

**Article History**

Received: 23 Aug 2024

Reviewed: 20 Oct 2024

Accepted: 08 Nov 2024

Published: 13 Nov 2024

# Relevance of Aceh's Qanun Jinayat in Minimizing Cases of Sexual Harassment against Children in Aceh

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**Abstract:** This study aims to describe the relevance of Qanun Number 6 of 2014 concerning Jinayat Law as a legal regulation used to address cases of child sexual Harassment in Aceh. This is considered important because until now cases of child sexual Harassment in Aceh have continued to increase every year. In addition, Aceh is a region that has special regulations that are formed based on Islamic law and customary law. Therefore, the provisions relating to sexual Harassment in Aceh are different from other provincial areas that use the Child Protection Law, the Sexual Violence Crime Law or Law Number 1 of 2023 concerning the Criminal Code. The study was conducted using a sociological legal research method with descriptive analytical writing specifications. The focus of this study is on how the relevance of Aceh Qanun Number 6 of 2014 concerning Jinayat Law is in minimizing the number of cases of child sexual Harassment in Aceh, thus causing this study to be different from previous studies. The results of this study indicate that Qanun Number 6 of 2014 concerning Jinayat Law has not been able to optimally address cases of child sexual Harassment in Aceh. It is because the five factors that influence the effectiveness of the implementation of Qanun Jinayat in Aceh have not been effective until now. The five factors are legal factors, law enforcement factors, facilities and infrastructure factors, community factors and cultural factors. In addition, the provisions of the threat of sanctions contained in Qanun Jinayat when associated with the theory of just desert and the theory of the purpose of punishment in Islamic criminal law are still relatively light so that they have an impact on the unprotection of children's rights as victims and do not provide a deterrent effect for perpetrators.

**Keywords:** Qanun Jinayat; Relevance; Sexual Harassment

**Abstrak:** Penelitian ini bertujuan untuk menggambarkan relevansi Qanun Nomor 6 Tahun 2014 tentang Hukum Jinayat sebagai aturan hukum yang digunakan untuk mengatasi kasus pelecehan seksual terhadap anak di Aceh. Hal tersebut dianggap penting dikarenakan hingga saat ini kasus pelecehan seksual terhadap anak di Aceh setiap tahunnya terus meningkat. Selain itu, Aceh merupakan daerah yang memiliki aturan khusus yang dibentuk berdasarkan hukum Islam dan hukum adat. Oleh karena itu, ketentuan-ketentuan yang berkaitan dengan pelecehan seksual di Aceh berbeda dari daerah provinsi lainnya yang menggunakan Undang-undang Perlindungan anak, Undang-undang Tindak Pidana Kekerasan Seksual atau Undang-undang Nomor 1 Tahun 2023 tentang Kitab Undang-undang Hukum Pidana. Penelitian dilakukan dengan metode penelitian yuridis sosiologis dengan spesifikasi penulisan bersifat deskriptif analitis. Adapun fokus dalam tulisan ini yaitu tentang bagaimana relevansi Qanun Aceh Nomor 6 Tahun 2014 tentang Hukum Jinayat dalam meminimalisir jumlah kasus pelecehan seksual terhadap anak di Aceh, sehingga menyebabkan penelitian ini berbeda dari penelitian-penelitian sebelumnya. Hasil dari penelitian ini menunjukkan bahwa Qanun Nomor

6 Tahun 2014 tentang Hukum Jinayat hingga saat ini belum dapat mengatasi kasus pelecehan seksual terhadap anak di Aceh secara maksimal. Hal tersebut dikarenakan kelima faktor yang mempengaruhi efektivitas penerapan Qanun Jinayat di Aceh hingga saat ini belum efektif. Kelima faktor tersebut yaitu faktor hukum, faktor penegak hukum, faktor sarana dan prasarana, faktor masyarakat dan faktor kebudayaan. Selain itu, ketentuan ancaman sanksi yang terdapat dalam Qanun Jinayat jika dikaitkan dengan teori *just desert* dan teori tujuan pemidanaan dalam hukum pidana Islam masih tergolong ringan sehingga berdampak pada tidak terlindunginya hak anak sebagai korban dan kurang memberikan efek jera bagi pelaku.

**Kata Kunci:** Relevansi; Qanun Jinayat; Pelecehan Seksual

## INTRODUCTION

Sexual violence, including sexual harassment, is an act that not only damages a person's dignity but also damages the nation, which then affects the current and future generations. Sexual violence and sexual harassment are different in meaning. Sexual violence is an act related to sexual coercion in general. In contrast, sexual harassment is part of an act of sexual violence by groping, kissing, touching, or rubbing against the body of the person being victimized. It can also be in the form of words that lead to sexuality. Related to the definition of sexual harassment, based on Farley's opinion, sexual harassment is behavior in the form of sexual persuasion that is not approved by the victim being harassed, so the action is only unidirectional in both physical and verbal actions.<sup>1</sup> In addition, Moh. Fauzi also argues that the definition of sexual harassment based on fiqh is in the form of sexual acts that are not approved by one other party called the victim.<sup>2</sup>

Furthermore, sexual harassment is condemned worldwide as an act that should be considered a crime. Currently, every country in the world has regulated the prohibition of sexual harassment. Although the rules have been set, sexual harassment cases have not necessarily continued to decrease. Even today, sexual harassment is classified as a case like the iceberg phenomenon. It is because of the many cases of sexual harassment that are revealed that there are still many cases of sexual harassment that are not revealed and not tried in court.

Indonesia is one of the countries that has regulations related to sexual harassment; until now, sexual violence cases, including sexual harassment, are the most common cases compared to other types of violence cases. In fact, in 2023, at least 3,404 cases occurred.<sup>3</sup> Unfortunately, the majority of victims of sexual harassment cases are children and women.<sup>4</sup> As a result of the many cases of sexual harassment that have occurred in Indonesia, Indonesia is categorized as a sexual harassment emergency country. Sadly, sexual violence, including sexual

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<sup>1</sup> Kurnianingsih Sri, "Pelecehan Seksual Terhadap Perempuan Di Tempat Kerja," *Buletin Psikologi* XI, no. 2 (2003): 117, <https://doi.org/http://dx.doi.org/10.22146/bpsi.7464>.

