

## **Punishment of Rape Perpetrators from Qonun Jinayat's Perspective (Decision No. 2/JN/2022/MS-Sat Jo. Decision No. 3/JN/2023/MS. Aceh and Decision No. 3/JN/2019/MS.Skm)**

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**ABSTRACT:** Qanun is a policy of the Aceh government which has special privileges in implementing special autonomy based on Law Number 11 of 2006 concerning Aceh Government which mandates the application of Islamic law to the entire region of Nangroe Aceh Darussalam Province. However, these provisions are very different from the provisions of the criminal law that applies in Indonesia, especially in imposing criminal sanctions in rape cases. This thesis research will examine the comparison of criminal sanctions for perpetrators of the crime of rape according to Qanun Jinayat and Criminal Code No. 1 of 1946, criminal sentences in case decision No. 2/JN/2022/MS-Sat Jo. Decision No. 3/JN/2023/MS. Aceh and Decision no. 3/JN/2019/MS. The SKM is appropriate based on the objectives of punishment, the policy of formulating punishment for perpetrators of the crime of rape based on Qanun Jinayat in the future. The type of research used in this thesis research is doctrinal legal research using a statutory approach, conceptual approach and case approach. Results of the research: The criminal sanctions imposed between cases of criminal acts of rape in the Criminal Code and criminal acts of rape in the Qanun Jinayat are very different. What both the Criminal Code and the Aceh Qanun have in common is that they both regulate that rape occurs outside of marriage, then both contain threats to anyone (anyone, everyone) meaning that there are sanctions from both laws. Criminal Imposition in Case Decision No. 2/JN/2022/MS-Sat Jo. Decision No. 3/JN/2023/MS. Aceh and Decision no. 3/JN/2019/MS. Skm is not in accordance with the purpose of punishment. The implementation of caning punishment in increasing public legal awareness is still considered not optimal. It is hoped that the competent institutions, namely the legislative body, in drafting the Aceh Qanun Jinayat, especially the Jarimah for sexual violence, can add a category for Jarimah based on the criteria for victims.

**KEYWORDS:** Punishment, Rape Perpetrators, Qonun Jinayat Perspective

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### **INTRODUCTION**

Criminal law in a broad sense is material criminal law and formal criminal law. The definition of formal criminal law, namely a formulation that emphasizes prohibited actions, can be interpreted as meaning that the legislator prohibits certain actions from being carried out without requiring any consequences from those actions to occur. Meanwhile, material criminal law is a law whose formulation places greater emphasis on prohibited consequences, which can be interpreted as the legislator prohibiting certain consequences. <sup>1</sup> The narrow meaning of criminal law only includes material law. <sup>2</sup>

Criminal law regulates the balance between public interests, state interests and individual interests. Criminal law is expected to provide legal certainty and justice, which is contained in written law and living law in society, by prioritizing human rights and human obligations. It is hoped that the reform of criminal law can complement and perfect it so that certainty, justice and benefits are expected as per the *ius constituendum*.<sup>3</sup> Rape in the Qanun Jinayat regulations is regulated in Article 48 – Article 50 of the Aceh Qanun Law Number 6 of 2014 concerning Jinayat Law. The qanun of jinayat law defines rape as sexual intercourse with the vagina or anus of another person as a victim with the perpetrator's penis or other objects used by the perpetrator or other objects used by the perpetrator with violence or coercion or with threats against the victim. Where it is explained in the Qanun Jinayat, rape is

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<sup>1</sup> RB Budi Prastowo, “*delik formil/materiil, sifat melawan hukum formil/materiil dan pertanggung jawaban dalam tindak pidana korupsi kajian teori hukum pidana pada putusan mahkamah konstitusi RI Nomor 003/PUU-VI/2006*”, 2006 Vol 24 No.3 Jurnal Hukum Pro Justitia

<sup>2</sup> Eddy OS Hiariej, 2016, *Prinsip-Prinsip Hukum Pidana Edisi Revisi* Yogyakarta: Cahaya Atma Pustaka,h..17

<sup>3</sup> Dewi Rohayati, “*pengaturan yudisial pardon dalam pembaharuan hukum di Indonesia*”, (2016) Vol 15 No 2, Wacana Paramarta : Jurnal Ilmu Hukum XV:2:2016

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divided into three, namely rape, rape involving a mahram (blood relationship), and rape of children. In the Qanun, the implementation of Uqubat includes fines, flogging and imprisonment.

Regarding criminal law, it cannot be separated from three main things which are often called the triad of criminal law, namely the formulation of criminal acts, the form of crime (witnesses) and mistakes. <sup>4</sup> Sudarto paid special attention to the reduction of sorrow or suffering. <sup>5</sup> Sudarto's opinion was confirmed by Barda Nawawi Arief who stated that there are two central problems in criminal law policy, namely determining what acts are criminalized and what form of criminal witness it is. <sup>6</sup> With the existence of a punishment orientation that is not the same as in Qanun Jinayat but can be considered to be in the opposite direction.

