



UQUBAT TA'ZIR FOR CHILD OFFENDERS CONVICTED OF RAPE UNDER ACEH'S JINAYAT LAW: BALANCING CHILD PROTECTION AND VICTIM JUSTICE

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Abstract

The imposition of *uqubat ta'zir* (a discretionary punishment under Aceh's Islamic criminal law) on a child offender convicted of rape requires courts to reconcile child-specific protection and rehabilitation with recognition of the harm experienced by a child victim. This article examines Banda Aceh Sharia Court Decision No. 1/JN.Anak/2023/MS.Bna. It asks what legal and nonlegal considerations supported the punishment and to what extent the court's reasoning balanced protection of the child offenders with justice for the child victim. The study employed doctrinal legal research using statutory and case approaches. Its primary materials included the decision, Aceh *Qanun* No. 6 of 2014—a regional regulation governing *jinayat* (Islamic criminal law) in Aceh—and Indonesia's juvenile justice, child-protection, and victim-recovery legislation. The court imposed 24 months of *pembinaan* (structured guidance and development) in a Juvenile Special Development Institution (*Lembaga Pembinaan Khusus Anak*, LPKA), compared with the prosecutor's request for 48 months. The disposition remained below the statutory ceiling and reflected the offenders' ages, remorse, absence of a previous *uqubat*, and prospects for rehabilitation. The court also recognized the victim's physical and psychological harm through medical and psychological evidence. However, its reasoning did not adequately explain how the mitigating and aggravating considerations produced the specific 24-month duration or how the victim's documented harm related to restitution and recovery. The decision therefore had an identifiable legal basis but achieved an incomplete balance between child-offender protection and victim justice at the level of judicial reasoning.

Keywords: *Aceh's Jinayat law; Child Offenders; Proportionality; Uqubat Ta'zir; Victim Justice*

A. Introduction

Judicial reasoning is central to the legitimacy of criminal adjudication because it explains how legal rules, evidentiary findings, the circumstances of the accused, and considerations of justice support a sentence (Republic of Indonesia 2009). This responsibility becomes more demanding when the accused is a child. Indonesian juvenile justice requires courts to consider the child's best interests, developmental circumstances, rehabilitation, and future reintegration rather than treating a child in the same manner as an adult offender (Republic of Indonesia 2012; Iman 2013). These protections, however, do not eliminate the court's responsibility to recognize the harm experienced by victims, particularly when the victim is also a child.

This tension is especially pronounced in cases of rape. A child in conflict with the law remains entitled to procedural protection and development-oriented punishment, while a child victim is entitled to recognition, protection, and recovery from physical, psychological, and social harm. In Aceh, these competing considerations operate within Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law, a regional regulation governing Islamic criminal law in Aceh. The *Qanun* regulates rape as a *jarimah* (an offense under Aceh's Islamic criminal law) and permits the imposition of *uqubat ta'zir* (a discretionary punishment determined within legally prescribed limits). Article 67 limits the punishment imposed on a child to no more than one-third of that applicable to an adult offender (Government of Aceh 2014). This provision protects children from adult-equivalent punishment but leaves the court responsible for explaining why a particular form and duration of punishment are proportionate.

This article examines Banda Aceh Sharia Court Decision No. 1/JN.Anak/2023/MS.Bna. The case involved four children convicted of raping a 15-year-old child. The prosecutor requested 48 months of placement and guidance in a juvenile correctional institution, whereas the court imposed 24 months (Banda Aceh Sharia Court 2023). The difference does not necessarily indicate legal error because both the juvenile justice framework and the *Jinayat Qanun* permit individualized, rehabilitative sentencing. It nevertheless raises an important question: how did the court relate the offenders' ages, admissions, remorse, and prospects for rehabilitation to the seriousness of the offense and the physical and psychological harm experienced by the victim?

Existing studies address several components of this problem separately. Research has examined the protection of children within Indonesia's juvenile justice system (Iman 2013), criminal sanctions for the rape of children under Indonesian and Islamic criminal law (Wahyuni 2016), the concept and purposes of *ta'zir* punishment (Syarbaini 2023), and the position of Aceh's *Jinayat Qanun* within Indonesia's national criminal-law system (Nurdin 2018). This literature provides relevant normative foundations, but it does not directly explain how proportionality should be assessed in Decision No. 1/JN.Anak/2023/MS.Bna, particularly when both the offenders and the victim are children. The present article addresses this narrower gap by examining whether the court's stated reasons adequately connect the legal protection of the child offenders with the seriousness of the offense and the victim's interests.

