

Reconstruction of Victim-Centered Justice in Jinayat Rape Cases Based on Substantive Justice

Fauziati^{1*}, Mansari², Innati Rahmah Salsabiela³

¹ Pengadilan Agama Stabat, Indonesia

² Universitas Iskandar Muda, Indonesia

³ Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

*Corresponding Author: fauziati0302@gmail.com

|| Received : 18-05-2026 || Accepted: 30-06-2026 || Published: 30-06-2026

Abstract

This study is prompted by sentencing disparities in a jarimah rape case involving a child victim adjudicated at three levels of judicial review. At the first instance, the Sharia Court imposed a custodial sentence of 70 months' imprisonment. On appeal, the court substituted the sentence with 150 lashes (uqubat caning). At the cassation stage, the Supreme Court imposed a custodial sentence of 120 months' imprisonment. These differences in both the type and severity of punishment demonstrate divergent judicial approaches in evaluating the facts established at trial, particularly regarding the reconciliation between the offender and the victim's family and the offender's willingness to assume responsibility. This study aims to examine the judicial reasoning adopted at each level of adjudication and to formulate a reconstruction of sentencing policy for jarimah rape cases involving child victims that prioritizes victim protection while upholding substantive justice. The research employs a normative juridical approach complemented by a socio-legal approach through an analysis of judicial decisions, the provisions of the Aceh Qanun Jinayat, and legal frameworks governing victim recovery within Indonesia's criminal justice system. The findings reveal that sentencing outcomes are shaped not only by the interpretation and application of legal norms but also by social circumstances emerging during the proceedings, including reconciliation and the offender's willingness to accept responsibility, which were considered by the courts as contributing to the restoration of the victim's social dignity within the socio-cultural context of Acehnese society. The novelty of this study lies in proposing a reconstructed sentencing guideline for the Jinayat legal system that integrates substantive justice with a victim-centred approach to protection and recovery without diminishing the offender's criminal liability. The proposed model establishes normative parameters to guide judicial discretion when addressing social circumstances that are not expressly regulated under the Aceh Qanun Jinayat, thereby reducing sentencing disparities while strengthening legal certainty and enhancing the protection of child victims.

[Penelitian ini berangkat dari persoalan disparitas pemidanaan dalam perkara jarimah pemerkosaan terhadap anak yang diperiksa melalui tiga tingkat peradilan. Pada tingkat pertama di Mahkamah Syar'iyah dijatuhkan hukuman penjara selama 70 bulan. Pada tingkat banding dijatuhkan uqubat cambuk sebanyak 150 kali. Pada tingkat kasasi dijatuhkan pidana penjara selama 120 bulan. Perbedaan jenis dan lamanya pemidanaan tersebut menunjukkan adanya variasi pendekatan hakim

dalam menilai fakta persidangan, terutama terkait perdamaian antara pelaku dan keluarga korban serta kesediaan pelaku untuk bertanggung jawab. Penelitian ini bertujuan menganalisis pertimbangan hakim pada setiap tingkat peradilan sekaligus mengkaji rekonstruksi kebijakan pemidanaan dalam perkara jarimah pemerkosaan terhadap anak yang tetap mengedepankan perlindungan korban dan keadilan substantif. Metode penelitian menggunakan pendekatan yuridis normatif yang dipadukan dengan pendekatan sosiologi hukum melalui analisis putusan pengadilan, ketentuan Qanun Jinayat, serta regulasi yang berkaitan dengan pemulihan korban dalam sistem peradilan pidana Indonesia. Hasil penelitian menunjukkan bahwa dinamika putusan tidak hanya dipengaruhi oleh konstruksi norma hukum, tetapi juga oleh fakta sosial yang berkembang selama proses persidangan, termasuk adanya perdamaian dan kesediaan pelaku untuk bertanggung jawab yang dipandang sebagai upaya memulihkan kehormatan sosial korban dalam konteks budaya masyarakat Aceh. Kebaruan (novelty) penelitian ini terletak pada perumusan model rekonstruksi pedoman pemidanaan dalam hukum jinayat yang mengintegrasikan keadilan substantif dengan pendekatan perlindungan dan pemulihan korban tanpa mengesampingkan pertanggungjawaban pidana pelaku. Model ini menawarkan parameter normatif bagi hakim dalam menggunakan diskresi ketika menghadapi fakta sosial yang tidak secara eksplisit diatur dalam Qanun Jinayat sehingga mampu mengurangi disparitas putusan sekaligus memperkuat kepastian hukum dan perlindungan terhadap korban.]

Keywords: Restorative justice; rape jarimah; sentencing disparity; substantive justice; jinayat law

How to Cite: Fauziati, F., Mansari, M., & Rahmah Salsabiela, I. (2026). Reconstruction of Victim-Centered Justice in Jinayat Rape Cases Based on Substantive Justice. *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsyiyah*, 9(2), 231–245. <https://doi.org/10.58824/mediasas.v9i2.597>



Copyright © 2026 by Author(s)

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

INTRODUCTION

Decision of the Sigli Syar'iyah Court Number 3/JN/2024/MS.Sgi, which imposed a sentence of 70 months' imprisonment below the prescribed special minimum penalty in a child rape case, has generated significant legal dynamics within the enforcement of jinayat law in Aceh. The statutory punishment for perpetrators of child rape is a minimum of 150 lashes, 150 months of imprisonment, or a fine equivalent to 1,500 grams of pure gold (Nugraha et al., 2023). The maximum punishment consists of 200 lashes, 200 months of imprisonment, or a fine equivalent to 2,000 grams of pure gold pursuant to Qanun Aceh Number 6 of 2014 as amended by Qanun Aceh Number 12 of 2025. According to Oheo K. Haris, the imposition of a sentence below the statutory minimum is impermissible because Indonesia adheres to the Continental legal system, under which judges are bound by enacted legal norms (Haris, 2017).

