



## Rights of restitution for victims of sexual violence according to perspective qanun aceh number 9 of 2019 and qanun aceh number 6 of 2014

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### Abstract

Aceh is a special region, Aceh's legal privileges are based on Law no. 44 of 1999 concerning Aceh Specialties and Law no. 11 of 2006 concerning the Government of Aceh, based on this legal basis, one of Aceh's special features is the implementation in the field of enforcing Islamic law, this is then specifically regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat and several other derivative regulations, one of the concerns of the Aceh government is to provide protection to victims of sexual violence by providing restitution. Restitution is compensation given to the victim or their family by the perpetrator or a third party. This research discusses and examines the mechanism for providing restitution to victims of sexual violence based on Aceh Qanun No. 9 of 2019 concerning the Implementation of Treatment for Women and Children, as well as Aceh Qanun No. 6 of 2014 which regulates the provision of restitution. For rape victims in general, the desired outcome is whether the regulations are appropriate and provide justice for victims of sexual violence.

**Keywords:** Restitution, sexual violence, qanun aceh

### Introduction

Currently, the crime of rape is a crime that is quite a concern among society. We often find reports about rape in newspapers, magazines and social media. Rape is nothing new, but rape is a crime that has existed for a long time <sup>[1]</sup>.

Aceh is a region that has the authority to administer its region, which includes Aceh Qanun No. 6 of 2014 concerning the Jinayat Law which regulates rape crimes. The official implementation of Qanun Jinayat emerged after the ratification of Aceh Qanun Number 6 of 2014 concerning Jinayat Law. This is based on the mandate of Article 125 of Law Number 11 of 2006 concerning the Government of Aceh. Jinayat law is the law that regulates jarimah and uqubat. Jarimah is an act prohibited by Islamic law which in this qanun is threatened with uqubat hudud and/or ta'zir while uqubat is a punishment that can be imposed by a judge on the perpetrator of jarimah.

So far, victims of rape only get inner satisfaction from the punishment of the perpetrator, but the victim does not get anything that is directly related to him. The Indonesian concept of punishment contained in the Criminal Code (KUHP) tends to talk more about aspects related to the perpetrator of a criminal act and punishment, but does not talk much about aspects related to the victim <sup>[2]</sup>.

According to Muladi, in the concept of regulating the protection of victims of criminal acts, the most important thing to pay attention to is the losses suffered by the victim. The losses suffered by victims are not only material losses or physical suffering, but also psychological pressure experienced by victims. This could take the form of "the trauma of losing trust in society and public order". Symptoms of this syndrome can include fear, distrust, depression, loneliness, and other avoidance behaviors <sup>[3]</sup>.

One form of compensation for victims of criminal acts of rape is restitution. Restitution in accordance with the principle of restoration to its original condition (restitutio in integrum) is an effort made to restore the victim's original

condition before the crime occurred, even though it is known that the possibility of the victim returning to his original condition is impossible. With restitution, it is hoped that it will be able to restore victims' rights such as legal rights and social status. In practice, in almost every country, the concept of restitution is developed and given to every crime victim for the suffering they received as a victim of a crime. In this concept, the victim or his family has the right to obtain fair and appropriate compensation from the person at fault or a third party who is responsible. This compensation consists of the right to return the victim's property, compensation for damage or loss, compensation arising from the victim's fall, providing services and restoration of the victim's rights <sup>[4]</sup>.

Legally, the Aceh Government regulates rules regarding compensation/restitution for rape victims in Article 1 Number (20) Qanun Aceh No.6 of 2014 which explains that restitution is a certain amount of money or property, which must be paid by the perpetrator, his family or a third party. based on an order by a judge to a rape victim or her family, for suffering, loss of certain property, or compensation for costs for certain acts. In addition, the Aceh Government specifically regulates the provision of restitution for victims of sexual violence in Aceh Qanun No. 9 of 2019. This research wants to see and examine the mechanism for providing restitution to victims of sexual violence in the legal norms of the Aceh Qanun.

### Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data <sup>[5]</sup>.

Based on the background above, the problem formulation in this research focuses

### Result and Discussion

Basically, sexual harassment or violence is a reality in today's society where acts of violence against women are numerous and often occur everywhere. Violence against women is a very inhumane act, even though women have the right to obtain human rights protection and enjoy basic freedoms in all fields <sup>[6]</sup>. Article 285 of the Criminal Code states: *Any person who, by force or threat of violence, forces a woman to have sexual intercourse with him outside of marriage, is threatened for committing rape with a maximum prison sentence of 12 (twelve) years* <sup>[7]</sup>.