<sup>2</sup> Fauzi M, *Fiqh Anti Kekerasan Seksual*, 1st ed. (Yogyakarta: Pustaka Pelajar, 2023).

<sup>3</sup> Kementerian Pemberdayaan Perempuan dan Perlindungan anak, "Jumlah Kasus Kekerasan Menurut Provinsi," Kementerian Pemberdayaan Perempuan dan Perlindungan anak, 2023.

<sup>4</sup> Kementerian Pemberdayaan Perempuan dan Perlindungan anak, "Jumlah Kasus Kekerasan," Kementerian Pemberdayaan Perempuan dan Perlindungan anak, 2024.

harassment, has been a common practice in Indonesia historically, even being part of the feudal government in 1755.<sup>5</sup>

Sexual violence, especially against children, has a very negative impact. Sexual violence against children is a criminal offense that can endanger the physical and mental health of children, resulting in long-term and even lifelong trauma. Children should get a good education at their age to encourage their growth. Based on the developmental theory put forward by Erickson, childhood and adolescence are ages when all people experience development to find their identity so that they can significantly influence the behavior of everyone in their lives.<sup>6</sup>

Aceh is one of the provinces in Indonesia with special regulations related to sexual harassment. It is a particular region with a legal system applied differently from other provinces. Aceh uses Islamic shari'a and customary law as the source of law. Local regulations in Aceh are called Qanun. The regulation related to criminal law in Aceh is called Qanun Jinayat.

Qanun Jinayat in Aceh was formed based on the historical and sociological dimensions of the Acehnese people, whose customary habits are always covered by Islamic law. It is evident from the proverb followed by the people of Aceh today, namely "*Hukom ngoen adat lage dzat ngoen sifeut*", which means "law and custom are both inseparable". The collaboration between customary law and Islamic law is not new. Customs in Islamic history have been recognized since the time of the prophet Muhammad when the customs of the people of Medina also coloured the establishment of Islamic law.<sup>7</sup>

Furthermore, the juridical basis for the establishment of Qanun Jinayat Aceh is Law Number 44 of 1999 on the Implementation of the Specialty of the Special Province of Aceh and Law Number 18 of 2001 on Special Autonomy for the Aceh Province which has been replaced by Law Number 11 of 2006 on the Government of Aceh. Based on Article 1 of Law Number 44 of 1999 concerning the Implementation of the Specialty of the Special Province of Aceh, "speciality is a special authority to organize religious life, customs, education and the role of the ulama in determining policies of Aceh".

Qanun Jinayat in Aceh regulates criminal law based on several types of criminal acts or what is referred to as *jarimah*. According to Djazuli, *jarimah* is a prohibition from Allah that contains *hudud* or *ta'zir* sanctions. *Hudud* is a criminal offence referred to as *jarimah*, and Allah has regulated its sanctions and are not rules created by humans.<sup>8</sup> The definition of *ta'zir* is a crime not regulated under *hudud* or *qishas*.<sup>9</sup> The violations regulated in the Aceh Qanun

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<sup>5</sup> Rukmini Mien, *Aspek Hukum Pidana Dan Kriminologi (Sebuah Bunga Rampai)*, 3rd ed. (Bandung: PT Alumni, 2014).

<sup>6</sup> Ramadhani Salsabila Rizky dan R Nunung Nurwati, "Dampak Traumatis Remaja Korban Tindakan Kekerasan Seksual Serta Peran Dukungan Keluarga," *Social Work Jurnal* 12, no. 2 (2023): 133, <https://doi.org/https://doi.org/10.24198/share.v12i2.39462>.

<sup>7</sup> Lukito Ratna, *Pergumulan Antara Hukum Islam Dan Hukum Adat Di Indonesia* (Jakarta: INIS, 1998).

<sup>8</sup> Santoso Topo, *Hukum Pidana Islam* (Bandung: Asy Syamil Press & Grafika, 2001).

<sup>9</sup> Rahman Abdur Edc, *Tindak Pidana Dalam Syari'at Islam* (Jakarta: PT Rineka Cipta, 1992).

Jinayat are related to *khamar, maiisir, khalwat, ikhtilat, zina*, sexual harassment, rape, *liwath* and *musahaqan*.<sup>10</sup>

The implementation of Qanun Jinayat in Aceh to date is considered unable to have a significant impact on reducing the number of cases of sexual violence and sexual abuse against children in Aceh.<sup>11</sup> It can be seen that in 2023, at least 323 cases of sexual violence against children occurred in Aceh, including 164 cases of sexual harassment, 2 inches, 16 cases of sodomy, 2 cases of sexual exploitation, and 139 cases of rape.<sup>12</sup> Besides, out of 38 (thirty-eight) provinces in Indonesia, Aceh has the 6th (sixth) highest number of cases of violence against children, which is dominated by cases of sexual violence.<sup>13</sup> Due to the high number of cases of sexual violence against children dominated by cases of sexual abuse, Aceh is a province that needs more attention in terms of law enforcement against perpetrators of sexual abuse against children. Thus, from the problems in the explanation above, in this study, the formulation of problems related to how the relevance of Aceh Qanun Number 6 of 2014 concerning Jinayat Law in minimizing the number of cases of sexual abuse against children in Aceh is drawn.

## METHOD

This study uses a juridical sociological research method, examining existing regulations (text) and how they are enforced in society (context).<sup>14</sup> Therefore, this sociological juridical approach uses an interdisciplinary approach that includes legal and social science. The writing specification in this article is descriptive-analytical, which means describing the current laws and regulations and then linking them with legal theories and the law's implementation in society.<sup>15</sup> In this study, data collection techniques were carried out through direct interviews with informants, questionnaires filled out by the community who were used as respondents, and literature searches.

