law because the Sultanate of Banten was a maritime-style kingdom that focused on trade and shipping. Banten had played an important role in the western region since the 15th century AD, after Malacca fell into the hands of the Portuguese, resulting in the transfer of some trade from the Malacca Strait to the Sunda Strait. Since then, Banten's north coast had become an international maritime route, where the Karangantu port served as a hub. Many Chinese ships anchored in Banten to transport traders and trade commodities, as well as immigrants seeking a better life on the Indonesian island of Java. In 1614, there were four Chinese ships in Banten, each weighing 300 tons. According to J.P. Coen’s records, six Chinese ships transported goods
worth 300,000 riyals. (According to a Dutch source, between 8 and 10 Chinese ships with a maximum carrying capacity of 50 tons entered Banten each year. According to another report, 5-8 Chinese ships with tonnages of up to 100 tons arrived every year. Meanwhile, French sailors reported 9-10 large ships, while British sources reported 3-6 Chinese ships with tonnages of up to 300 tons. According to J.P. Coen (1614), no less than six Chinese ships arrived in Banten each year, bringing a cargo worth 300,000 riyals.

In addition to China, Indian traders played an important role in enlivening the port of Banten by bringing clothing materials to be exchanged for pepper in Banten, even though the volume of transport by Indian traders was less than that of Chinese traders. As an example, in 1598, up to 18,000 sacks of pepper were loaded onto 5 Chinese ships, whereas in the same year, Indian traders transported 3,000 sacks and the VOC had no more than 9,000 sacks. Besides Asia, European traders such as the Portuguese, British, and Dutch sent four ships to Banten each year, each weighing about 40 tons and carrying spices and sandalwood. On the other hand, they sold woven fabrics of higher quality than those brought by the Dutch.

This situation prompted the Sultan of Banten to enact customs regulations that everyone passing through the Banten maritime area must follow. The maritime boundaries of the Banten Sultanate were explained in UUB as follows: (a) the western part was located in Caringin, and (b) the eastern part was located at the mouth of the Cisadane River (UUB: 17). Foreign ships visiting Banten had to obtain permission from the Syahbandar, who was held by a nobleman named Prince Arya Dipaningrat. He was an official who received a direct mandate from the Sultan and was given Sultan's stamp or seal (UUB: 18).

Every ship leaving and entering Banten from the port must first pass through the tolhuis, or toll gate, which was the gate for goods inspection and tax collection. If a person did not comply with these provisions, whether for the purpose of trading, sailing, or visiting within or outside Banten, he was declared to have violated customs provisions (UUB: 18-20). Even though Sultan Haji and the VOC had signed an agreement on April 17, there were rules for anyone planning to visit Speelwijk Fort in Pamarican Village. People must have permission from Prince Arya Dipaningrat. Similarly, customs

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10 Roelofsz.
officials had to inspect letters sent from and to VOC Inspectors based in Fort Speelwijk. In other words, parties who violated this rule were declared to have violated customs regulations, and the ships and all their contents were confiscated (UUB: 20).

**Slavery Law**

The practice of buying and selling slaves, as well as slavery, was legalized in the Banten area because some people needed unskilled labor. Meanwhile, labor was in short supply at the time. Slaves were not only treated as private property to serve their masters during the Banten Sultanate era but they were also traded and rented out. Reid, who visited Banten, stated that a slave's daily wage was 1,000 cash or the equivalent of 15 bushels of rice.\(^\text{11}\)

The slaves' wages or earnings did not fully belong to them, and some were handed back to their masters. According to JC. Van Leur, employers in Banten were very dependent on slaves who acted as money makers because the slaves provided a living for their masters.\(^\text{12}\) Reid - quoting Scott - stated that the wealth of the Banten elite was entirely dependent on slaves. Thus, if these slaves were killed, the elite would become beggars.

This situation resulted in frequent slavery disputes between slaves and masters, employers and other parties, and employer-slave-other party conflicts. The Banten Government had enacted regulations concerning slavery disputes, including (a) protecting slaves who fled from their masters for any reason (UUB: 2-3); (b) protecting a slave who claimed to have obtained his right to freedom from his employer (UUB: 4); (c) trading and renting the services of slaves who have fled from their masters (UUB: 28-30); and (d) being responsible for slaves' debt (UUB: 31-33).

