

Research Article

Juridical Analysis of the Fulfillment of the Rights of Children of Rape Perpetrators from the Perspective of National Law and Qanun Jinayat

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Abstract: This study analyzes the legal protection of children as perpetrators of rape within Indonesia's national legal system and Aceh's Qanun Jinayat, focusing on the Syar'iyah Court's decisions that often fail to confirm the fulfillment of children's rights to education, rehabilitation, and reintegration. Although the principle of the best interests of the child requires comprehensive protection, the absence of clear implementing regulations has created uncertainty. Using a normative juridical method with legislative and case approaches, the research draws on secondary data enriched with primary data and qualitatively analyzed. The findings show that both national law and Qanun Jinayat emphasize child protection based on the best interests principle. National law mandates special procedures such as mentoring, closed hearings, psychological assessments, and diversion, while Qanun Jinayat, through Article 50, stipulates lighter and proportionate *uqubat* for children. These frameworks complement each other in ensuring education, psychological recovery, and social reintegration. However, several Syar'iyah Court decisions have not explicitly included recovery rights, resulting in ineffective protection and legal uncertainty. The study recommends that the Syar'iyah Court explicitly incorporate children's rights to education, rehabilitation, and reintegration in its verdicts. Furthermore, the Aceh Government should issue Standard Operating Procedures or Governor's Regulations to provide a clear legal basis for implementing child *uqubat* in line with the Juvenile Criminal Justice System.

Keywords: Child Protection; Juvenile Justice; Legal Certainty; Qanun Jinayat; Rehabilitation Rights

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1. Introduction

Human Rights are basic rights inherent in every human being and must be respected, upheld, and protected by the state, government, and society to maintain human dignity and dignity. Children receive special attention because they are more vulnerable to human rights violations. This attention is realized through *Declaration of the Rights of the Child* or the Declaration of the Rights of the Child adopted by the United Nations on November 20, 1959. The declaration affirms that every child has the right to enjoy a happy childhood and freedom for the benefit of himself and society. The declaration also encourages parents, organizations, local governments, and national governments to gradually fulfill children's rights through adequate policies and regulations. Indonesia has demonstrated its commitment to child protection through various legal instruments, including Law No. 23 of 2002 concerning Child Protection and its amendments in Law No. 35 of 2014, as well as Law No. 11 of 2012 concerning the Child Criminal Justice System. All of these regulations affirm that every child, both when in the position of a victim and a perpetrator of a criminal act, has the right to

receive special treatment that is in line with the principle of the best interests of the child. The provision also provides restrictions on the definition of a child as any individual under the age of eighteen and unmarried, including a child who is still in the womb as far as his interests are concerned. In addition, the laws and regulations classify children into three categories, namely children who are in conflict with the law, children who are victims of crimes, and children who are witnesses to criminal acts (Silvia Fatmah, 2019).

Children who are in conflict with the law must receive special treatment and protection in accordance with Beijing Rules, Law Number 3 of 1997, and Law Number 23 of 2002, because psychologically children are not able to fully distinguish between good and bad so that they are vulnerable to becoming perpetrators and victims of crimes, including rape. The child of the perpetrator still has the right to be protected, but it needs to be given educational action. The provisions differ based on age: children under the age of twelve are not brought before the court and are only subject to actions such as return to their parents or to participate in educational programs in social institutions, while children aged twelve to eighteen years can be subject to both criminal and criminal charges (Faisal Riza, 2021).

Children of criminal offenders are subject to lighter sanctions than adults, such as Article 81 paragraph (2) of the Law on the Juvenile Criminal Justice System which limits the prison sentence for children to only half of the maximum threat for adults. This is based on the principle that children are the next generation of the nation and must be treated according to the principles of non-discrimination, the best interests of children, the right to live and develop, and respect for children's opinions as stated in Law Number 35 of 2014. Therefore, court decisions against the child of rape perpetrators must consider the physical, mental, and background conditions of the child so that the sanctions imposed are proportionate and educational (Ainal Mardiah, 2012).

Aceh is the only province in Indonesia that has received special authority from the Central Government to administer Islamic law. The implementation of Islamic sharia is based on Law Number 44 of 1999 concerning the Implementation of Provincial Privileges of the Special Region of Aceh and Law Number 11 of 2006 concerning the Government of Aceh, which is a strong foundation for the implementation of Islamic sharia qanun in various fields, including religion, customs, education, and the role of ulama in the formulation of regional policies. Further arrangements are outlined through the Aceh Qanun as a regional regulation that regulates the administration of government and community life. One of the important regulations is Qanun Aceh Number 6 of 2014 concerning the Jinayat Law that is currently in force (Ridwan Nurdin, 2020).