## DISCUSSION

Sexual harassment is a criminal offence that occurs when a person degrades another person through sexual acts without the victim's consent, causing harm to the victim physically, psychologically, economically and socially. Mayer argues that behaviour, situation and legality

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<sup>10</sup> Praja Selvia Junia dan Wia Ulfa, "Implementasi Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat Di Kota Banda Aceh Provinsi Aceh," *Jurnal Kebijakan Pemerintah* 3, no. 1 (2020): 12, <https://doi.org/https://doi.org/10.33701/jkp.v3i1.1071>.

<sup>11</sup> Rahman Cut Amatun, "Efektivitas Hukum Cambuk (Jinayat) Dalam Menciptakan Efek Jera Di Kabupaten Nagan Raya," IPDN, 2022.

<sup>12</sup> Dinas Pemberdayaan Perempuan dan Perlindungan Anak Aceh, "Jumlah Kasus Dan Bentuk Kekerasan Terhadap Anak (Januari-Desember 2023)," Dinas Pemberdayaan Perempuan dan Perlindungan Anak Aceh, 2023.

<sup>13</sup> KEMENPPA, "Sebaran Jumlah Kasus Kekerasan Menurut Provinsi Tahun 2024," Kementerian Pemberdayaan Perempuan dan Perlindungan anak, 2024.

<sup>14</sup> Ali Zainuddin, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009).

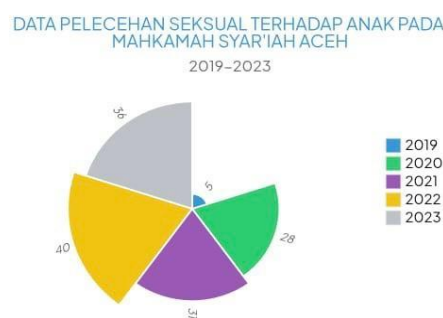
<sup>15</sup> Disemadi Hari Sutra, "Lensa Penelitian Hukum: Esai Deskriptif Tentang Metodologi Penelitian Hukum," *Journal of Judicial Review* 24, no. 2 (2022): 292, <https://doi.org/https://doi.org/10.37253/jjr.v24i2.7280>.

are three elements that can be identified as sexual harassment.<sup>16</sup> The behavioural aspect examines whether the act is sexual harassment. The situational aspect relates to when and where the act is committed. The legal aspect means that the behaviour is illegal.

Sexual harassment against children is an act that the perpetrator deliberately carries out to fulfil his sexual desires without considering the fatal consequences that the child will experience as a victim. The fatal consequences of child sexual abuse can cause children to experience prolonged trauma, causing psychological disruption. The result of the trauma causes the child to have difficulty socializing, disrupts the child's education process and can hurt the child physically due to difficulty sleeping, loss of appetite and prolonged anxiety.<sup>17</sup>

Aceh is a particular region that applies special regulations, namely Qanun, which are formed based on the people's customs of Aceh and Islamic law. As a special regulation applied in a particular region, Qanun obliges law enforcement officials in Aceh to use Qanun and not other regulations in deciding cases regulated in Qanun. It is by the provisions in Article 72 of Qanun Jinayat. Therefore, when conducting law enforcement against sexual harassment cases in Aceh, Qanun Jinayat Number 6 Year 2014 must be applied. Law enforcement officials in Aceh are not allowed to use the Law on Child Protection or the Law on Sexual Violence Crime in handling cases of sexual abuse against children and all cases that have been stipulated in Qanun Jinayat. Aceh law enforcers also use the Jinayat Procedural Law in law enforcement. However, related to procedural law, law enforcement officials in Aceh can still refer to the Criminal Procedure Code (KUHAP).<sup>18</sup>

Moreover, data obtained from the Aceh Syar'iyah Court shows that cases of sexual violence against children in Aceh that are resolved in the Aceh Syar'iyah Court continue to increase. The following is a graph of the increase in the number of cases of sexual violence against children in Aceh that were resolved through the Aceh Syar'iyah Court:



Source: Aceh Syar'iyah Court

<sup>16</sup> Sri, "Pelecehan Seksual Terhadap Perempuan Di Tempat Kerja."

<sup>17</sup> Novrianza dan Imam Santoso, "Dampak Dari Pelecehan Seksual Terhadap Anak Di Bawah Umur," *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 1 (2022): 54, <https://doi.org/https://doi.org/10.23887/jpku.v10i1.42692>.

<sup>18</sup> Hasil Wawancara dengan Darmansyah Hasibuan, Hakim Tinggi Mahkamah Syar'iyah Aceh, Pada 12 Juli 2024 via Zoom.

Based on the graph above, it can be seen that cases of sexual abuse against children in Aceh that were resolved at the Aceh Syar'iyah Court continued to increase, and the highest centre of increase was in 2022, with 40 cases. Although in 2023 there was a slight decrease, 36 (thirty-six) child victims is not a small number. Therefore, the increase in the number of cases of sexual abuse against children in Aceh is homework for the government and law enforcement officials in Aceh to immediately make efforts to overcome the increase in the number of cases of sexual violence against children in Aceh.

It should also be noted that the number of cases of sexual violence against children in Aceh above is not the actual number of sexual violence against children. It is because until now, there are still cases of sexual abuse against children in Aceh that are resolved through traditional institutions or even the case is not resolved. After all, there are still people who think that sexual violence is a disgrace, especially sexual abuse in the family environment. Sexual abuse cases that are resolved through customary institutions are referred to as Meusapat or only resolved up to the village level, which is still common in Aceh. Meusapat is the settlement of cases by mediation, with the mediator being a customary leader and village officials.<sup>19</sup> The settlement of cases by customary institutions in Aceh is based on Aceh Qanun Number 4 of 2003 concerning the Mukim Government in Aceh Province and Qanun Number 5 of 2003 concerning the Gampong Government in Aceh Province which authorizes the Mukim government and Gampong government to resolve cases that are violations of custom or disputes. Both of these problems have led to unrecorded cases of sexual harassment, making sexual harassment categorized as a case that is likened to an iceberg. It is because, of the many cases recorded, there are still many cases that are not even touched by the law.