The panel of judges at the first instance appeared to place considerable weight on the reconciliation that had been reached between the defendant's family and the victim's family. Such reconciliation was not merely expressed through oral statements during the trial, but was further reinforced by concrete actions undertaken by the defendant's family, who formally proposed marriage to the victim and presented a dowry consisting of 10 manyam of gold as a symbol of responsibility. This circumstance demonstrates that the judges did not confine themselves solely to a textual interpretation of legal norms, but also carefully considered the social realities emerging within the courtroom. Considerations of this nature reflect an effort to capture the values of social utility and the restoration of

social relations prevailing within the community (Haslam, 2025). Such an approach indicates an orientation toward substantive justice, namely a conception of justice that is not limited to the literal wording of legal provisions, but also takes into account the social consequences arising from the judgment rendered (Wirayudha, 2025).

The Public Prosecutor objected to the judgment and subsequently filed an appeal before the Aceh Syar'iyah Court, which was adjudicated through Decision Number 34/JN/2024/MS.Aceh. At the appellate level, the direction of legal reasoning shifted considerably. The panel of judges of the Aceh Syar'iyah Court imposed a sentence of 150 lashes upon the defendant, precisely corresponding to the statutory minimum prescribed under Article 50 of the Aceh Qanun on Jinayat Law concerning child rape (Rizkal & Mansari, 2019). The legal reasoning adopted at the appellate stage appeared to place greater emphasis on legal certainty and strict compliance with the minimum punishment established by the qanun legislator, under which the sanctions are formulated alternatively in the form of caning, fines, or imprisonment (Yuniar, 2019). The appellate judges seemingly opted for a strict interpretation of the legal norm by positioning the provisions of the qanun as the primary reference in determining both the type and severity of punishment. This reflects a more procedural orientation, namely maintaining consistency in the application of legal norms as expressly formulated within statutory regulations.

The case underwent another significant shift when it reached the cassation stage before the Supreme Court of the Republic of Indonesia. In its Decision Number 24 K/Ag/JN/2024, the Supreme Court imposed a sentence of 120 months' imprisonment upon the defendant, a term falling below the statutory minimum of 150 months as stipulated under Article 50 of the Aceh Qanun on Jinayat Law. This circumstance demonstrates a form of vertical inconsistency in the application of the same legal norm across different levels of the judiciary. On the one hand, the Supreme Court appeared to correct the severity of the corporal punishment imposed at the appellate level. On the other hand, the judgment did not entirely revert to the reconciliation-based considerations that had constituted the principal reasoning of the court of first instance. This situation creates an important analytical space concerning the extent to which cassation judges possess the authority to interpret statutory minimum sentencing provisions in a more flexible manner. The variation of judgments across the three judicial levels ultimately forms a rich spectrum for examining the relationship between written legal norms and the evolving sense of justice within society.

The principal issue arising from this case revolves around the classical debate between substantive justice and procedural justice (Mansari et al., 2024). Substantive justice emphasizes outcomes that are regarded as fair by taking into account the actual circumstances of the parties, the moral values prevailing within society, and the social context surrounding the legal event. Procedural justice, by contrast, requires consistency in adhering to formal rules and normative boundaries established by the lawmaker. The judgment at first instance demonstrated the judges' willingness to treat reconciliation as a significant mitigating factor capable of reducing criminal punishment. The appellate and cassation judgments, however, reflected a more cautious approach by returning the case to a stricter formal legal framework. These differing approaches illustrate how each level of the judiciary adopted distinct perspectives in balancing legal certainty with the societal sense of justice.

The debate becomes more complex when linked to Indonesia's national restorative justice policy. Police Regulation No. 8 of 2021 and Attorney General Regulation No. 15 of 2020 restrict restorative justice for offenses punishable by more than five years' imprisonment. Since rape under the Aceh Qanun on Jinayat Law carries a minimum

sentence of 150 months, reconciliation is effectively excluded at investigation and prosecution stages, leaving familial settlements without formal legal recognition. A normative gap emerges as positive law provides no clear mechanism for incorporating reconciliation into sentencing. The first-instance court applied progressive discretion, while the appellate court returned to strict minimum sentencing. The Supreme Court took an intermediate stance without clear justification. This inconsistency raises questions about legal reasoning coherence and value hierarchy within Jinayat law, indicating the need for broader sociological and philosophical analysis.

From the perspectives of victimology, child protection, and human rights, reconciliation between the offender and the victim's family, including the offender's expressed willingness to assume responsibility, cannot in itself be regarded as constituting victim recovery or as diminishing the State's obligation to prosecute serious sexual offences against children. International child protection standards recognize child victims of sexual violence as rights holders entitled to physical and psychological recovery, rehabilitation, protection against revictimization, and meaningful participation throughout the criminal justice process. Accordingly, any judicial consideration of reconciliation must be assessed with caution to ensure that it neither legitimizes coercive social practices nor compromises the principle of the best interests of the child. The principal issue is not whether reconciliation may replace criminal punishment, but rather the extent to which such social circumstances may legitimately be taken into account as one of the sentencing considerations without undermining victim protection, the offender's criminal liability, and the realization of substantive justice. Within this normative framework, the present study does not advocate reconciliation as an alternative to criminal prosecution. Instead, it examines the limits of judicial discretion in taking into account the social realities revealed during trial when determining sentences under the Jinayat legal system, while consistently upholding the principles of child protection and internationally recognized human rights standards.

Several studies have examined the issue of child rape from various legal perspectives. The study conducted by Virdis Firmanillah Putra Yuniar focused primarily on the enforcement of law against perpetrators of child rape within the normative framework of the Aceh Qanun on Jinayat Law, particularly concerning the effectiveness of sanctions in the form of caning, imprisonment, and fines denominated in gold (Yuniar, 2019). Research by Rizanizarli and colleagues emphasized the application of restorative justice and diversion mechanisms for children as criminal offenders under the Juvenile Criminal Justice System Act and the Aceh Qanun on Jinayat Law (Rizanizarli et al., 2023). Meanwhile, the study conducted by Abdul Gafur and colleagues highlighted the implementation of diversion and restorative justice in cases of sexual harassment, as well as their relationship with Islamic criminal law in Aceh (Abdul Gafur et al., 2023). Furthermore, research by Fadel Laden Mahmud and colleagues concentrated on operational obstacles and social factors influencing the implementation of restorative justice during the law enforcement process, particularly at the policing stage (Mahmud et al., 2025).