The author takes the example of the first case that occurred in Aceh, namely rape in Decision Number 2/JN/2022/MS-Sat Jo Decision Number 3/JN/2023/MS. Aceh on behalf of the 63 year old defendant committed rape against the victim who was people with disabilities. The defendant's actions are regulated in the provisions of Article 48 of the Qanun Jinayat Law which reads:

"Every person who deliberately commits Jarimah Rape as intended in Article 47 against a child is threatened with 'Uqubat Ta'zir whipping at least 150 (one hundred and fifty) times, a maximum of 200 (two hundred) times or a fine of at least 1,500 (one thousand and five hundred) grams of pure gold, a maximum of 2,000 (two thousand) grams of pure gold or imprisonment for a minimum of 150 (one hundred and fifty) months, a maximum of 200 (two hundred) months."

In the indictment, the public prosecutor charges the defendant with a subsidiary charge, namely, with a primary charge in accordance with the provisions of Article 48 Aceh Qanun No.6 of 2014 concerning Jinayat Law. And the indictment for subsidizing Article 46 Aceh Qanun no. 6 of 2014 concerning Jinayat Law. In the prosecution and based on the facts at trial, testimony from witnesses, expert testimony, as well as the defendant's statement and evidence in the form of a Visum Et Repertum were heard. That the public prosecutor is of the opinion that the primary indictment has been proven and is of the opinion that the subsidiary indictment does not need to be explained further, and believes that the defendant will be judged in accordance with the primary indictment Article 48 of Qanun Hukum Jinayat.

In decision no. 2/JN/2022/MS-Sat Jo Decision Number 3/JN/2023/MS.Aceh ruled that the defendant was legally and convincingly proven guilty of committing Jarimah rape as regulated and punishable by crime in Article 48 of the Aceh Qanun concerning Jinayat Law. convict the defendant of the primary charge and declare the defendant legally and convincingly proven guilty of committing rape as regulated in Article 48 of the Aceh Qanun concerning Jinayat Law. Sentenced the defendant to 'uqubat Ta'zir in the form of 125 lashes with the stipulation that the length of time the defendant was detained was deducted entirely from the uqubat imposed. Sentenced to the defendant to remain in detention until the inkraht decision is implemented for a maximum of 3 months.

Based on the description above, it can be seen that both cases of rape that were charged and convicted had violated the provisions of Article 48 of Aceh Qanun Number 6 of 2014 concerning jinayat law which includes the elements; each person; deliberately; committing rape; and the definition of rape based on Article 1 number 30 of Aceh Qanun Number 6 of 2014 states that "Rape is sexual intercourse with the vagina or anus of another person as a victim with the perpetrator's penis, or other objects used by the perpetrator or against the victim's vagina or penis with the perpetrator's mouth or against the victim's mouth with the perpetrator's penis, with violence or coercion, or threats against the victim," however, the panel of judges in determining a decision imposes a different sentence. namely in the form of punishment 'uqubat Ta'zir in the form of whipping and some in the form of uqubat prison. Therefore, this thesis research tries to describe the characteristics of punishment, in imposing sentences on perpetrators of rape based on Qanun Jianyat. The interesting problem formulation to be studied in this research is as follows:

1. What is the comparison of criminal sanctions for perpetrators of the crime of rape according to Qanun Jinayat and Criminal Code No.1 of 1946?
2. Is the sentence imposed in case decision no. 2/JN/2022/MS-Sat Jo. Decision No. 3/JN/2023/MS. Aceh and Decision no. 3/JN/2019/MS. Is SKM appropriate based on the purpose of the sentence?
3. What will be the policy for formulating punishment for perpetrators of the crime of rape based on Qanun Jinayat in the future?

### **RESEARCH METHODS**

Legal research aims to obtain legal materials or legal data that are used to solve legal problems scientifically. <sup>7</sup>By using research methods it is hoped that you can find and obtain concrete results. Research methods themselves are divided into two types, namely

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<sup>4</sup> Sudarto, *Hukum Pidana I*, (Semarang: Fakultas Hukum Universitas Diponegoro. 1990), h. 81.

<sup>5</sup> *Ibid.*,h.81

<sup>6</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Jakarta: Kencana Prenada Media Group,2002), h. 84

<sup>7</sup> I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media Group, 2017), h. 1.

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normative legal research and empirical legal research.<sup>8</sup> Normative Juridical research type,<sup>9</sup> The approaches used are Legislative Approach, Conceptual Approach and Case Approach.<sup>10</sup>

### **DISCUSSION**

#### **1. Comparison Of Criminal Sanctions Against Perpetrators Of The Crime Of Rape According To The Qanun Jinayat And The Criminal Code**

Positive criminal law regulates the crime of rape as stated in Article 285 of the Criminal Code. This article is one of the regulations for criminal acts against decency which is not a complaint offense but an ordinary offense. Sugandhi said that rape occurs when a man forces a woman who is not his wife to have sexual intercourse with the threat of violence and which requires the man's genitals to enter the woman's genitals which then releases semen.<sup>11</sup>

The crime of rape emphasizes the elements of coercion with violence and threats of violence from the perspective of the perpetrator.<sup>12</sup> However, in practice this element is very difficult to prove due to the often late processing of complaints from victims so that proof cannot be maximized, for example the post mortem et repertum<sup>13</sup> results do not show any traces of violence on the victim's body due to the long period of time since the incident.