**Agrarian Law**

The sultan owned all of Banten's land, as implied by the phrase "earth law" (UUB: 29). Residents of Banten who lived and worked on the land were essentially people who had obtained permission from the Sultan to live and work. Because all land in the Banten region was essentially owned by the sultan, people must first seek permission from the sultan before using the land for plantations or rice fields. Clearing land without Sultan's permission might result in sanctions such as collecting 5 pikul (sacks) of coral reefs...

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(UUB: 38). According to UUB, the opening of new land must be at least 40 fathoms from the boundaries of open land or those that have been managed and cultivated. Every cultivator was required to construct water ditches around rice fields that serve as boundary markers, as well as irrigation to drain water to neighboring fields (UUB: 38-39). UUB did not regulate the land law in detail, including land tax provisions, because the Sultanate of Banten was more oriented towards maritime affairs. Therefore, the customs law was more detailed than the land law.

UUB Criminal Sanctions and Law Enforcement

In UUB, all types of unlawful acts could be punished, referring to the general terms "kinaun" and "kapidana"; with the imposition of criminal sanctions by the "earth". For example, the application of sanctions in cases of slavery disputes was mentioned as follows: "Lan lamun nayaga utowo punggawa adol wong dalem maka katitik ing padolan maka kebedol wong iku dining hukum serta tinetepaken wong iku ing hukum dining bumi" (UUB: 4). The repeated use of "earth" in UUB was identical with the ruler's power, notably Sultan (Queen), as in the meaning "earth law" (UUB: 29). In a practical sense, the Sultan was in charge of imposing sanctions. However, the Sultan did not do everything himself, except the sanctions imposed on people who killed foreigners (UUB: 22).

In addition to this case, the imposition of punishment was carried out by sultan's officials, Fakih Najmuddin, who served as qadi (judge), or Prince Arya Dipaningrat, who had the legal authority and tax collection at the port. However, during the final period of Sultan Haji's and his successors' reigns, or more precisely during the reign of Sultan Abul Mahasin Muhammad Zainul Abidin, Pakih Najmuddin's position was not equal to the position of Prince Arya Dipaningrat anymore. It declined to a similar level as the princes and other Nayaga (UUB: 24). The increase in the number of fines for arguing against Pakih Najmuddin reflected this decline in position. Speaking harshly to Pakih Najmuddin, for example, resulted in a fine of six million and a half keti, despite the fact that the original fine was one million and three keti. Similarly, speaking hatefulness towards someone and conveying it in Pakih Najmuddin's territory increased from one million and three keti to six million and a half keti (UUB: 25).

In consequence, Pakih Najmuddin's strategic position was taken over by four princes at once: Prince Arya Ranamanggala, Prince Ingawangga, Prince Ingabudi, and Prince Purbaya (UUB: 23). The possibility of this position exchange arose after Sultan Haji and the VOC
reached an agreement. According to Talens’ records, the VOC wanted to reduce Pakih Najmuddin's influence in the application of Islamic law in the Sultanate of Banten during the reign of Sultan Ageng Tirtayasa. However, the Sultan rejected the suggestion, and the desire to extend the peace agreement by more than ten years was canceled.¹³ The decline of Pakih Najmuddin's position was followed by forms of criminal sanctions during the reign of Sultan Haji and his successors, in which the *hudud* punishment was replaced by paying a fine.

In comparison to the strong influence of Islamic law in Banten in the 17th century, particularly during the reign of Sultan Ageng Tirtayasa, Shrieke - quoted by Talens - stated that opium and tobacco users faced severe punishment, including the amputation of their hands. This was explained in the VOC employee's report dated December 1st, 1671: "It was crystal clear that Sultan Ageng Tirtayasa intended to completely eradicate all opium pollinators; four days ago, he also amputated the hands of a Javanese man who had purchased opium for 4-5 cents, and then the Sultan expelled him to Lampung.”