From the perspectives of victimology, child protection, and human rights, reconciliation between the offender and the victim's family, including the offender's expressed willingness to assume responsibility, cannot in itself be regarded as constituting victim recovery or as diminishing the State's obligation to prosecute serious sexual offences against children. International child protection standards recognize child victims of sexual violence as rights holders entitled to physical and psychological recovery, rehabilitation, protection against revictimization, and meaningful participation throughout the criminal justice process. Accordingly, any judicial consideration of reconciliation must be assessed

with caution to ensure that it neither legitimizes coercive social practices nor compromises the principle of the best interests of the child. The principal issue is not whether reconciliation may replace criminal punishment, but rather the extent to which such social circumstances may legitimately be taken into account as one of the sentencing considerations without undermining victim protection, the offender's criminal liability, and the realization of substantive justice. Within this normative framework, the present study does not advocate reconciliation as an alternative to criminal prosecution. Instead, it examines the limits of judicial discretion in taking into account the social realities revealed during trial when determining sentences under the Jinayat legal system, while consistently upholding the principles of child protection and internationally recognized human rights standards.

None of the aforementioned studies provide a concrete alternative solution to the practical problems arising within judicial proceedings. This research therefore becomes significant due to the existence of sentencing disparities in jinayat rape cases, which reflect differing orientations between the application of positive law and the pursuit of substantive justice, particularly where trial facts reveal reconciliation between the families and the defendant's good faith intention to assume responsibility for his actions. Such circumstances raise important legal questions concerning the basis of judicial reasoning in sentencing and the ideal reconstruction of legal mechanisms for handling jinayat rape cases capable of integrating substantive justice approaches without disregarding victim protection.

METHOD

This study employs a normative juridical method using statutory, case, and conceptual approaches (Armia, 2022), focusing on legal norms, judicial reasoning, and argument construction in child rape cases under the Jinayat system in Aceh. The statutory approach examines Aceh Qanun No. 6 of 2014 as amended by Qanun No. 12 of 2025, the Criminal Procedure Code, the Judicial Power Act, and restorative justice regulations. The case approach analyzes decisions from the Sigli Syar'iyah Court, Aceh Syar'iyah Court, and the Supreme Court regarding sentencing, reconciliation, and justice orientation. The conceptual approach addresses substantive justice, procedural justice, restorative justice, discretion, and punishment theory. Legal materials include primary, secondary, and tertiary sources (Mansari, 2026). Analysis uses qualitative prescriptive and interpretative methods (Ali, 2021), including comparative reasoning across court levels to reconstruct a limited restorative justice model balancing reconciliation, offender responsibility, and child victim protection.

RESULTS AND DISCUSSION

Legal Reasoning in Judicial Decisions

To provide a comprehensive overview of the judgments examined in this study, the judicial considerations at each level of adjudication are outlined as follows:

1. Considerations at the First Instance Level

Considering that, based on the statements of the Defendant and the victim, corroborated by the testimony of the victim's witnesses regarding the existence of reconciliation, the Panel of Judges may determine the amount of uqubat ta'zir (imprisonment) in this case by referring to the minimum punishment stipulated under Article 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law;

Considering that, although the intent of Article 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law is very clear that a Defendant who commits the jarimah of rape shall be punished with uqubat ta'zir (imprisonment), and as referred to in Article 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law with imprisonment or ta'zir punishment for a maximum period of 200 (two hundred) months, nevertheless, the Panel of Judges in this matter holds a different assessment, whereby the Panel of Judges shall consider the plea or request for leniency submitted by the legal counsel and the Defendant due to the reconciliation that has occurred between the victim and the Defendant as mentioned above, and therefore the Panel of Judges may impose upon the Defendant the minimum punishment of 70 (seventy) months' imprisonment;

Considering that the Defendant deeply regrets his actions, that the Defendant is still young and has a future in seeking employment, especially in fulfilling his promise to marry the victim, therefore according to the Panel of Judges, the sense of legal justice within society would be better served if the uqubat imposed in this case were imprisonment, as it would not only provide a deterrent effect upon the Defendant but also serve as a process of tadabbur for the Defendant during his period of incarceration;"

2. Considerations at the Appellate Level

Considering that, after taking into account the factual circumstances described above and the agreement/intention of the Defendant and the child victim to marry, the Panel of Judges at the Appellate Level does not concur with the uqubat ta'zir of imprisonment as imposed in the Decision of the Sigli Syar'iyah Court, insofar as the imprisonment of the Defendant would indirectly also result in the child victim being subjected to punishment, suffering additional harm and detriment following the rape incident she experienced, namely psychological and sociological burdens;

Considering that, based on the matters taken into consideration above, the Panel of Judges at the Appellate Level imposes a judgment for the jarimah of rape committed by the Defendant in the form of uqubat ta'zir of caning in the amount as stated in the operative part of this judgment;"

3. Considerations at the Cassation Level

"That the Child Victim requires adequate time and sufficient opportunity to restore her personal balance, to develop the ability to master skills aimed at reducing her vulnerability in accordance with her level of maturity, to foster self-awareness that she is capable of surviving potential sexual violence, and to express the unpleasant feelings arising after experiencing sexual violence so as not to become trapped in aggressive and self-destructive behavior, through counseling capable of assisting the recovery of both physical and psychological injuries suffered, as well as through the provision of other special forms of treatment;

That based on such considerations, the type of 'uqubat reflecting justice, both for the Defendant and for the Child Victim, is imprisonment. The imprisonment is intended to provide a deterrent effect upon the Defendant while simultaneously serving as a process of tadabbur for the Defendant during the period of incarceration. From the perspective of justice for the Child Victim, justice would be achieved when, upon the Defendant's completion of the 'uqubat and release from prison, the Child Victim has recovered from her trauma while also being afforded the opportunity to continue her education and to wait until she satisfies the minimum legal age requirement for marriage;