Abdul Qadir Al-Audah classified the criminal act of rape into adultery with syubhat. Criminal acts in Islam, or what is usually called Jarimah, are divided into three categories, namely Jarimah Qishash, Jarimah hudud, and Jarimah takzir.<sup>14</sup> Jarimah hudud is the most serious crime because it concerns the public interest, this punishment is the most severe and is directly related to what is called Allah's right. Hirabah and zina are included in the category of jarimah hudud, whereas in Islamic criminal law rape is closer in meaning to the jarimah hirabah regulated in the QS. Al-Maidah verse 33, not as a crime for adultery.

According to cleric Dzahiriyah, a person who commits hirabah or muharib is anyone who threatens passersby and scares road users and then kills people, takes property or damages farji (commits adultery). Some Shafi'iyah and Malikiyah scholars are of the opinion that openly harassing women is a criminal act of hirabah. The punishment for jarimah hirabah in Islamic law is in the form of death or being crucified or having one's hands and feet cut off crosswise or being exiled.

One form of protection by the state for its citizens is the administration of justice. Legal protection for crime victims is not only limited to the punishment of the perpetrator, but also to the consequences that befall them, such as pregnancy due to rape.<sup>15</sup> Victims of the crime of rape must receive serious attention to the suffering they experience such as hurt, fear and various kinds of negative impacts that befall them. Victims should not be left alone to fight for the bad fate that befell them, but need to be bridged by law enforcement in fighting for their fate.<sup>16</sup> Legal protection for victims in an effort to provide a sense of security and legal certainty is regulated in the general rights of victims contained in Law Number 31 of 2014 contained in Article 5.

The criminal sanctions imposed between cases of criminal acts of rape in the Criminal Code and criminal acts of rape in the Qanun Jinayat are very different. What both the Criminal Code and the Aceh Qanun have in common is that they both regulate that rape occurs outside of marriage, then both contain threats to anyone (anyone, everyone) meaning that there are sanctions from both laws. While the difference is in terms of punishment, the Criminal Code contains a maximum of twelve years in prison, but in the Aceh Qanun the punishment is more varied, the first option is 125 to 175 canings; the second option is a fine of between 1,250 to 1,750 grams of pure gold; and the third option is imprisonment for a minimum of 125 months and a maximum of 175 months. The following is a chart of the differences in criminal penalties.

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<sup>8</sup> *Ibid*, h. 12

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta, : Kencana Prenada Media Group, 2010), h 32

<sup>10</sup> *Ibid.*, h.95

<sup>11</sup> R. Sugandi, *Kitab Undang-Undang Hukum Pidana dengan Penjelasannya*, (Surabaya: Usaha Nasional, 1980), h. 32

<sup>12</sup> Doortje D Turangan, Penerapan Pasal 285 KUHP tentang Pelaku Tindak Pidana Perkosaan, dalam Karya Tulis Ilmiah tidak diterbitkan, (Manado: Universitas Sam Ratulangi, 2011), h. 21

<sup>13</sup> <https://id.wikipedia.org/wiki/Visumetrepertum>

<sup>14</sup> Muslich, Ahmad Waedi, *Pengantar dan Asas Hukum Pidana Islam: Fikih Jinayat*, (Jakarta: Sinar Grafika, 2006), h. 144

<sup>15</sup> Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi atas Hak Asasi Perempuan)*, (Bandung: PT Refika Aditama, 2001), h. 96

<sup>16</sup> Akbar Sayudi, "Upaya Perlindungan Korban Tindak Pidana Perkosaan dalam Sistem Peradilan Pidana Indonesia", dalam *Jurnal Fiat Justisia*, Vol. 10, No. 1, Januari 2016, h. 210

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KUHP	Qanun Aceh
Article 285 states that "Anyone who, by force or threat of violence, forces a woman to have sexual intercourse with him outside of marriage, shall be punished for rape with a maximum imprisonment of twelve years."	Article 48 Qanun Number 6 of 2014 concerning Jinayat Law states that "Every person who deliberately commits Jarimah Rape is threatened with uqubat Ta'zir whipping at least 125 (one hundred and twenty five) times, a maximum of 175 (one hundred and seventy five) times or a fine of at least 1,250 (one thousand two hundred and fifty) grams of pure gold, a maximum of 1,750 (one thousand seven hundred and fifty) grams of pure gold or imprisonment for a minimum of 125 (one hundred and twenty five) months, a maximum of 175 (one hundred and seventy five) month".