Shrieke's viewpoint on the implementation of Islamic law in Banten in the 17th century was later cited by historians such as De Graaf (1970), Milner (1983), Watson Andaya (1992), and Anthonie Reid (1993). According to Reid, as quoted by Talens, he stated that the Islamic law implemented by the Sultanate of Banten was based on the Shafi'i school, in which his influence could be seen in the *hudud* punishments which were so strict and rigid such as in the implementation of the law of cutting off hands (*de verminkingenamputatie van ledematen*). During the reign of Sultan Haji, many *hudud* punishments were replaced by fines. Even though the *hudud* punishment was still in effect, it was still confidential because in the Banten Law, it was stated that "the *hudud* case must be handed over to the Queen”. This information was confirmed by a report by a British trader named Edmund Scott, who stated: ‘I will tell you the laws of our country, which is this: if one kills a slave, he must pay 20 riyals; if a freeman, 50 riyals; if a gentleman, 100 riyals.”¹⁴

If the *hudud* punishment was replaced by a fine, the authority of Pakih Najmuddin would be replaced by a Prince of the same level as Prince Arya Dipaningrat to enforce the law. More specifically, in the writer's opinion, this authority was in the power of Prince Arya Dipaningrat as the recipient of the sultan's mandate, who had the authority to enforce regulations in the port area because these types of crimes were common in the Karangantu

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¹³ Leur.
area, whereas special crimes had been determined to occur in paseban or special areas inhabited by nobles and the upper classes. As a result, the punishment of paying a fine, which was enforced during the reign of Sultan Haji and his successors, became the sultan's revenue, in addition to taxes collected by Prince Arya Dipaningingrat, who also served as Syahbandar.

The details of the forms of criminal sanctions - from the most severe to the mildest - that were explained in the UUB from the time of Sultan Haji to the time of Sultan Abul Mahasin Muhammad Zainul Abidin were as follows: First, the punishment for cutting off a hand was applied to the thief of goods worth one ryal of the property of a new person who arrived or had just arrived at the port (UUB: 22). Conversely, there was no explanation in the UUB as written in Talens' report on the hand-cutting sanction for the drug addict that had been implemented during the reign of Sultan Ageng Tirtayasa. The exception was that the drug addict’s witness testimony could not be accepted under the law as written (UUB: 34-35).

Second, fines included cash payments and coral reef collection. In UUB, the type of currency used to pay fines was riyal and picis (which was calculated in a bunch worth Keti). Banten's currency consisted of several types of riyal, including the Bantenese Riyal currency, which was made of copper, the Dutch Riyal currency, which was made of silver, and the Spanish Riyal currency, also known as the Spanish dollar. The penalty for paying a fine in Ryal currency in the UUB was set specifically for foreigners or people not belonging to Surosowan groups. The currency used was Bantenese Riyal, which was a round coin with round holes, 1.90-2.40 cm in diameter, 0.05-0.16 cm thick, 0.60-1.20 cm hole diameter, and made of tin.

As for unlawful acts that were subject to the obligation to pay fines in ryal currency were; (a) if foreigners fight in the Surosowan square and the Karangantu port area by using weapons, they are fined paying 2000 riyals (UUB. 12); (b) if during the fight they do not use their weapons, they are fined 1000 riyals (UUB. 11); (c) If a person kills another person without reason or for reasons such as killing his wife because she has committed adultery with another man, he will be fined 200 riyals (UUB 39-40). The proposition of the penalty for killing is actually less than the amount of the penalty for paying a fine because of a fight; (d) If a (slave) woman beats a man who does not want to retaliate, she is fined 20 riyals (UUB: 10); (e) If a (slave) woman swears at a man who does not want to retaliate, she is fined 10 riyals (UUB: 9); (f) If a foreigner (slave owner) allows a (slave) fight in public, he is fined 30 riyals (UUB: 12).

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Fines in the form of ryal were also imposed during the reign of Sultan Abul Mahasin Muhammad Zainul Abidin for all groups who committed violations in the form of; (a) If someone grumbles in the *paseban* of the sultan's sons or among the residents, the person making the grumble is fined 200 riyals; (b) If someone grumbles in the *paseban* of Prince's courtier, the person making the grumble is fined 140 riyals; (c) If someone grumbles at the *paseban* of noble family, he is fined 100 riyals; (d) If someone grumbles at the *paseban* of rangga, temenggung or demang, he is fined 80 riyals; (e) If someone grumbles at the *paseban* of Ngabehi or subdistrict head, he is fined 60 riyals; (f) If two people argue for a few words until the third word is spoken, they are fined 10 reyals (UUB: 26-27).

