

BETWEEN LAW AND SOCIETY: UNVEILING THE RISING SEXUAL VIOLENCE CASES IN ACEH UNDER QANUN JINAYAT

A Thesis

**Submitted to the Master's Study Program of Islamic Studies at the
Faculty of Islamic Studies in partial fulfillment of the requirements for
the degree of**

Master of Arts (M.A.)



by:

Veni Ariani

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ABSTRACT

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This study examines the implementation of Qanun Jinayat in handling cases of sexual violence in Aceh, focusing on the patterns and substance of Sharia Court decisions, as well as how social and cultural dynamics influence the judicial process. Although the Qanun Jinayat was designed as a Sharia-based legal instrument regulating criminal offenses, including sexual harassment and rape, its practical application has revealed several issues, uses a socio-legal approach with qualitative methods, involving analysis of a particularly in terms of evidence, victim protection, and substantive justice. This study number of Sharia Court rulings in Aceh as well as interviews with relevant parties, including legal officials, activists, and survivors. The results of the study show that there are disparities in court decisions, particularly in terms of consistency of verdicts, understanding of power relations, and the limited perspective of victims in the judges' considerations. In addition, the dominance of patriarchal culture and masculine interpretations of religion further weaken the position of victims in the legal process. The findings also show that the Qanun Jinayat still tends to emphasize symbolic and moral aspects rather than building a legal system that is responsive to the needs of victims. This situation is exacerbated by limited resources, a lack of gender-sensitive training, and limited access to support services.

Keywords: *Aceh Sharia Court, Islamic law, Qanun Jinayat, sexual violence, substantive justice.*

لمخلصنا

تبحث هذه الدراسة في تطبيق قانون الجنايات في التعامل مع قضايا العنف الجنسي في آتشييه مع التركيز على أنماط ومضمون قرارات المحاكم الشرعية، وكذلك كيفية تأثير الديناميات الاجتماعية والثقافية على العملية القضائية. على الرغم من أن قانون الجنايات صُمم كأداة قانونية تستند إلى الشريعة الإسلامية وتنظم الجرائم الجنائية، بما في ذلك التحرش الجنسي والاغتصاب، إلا أن تطبيقه العملي كشف عن عدة مشكلات، ويستخدم نهجًا اجتماعيًا قانونيًا مع أساليب نوعية، يتضمن تحليلًا خاصًا بالأدلة وحماية الضحايا والعدالة الموضوعية. تستند هذه الدراسة إلى عدد من أحكام المحكمة الشرعية في آتشييه، بالإضافة إلى مقابلات مع الأطراف المعنية، بما في ذلك المسؤولون القانونيون والناشطون والناجون. تظهر نتائج الدراسة أن هناك تباينات في قرارات المحكمة، لا سيما من حيث اتساق الأحكام، وفهم علاقات القوة، ومحدودية منظور الضحايا في اعتبارات القضاة. بالإضافة إلى ذلك، فإن هيمنة الثقافة الأبوية والتفسيرات الذكورية للدين تضعفان موقف الضحايا في العملية القانونية. تظهر النتائج أيضًا أن قانون الجنايات لا يزال يميل إلى التركيز على الجوانب الرمزية والأخلاقية بدلًا من بناء نظام قانوني يستجيب لاحتياجات الضحايا. ويتفاقم هذا الوضع بسبب محدودية الموارد، ونقص التدريب المراعي للمنظور الجنساني، ومحدودية الوصول إلى خدمات الدعم.

الكل مات لفاتحجة: قلوبون الحزونات، محكممة الشريفة في انشيه، العرف النجسي، الشريعة الإسلامية،
العللة المرضية.

TABLE OF CONTENTS

STATEMENT OF AUTHENTICITY	ii
ANTI-PLAGIARISM STATEMENT	iii
THESIS ATTESTATION.....	iv
THESIS DEFENSE APPROVAL	v
ABSTRACT	vi
TABLE OF CONTENTS	viii
CHAPTER I INTRODUCTION	1
1.1 Background.....	1
1.2 Literature Review	3
1.3 Problem Statement.....	8
1.4 Theoretical Framework	8
1.4.1 Feminist Legal Theory MacKinnon.....	8
1.4.2 Criminology Theory (Jock Young)	9
1.5 Research Methodology	11
CHAPTER II HISTORY AND DEVELOPMENT OF QANUN JINAYAT IN ACEH	13
2.1 Background.....	13
2.2 Historical background of Qanun Jinayat after the Helsinki MoU.....	14
2.3 The process of formulating and enacting the Qanun Jinayat.....	17
2.4 Developments of the Revision of the Qanun Jinayat	25
2.5 Conclusion.....	28
CHAPTER III THE LEGAL FRAMEWORK FOR CRIMINAL LAW AND THE RULINGS OF THE ACEH SHARIA COURT ON SEXUAL HARASSMENT AND RAPE	29
3.1 Introduction	29
3.2 General concepts of sexual harassment and rape	30
3.2.1 Sexual harassment	30
3.2.2 Rape.....	31
3.3 The Application of Sharia Law to Sexual Harassment and Rape in Aceh ..	36

3.4 Conclusion.....	47
CHAPTER IV ANALYSIS OF ACEH COURT JUDGES' DECISIONS AND FACTORS CONTRIBUTING TO THE INCREASE IN SEXUAL HARASSMENT AND RAPE CASES IN ACEH	48
4.1 Introduction	48
4.2 Overview of the Aceh Sharia Court Decision	49
4.3 Analysis of Decision Patterns and Legal Determinations.....	51
4.3.1 Identification of Patterns and Disparities in Judgments	54
4.4 Social and Cultural Factors Causing the Increase in Cases.....	59
4.5 Conclusion.....	64
CHAPTER V CONCLUSION	66
5.1 Conclusion.....	66
BIBLIOGRAPHY	69

GLOSSARY, ABBREVIATIONS DIRECTORY, AND BASIC ARABIC TERM ISLAMIC LAW TRANSLATED

Glossary

Qanun Jinayat:	Regional Islamic criminal code implemented in Aceh that governs offenses such as sexual harassment, rape, gambling, alcohol, etc.
Mahkamah Syar'iyah:	Aceh Sharia Court, the judicial body handling Islamic law cases in Aceh.
Uqubat Ta'zir:	Discretionary punishment determined by a judge, not explicitly mentioned in the Qur'an or Hadith.
Restitution:	Compensation provided to victims of crimes for material or non-material loss.
Flogging:	A form of physical punishment involving lashes, often applied in Aceh under Sharia law.
Oath (Sumpah):	A religious declaration made before God used in Islamic legal proceedings as part of evidentiary practice.
TPKS Law:	Law No. 12 of 2022 concerning Sexual Violence Crimes (Undang-Undang Tindak Pidana Kekerasan Seksual), a national Indonesian law.

Abbreviations Directory

BPS:	Badan Pusat Statistik (Central Statistics Agency of Indonesia)
DPRA:	Dewan Perwakilan Rakyat Aceh (Aceh Regional Legislative Council)
GAM:	Gerakan Aceh Merdeka (Free Aceh Movement)
LBH:	Lembaga Bantuan Hukum (Legal Aid Institute)
MoU:	Memorandum of Understanding

MPU:	Majelis Permusyawaratan Ulama (Aceh Islamic Scholars Council)
SIMFONI PPA:	Sistem Informasi Online Perlindungan Perempuan dan Anak
TPKS:	Tindak Pidana Kekerasan Seksual (Sexual Violence Crime)
UU:	Undang-Undang (Law)
WH:	Wilayatul Hisbah (Sharia Police in Aceh)

Basic Arabic Terms

Qanun (قانون):	In Aceh, refers to regional Islamic laws, rooted in both state authority and Islamic tradition.
Jinayah (جناية):	Refers to offenses considered crimes in Islamic criminal law.
Hudud (حدود):	Punishments specified by the Qur'an or Hadith for specific crimes (e.x adultery, theft).
Qisas (قياس):	A principle of equal punishment, e.x, "an eye for an eye" in cases of murder or bodily harm.
Ta'zir (تعزير):	Punishment decided by the judge for crimes not covered under hudud or qisas.
Zina (زنا):	Sexual intercourse between a man and a woman outside a lawful marriage.
Khalwat (خلوة):	Being in a private place with someone of the opposite sex who is not a mahram.
Uqubat (عقوبات):	General term for legal punishments under Sharia.

CHAPTER I

INTRODUCTION

1.1 Background

Aceh is known as the “Veranda of Mecca,” with a community that upholds religious norms in their daily lives, for the people of Aceh, religion and customs are inseparable. A profound slogan in the community is “*Adat ngon hukom lagee zat ngon sipheut*,” which means that customs and Sharia are like substance and nature. This indicates that traditional values in Aceh coexist with Islamic Sharia and are deeply integrated in shaping the norms and social order of the community. This strong integration between tradition and Sharia is one of the main foundations for Aceh to implement Islamic Sharia through special regional regulations officially. This implementation is also the result of the long struggle and history of the Acehnese people, their aspirations for autonomy, and their religious character. The legal basis for the implementation of Islamic Sharia includes Law No. 1 of 2001 (Special Autonomy for Aceh), which was later amended by Law No. 11 of 2006 as part of the implementation of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, agreed upon in Helsinki, Finland, known as the Helsinki Memorandum of Understanding (MoU). Based on this autonomy, the Aceh government then formulated several regional regulations known as Qanun.¹

In addition to being an effort at post-conflict social reconstruction, the Qanun has several important objectives, such as improving moral and ethical standards by Islamic values. Al Yasa Abubakar, the first Head of the Islamic Sharia Office and designer of the contemporary Sharia system in Aceh, explained that implementing the Qanun is a form of social engineering based on Islamic values. Therefore, Qanun serves as a formal legal instrument and a social order with a more religious approach. However, in practice, the implementation of Qanun faces

¹ “Peraturan Perundang-Undangan Tentang Pelaksanaan Syariat Islam Di Aceh,” accessed June 25, 2025, <https://ms-aceh.go.id/berita-artikel-galeri/artikel/183-peraturan-perundang-undangan-tentang-pelaksanaan-syariat-islam-di-aceh.html>.

various challenges from within and outside Aceh, especially when dealing with social complexity, state law, and human rights. Qanun that is still being discussed and criticized by many circles is Qanun Aceh No. 6 of 2014 concerning Jinayat Law, which enforces Islamic norms in criminal law. The Criminal Law Qanun regulates several forms of offenses, including sexual harassment and rape, as stipulated in Articles 46 and 48.² This is ironic when compared to the reality on the ground, as the number of rape cases has increased, despite Aceh having implemented the Criminal Law Qanun regulating these offenses for over a decade.

Based on national data, the number of rape cases in Indonesia increased from 1,164 cases in 2021 to 1,443 in 2022. In the trend released by Badan Pusat Statistik (BPS), Aceh was one of the provinces with a significant increase in rape cases. Data from 2021 recorded 70 cases, which increased to 135 cases in 2022.³ This finding was also reported by several national online media outlets, such as Kompas.com⁴ and Tempo, which cited BPS data and highlighted the high incidence of rape. In its report, Tempo noted that the Aceh Human Rights Commission emphasized ensuring victims' rights are fully upheld.⁵ The National Commission on Violence Against Women's data (Komnas Perempuan) from the Online Information System for the Protection of Women and Children (SIMFONI PPA) shows a trend of increasing cases of violations of the Qanun Jinayat, particularly those related to sexual violence against women. During the period from 2019 to 2023, Komnas Perempuan recorded 140 cases of rape and 118 cases of sexual harassment experienced by adult women in Aceh. Meanwhile, the number of cases involving child victims was significantly higher. During the same period, there were 499 cases

² “Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat,” 15–16, accessed June 1, 2025, <https://www.regulasip.id/book/8964/read>.

³ “Badan Pusat Statistik,” 102–8, accessed May 17, 2022, <https://www.bps.go.id/publication/2020/12/02/725d484ca73434e95d4d4b9d/profil-migran-hasil-survei-sosial-ekonomi-nasional-2019.html>.

⁴ Kompas Cyber Media, “10 Provinsi dengan Kasus Pemerkosaan Tertinggi di Indonesia Menurut Laporan BPS 2023,” KOMPAS.com, July 12, 2024, <https://www.kompas.com/tren/read/2024/07/12/204500765/10-provinsi-dengan-kasus-pemerkosaan-tertinggi-di-indonesia-menurut-laporan>.

⁵ “Aceh Di Urutan Pertama, Inilah 10 Provinsi Dengan Kasus Pemerkosaan Tertinggi Di Indonesia | Tempo.Co,” accessed July 8, 2025, <https://www.tempo.co/hukum/aceh-di-urutan-pertama-inilah-10-provinsi-dengan-kasus-pemerkosaan-tertinggi-di-indonesia-38986>.

of rape and 764 cases of sexual harassment against children.⁶ The high number of sexual harassment and violence cases over the past five years indicates that violations of the Qanun Jinayat remain a serious issue in Aceh. This situation reflects the weak effectiveness of the law in preventing sexual harassment and rape, particularly against women and children.

According to the Legal Aid Institute (LBH), the discrepancy between the Qanun and reality stems from a regulatory orientation that tends to focus more on punishing perpetrators than on fulfilling the rights of victims.⁷ For example, in cases of rape, the Aceh Qanun No. 6 of 2014 on Criminal Law does not provide detailed provisions on evidence. Article 52 (3) merely states that the rape victim must take an oath that the rape occurred as additional evidence, and this must be done five times. Then, in Article 55, anyone accused of rape can defend themselves by taking an oath of defence five times, and it is emphasized in Article 56 that if both parties take an oath, no punishment will be imposed on either of them.⁸ This is clearly detrimental to the victim, as evidence often poses a significant challenge. When the victim cannot provide sufficient evidence, it can backfire on the victim if the perpetrator reports the accusation of rape. As a result, not only does the victim fail to obtain justice, but they also risk being punished and further traumatized. The many discrepancies between the normative spirit of the Qanun Jinayat and the reality on the ground have attracted the attention of many scholars to study the implementation of the Qanun in greater depth.

1.2 Literature Review

Several studies on Qanun have been conducted by scholars interested in examining the dynamics of Islamic law implementation in Aceh. These researchers highlight various aspects, ranging from the fundamental normative aspects of Qanun to the effectiveness of its implementation. These studies indicate that the

⁶ “Laporan Pemantauan HAM,” Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap Perempuan, 3–4, accessed June 1, 2025, <https://komnasperempuan.go.id/laporan-pemantauan-ham-detail/laporan-pemantauan-penanganan-kekerasan-seksual-di-aceh-jaringan-pemantau-aceh-231-dan-komnas-perempuan>.

⁷ “LBH Beberkan Penyebab Meningkatnya Kekerasan Seksual Anak Di Aceh,” accessed June 1, 2025, <https://www.hukumonline.com/berita/a/lbh-beberkan-penyebab-meningkatnya-kekerasan-seksual-anak-di-aceh-lt62f4d434549dd/>.

⁸ “Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat,” 16.

implementation of Qanun as part of the sharia legal system in Aceh has its complexities in the social and legal context. Some previous studies that have discussed this issue include:

Based on the article “*Examining Qanun in Aceh from a Human Rights Perspective: Status, Substance and Impact on Vulnerable Groups Minorities*” by Dian Andi et al. This paper critically examines the implementation of Qanun Jinayat in Aceh from a human rights perspective. It explains that in its implementation, this Qanun raises various issues, particularly for vulnerable groups and minorities, both Muslim and non-Muslim. The study found that the substance of the Qanun often conflicts with international human rights principles and results in discrimination against women, children, and religious minority groups. Therefore, this paper recommends the need for legal reform and constructive dialogue between Sharia principles and human rights norms to ensure justice for all residents of Aceh.⁹ Another study by research conducted by Nur Anisah and Ariesta Wibowo entitled “*Eliminating Qanun Jinayat in Resolving Sexual Violence in Indonesia: A Comparative Study of the TPKS Law and Qanun Jinayat*,” which comprehensively discusses the comparison between Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law) with the Qanun Jinayat. The study found that the Qanun Jinayat is severely lacking in protecting victims of sexual violence, particularly in the areas of evidence, legal protection, restitution, and compensation. In contrast, the TPKS Law is considered more progressive as it relies on human rights principles, takes into account the absolute vulnerability of children, provides restitution for perpetrators, and offers compensation from the state. One of the findings of this paper that shows that the Qanun Jinayat does not favour victims is the use of oaths as an alternative to proving whether the victim was actually raped or not. This is actually dangerous for victims because there is a law governing Qadzaf (accusing someone of adultery without evidence), and the use of oaths for victims and perpetrators tends to exonerate both parties. This paper also recommends using the TPKS Law as the primary reference because it provides greater guarantees in

⁹ Dian Andi Nur Aziz et al., “Examining Qanun in Aceh from a Human Rights Perspective: Status, Substance and Impact on Vulnerable Groups and Minorities,” *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 37–56, <https://doi.org/10.18326/ijtihad.v23i1.37-56>.

regulating prevention, handling, protection, and recovery for victims of sexual violence.¹⁰

Furthermore, an in-depth study of legal discrimination in the Qanun Jinayat was written by Faradilla Fadlia and Ismar Ramadani in the journal *The Qanun Jinayat Discriminates Against Women (Victims of Rape) in Aceh, Indonesia*. This paper focuses on Article 5 (1) of the Qanun Jinayat, which imposes a double burden on victims when reporting a crime, requiring them to provide initial evidence. In contrast, under the national law KUHP, the collection of evidence is the responsibility of the investigator. The authors argue that such provisions deter victims from reporting crimes. Additionally, this paper finds that there is a dual legal system between the Qanun Jinayat and customary law. In cases of child rape, the government prefers to use the Child Protection Law, while in other cases, it continues to use the Qanun Jinayat, which tends to impose lighter penalties such as flogging. This paper also highlights settlements using customary law, especially in several areas in Aceh, in the form of marrying the victim to the perpetrator, paying compensation to the victim, and possibly expelling the victim and perpetrator. These findings prove that settlements carried out according to customary law fail to provide justice and protection to women as victims and also reinforce patriarchal culture in society. In this article, as in the previous one, it is recommended that there be fundamental changes in the legal system, improvements in judicial procedures, and capacity building for judges through specialized training. This is intended to prevent legal disparities that would harm women in Aceh.¹¹

The following article by Syarifah Rahmatillah, entitled “*Discontinuity Formulation of Restitutions in Aceh Qanun against the Protection of Rape Victims*,” critically discusses the Qanun Jinayat, which focuses on the fulfilment of restitution rights for rape victims in Aceh, which, according to the author, should be the main punishment. This article finds that the root of the problem lies in the absence of an

¹⁰ Laili Nur Anisah and Anditya Ariesta Wibisono, “Eliminating Qanun Jinayat in Resolving Sexual Violence in Indonesia: A Comparative Study of the TPKS Law and Qonun Jinayat,” *Journal of Asian Wisdom and Islamic Behavior* 2, no. 2 (2024): 2, <https://doi.org/10.59371/jawab.v2i2.86>.