That the prescribed imprisonment sanction for perpetrators of the jarimah of rape against a child pursuant to Article 50 of Aceh Qanun Number 5 of 2014 concerning Jinayat

Law is a minimum of 150 (one hundred and fifty) months and a maximum of 200 (two hundred) months. Nevertheless, based on the foregoing considerations and the mitigating circumstances in favor of the Defendant, namely the reconciliation that had occurred between the Defendant and the families of both parties, greater justice would be achieved if the Defendant were sentenced to an ‘uqubat of imprisonment for 120 (one hundred and twenty) months;

The Decision of the Sigli Syar’iyah Court stated: ‘To impose upon the Defendant, Muhammad Raji bin M. Isa, an ‘uqubat in the form of imprisonment for 70 (seventy) months, with the period during which the Defendant has been detained deducted from the sentence imposed’; subsequently, the operative part of the Decision of the Aceh Syar’iyah Court stated: ‘To sentence the Defendant, MR therefore, with an ‘uqubat ta’zir of 150 (one hundred and fifty) lashes to be carried out in public.’ Furthermore, at the cassation level, the operative part of the judgment stated: ‘To impose upon the said Defendant an ‘uqubat ta’zir of imprisonment for 120 (one hundred and twenty) months, with the period during which the Defendant has been detained deducted from the sentence imposed’;

Analysis of Judicial Reasoning from the Perspectives of Prosedural Justice and Substantive Justice

The judgments in the jarimah case of child rape adjudicated successively by the Sigli Syar’iyah Court, the Aceh Syar’iyah Court, and the Supreme Court of the Republic of Indonesia demonstrate differing patterns of legal reasoning in understanding the relationship between criminal norms and the factual realities revealed during trial proceedings. The three decisions reflect disparities in both the type and duration of the uqubat imposed at each judicial level. The court of first instance imposed a sentence of 70 months’ imprisonment, the appellate court imposed an uqubat of 150 lashes, while the cassation court imposed a sentence of 120 months’ imprisonment. These differences indicate that each level of adjudication adopted legal reasoning that was not entirely identical. Such differences in orientation are closely related to the manner in which judges interpreted the objectives of punishment within the framework of jinayat law.

The considerations of the panel of judges at the first-instance level demonstrate a relatively progressive approach in understanding the social context of the case, as progressive law does not merely adhere rigidly to the text of legal provisions (Rifai, 2020). The judges did not view Article 50 of the Aceh Qanun on Jinayat Law solely as a mechanistic rule. Instead, the judges prioritized legal utility as a legal objective ideally aimed at achieving “the greatest happiness for the greatest number” (Santaria, 2019). The judicial reasoning positioned the reconciliation between the families of the offender and the victim as an important factual circumstance influencing the imposition of punishment. The fact that the defendant expressed remorse and demonstrated willingness to assume responsibility by marrying the victim became a moral variable taken into judicial consideration. Such an assessment indicates that the judges attempted to understand the case contextually. This approach reflects a conception of law oriented toward social restoration.

The approach adopted by the judges at the first-instance level may be understood through the perspective of progressive law. Progressive law does not regard law merely as a rigid body of normative texts, but rather as an instrument for achieving justice that genuinely lives within society. Within this perspective, judges are afforded space to undertake creative interpretation in order to realize broader social welfare and justice. The imposition of a 70-month imprisonment sentence reflects the judges’ willingness to depart from the formal statutory minimum in order to take into account the social realities faced

by the parties. Such a decision placed the dimension of substantive justice as the primary judicial consideration. The judges considered that reconciliation and the defendant's willingness to assume responsibility could reduce the degree of moral culpability attached to the offense.

Further analysis demonstrates that the reasoning at the first-instance level attempted to integrate the objectives of punishment with the concept of restoring social relations. The proposed marriage between the defendant and the victim was not regarded as a justification for the criminal act. Rather, it was positioned as a form of moral responsibility capable of restoring the victim's social dignity. Within Acehese society, which maintains strong cultural values concerning female honor and dignity, this factor possesses significant social meaning. The judges also considered the long-term social consequences for the victim. Such a perspective sought to preserve the continuity of the victim's social life within the community.

This approach is closely related to the theory of *maslahah* within Islamic legal thought. The concept of *maslahah* places the protection of human welfare as the primary objective of law, reflected through five fundamental aspects: *hifzh al-din* (protection of religion), *hifzh al-nafs* (protection of life), *hifzh al-'aql* (protection of intellect), *hifzh al-nasl* (protection of lineage), and *hifzh al-mal* (protection of property) (Huda et al., 2021). The ultimate objective of Islamic law is the realization of human welfare and social benefit (Manan, 2018). Law is not intended solely to punish offenders, but also to preserve the social equilibrium of society. The reasoning adopted by the judges at the first-instance level may therefore be understood as an effort to achieve *maslahah* for the victim, the families involved, and the offender. The reconciliation reached during the proceedings was viewed as an indication that the underlying social conflict had subsided. From this perspective, excessively severe punishment could potentially generate new forms of harm and social disruption.

Such an approach also invites criticism from the perspective of legal certainty. Article 50 of the Aceh Qanun on Jinayat Law explicitly prescribes a minimum sentence of 150 months' imprisonment. The imposition of a 70-month prison sentence therefore normatively falls below the statutory provision. This situation raises questions concerning the limits of judicial discretion within jinayat law. Judges are required to balance the freedom to interpret the law with the obligation to comply with positive legal norms. The tension between these two principles is clearly reflected in this case.

In contrast to the approach adopted at the first-instance level, the appellate judges of the Aceh Syar'iyah Court advanced a different line of reasoning. The panel of judges did not fully agree with the imprisonment sanction imposed by the lower court. The appellate considerations instead viewed imprisonment as potentially causing additional harm to the victim. The child victim was considered likely to suffer further psychological and social burdens if the defendant were imprisoned for a prolonged period. This situation was closely connected to the proposed marriage arrangement that had been agreed upon by both families. Such considerations subsequently resulted in the imposition of an *uqubat* of 150 lashes.