From the description above, it can be seen that the meaning of "Every person" who deliberately commits Jarimah Rape against an adult and not a mahram is threatened with uqubat Ta'zir whipping at least 125 (one hundred and twenty five) times, a maximum of 175 (one hundred and seven). twenty-five) times or a fine of at least 1,250 (one thousand two hundred and fifty) grams of pure gold, a maximum of 1,750 (one thousand seven hundred and fifty) grams of pure gold or imprisonment for a minimum of 125 (one hundred and twenty-five) months, a maximum of 175 ( one hundred and seventy five) month.

Meanwhile, rape of the mahram and children is based on Article 49 of Qanun Number 6 of 2014 concerning Jinayat Law that the perpetrator of the crime of rape is threatened with Uqubat Ta'zir caning at least 150 (one hundred and fifty) times, a maximum of 200 (two hundred) times or a fine of at least 1,500 (one thousand five hundred) grams of pure gold, a maximum of 2,000 (two thousand) grams of pure gold or imprisonment for a minimum of 150 (one hundred and fifty) months, a maximum of 200 (two hundred) months.

The punishment for the crime of rape as regulated in Article 285 of the Criminal Code only sets a maximum limit of punishment so that there is a chance of a lighter sentence for the perpetrator of rape and does not differentiate between rape of children and adults. Meanwhile, Qanun Jinayat sets minimum and maximum sentences for perpetrators of rape and imposes heavier penalties for child rape.

**2. Sentencing In Case No. 2/JN/2022/MS-Sat Jo. Decision No. 3/JN/2023/MS.Aceh And Decision No. 3/JN/2019/MS.Skm Based On The Purpose Of Sentencing**

In 2002 the NAD provincial government implemented Islamic law in the field of jinayah, namely Qanun Number 11 of 2002 concerning the implementation of Islamic Law in the field of aqidah, worship and Islamic teachings. Qanun Number 12 of 2003 concerning Khamar Drinks and the like. Qanun Number 13 of 2003 concerning maisir (gambling), Qanun Number 14 of 2003 concerning khalwat (lewd acts). Sexual violence that occurs against girls, children and people with disabilities must be handled seriously because this crime often occurs in the community and the methods of the perpetrators are increasingly developing.

If a child becomes a victim of crime, legal protection must of course be given more attention because children are the nation's next generation. For criminal acts of sexual violence experienced by child victims, it certainly has a deep trauma or bad memory effect on the child, this affects the child's behavior, lifestyle and behavior in the future. In terms of conducting research on files, prosecutors must also be able to see and sort out which articles can be charged against perpetrators of sexual crimes against children, because not all crimes are regulated in the Qanun Jinayat, such as cases of obscenity. Obscene acts are only regulated in Law Number 35 of 2014.

In formulating and enacting laws that have been and will be implemented, legal politics is what delegates legislative authority to state administrators, but while still paying attention to the values that have prevailed in society so far, and everything is directed towards achieving the aspired state goals. L.H.C Hullsman once stated that the sentencing system is the statutory rules relating to penal sanctions and punishment.<sup>17</sup>

The qanun of jinayat law defines rape as sexual intercourse with the vagina or anus of another person as a victim with the perpetrator's penis or other objects used by the perpetrator using violence or coercion or threats against the victim. According to the rules in article 52 of the Jinayat Law Qanun, this is a complaint offense, not a reporting one, because it imposes obligations in terms of including initial evidence against the victim and requests for follow-up on the case by the victim, whereas in the case of reporting the victim only reports without any desire for further action from the party involved. authorized.

According to the panel of judges' considerations, based on the facts presented at the trial, the defendant's statement, as well as the evidence, the defendant was deemed to have committed rape based on a series of trial examinations into this case both before the post mortem was carried out and the results of the examination, it was indeed proven that the victim suffered injuries. reddish abrasions between the sexual canal and anus and skin-colored lacerations found at eight and ten o'clock on the blood membrane.

<sup>17</sup> Mahfud Md, Politik Hukum di Indonesia,dalam Viridis Firmanillah Putra Yuniar , Penegakan Hukum dalam Tindak Pidana Pemerkosaan Terhadap Anak Berdasarkan Qanun Jinayat Aceh Vol. 2 No. 2, Juni 2019, Media Iuris h.261,262, 263

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This is because there was no force with a blunt object, and at the stage of examining the statements of witnesses, expert witnesses and the defendant's statement, there was no information indicating that there was another person who abused or raped the victim witness, there was no other person who had a close relationship with the victim except the defendant. . In this way, the post-mortem evidence has fulfilled the formal and material requirements and is proof that the rape incident actually occurred and has objective relevance and correlation in the case.