¹¹ Faradilla Fadlia and Ismar Ramadani, “The Qanun Jinayat Discriminates Against Women (Victims of Rape) in Aceh, Indonesia,” *Journal of Southeast Asian Human Rights* 2, no. 2 (2018): 2, <https://doi.org/10.19184/jseahr.v2i2.8358>.

Aceh Governor Regulation that technically and regulates explicitly the procedures for exercising the right to restitution. This makes it difficult for judges to include restitution in their verdicts, resulting in the victims' right to restitution not being fulfilled. The judicial process, which should provide restorative justice, has failed to help restore the rights of victims of sexual violence. Another important finding in this paper is the lack of understanding among victims regarding the submission of restitution claims. Therefore, there is a need for special assistance for victims from specialized institutions such as the Witness and Victim Protection Agency (LPSK), the Legal Aid Institute (LBH), and non-governmental organizations (NGOs), which will help victims obtain their rights.¹² The paper by Zuriah, Amna, and Novriansyah examines the effectiveness of the Qanun Jinayat in preventing sexual violence against children from a psychological perspective. The research findings indicate that the flogging punishment currently in place does not deter perpetrators, and perpetrators are often released after serving their sentences, which adds to the psychological burden on victims due to the likelihood of re-encountering the perpetrator. This paper also addresses the issue of restitution, which focuses solely on material losses and does not address the psychological needs of victims, which are far more critical and necessary, given that the psychological trauma experienced by victims can last for a very long time. This study emphasizes that child protection should not be limited to formal legal aspects alone but should also involve a comprehensive psychological, educational, social, and legal approach to prevent victims from experiencing repeated sexual violence (re-victimization) due to punishments that fail to deter perpetrators.¹³

In the article by Liza Agnesta Krisna et al., “*Discourse on the Formulation of the Jarimah of Sexual Violence Against Children in the Aceh Qanun Jinayat*,” the authors discuss how legal and theological foundations, as well as local social and political contexts, influence the formulation of the jarimah of sexual violence against children in the Aceh Qanun Jinayat. The study shows that the provisions

¹² Syarifah Rahmatillah Aljamalulail, “Discontinuity Formulation of Restitutions in Aceh Qanun against the Protection of Rape Victims,” *Gender Equality: International Journal of Child and Gender Studies* 7, no. 2 (2021): 7, <https://doi.org/10.22373/equality.v7i2.9059>.

¹³ Zuriah Zuriah et al., “The Effectiveness of Qanun Jinayat in Preventing Sexual Violence Against Children from a Psychological Perspective,” *An-Nisa Jurnal Kajian Perempuan Dan Keislaman* 16, no. 2 (2023): 16, 2, <https://doi.org/10.35719/annisa.v16i2.176>.

related to sexual harassment and rape of children are primarily based on the practice of *jarimah khalwat* (being together in quiet place), which tends to frame sexual violence as a moral offence rather than a violation of the child's body and rights. However, the National Child Protection Law addresses both types of violence more comprehensively. The author argues that this law is inadequate because it does not align with standards applicable across the country, leading to confusion, ambiguity, and insufficient protection for victims. Due to these criticisms, the substance of the Qanun must be re-evaluated to avoid harming child victims. This also underscores the importance of committing to making the law fair and protective of vulnerable groups.¹⁴

Previous studies have made important contributions to analyzing the normative framework of the Qanun Jinayat, particularly in relation to sexual violence. Some of these studies highlight issues such as legal discrimination, limitations in protecting victims, and inconsistencies between local regulations and national legislation. However, most of these studies have focused on normative and policy aspects, while the implementation dimension, particularly in judicial practice at the Sharia Court, has received little attention. In this context, this research takes a different position by critically examining how judges' decisions are formed, the legal reasoning patterns used, and their impact on the fulfillment of justice for victims. Focusing on jurisprudence is important to see whether the applicable Sharia law is truly capable of providing deterrence and substantive justice, or whether it reproduces structural inequalities.

In addition, this study also seeks to understand why cases of sexual violence in Aceh continue to increase despite the region being known for its relatively strict application of Islamic law. In this regard, attention is not only directed at weaknesses in the legal system, but also at the socio-cultural conditions that influence the high rates of violence. Deep-rooted patriarchal culture, stigma against victims, and informal resolution mechanisms that often do not favor victims are part of the analysis that cannot be ignored. By combining analysis of judicial practices

¹⁴ Liza Agnesta Krisna et al., "Discourse on the Formulation of the Jarimah of Sexual Violence against Children in the Aceh Qanun Jinayat," *Research, Society and Development* 10, no. 11 (2021): e531101120059, <https://doi.org/10.33448/rsd-v10i11.20059>.

and the surrounding socio-cultural factors, this study is expected to provide a new, more comprehensive contribution to understanding the challenges of protecting victims of sexual violence in sharia-based legal systems.

1.3 Problem Statement

The reality shows an increase in violations of the Qanun Jinayat, as well as writings that reveal weak penalties for violators and a lack of attention to victims. While Aceh is known for its strong Sharia law and long-standing application of the law, this raises questions about the extent to which the Qanun Jinayat can be effectively enforced in handling cases of violations. Based on the discrepancy between the applicable norms and the existing reality, this study aims to explore the following questions:

1. How do Aceh Sharia Court judges decide on cases of Qanun Jinayat violations, particularly in cases of sexual violence and rape?
2. What are the factors influencing the increase in cases of sexual harassment and rape?

1.4 Theoretical Framework

The legal conditions are considered to be less than optimal, and the number of cases continues to increase every year, indicating that the problems in Aceh are legal and formal, that there are deeper structural and relational issues. This paper will use two theoretical approaches that are appropriate to the current situation in Aceh, namely:

1.4.1 Feminist Legal Theory MacKinnon.

Gender inequality in the legal system has long been a concern for feminist thinkers, especially in systems that are considered neutral in practice but are in fact strongly influenced by patriarchal power relations. Catharine A. MacKinnon, in her work "Towards Feminist Theory of The State," criticizes how, in most of the world's population, men dominate women and children through family rules, customs, and sexual norms designed to give men complete control over reproduction and sexuality, which the state then applies to the legal system. Through the law, male dominance is made to seem normal in everyday life, and this is also embedded in

society's worldview. For feminist thinkers, such a legal system establishes male values as the standard for human relationships. For example, the way courts operate, the division of state power, and the separation between public and private law are all based on a male perspective. Women's perspectives tend to be ignored and considered invalid in law because women's status is not higher than men's. Thus, men have far greater power than women.¹⁵

The relevance of this theory to the research lies in the structural framework of the Qanun Jinayat in Aceh, which still prioritizes a moralistic approach and social control over women's bodies, rather than the protection and rehabilitation of victims. When the law is interpreted and applied in a space saturated with norms and patriarchy, such as in the Aceh Sharia judicial system, the voices, experiences, and needs of female victims are often sidelined or even deemed invalid. Thus, this theory offers a conceptual framework to understand that injustice toward victims of sexual violence is not only a result of legal weaknesses but also of how the law is shaped, interpreted, and enforced within unequal social structures. This theory expands our understanding of the context in Aceh, highlighting that legal reform is insufficient if it does not address the dimensions of power and gender dominance that form the foundation of the legal system itself.

1.4.2 Criminology Theory (Jock Young)

Jock Young is a British criminologist known as one of the founders of left-wing realism in criminology. This theory emerged as a response to right-realism criminology, which focused too much on social control and punishment, and radical criminology, which focused too much on structure and paid little attention to the experiences of victims. According to Young, crime is not merely a social construct but also a painful social reality where victims often come from the working class, the poor, marginalized groups, and those structurally excluded. Additionally, how men typically perpetrate violence and oppress women highlights how power dynamics and gender inequality persist in society, thereby creating a system of

¹⁵ Catharine A MacKinnon, *Towards A Feminist Theory Of The State* (Harvard University Press, n.d.), 237–38.

discrimination within it. Such phenomena can no longer be viewed as usual or ordinary.¹⁶

In the context of Aceh, this theory provides an understanding that the increase in sexual violence is not only a matter of weak law enforcement, but also a result of a social system that is unresponsive to the needs and realities of victims. Women, children, and poor communities are often not only victims of violence but also victims of re-victimization by a legal system that demands complex proof and fails to provide guarantees for psychological and social recovery. The left realism approach is also critical of symbolic and repressive laws, such as the well-known caning law in Aceh. This punishment is considered to create a deterrent effect, but in practice it does not address the root causes of violence and can even reinforce a culture of shame and silence victims. In their writing, Lynn and Sarah explain that the culture of shame is deeply ingrained in society and the concept of family honor is linked to control over women's sexuality. Therefore, violations or rumors can lead to social stigma, so the approach taken in resolving cases such as sexual violence is to marry the victim to the perpetrator in an effort to restore honor.¹⁷ Using Jock Young's perspective, this study examines how victims of sexual violence in Aceh are often in a position that is structurally not accommodated by the system. This inequality is exacerbated by a patriarchal culture that normalizes power relations, as well as a legal approach that is not based on victim recovery. This approach offers a more sociological perspective that legal reforms such as the Qanun Jinayat will not be effective unless accompanied by structural changes that address the social and cultural inequalities that are the root causes of violence.

These two theoretical methods complement each other. Feminist Legal Theory offers a critical perspective on gender-biased legal substance and processes, while Right-Wing Realist Criminology expands knowledge about the social aspects of victims and their marginalization within the legal system and society. MacKinnon's theory helps explain why Sharia law may fail to protect women in

¹⁶ “Young, Jock - The Exclusive Society | PDF,” 30–31, accessed July 8, 2025, <https://www.scribd.com/document/412064756/Young-Jock-The-Exclusive-Society>.

¹⁷ Lynn Welchman and Sara Hossain, *Honour': Crimes, Paradigms, and Violence Against Women* (Zed Books, 2005), 5.

Aceh, while Young's theory helps explain why the law has not had a significant impact in reducing rates of sexual violence, as it does not address the underlying social and cultural inequalities. Therefore, this theoretical framework helps evaluate the weaknesses in the implementation of the Qanun Jinayat and encourages the development of a more transformative legal approach that focuses on the experiences of victims and the underlying social structures.

1.5 Research Methodology

This research is qualitative descriptive, with data collection techniques using two primary methods: interviews and literature study. In-depth interviews were conducted with relevant parties, such as law enforcement officials, activists, and academics, to gain contextual and empirical understanding of the application of law in cases of sexual violence and rape in Aceh. A literature review was conducted by examining regulations outlined in the Qanun Jinayat, as well as reviewing academic literature and previous research findings on similar topics. Building upon this foundation, this research employs both a social-legal and normative legal approach. The normative legal approach is used to examine the legal substance of Aceh Qanun No. 6 of 2014 on Jinayat Law, particularly the articles regulating sexual violence and rape. This approach facilitates the examination of law as a normative rule written in legislation and official documents. As explained in Johnny Ibrahim's writing, the normative legal approach focuses on the interpretation of positive legal texts and the systematic examination of legal principles and foundations.¹⁸

In addition, this study also uses content analysis of Aceh Sharia Court decisions related to cases of sexual harassment and rape. This was chosen to understand how legal norms are applied in judicial practice. Furthermore, the socio-legal approach, as outlined in the book *Theory and Method in Socio-Legal Research*, states that law and society are interrelated and how law functions within society. This approach is relevant for analyzing the implementation of legal norms in Aceh, particularly in examining the application of the Qanun Jinayat and

¹⁸ Dr. Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Bayu Media, 2005), 49.

understanding the various social, cultural, and institutional realities that influence violations of the Qanun Jinayat.¹⁹

By combining a normative legal approach and a socio-legal approach, this paper aims to provide an overview of how the law in the Qanun Jinayat is written and applied in practice, as well as the disparities between legal norms and legal reality that emerge in the context of the implementation of Islamic law in Aceh.

1.5 Thesis Outline

This thesis will be divided into five chapters. The first chapter is an introduction that covers the background, research questions, literature review, research significance, methodology, research limitations, and thesis outline.

The second chapter will discuss the history of the formation of qanun in Aceh until its inauguration after the Helsinki MoU, the evolution of Jinayat procedural law and Qanun Jinayat, as well as the dynamics of its application. The critiques and suggested changes to the articles in the Qanun Jinayat are also covered in this chapter.

The third chapter focuses on the concept of criminal law in Islam, the definition of sexual harassment and rape according to Islam and positive law, and the application of the Qanun Jinayat in Aceh, including the articles on punishment, challenges of proof, and protection for victims.

Chapter Four provides an overview of the Sharia courts in Aceh and analyzes the patterns of judges' decisions in several cases of sexual harassment and rape, legal disparities, power relations, and socio-cultural factors and structural weaknesses that contribute to the high incidence of such cases in Aceh.

Chapter Five, the final part of the paper, presents the conclusions of the research.

¹⁹ Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research*, 1st ed. (2005), 3.

CHAPTER II

HISTORY AND DEVELOPMENT OF QANUN JINAYAT IN ACEH

2.1 Background

The history of the formation and implementation of Qanun jinayat in Aceh cannot be separated from the socio-political context, religious identity, and the dynamics of the relationship between the Acehnese people and the central government. Aceh is the only province in Indonesia that has been granted legal authority to implement Islamic law formally. The desire to implement Islamic law is not a new phenomenon in Aceh. Still, it has been a long-standing historical aspiration rooted in the strong Islamic system that has existed in Acehnese society since the era of the Samudera Pasai Sultanate until the reign of Sultan Iskandar Muda. This identity has become an integral part of moral and spiritual values and also serves as a symbol of cultural and political sovereignty.²⁰

After Indonesia's independence, Islamic scholars were actively involved in fighting for the implementation of Islamic law, which led to several forms of rebellion. One of them is DI/TII (Darul Islam/Indonesian Islamic Army). This rebel movement wanted to establish Indonesia as an Islamic state in several regions of Indonesia, including Aceh, which at that time was led by Daud Beureueh. This rebellion arose due to the dissatisfaction of the Acehnese people over the revocation of Aceh's special status and its incorporation into North Sumatra Province.²¹ Following the DI/TII rebellion, the conflict between Aceh and the central government continued, led by Hasan Di Tiro, giving rise to the Free Aceh Movement (GAM), with the primary demand to establish an independent Aceh state. GAM argued that the Indonesian government had failed to respect the identity and rights of the Acehnese people as a region seeking to implement Islamic law.²²

²⁰ R Michael Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (2013), 20–22.

²¹ Any Puspita Sari et al., "DI/TII Movement 1949–1962: Conflict of Islamic Ideology and Nationalism in Indonesia," *Journal of Political Islam* 1, no. 1 (2025): 7, <https://journal.unesa.ac.id/index.php/jopi/article/view/41143>.

²² Kirsten E. Schulze, "The Free Aceh Movement (GAM): Anatomy of a Separatist Organization," 2004, 2, <http://hdl.handle.net/10125/3514>.

The intense conflict between the central government and the people of Aceh ended after the devastating 2004 tsunami, which ultimately prompted the GAM and the central government to sign a peace agreement known as the Memorandum of Understanding (MoU) in Helsinki, Finland. This marked the end of the conflict, and the central government agreed on several points, one of which concerned legislation on the government of Aceh.²³ The implementation of the MoU agreement was then formalized through the enactment of the Qanun, which became one of the most significant milestones in the history of legal autonomy in Aceh. This peace agreement ended the armed conflict between the Free Aceh Movement (GAM) and the Indonesian government. It opened the door for the reconstruction of Aceh's legal framework through the enactment of Law No. 11 of 2006 to the Government of Aceh, which officially granted the authority to design and implement laws based on Islamic Sharia.²⁴

This chapter will systematically describe the historical process and political dynamics behind the enactment of the Qanun Jinayat and its implementation. During the drafting process, there was considerable public debate regarding provisions that were deemed incompatible with human rights, such as flogging. Several civil society groups, women's activists, academics, local, national, and even international NGOs have criticized specific provisions within the Qanun Jinayat. After 10 years of implementation, marked by ongoing criticism, rising cases of violence, and pressure from various quarters, the Qanun Jinayat was finally revised to strengthen the law and protect victims.