Meanwhile, the penalty of paying fines in picis currency (calculated in a bunch equal to *keti*) was applied to large groups of people. *Picis* currency was essentially a Chinese currency that had been developed since the 13th century in Chuan Chou, China. Chinese traders brought this money as a medium of exchange to various locations, including the archipelago. Chinese currency entered Banten for the first time as a foreign currency in 1590, when the Chinese king, Hammion, reopened the circulation of Chinese currency abroad after twenty years because of the fear of the possibility of inflation in its country. This picis currency was counted in string ties of a specific value: 1 *atak* equals 200 *picis*; 1 rope equals 10,000 *picis*; and 1 *keti* equals 100,000 picis.16

Unlawful acts that were subject to the obligation to pay fines in *picis* currency were:

a) If people fight at the *paseban* of Prince Arya Ranamanggala, Prince Ingawangga, Prince Ingabudi, or Prince Purbaya, they are fined 2 million picis (UUB: 1 and 22). Fighting at Pakih Najmuddin's Paseban was initially fined 2 million Picis, but this was reduced to 1 million *picis* and 3 *keti* (UUB: 23).

b) If two or more people fight at the prince’s worksite, they must pay a fine of 1 Million picis and 3 *keti* (UUB: 1); This provision was also changed that the prince's *paseban* referred to UUB was a place belonging to Prince Datuwesta, Prince Perbangsa, Prince Wirasuta, Prince Wirasmara, Prince Jayaningrat, Prince Adiwangsa, and Prince Sutakusuma, so that if they fight in this area, they are fined 1 million *picis* and 5 *keti*. The perpetrators are fined 1 million *picis* and 4 *keti* if they fight in the *paseban* belonging to Prince Trenggana, Prince Subamanggala, Raden Arya Mandaraka, Prince Suryadikara, Prince Kasunyatan, Prince Rangga Singasari, Ratu Bagus Natakusuma,

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Ratu Bagus Wirananca, or Ratu Bagus Wangsa Kusuma. If the fight occurs at the *paseban* of Ratu Bagus Martajaya, Ratu Bagus Suba, Ratu Bagus Sumambita, Ratu Bagus Wira Taruna, Ratu Bagus Wiranatpada, Ratu Bagus Wirapurbaya, Ratu Bagus Wiratmaka, Ratu Bagus Wangsanata, Prince Arya Surya Diwangsa, Ratu Bagus Jaya Manggala, Marta Negara, Ratu Bagus Pulong Jiwa, Ratu Bagus Nata Diwangsa, Ratu Bagus Wiranggamarta, Ratu Bagus Suranggamarta, Ratu Bagus Wirangganata, Kiai Faqih Najmuddin, those who fight are fined one 1 million *Picis* and 3 *Keti* (UUB: 23-24).

c) If people fight in the big or small *paseban* of Nayaga, they are fined 1 million picis (UUB: 1). This provision was also changed later, with the addition that if the fight took place at *Paseban of Nayaga* who had not received the designation, they were fined 1 million *Picis* and 1 keti. If the fight occurred at *Paseban Ki Arya Kusuma Dilaga, Ki Arya MangUnyuda, Ki AyraDipa Kusuma, Ki Arya Suradiwangsa*, or *Ki Ngabehi Wangsayuda*, they were fined 1 million *Picis* (UUB: 24).

d) If people fight in the big or small *paseban* of Aryans, they are subject to a penalty of 1 million Picis each (UUB: 1-2). This sanction was also amended with an explanation: If a fight occurs in *Para Arya's paseban*, they are fined 9 keti. If they fight in an official's palace of the *Kandaka Lante*, they are fined 8 Keti. If they fight in an official's *paseban of Lampit Behior* equivalent, they will be fined 7 Keti. If they fight in an official's *paseban at the level of lurah dalem*, they are fined 6 Keti. If they fight in an official's *paseban at the level of Pambekel Dalem*, they are fined 5 Keti. If they fight at *paseban of officials at the level of priyayi dalem and priyayi luar Surosowan*, as well as *paseban's Kliwon*, they are fined 6 Keti (UUB: 24-25).

The final form of punishment for violators of the law in the Sultanate of Banten was to hand over coral reefs. This penalty was meant to be onerous for lawbreakers because coral reefs could not grow properly in Banten Bay. Molengraaf described the different types of coral in the Banten environment, including the fringing type, which lives about 40 meters below sea level. In other words, lawbreakers must first be able to dive into the seabed of Banten Bay in order to pay fines in the form of coral reefs. However, this was not an issue for the Banten people in ancient times because they believed that coral reefs could be found in Kepulauan Seribu (the Thousand Islands).  

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18 Untoro, *Keberatan Dan Tragedi Kota Banten*. 