This appellate judgment is particularly noteworthy because, from a substantive perspective, it also attempted to consider the interests of the victim. The judges reasoned that imprisonment could negatively affect the victim's future. The proposed marriage was viewed as a social solution capable of restoring the victim's condition. This approach demonstrates that the judges sought to evaluate the social consequences arising from each form of punishment. The choice of *uqubat* in the form of caning was considered more

conducive to the restoration of social relations. Such reasoning reflects an effort to balance legal interests with social realities.

Nevertheless, the appellate judgment gave rise to a new problem from the perspective of the national legal system. Within Indonesian judicial practice, there are guidelines emphasizing that cases involving sexual violence against children should be sanctioned with imprisonment. Such provisions are reflected in Supreme Court Circular Letter Number 10 of 2020, which emphasizes the need to provide maximum protection for child victims (Muharnina et al., 2025). The imposition of caning in this case may therefore be regarded as not entirely consistent with such guidelines (Zakwan, 2023). This situation demonstrates the existence of tension between the norms of jinayat law and national legal policies concerning child protection. The divergence in these orientations became one of the factors prompting correction at the cassation level.

A review of previous studies provides an additional perspective for understanding this legal dynamic. Research conducted by Muslim Zainuddin demonstrates that the implementation of caning punishment in cases of sexual violence against children in Aceh has frequently generated controversy. The study highlights that caning is not always perceived as providing maximum protection for victims (Zainuddin, 2023). Corporal punishment imposed upon perpetrators of sexual violence has been considered disproportionately lenient when compared to the severity of the harm suffered by victims. These findings provide an academic context for criticism directed at the appellate judgment imposing caning punishment in the present case. Such arguments reinforce the need for further evaluation regarding the appropriateness of the type of punishment imposed in similar cases.

A different perspective emerges from the research conducted by Mansari and Hasnul Arifin Melayu. Their study highlights the practice of revoking caning punishments in cases involving sexual violence against children (Mansari & Melayu, 2018). The research demonstrates that law enforcement authorities frequently alter the type of punishment in order to create a stronger deterrent effect. Such changes are based on considerations relating to victim protection and the public interest. The findings further illustrate that the practice of jinayat adjudication has not always been consistent in determining the type of uqubat imposed. In certain cases, offenders are sentenced to caning punishment, while in others imprisonment is imposed instead (Fauziati et al., 2025).

Another perspective may be found in the research conducted by Salman Abdul Muthalib concerning the principle of the best interests of the child within jinayat law. The study emphasizes that every judgment involving child victims must take into account the long-term impact on the victim's psychological development (Muthalib et al., 2021). Judges are not solely required to consider punishment for the offender. The protection of the victim's future constitutes a highly significant factor. This approach is consistent with child protection principles recognized under international law. Such considerations are also relevant in understanding the reasoning adopted at the cassation level.

The Supreme Court also took into consideration the fact that reconciliation had occurred between the two families. Such reconciliation did not extinguish the offender's criminal liability. Instead, it was positioned as a mitigating factor in sentencing. These considerations subsequently resulted in the imposition of a sentence of 120 months' imprisonment. The judgment fell below the statutory minimum prescribed under Article 50 of the Aceh Qanun on Jinayat Law. The Supreme Court appeared to attempt a balance between legal certainty and the sense of justice.

The cassation judgment demonstrates an effort to reach a compromise between the two previous approaches. On the one hand, the Supreme Court did not accept the extreme

approach adopted at the first-instance level, which imposed a substantially reduced sentence. On the other hand, the Supreme Court also declined to follow the appellate judgment that replaced imprisonment with caning punishment. This moderate position reflects an effort to preserve equilibrium within the judicial system. The Supreme Court sought to maintain the repressive function of criminal law without disregarding the social factors surrounding the case.

From the perspective of progressive law, the judgment at the first-instance level may be regarded as the most courageous approach. The judges did not merely interpret the legal norms textually, but attempted to position the law within the social realities of Acehese society. The reconciliation between the two families, as well as the defendant's willingness to assume responsibility and marry the victim, were treated as important considerations in assessing justice. The facts revealed during trial also indicated that the coercion was not carried out through extreme physical violence, but occurred when the defendant brushed aside the victim's hand without any scream or indication of strong resistance. Their prior relationship had been based on a dating relationship, while the incident occurred at the victim's residence after the victim allowed the defendant to enter the house at night to deliver food. The judgment demonstrates that the judges did not merely function as mechanical appliers of legal rules, but also as actors attempting to resolve broader social problems.

Within the value structure of Acehese society, sexual relations outside marriage are regarded as moral violations capable of bringing shame upon the family (Rizkal et al., 2023). Women who lose their virginity before marriage frequently encounter social stigma affecting their social standing and future prospects. This social condition explains why the victim's family viewed the proposed marriage as a means of restoring their child's social dignity. The reconciliation between the two families was therefore understood as an effort to preserve social honor, which occupies a highly respected position within Acehese social life.

The decision of the victim's family to accept the proposed marriage with the defendant cannot be understood simplistically as merely a form of pressure or submission to the offender. Such a decision was also closely connected to the family's rational consideration in protecting the future of the child victim within a social structure that remains highly sensitive to issues of morality and decency. If the victim did not marry the perpetrator who had engaged in sexual relations with her, social stigma would most likely continue to attach to the victim and influence her life in the long term. The consequences would not only be social in nature, but could also affect the victim's psychological condition, as she would continue living under the shadow of societal judgment. These considerations led the victim's family to choose a reconciliatory approach and to open the possibility of marriage as a form of the offender's responsibility. The judges at the first-instance level appeared to read this social reality more deeply and incorporated it into their judicial considerations when rendering the judgment. Such sensitivity toward the local cultural context demonstrates that legal reasoning does not always rest solely upon the text of legal norms, but also upon an understanding of the social dynamics within which the law is applied. The first-instance judgment is relevant and consistent with the view expressed by Amran Suadi in his work, in which he argues that judges should prioritize conscience before subsequently seeking legal justification within statutory regulations, and that the application of law cannot rely solely upon the logic of legal rules, but must also incorporate other forms of reasoning, namely justice and social reasonableness (Suadi, 2018).