2.2 Historical Background Of Qanun Jinayat After The Helsinki Mou

Since Indonesia's independence, Acehnese clerics have played an essential role in fighting for the implementation of Islamic law as part of the local identity. The clerics took advantage of the revolutionary moment to assert the role of Islam in society and push for the formation of the Province of Aceh,²⁵ Which finally

²³ Edward Aspinall, "The Helsinki Agreement: A More Promising Basis for Peace in Aceh?," 2005, 75, <http://hdl.handle.net/10125/3501>.

²⁴ Hani Adhani, "Menakar Konstitusionalitas Syari'at Islam Dan Mahkamah Syar'iyah Di Provinsi Aceh," *Jurnal Konstitusi* 16, no. 3 (2019): 619, <https://doi.org/10.31078/jk1638>.

²⁵ Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (University of Hawai'i Press, 2008), 143.

gained special autonomy from the central government in 1959, as stated in Prime Minister's Decree No. 1/Missi/1959, signed by Mr. Hardi. The privileges cover three main areas: religion, customs, and education. However, this regulation cannot be fully realized due to the absence of clear implementing regulations. In addition, the conflict between the people of Aceh and the central government regarding the implementation of Islamic law as a whole is also one of the main obstacles. In 2001, the government again granted special autonomy through Law No. 18 of 2001, which was expected to be a step toward easing long-standing tensions. There were five first legitimate Qanun, Qanun that regulates the Sharia court as an institution authorized to examine and decide on some instances. These included the Qanun on the enforcement of Islamic law, the Qanun on the prohibition of alcohol, the Qanun on the prohibition of gambling, and the Qanun on adultery (Zina).²⁶

After the signing of the Helsinki MoU on August 15, 2005, the Indonesian government was obligated to draft legislation addressing all aspects of the agreement and other matters deemed beneficial and necessary for Aceh. This draft was enacted as Law No. 11 of 2006 on Aceh governance. The law provides detailed regulations for the implementation of Sharia law; there are three chapters: the implementation of Sharia, the Sharia court, and the Aceh Islamic Scholars Council (MPU). Through this legislation, the central government designated Aceh as the only province in Indonesia legally authorized to implement Islamic Law within the framework of religious court jurisdiction.²⁷ Based on the implementation of Sharia law, there were several types of qanun to regulate the different aspects of government and societal life under islamic law. These qanun cover areas such as criminal law (*jinayat*), family law, economic transactions, education and social conduct. One of several Qanun that is very famous is Qanun Jinayat, which regulates criminal offences that violate islamic law and its sanctions.²⁸ The

²⁶ Sehat Ihsan Shadiqin and Eka Srimulyani, "THE CONTESTED AUTHORITIES: Institution and Agency in the Enforcement of Sharia Law in Aceh, Indonesia," *Journal of Contemporary Islam and Muslim Societies* 5, no. 2 (2022): 205, <https://doi.org/10.30821/jcims.v5i2.10601>.

²⁷ Firdaus M Yunus et al., "Penerapan Dan Tantangan Pelaksanaan Syariat Islam Di Aceh," *Jurnal Sosiologi USK (Media Pemikiran & Aplikasi)* 17, no. 1 (2023): 186, <https://doi.org/10.24815/jsu.v17i1.32865>.

²⁸ Anjas Putra Pradana et al., "Perkembangan Qanun Aceh Dalam Perubahan Sosial Dan Politik Di Aceh," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 1 (2024): 66, <https://doi.org/10.71153/jimmi.v1i1.100>.

implementation of Qanun Jinayat in Aceh, initiated on October 2, 2014, through Aceh Government Regulation No. 6 of 2014 concerning Qanun Jinayat and Regulation No. 8 of 2014 on the fundamental principles of Islamic Law, has sparked significant debate.²⁹

Long before the tragic 2004 tsunami and the Helsinki peace agreement that ended the long conflict between the Free Aceh Movement (GAM) and the Indonesian central government, Aceh was known as a region with a strong and mature Islamic tradition. Aceh was the first place where Islam arrived in the Indonesian archipelago, marked by the establishment of the Samudera Pasai Sultanate in the late 13th century along the northern coast of Aceh, which had strong ties with the global Islamic world through trade, politics, and Islamic learning networks. It continued to flourish, especially under the leadership of Sultan Iskandar Muda, who further strengthened the spread of Islam by building mosques, establishing a systematic Islamic education system, and expanding his Islamic campaigns to other parts of Sumatra.³⁰ Looking at the history of Sultan Iskandar Muda's reign (1606-1636), the implementation of Sharia law at that time was very strict and did not discriminate based on social class. This was proven when his son was accused of committing adultery with a married woman. Sultan Iskandar Muda ordered his royal minister of justice, Wazir Mizan, to investigate the allegations. The investigation revealed that Meurah Pupok, the Sultan's own son, was guilty and was sentenced to stoning. This demonstrates that justice and Islamic law were highly valued during that period.³¹

The strength of Islamic traditions that had taken root since the days of the kingdom never completely disappeared, despite a period of colonialism and national political change after Indonesia's independence. Although the colonial authorities and the Indonesian central government attempted to integrate Aceh into

²⁹ Ahyar Ahyar, "Aspek Hukum Pelaksanaan Qanun Jinayat Di Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 17, no. 2 (2017): 133, <https://doi.org/10.30641/dejure.2017.V17.131-154>.

³⁰ Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia*, 20–21.

³¹ Misri A. Muchsin and Fadhlur Rahman Armi, "The Dynamics of the Implementation of Islamic Law in Aceh: Historical Challenges and Issues," *Hikmah* 21, no. 2 (2024): 271–271, <https://doi.org/10.53802/hikmah.v21i2.444>.

the secular national legal system, Islamic values remained strong within the community through Dayah educational institutions, networks of Islamic scholars, and customs based on Islamic law. The aspiration of the Acehnese people to implement Islamic law remains alive and is an integral part of their collective identity, passed down across generations. Islamic law is not merely understood as a legal system but also as a symbol of resistance against external domination and an expression of the cultural and spiritual sovereignty of the Acehnese people.

2.3 The Process Of Formulating And Enacting The Qanun Jinayat

Qanun Jinayat, was enacted under Law No. 44/1999 on the Implementation of Special Autonomy for Aceh³² and reinforced by Law No. 11/2006 on the Government of Aceh. In 2003, three laws were enacted: Law No. 12 on the consumption of alcohol, Law No. 13 on gambling, and Law No. 14 on the seclusion of men and women in private places with non-mahram (*Khalwat*).³³ In 2007, the Islamic Sharia Department received instructions from Irwandi Yusuf, who was then serving as Governor, to formulate the Qanun Jinayat, replacing the three previously separate Qanuns. In preparing the draft for the Qanun Jinayat, Irwandi Yusuf formed a Qanun Drafting Team consisting of professors and lecturers from the State Islamic University (IAIN) in Banda Aceh and members of the Ulama Consultative Council (MPU). However, upon reviewing the draft of the Qanun, it appears that the process was rushed, as many paragraphs exhibit internal inconsistencies.³⁴ Therefore, further revisions are deemed necessary to ensure the Qanun is more comprehensive and better aligned with the needs of the Acehnese community as a whole.

Following the Helsinki Agreement in 2005, the drafting of the Qanun Jinayat was resumed to achieve perfection in its implementation. The first phase was carried out in 2008, drafted and redesigned by the executive and legislative

³² “UU No. 44 Tahun 1999,” Database Peraturan | JDIH BPK, 44, accessed June 2, 2025, <http://peraturan.bpk.go.id/Details/45380>.

³³ R. Michael Feener et al., eds., *Islam and the Limits of the State: Reconfigurations of Practice, Community and Authority in Contemporary Aceh* (Brill, 2015), 10–11, <https://doi.org/10.1163/9789004304864>.

³⁴ Feener et al., *Islam and the Limits of the State*, 100–101.

branches of the Aceh Government in the form of a Draft Qanun Jinayat (RQA).³⁵ During the drafting process, several groups actively promoted the vision of Islamic law, one of which was local Muslim women activists who demanded full equality between men and women in both public and private spheres, as well as gender justice and sensitivity. The activists' demands regarding sexual harassment, rape, human rights, and women's rights were successfully accommodated in the amendment group and expert meetings aimed at drafting the Qanun Jinayat during the initial drafting process. On September 14, the draft Qanun Jinayat was approved by the Aceh Regional People's Representative Council (DPRA). However, many of the demands made by women activists were overlooked, and new provisions were added that were seen as reflecting more Islamic interests, including the criminalization of homosexuality and stoning as punishment for adultery.³⁶

There are pros and cons regarding the punishment of stoning in the initial draft of the Qanun, which applies to married or previously married individuals who commit adultery, as proposed by several council members, including the Partai Keadilan Sejahtera (PKS) and Partai Persatuan Pembangunan (PPP). However, stoning was strongly opposed by the Democratic Party and later rejected because it was considered unclear in concept.³⁷ Additionally, criticism came from various parties, including Professor Rusidi Ali Muhammad, an academic figure who does not fully agree with the form of stoning punishment, as there is still debate among Islamic legal schools regarding its validity. Strong criticism also came from local and international NGOs in Aceh, which not only raised concerns about the punishment violating human rights but also referred to Indonesia's legal system, which should have a higher standing in terms of law formation.³⁸ Due to the extensive criticism regarding the implementation of stoning, the process became

³⁵ Zainul Fuad et al., "Wither Qanun Jinayat? The Legal and Social Developments of Islamic Criminal Law in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022): 2, <https://doi.org/10.1080/23311886.2022.2053269>.

³⁶ Feener et al., *Islam and the Limits of the State*, 87.

³⁷ Dr Ali Abubakar M.H M. A, Drs H. Zulkarnain Lubis, *Hukum Jinayat Aceh* (Prenada Media, 2019), 39–41.

³⁸ Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh University Press, 2015), 100–103.

one of the factors why the Qanun Jinayat was not immediately enacted at that time, as the government considered the broader social, political, and legal implications.

September 24, 2009, the draft Qanun Jinayat was sent back by the Aceh Representative Council (DPRA) to Governor Irwandi, and a letter was sent on September 25 rejecting its ratification because it was still in draft form and was declared invalid due to the lack of agreement between the executive and legislative branches. By the end of Irwandi's term, the Qanun Jinayat had not been ratified and could not be implemented. This continued until the term of Governor Zaini Abdullah, who sought to implement the Qanun Jinayat in Aceh in a comprehensive manner, ensuring it would be beneficial and not burdensome for the people, and also through the approach taken by Al Yasa' Abubakar. The outcome of this approach was prioritizing the drafting of the Qanun Jinayat Bill over the Qanun Jinayat Regulation. Although, in general, regulations should be the top priority in the legislative process compared to implementation mechanisms, in the context of Aceh, a different approach was taken to ensure that the Qanun Jinayat Bill could be resumed. By beginning to discuss the procedures for implementing and the scope of enforcing Sharia law, the drafters of the Qanun began to strive to ensure that the legal provisions in the Qanun Jinayat did not contradict the principles of justice or national law by not including stoning as a form of punishment. In 2013, the Draft Qanun Jinayat was resubmitted and removed the stoning provision, receiving approval from the Aceh Regional Parliament (DPRA) in September 2014.³⁹ It came into effect one year after approval, on October 22, 2015.⁴⁰

The implementation of the Qanun Jinayat in Aceh marks an important milestone in the history of value-based regional autonomy. The implementation, which ultimately abolished stoning and replaced it with flogging, has been met with criticism from various quarters, including academics, practitioners, the public, and NGOs. Amnesty International, together with the Criminal Justice Reform (ICJR),

³⁹ Nurul Etika, *Qanun Jinayat Aceh: Dinamika Sosial Politik dan Aspek Fiqhiyah* (Penerbit A-Empat, 2024), 133–37.

⁴⁰ “Komnas Perempuan,” 2, accessed May 30, 2025, <https://komnasperempuan.go.id/laporan-pemantauan-ham-detail/laporan-pemantauan-penanganan-kekerasan-seksual-di-aceh-jaringan-pemantau-aceh-231-dan-komnas-perempuan>.

in a public statement urged the Indonesian government to stop the practice of flogging and repeal the provisions of the Qanun Jinayat that are considered to violate international human rights law.⁴¹ International attention to the implementation of flogging in Aceh highlights the ongoing conflict over the struggle for human rights. This has placed Aceh in a major dilemma: whether to uphold local wisdom rooted in religion or to adapt to modern demands for the preservation of humanitarian laws and the prioritization of individual rights. However, in reality, the Qanun Jinayat remains in effect despite widespread criticism. Normatively, the Qanun Jinayat is based on a number of Islamic laws contained in articles. The implementation of the Qanun Jinayat is based on: a). Islam, b). Legality, c). Justice and balance, d). Public interest, e). Protection of human rights, f). Education for the community (*tadabbur*)⁴²

Based on the principles mentioned above, what distinguishes Qanun Jinayat from the general criminal law system lies in its Islamic principles derived directly from the Qur'an and Hadith. However, the principles outlined are not solely sourced from classical fiqh values but are also aligned with modern legal principles and the values of the Indonesian Constitution.⁴³ When viewed from the principles outlined above, the implementation of Qanun Jinayat not only focuses on the punishment for offenders but also ensures that the penalties imposed carry values that can serve as education for the broader community, thereby fostering a social order aligned with Islamic principles. Thus, the Qanun Jinayat demonstrates a serious effort to build a fair, dignified, and contextual legal system within the framework of sharia autonomy. However, in reality, there are many criticisms, particularly regarding the principles of human rights protection, as some groups feel that the human rights referred to in Article 2 do not meet the standards for both victims and offenders in terms of the penalties imposed.

⁴¹ "Indonesia: Kriminalisasi Terhadap Aktivitas Intim Dan Seksual Konsensual Pasangan Di Luar Nikah Di Aceh Harus Diakhiri," *Amnesty International*, October 26, 2016, <https://www.amnesty.org/en/documents/asa21/5039/2016/id/>.

⁴² "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 5.

⁴³ M.H, *Hukum Jinayat Aceh*, 10–11.

Moreover, with these principles the Qanun Jinayat then established the scope of regulation covering various types of acts categorized as jarimah (criminal acts) under Islamic law. This scope is not limited to moral violations such as adultery and khalwat, but also includes several other matters. Each form of violation has been formulated with legal provisions and specific types of sanctions, both in uqubat ta'zir, the implementation of which is adjusted to the level of the offense and the judge's considerations. Article 3 (1) explains that this Qanun regulates: a) Perpetrators of Jarimah, b) Jarimah, c) Uqubat. Jarimah, as referred to in paragraph 1, includes: a). Khamar, b). Gambling, c). Khalwat, d). Ikhtilat, e). Zina, f). Sexual Harassment, j). Rape, k). Qadzaf, l). Liwath, m). Musahaqah

In addition, Article 4 explains the various types of punishment referred to in Article 3 (1) c, stating that punishment consists of Uqubat Hudud, which is punishment in the form of flogging, and Uqubat Ta'zir, which is further divided into Uqubat Ta'zir Utama, which includes flogging, fines, imprisonment, and restitution. Meanwhile, additional Ta'zir punishment consists of several forms of punishment, namely state rehabilitation, restitution by parents or guardians, return to parents or guardians, dissolution of marriage, revocation of certain rights, confiscation of certain property, and community service.⁴⁴ The provisions regarding the severity of penalties imposed under the Qanun Jinayat depend on the nature of the offense. For cases of sexual assault, the penalty is "Uqubat Ta'zir," as stipulated in Article 46, Section 6, which states that the perpetrator may be sentenced to a maximum of 45 lashes, a fine of up to 450 grams of pure gold, or imprisonment for a maximum of 45 months. For those who intentionally commit the crime of sexual assault against a child, the punishment is a maximum of 90 lashes, a fine of up to 900 grams of pure gold, or imprisonment for a maximum of 90 months. Meanwhile, perpetrators of rape under Section 48, if intentionally committing the crime of rape, shall be sentenced to a maximum of 125 lashes, or a fine of at least 1,250 grams of gold, or imprisonment for a minimum of 125 months.⁴⁵ The penalties stipulated in Qanun No. 6 of 2014 are alternative, whereby judges have the authority to choose the type of punishment to be imposed on offenders. Although several forms of punishment

⁴⁴ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 6–7.

⁴⁵ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 15–16.

are available in practice, flogging remains the most common choice of the Sharia Court in sentencing offenders.