The Qanun of the Jinayat Law regulates the types of jarimah and uqubat that can be imposed on every Muslim who violates the provisions of the sharia in Aceh. Jarimah is understood as an act that is prohibited according to sharia law and in Qanun Aceh Number 6 of 2014 uqubat hudud or ta'zir, while uqubat is a sanction imposed by a judge. One of the ten types of jarimah regulated in the qanun is the rape jarimah. Cases of rape committed by children in Aceh are a serious problem, as seen in the Decision of the Bireuen Syar'iyah Court Number 1/JN/2022/MS. Beer, which began with the act of child rape against the victim's child. In the case, the public prosecutor filed a cumulative indictment based on Article 50 and Article 47 of Qanun Aceh Number 6 of 2014 jo. Article 64 paragraph (1) of the Criminal Code jo. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The chronology of this case begins when a child commits an act of rape against the victim. For this incident, the public prosecutor compiled an indictment in layers. The main indictment is based on Article 50 of Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat, combined with Article 64 paragraph (1) of the Criminal Code and the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Meanwhile, the subsidiary indictment was formulated based on Article 47 of the Aceh Qanun Number 6 of

2014. In his demands, the prosecutor requested that the child be sentenced to sixty months of coaching at the Banda Aceh Special Children's Development Institute. Through Decision Number 3/JN. Anak/2025/MS. Aceh, the Aceh Syar'iyah Court actually imposed a ninety month guidance ruqbat, ordered that the child remain in custody, determined the status of evidence, and charged case costs.

The decision of the Bireuen Syar'iyah Court Number 1/JN/2022/MS. Bir and two decisions of the Aceh Syar'iyah Court in a similar case show that the panel of judges has not fully accommodated the fulfillment of the rights of the perpetrator's children, especially the right to education, physical and psychological recovery, and guarantees of protection during the coaching period. In fact, judges have ex officio authority to ensure the availability of legal protection for children who are facing the law. The absence of such guarantees has the potential to cause serious problems, because the perpetrator's child is still a child who has the right to receive treatment in accordance with human rights principles.

The handling of the case of a child rapist in Aceh raises questions about the extent to which the principle of the best interests for the child is applied in court decisions, especially in the context of the application of Qanun Jinayat. Aceh, as the only province that implements jinayat law, faces challenges in balancing national rules with regional specificities. A decision that does not contain the fulfillment of children's rights shows that there is a gap between normative provisions and judicial practice, as well as the potential for violations of basic principles of child protection (Rizanizarli, 2023).

This condition emphasizes the urgency of research to assess the fulfillment of the rights of children of rapists from the perspective of national law and Qanun Jinayat. The absence of protection guarantees in the verdict creates a normative and implementable vacuum that can weaken the juvenile justice system. A comprehensive analysis of the ideal form of protection, consistent standards of verdicts, and the role of judges in ensuring rehabilitation and prevention of repetition of criminal acts is needed. Without strengthening these aspects, law enforcement against children in Aceh risks not being in line with the principle of the best interests of children.

2. Research Methods

This study uses a normative juridical method that focuses on the analysis of written legal norms as the main basis of the study. The approaches applied include a legislative approach and a case approach to assess the relationship between legal provisions and enforcement practices. In this normative research, the data used is mainly in the form of secondary data enriched with primary data as a complement (Nomensen Sinarmo, 2009).

Primary data were obtained through interviews with the research informants, namely the Judge of the Bireuen Syar'iyah Court and the Judge of the Aceh Syar'iyah Court who handled cases of rape with child perpetrators (Peter Mahmud Marzuki, 2005). The secondary data is collected through a literature study by tracing legal documents, literature, laws and regulations, expert opinions, and relevant court decisions. Data collection was carried out through a combination of literature studies and structured interviews to obtain more comprehensive information (I Made Pesek Diantha, 2016).

All collected data were analyzed using qualitative methods. Analysis is carried out by grouping, selecting, and arranging data based on its quality and relevance, then relating it to legal theories through deductive reasoning. This approach is used to produce a coherent understanding and provide the right answers to the formulation of the problem in the research (Soerjono Soekanto, 1984).