Based on this evidence, the panel of judges found evidence in the form of a post mortem et repertum letter, expert testimony, as well as testimony from witnesses and the defendant's statement, which had objective relevance, in the process of proving that it was the defendant who had raped the victim by inserting his genitals (penis) into his body. forced into the victim's vagina after finishing the defendant's penis was forcibly inserted again into the anus or at least the defendant had poked the victim's vagina with the defendant's middle finger according to the defendant's statement. In this way, the defendant committed rape using other objects so that he fulfilled the provisions of article 1 paragraph 30 of Aceh Qanun number 6 of 2014 concerning jinayat law. So in this case the judge considered the public prosecutor's primary indictment.

In decision no. 2/IN/2022/MS-Sat Jo Decision Number 3/JN/2023/MS.Aceh ruled that the defendant was legally and convincingly proven guilty of committing Jarimah rape as regulated and punishable by crime in Article 48 of the Aceh Qanun concerning Jinayat Law. convict the defendant of the primary charge and declare the defendant legally and convincingly proven guilty of committing rape as regulated in Article 48 of the Aceh Qanun concerning Jinayat Law. Sentenced the defendant to 'uqubat Ta'zir in the form of 125 lashes with the stipulation that the length of time the defendant was detained was deducted entirely from the uqubat imposed. Sentenced to the defendant to remain in detention until the inkraht decision is implemented for a maximum of 3 months.

In the indictment, the public prosecutor charged the defendant with an alternative form of indictment, namely, in first case violating the provisions of Article 48 of Aceh Qanun No.6 of 2014 concerning Jinayat Law. Both violate the provisions of Article 33 paragraph (1) Aceh Qanun No. 6 of 2014 concerning Jinayat Law. that because the Public Prosecutor's indictment was in the form of an alternative, taking into account the legal facts above, the panel of judges chose the first alternative indictment directly as regulated in Article 48 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

In the prosecution and based on the facts at trial, the statements of witnesses, expert statements, as well as the defendant's statements and evidence in the form of a post mortem et repertum were heard. According to the consideration of the panel of judges, based on the facts at trial, the defendant's statement, and the evidence, the defendant was deemed to have committed rape based on a series of trial examinations of this case, both before the post mortem and repertum was carried out by the expert, and the facts were found to be true. It was truly proven that the victim had suffered because her hymen was no longer intact (like someone who had had several intimate relationships. The victim had even been declared pregnant at 24-25 weeks (6 months) in pregnancy).

Where the suffering was caused by the actions of the Defendant who had sexual relations with the victim. That because all the elements of Article 48 Aceh Qanun number 6 of 2014 concerning Jinayat Law have been fulfilled, the defendant must be declared to have been legally and convincingly proven to have committed the jihad as charged in the first alternative indictment. In Decision Number 3/JN/2019/MS-Skm, the court ruled that the defendant was legally and convincingly proven guilty of committing Jarimah rape as regulated and punishable by crime in Article 48 of the Aceh Qanun concerning Jinayat Law. Imposing uqubat to the Defendant in the form of imprisonment for 140 (one hundred and forty months), determining that the period of arrest and detention that the Defendant has served shall be deducted entirely from the uqubat imposed, determining that the defendant remains in detention.

Based on the analysis of these two cases, the judge must consider the sense of justice for the victim and the perpetrator regarding the purpose of the sentence. Talking about justice, we can see it in several aspects, including the following: First, from the perspective of the perpetrator of the crime. Islamic Criminal Law provides clear provisions and conditions that are so strict that it will not allow games of justice. Islamic Criminal Law provides justice for perpetrators, namely by providing strict conditions for the implementation of certain sanctions, such as stoning, qishash, and cutting off hands. Or in certain cases, such as people who apostatize, Islam recommends that the perpetrator repent, and his repentance can erase the punishment.<sup>18</sup>

Apart from that, the sanctions threatened for every perpetrator of a criminal act in Islamic criminal law can make the victim or the victim's family feel that justice has been fulfilled, so that they do not hold a grudge or retaliate with more cruel retaliation against the perpetrator. This is of course very good for the perpetrator because he is kept away from the greater effects of revenge. Apart from that, these sanctions are a guarantee for the perpetrator of the crime so that he will be deterred and then repent sincerely. If he repents, then his repentance will be accepted in the afterlife. Second, from the side of the victim or the victim's family. In cases of intentional murder and abuse, the victim or the victim's family can choose between making qishash, asking for diyat, or forgiveness. In this case, the interests of the victim (or the victim's family) to be treated fairly are taken into account. Meanwhile, other legal systems only focus on dealing with the perpetrator and make no effort to alleviate the suffering of the victim or the victim's family.