In addition, in implementing the Qanun Jinayat in Aceh, a legal system is required to ensure that its implementation is orderly, fair, and in accordance with applicable regulations. Therefore, the Aceh government has implemented the Criminal Procedure Law as a legal framework that establishes the process of enforcing the law against any violation of Islamic Sharia. The Criminal Procedure Law plays a significant role in ensuring that the process, from reporting, investigation, prosecution, to the execution of the verdict, is systematic, transparent, and legally accountable. As stated in Aceh Qanun No. 7 of 2013 on Criminal Procedure Law, Article 4 outlines several objectives for the implementation of these provisions, including: a). To seek and obtain the fullest possible material truth in criminal cases by establishing appropriate and accurate rules of criminal procedure law. b). To provide legal guarantees and protection to victims, complainants, witnesses, the public, suspects, and defendants in a balanced manner in accordance with Islamic teachings. c). To encourage those who have committed criminal acts to sincerely repent so that they do not repeat such acts.⁴⁶

There are a number of institutions that play important roles and coordinate with each other in accordance with their respective authorities in the implementation of criminal procedure law, including:

- a. The Sharia Court, which was later changed to the Sharia Court, is a religious court.⁴⁷ After being inaugurated on March 4, 2003, the Sharia Court has several main duties and functions, namely:
 1. The Judicial Branch, in carrying out the mandate of Article 25 of Law No. 18 of 2001 and Qanun of the Province of Nanggroe Aceh Darussalam No. 10 of 2002, has granted authority to the Islamic

⁴⁶ "Qanun Nomor 7 Tahun 2013 Tentang Hukum Acara Jinayat," 6, accessed July 8, 2025, <https://www.ms-aceh.go.id/peraturan-dan-kebijakan-undang-undang-surat-edaran/qanun-qanun/1983-qanun-nomor-7-tahun-2013-tentang-hukum-acara-jinayat.html>.

⁴⁷ Dr Mardani, *Hukum Acara Jinayat* (Prenada Media, 2022), 7.

Sharia Court to examine, decide, and resolve cases at the first instance and appellate levels: 1). Al-Ahwa Al-Syakhshiyah (Family Law), 2). Mu'amalah (Social and Economic Law, 3). Jinayat (Acts prohibited by Sharia).

2. Non-Judicial Functions: The Islamic Sharia Court oversees the conduct of first-instance proceedings to ensure they are conducted honestly, fairly, promptly, simply, and at minimal cost. It also registers legal advisors or advocates and practicing lawyers who will perform their duties. The Chairman of the Sharia Court has the authority to grant permission to an individual acting as a legal advisor. Finally, the court conducts calculations and observations of the crescent moon to determine the beginning of the lunar month and other related matters.⁴⁸

b. Wilayatul Hisbah is an institution that enforces Islamic law in Aceh. Its duties and functions are as follows:

1. Enforcing Qanun in Aceh
2. Monitoring the community to ensure compliance with the Qanun
3. Conducting outreach activities to inform the community about the aspects regulated in the Qanun, with the aim of improving knowledge, understanding, and awareness among the community.⁴⁹

c. Islamic Sharia Agency, one of the regional government agencies responsible for implementing Islamic Sharia law, was established in response to the implementation of Law No. 4 of 1999 on the Special Status of Aceh and Law No. 18 of 2001 on Special Autonomy, and operates under Regional Regulation (PERDA) No. 33 of 2001, which was enacted on January 25, 2002. This institution operates under the authority of the Governor and is led by the Head of the Department, who reports directly to

⁴⁸ "Tugas Pokok & Fungsi," accessed June 13, 2025, <https://www.ms-aceh.go.id/profil-pengadilan/tugas-pokok-fungsi.html>.

⁴⁹ "Qanun Nomor 7 Tahun 2013 Tentang Hukum Acara Jinayat," 3.

the Governor through the Secretary of the Regional Government. Its duties and functions include:

1. Carrying out general and specific tasks of the Regional Government and Development, as well as being responsible for the implementation of Islamic law
2. Carrying out all forms of tasks related to planning, preparing qanun (laws) related to the implementation of Islamic law, as well as documenting and disseminating the results
3. Conducting the preparation and development of human resources related to the implementation of Sharia law
4. Carrying out tasks to ensure the smooth and orderly conduct of religious worship and promoting the strengthening and dissemination of Islamic values through various forms of religious outreach
5. Conducting supervision and guidance regarding the implementation of Sharia law in society.

The Islamic Sharia Agency has the authority to plan programs, research, and development of Islamic Sharia elements, develop and guide the implementation of Islamic Sharia, including in the field of criminal law.⁵⁰

- d. Aceh Regional Police, which is responsible for the Aceh region, has a legal basis in accordance with Qanun No. 11 of 2004 on the functional duties of the regional police of Nanggroe Aceh Darussalam in the non-judicial sphere, with the task of taking preemptive action as an initial step to prevent violations or crimes, preventive action as a direct preventive measure by going into the field, and repressive measures within the judicial sphere in general police matters, enforcing the law in accordance with official legal procedures. Additional duties related to the enforcement of Islamic Sharia law in Aceh include conducting investigations and inquiries. against all

⁵⁰ “Dinas Syariat Islam Aceh | Halaman SEJARAH DSI,” accessed June 13, 2025, <https://dsi.acehprov.go.id/halaman/sejarah-dsi>.

criminal acts in accordance with Islamic law.⁵¹ The police and WH in Aceh cooperate in certain cases such as (Zina or Khalwat) for further processing in the Sharia Court.

2.4 Developments of the Revision of the Qanun Jinayat

November 2022, Dewan Perwakilan Rakyat (DPR) initiated steps to discuss the possibility of revising the Qanun Jinayat, which will focus on protecting women and children from sexual violence crimes.⁵² This was based on historical accounts that had been presented, from the drafting stage to its enactment, the Qanun Jinayat had always been a hot topic of discussion both internally and externally. Ten years after its implementation, some groups still voiced their opinion that the Qanun Jinayat was not yet fully capable of creating a more moral society. This is further reinforced by the increasing number of recorded violations, which indicate that the effectiveness of the Qanun Jinayat remains questionable. In response to this, various parties continue to urge the government to revise the provisions of the Qanun as soon as possible.

The law on flogging, which continues to be a subject of debate regarding its perceived unfairness to both perpetrators and victims, has also become an important concern for the chairman of the MPU regarding the revision of the Qanun Jinayat. Lem Faisal stated that revising the qanun to impose harsher penalties on perpetrators is highly recommended and that there are no restrictions on doing so. However, he emphasized that Aceh has its own Qanun, and flogging is a clear form of punishment that cannot be abolished because it is part of Islamic sharia law, which is inherently just and cannot be measured or judged solely on a case-by-case basis.⁵³ This statement clearly shows that the interpretation of justice, especially in Islamic law, should not be viewed rigidly and literally. Islamic law itself has a

⁵¹ ali Geno Berutu, *Peran Polri Kejaksaan Dan Mahkamah Adat Aceh Dalam Penegakan Syariat Islam Di Aceh*, 7 (November 2019): 242, <https://doi.org/10.21274/ahkam.2019.7.2>.

⁵² “Dewan Perwakilan Rakyat Aceh | Berita Komisi I DPR Aceh Gelar RDPU Perubahan Qanun Jinayat,” Accessed June 14, 2025, <https://dpra.acehprov.go.id/Berita/Kategori/Berita-Komisi/Komisi-I-Dpr-Aceh-Gelar-Rdpu-Perubahan-Qanun-Jinayat>.

⁵³ “Revisi Qanun Jinayat, MPU Aceh Sebut Jangan Coba-Coba Hilangkan Roh Syariat Islam - RMOLACEH.ID,” accessed July 8, 2025, <https://www.rmolaceh.id/revisi-qanun-jinayat-mpu-aceh-sebut-jangan-coba-coba-hilangkan-roh-syariat-islam>.

broader and deeper dimension of justice, so that justice is not only about balancing actions and rewards directly, but more about creating mutual benefit. It is important to recognize that when evaluating a law, especially one based on religious values such as the Qanun Jinayat, society must have a more comprehensive understanding and avoid superficial judgments.

A public lawyer at the Banda Aceh Legal Aid Institute (LBH), revealed that the revision of this qanun initially faced opposition from several groups. The opposition was initially based on concerns that the revision would undermine the existing Qanun and Islamic Sharia law in Aceh. However, after engaging in intensive dialogue, including providing explanations that the revision would actually strengthen the legal protection of Islamic Sharia in Aceh and that there was no proposal to abolish flogging as one of the punishments. Some of the parties who had previously opposed the revision gradually came to accept the efforts to improve the Qanun Jinayat to ensure justice for victims, particularly in cases of sexual violence and rape.⁵⁴

The National Commission on Violence Against Women (Komnas Perempuan) presented a number of important proposals during a Rapat Dengar Pendapat Umum (RDPU) regarding the revision of Qanun Jinayat No. 6 of 2014, particularly in relation to the regulation of rape and sexual harassment. Komnas Perempuan recommended that articles concerning sexual violence, including rape and sexual harassment, be removed from the Qanun Jinayat.⁵⁵ This is based on the argument that the types of crimes in question are already comprehensively regulated at the national level through various laws, such as Law No. 1 of 2022 on Sexual Violence Crimes (TPKS Law), the Child Protection Law, and similar laws. The National Commission on Violence Against Women (Komnas Perempuan) notes that the Qanun Jinayat, which was enacted in 2014, often creates barriers to access to justice for victims, particularly women. Several parties have also urged and

⁵⁴ "Interview 1," May 16, 2025.

⁵⁵ "Siaran Pers," Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap Perempuan, accessed June 3, 2025, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-pandangan-komnas-perempuan-dalam-rdpu-dpr-aceh-pada-perubahan-pembahasan-qanun-hukum-jinayat-nomor-06-tahun-2014>.

provided input regarding the revision of the Qanun Jinayat. As stated by the director of the Banda Aceh Legal Aid Institute (LBH), Aulianda, there are four major revisions in the Qanun Jinayat. First, regarding the form of punishment, which was originally imprisonment as an option that could be replaced with flogging or a fine, has been changed to mandatory imprisonment plus flogging or a fine. Second, the right to physical and non-physical rehabilitation for every rape victim, as well as restitution to victims in the form of pure gold measured in grams. The amount of restitution will be determined based on the victim's needs, disregarding the perpetrator's circumstances. If the perpetrator is unable to pay, the cost will be borne by the state, such as the Aceh Baitul Mal or the district/city government. Third, harsher penalties for perpetrators of rape against persons with disabilities. Fourth, revision of the definition of the age of a child, which has been changed to those who have reached the age of sixteen but have not yet reached the age of eighteen, whereas before the revision, the definition of a child was those who had reached the age of twelve but had not yet reached the age of eighteen. Several recommendations for these revisions continue to be urged to the Ministry of Home Affairs (Kemendagri) to promptly provide the results of the facilitation process for approval.⁵⁶

Since 2022, the draft amendment to the Qanun Jinayat has been submitted to the Ministry of Home Affairs (Kemendagri) for immediate facilitation. This facilitation is an important step in drafting the qanun, as it determines whether the draft can be passed or needs to be revised.⁵⁷ The pressure exerted by several parties indicates the need to adjust the legal system to be more progressive, given the increasing rates of sexual violence and rape. Delaying the facilitation process will prolong the suffering of victims and demonstrate the weakness of the legal system's effectiveness in protecting them in Aceh. On the other hand, this revision is

⁵⁶ AJNN net-Aceh Journal National Network, "LBH Banda Aceh Desak Pelaku Kekerasan Seksual Tak Cukup Dicambuk, Tetapi Dipenjara," AJNN.net, August 17, 2024, <https://www.ajnn.net/news/lbh-banda-aceh-desak-pelaku-kekerasan-seksual-tak-cukup-dicambuk-tetapi-dipenjara/index.html>.

⁵⁷ "Dewan Perwakilan Rakyat Aceh | Berita Komisi I DPR Aceh Minta Fasilitasi Qanun Jinayat Di Kemendagri Dipercepat," accessed June 14, 2025, <https://dpra.acehprov.go.id/berita/kategori/berita-komisi/komisi-i-dpr-aceh-minta-fasilitasi-qanun-jinayat-di-kemendagri-dipercepat>.

expected to create a more victim-centered judicial system without compromising the Islamic sharia identity that has been the legal foundation of Aceh.

2.5 Conclusion

The Qanun Jinayat stems from Aceh's past, which was marked by Islamic practices and political conflicts with the central government. The spirit of implementing Islamic law has always been an important part of Aceh's identity, from the sultanate era to the long conflict that ended with the Helsinki Memorandum of Understanding in 2005. Finally, Aceh was granted special autonomy to create its own laws, including the Qanun Jinayat. However, these regulations sparked significant controversy upon implementation, particularly regarding human rights and protection for victims of sexual violence. To make the law fairer and more beneficial for victims, revisions to certain articles have been continuously made. However, the legal foundation remains rooted in Sharia principles. This process demonstrates that Aceh's Islamic law continues to evolve in response to the demands and needs of its society.

CHAPTER III

THE LEGAL FRAMEWORK FOR CRIMINAL LAW AND THE RULINGS OF THE ACEH SHARIA COURT ON SEXUAL HARASSMENT AND RAPE

3.1 Introduction

In the legal and social context of Indonesia, sexual harassment and rape are issues that are not only legally complex but also culturally sensitive when placed within the framework of Aceh's special autonomy and the implementation of Qanun Jinayat as Sharia-based criminal law. The challenges that arise are multi-layered, not only concerning how forms of sexual violence are defined but also how the state, through its legal institutions, can ensure justice for both victims and perpetrators.

The Qanun Jinayat itself was enacted in 2015,⁵⁸ marking the concrete implementation of Islamic values in Aceh's positive legal system, particularly in the handling of sexual harassment and rape cases, through provisions that specify the types of crimes and punishments applicable. In national regulations such as the Qanun Jinayat (KUHP) and the Law on the Prevention and Eradication of Sexual Violence Against Women (UU TPKS), the Qanun Jinayat has a slightly different approach and mechanism for proof. While the KUHP and UU TPKS adopt a progressive human rights-based approach with a broader scope of evidence and emphasize protection through a clear restitution system, the Qanun Jinayat still upholds the classical fiqh approach, such as testimony and oaths.⁵⁹

In addition, although the Qanun Jinayat has established specific articles with severe penalties for perpetrators of sexual violence, these have not been effective in deterring either perpetrators or victims. This is because, in the implementation of the Qanun Jinayat, specifically on sexual harassment and rape, there are often

⁵⁸ "Menyambut Qanun Jinayat Nomor 6 Tahun 2014," accessed July 11, 2025, <https://www.ms-aceh.go.id/publikasi/artikel%E2%80%8B/2059-menyambut-qanun-jinayat-nomor-6-tahun-2014.html>.

⁵⁹ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 17.

discrepancies between the law and reality. For example, the provisions governing sexual violence in terms of sentencing are still optional, with punishments such as flogging, fines, or imprisonment.⁶⁰ Punishment in the form of flogging and fines will certainly be very detrimental to victims because the punishment imposed is not as severe as that stated in the TPKS Law. One element that has often been criticized in the implementation of the Qanun Jinayat is the issue of restitution. The provisions on restitution are not explained thoroughly, so many victims do not know that they have the right to receive restitution as part of their recovery from the crimes committed against them.

This chapter will examine the concepts of sexual harassment and rape based on the Qanun Jinayat, the Law on Sexual Violence Against Women and Children, and the Qanun Jinayat. This paper will also discuss in detail the articles regulating sexual violence along with several case studies that show disparities in the application of the Qanun Jinayat.

3.2 General Concepts Of Sexual Harassment And Rape

3.2.1 Sexual Harassment

Sexual harassment is a form of gender-based violence and is often underestimated in society. In their article, Jan Crosthwaite and Graham mention that harassment is often considered unimportant, resulting in a lack of response, especially from men and society in general. This stigma leads to sexual harassment cases not being taken seriously, despite being a very serious issue that can escalate to rape. It is essential for society to raise awareness and pay more attention to cases of sexual harassment, so that we can work together to prevent it and reduce the number of victims of sexual harassment.⁶¹ In a book entitled “Ivory Power, Sexual Harassment on Campus”, it is explained that sexual harassment is divided into two types, verbal and physical. Verbal forms include anything that involves sexual remarks or comments that are offensive or disturbing to someone. Physical forms

⁶⁰ “Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat,” 8.

⁶¹ Jan Crosthwaite and Graham Priest, “The Definition of Sexual Harassment,” *Australasian Journal of Philosophy*, ahead of print, Taylor & Francis Group, March 1, 1996, 66, world, <https://doi.org/10.1080/00048409612347071>.

include activities such as touching, pinching, and other physical actions that are done without consent.⁶² In classical Islamic perspective, sexual harassment is something new and there is no specific discussion about it. However, Muslim scholars and thinkers define sexual harassment as a violation involving men and women where there is sexual desire, either verbally or through actions such as eye contact, flirtatious words, touching, simple hand gestures, and other actions that violate religious principles.⁶³

Since there is no specific text in the Qur'an and hadith that regulates the law of sexual harassment in detail, this becomes the *ijtihad* of the scholars, and in this case, the scholars have determined the punishment to be part of the *jarimah Ta'zir*, which is not specified in the Sharia. However, the punishment is determined by the judicial authority based on the location and severity of the offender's actions. The types of *Ta'zir* punishment may include capital punishment (according to some scholars), flogging, fines, and others. This demonstrates that Islamic law is flexible, adapting to the dynamics of societal development while remaining morally and socially relevant. However, it always refers to the principles of Sharia law.⁶⁴

3.2.2 Rape

Rape is at a higher level than sexual harassment because it involves sexual activity, physical coercion, and lack of consent from the victim.⁶⁵ In the context of Islamic law, the interpretation of rape differs between one school of thought and another. In the Maliki school of thought, rape is defined as a form of deprivation of the right of ownership over the body and can occur to women, whether slaves or free. The legal consequences in this school of thought are that if there is evidence in the form of at least four witnesses or the victim is pregnant, the perpetrator will

⁶² Michele A. Paludi, *Ivory Power: Sexual Harassment on Campus* (State University of New York Press, 1991), 24.