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The Sultan purposefully decided to pay fines in the form of coral reefs so that they could be used to develop the city of Surosowan. According to Hariyanti, the results of coral observations and analysis at the Old Banten site show that coral can be used for a variety of purposes, such as building wall beams, foundations, pillar support bases, building decorative panels, pillar support panels, building decoration panels, bullets, gravestones, and plaster. The Surosowan palace and the Speelwijk fortress are examples of archaeological sites in the form of buildings. The main walls of the two buildings were made of coral, as well as stone and brick blocks.\(^{19}\)

The number of fines paid in the form of coral reefs was as follows: (a) 15 \textit{pikuls} (a traditional unit of weight of approximately 62.5 kilograms used in Java and its surroundings) of coral reefs for using other people's slaves who ran away from their master's house (UUB: 44); (b) 10 \textit{pikuls} of coral reefs for claiming to be the owner of a runaway slave without any evidence (UUB: 41), crossing the Karangantu harbor without attaching a permit from Syahbandar (UUB: 20); (c) 5 \textit{pikuls} of coral reef as a penalty for clearing forest land without the permission of the sultan (UUB: 38), allowing commotion without reporting to Syahbandar (UUB: 21); entering and leaving Fort Speelwijk without Syahbandar's permission (UUB: 20) And; (d) 1 \textit{pikul} of coral reef for violating the law by pulling other people's boats without permission (UUB: 35-36), as well as soldiers who failed to guide the noble family and their superiors (UUB: 13-14).

Third, the other type of punishment was forced labor. Due to the difficulty in obtaining free labor in the Sultanate of Banten, the sultan issued provisions for forced labor punishment. According to Talens, this had been practiced since Sultan Ageng Tirtayasa mandated forced labor in various types of work as a punishment for drug addicts. It was explained, for example, that in 1661, drug addicts were forced to collect stones from several islands in the Sunda Strait to be used in the construction of a city fort. In the late 1660s, drug addicts were recruited by the Sultan to serve as assistants and servants and perform various duties on Sultan's warships. It was also reported in 1671 that the Sultan punished thousands of opium addicts (opium schuivers) by forcing them to work on the construction of the "Sultan

Canal”, a waterway that connects Tirtayasa-Tanara, Tirtayasa-Bendung, and Tirtayasa-Pontang.

In UUB, law violations that may result in forced labor sanctions include: (a) If Bantenese people with the title *Hajj*, Keling, or Gujarati people fight in the square, either punching each other or simply provoking their opponents to fight, both will be arrested, forced to work in Ketandan, fined 1,000 riyals, and their belongings confiscated. Ketandan was possibly the Chinatown Village or the new town next to the Canal, which crossed a straight chain bridge heading east to the southern part of the Karangantu market. Sultan wanted to build this area because this area was no longer traced on the current Banten map; (b) If there are Chinese or Muslim Chinese fighting in the square by hitting each other or simply provoking their opponents, they face a 1000 riyals fine as well as being forced to work at Karangantu port (UUB: 11).

*Fourth*, the other type of punishment mentioned in UUB was banishment. Banishment is a criminal sanction written in UUB for Bantenese who were convicted of a crime and were banished to the Lampung area (*binuang ing Lampung*). For example, if Chinese or Muslim Chinese fight in the square by hitting each other or simply starting to provoke the opponents to fight, they face a 1,000 riyals fine, are forced to work at customs, have their belongings confiscated, and are banished in Lampung (UUB: 11-12). The selection of certain ethnic groups, such as the Chinese, from among the many lawbreakers banished to Lampung was likely to strengthen the VOC’s trade policies because Lampung would be under VOC control since the signing of the agreement between the VOC and Sultan Haji. Thus, in addition to providing the Sultan of Banten with free labor from convicts of a certain ethnicity, the VOC benefited from the exile status of these convicts in the Lampung area.

*Fifth*, the other punishment was the confiscation of the property of the offender. The UUB mentioned the punishment for confiscation of law breakers' property, which included: (1) the confiscation of ship cargo for traders and sailors who entered the Banten area without the permission of the Syahbandar. According to the UUB, anyone who traded to the East or other areas must carry a letter stamped by the Sultan and authorized by Prince Arya Dipaningrat before being examined by customs officers. If the person failed to provide a letter stamped by the Sultan, the State would seize the boat and its contents (UUB: 17). Similarly, if they could not show the letter stamp from Prince Arya Dipaningrat when they returned from Jakarta, the ship and its contents would be confiscated by customs officials (UUB: 19). (2)

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20 Talens, “Een Feodale Samenleving in Kolonial Yaarwater. Staatsvorming, Koloniale Expansie En Economische Onderontwikkeling in Banten, West-Java (1600-1750).”
THE CONTINUITY AND CHANGE OF DIYAT AS AN ALTERNATIVE TO ISLAMIC CRIMINAL SANCTIONS IN UNDHANG-UNDHANG BANTÉN DURING THE 17TH – 18TH CENTURIES

The sultan and nobles would confiscate or expropriate ownership rights over slaves who had escaped from their masters if their masters were unable to redeem them as long as the slave's master was not a member of the nobility or a group of ordinary people (UUB: 2).