Therefore, the article addresses two questions. First, what legal and nonlegal considerations did the court use in imposing *uqubat ta'zir* on the child offenders? Second, to what extent does the reasoning in the decision balance protection of the child offenders with justice for the child victim? Through a normative case analysis, the article evaluates the legal basis of the sentence, the court's exercise of discretion, and the transparency of its proportionality reasoning. Its contribution is limited to a critical analysis of this decision; it does not claim to represent all juvenile rape decisions issued by Aceh's Sharia Courts.

B. Methods

This study employed doctrinal legal research to examine the legal reasoning in Banda Aceh Sharia Court Decision No. 1/JN.Anak/2023/MS.Bna. Doctrinal research was appropriate because the study focused on interpreting legal rules and evaluating their application in a judicial decision (Hutchinson and Duncan 2012). A statutory approach was used to examine the legal framework governing *uqubat ta'zir*, child rape, juvenile justice, and child protection. A case approach was used to examine the facts established by the court, the evidence considered, the judicial reasoning, and the sanction imposed.

The primary legal materials consisted of the court decision, Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law, Law No. 48 of 2009 on Judicial Power, Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 35 of 2014 on Child Protection, Government Regulation No. 43 of 2017 on Restitution for Child Victims of Crime, Aceh *Qanun* No. 9 of 2019 on Services for Women and Children Experiencing Violence, Government Regulation No. 78 of 2021 on Special Protection for Children, and Law No. 12 of 2022 on Sexual Violence Crimes (Government of Aceh, 2014, 2019; Republic of Indonesia, 2009, 2012, 2014, 2017, 2021, 2022) Secondary materials consisted of verified journal articles addressing Aceh's *Jinayat* law, judicial reasoning, juvenile justice, *ta'zir*, proportionality, and victims' rights.

The analysis proceeded by reconstructing the legally relevant facts and evidentiary findings, identifying the statutory and nonstatutory considerations relied upon by the court, and evaluating the connection between those considerations and the 24-month disposition. The analysis then assessed whether the reasoning balanced the child offenders' right to protection and rehabilitation with the child victim's right to recognition, justice, and recovery. The study relied exclusively on documentary legal materials and did not use interviews, observations, or quantitative data.

C. Results and Discussion

1. Judicial Grounds for Imposing Child-Specific *Uqubat Ta'zir*

Banda Aceh Sharia Court Decision No. 1/JN.Anak/2023/MS.Bna concerned four child offenders, aged 17, 15, 17, and 15, and a 15-year-old victim. The court found the children legally responsible for rape against a child after considering their statements and the medical and psychological evidence presented in the proceedings. The forensic medical report (*Visum et Repertum*) documented injuries consistent with the alleged offense, while the psychological examination recorded trauma, anxiety, depression, and diminished trust in the victim's social environment. These materials supported both the legal finding that the offense had occurred and the court's recognition of its physical and psychological consequences (Banda Aceh Sharia Court 2023).

The legal basis for the disposition was drawn from Articles 50, 66, and 67 of Aceh *Qanun* No. 6 of 2014. Article 50 regulates rape against a child and provides, among its alternative sanctions for adult offenders, imprisonment for 150 to 200 months. Article 66 subjects cases involving children to the juvenile justice framework, while Article 67 limits a child's *uqubat* to no more than one-third of the corresponding adult sanction.

Both the prosecutor's request for 48 months and the court's 24-month disposition therefore remained below the statutory ceiling. This establishes the formal legality of the disposition, but it does not by itself determine whether the duration selected was proportionate. The interaction between Aceh's Jinayat law and national juvenile justice legislation requires courts to reconcile regional criminal norms with child-specific procedural and sentencing protections (Nurdin 2018; Sumardi, Lukito, and Ichwan 2021). Studies have also identified continuing interpretive difficulties in cases situated at the intersection of these legal regimes (Aprilianda, Farikhah, and Krisna 2022; Qotadah, Wakhid, and Susanto 2022).

The court imposed a 24-month placement in a Juvenile Special Development Institution (*Lembaga Pembinaan Khusus Anak*, LPKA), where the children were to receive *pembinaan* (structured guidance and development), rather than the 48 months requested by the prosecutor. Its mitigating considerations included the offenders' ages, acknowledgment of their conduct, remorse, respectful behavior during the proceedings, absence of a previous *uqubat*, and prospects for rehabilitation. The aggravating considerations included the seriousness of the offense, the victim's status as a child, the participation of more than one offender, and the physical and psychological consequences for the victim. Judicial discretion is inherent in *ta'zir*, but it must remain connected to the seriousness of the conduct, the offender's circumstances, and the purposes of prevention and rehabilitation (Syarbaini 2023; Wahyuni 2016). Studies of *Jinayat* decisions also examine how statutory choices, evidentiary findings, and judicial discretion shape sanctions in sexual-offense cases (Armia et al. 2022; Salma et al. 2024). The weakness of the decision was therefore not the absence of a legal basis, but its limited explanation of why the relevant considerations justified 24 months rather than another duration within the permitted ceiling.