⁶³ Nasih Kareem Abdulla et al., "Sexual Deviations from Islamic Perspective: Sexual Harassment as An Example," *Analisis: Jurnal Studi Keislaman* 23, no. 2 (2023): 198–99, <https://doi.org/10.24042/ajsk.v23i2.19091>.

⁶⁴ Muhammad Rifqi Afrizal et al., "Pelecehan Seksual Dalam Al-Qur'an," *Jurnal Tafsire* 10, no. 2 (2023): 164, 2, <https://doi.org/10.24252/jt.v10i2.35565>.

⁶⁵ Hilkje Charlotte Hänel, *What Is Rape?: Social Theory and Conceptual Analysis* (transcript Verlag, 2018), 14, <https://doi.org/10.14361/9783839444344>.

be sentenced to *hadd zina*, but if four witnesses cannot be produced, the plaintiff may be sentenced to *qadhaf* (slander), and the perpetrator is also required to pay a dowry or fine for what has been done. The principle of the dowry is to compensate or serve as a form of exchange for the sexual access that has been taken away. In the Hanafi school of thought, rape falls under the category of adultery, or what is known as “Zina bil Jabr” (adultery by force). In this school of thought, the victim of rape is technically considered to have committed adultery, but is not punished because the act was committed under duress, and there was no mutual consent between the two parties. By classifying rape as a form of adultery, the Hanafi school of thought uses the term “seizure” in the context of rape to refer more to kidnapping or the seizure of slaves. In determining the punishment for forced adultery, the same evidence is required as in the Maliki school of thought, which requires four witnesses to testify that what happened was rape or not. The legal consequences in this school of thought are stoning for married perpetrators and 100 lashes for unmarried ones.⁶⁶

Rape and sexual harassment are among the most extreme forms of human rights violations. They can occur anywhere, anytime, and by anyone, regardless of geographical boundaries, race, religion, culture, and whether or not there is a conflict situation. The perpetrators of sexual violence are predominantly men who are known to the victims, meaning they are people who are close to them or in their immediate surroundings.⁶⁷ Both forms of abuse can have multidimensional impacts, such as psychosocial effects on victims, causing them to often experience exclusion and a lack of self-confidence in society.⁶⁸ As well as a legal system that is unable to provide justice for victims. In many cases, victims often experience injustice for several reasons, such as difficulty in providing evidence, and if they are unable to provide complete evidence in accordance with the applicable provisions, the report

⁶⁶ Hina Azam, *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*, 1st ed. (Cambridge University Press, 2015), 127–220, <https://doi.org/10.1017/CBO9781316145722>.

⁶⁷ Elizabeth Dartnall and Rachel Jewkes, “Sexual Violence against Women: The Scope of the Problem,” *Best Practice & Research Clinical Obstetrics & Gynaecology*, Clinical Aspects of Sexual Violence, vol. 27, no. 1 (2013): 4, <https://doi.org/10.1016/j.bpobgyn.2012.08.002>.

⁶⁸ Ester Serrano-Rodríguez et al., “Psychosocial Consequences of Sexual Assault on Women: A Scoping Review,” *Archives of Sexual Behavior* 54, no. 1 (2025): 54, <https://doi.org/10.1007/s10508-024-03013-1>.

submitted is considered invalid.⁶⁹ Psychological counseling is essential for the recovery of victims. A study titled “A Qualitative Exploration of the Psychological Needs of Women Survivors of Rape in Iran” identified several psychological impacts experienced by rape victims, including decreased self-esteem, self-blame for what happened, suicidal thoughts and attempts, sadness, depression, fear, panic, anxiety, hatred toward men, and concerns about being accepted and returning to normal life.⁷⁰ Therefore, psychological counseling is crucial for the recovery of victims and also fulfills their right to feel safe and receive full protection.

Sexual harassment and rape are serious issues today, not only in Indonesia but also around the world. According to data released by the World Health Organization (WHO) on its official website in March 2024, more than a quarter of women aged 15–49 have experienced physical and sexual violence by their partners at least once in their lives, and this is typically perpetrated by men against their female partners. Globally, at least 6% of women report having experienced sexual harassment.⁷¹ In Indonesia itself, based on Tempo news sources, data shows that throughout 2024, the Ministry of Women's Empowerment and Child Protection received 14,374 cases of violence, an increase from 12,836 cases of sexual violence reported in 2023.⁷² The data shows that the increase in cases of sexual violence and rape indicates that women are still the most vulnerable group and that there is a lack of safe spaces for women. This issue is the responsibility of all parties, both the government and the community, to provide proper education on how to prevent sexual violence in order to reduce the number of cases.

In Indonesia, matters relating to sexual harassment and rape are regulated in the Qanun Jinayat (KUHP) and the Law on Sexual Violence (UU TPKS). In Aceh,

⁶⁹ Jodie Murphy-Oikonen et al., “Unfounded Sexual Assault: Women’s Experiences of Not Being Believed by the Police,” *Journal of Interpersonal Violence* 37, nos. 11–12 (2022): 17, <https://doi.org/10.1177/0886260520978190>.

⁷⁰ Leila Asadi et al., “A Qualitative Exploration of the Psychological Needs of Women Survivors of Rape in Iran,” *BMC Psychology* 11, no. 1 (2023): 11, <https://doi.org/10.1186/s40359-023-01332-x>.

⁷¹ “Violence against Women,” accessed July 8, 2025, <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

⁷² “Tren Kekerasan Seksual di Indonesia,” *tempo.co*, April 18, 2025, <https://www.tempo.co/data/data/data/tren-kekerasan-seksual-di-indonesia-1232833>.

the Qanun Jinayat is also applied. The differences between these three regulations are as follows:

1. Book of Criminal Law (Kitab Undang-Undang Hukum Pidana (KUHP))

Under Article 414 of KUHP on sexual harassment, anyone who commits an indecent act against another person of the opposite or same sex shall be punished with imprisonment for a term of one year and six months or a fine of 50 million rupiah. Article 416 states that if the sexual harassment results in serious injury to the victim, the perpetrator shall be punished with imprisonment for a maximum term of 12 years. Article 418 also states that anyone who commits indecent acts with a biological child, stepchild, adopted child, or a child under their care or supervision for the purpose of upbringing or education shall be sentenced to a maximum of 12 years' imprisonment.

Meanwhile, Article 473, which addresses rape, states that any person who, through violence or the threat of violence, forces another person to engage in sexual intercourse shall be punished with imprisonment for a maximum of 12 years. This also applies to acts of rape involving sexual intercourse with a child.⁷³

2. Law on Sexual Violence Crimes (Undang-Undang Tindak Pidana Kekerasan Seksual (UU TPKS))

Under the TPKS Law, Article 5 states that any person who commits a non-physical sexual act directed at the body for sexual gratification shall be subject to imprisonment for a maximum of 9 months or a fine of up to 10 million. Article 6 (a) states that any person who commits a physical sexual act with the intent to **degrade the dignity** of another person based on their sexuality shall be subject to imprisonment for a maximum of 4 years or a fine of up to 50 million rupiah. Article 6 (b) states that anyone who commits a physical sexual act with the intent to **place**

⁷³ “UU No. 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana,” Database Peraturan Perundang-Undangan Indonesia - [PERATURAN.GO.ID], 42–63, accessed July 11, 2025, <https://peraturan.go.id/uu-no-1-tahun-2023>.

someone under unlawful control, either within or outside of marriage, shall be punished with a maximum imprisonment of 12 years or a maximum fine of 300 million rupiah. Under Article 9 of the TPKS Law, any person who commits acts of coercion against another person using violence or the threat of violence, abuse of power, deception, or fraud that results in the victim losing their reproductive function shall be punished with imprisonment for a maximum of 9 years or a fine of 200 million rupiah.

Restitution as regulated in the TPKS Law is stipulated in Article 33 (1), which states that restitution must be provided within a maximum period of 30 days from the date of the court decision. Article 33 (5) states that the judge and the court decision shall order the prosecutor to auction the seized collateral for restitution if payment is not made within 30 days after the court decision. Article 33(7) explains that if the convicted person's seized assets are insufficient to cover the restitution costs, the convicted person shall be subject to an alternative prison sentence, not exceeding the original sentence.

Furthermore, Article 24 of the TPKS Law states that evidence in cases of violence is not limited to traditional evidence but also includes conventional evidence, as regulated in the Qanun Jinayat, such as witness testimony, documentary evidence, and similar materials. Additionally, the TPKS Law also accepts electronic evidence such as digital information, audio recordings, or videos, as well as electronic documents, witness statements, or victim statements through electronic recording, and medical and psychological evidence. This demonstrates that the evidence system under the TPKS Law is more inclusive, progressive, and victim-centered.⁷⁴

3. Qanun Jinayat

In the sixth section of the Qanun Jinayat on sexual harassment, Article 46 states that anyone who intentionally commits the crime of sexual harassment shall

⁷⁴ “UU No. 12 Tahun 2022,” Database Peraturan | JDIH BPK, 8–25, accessed July 11, 2025, <http://peraturan.bpk.go.id/Details/207944/uu-no-12-tahun-2022>.

be punished with Uqubat Ta'zir, which is a maximum of 45 lashes, or a fine of up to 450 grams of pure gold, or imprisonment for a maximum of 45 months. Article 47 states that any person who intentionally commits the crime of sexual assault against a child shall be punished with a maximum of 90 lashes, a fine of up to 900 grams of pure gold, or imprisonment for a maximum of 90 months. Article 48 on rape in the Qanun Jinayat states that anyone who intentionally commits the crime of rape shall be punished with Uqubat Ta'zir, which includes a maximum of 175 lashes, a fine of up to 1,750 grams of pure gold, or imprisonment for a maximum of 175 months. Article 49 states that any person who intentionally commits the crime of rape against a person with whom they have a mahram relationship shall be punished with a maximum of 200 lashes, a fine of 2,000 grams of pure gold, or imprisonment for a maximum of 200 months.⁷⁵

The valid evidence in the Criminal Procedure Code, in accordance with Article 181, consists of: a) Witness testimony, b) Expert testimony, c) Physical evidence, d) Documents, e) Electronic evidence, f) Defendant's confession, g) Defendant's testimony.⁷⁶

3.3 The Application of Sharia Law to Sexual Harassment and Rape in Aceh

Aceh implements criminal law, commonly referred to as Qanun Jinayat. Qanun itself has different meanings and there is conceptual debate between Qanun (state legislation) and Islamic law (sharia), especially in the history of Ottoman rule.⁷⁷ However, in Acehnese history, Qanun has the meaning of a constitution, as in the writings of Teungku Di Mulek As Said Abdullah, one of the royal administrators, entitled *Qanun Meukuta Alam Iskandar* or *Qanun al-Asyi*, which was the constitution of the Kingdom of Aceh Darussalam at that time. Meanwhile, Jinayat refers to an act that opposes and is prohibited by religion because it causes

⁷⁵ “Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat,” 15–16.

⁷⁶ “Qanun Nomor 7 Tahun 2013 Tentang Hukum Acara Jinayat,” 51, accessed June 22, 2025, <https://www.ms-aceh.go.id/peraturan-dan-kebijakan-undang-undang-surat-edaran/qanun-qanun/1983-qanun-nomor-7-tahun-2013-tentang-hukum-acara-jinayat.html>.

⁷⁷ Peri Bearman and Professor Rudolph Peters, *The Ashgate Research Companion to Islamic Law* (Ashgate Publishing, Ltd., 2014), 110.

harm to religion, reason, or property, or can also mean crime, criminal offense, or criminal act.⁷⁸

1. ***Hudud*** - A term in Islamic law whose punishment is derived directly from Allah, with the source of law being the Qur'an and Hadith, making the punishment absolute. *Hudud* is punishment for serious crimes that have an impact on morality, safety, and public order that are fundamental to society. The purpose of this law is to maintain stability, security, and peace in society.⁷⁹ The word *hudud* comes from the Arabic plural form of *hadd*, which means limit, and covers several crimes such as adultery, consuming alcoholic beverages (*Khamar*), accusing someone of adultery (*Qadzaf*), several types of theft (*Sariqah*), and armed robbery (*Hiraba*).⁸⁰ The type of punishment imposed in hudud is stoning for married individuals and 100 lashes for unmarried individuals. However, this punishment only applies to adults and requires at least four witnesses to prove that adultery has occurred. For *Khamar*, the perpetrator is sentenced to 80 lashes, but in the Shafi'i school of thought, only 80 lashes are administered, as this is considered less severe than adultery and only harms the individual. For *Qadzaf*, the punishment is 80 lashes. As for the punishment for certain types of theft, it is amputation of the hand, but this must be preceded by a series of specific conditions in proving whether the person actually committed theft or not.⁸¹
2. ***Qisas*** - Terminologically, this means that the perpetrator of a crime is punished in accordance with what they have done, or in other words, they receive equal punishment. For example, if someone commits

⁷⁸ M.H, *Hukum Jinayat Aceh*, 2–3.

⁷⁹ Souha Korbatiéh, “Adultery Laws in Islam and Stoning in the Modern World,” *Australian Journal of Islamic Studies* 3, no. 2 (2018): 3, <https://doi.org/10.55831/ajis.v3i2.121>.

⁸⁰ Jonathan A.C Brown, “Stoning and Hand Cutting—Understanding the Hudud and the Shariah in Islam,” Yaqeen Institute for Islamic Research, 7, accessed June 21, 2025, <https://yaqeeninstitute.org/read/paper/stoning-and-hand-cutting-understanding-the-hudud-and-the-shariah-in-islam>.

⁸¹ Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2009), 312–16.

murder, the punishment they receive is also death.⁸² In Islamic law, there are three types of murder, including: 1). Intentional murder will be punished accordingly, unless the victim's family forgives the perpetrator, in which case the perpetrator will be subject to *diyat* (compensation or ransom), *ta'zir*, or fasting. 2). Murder committed with partial intent and using a blunt instrument will be punished with *diyat* or *Kafarat* (spiritual penalty), or an alternative punishment such as *ta'zir*. 3). Murder committed without intent or accidentally will be punished by freeing a slave or paying *diyat*.⁸³ *Qisas* actually implements a system called justice to create social order, so that no one commits crimes that harm others in any way, including taking lives.

3. ***Ta'zir*** - A punishment imposed by a judge or ruler because it is not directly explained in Sharia law, but in making a decision, they still refer to the Qur'an and Hadith and seek new laws that are relevant to the current situation.⁸⁴ In practice, this punishment is more commonly implemented than the previous two types of punishment. Punishment for perpetrators is frequently shaped by prevailing notions of moral propriety and the desire to uphold communal respectability, rather than focusing solely on the rights of the victim. This punishment is not always physical; sometimes it can take the form of sanctions such as public humiliation and defamation, and such punishments are considered sufficient normatively.⁸⁵

Violations of sexual rights and individual dignity, such as harassment and rape, receive special attention in Islamic law. This is because Islamic law attaches great importance to the integrity of the human body, dignity, and the protection of

⁸² H. Fuad Thohari, *Hadis Ahkam: Kajian Hadis-Hadis Hukum Pidana Islam (Hudud, Qishash, Dan Ta'zir)* (Deepublish, 2018), 195.

⁸³ Muhammad Tahmid Nur, "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in The Law of Qisās," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 55, no. 2 (2021): 55, 2, <https://doi.org/10.14421/ajish.v55i2.1011>.

⁸⁴ Thohari, *Hadis Ahkam*, 264.

⁸⁵ Hallaq, *Shari'a*, 323.

honor, especially for women.⁸⁶ In line with these basic principles, several countries have implemented Islamic law to regulate certain types of crimes, including sexual harassment and rape. One such country is Aceh, which officially implemented the Qanun Jinayat in 2014. Some important provisions addressing this issue include: In Section Six of Aceh Regulation No. 6 of 2014 on Sexual Harassment, there are two articles that address this issue, namely:

- a) Article 46: Any person who intentionally commits sexual harassment shall be punished with *Uqubat Ta'zir*, a maximum of 45 (forty-five) lashes or a maximum fine of 450 (four hundred and fifty) grams of pure gold or a maximum imprisonment of 45 (forty-five) months.
- b) Article 47: Any person who intentionally commits the crime of sexual assault as referred to in Article 46 against a child shall be punished with *Uqubat Ta'zir*, consisting of a maximum of 90 (ninety) lashes or a fine of up to 900 (nine hundred) grams of pure gold or imprisonment for a maximum of 90 (ninety) months.

The seventh section discusses rape and contains nine articles, namely:

- a) Article 48: *Uqubat Ta'zir*, which entails flogging, a fine of at least 1,250 (one thousand two hundred fifty) grams of pure gold, up to a maximum of 1,750 (one thousand seven hundred fifty) grams of pure gold, or imprisonment for at least 125 (one hundred twenty-five) months, up to a maximum of 175 (one hundred seventy-five) months, with a minimum of 125 (one hundred twenty-five) strokes and a maximum of 175 (one hundred seventy-five) lashes, are the punishments for the deliberate commission of the crime of rape.
- b) Article 49: *Uqubat Ta'zir*, flogging at least 150 times and up to 200 lashes, a fine of at least 1,500 (one thousand five hundred) grams of pure gold and up to 2,000 (two thousand) grams of pure gold, or imprisonment for at least 150 (one hundred fifty) months and up to 200 (two hundred) months are the

⁸⁶ Mohammed Houmine, "Assessing the Impact of Islamic Teachings on the Rights and Welfare of Muslim Women: A Policy and Social Justice Perspective," *Religion and Policy Journal* 2, no. 2 (2024): 50, <https://doi.org/10.15575/rpj.v2i2.981>.

punishments for anyone who willfully commits the crime of rape against a person with whom he has a mahram relationship.