The debate concerning the type and severity of punishment in this case is closely related to the objectives of punishment within the Jinayat legal system. From the

perspective of Jinayat law, punishment is not solely intended as retribution for the offender's actions, but also serves preventive and educative functions for society. Sanctions are expected to deter similar conduct in the future while simultaneously providing moral instruction to both the offender and the wider community. The concept of *tadabbur*, as referenced in the reasoning of the court of first instance and the cassation level, reflects the reflective dimension of punishment. In this sense, imprisonment is viewed not merely as a means of executing a sentence, but also as a space for the offender to contemplate wrongdoing, engage in self-reformation, and develop awareness of the harm inflicted upon the victim.

This case further demonstrates that the application of Jinayat law cannot be separated from the prevailing social dynamics within Acehnese society. Legal norms formulated in the *qanun* inevitably interact with complex cultural realities that cannot always be reduced to rigid normative formulations. Judges are placed in a difficult position when required to balance legal certainty as embodied in statutory norms with evolving demands of social justice within the community (Hosaimah, 2023). The disparity in judicial decisions observed in this case reflects a relatively broad interpretative space in construing applicable legal provisions. Each level of the judiciary attempts to interpret the legal norms through different analytical lenses in assessing the case. These divergent interpretative approaches subsequently produce variations in the type and severity of sentences imposed on the defendant.

Based on the analysis of the judgments examined in this study, it is evident that the development of more detailed and operational sentencing guidelines within the Jinayat legal system is essential. The provisions concerning mandatory minimum penalties stipulated in the *qanun* often create practical dilemmas when judges are confronted with social realities such as reconciliation between the offender and the victim. In such circumstances, judges require a clearer normative framework to determine the extent to which social factors may be considered as mitigating grounds in sentencing. A structured sentencing guideline would help maintain a balance between legal certainty and substantive justice in judicial practice. The existence of such guidelines has the potential to reduce sentencing disparities that frequently arise in cases with relatively similar characteristics. In the absence of adequate guidance, overly broad judicial discretion may generate legal uncertainty within society.

Law never operates in a social or cultural vacuum. Every judicial decision is inevitably situated at the intersection of law and the living values of the society in which it is applied (Jorovlea, 2023). Judges are not only confronted with statutory texts but also with complex and nuanced social realities that often resist simple legal categorization (Cross, 2015). In this context, judges are required to weigh multiple factors proportionally so that the resulting decisions are not only legally valid but also socially acceptable. A progressive legal approach provides space for more creative and responsive judicial interpretation in addressing societal needs. Through this lens, law is not positioned as a rigid system, but rather as an instrument capable of adapting to social dynamics. The dynamics reflected in the three-tier court decisions in this case clearly demonstrate how the complexity of the relationship between legal norms and social reality can influence judicial reasoning processes (Sabadina, 2025).

The need for regulatory reform in cases of child rape under Jinayat law arises from the tension between rigid penal norms and the social realities of the community. Article 50 of Aceh *Qanun* No. 6 of 2014 establishes a mandatory minimum sentence of 150 months without explicitly providing room for considerations of reconciliation. Court proceedings, however, frequently reveal the existence of reconciliation between the families of the offender and the victim, as well as the offender's intention to assume responsibility. This

condition indicates that the applicable norm does not fully accommodate the dynamics of social conflict resolution (Lența, 2014). The absence of a restorative mechanism creates a normative gap and places judges in a dilemma between legal certainty and substantive justice. Regulatory reconstruction is therefore necessary to provide a limited space for restorative justice under strict conditions (Forsyth et al., 2021). Judges may consider reconciliation, the consent of the victim's family, and the offender's willingness to marry the victim, evidenced by the presence of both families and the provision of mahr. Such a process must be supervised by the court and accompanied by psychological assessment of the victim to prevent social coercion. These provisions do not eliminate criminal liability but rather allow for adjustments in the type and severity of uqubat. This approach preserves legal certainty while simultaneously opening space for social recovery of victims within the context of Acehese society.

From the perspective of the theory of *maslahah* (public interest), the recognition of restorative justice mechanisms can be understood as an effort to safeguard broader social interests (Sumardi et al., 2022). Victim protection is not necessarily identical to imposing the harshest punishment on the offender, but is also closely related to restoring the victim's social dignity within the community. In certain contexts, a reduction in punishment may generate *maslahah*, particularly when it facilitates marriage between the offender and the child victim as a form of social protection. This is especially relevant in Acehese cultural settings, where morality is closely linked to family honor and the continuity of the victim's social life is a significant concern. Without adequate guarantees of social rehabilitation, stigma may persist longer than the period of incarceration. The reconstruction of legal norms that accommodate the offender's moral responsibility may function as an instrument to mitigate such consequences and aligns with progressive law, which positions law as a means of resolving social conflicts (Yunanto, 2019). A new regulatory framework should emphasize that restorative justice cannot be applied automatically in rape cases. Its application must be based on a comprehensive assessment of the victim's condition, the severity of the offense, and psychological impacts. Judges must ensure that any settlement reflects the victim's best interests, supported by safeguards against coercion. A supervisory mechanism involving child protection institutions should be included in the approval process. Such regulation would provide clearer guidance for judicial discretion, reduce sentencing disparities, and strengthen the social legitimacy of Jinayat law in Aceh.

From the perspective of victimology, the impact of child rape extends far beyond the immediate physical harm suffered by the victim. Child victims commonly experience long-term psychological trauma, including depression, anxiety, post-traumatic stress disorder, loss of self-esteem, and difficulties in establishing healthy social relationships. These consequences frequently persist even after criminal proceedings have concluded and may affect the victim's educational development, social participation, and future family life. Accordingly, the effectiveness of a criminal justice response should not be measured solely by the restoration of social harmony between families, but also by its ability to guarantee the victim's recovery, safety, and long-term well-being. Any sentencing policy that fails to address these dimensions risks overlooking the primary purpose of victim protection within the criminal justice system.