**Diyat as a Qisas and Hudud Substitute in UUB**

*Diyat* is a property that must be paid for committing a crime against another person. The legal basis is QS. An-Nisa': 92, the *hadith* of the Prophet narrated by al-Tirmidhi and other *hadith* scholars, as well as the *ijma’* of the scholars.21 (A perfect *diyat* (*diyat kamilat*)) is worth the price of 100 camels whose age is determined by the *nisab* of camel zakat that meets the criteria for *jazdaah* age (3 years). While *arsy* refers to the criminal sanction of a fine that is less than the amount of the provision (*diyat naqisat*). Scholars typically generalized *arsy* by only mentioning the *diyat*.22 According to Mustafa Dib al-Bugha,23 this generalization was because the *diyat* retaliates directly with fixed *hudud* punishments; however, in practice, *diyat* is relative, as there are *diyat kamilat* and *diyat naqisat*. Imam Syafii argued in his book *Qaul Qadim* that *diyat* as a substitute for *hudud* is worth 1000 dinars or 1012 dirhams, whereas, in his book *Qaul Jadid*, it equals 100 camels whose ages meet the zakat condition.24 Even in the criminal case of unplanned murder, Syafi’iyah and Hanabilah scholars applied fines based on the *al-akhzd bi al-aqall* (minimum limit) approach.25

In Islamic criminal law, *diyat* is a substitute sanction (*al-uqubat al-badaliyat*) for *qisas* and *hudud* punishments used for specific reasons. The victim's family, for example, withdrew the demand for *qisas* and *hudud* punishment, but the perpetrator of the crime was still compelled to pay the fine because he did not receive remission. *Diyat* can also be applied if there are difficulties in implementing and determining the motive for murder and physical violence, whether intentional or not. To uncover the motive for the crime of murder and determine whether it was committed intentionally (*al-’amd*), resembling intentionally (*syibh al-’amad*), or unintentionally (*khata’*), a witness statement and evidence are required. According to Abd al-Qadir Audah in Islamic law, evidence and witness testimony are

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methods for determining the law (al-syahadatwa al-bayyinatwasilah min wasail al-itsbat).26 However, most crimes are not directly identified by other parties (witnesses), so that the perpetrators of crimes are subject to diyat fines.

Referring to Muhammad Syahrur’s hudud theory diyat occupies the conceptual framework, which is directly related to qisas and hudud law. In Islamic law, criminal acts that should be subject to qisas and hudud sanctions can be replaced by paying diyat (fines) for certain reasons, such as the seriousness and severity of the crime, the motive for the crime, and reasons for forgiveness from the victim’s family.27

<table>
<thead>
<tr>
<th>Onerous Sanction (Qisas and Hudud)</th>
<th>Venial Sanction (Diyat, Arsy, Hukumat)</th>
<th>Criminal Charge UUB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Killing other people’s lives intentionally</td>
<td>Killing other people’s lives unintentionally</td>
<td>To be apprehended and brought to the Sultan to be punished.</td>
</tr>
<tr>
<td></td>
<td>Obtaining forgiveness for the deliberate killing of another person.</td>
<td>Paying between 20 and 100 Bantenese Riyals depending on the victim's social status</td>
</tr>
<tr>
<td>To plan the mutilation of other people’s limb</td>
<td>To not plan the mutilation of other people’s limb</td>
<td>To pay between 1000 and 3000 kethi (equivalent to 10-30 riyals)</td>
</tr>
<tr>
<td></td>
<td>To take specific parts of other people's bodies</td>
<td></td>
</tr>
<tr>
<td>Harming other people's limbs intentionally</td>
<td>Harming other people's limbs unintentionally</td>
<td>To pay between 1000 and 3000 kethi (equivalent to 10-30 riyals)</td>
</tr>
<tr>
<td></td>
<td>The violence that results in the paralysis of another person's limbs</td>
<td></td>
</tr>
<tr>
<td>Adultery and accusing adultery</td>
<td>None</td>
<td>To be taken before the Sultan, or fined 4 riyals.</td>
</tr>
<tr>
<td>Thievery and confiscation of other people's property</td>
<td>None</td>
<td>To have the hand severed or to replace the cost of stolen goods and collect one pikul of coral reefs</td>
</tr>
<tr>
<td>Drunk</td>
<td>None</td>
<td>Cannot be a witness</td>
</tr>
</tbody>
</table>