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<sup>18</sup> Kun Budianto, *Hukum Pidana Islam Perspektif Keadilan*, Nurani, Vol.15.No.1, Juni 2015, Fakultas Syariah, IAIN Palembang, h.45

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Third, from the law enforcement side. The Islamic legal system, including Islamic criminal law, has a strong, clear foundation and cannot be changed by anyone, namely the Al-Quran and As-Sunnah. Thus, there is no attempt to change the rules, or deviate from them, or override them. If there is a law enforcer who turns away from the provisions of Islamic criminal law, or goes overboard in carrying out his obligations, it will be known easily. In other words, clear and firm rules close the space for law enforcers to act as they please or act arbitrarily. Fourth, from the community side. Society certainly wants a situation that is far from various unkindness, whether caused by criminals in the form of crimes, or as a result of various criminal acts. Adultery is something bad and will give birth to bad consequences, as do other crimes.<sup>19</sup>

Aceh's Qanun Jinayat often receives criticism from various groups, especially those working on the issue of protecting women and children related to rape crimes which often harm women rather than accommodate their interests. Article 52 paragraph (1) creates a high threshold for female rape victims to report the crime of rape they experienced because it requires the victim to prepare sufficient initial evidence. This is a form of discrimination against women victims of rape because it doubles their burden.<sup>20</sup>

In fact, the government and law enforcers must be committed to implementing caning punishments with the vision of upholding Islamic law in a kaffah manner. The judge must provide additional guidance for spiritual formation within a specified time so that the convict does not repeat his crime. The community's lack of concern regarding the implementation of caning sentences has decreased, which can be seen in the caning sessions which are rarely attended by the general public. This perception arises as a result of the overall enforcement of Islamic law in Aceh only being enforced on the lower middle class. It is feared that this could lead to an attitude of public distrust in law enforcers, and this could result in people taking the law into their own hands. Meanwhile, jinayah perpetrators who are considered to have power are never caned. This is what causes public perception to change so that the orientation of increasing public awareness is not achieved.

### **3. Policy For Formulating Punishment For Perpetrators Of The Crime Of Rape Based On Qanun Jinayat In The Future**

Islam sees acts of sexual harassment as falling into the category of tawamah ta'zir because it is related to honor as a human being. Islamic criminal law itself does not discuss in detail regarding uqubat for perpetrators of criminal acts of sexual harassment, because sexual harassment is classified as an act approaching adultery. This term is an act of sexual immorality that is not yet included in the category of zina, while uqubat ta'zir for perpetrators of criminal acts of sexual harassment are given uqubat volume (basic punishment). As for the number of uqubat volumes in the category of ta'zir, the ulama have different opinions.<sup>21</sup>

It is hoped that the Uqubat ta'zir given to perpetrators of criminal acts of sexual harassment will be able to provide awareness and have a deterrent effect on the people who witness it so that they do not carry out such actions, especially against minors, with sanctions given for the actions they carry out. This is an effort to prevent acts of sexual harassment in Islamic criminal law, especially for minors with the formulation of sanctions given, while for uqubat ta'zir Jarimah sexual harassment in Aceh Qanun Number 6 of 2014 concerning Jinayat Law.<sup>22</sup>

In the Qanun Jinayat Aceh itself prioritizes the caning punishment stated in the Al-Quran, however, if we look at the punishment proportionally, the caning punishment for perpetrators of sexual harassment does not have an impact on the perpetrator, especially since the perpetrator is from the lower middle class, whereas for The victim himself received no attention at all from a legal perspective, either to the decisions taken by the Sharia Court or the local government in dealing with the trauma experienced by the victim.

The impacts that occur as a result of criminal acts of sexual violence are experienced by victims in the form of depression, trauma, fear and other psychological disorders. In cases of sexual violence, one thing that must be known is that it is not a matter of how heavy the uqubat ta'zir is given to the perpetrator, but rather what steps must be formulated into the legal mechanism to cure the victim's psychological disorders in the long term, so that the victim able to continue his life as a normal human being by socializing with society.

Physical wounds will not be the same as psychological wounds in that they require a relatively short time to treat, the healing requires professional techniques in terms of healing, it is possible that the recovery felt by the victim will take years and does not rule out the possibility that the psychological wounds will last a lifetime. This is the government's task to formulate existing laws taking into account the priorities of victims in the case of criminal acts of sexual violence. Uqubat which is applied to perpetrators of sexual violence is given authority to the judge or ulilamri in determining the uqubat of the jarimah. If the action is ongoing, then

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<sup>19</sup> Ibid, h.47

<sup>20</sup> Weni Wahyuni *Jarimah Pemerkosaan Dalam Qonun Jinayat Aceh Perspektif Feminist Legal Theory*, Vol 38 No. 1, Maret, Jurnal UNISSULA, h.44

<sup>21</sup> A. Dzauli, *Fiqh Jinayah (Upaya Menanggulangi kejahatan dalam Islam)*, Jakarta: Raja grafindo Persada, 2000, h. 181

<sup>22</sup> Setiaporang yang dengan sengaja melakukan jarimah pelecehan seksual, diancam dengan uqubat ta'zir cambuk paling banyak 45 (empat puluh lima) kali atau denda paling banyak 450 (empat ratus lima puluh) gram emas murni atau penjara paling lama 45 (empat puluh lima) bulan.

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he could be subject to a limit which is classified as a crime of adultery, or rape, especially related to the aspect of compensation to the victim.