Related to law enforcement on perpetrators of sexual violence against children in Aceh until now has not been maximally achieved. It is due to the non-achievement of several factors that influence the effectiveness of law enforcement. Based on the theory of law enforcement effectiveness by Soerjono Soekanto, it is known that 5 (five) factors can influence the effectiveness of law enforcement. The five factors include legal, law enforcement, facilities, infrastructure, community, and cultural factors.<sup>20</sup>

The first factor is legal factors. What is meant by legal factors, according to Soerjono Soekanto, is that the law must contain clear principles and implementing rules, and the meaning of every word in the law must be clear. Based on Article 1 paragraph (27) of Qanun Number 6 of 2014, what is meant by sexual harassment is: "sexual harassment is an immoral act or obscene act deliberately committed by someone in public or against another person as a victim, both male and female, without the victim's will". Based on Article 1 paragraph (27), it can be seen that there is the phrase "in public" and the phrase "without the victim's willingness", which means that it is categorized as sexual harassment only if it is done in public or if it is without the victim's willingness.

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<sup>19</sup> Fitirani Rahmi dan Teuku Muttaqin Mansur, "Penyelesaian Kasus Khalwat Melalui Hukum Adat Di Kecamatan Bebesen Kabupaten Aceh Tengah," *Jurnal Ilmiah Mahasiswa* 4, no. 3 (2020): 469.

<sup>20</sup> Soekanto, Soerjono, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: PT Rajagrafindo Persada, Cetakan ke-14, 2016, hlm. 8.

The meaning of the phrase "in public" is that the act is carried out in front of more than 2 (two) people or carried out in a place frequented by people.<sup>21</sup> Furthermore, the phrase "without the willingness of the victim" means that if the victim is willing, this element of "without the victim's willingness" cannot be fulfilled in the process of proof. Qanun Jinayat, which has not regulated this persuasion until now, makes the phrase "without the victim's willingness" challenging to prove. If the perpetrator makes a persuasion and the victim is willing, it can cause the perpetrator to be sentenced to a light sentence or even free from the law. The phrase "in public" and the phrase "without the victim's will" can be an obstacle in the process of proof because the perpetrator commits most criminal acts of sexual harassment while in a quiet place, and usually, the perpetrator uses a method by persuading the child or by giving threats to the child. Children who still do not know the impact of these actions are willing to fulfil the will of the perpetrator because the lure given by the perpetrator tempts them, or there are even children who follow the will of the perpetrator because they are afraid of threats from the perpetrator.

Furthermore, Qanun Number 6 Year 2014 on Jinayat Law to date has not regulated sexual harassment with threats and sexual harassment of children with persuasion. It differs from the provisions regulated in Article 76E of Law Number 35 Year 2014 concerning Child Protection. Article 76E of Law Number 35 of 2014 concerning Child Protection states that "every person is prohibited from committing violence or threats of violence, forcing, deceiving, committing a series of lies, or inducing a child to commit or allow obscene acts to be committed". Based on the wording of Article 76 E, even though the child is willing to follow the perpetrator's will, the perpetrator can still be sentenced if the perpetrator carries out his actions with persuasion or with threats.

Article 1, paragraph (27) of Qanun Jinayat also shows that the provisions related to sexual harassment in Qanun Jinayat have not provided differences related to verbal sexual harassment of children and physical sexual harassment. It is different from Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which have regulated in detail the differences related to verbal sexual abuse and physical, sexual abuse. Therefore, until now, the sanctions for perpetrators of sexual harassment, both verbal sexual harassment and physical sexual harassment, have not been differentiated. Even more sadly, the majority of perpetrators of sexual harassment who commit verbal acts against children in Aceh are not sanctioned because the child does not know that he is being harassed. Many people still think that this action is not a criminal offence.

The clarity of the meaning of each word in the legislation is one part of the legal factors. So, the meaning of sexual harassment in Article 1 paragraph (27) Qanun Number 6 of 2014, when associated with legal factors by Soerjono Soekanto, can be said that the legal factors in Article 1 paragraph (27) Qanun Number 6 of 2014 have not met the criteria. It is because the meaning of sexual harassment in Article 1 paragraph (27) of Qanun Number 6 Year 2014 still causes law enforcement officials to experience difficulties in the process of proving cases of sexual harassment against children.

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<sup>21</sup> R Soesilo, *Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya* (Bandung: Pustaka Setiq, 2000).

Especially in Aceh, the threat of punishment is also a factor that causes the increase in cases of sexual harassment against children not to be overcome optimally. It is because the provisions related to the punishment for sexual harassment based on Qanun Jinayat Number 6 Year 2014 are considered too light. Based on Article 47 of Qanun Jinayat Number 6 of 2014 states that:

*"Setiap Orang yang dengan sengaja melakukan Jarimah Pelecehan Seksual sebagaimana dimaksud dalam Pasal 46 terhadap anak, diancam dengan 'Uqubat Ta'zir cambuk paling banyak 90 (sembilan puluh) kali atau denda paling banyak 900 (sembilan ratus) gram emas murni atau penjara paling lama 90 (sembilan puluh) bulan".*

"Every person who intentionally commits the Jarimah of Sexual Abuse as referred to in Article 46 against a child, shall be punished with 'Uqubat Ta'zir flogging at a maximum of 90 (ninety) times or a fine of a maximum of 900 (nine hundred) grams of pure gold or imprisonment for a maximum of 90 (ninety) months".