3. Results and Discussion

Legal Protection of Children as Perpetrators of the Crime of Rape in the National Legal System and Qanun Jinayat

In the Indonesian legal system, the protection of children is a fundamental principle that must be integrated in every stage of law enforcement. The position of children as a vulnerable group requires the state to provide special procedures when they are faced with legal proceedings, including in serious cases. Various national regulations that have been formed show that there is a layer of protection that must be prioritized and should not be ignored by law enforcement officials. One of the criminal acts that can be committed by children is rape, which in Article 285 of the Criminal Code is regulated as the act of forcing women to have sex with violence or threats with criminal threats of up to twelve years. The affirmation of the elements of violence and coercion places rape as a serious violation of the victim's dignity and sexual integrity, as well as providing clear legal boundaries regarding the scope of this crime, which in the Criminal Code is proven mainly through physical acts or threats (Fransiska Novita, 2021).

The regulation of rape in the national legal system emphasizes the elements of coercion, violence, or threats as formulated in the Criminal Code, which provides clear boundaries on acts that constitute rape as a serious violation of the sexual integrity of the victim. The affirmation of these elements shows a positive legal orientation to the protection of the dignity of the victim and is supported by strict evidentiary standards, which are an important basis when the perpetrator is a child. Meanwhile, Qanun Aceh Number 6 of 2014 concerning the Jinayat Law defines rape as the coercion of sexual relations and other acts that degrade the honor of the body, with the threat of *uqubat* in Articles 48 to 50 which are heavier than national regulations. The clarity of the limits of acts in this qanun is a guideline for *Syar'iyah* Court judges as well as a foothold in providing legal protection to the perpetrator's children in the context of positive Islamic law in Aceh (Wardani, 2018).

The regulation of rape in Qanun Jinayat is based on the concept of substantive *jarimah*, with provisions regarding sanctions for perpetrators who are still children contained in Article 50 which stipulates *uqubat ta'zir* in the form of whipping, gold fines, or imprisonment with a very heavy range. The high threat of *uqubat* shows that the rape of children is seen as a violation of sharia which has a very high level of seriousness. The structure of the sanctions formulated also reflects the purpose of deterrence as well as an effort to maintain moral order among the people of Aceh. The affirmation of this provision also marks a fundamental difference between the national legal approach and the sharia-based approach in assessing and responding to the crime of rape (Maksum, 2024).

The position of children as perpetrators in both legal systems requires special treatment that must follow the principles of juvenile justice. This provision is in line with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which emphasizes that children in conflict with the law cannot be equated with adult perpetrators. The determination of the age limit under eighteen years of age creates an obligation for the state to organize a trial, proof, and sanction process that takes into account the level of mental maturity of the child. The affirmation of this status is the basis that protection must still be provided even though the criminal acts committed are in the severe category, so that criminalization must not eliminate the right of children to be treated humanely.

The definition of children in Law Number 23 of 2002 concerning Child Protection and amendments through Law Number 35 of 2014 places children as subjects whose physical, mental, and moral protection must be guaranteed. This status emphasizes that the child of the perpetrator still needs a comprehensive protection approach, with an assessment of psychological development as the basis for determining rehabilitative and corrective steps. Understanding children's vulnerability ensures that the legal process does not ignore the

elements of coaching, while strengthening the position of children as parties who must be treated differently in the criminal justice system (Wardah Nuroniyah, 2022).

The principle of the best interests of the child is the main foundation in the entire process of handling cases involving children. This principle requires law enforcement officials to place recovery, education, and the future of children as the main focus in decision-making. This approach directs the judicial process not only to focus on punishment, but to see the child as an individual who can still be guided through coaching. This affirmation of the principle shows that the national legal system is oriented towards comprehensive protection for children, including when they are faced with serious crimes.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the main instrument that provides procedural protection for children from the investigation stage to coaching. The existence of a diversion mechanism provides opportunities for resolving cases through a restorative justice approach to prevent children from the negative impact of criminalization. The obligation of legal assistance, examinations that take into account psychological conditions, and the provision of a remedy outside the formal process show that protection is not only a principle, but also an operational obligation of the state. This series of arrangements illustrates an effort to affirm that children's future must not be lost due to legal proceedings (Siswanto, 2024).