Judging from the types of jarimah, sexual violence is not included in the jarimah hudud or qishas, and is in the jarimah ta'zir which is subject to uqubat ta'zir because in the text of both the Al-Quran and al-hadith it does not regulate explicitly and in detail. Regarding the uqubat given, it is the authority of the judge or ulil amri depending on the conditions of the community, so that the form of uqubat given can vary, it can take the form of imprisonment, ostracism, humiliation and even death uqubat, as is the opinion of the Maliki madhab of law regarding social justice,<sup>23</sup> and also the act of murder using a blunt object in the view of the Hanafi madhab.<sup>24</sup>

Sexual violence listed in the qanun, namely the Aceh qanun jinayat, is classified into two categories, namely general in nature in the sense that victims of sexual violence are included in the adult category and the second category is children, namely victims of sexual violence are classified as children. Uqubat ta'zir jarimah sexual violence in Aceh Qanun No.6 of 2014 concerning Jinayat Law as stated in the sixth part of article 46 and article 47. The Sharia Court should prioritize prison sentences for perpetrators of sexual violence because the acts carried out by the perpetrators use elements of violence, as well as prison sentences which are considered commensurate with the crime committed by the perpetrator when compared to punishment in the form of flogging, such as the flogging mechanisms that have been implemented. implemented in the Aceh Qanun Jinayat at this time.

Likewise, regarding the long prison sanctions given to perpetrators of sexual violence, the criteria for victims and perpetrators, namely disabled victims, should be more systematic in the Aceh Qanun Jinayat mechanism, because these victims cannot be classified as adult victims. Likewise with perpetrators who have a family relationship with the victim (mahram), because after all perpetrators who fall into this category should be able to protect the victim from various existing threats, both those contained in the modern city and in Islam, namely the Al-Quran. and Hadith.

The Aceh Qanun Jinayat in providing sanctions to perpetrators of sexual violence can match or even exceed the sanctions for sexual violence in the Criminal Code which uses legal terms with the language of obscenity as stated in article 82 (1) which reads "anyone who violates the provisions as intended in article 76E shall be punished." with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen years) and a maximum fine of Rp. 5000,000,000,- (five billion rupiah). In the future, it is hoped that the competent institutions, namely the legislative body, in drafting the Aceh Qanun Jinayat, especially the Jarimah for sexual violence, can add the category of fingertips based on the criteria for victims.

1. General in nature, namely normal and mature
2. Children
3. The perpetrator belongs to the victim's relatives/family (mahram)
4. Disability
5. Payment of compensation to victims in the form of restitution or compensation

This is because ta'zir in the form of compensation has been formulated in the Aceh Qanun Jinayat Number 6 of 2014 concerning Jinayat Law, namely for rape victims and qadzaf victims. If explored more deeply, the two victims of the jarimah experienced disturbances and even damage both physically and spiritually like the victim. rape and also spirituality for qadzaf victims, especially the good name of the victim. Apart from that, victims of sexual violence should also receive compensation. In the perspective of contemporary jurisprudence, sexual harassment is considered a despicable act, which goes beyond the framework of its human nature and violates the provisions of Islam regarding advice in marriage. Even though the classical fiqh book does not mention sexual harassment, the term sexual harassment is a contemporary world term.

The agreement of contemporary scholars is that sexual harassment is classified as an act of violation that can damage the order of social life, so perpetrators of sexual harassment must be given sanctions in the form of ta'zir, namely sanctions given by the authorities based on the results of ijtihad. can vary, depending on the judge's and Ulil Amri's policies in determining the uqubat for the perpetrator, which not only can deter the perpetrator, but also the uqubat looks from the victim's side, especially the impact of the punishment on the victim, which can take the form of imprisonment, exile, exclusion and fines paid to victims to treat the psychological impact experienced by the victim.

If uqubat must be given in the form of a whip, the whip given should be balanced with the actions committed by the perpetrator, not just a whip that shames the perpetrator in social life, because in the current contemporary era, the majority of people prioritize the economic side rather than shame in social life. especially people belonging to the lower middle economic group. The Al-Quran does not mention the punishment of stoning at all but prescribes 100 lashes for adultery. This fact is so important that it must be fully faced and explained if we are to reach the truth. Proponents of stoning for adultery have explained this fact in one of five ways:

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<sup>23</sup> Wahbah Az-Zuhaili, dalam Akmal, *Uqubat Ta'zir Jarimah Pelecehan Seksual Dalam Qanun Aceh No.6 Tahun 2014 Di Mahkamah Syariah Kota LANGSA (Perspektif Fiqih Kontemporer)*, h.116

<sup>24</sup> Ibid.h.116

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- a. The Al-Quran punishment of 100 lashes is for unmarried people. For married people, we need to turn to the Sunnah/Hadith, which prescribes the death penalty by stoning.
- b. For married people, the Sunnah/Hadith cancels the Al-Quran regarding the punishment of 100 lashes and instead prescribes the death penalty by stoning.
- c. For married people, the Sunnah/Hadith stipulates stoning as a second punishment which will be combined with the Al-Quran punishment of 100 lashes.
- d. The punishment of stoning is found in the Al-Quran but is only known by scholars with deep knowledge who are able to dive deep into the meaning of Allah's book.
- e. The Al-Quran does not provide an explanation of stoning for adultery but the verse where this law is stated is not included in the Al-Quran or has been removed from the Al-Quran.<sup>25</sup>