The maximum imprisonment sanction in Article 47 of the Qanun Jinayat is only 90 (ninety) months or equivalent to 7 (seven) years and 5 (five) months which means half of the maximum provision in the Child Protection Law which provides a maximum threat of 15 (fifteen) years in prison plus a maximum fine of Rp5,000,000,000.00 (five billion rupiah). In addition, the punishment model in the current Qanun Jinayat is an alternative sanction model. This alternative sanction model means that it allows Judges to decide cases of sexual harassment by choosing only one type of punishment in the form of flogging, fines, or imprisonment. It has caused until now. There are still perpetrators of sexual abuse against children in Aceh who are sentenced in the form of flogging even though there has been a Supreme Court Circular Letter on the Enforcement of the Results of the Plenary of the Religious Chamber Number 10 of 2020 Point 3 Point (b). SEMA Number 10 of 2020 Number 3 Point (b) provides provisions for the Aceh Syar'iyah Court Judges to be sentenced to imprisonment instead of flogging punishment in deciding cases related to children.

One of the cases of sexual abuse against children that is subject to sanctions under Article 47 of Qanun Jinayat is Decision Number 16/JN/2023/MS.Lsk. Based on the chronology of the case in Decision Number 16/JN/2023/MS.Lsk, it is known that the perpetrator sexually abused the child three times by kissing, hugging, holding the victim's genitals and inserting the defendant's genitals into the victim's genitals. The child was 17 (seventeen) years old at the time of the incident. The victim complied with the will of the perpetrator because she was tempted by the lure of money in the form of Rp.100,000.00 (one hundred thousand rupiah) to Rp.600,000.00 (six hundred thousand rupiah) following the actions taken. The public prosecutor charged the perpetrator with alternative charges, namely jarimah sexual harassment following Article 47 Qanun Jinayat or rape following Article 50 Qanun Jinayat or zina Article 33 paragraph (1) Qanun Jinayat. Based on the three charges that can be proven during the trial, the first alternative charge is the sexual abuse of children. In its decision, the Panel of Judges decided that the perpetrator was sentenced to *'uqubat ta'zir* whipping 80 (eighty) times, following the provisions of Article 47 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law. The punishment in the form of flogging 80 (eighty) times, although it is almost close to the maximum sanction in Article 47 of Qanun Jinayat, 80 (eighty) times of flogging when viewed from the actions taken by the perpetrator against the child, the sanction is still relatively light. It does not protect the child as a victim. It is because after the perpetrator



carries out the execution of flogging within a short time, the perpetrator has an excellent opportunity to meet again with the child who is still not healed from the trauma.

Terkait ancaman sanksi yang terdapat dalam Pasal 47 Qanun Jinayat tersebut di atas jika dikaitkan dengan teori pemidanaan modern *just desert* oleh Sue Titus Reid dimana tujuan pemidanaan adalah sebagai pencegahan dan pembalasan, maka keberadaan Pasal 47 Qanun Jinayat belum memenuhi kriteria tujuan pemidanaan teori *just desert*.<sup>22</sup> Hal tersebut dikarenakan ancaman sanksi dalam Pasal 47 Qanun Jinayat tersebut tergolong ringan sehingga tujuan pemidanaan berupa pencegahan agar orang lain tidak melakukan tindak pidana pelecehan seksual terhadap anak dan pembalasan kepada pelaku pelecehan seksual terhadap anak tidak tercapai.<sup>23</sup> Peneliti mengaitkan dengan teori *just desert* dalam penelitian ini dikarenakan tujuan pemidanaan dalam hukum pidana Islam secara eksplisit juga turut memiliki tujuan yang sama yaitu pencegahan dan pembalasan.

Based on the theory of just desert and the theory of the purpose of punishment in Islamic criminal law above, lenient provisions are not the right solution to achieve the purpose of punishment. It is also because, e, in practice until now, cases of sexual abuse against children in Aceh continue to increase. In addition, based on the results of a survey conducted by researchers on respondents, namely the people of Aceh who directly feel the impact and participate in implementing Article 47 of the Qanun Jinayat, it shows that 97.5% of respondents feel that the threat of sanctions contained in Article 47 has not been able to fully overcome cases of sexual abuse against children in Aceh because it is considered that the maximum sanction in the Qanun Jinayat is still relatively light.<sup>24</sup>

Based on data by WHO, at least 78% of perpetrators of sexual abuse or violence against children are adults who are in the child's environment.<sup>25</sup> However, the threat of additional sanctions, if the perpetrators of sexual abuse are parents, guardians and educators in Qanun Number 6 Year 2014 concerning Jinayat Law, has not been regulated. The additional sanction against parents, guardians or educators of children is essential because parents, guardians and educators of children must protect children and directly support the growth and development of children and people whom children trust to be a shelter. The consequences of sexual harassment committed by parents, guardians and educators are more fatal than acts committed by strangers. Therefore, it can cause children to feel they have no place to go, have difficulty trusting others, have depression and aggressive behaviour, and can even cause children to commit criminal acts in the future.<sup>26</sup>

Qanun Jinayat also has not regulated the provision of restitution to child victims of sexual abuse. It causes until now, in practice, there is not a single case of sexual abuse against children whose perpetrators are given additional sanctions in the form of restitution payments.<sup>27</sup> Whereas to protect children's rights, restitution is necessary. In practice, judges in Aceh have never added restitution as an additional sanction because they only make decisions

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<sup>22</sup> Gunarto Mercus Priyo, "Sikap Pemidanaan Yang Berorientasi Pada Tujuan Pemidanaan," *Mimbar Hukum* 21, no. 1 (2009): 102, <https://doi.org/https://doi.org/10.22146/jmh.16248>.

<sup>23</sup> Asmak UI Hosnah, Silvia Maharani Iskandar Putri dan Nashwa Salsabila, "Analisis Pasal 285 Kuhp: Perlindungan Hukum Terhadap Korban Pemerkosaan", *Journal of Law, Administration, and Social Science*, Vol. 4, No.4, hlm. 531, (2024).