- c) Article 50: Uqubat Ta'zir, which consists of at least 150 (150) lashes and up to 200 (two hundred) times, a fine of at least 1,500 (one thousand five hundred) grams of pure gold and up to 2,000 (two thousand) grams of pure gold, or a minimum of 150 (150) months and a maximum of 200 (two hundred) months in jail, anyone who willfully commits the crime of rape against a child as defined by Article 48.

- d) Article 51:

1. Any individual subject to Uqubat as defined by Articles 48 and 49 may be subject to Uqubat Restitution of up to 750 (seven hundred and fifty) grams of pure gold at the victim's request.
2. The judge will consider the guilty person's financial capabilities while calculating Uqubat Restitution as mentioned in paragraph (1).
3. In cases where the offense referred to in paragraph (1) is committed under duress by an unavoidable authority, the Restitution Punishment for the victim shall be imposed on the one who compelled and the perpetrator.

- e) Article 52:

1. Any person who claims to have been raped may file a complaint with the investigator about the person who raped them, accompanied by preliminary proof.
2. Upon becoming aware of a rape offense, the investigator is obligated to conduct an investigation to uncover initial evidence.
3. If the investigator finds evidence but it is insufficient, the person who claims to have been raped, as referred to in paragraph (1), may submit an oath as additional evidence to supplement it.
4. The investigator and public prosecutor shall forward the case referred to in paragraph (3) to the District/City Sharia Court with the

initial evidence and a statement of willingness from the person claiming to have been raped to take an oath before the judge.

5. The willingness of the person claiming to have been raped to take an oath as referred to in paragraph (4) shall be recorded by the investigator in a special report for that purpose.

f) Article 53:

1. The oath referred to in Article 52 paragraph (3) shall be taken five (5) times.
2. The first to fourth oaths state that she is honest and sincere in her confession that she has been raped by the accused.
3. The fifth oath states that she is willing to accept Allah's curse if she is lying in her accusation.

g) Article 54:

1. If the accuser, after appearing before the judge, refuses to take an oath, even though he has signed the official report as referred to in Article 52, he shall be deemed to have committed the crime of Jarimah Qadzaf.
2. The accuser referred to in paragraph (1) shall be punished with 'Uqubat Hudud, namely 80 (eighty) lashes.

h) Article 55:

1. Every person accused of rape has the right to defend himself by stating that he did not commit rape.
2. In the event that the evidence is an oath as referred to in Article 52, the accused may defend himself by taking an oath of defense five (5) times.
3. The first to fourth oaths state that he did not commit rape and that the charges brought against him are false.

4. The fifth oath states that he is willing to accept the curse of Allah if he is lying in his oath.

- i) Article 56: If both parties take the oath referred to in Article 53, they shall be exempt from 'Uqubat'.⁸⁷

The articles contained in the Qanun Jinayat separate the types of punishment for sexual harassment and rape, but in terms of punishment, they still use *sanctions*. The provisions of each article demonstrate the seriousness of the Aceh government in addressing these forms of crime, particularly sexual assault and rape, reflecting a commitment to upholding Sharia law in Aceh. However, upon further examination, the provisions of the Qanun Jinayat tend to focus more on punishing the perpetrators than on protecting and supporting the victims. As a result, the Qanun is often perceived as discriminatory toward victims, particularly women, and its implementation also faces challenges regarding enforcement and evidence in cases of sexual assault and rape. As stated in Article 52, paragraphs 1 and 2, victims are required to submit initial evidence when reporting a rape. This has drawn criticism as it is seen as technically burdensome for victims and imposes an additional burden on them, given the traumatic condition of victims of sexual assault and rape.⁸⁸ Pursuant to Article 180 of the Criminal Procedure Code No. 7 of 2013, a judge is prohibited from imposing a *Uqubat* sentence on the defendant unless the judge has received at least two valid pieces of evidence. Article 181 explains that there are seven categories of valid evidence, including: a) Witness testimony, b) Expert testimony, c) Physical evidence, d) Documents, e) Electronic evidence, f) Defendant's confession, g) Defendant's testimony.⁸⁹

However, when reporting, victims tend to be in poor psychological condition, not only because of trauma, but in many case victims only dare to report what happened to them after a long time. Factors such as shame, fear of not knowing

⁸⁷ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 17.

⁸⁸ Meri Andani, "Kewajiban Menyertakan Bukti Pemula Oleh Korban Dalam Proses Pembuktian Kasus Pemerkosaan (Studi Pasal 52 Qanun Aceh No.6/2014 Tentang Hukum Jinayat)," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 9, no. 1 (2020): 50, <https://doi.org/10.22373/legitimasi.v9i1.7326>.

⁸⁹ "Qanun Nomor 7 Tahun 2013 Tentang Hukum Acara Jinayat," 51.

how to prove it, feeling threatened, worrying that they will not be believed or accepted by their family and community, as well as social pressure, prevent victims from reporting immediately.⁹⁰ Reporting incidents of abuse and rape a long time after they occur will certainly make it difficult for victims to provide initial evidence. Physical evidence and witnesses are often no longer available, making the process of proving the crime more complex and placing a greater burden on the victim.

Furthermore, Articles 52-56 discuss the taking of oaths by victims and perpetrators in cases where there is insufficient evidence. In practice, this could open the door for perpetrators to exploit the law by swearing to deny the allegations because the victim also lacks sufficient evidence. If the perpetrator dares to take an oath and convince the court that no sexual assault or rape occurred, the judge may use the perpetrator's oath as a basis to dismiss the victim's allegations. In such cases, the perpetrator's oath can also backfire on the victim, as they may be deemed to have made a false accusation, resulting in the victim being charged with the crime of *Qadzaf* and the perpetrator being acquitted.⁹¹

As reported by VOA on October 11, 2021, in an article titled "Child Rapist Acquitted, Criminal Law Questioned Again," the report states that the case of child rape committed by SU, a 45-year-old civil servant, denied that the rape of his biological child, identified as K, had occurred and filed an appeal after the Sharia Court had previously sentenced the perpetrator to 180 months in prison. Based on evidence including the child's statement, medical examination results, and witness testimony from the victim's parents. However, after the appeal, the judge ruled that the victim's statement could not be used as valid evidence, as the victim was still a minor and there were no other witnesses who saw the crime. Based on this, the final decision of the Sharia Court was to acquit the defendant.⁹² The same thing also

⁹⁰ Rachael Goodman-Williams et al., "Reasons for Not Reporting Among Sexual Assault Survivors Who Seek Medical Forensic Exams: A Qualitative Analysis," *Journal of Interpersonal Violence* 39, nos. 9–10 (2024): 39, <https://doi.org/10.1177/08862605231211926>.

⁹¹ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 17.

⁹² Anugrah Andriansyah, "Terdakwa Pemerkosa Anak Divonis Bebas, Qanun Jinayat Kembali Dipertanyakan," VOA Indonesia, October 11, 2021, <https://www.voaindonesia.com/a/terdakwa-pemerkosa-anak-divonis-bebas-qanun-jinayat-kembali-dipertanyakan/6265929.html>.

happened in Meulaboh, according to a report published by the Aceh Jurnal Nasional Network (AJNN), which stated that a 70-year-old man with the initials RCA had been charged with raping a minor on Saturday (August 13).

However, in this case, the public prosecutor filed charges against the defendant, seeking a sentence of 20 months in prison. However, the judge of the Meulaboh Sharia Court ruled to acquit the defendant of the sexual assault charges, as there was insufficient evidence to prove that he had committed the crime as alleged. Rudi Reza Kusuma, Chairman of the Aceh Barat Legal Aid Foundation (YLBH-KI), strongly regretted the judge's decision, stating that it undermines the sense of justice for the victim by acquitting the perpetrator. This decision may also deter other victims of sexual assault or rape from reporting such crimes, as they may feel that the legal system cannot resolve such cases fairly.⁹³ Based on the above case example, it is evident that the Qanun Jinayat still falls short in providing protection and justice to rape victims. The acquittal of the perpetrators of sexual assault and rape opens the door for them to commit similar acts repeatedly due to the weakness of the law, which lacks deterrent sanctions. By releasing the perpetrators, victims and perpetrators can return to the same environment, which undoubtedly poses a greater physical and psychological danger to the victims, as their trauma has not yet healed. In Quraishi's article, it is mentioned that although Islamic law has a strong ethical framework to protect victims of sexual violence, many contemporary interpretations and applications fail to address the complexity of such crimes, often reinforcing social stigma and disregarding victims' rights. This tension is particularly evident in regions where Islamic law is officially adopted, yet victims continue to face structural and cultural barriers in accessing justice.⁹⁴

⁹³ AJNN net-Aceh Journal National Network, "Terdakwa Pelecehan Seksual Anak di Bawah Umur Divonis Bebas, YLBH-KI: Lecehkan Rasa Keadilan Pada Korban," AJNN.net, January 7, 2023, <https://www.ajnn.net/news/terdakwa-pelecehan-seksual-anak-di-bawah-umur-divonis-bebas-ylbh-ki-lecehkan-rasa-keadilan-pada-korban/index.html>.

⁹⁴ Asifa Quraishi-Landes, "What If Sharia Weren't the Enemy? Rethinking International Women's Rights Advocacy on Islamic Law," SSRN Scholarly Paper no. 1762767 (Social Science Research Network, February 18, 2011), 23, <https://papers.ssrn.com/abstract=1762767>.

The Qanun Jinayat also regulates Jarimah and Uqubat for children as stated in

a. Article 66: If a child who has not reached the age of 18 (eighteen) commits or is suspected of committing a crime, the child shall be investigated in accordance with the laws and regulations concerning juvenile criminal justice.

b. Article 67:

1). If a child who has reached the age of 12 (twelve) years but has not yet reached the age of 18 (eighteen) years or is not married commits a crime, then the child may be subject to a punishment of up to one-third of the punishment prescribed either placed in a facility run by the Acehnese government or the regency/municipal government, or sent back to their parents/guardians.

2). The procedures for implementing 'Uqubat against children that are not regulated in legislation concerning the juvenile justice system are regulated in a Governor Regulation.⁹⁵

If we look at the Qanun Jinayat, which regulates Jarimah and Uqubat against children, it does not explicitly explain the punishment imposed. Article 67 paragraph 1 explains that they can only be punished with $\frac{1}{3}$ of the punishment imposed on adults or not punished at all. This provision conflicts with Article 19(1) of the Convention on the Rights of the Child, which states that every State Party shall undertake all appropriate measures, including legislative and educational measures, to protect the child from all forms of physical or mental violence, or treatment that is cruel, inhuman, or degrading.⁹⁶ Therefore, it is reiterated in Article 67(2) that this law is subject to the judicial system established by the Governor under Aceh Regulation No. 9 of 2019 on Child Protection, which is designed to provide protection for children as victims, witnesses, or perpetrators of all forms of crime, particularly sexual harassment and rape. The principles of this Qanun are to

⁹⁵ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 20.

⁹⁶ "Convention on the Rights of the Child," OHCHR, accessed June 22, 2025, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

formalize the principles of protection within the framework of Islamic law in Aceh, as stated in Article 2 (a).⁹⁷

This regulation also reinforces Law No. 11 of 2012 on the Criminal Justice System for Children (UU SPPA), as referred to in Qanun No. 9 of 2019, Article 44(a), which states that the Sharia Court shall apply the criminal justice system for children.⁹⁸ Considering that Aceh is part of Indonesia, it cannot be separated from national law. Although the offenses committed by the juvenile defendant fall under the category of crimes regulated by the Qanun Jinayat, Aceh must still refer to the principles and procedures in the SPPA, because the SPPA emphasizes restorative justice and diversion in the resolution of criminal cases involving children, as explained in:

a. Article 5:

The Criminal Justice System for Children shall prioritize a restorative justice approach.

1. The Criminal Justice System for Children referred to in paragraph (1) includes:
 - a). Criminal investigation and prosecution of children carried out in accordance with the provisions of laws and regulations, unless otherwise specified in this Law
 - b). The trial of children conducted by courts within the general court system; and
 - c). Guidance, counseling, supervision, and/or accompaniment during the implementation of criminal sanctions or measures and after the completion of criminal sanctions or measures.
2. In the Juvenile Criminal Justice System referred to in paragraph (2) letters a and b, Diversion must be sought.

b. Article 6: Explains the objectives of diversion to achieve peace, avoid imprisonment for children, and instill a sense of responsibility

c. Article 7: Diversion must be carried out at every stage of the criminal justice process if the criminal penalty is less than 7 years and is not a repeat offense

⁹⁷ “QANUN Prov. NAD No. 9 Tahun 2019,” 6, accessed June 22, 2025, <https://peraturan.bpk.go.id/Details/143279/qanun-prov-nad-no-9-tahun-2019>.

⁹⁸ “QANUN Prov. NAD No. 9 Tahun 2019,” 25.

- d. Article 8-15: Addressing the procedures, the parties authorized to conduct diversion, the timing of its implementation, and the provisions if the diversion process fails.⁹⁹

The implementation of provisions in the Criminal Justice System for Children Act in conjunction with Aceh Qanun No. 9 of 2019 demonstrates that the Aceh government has taken important steps and shown commitment to ensuring legal protection for child offenders. However, the integration of these two legal systems appears to be overlapping, as there are no detailed and uniform technical guidelines explaining how to integrate the mechanisms of these two legal systems.

3.4 Conclusion

This chapter has explored the complex legal architecture governing sexual harassment and rape in Aceh, with a focus on the implementation of the Qanun Jinayat within the broader Indonesian legal framework. While the Qanun represents an effort to integrate Islamic principles into positive law, particularly through the use of *uqubat ta'zir*, its application reveals substantial legal and procedural limitations—especially in cases involving gender-based violence. The comparison between the Qanun Jinayat, KUHP, and the TPKS Law illustrates a critical disparity in both the conceptualization of sexual violence and the protection afforded to victims. The Qanun, while stringent in its penalties, continues to rely heavily on classical evidentiary standards—such as oaths and the requirement of initial proof from victims—which often disadvantage those seeking justice in the aftermath of trauma. In contrast, the TPKS Law adopts a more victim-centered and restorative approach, offering broader definitions of violence and more inclusive types of evidence.

⁹⁹“UU No. 11 Tahun 2012,” 7–12, accessed June 22, 2025, <https://peraturan.bpk.go.id/Details/39061/uu-no-11-tahun-2012>.

CHAPTER IV

ANALYSIS OF ACEH COURT JUDGES' DECISIONS AND FACTORS CONTRIBUTING TO THE INCREASE IN SEXUAL HARASSMENT AND RAPE CASES IN ACEH

4.1 Introduction

After the tsunami and the 2005 Helsinki Memorandum of Understanding, One of the most critical aspects of the Indonesian legal system today is the application of Islamic criminal law in Aceh, especially the Qanun Jinayat.¹⁰⁰ Aceh was granted special authority to establish a government based on Islamic law, including the handling of sexual crimes such as sexual harassment and rape. However, in practice, numerous issues have emerged during the judicial process in Sharia Courts, particularly regarding inconsistent judicial decisions and the unfair treatment of perpetrators and victims despite the formal existence of laws. Field evidence indicates a disparity between the normative spirit of the law and its application in courtrooms.

The purpose of this chapter is to examine how judges decide cases of sexual violence in the Aceh Sharia Court and to identify the social and cultural factors that have led to an increase in the number of cases of sexual assault and rape in Aceh. The differences between decisions involving similar types of offenses and provisions but resulting in vastly different sentences are the primary focus to emphasize that this analysis can be linked to Jock Young's criminological theory¹⁰¹ and MacKinnon's feminist legal perspective,¹⁰² demonstrating that the legal structure is not merely technical but also a site of gender conflict and power struggles. This chapter will also discuss the absence of restitution and inadequate

¹⁰⁰ R. Michael Fenner, *Shari'a and Social Engineering The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (Oxford University Press, 2013), 11.

¹⁰¹ Jock Young, *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity*, illustrated, reprint ed. (1999).

¹⁰² MacKinnon, *Towards A Feminist Theory Of The State*.

protection for victims, as evident in the judicial process through several specific cases decided by the Sharia Court.

It is hoped that this analysis will contribute significantly to the evaluation of the implementation of the Qanun Jinayat, and will also serve as a basis for promoting more equitable and responsive legal reforms for victims of sexual violence in Aceh.

4.2 Overview of the Aceh Sharia Court Decision

As one of the judicial institutions with the authority to enforce Qanun Jinayat in the province of Aceh, the Sharia Court serves as the court of law for all Muslims residing in Aceh, with the authority to investigate, adjudicate, render judgments, and resolve cases, as stipulated in Law No. 11 of 2006 on the Government of Aceh, this gives the central government extra power to guarantee Aceh's adherence to Islamic law.¹⁰³ This paper focuses on the categories and classification of decisions regarding sexual harassment and rape, as stipulated in Article 46, which addresses the crime of sexual harassment, encompassing indecent or obscene acts committed against another person, whether in private or public settings, and Article 50, which addresses the crime of rape, described as having sex without the victim's permission. In practice, the penalties imposed for violations of these provisions include three types of punishment: flogging, imprisonment, and a fine in the form of pure gold.¹⁰⁴ One of the characteristics of Sharia Court rulings is the use of caning, which is more commonly used, even though there are two other options, namely imprisonment and fines. Caning is often chosen as a punishment because it reflects a symbol that affirms the enforcement of Islamic law in Aceh. In his writing, Feener mentions that the flogging law implemented in Aceh serves as a marker of the religious and cultural identity of Aceh and is used to create a strong social impact. However, the implementation of the flogging law has drawn criticism

¹⁰³ "UU No. 11 Tahun 2006," Database Peraturan | JDIH BPK, 11, accessed June 28, 2025, <http://peraturan.bpk.go.id/Details/40174/uu-no-11-tahun-2006>.