2. Balancing Protection of the Child Offenders and Justice for the Child Victim

The court's attention to age, development, rehabilitation, and the avoidance of excessive punishment was consistent with the child-protection orientation of Law No. 11 of 2012. The Convention on the Rights of the Child also requires deprivation of liberty to be used only as a last resort and for the shortest appropriate period (United Nations General Assembly 1989; United Nations Committee on the Rights of the Child 2019). Indonesian scholarship similarly maintains that sanctions for children should be individualized and directed toward rehabilitation rather than retribution alone (Iman 2013; Saputri, Wahyuni, and Muhsin 2024). The court's offender-oriented considerations were therefore legally relevant and should not be treated as improper leniency merely because the underlying offense was serious.

Nevertheless, protecting the child offenders did not remove the court's responsibility to consider the child victim. The judgment recognized the victim's suffering through the medical and psychological evidence, but it did not clearly explain how the documented harm affected the duration of the disposition or the victim's recovery. Research on *Jinayat* enforcement has shown that formal recognition of sexual

violence does not necessarily ensure that victims' experiences and recovery needs are fully incorporated into judicial outcomes (Febriandi, Ansor, and Nursiti 2021; Fadlia and Ramadani 2018; Wahyuni 2022). At the national level, Government Regulation No. 78 of 2021 provides a framework for the special protection of children, while Aceh *Qanun* No. 9 of 2019 provides a regional framework for services to women and children experiencing violence (Government of Aceh 2019; Republic of Indonesia 2021). National child-protection scholarship also treats psychological recovery and access to restitution as distinct components of justice for child victims (Murtadho 2021; Zakaria, Mahmud, and Mulyana 2023).

The restitution question requires particular care. Article 51 of Aceh *Qanun* No. 6 of 2014 expressly connected restitution to the offenses regulated in Articles 48 and 49, but not to rape against a child under Article 50. The 2014 *Qanun* therefore did not expressly establish restitution for the specific offense examined here. Government Regulation No. 43 of 2017 and Law No. 12 of 2022 provided a broader national framework, but the judgment alone does not establish whether restitution was requested or processed in this case. The absence of a restitution order should consequently not be described as a legal violation without access to the complete procedural record. This limitation reflects broader difficulties in coordinating restitution rules, prosecutorial practice, and enforcement in Aceh (Aljamalulail, Rani, and Muazzin 2024).

Restorative justice should not be understood solely as reducing punishment for a child offender; it also involves acknowledgment of harm, accountability, and measures supporting the victim's recovery (Hasan 2013). The formulation of sexual violence against children within Aceh's *Jinayat* framework also affects how victim protection is incorporated into the applicable legal rules (Krisna et al. 2021). Critical studies of *Jinayat* implementation have similarly called for stronger integration of human-rights and victim-protection considerations into judicial practice (Muzakkir 2022; Aziz et al. 2023). In this case, offender-oriented considerations were clearly reflected in the reasons supporting the 24-month disposition, whereas the victim's documented harm was not equally connected to its duration or to a defined recovery mechanism. The decision therefore reflected a legally recognizable but incomplete balance between the protection of the child offenders and justice for the child victim. This assessment concerns the completeness of the court's reasoning; it does not establish that the 24-month disposition was unlawful or necessarily too lenient.

D. Conclusion

The court's decision to impose a child-specific *uqubat ta'zir* had an identifiable legal foundation in Articles 50, 66, and 67 of Aceh *Qanun* No. 6 of 2014 and the juvenile justice principles established by Law No. 11 of 2012. The 24-month disposition remained below the statutory ceiling applicable to child offenders. The court also relied on relevant mitigating and aggravating circumstances. However, it did not sufficiently explain how those circumstances produced the specific 24-month duration.

The decision gave substantial attention to the offenders' ages, developmental circumstances, and prospects for rehabilitation. It also recognized the child victim's physical and psychological harm. Nevertheless, the victim's harm was not comparably connected to the duration of the disposition, restitution, or a defined recovery process. The decision therefore achieved a legally defensible but incomplete balance between protecting the child offenders and providing justice for the child victim.

These findings are limited to the text of a single judgment and the legal materials examined. The study did not assess the implementation of the LPKA placement, the offenders' rehabilitation, the victim's subsequent recovery, or any restitution process conducted outside the judgment. Its conclusion is therefore limited to the legal reasoning recorded in the decision rather than the later consequences of its implementation.

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