<sup>24</sup> Survey Oleh Peneliti Terhadap 81 Orang Responden Dengan Ketentuan Kriteria Masyarakat Yang Menetap di Aceh Minimal 3 (Tiga) Tahun Dan Minimal Pendidikan Sarjana, Pada 11-15 Juni 2024

<sup>25</sup> Indanah, "Pelecehan Seksual Pada Anak," *JIKK* 7, no. 1 (2016): 8.

<sup>26</sup> Santoso, "Dampak Dari Pelecehan Seksual Terhadap Anak Di Bawah Umur."

<sup>27</sup> Hasil Wawancara dengan Darmansyah Hasibuan, Hakim Tinggi Mahkamah Syar'iyah Aceh, Pada 12 Juli 2024.

following the provisions of Qanun.<sup>28</sup>

Provisions related to restitution should be regulated in Qanun Jinayat Aceh, which is formed not only based on customary law but also on Islamic law. Related to restitution in Islamic law, it is known as *at-ta'wid* in the form of *as-shadaq*, defined as giving compensation to the victim.<sup>29</sup> Based on the opinion of Imam Shafi'I, Imam al-Laits and also what has been narrated by Ali bin Abi Talib that *hadd* in adultery, including rape, is the right of Allah. At the same time, dowry is the right of humans, and between *hadd* and dowry, the punishment can be combined.<sup>30</sup> Based on this opinion, it is known that for the crime of sexual harassment, which also harms the victim, causing physical and psychological injuries to the victim, the victim is entitled to a dowry, modernly called restitution. Provisions related to the amount of restitution are determined by the judge who already decides the case using the *hukumah al'adl*, which means the case must be based on fair considerations. Suppose the perpetrator cannot pay restitution to the victim due to his weak economic situation or has received forgiveness from the victim. In that case, the restitution funds will be taken from *Baitu Mal*. It is because, since the time of Umar bin Khattab, the purpose of the existence of *Baitu Mal* has been for the benefit of religion and the welfare of Muslims.

In addition, Article 71D of Law No. 35/2014 on the Amendment to Law No. 23/2002 on Child Protection also regulates restitution for child victims of sexual violence, including sexual abuse. Law No. 35/2014 on Child Protection has determined the right to assistance for child victims, namely the right to protection, the right to education, the right to health, the right to identity and the right to restitution. Children should be given legal protection and the right to continue their education with a sense of security and free from negative responses from the community.<sup>31</sup> Psychological recovery and efforts to ensure children's lives are essential when looking at the long-term impact of sexual abuse on children.<sup>32</sup>

The legal factor in Qanun Number 6 of 2014 impacts the ineffectiveness of law enforcement factors. It is because the law enforcement apparatus based on Article 72 of Qanun Jinayat clearly states that handling cases of sexual abuse against children must be based on the provisions stipulated in Qanun Number 6 of 2014 concerning Jinayat Law. Meanwhile, the Qanun Jinayat until now has not maximally accommodated the provisions that can maximally overcome the criminal offence of sexual abuse against children. Thus, the law enforcement factor in terms of enforcing the law on perpetrators of sexual abuse against children in Aceh becomes less effective.

Facilities and infrastructure are also factors that affect the effectiveness of Qanun Jinayat in Aceh. Until now, not all Syar'iyah Courts have a special courtroom for children in Aceh. The absence of a particular courtroom for children in some of the Syar'iyah Courts requires that cases of sexual abuse against children be tried in courtrooms that are usually

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<sup>28</sup> Hasil Wawancara dengan Alimal Yusro Siregar, Hakim Mahkamah Syar'iyah Gayo Lues, Aceh, Pada 24 Juli 2024.

<sup>29</sup> AZ Narazi, "Pembayaran Ganti Rugi Bagi Korban Jarimah Jinayat Menurut Perspektif Praktisi Hukum Kota Langsa," *LEGALITE: Jurnal Perundang-Undangan Dan Hukum Pidana Islam* 4, no. 1 (2019): 108, <https://doi.org/https://doi.org/10.32505/legalite.v4iNo.%20I.1311>.

<sup>30</sup> Narazi.

<sup>31</sup> Masrifatun Mahmudah Gebby Sintia Irawati, Wahab Aznul Hidaya, "Peran Kepolisian Dalam Pencegahan Dan Penanggulangan Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak," *Judge : Jurnal Hukum* 5, no. 2 (2024): 339–45, <https://medium.com/@arifwicaksanaa/pengertian-use-case-a7e576e1b6bf>.

<sup>32</sup> Teuku Amnar Saputra dan Muhammad Novriansyah Zuriah, "The Effectiveness of Qanun Jinayat in Preventing Sexual Violence Against Children from a Psychological Perspective," *An-Nisa: Journal of Gender Studies* 16, no. 2 (2023): 192, <https://doi.org/https://doi.org/10.35719/annisa.v16i2.176>.

used for adult courtrooms. The lack of facilities and infrastructure makes it difficult for law enforcement officials to be able to provide adequate facilities to the public who resolve cases of sexual abuse in the Acehhar'iyah Court, and it can even slow down the trial process because the facilities to be used must alternate with the trial of other cases.