¹⁰⁴ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 4.

from various parties, including the public, who feel that flogging tends to be imposed only on lower-middle-class individuals and does not affect the elite.¹⁰⁵

Aceh uses a number of different legal foundations in addition to the Qanun Jinayat, which serves as the primary legal basis for cases of rape and sexual harassment. One of them is customary law, which is governed by Qanun Aceh No. 9 of 2008 on the Development of Customary Life and Customs.¹⁰⁶ and also national law, considering that Aceh is part of Indonesia and therefore remains obliged to comply with and adapt to the national legal system. With regard to sexual violence, several national laws apply, namely Law No. 1 of 1946 on the Qanun Jinayat, Law No. 35 of 2014 on the protection of children, Law No. 12 of 2022 on Sexual Violence Crimes.¹⁰⁷ This pluralism makes law enforcement more complicated, because customary law, Qanun Jinayat, and national law differ in terms of rules, methods of proof, and types of punishment. When these three systems are not integrated harmoniously, the potential for normative conflicts and legal uncertainty is very high, due to overlapping practices in implementation, leading to confusion or uncertainty about which system should be applied. This will result in legal uncertainty and injustice for victims.¹⁰⁸ This situation creates complexity and poses a unique challenge in its implementation in Aceh, particularly with regard to the choice of law to be used by law enforcement officials.

In general, the judicial mechanism of the Sharia Court follows the same process as the general court, but differs in the substance of the law used, which is based on Islamic law. The processes and stages in handling cases of sexual harassment and rape in the Aceh Sharia Court include making an initial report submitted in writing to the Court.¹⁰⁹ Based on the complaint received by the Sharia Court, the next step is an investigation, which is an investigative action to search

¹⁰⁵ Fenner, *Shari'a and Social Engineering The Implementation of Islamic Law in Contemporary Aceh, Indonesia*, 178.

¹⁰⁶ Ridha Maulana, "Sistem Hukum Di Aceh Dan Kaitannya Dengan Pluralisme Hukum," *Jurnal Geuthèë: Penelitian Multidisiplin* 2, no. 3 (2019): 327, 3, <https://doi.org/10.52626/jg.v2i3.66>.

¹⁰⁷ "Komnas Perempuan," 15.

¹⁰⁸ Franz Von Benda-Beckmann, "Who's Afraid of Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 34, no. 47 (2002): 62, <https://doi.org/10.1080/07329113.2002.10756563>.

¹⁰⁹ "Syarat Dan Tata Cara Pengaduan - Mahkamah Syar'iyah Banda Aceh," accessed June 23, 2025, <https://ms-bandaaceh.go.id/syarat-dan-tata-cara-pengaduan/>.

for and find events or objects that can be used to prove whether the report is suspected of being a crime. This is an important step so that the judge can then conduct an investigation in accordance with the procedures of the law and/or Qanun.¹¹⁰ Then, the public prosecutor prepares the indictment after receiving the files from the investigator. Depending on how serious the issue is, this procedure typically takes a week or many months. If this phase is finished and the judge is convinced by the evidence, the prosecutor then submits the case file to the court, where it is officially recorded. The court president then appoints the judges who will preside over the trial. Following this, the schedule for the first hearing is determined. The trial proceedings then proceed in order, from the examination of evidence until the judge delivers the verdict.¹¹¹

4.3 Analysis of Decision Patterns and Legal Determinations

Every criminal case involving the same elements of an offense can result in different verdicts. In the practice of Sharia courts, it has been found that verdicts against perpetrators of sexual violence and rape can differ, even though the characteristics of the cases, the articles of the law, and the types of offenses committed are similar. These differences indicate gaps in the application of the law, revealing inconsistencies in the application of legal norms and the imposition of sanctions during the judicial process. The following are some analyses of cases of sexual assault and rape with differing verdicts.

Case 1: Rape Of A Child By Her Biological Father (PNS), Acquittal

This case involves a civil servant (PNS) accused of raping his five-year-old biological daughter. The report was filed by the victim's mother, accompanied by a medical examination report describing tears in the child's vagina, and psychological counseling. The initial demand from the complainant was a prison sentence of 200 months and restitution of Rp 14,258,000. During the trial, the prosecutor called the victim's mother, grandmother, examining doctor, and psychiatrist as witnesses, who stated that the child had suffered psychological trauma. At the first instance, the

¹¹⁰ “Qanun Nomor 7 Tahun 2013 Tentang Hukum Acara Jinayat,” 4.

¹¹¹ “Laporan Perkara Jinayat,” accessed June 28, 2025, <https://ms-aceh.go.id/kepaniteraan/laporan-perkara/laporan-perkara-jinayat.html>.

Court sentenced the defendant to 180 months in prison, lighter than the prosecutor's demand. However, the defendant appealed, arguing that the allegations stemmed from an ongoing domestic dispute and that the medical examination could not definitively prove the perpetrator or the time of the incident, as the victim's injuries were classified as old wounds. Additionally, the defendant's mother stated that her grandchild was healthy when staying overnight at her home. Based on the appeal ruling, the judge determined that the evidence presented did not meet the requirements of Article 183 of the Criminal Procedure Code, which mandates at least two valid pieces of evidence to prove a criminal offense. Furthermore, the judge also found the testimonies of the witnesses to be inconsistent. For these reasons, the Panel of Judges overturned the first-instance court's decision and acquitted the defendant of all charges brought by the prosecution, restoring the defendant's rights and dignity as they were before.¹¹²

Case 2: Grandfather Rapes Granddaughter (Farmer), 170 Months in Prison

A 63-year-old man in Aceh Besar was found guilty of repeatedly raping his 9-year-old granddaughter. The incidents took place in 2020 and were uncovered after the victim reported the crime to her father. The prosecutor requested that the defendant be sentenced to 200 months in prison under the Qanun Jinayat (Sharia Qanun Jinayat) for sexual violence against a mahram (close relative), supported by medical evidence, the victim's testimony, the victim's parents, and a psychologist's statement. The defendant denied the charges and appealed, claiming that the medical evidence could not be linked to the perpetrator and accusing the victim's father of being the perpetrator. During the appeal hearing, one judge issued a dissenting opinion, expressing doubts about the medical examination and witnesses who did not directly observe the incident. Nevertheless, the Aceh Sharia Court stated that the evidence was interconnected and upheld the defendant's guilt, sentencing him to 170 months in prison.¹¹³

¹¹² Putusan Nomor 22/JN/2021/MS.Aceh, 22/JN/2021/MS.Aceh (Mahkamah Syar'iyah Aceh September 28, 2021). <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec7ab097f2229e8885313835323232.html>.

¹¹³ Putusan No 28/JN/2021/MS.Aceh (Mahkamah Syar'iyah Jantho Oktober 2021).

Case 3: Rape Of A Child By Biological Father (Farmer), 160 Months In Prison

A case of rape committed by a 51-year-old father against his biological daughter from 2019 to 2023. The total number of rapes was 31, with the last incident occurring on October 27, 2023. The first incident took place when the victim was 17 years old, and the victim had also been sexually abused by two other individuals prior to this. The crime came to light after the victim confided in a neighbor about what had happened, who then reported it to the authorities. During the trial, the public prosecutor sought a prison sentence of 190 months, based on Article 49 of Aceh Qanun No. 6 of 2014 on the crime of rape against a mahram. The evidence presented included testimony from the victim's mother and two relatives who were aware of the case through the victim's own confession, as well as medical examination reports showing physical injuries and trauma. The defendant did not contest the charges and admitted to most of his actions, expressing remorse. However, the final verdict of the panel of judges sentenced him to 160 months in prison, 30 months lighter than the prosecutor's demand, without providing any specific explanation for the reduction in the sentence.¹¹⁴

Case 4: Sexual Harassment by the Indonesian National Armed Forces (TNI) against six victims (2018–2021), 39 lashes.

The Sabang Sharia Court handled a case of sexual harassment committed by a civil servant from the Sabang Navy against six young women between May 2018 and August 2021. The perpetrator acted under the pretext of conducting a physical examination as a requirement for admission to a military academy. The number of incidents varied, ranging from one to six times per victim. The defendant was charged under Article 46 of Aceh Qanun No. 6 of 2014 on Sexual Harassment, with the public prosecutor seeking a sentence of 40 lashes. The judge ruled that the perpetrator had violated the dignity of women, abused his position as a public official, and caused trauma to the victims. As mitigating factors, the defendant behaved respectfully during the trial and expressed remorse for his actions. The final sentence of 39 lashes was carried out in public.¹¹⁵

¹¹⁴ Putusan No 2/JN/2024/MS.Ksg (Mahkamah Syar'iah Kuala Simpang April 3, 2024).

¹¹⁵ Putusan No 3/JN/2022/MS-Sab (Mahkamah Syar'iyah Sabang Desember 2022).

Case 5: Sexual Harassment by a Teacher Against a Student, 8 Months in Prison

This case began on January 13, 2023, at around 11:00 a.m. Western Indonesian Time, when a counseling teacher at a high school in East Aceh sexually abused his 17-year-old student. The incident occurred when the victim felt abdominal pain due to menstruation and was accompanied by her friend to the school clinic. The defendant gave the victim medication and mineral water, then applied white camphor oil to the victim's abdomen by inserting his hand into the victim's clothing. According to the victim's testimony, her friend, her brother, and the school principal, the incident occurred as described. The victim and her friend stated that the defendant committed sexual assault by applying white camphor oil to the victim's abdomen and inserting his hand into her skirt. The school principal confirmed that the defendant had attempted to mediate, but the victim's family insisted on resolving the matter through legal channels. The panel of judges ruled that the defendant was proven beyond a reasonable doubt to have committed the criminal act of sexual assault against a child. The judge sentenced the defendant to eight months in prison, reduced from the twelve months sought by the prosecutor. In its ruling, the judge considered the aggravating and mitigating factors, taking into account the defendant's actions that did not support the Aceh government's implementation of Sharia law, but noted that the defendant behaved well in court, had served as a teacher for many years, and was the family's breadwinner.¹¹⁶

4.3.1 Identification of Patterns and Disparities in Judgments

The Sharia Court's judgments in a number of rape and sexual harassment cases show inconsistent patterns and clear disparities. These disparities are not only technical legal issues, but also reflect bias in the structure and power relations within the legal system. From the five cases above, it can be seen that even though the crimes and articles used were the same, the sentences handed down by the judges varied greatly. In the first case of rape committed by a biological father against his daughter, the defendant was acquitted by the judge after filing an appeal. This acquittal was based on evidence that did not meet the requirements as stated

¹¹⁶ Putusan No 4/JN/2023/MS.Idi (Mahkamah Syar'iyah Idi July 17, 2023).

in Article 183 of the Qanun Jinayat. In contrast, in the next case, where the rape was committed by a grandfather who worked as a farmer against his granddaughter and was committed repeatedly throughout 2020, the defendant was sentenced to 170 months in prison despite appealing, but the judge only reduced the prison sentence. Another case involved the rape of a father, who was a farmer, against his biological daughter, which occurred 31 times between 2019 and 2023, resulting in a sentence of 160 months in prison. With similar cases and differing rulings, this demonstrates that there are no clear standards in the assessment of rape cases. Meanwhile, in a case of sexual assault committed by a member of the Indonesian National Armed Forces (TNI) against six women, the perpetrator was sentenced to 39 lashes without imprisonment, despite the assaults having been committed repeatedly from 2018 to 2021. On the other hand, a counseling teacher who sexually assaulted a female student once was sentenced to eight months in prison.

This disparity indicates that the social status and profession of the perpetrator greatly influence the verdict. When the perpetrator comes from a formal and respected profession such as civil servant or member of the military, there is a tendency to impose lighter sentences or even acquit the defendant, even though the evidence presented is the same as in other cases, compared to ordinary civilians such as farmers or teachers. From the patterns of rulings, there is a gap in the Sharia court's assessment system, which does not operate based on the principle of equality before the law. There is strong evidence that the social status and profession of the perpetrator implicitly influence the judge's verdict. In line with the concept of power relations developed by Michel Foucault in his book *Discipline and Punish*, which explains how power can not only oppress and prohibit, but also create a reality, shape objects, and determine what is considered truth—the power to create norms in society that determine who is worthy of trust and who is not.¹¹⁷ This inequality is also reflected in the approach taken by the Sharia Court in its decisions, which also fails to show serious concern for the position of victims. Victims are instead burdened with the obligation to prove that sexual violence or rape actually occurred through a standard of proof that is burdensome for victims.

¹¹⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage Books, 1977), 194.

Referring to Catherine MacKinnon's feminist theory, the law is never neutral and is inherently gender biased, as norms and legal subjects in its design and implementation are based on male experiences and perspectives, thereby perpetuating gender inequality in social policies.¹¹⁸ This is clearly evident in judicial practice, where the law tends to fail to fully understand the dimensions of a female victim's experience, especially when the victim is a woman or a child. In the case mentioned above, psychological evidence such as trauma is insufficient, or even the victim's testimony is disregarded because there is no direct eyewitness evidence at the time of the incident. This is highly detrimental to the victim, especially children under the age of majority who are unable to defend themselves by providing verbal evidence, making them vulnerable to discrimination.

The dominance of power relations in law and society has a direct impact on victims' courage to pursue legal proceedings. According to one staff member handling cases at Flower Aceh, a non-governmental organization focusing on women's empowerment,

*“Some victims have withdrawn their reports to prevent the cases from proceeding to trial, citing reasons such as having reached a settlement or receiving threats from the perpetrators.”*¹¹⁹

This example clearly illustrates how power relations work in cases of sexual violence, particularly in Aceh. Power relations in this context refer to social, gender, economic or authority imbalances between perpetrators and victims. This makes victims feel they have no choice but to withdraw their reports and remain silent. The decision not to pursue the case on the grounds that peace has been made or because the victim has received threats from the perpetrator means that this peace cannot be called peaceful. This is because the peace was not achieved voluntarily, but rather through coercion and pressure resulting from unequal relations. This is clearly illustrated in two cases of rape and sexual harassment committed by a civil servant and a member of the Indonesian National Armed Forces (TNI). Within the framework of Jock Young's critical criminology theory in *The Exclusive Society*,

¹¹⁸ MacKinnon, *Towards A Feminist Theory Of The State*, 161–62.

¹¹⁹ “Interview 2,” April 15, 2025.

he states that marginalized groups are not only at risk of becoming victims of crime but are also often targets of repeated discrimination, and the law can become a tool of power to control vulnerable groups, thereby reinforcing social inequality and power imbalances.¹²⁰

This is highly relevant to the above case, which was handled by the Sharia Court of Kuala Simpang, Aceh Tamiang, which stated that the child victim had previously been abused by two men before being raped by her biological father. This fact demonstrates that children are not only a vulnerable group but also that the legal system is weak in recognizing signs of prior abuse and that there is a lack of societal concern for victim protection, often leading to neglect, blame, or even disbelief. Several studies have shown that, within the context of criminal law, victims often experience revictimization, a process where victims are subjected to the same crime again, either symbolically or psychologically, through negative responses from law enforcement, society, or legal institutions.¹²¹

In addition to structural bias in the legal process, the types of punishment imposed also demonstrate injustice, especially when viewed in relation to the severity of the offense committed. For example, flogging, although it is one of the symbols of the implementation of Sharia law, in practice, this punishment has not been able to fully deter offenders, as it is only temporary, very practical, and completed in a very short time. The Director of the Legal Aid Institute (LBH) in Banda Aceh expressed concerns that individuals sentenced to flogging, who are then released, may re-engage with their victims. This creates an opportunity for perpetrators to repeat their actions and places victims at risk of re-victimization.¹²² Caning in Aceh tends to focus more on deterrence and learning for the community (*Tadabbur*), as stated in Qanun Aceh No. 6 of 2014 on Jinayat Law, article 2 letter f.¹²³ This is the legal reason why flogging is carried out in public and displayed to the public. However, the trauma and recovery of the victims are overlooked, even

¹²⁰ Young, *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity*, 21.

¹²¹ Dinah Faizah Syahbur et al., "Prevention of Secondary Victimization for Victims of Sexual Violence in Court Proceeding," *Contemporary Issues in Criminal Law* 1, no. 1 (2024): 21, <https://doi.org/10.20885/CICL.vol1.iss1.art2>.

¹²² Network, "LBH Banda Aceh Desak Pelaku Kekerasan Seksual Tak Cukup Dicambuk, Tetapi Dipenjara."