According to Winkel and Mukhtar, comprehension is the stated ability to grasp the meaning and meaning of the material being studied, which is expressed by explaining the main content of a reading or changing data presented in a certain form to another form.<sup>26</sup> Meanwhile, Benjamin S. Bloom said that understanding is a person's ability to understand or comprehend something after something is known and remembered. In other words, understanding is understanding something and being able to see it from various aspects.<sup>27</sup>

Meanwhile, awareness is awareness of one's actions and the circumstances one experiences. Literally the word consciousness comes from the word conscious, which means to realize, feel, know and understand, so consciousness is awareness or feeling like you understand or understand everything. A person cannot be said to be conscious if he does not know the situation he is experiencing, and does not want to change the situation he is experiencing, and does not want to change the situation for the better. The term awareness means knowing or understanding the legal action being carried out and its legal consequences, and being able to differentiate between good and bad. Feeling and understanding that certain behavior is regulated by law is called legal awareness.<sup>28</sup>

Legal awareness is always related to humans as individuals and members of society. Humans as individuals of course always pay attention to themselves, while humans as members of society will always interact or contact with other humans so that reactions arise between them. Awareness is an attitude/behavior of knowing or understanding and obeying the rules and provisions of existing legislation. Awareness can also be interpreted as an attitude or behavior of knowing or understanding and obeying the customs and habits of life in society.<sup>29</sup>

The caning that was carried out was based on the ideology of Islamism, intolerance and Aceh. As mentioned by Muhammad Ansor in his research, his research found that factors that correlated with attitudes towards implementing Islamic law were the ideology of Islamism, intolerance and violence. Almost all elements of Islamism are positively and significantly correlated with attitudes towards implementing Islamic law. The more someone agrees with the ideology of Islamism, the stronger their support for the implementation of Islamic law through a state approach. Some elements related to tolerance are not correlated but most are significantly correlated, but most of these elements are significantly correlated. The stronger the intolerance, the more positive the support for the implementation of Islamic law.

### **CONCLUSION**

The criminal sanctions imposed between cases of criminal acts of rape in the Criminal Code and criminal acts of rape in the Qanun Jinayat are very different. What both the Criminal Code and the Aceh Qanun have in common is that they both regulate that rape occurs outside of marriage, then both contain threats to anyone (anyone, everyone) meaning that there are sanctions from both laws. While the difference is in terms of punishment, the Criminal Code contains a maximum of twelve years in prison, but in the Aceh Qanun the punishment is more varied, the first option is punishment; the second option is pure gold fines; and the third option is prison.

Criminal Imposition in Case Decision No. 2/JN/2022/MS-Sat Jo. Decision No. 3/JN/2023/MS. Aceh and Decision no. 3/JN/2019/MS. Skm is not in accordance with the purpose of punishment. The implementation of caning punishment in increasing public legal awareness is still considered not optimal. This is due to several reflections on the life of the Acehnese people today who have developed a culture of indifference. In fact, the government and law enforcers must be committed to implementing caning

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<sup>25</sup> Rahmat Hakim, *Hukum Pidana Islam (Fiqih Jinayah)*, (Pustaka Setia, Bandung: 2000), h. 54

<sup>26</sup> Sudaryono, *Dasar-dasar Evaluasi Pembelajaran*, Graha Ilmu, Yogyakarta, 2012, h. 44

<sup>27</sup> Anas, Sudijono, *Pengantar Statistik Pendidikan*, Rajawali Pers, Jakarta, 2009, h. 50

<sup>28</sup> Miftahur Rifqi, *Tingkat Kesadaran Hukum Mahasiswa Terhadap Qanun No. 6 Tahun 2014 tentang Hukum Jinayat (Studi Kasus Mahasiswa Fakultas Syariah & Hukum UN Ar-Raniry)*, Jurnal LEGITIMASI, Vol. VI No. 1, Januari-Juni 2017, h. 67

<sup>29</sup> AW. Widjaja, *Kesadaran Hukum manusia dan Masyarakat Pancasila*, CV. Era Swasta, Jakarta, 1982, h. 16



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punishments with the vision of upholding Islamic law in a kaffah manner. The judge must provide additional uqubat for spiritual formation within a specified time so that the convict does not repeat his crime.

It is hoped that the authorized institutions, namely the legislative body, in drafting the Aceh Qanun Jinayat, especially the Jarimah for sexual violence, can add the category of jarimah based on the following victim criteria: General in nature, namely classified as normal and adult, Children, Perpetrators are classified as relatives/family of the victim (mahram). Disability, Payment of compensation to victims in the form of restitution or compensation.

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