Preventive measures are placed as the initial foundation in preventing children from falling into the crime of rape and other deviant behavior. This effort is realized through sexual and moral education from an early age, strengthening the role of the family, and environmental supervision. Instilling moral values and self-control from a young age is expected to form healthy behavioral boundaries for children. Strengthening support from parents and the environment helps children understand the consequences of actions and build a more stable character. This mechanism confirms that protection does not stop at the enforcement stage, but begins at prevention.

When children continue to commit *jarimah* or criminal acts that cannot be resolved restoratively, repressive mechanisms are still needed but with certain restrictions. Coaching at the Special Children's Development Institution provides a safer and more targeted rehabilitative space, in line with the view that children cannot be treated like adult actors. The mechanism of juvenile punishment is directed to correct behavior and provide opportunities for change, not as a means of retribution. This arrangement reinforces the commitment that the rehabilitation aspect remains the main goal in juvenile punishment (Muthaib, 2021).

During the judicial process, children are guaranteed special procedural rights such as closed hearings, legal assistance, and psychological assessments to assess the level of awareness, motives, and coaching needs. Protection during the trial aims to maintain the psychological condition, identity, and sense of security of children so that they do not experience physical or mental pressure. Mental health services, continuing education, and psychosocial recovery programs then become forms of substantive protection to prevent repetition while supporting social reintegration. The principle of non-discrimination also ensures that children still have the right to equal treatment without social stigma (Sasmita, 2021).

In the context of Aceh, Qanun Jinayat remains subject to the principles of juvenile justice as stipulated in the Law on the Juvenile Criminal Justice System. Article 50 of Qanun Jinayat establishes the limit of *uqubat* for children through the sanction of whipping, a golden fine, or imprisonment for a certain range as a form of proportionality that adjusts the level of maturity of the child. The adjustment of the provisions of *jarimah* to the principle of child protection creates harmonization between sharia values and national protection standards. Overall, both national law and Qanun Jinayat place a balance between justice, protection, and

restoration as the main orientation in handling child rapists, so that their legal, moral, and social needs are met.

Legal Certainty of the Application of Qanun Jinayat to the Syar'iyah Court Decision Which Does Not Contain the Rights of the Child of the Perpetrator of the Crime of Rape

The authority of Aceh Province in implementing Qanun Jinayat as a regional criminal law is based on the Aceh Government Law and the Law on Acehness Privileges which provide space for the formal application of Islamic sharia in the national legal system. Within this framework, the Syar'iyah Court has full authority to examine and decide cases involving children as perpetrators of jarimah, including the crime of rape. However, a number of decisions—such as the Decision of the Bireuen Syar'iyah Court Number 1/JN/2022/MS. Bir and two decisions of the Aceh Syar'iyah Court in 2025 show that the aspect of child protection has not been fully accommodated in the consideration or the judgment of the decision. This condition indicates that although Aceh has broad authority in the application of sharia, its implementation is not fully in line with the principles of child protection as stipulated in national laws and regulations that guarantee children's rights (Thani, 2023).

The provisions of rape jarimah in Articles 48 to 50 of the Qanun Jinayat regulate the form of punishment in the form of whipping, gold fines, and/or imprisonment. The special provisions for children who commit jarimah in Articles 66 to 67 only affirm the reduction of punishment without providing a recovery mechanism. In fact, for children who are facing the law, punishment cannot stand alone without adequate rehabilitation efforts. The three decisions that are the object of the study are proven not to include instructions regarding rehabilitation, so that the coaching process is only focused on the criminal aspect without paying attention to psychological, social, and educational needs. This situation certainly has the potential to hinder children's development during the coaching period and reduce the chances of successful social reintegration.

As a special provision, Qanun Jinayat does not remove the enactment of the Law on the Juvenile Criminal Justice System, which is also a special rule in juvenile justice and requires that every legal process against children be oriented towards guidance and protection. The law affirms that child punishment must be directed at rehabilitation, education, and social reintegration as the main goal. The absence of a remedial component in the three decisions shows that the principles stipulated in the Law on the Juvenile Criminal Justice System have not been adequately integrated in the handling of cases of adultery. As a result, there is a disharmonization of norms that has a direct impact on the fulfillment of children's rights in the judicial process, weakens the quality of decisions, and creates uncertainty for children who should receive protection from the state.