¹²³ "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," 5.

though in modern criminal law, the concept of restorative justice emphasizes the recovery of victims. In Indonesia, although not yet universally applied, restorative justice does exist, emphasizing that victims are not only involved in recovery efforts but also play a central role in resolving cases, actively participating in their own cases. Victims are no longer positioned as passive objects where the state fully takes over the case.¹²⁴

The legal weaknesses of flogging, aside from being practical and quick in terms of process, is that perpetrators have the potential to be released immediately after carrying out their punishment. In cases of rape and sexual harassment, the perpetrators are people who live in the vicinity of the victim, so there is a high potential for the victim and perpetrator to interact again, which could lead to revictimization or further trauma and pressure felt by the victim. An example from a study conducted by the National Commission on Violence Against Women (Komnas Perempuan) in monitoring the handling of sexual violence in Aceh revealed that one of the challenges encountered during data collection was that the perpetrator, who turned out to be a neighbor of the victim, came forward and objected to the interview process for data collection with the victim. This highlights how legal weaknesses fail to provide adequate protection for victims.¹²⁵

Furthermore, none of the five rulings issued by the Sharia Court addressed the issue of restitution for victims. Although some perpetrators were sentenced to imprisonment, the restoration of restitution to victims appears to have been overlooked, despite being explicitly stipulated in Aceh Qanun No. 6 of 2014 on Criminal Law, Article 4(d). In fact, restitution is crucial and necessary to assist in the recovery of victims, as restitution is not only about economic losses or other financial issues but also about the psychological and emotional harm suffered by the victims.¹²⁶ Rebecca Campbell's article mentions that rape victims often face difficulties in getting help, both from the law and from the medical and mental health systems, or what is commonly referred to as secondary victimization, where the help they receive can make them feel blamed and doubted for what happened.

¹²⁴ Yudhi Syufriadi and Chepi Ali Firman Zakaria, "The Concept of Restorative Justice as a Means of Legal Protection for Victims of Crime in Indonesia," *International Journal of Social Science And Human Research* 05, no. 12 (2022), <https://doi.org/10.47191/ijsshr/v5-i12-99>.

¹²⁵ "Komnas Perempuan," 13.

¹²⁶ Cortney E. Lollar, "What Is Criminal Restitution," *Iowa Law Review* 100 (2015 2014): 103.

As a result, the post-rape trauma experienced by victims is not only caused by the rape itself but also by how they are treated by the social system after what they have endured. Additionally, victims who are raped by someone they know are at a higher risk of facing difficulties in obtaining adequate assistance.¹²⁷

Summarizing from the article “Psychological Consequences of Sexual Assault on Women: A Scoping Review,” it states that the main impact experienced by victims is symptoms of depression with varying degrees of severity, depending on the victim, and this can be long-term. Anxiety disorders make it difficult for victims to function socially and professionally after the incident. Additionally, many victims also develop Post-Traumatic Stress Disorder (PTSD), which can result in nightmares, flashbacks of the traumatic event, social avoidance, and severe emotional disturbances. Sleep disorders such as insomnia and nightmares are common, and in more severe cases, victims may resort to self-harming behaviors as a coping mechanism.¹²⁸ Looking at the various types of traumas experienced by victims of sexual violence, it is clear that this issue is not trivial, but rather a serious problem that requires in-depth and ongoing treatment. For victims, the experience of sexual violence not only robs them of their sense of security, but also affects important aspects of their lives, such as work, social relationships, and education. As a result, they often miss out on important moments with loved ones, feeling isolated and disconnected from their surroundings. This highlights that the struggle for victims is not only in the legal or social realm but also within themselves, as they must confront feelings of devastation, anger, and loss of self-identity. Therefore, psychological support is crucial to help victims heal emotionally, socially, and spiritually.

4.4 Social and Cultural Factors Causing the Increase in Cases

The increase in cases of sexual harassment and rape in Aceh cannot be viewed solely as the fault of individuals, but must be understood within a broader social and cultural framework. Based on available data, women and children are the most frequent victims. This occurs within Acehnese society, which is known for

¹²⁷ Rebecca Campbell, “The Psychological Impact of Rape Victims,” *The American Psychologist* 63, no. 8 (2008): 702–17, <https://doi.org/10.1037/0003-066X.63.8.702>.

¹²⁸ Serrano-Rodríguez et al., “Psychosocial Consequences of Sexual Assault on Women.”

strongly upholding Islamic values, which are then implemented through the application of Islamic Sharia law, a special form of regulation in Aceh governing social and moral life. However, despite the implementation of Islamic law, cases of sexual harassment and rape continue to rise. In this context, it is necessary to identify and analyze the religious, cultural, and social factors that influence the high incidence of sexual harassment and rape. Women and children, as the most vulnerable groups, are often trapped in positions that are stigmatized as inferior to men, as interpreted by culture and religion, which are still conservative in nature. In some cases, victims of violence also face negative stigma from society and those around them, and as indicated by the analysis above, victims often struggle to obtain justice. The factors causing the increase in cases of sexual harassment and violence in Aceh are the dominance of religion and patriarchal culture, which refers to a social system in which men hold dominant power in almost all aspects of society, both in the domestic and public spheres. In this system, women are positioned lower in status. Sylvia Walby (1990) in her book entitled "*Theorizing Patriarchy*", that there are six linked pillars of patriarchy: paid work, housework, culture, sexuality, violence, and the state. These six pillars show that patriarchy is not just a matter of individuals, but also social and institutional conditions that shape a system of male domination and exploitation of women. Walby further explains that patriarchy is divided into two forms: private, which is seen in male control over women in the domestic sphere, such as all forms of housework that are claimed to be women's duties, as well as sexual control; and public, which usually occurs in formal institutions, such as the legal system and the formulation of state policies that do not include women, resulting in frequent gender bias.¹²⁹

As mentioned in Amina Wadud's book *Qur'an and Woman*, traditional interpretation of the Qur'an has long been carried out by male scholars, indicating that all forms of interpretation are based on their perspectives and life experiences. This male dominance creates a bias that overlooks women's experiences in religious narratives, resulting in portrayals of women in Islamic texts often being based on a male perspective. As a result, women's experiences are not given space in religious

¹²⁹ Sylvia Walby, *Theorizing Patriarchy* (Wiley-Blackwell, 1991), 21–24.

narratives or in legal interpretations, as men monopolize the process of interpretation and lawmaking.¹³⁰ In Acehese society, customary values and religious interpretations have their own unique characteristics regarding the relationship between religion and culture. This often results in overlap, with both affirming that the position of men as leaders means they have greater power and are guardians of morality. Historically, Aceh has had several female leaders, such as Cut Meutia, Ratu Safiatuddin, and others. However, this shifted when debates arose regarding the legitimacy of female leadership based on interpretations used by religious scholars to undermine the positions of female leaders. These religious interpretations were then used as a tool to halt the tradition of women holding the highest leadership positions in Aceh, and religion has always been used as a tool to control women. Furthermore, religion has also always been a tool for educating people about patriarchy, as explained by the Chair of the Indonesian Association of Sociology of Religion:

*“Three main aspects of Acehese culture and religious diversity that contribute to high rates of sexual violence are religious symbolism, patriarchal dominance in religious authority, and cultural unpreparedness for modern developments. Religious teachings tend to emphasize outward aspects such as dress and legal compliance, without instilling moral and humanitarian values. Religious leaders’ sermons often originate from a male perspective and perpetuate the narrative that women are the cause of sexual violence. At the same time, society has not been sufficiently adaptive to social and technological changes, resulting in digital-based violence not being adequately addressed by existing cultural or religious instruments.”*¹³¹

As Feener wrote, the implementation of Islamic law in Aceh was not entirely due to substantial religious reform, but there were also political forces at work.¹³² Thus, Islamic law that is implemented is not merely a set of religiously based norms, but has also undergone transformation, with the state playing an active role in it, thereby becoming an instrument of the state in formally demonstrating its

¹³⁰ Amina Wadud, *Qur’an and Woman : Rereading the Sacred Text from a Woman’s Perspective* (Oxford University Press, 1999), 2.

¹³¹ “Interview 3,” May 15, 2025.

¹³² Fenner, *Shari’a and Social Engineering The Implemnetation of Islamic Law in Contemporary Aceh, Indonesia*, 151.

religious commitment. This has led to substantive justice for vulnerable groups such as children, women, and the poor being overlooked. Rather than serving as a tool to empower and uphold Islamic teachings in society, it has the potential to perpetuate the status quo of power and structural inequality. This was also highlighted by the former chairperson of the National Commission on Women (KOMNAS Perempuan), Mrs. Azriana, who stated that:

*“The implementation of Islamic law in Aceh still appears contradictory. The government frequently conducts raids on clothing and khalwat (unlawful gatherings). However, on the other hand, there is still a lack of control and supervision from the community itself. Therefore, improvements are needed in terms of approach to enforce Islamic law.”*¹³³

Furthermore, in order to effectively enforce Islamic law and achieve its original objectives as a legal system that upholds justice, protection, and moral values, the government needs to conduct outreach and educate the public, not only by instilling technical understanding of the regulations, but also by fostering a substantive awareness of Islamic morals and ethics. This will enable a process of religious internalization in the collective consciousness of the community. In many cases in Aceh, the government's approach tends to use a top-down method, which actually reduces the effectiveness of Islamic law because it does not touch on the cultural and social values that have grown in the community. This can be seen from the formalization of Islamic law in Aceh, where religious scholars have played a central role since the initial stages of formulation and have become an integral part of the legal structure, although they often overlook broad public participation.¹³⁴

In addition to the patriarchal and culture embedded in Acehnese society, legal weaknesses are also evident in the implementation of the Qanun, not only in the form of weak court decisions, but also in the limited budget for implementing the Qanun, the lack of funds allocated for victim protection, and the judges' understanding of how to issue decisions based on the Qanun. Results of interviews

¹³³ “Interview 4,” May 11, 2025.

¹³⁴ Salim, *Challenging the Secular State*, 143.

with the Head of Inter-Institutional Cooperation for Law Enforcement, Department of Islamic Sharia Law:

*"The weakness of Islamic law and its implementation is divided into two major challenges, namely the need for a common understanding among law enforcement officials, particularly judges and prosecutors, and the frequent transfer of law enforcement officials, including judges and prosecutors, who are often transferred from outside Aceh and are therefore unfamiliar with criminal law. Therefore, it is crucial for judges and prosecutors to have a thorough understanding of criminal law and criminal procedure law. Additionally, there are budgetary constraints in implementing the Qanun Jinayat."*¹³⁵

Nasrullah and colleagues found that budget constraints remain a serious problem in several districts/cities in Aceh, including for the operation of Sharia courts and Wilayatul Hisbah, which require large budgets to carry out criminal proceedings. In addition, infrastructure is still inadequate, with not all areas having proper offices, waiting rooms for parties to cases, or other supporting facilities.¹³⁶ In implementing Islamic law, it is not only necessary to have a clear and firm legal framework, but also to be supported by a commitment to adequate budgeting and infrastructure development. Similar challenges are faced by several NGOs focused on addressing cases of rape and sexual harassment. Access to reporting centers remains severely limited, particularly in areas far from the provincial capital of Banda Aceh. Some regions lack local support institutions capable of addressing sexual violence, resulting in minimal access for victims to counseling services. NGOs working on these cases are mostly located in the provincial capital and often face difficulties in reaching victims due to limited resources and geographical distances. This situation also highlights that the victim protection system, as an integral part of law enforcement and justice efforts, remains severely inadequate. Stated in an interview:

¹³⁵ "Interview 5," April 24, 2025.

¹³⁶ Nasrullah Nasrullah et al., "The Challenges Of Islamic Criminal Law Implementation In Aceh Shariah Court," *Diponegoro Law Review* 9, no. 1 (2024): 130, <https://doi.org/10.14710/dilrev.9.1.2024.121-135>.

“The urgent need right now is to provide many assistants and train the community on how to handle rape victims, because NGOs cannot always be relied upon, given that not every region has NGOs that focus on issues such as this.”¹³⁷

This indicates that the Sharia Court's decisions in handling cases of sexual harassment and rape have not shown consistency that reflects substantive justice. Legal inequality, gender bias, and power relations are still deeply rooted in law and society. Weak protection and recovery for victims remain a major recurring problem. The many differences in decisions on cases with similar characteristics show that the judicial system is still operating within a framework that is not entirely neutral. On the other hand, social and cultural factors such as strong patriarchal domination, minimal religious education based on substantive ethical values, and limited resources in the implementation of Qanun further complicate the protection of victims. Therefore, the enforcement of law in Aceh requires more than just enforcing rules; it demands a serious commitment to building a system that prioritizes victims, upholds the principle of justice that is not merely formal but truly fosters good moral values in society and the law, so that the objectives of enforcing Islamic Sharia law can truly be felt.

This description is not intended to provide a single explanation or deterministic conclusion regarding the causes of the increase in cases of sexual violence in Aceh. Social dynamics—especially those related to gender-based violence—always involve many interrelated variables. Therefore, the following analysis is merely the result of an exploration of several factors that emerged prominently in field interviews, and not a complete representation of the entire social context. As such, these findings should be understood as a partial portrait of a complex issue.

4.5 Conclusion

This chapter shows that, in cases of sexual harassment and rape, the Qanun Jinayat still faces many problems when implemented in Aceh. Some of these problems include gender bias, uncertainty in judges' decisions, and a lack of protection for victims. The social status of the perpetrator has a significant influence

¹³⁷ “Interview 4,” May 11, 2025.

on sentencing, as demonstrated by different verdicts for similar cases. Additionally, legal methods that emphasize symbolism, such as flogging, have failed to effectively address the restorative aspects of victim recovery.

The rise in sexual violence cases is also caused by patriarchal culture, conservative religious beliefs, financial constraints, and lack of access to support services. Therefore, to uphold true justice within the framework of Islamic law in Aceh, comprehensive and victim-centered legal reforms are needed, including a fair and gender-sensitive judicial system. In addition, improved protection and recovery for victims are required.

CHAPTER V

CONCLUSION

5.1 Conclusion

This study reveals the complex dynamics in the implementation of the Qanun Jinayat in Aceh, particularly in handling cases of sexual violence such as harassment and rape. Through a socio-legal approach and qualitative methods, this study successfully describes how the legal norms enshrined in the Qanun Jinayat often do not align with social realities or the needs of victims on the ground. This inconsistency is reflected in the patterns of Sharia Court rulings, which show disparities in substance, inconsistencies in the application of sanctions, and a limited consideration of the victim's perspective in the judicial process.

Substantively, the Qanun Jinayat has explicitly defined the crimes of sexual harassment and rape and accompanied them with criminal penalties. However, the articles related to evidence, oaths, and the mechanism of proof still leave a large gap in the protection of victims. The use of oaths as a method of proof, for example, not only burdens the victim but also opens up the possibility of impunity for the perpetrator. In many cases, the victim's testimony is not strong enough without the support of four witnesses or physical evidence, which is often difficult to provide, especially in cases of sexual violence that occur in private spaces. This indicates that the legal system is still oriented towards formal proof and does not prioritize the principle of substantive justice.

Additionally, it was found that Sharia courts tend to use moral considerations and patriarchal social norms in deciding cases, rather than focusing on the interests and recovery of victims. This pattern is exacerbated by judges' limited understanding of power relations and the structural impact of gender-based violence. The decisions handed down often do not take into account the psychological trauma, social position of the victim, or the victim's access to justice and recovery. In this context, Sharia law, which is supposed to guarantee protection and justice, has the potential to reinforce the marginalization of women as victims of sexual violence.

Social and cultural factors in Aceh also play a significant role in the high rates of sexual violence, where a social system steeped in patriarchal values, masculine interpretations of religion, and strong norms of modesty and family honor often place victims in a position of blame. Traditional resolutions of cases, such as marriage between the victim and the perpetrator or the provision of compensation without a fair recovery process, reflect that cultural values often negate the victim's right to justice. In many cases, the victim's family chooses to remain silent or withdraw the report in order to protect their reputation, while law enforcement officials, including Sharia court judges, do not yet fully possess gender sensitivity or a deep understanding of the power relations that accompany cases of sexual violence. This imbalance is exacerbated by limited support services and information about restitution rights, leaving many victims trapped in a cycle of revictimization. Thus, without more egalitarian social and cultural structures, the implementation of the Qanun Jinayat is not effective enough to prevent sexual violence or provide substantive protection for victims.

In theory, the findings of this study reinforce the relevance of Catharine MacKinnon's Feminist Legal Theory, which states that legal systems are often shaped within a framework of male domination, where women's experiences are marginalized. In the context of Aceh, the application of Sharia law is often based on masculine religious interpretations, which narrow the opportunities for victims to obtain justice. Meanwhile, Jock Young's Left Realist Criminology approach emphasizes that symbolic and repressive laws are not effective enough if they are not accompanied by recognition of the real experiences of victims and structural efforts to address the social inequalities that underlie crime.

Legal reform is insufficient if it is merely normative. A more transformative approach is needed, one that prioritizes victims' experiences as the foundation for designing and implementing the law. In this regard, the integration of Qanun Jinayat and national laws such as the TPKS Law needs to be considered more seriously so that Aceh can have a legal system that is not only based on Sharia but also responsive to the needs of victims and human rights standards. Additionally, enhancing the capacity of judges, law enforcement officials, and victim support

institutions to understand gender perspectives and power dynamics is an important step in promoting substantive justice.

Finally, this study emphasizes that the existence of the Qanun Jinayat in Aceh reflects the tension between religious values, local culture, and modern human rights demands. In this context, efforts to revise and develop the Qanun should not stop at changing the legal text alone, but must aim for comprehensive structural reform. This includes establishing a sustainable victim recovery system, strengthening access to justice, and creating a safe social space for all citizens, particularly women and children, who are the most vulnerable groups to sexual violence. Without collective commitment and a sustained interdisciplinary approach, the hope of creating true justice under the umbrella of Islamic law in Aceh will remain a normative discourse far removed from reality.

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