The community factor is a factor that can have a very significant influence on the effectiveness of the enforcement of Qanun Number 6 Year 2014 on the Jinayat Law. It is because the community's perspective on law enforcement based on Qanun Jinayat becomes a reference for the success or failure of the implementation of Qanun Number 6 Year 2014 on Jinayat Law. In practice, currently in Aceh there are still people who prefer to resolve cases of sexual abuse against children by using customary deliberations or only settlement at the gampong level. Whereas related to cases that can be resolved through customary institutions or the gampong level are limited, which is only explicitly allowed for criminal offences sentenced to whipping 2 (two) times.<sup>33</sup> In comparison, for sexual abuse against children, the majority of the minimum sanctions that have been imposed are 20 (20) times.<sup>34</sup>

Based on the results of a survey of 81 (eighty-one) respondents with the criteria of people living in Aceh for at least 3 (three) years and at least a Bachelor's degree,<sup>35</sup> it was found that 42% of respondents had seen or experienced firsthand the resolution of cases of sexual abuse against children resolved by customary institutions or the gampong level in Aceh. In addition, 23.5% of respondents thought that sexual abuse cases should be resolved by customary institutions first. Based on this data, it can be seen that the existence of the settlement of cases of sexual abuse against children resolved through traditional institutions in Aceh is still ongoing. It also shows that the community factor in the enforcement process of Qanun Number 6 of 2014 concerning Jinayat Law has not been influential until now.

The community perspective on enforcing Qanun Number 6 Year 2014 on Jinayat Law impacts cultural factors. People who consider that law enforcement on perpetrators of sexual abuse against children based on Qanun Number 6 Year 2014 on Jinayat Law does not give deterrent effect to perpetrators, does not protect the rights of victims, and the complicated process makes people prefer to resolve sexual abuse cases through customary deliberations. Legal flaws in Qanun Number 6 Year 2014 on Jinayat Law that can cause the perpetrator to be free from punishment can cause the perpetrator not to be afraid to repeat his actions. For example, verbal sexual harassment, which until now has not been regulated in Qanun Jinayat, has caused the community to consider that verbal sexual harassment is not a criminal offence. Hence, until now, verbal sexual harassment is still rampant in Aceh. In addition, until now, there has never been a case of verbal sexual harassment reported by the community to be prosecuted.

Decision No. 17/JN/2022/MS. Mbo is one example of a case of sexual abuse against a child in Aceh. Based on Decision Number 17/JN/2022/MS. Mbo, it is known that the perpetrator of sexual abuse against children was acquitted of all charges. The consideration of the panel of judges was to acquit because one of the elements in Article 47 Qanun Number 6 of 2014 concerning Jinayat Law was not fulfilled. The element that was not fulfilled was the element of "intentionally committing sexual harassment against a child". This element is not proven because, at the time of the incident, the perpetrator committed sexual abuse against

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<sup>33</sup> Lihat Pada Naskah Akademik Qanun Nomor 6 Tahun 2014 tentang Hukum Jinayat.

<sup>34</sup> Gerson Sem Buinei et al., "Restorative Justice Approach in Dealing with Crimes at Police Level ( A Study at Polresta and Polres Sorong )," *Journal of Law Justice (JLJ)* 2, no. 1 (2024): 1–12.

<sup>35</sup> Survey Oleh Peneliti Terhadap 81 Orang Responden Dengan Ketentuan Kriteria Masyarakat Yang Menetap Di Aceh Minimal 3 (Tiga) Tahun Dan Minimal Pendidikan Sarjana, Pada 11-15 Juni 2024.

the child without being seen by other people in the sense that there were only the perpetrator and the victim. When giving testimony under oath, the perpetrator did not admit his actions. However, based on the testimony of the victim's child that the victim's child, who was 11 (eleven) years old at the time of the incident, was abused by kissing, groping the victim's chest and genitals and also the perpetrator rubbed his penis against the victim's buttocks. Because the testimony of the victim's child was not under oath and did not match the testimony of the witnesses under oath, namely the perpetrator and the perpetrator's second wife, who, at the time of the incident, only saw the victim's child being pushed by the perpetrator, the testimony of the victim's child could not be used as evidence.

During the trial, the public prosecutor presented an expert witness, a doctor who had examined the victim's child. However, based on the consideration of the Panel of Judges, the tear of the victim's hymen did not show that the perpetrator caused it. In addition, the Public Prosecutor also attached evidence of a psychological examination of the child. Based on the results of the psychological examination of the child showed that the child had been a victim of sexual abuse and experienced behavioral disorders. After being submitted for Cassation, in Cassation Decision Number 5 K/Ag/JN/2023, the Panel of Judges found the perpetrator guilty and charged with a prison sentence of 20 (twenty) months.

Then, based on the five factors that influence the effectiveness of law enforcement by Soerjono Soekanto and the threat of criminal sanctions contained in Qanun Number 6 of 2014 concerning Jinayat Law above, it shows that the existence of provisions in Qanun Jinayat is still not effective in overcoming the increasing number of cases of sexual abuse against children in Aceh. These factors also impact the non-achievement of the objectives of punishment in the form of preventive and repressive in Qanun Jinayat. This has been the case since the beginning of the implementation of Article 47 of Qanun No. 6/2014 on Jinayat Law. There has been a continuous increase in the number of cases of sexual abuse against children in Aceh every year.

## **CONCLUSION**

To sum up, Qanun Number 6 Year 2014 on Jinayat Law in Aceh until now has not been able to have a significant impact on reducing the number of cases of sexual abuse against children in Aceh. It can be seen in the cases of sexual abuse against children in Aceh that continue to increase every year; there are still many people who choose to resolve their cases using customary law, even though there are still perpetrators of sexual abuse against children who are acquitted. Provisions related to the meaning of sexual abuse and sanctions do not yet provide a clear distinction between physical and verbal sexual abuse, sexual abuse of children with seduction and sexual abuse with threats. It is caused by the ineffectiveness of five factors that affect law enforcement effectiveness: legal factors, law enforcement factors, facilities and infrastructure factors, community factors and cultural factors. Qanun Jinayat, until now, has not regulated the provision of additional sanctions if the perpetrators are parents, caregivers or educators of children. The maximum threat in Article 47 of Qanun, Number 6, the Year 2014 on Jinayat Law, is still relatively light compared to the sanctions stipulated in Law Number 35, the Year 2014 on Child Protection. Qanun Number 6 Year 2014 on Jinayat Law also has not regulated the provision of restitution to child victims of sexual abuse. Therefore, to minimize the increase in the number of cases of sexual abuse against children in Aceh, it is necessary to immediately make revisions that take into account some of the problems mentioned above and also consider the provisions that have been regulated in the Child Protection Law in order

to protect children's rights and provide a deterrent effect on the perpetrators.