The substitution of diyat for hudud punishments in the form of paying fines, collecting coral reefs, and performing forced labor in the UUB, as shown in the table above, was not enough to apply it in the context of sharia doctrine itself (an sich), but it must also be perceived in the political, economic, and military context of the Sultanate. According to the UUB, it mentions that “During the time of Sultan Abu Mufakhir Abdul Qadir, the sultan was ordered to carry out the ta’zir law in the form of fines, referring to Imam Malik’s opinion”.

Those who embraced another woman, held her, or kissed her outside or inside her own home would face a ta’zir criminal sanction in the form of a fine of 4 riyals" (UUB: 92). The payment of fines was undoubtedly an income source for the Sultanate's treasury, and the punishment of forced labor could also contribute to cheap labor. Meanwhile, if the Sultan maintained the punishment of cutting off one's hand or the death penalty, he would lose a potential workforce.

This analysis was strengthened by historical and archaeological data compiled by Hasan Muarif Ambari. According to him, the city of Banten was still growing in 1659-1715; canals had been added, one of the oldest of which served as a foreigner's settlement (new town), and in the east was a bustling market; the fort surroundings were perfected; although it was not presented in Valentijin's maps, the Dutch had built strong fortifications in the north corner facing the sea; the fort was built by the request of the Governors-general of VOC at that time, Cornelis Speelman, which was named Spellwijk Fort. The road and canal system was expanded between 1725 and 1759 by digging ditches around the Surosowan Palace and building the Dutch fortifications. The canal that ran beneath the chain bridge has been straightened eastward to the south of the Karangantu market. Heydt's map depicted the process of moving and changing the city plan, including architectural elements, canals, streets, and city walls. 

Surosowan's development in the 17th century required increased efforts, both financially and in terms of labor capital. Therefore, the sultan’s initiatives to replace qisas and hudud punishments with fines in the form of money, and coral reefs, as well as forced labor, were made up based on fiqh and siyasa syari’yah.

The other side of the sultan's initiative in diyat law was the determination of the type of currency used to pay fines. The UUB that was imposed during the Sultan Haji era required foreign residents to pay fines in riyals currency. While the natives pay fines in picis currency, even though picis coins have a lower value than other coins. As an illustration, to determine the price of a slave per day to be hired, one must deposit 1,000 picis (1 peku) to his master, along with a meal worth 200 picis. The Chinese in Banten used to buy 8 sacks of pepper from the mountains for 1 keti and sold it for 4 keti in the Karangantu market. The value of the picis currency, which was originally used by Chinese traders throughout the region, began to fall as a result of the presence of several currencies on the free market, particularly the riyal currency and the Spanish dollar.

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For this reason, during the reign of Sultan Abul Mahasin Muhammad Zainul Abidin, provisions for paying fines in riyal currency were imposed for all groups who violated the rules. The payment of fines using Real currency was applied because it was more stable than picis currency. It demonstrated that hududiyyah was legalized during the Banten Sultanate period.

C. CONCLUSION

UUB was implemented in the Sultanate of Banten during the reign of Sultan Abun Nasr Abdul Kahhar alias Sultan Haji (1672-1687) and continued until the reign of Sultan Abulfathi Muhammad Shifa Zainul Arifin (1733-1747). Because of legal considerations that adopted the Maliki school of thought, as well as social, economic, and political reasons that occurred in the XVII-XVIII centuries, the legal provisions of qisas and hudud were replaced by fines or diyat sanctions in UUB. Throughout that time, the fine fluctuated between being the same and changing. During Sultan Haji’s reign, the UUB only required foreign residents to pay fines in riyal currency and natives to pay fines in picis currency. The UUB, enacted during the reign of Sultan Abul Mahasin Muhammad Zainul Abidin, governed the payment of fines in riyal currency for all groups that violated the rule of law.

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