The principle of the best interests of the child further requires that every judicial decision involving child victims be directed primarily toward protecting the child's rights rather than accommodating social expectations or cultural pressures. Although reconciliation between families may reflect an existing social reality within Acehese society, such reconciliation cannot automatically be presumed to represent the genuine interests or wishes of the child victim. Children's decisions are frequently influenced by

unequal power relations, emotional dependence, family expectations, and community pressure. Consequently, judges should carefully examine whether any reconciliation genuinely reflects the victim's free and informed consent or merely constitutes a mechanism for preserving family honour at the expense of the child's fundamental rights. This approach is consistent with international child protection principles, particularly the requirement that the best interests of the child constitute a primary consideration in all judicial proceedings involving children.

For this reason, the offender's willingness to marry the victim should not be regarded as a legal or moral justification capable of reducing the seriousness of the offence. Marriage cannot erase the criminal nature of rape, eliminate the psychological harm suffered by the child victim, or discharge the State's obligation to provide effective protection and criminal accountability. At most, such willingness may be considered as one of several post-offence social circumstances relevant to sentencing, provided that it is supported by an independent psychological assessment, voluntary participation by the victim free from coercion, professional assistance, and continuous judicial supervision. Within this framework, victim protection remains the paramount consideration, while reconciliation functions only as a complementary factor that may be evaluated without diminishing the offender's criminal responsibility or compromising the child's fundamental rights. ubah ke indonesia

CONCLUSION

The findings demonstrate that child rape cases adjudicated at three levels of judicial review reflect a dynamic interpretation of Jinayat law, particularly where mandatory minimum sentencing provisions intersect with social realities and the facts established during trial. The proceedings revealed reconciliation between the victim's family and the offender, as well as the offender's willingness to assume responsibility. These circumstances led the court of first instance to impose a sentence below the statutory minimum by taking into account the restoration of social relations and the victim's future within the socio-cultural context of Acehnese society. By contrast, the appellate and cassation courts adopted different approaches, resulting in inconsistencies concerning the legal significance of reconciliation and the offender's willingness to assume responsibility as sentencing considerations. This situation demonstrates the absence of explicit sentencing guidelines governing whether, and to what extent, social circumstances may be taken into account in sentencing for serious criminal offences. Consequently, such uncertainty has contributed to sentencing disparities and diminished legal certainty.

This study does not recognize restorative justice as a legal basis for diverting, terminating, or substituting criminal prosecution in child rape cases, since such offences constitute serious violations of children's rights that require effective criminal accountability. Rather, restorative considerations may only be taken into account in a limited manner as complementary sentencing factors after the offender's guilt and criminal liability have been judicially established, provided that they do not diminish the level of protection afforded to child victims or undermine the principles of the best interests of the child, victim protection, and substantive justice.

Based on these findings, this study recommends the reconstruction of the Aceh Qanun on Jinayat Law through the incorporation of explicit sentencing guidelines defining the legal status, scope, and limits of judicial discretion in considering reconciliation and other post-offence social circumstances. Such guidelines should expressly prohibit the use of reconciliation as a ground for extinguishing criminal liability or compelling marriage between the offender and the victim. They should further require judges to assess carefully

whether any reconciliation has been entered into voluntarily, free from coercion or intimidation, while ensuring compliance with the principle of the best interests of the child, the victim's physical and psychological recovery, and the availability of professional assistance and state supervision throughout the criminal justice process. These normative parameters are intended to reduce sentencing disparities while strengthening legal certainty, enhancing the protection of child victims, and promoting the consistent application of substantive justice within the Jinayat criminal justice system.

REFERENCES

- Abdul Gafur, Ahmadi Hasan, & Masyithah Umar. (2023). Restorative Justice Dan Diversi Dalam Penanganan Jarimah Pelecehan Seksual Berdasar Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 1(4), 945–965. <https://doi.org/10.62976/ijijel.v1i4.257>
- Ali, Z. (2021). *Metode Penelitian Hukum*. Sinar Grafika,.
- Armia, M. S. (2022). *Penentuan Metode & Pendekatan Penelitian Hukum*. Lembaga Kajian Konstitusi Indonesia (LKKI).
- Cross, F. B. (2015). The New Legal Realism and Statutory Interpretation. *The Theory and Practice of Legislation*, 1(1), 129–148. <https://doi.org/10.5235/2050-8840.1.1.129>
- Fauziati, Abbas, S., Devy, S. M. H., & Suarni. (2025). The Ijtihad of Female Judges in Aceh's Sharia Courts: Disparity in Sentencing for Child Sexual Abuse Fauziati1,. *El-Urah Jurnal Hukum Keluarga*, 8(1), 294–312. <https://doi.org/10.22373/zr002d09>
- Forsyth, M., Cleland, D., Tepper, F., Hollingworth, D., Soares, M., Nairn, A., & Wilkinson, C. (2021). *A Future Agenda for Environmental Restorative Justice*. 4(1), 17–40. <https://doi.org/10.5553/TIJRJ.000063>
- Haris, O. K. (2017). Telaah Yuridis Penerapan Sanksi di Bawah Minimum Khusus pada Perkara Pidana Khusus. *Jurnal Ius Constituendum*, 2(2), 240–254.
- Haslam, E. (2025). Paradoks Pemidanaan: Antara Rasionalitas Hukum dan Rasa Keadilan Sosial dalam Praktik Peradilan Pidana. *All Fields of Science J-LAS*, 5(1), 251–260.
- Hosaimah. (2023). Transformasi Peran Hakim Konstitusi dalam Mewujudkan Keadilan Substantif melalui Yurisprudensi. *Yudhistira Jurnal Yurisprudensi, Hukum Dan Peradilan*, 1(4), 69–78.
- Huda, N., Basry, E., Hanif, F., Syafiuddin, M. N., Sapi'i, M., Ase, M. F., Valevi, M. R., Roza, A. F., & Yusnardi. (2021). *Formulasi Aksentuasi Jenis Uqubat terhadap Pelaku Jarimah Pemerkosaan dan Pelecehan Seksual terhadap Anak*. Kencana.
- Jorovlea, E. (2023). Examining the Political Culture of Jurisprudence: Influences, Ideologies, and Implications for Legal Decision-Making. *European Science*, sge42-06, 246–255. <https://doi.org/10.30890/2709-2313.2025-42-06-012>
- Lenta, O. E. (2014). Violence Dynamics in the Context of Social Redefining in a Changing Society. *Procedia - Social and Behavioral Sciences*, 149, 484–489. <https://doi.org/10.1016/J.SBSPRO.2014.08.295>
- Mahmud, F. L., Badu, L. W., & Mandjo, J. T. (2025). Faktor yang Mempengaruhi Restoratif Justice dalam Kasus Pemerkosaan Anak. *Jurnal Riset Ilmiah*, 2(1), 147–159.
- Manan, A. (2018). *Pembaharuan Hukum Islam di Indonesia*. kencana.
- Mansari. (2026). *Metodologi Penelitian Hukum: Normatif, Empiris dan Pencarian Literatur Digital*. Elfarazy Media Publisher.
- Mansari, Hadana, E. S., & Hidayat, R. (2024). Hukum dan Keadilan dalam Dimensi Ilmu Hukum dan Hukum Islam. *Journal of Dual Legal Systems*, 1(1), 17–27. <https://journal.staisar.ac.id/index.php/jdls>
- Mansari, & Melayu, H. A. (2018). Pembatalan Hukuman Cambuk Bagi Pelaku Jarimah