## REFERENCES

- Aceh, Dinas Pemberdayaan Perempuan dan Perlindungan Anak. "Jumlah Kasus Dan Bentuk Kekerasan Terhadap Anak (Januari-Desember 2023)." Dinas Pemberdayaan Perempuan dan Perlindungan Anak Aceh, 2023.
- Amatun, Rahman Cut. "Efektivitas Hukum Cambuk (Jinayat) Dalam Menciptakan Efek Jera Di Kabupaten Nagan Raya." IPDN, 2022.
- Buinei, Gerson Sem, Universitas Muhammadiyah Sorong, Wahab Aznul Hidayah, Universitas Muhammadiyah Sorong, Sahertian Marthin, Universitas Muhammadiyah Sorong, A Faqih Mursid, et al. "Restorative Justice Approach in Dealing with Crimes at Police Level ( A Study at Polresta and Polres Sorong )." *Journal of Law Justice (JLJ)* 2, no. 1 (2024): 1–12.
- Edc, Rahman Abdur. *Tindak Pidana Dalam Syari'at Islam*. Jakarta: PT Rineka Cipta, 1992.
- Gebby Sintia Irawati, Wahab Aznul Hidayah, Masrifatun Mahmudah. "Peran Kepolisian Dalam Pencegahan Dan Penanggulangan Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak." *Judge: Jurnal Hukum* 5, no. 2 (2024): 339–45. <https://medium.com/@arifwicaksanaa/pengertian-use-case-a7e576e1b6bf>.
- Indanah. "Pelecehan Seksual Pada Anak." *JIKK* 7, no. 1 (2016): 8.
- KEMENPPA. "Sebaran Jumlah Kasus Kekerasan Menurut Provinsi Tahun 2024." Kementerian Pemberdayaan Perempuan dan Perlindungan anak, 2024.
- Kementerian Pemberdayaan Perempuan dan Perlindungan anak. "Jumlah Kasus Kekerasan." Kementerian Pemberdayaan Perempuan dan Perlindungan anak, 2024.
- . "Jumlah Kasus Kekerasan Menurut Provinsi." Kementerian Pemberdayaan Perempuan dan Perlindungan anak, 2023.
- M, Fauzi. *Fiqh Anti Kekerasan Seksual*. 1st ed. Yogyakarta: Pustaka Pelajar, 2023.
- Mansur, Fitirani Rahmi dan Teuku Muttaqin. "Penyelesaian Kasus Khalwat Melalui Hukum Adat Di Kecamatan Bebesen Kabupaten Aceh Tengah." *Jrnal Ilmiah Mahasiswa* 4, no. 3 (2020): 469.
- Mien, Rukmini. *Aspek Hukum Pidana Dan Kriminologi (Sebuah Bunga Rampai)*. 3rd ed. Bandung: PT Alumni, 2014.
- Narazi, AZ. "Pembayaran Ganti Rugi Bagi Korban Jarimah Jinayat Menurut Perspektif Praktisi Hukum Kota Langsa." *LEGALITE: Jurnal Perundang-Undangan Dan Hukum Pidana Islam* 4, no. 1 (2019): 108. <https://doi.org/https://doi.org/10.32505/legalite.v4iNo.%20I.1311>.
- Nurwati, Ramadhani Salsabila Rizky dan R Nunung. "Dampak Traumatis Remaja Korban Tindakan Kekerasan Seksual Serta Peran Dukungan Keluarga." *Social Work Jurnal* 12, no. 2 (2023): 133. <https://doi.org/https://doi.org/10.24198/share.v12i2.39462>.
- Priyo, Gunarto Mercus. "Sikap Pemidanaan Yang Berorientasi Pada Tujuan Pemidanaan." *Mimbar Hukum* 21, no. 1 (2009): 102. <https://doi.org/https://doi.org/10.22146/jmh.16248>.
- Ratna, Lukito. *Pergumulan Antara Hukum Islam Dan Hukum Adat Di Indonesia*. Jakarta: INIS, 1998.
- Santoso, Novrianza dan Imam. "Dampak Dari Pelecehan Seksual Terhadap Anak Di Bawah Umur." *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 1 (2022): 54. <https://doi.org/https://doi.org/10.23887/jpku.v10i1.42692>.
- Soesilo, R. *Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya*. Bandung:

Pustaka Setiq, 2000.

- Sri, Kurnianingsih. "Pelecehan Seksual Terhadap Perempuan Di Tempat Kerja." *Buletin Psikologi* XI, no. 2 (2003): 117. <https://doi.org/http://dx.doi.org/10.22146/bpsi.7464>.
- Sutra, Disemadi Hari. "Lensa Penelitian Hukum: Esai Deskriptif Tentang Metodologi Penelitian Hukum." *Journal of Judicial Review* 24, no. 2 (2022): 292. <https://doi.org/https://doi.org/10.37253/jjr.v24i2.7280>.
- Topo, Santoso. *Hukum Pidana Islam*. Bandung: Asy Syamil Press & Grafika, 2001.
- Ulfa, Praja Selvia Junia dan Wia. "Implementasi Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat Di Kota Banda Aceh Provinsi Aceh." *Jurnal Kebijakan Pemerintah* 3, no. 1 (2020): 12. <https://doi.org/https://doi.org/10.33701/jkp.v3i1.1071>.
- Zainuddin, Ali. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2009.
- Zuriah, Teuku Amnar Saputra dan Muhammad Novriansyah. "The Effectiveness of Qanun Jinayat in Preventing Sexual Violence Against Children from a Psychological Perspective." *An-Nisa: Journal of Gender Studies* 16, no. 2 (2023): 192. <https://doi.org/https://doi.org/10.35719/annisa.v16i2.176>.