The concept of legal certainty requires that a decision has clarity, consistency, and can be implemented concretely by all parties involved. The decision that does not contain recovery instructions causes children's rights to have no basis for implementation at the Special Children's Development Institute or other implementing institutions. The lack of clarity of these instructions makes child protection only stop at the normative level without clear operationalization. This also creates a gap between the goal of rehabilitative juvenile justice and decisions that tend to highlight repressive aspects. Thus, legal certainty for children of perpetrators has not been achieved to the maximum extent (Patepa, 2020).

In addition, the absence of the right to recovery, education, and social assistance in the verdict also affects the process of children's mental and emotional development during coaching. Without adequate psychological support, children have the potential to experience prolonged trauma that hinders their recovery process. In Gustav Radbruch's view, a rule must provide certainty so that individual rights can be exercised effectively and not just formally. However, the three decisions do not provide clarity on the form of protection that children

must receive, so that the main purpose of rehabilitative juvenile justice is not optimally carried out in practice.

The problem is further exacerbated by the absence of a governor's regulation or technical instructions that regulate in detail the execution of punishment for children sentenced to 'uqubat. Without clear technical guidelines, coaching institutions do not have a solid basis to provide psychological rehabilitation, education, and social reintegration services in accordance with child protection standards. This kind of regulatory vacuum makes the implementation of decisions dependent on the internal interpretation of the institution, which ultimately leads to inconsistencies in implementation and potential violations of children's rights. Therefore, it is very necessary to prepare more comprehensive technical rules so that every decision related to children can be implemented with uniform standards and oriented towards protection.

Therefore, the harmonization between Qanun Jinayat and the Law on the Juvenile Criminal Justice System, the improvement of the verdict, and the preparation of technical guidelines for implementation are important steps to strengthen the protection of children in adulteration cases. Future decisions must explicitly include the components of psychological rehabilitation, education, social assistance, and reintegration so that the principle of the best interest of the child can be realized in every case. Without these reforms, the application of Qanun Jinayat to the children of rape perpetrators will continue to cause legal uncertainty and fail to guarantee the future of children who are facing the law.

4. Conclusion

Legal protection for children of rape offenders, both in the national legal system and in Qanun Jinayat, is based on the principle of the best interests of the child. This principle emphasizes that the criminal process must not deprive children of their rights to protection, guidance, and security for their future. In the Indonesian legal system, the Child Protection Law, the Law on the Juvenile Criminal Justice System, and the provisions of Article 285 of the Criminal Code require special procedures for children who are in conflict with the law. These procedures include legal assistance, holding trials behind closed doors, psychological assessments, restrictions on the type and form of criminal cases, and efforts to resolve cases outside the court through diversion mechanisms. On the other hand, Qanun Jinayat through Article 50 also accommodates the principle of juvenile justice by stipulating a lighter and proportionate form of punishment according to the age and condition of the child. Thus, the two legal systems combine to provide procedural, substantive, and normative protection so that children continue to receive education, moral development, psychological recovery, and proper social reintegration.

Legal certainty in the application of Qanun Jinayat to children requires consistent harmonization between sharia-based legal provisions and child protection standards that have been set out in the Law on the Juvenile Criminal Justice System. Decision of the Bireuen Syar'iyah Court Number 1/JN/2022/MS. Bir, Decision of the Aceh Syar'iyah Court Number 2/JN. Children/2025/MS. Aceh, as well as the Decision of the Aceh Syar'iyah Court Number 3/JN. Children/2025/MS. Aceh has not included recovery rights, so the guarantee of protection for children is not implemented effectively at the implementation stage. The absence of recovery instructions in the verdict creates uncertainty over the child's right to education, psychological rehabilitation, and social reintegration during the coaching period. Therefore, the harmonization of norms and the improvement of judgments are important prerequisites to ensure that child protection is realized substantively and not just declarative. Legal certainty can only be achieved if the verdict expressly and explicitly contains the rights of the child of the perpetrator of the crime of rape.

It is recommended that the Syar'iyah Court explicitly include the rights to education, psychological rehabilitation, and social reintegration in the verdict of the child perpetrator of

rape to ensure legal certainty and the principle of the best interests of the child. In addition, it is recommended that the Government of Aceh issue an implementing regulation in the form of Standard Operating Procedures or Governor's Regulation regarding the implementation of children's uqubat so that the Qanun Jinayat decision has a clear operational basis and is in line with the Juvenile Criminal Justice System.

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