- Pencabulan Anak dalam Putusan Nomor 07/JN/2016/MS.Aceh. *Jurnal Hukum Dan Peradilan*, 7(07), 425–440.
- Muharnina, Y., Kadafi, M., & Saputra, J. (2025). Disparity in Judges' Decisions in Sexual Harassment Cases: A Juridical Analysis of Caning and Imprisonment Sentences in the Mahkamah Syar'iyah Disparitas Putusan Hakim dalam Kasus Pelecehan Seksual: Analisis Yuridis terhadap Hukuman Cambuk dan Penjara di. *Jurnal Mediasas*, 8(1), 2808–2303.
- Muthalib, S. A., Mansari, Mahmuddin, Zainuddin, M., & Melayu, H. A. (2021). Analisis Kepentingan Terbaik Bagi Anak dalam Hukum Jinayat Aceh. *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 9(02), 415–430. <https://doi.org/10.30868/am.v9i02.1621>
- Nugraha, A. S., Hakema, A. M., & Mugie, D. A. (2023). Tindak Pidana Dalam Qanun Jinayah Nanggroe Aceh Darussalam. *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, 1(2), 456–460.
- Rifai, A. (2020). *Menggapai Keadilan dengan Hukum Progresif sebuah Upaya Menyempurnakan Putusan Hakim pada Keadilan*. Nas Media Pustaka.
- Rizanizarli, R., Mahfud, M., Pratama, R. C., & Fikri, F. (2023). The Application of Restorative Justice for Children as Criminal Offenders in the Perspective of National Law and Qanun Jināyat. *Samarah*, 7(1), 21–39. <https://doi.org/10.22373/sjhg.v7i1.15633>
- Rizkal, Hasmalina, Rafiqah, & Fitria. (2023). Peran Lembaga Flower Aceh terhadap Perlindungan Perempuan dan Anak sebagai Korban Kekerasan Seksual. *Al-Ahkam Jurnal Syariah Dan Peradilan Islam*, 3(2), 24–48.
- Rizkal, R., & Mansari, M. (2019). Pemenuhan Ganti Kerugian Anak Sebagai Korban Pemerkosaan Dalam Kasus Jinayat Aceh. *Gender Equality: International Journal of Child and Gender Studies*, 5(2), 33. <https://doi.org/10.22373/equality.v5i2.5587>
- Sabadina, U. (2025). Peranan Hakim dalam Penegakan Hukum di Indonesia (Suatu Telaah Teoritis dan Normatif. *Desiderata: Law Review*, 2(6), 14–25.
- Santaria, H. (2019). *Konsep Dasar Sosiologi Hukum*. Kelompok Intans Publishing.
- Suadi, A. (2018). *Sosiologi Hukum Penegakan, Realitas & Nilai Moralitas Hukum*. Kencana.
- Sumardi, D., Mansari, & Albaba, M. F. (2022). Restoratif Justice, Diversi dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012. *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum*, 11(2), 248–265. <https://doi.org/10.23373/legitimasi.v11i2.16010>
- Wirayudha, M. D. (2025). Diskresi Penegak Hukum Dalam Sistem Peradilan Pidana : Harmonisasi Keadilan Prosedural dan Substantif. *Harisa: Jurnal Hukum, Syariah Dan Sosial*, 02(1), 170–185.
- Yunanto, Y. (2019). Menerjemahkan Keadilan Dalam Putusan Hakim. *Jurnal Hukum Progresif*, 7(2), 192. <https://doi.org/10.14710/hp.7.2.192-205>
- Yuniar, V. F. P. (2019). Penegakan Hukum dalam Tindak Pidana Pemerkosaan Terhadap Anak Berdasarkan Qanun Jinayat Aceh. *Media Iuris*, 2(2), 259–278. <https://doi.org/10.20473/mi.v2i2.13044>
- Zainuddin, M. (2023). Penjatuhan Hukuman Cambuk Terhadap Pelaku Pelecehan Seksual Terhadap Anak. *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam*, 8(1), 58–74. <https://doi.org/10.32505/legalite.v8i1.5960>
- Zakwan, M. I. (2023). *Kebebasan Hakim Dalam Menjatuhkan Hukuman Terhadap Pelaku Pelecehan Seksual (Studi Kasus di Mahkamah Syar'iyah Idi)*. Universitas Malikussaleh.