One form of sexual violence is rape. Rape is sexual intercourse against the vagina or anus of another person as a victim with the perpetrator's penis or other objects used by the perpetrator or against the victim's vagina or penis with the perpetrator's mouth or against the victim's mouth with the perpetrator's penis, with violence or threats or coercion against the victim (*Article 1 Paragraph 30 Aceh Qanun No. 14 of 2014 concerning Jinayat Law*). explains that rape is an attempt to vent sexual desire by a man against a woman by violating moral and/or legal provisions <sup>[8]</sup>.

The types of losses suffered by victims of sexual violence are not only limited in material form, such as costs incurred to heal the victim's physical, mental and psychological wounds, but there are also immaterial losses that are difficult for the victim to explain, such as loss of self-confidence and mental balance, causing feelings of suicidal thoughts or lack of enthusiasm in living life because they feel anxious and afraid of the bad events they have experienced <sup>[9]</sup>. One form of protection for the rights of witnesses and victims of criminal acts is efforts to provide compensation to victims in the form of compensation and restitution <sup>[10]</sup>.

Aceh Qanun No. 6 of 2014 explains that restitution is a certain amount of money or property, which must be paid by the perpetrator, his family, or a third party based on a judge's order to the victim or his family, for suffering, loss of certain assets, or compensation for costs for certain actions. According to Article 1 paragraph 11 of Law no. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims, restitution or compensation in criminal law is compensation given to victims or their families by perpetrators or third parties. According to the law contained in Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP), it is explained that if a victim of a criminal act of sexual violence wants to apply for restitution, they must collect valid evidence such as: witness statements, expert statements, letters, instructions, and the defendant's statement.

The mechanism for providing restitution for victims of sexual violence based on Aceh Qanun No. 9 of 2019 is as follows: <sup>[11]</sup>

Article 76 Aceh Qanun no. 9 of 2019 explains the mechanism for applying for restitution that must be carried out by victims to obtain the right to compensation (diyath) as follows:

Requests for restitution submitted before the court decision can be requested by the applicant for restitution from the investigator and/or Public Prosecutor (JPU).

1. The investigator includes a request for restitution in the investigation report.

2. The prosecutor includes a request for restitution in the lawsuit.
3. The judge examines the request for restitution and decides whether or not to accept the request for restitution placed in the Court Decision.
4. The judge decides the amount of restitution after considering the ability of the defendant and/or the defendant's family to pay.
5. The prosecutor is responsible for implementing the court decision against the victim or heir.

Furthermore, the mechanism for providing restitution for victims of sexual violence based on Aceh Qanun No. 4 of 2014 is as follows: <sup>[12]</sup>

According to Article 51 of Aceh Qanun no. 6 of 2014, the mechanism for providing restitution for victims of criminal acts of sexual violence, the payments that must be paid are as follows:

1. If there is a request from the victim, every person subject to 'uqubat as intended in article 48 and article 49 may be subject to 'uqubat restitution of a maximum of 750 (seven hundred and fifty) grams of pure gold.
2. The judge in determining the amount of restitution uqubat as referred to in paragraph (1) needs to consider the financial capabilities of the convict.
3. In this case, the jihad as referred to in paragraph (1) is carried out because it is forced by an unavoidable power, so the 'uqubat restitution for the victim is borne by the person who forced the perpetrator. In Article 52 Aceh Qanun no. 14 of 2014, states that:
4. Every person who claims to have been raped can submit a complaint to the investigator about the person who raped them by including preliminary evidence. Every time a rape case is discovered, investigators are obliged to carry out an investigation to find initial evidence.
5. In the event that investigators find evidence but it is inadequate, the person who claims to have been raped as referred to in paragraph (1) can submit an oath as additional evidence to complete it.
6. Investigators and public prosecutors forward the case as intended in paragraph (3) to the Regency/City Syar'iyah Court with preliminary evidence and a statement of the willingness of the person who claims to have been raped to swear an oath before the Judge.
7. Willingness of the person who claims to have been raped to swear as intended
8. In paragraph (4) is stated by the investigator in a special report for that purpose.

### Conclusion

Based on Law (UU) Number 11 of 2006 concerning the Government of Aceh, which explains that Aceh is a provincial region consisting of special legal community units and is given special authority to regulate and manage government affairs and the interests of the local community in accordance with statutory regulations. - invitations in the system and principles of the Unitary State of the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia. Then Islamic Sharia Qanuns were created, one of which is Aceh Qanun No. 6 of 2014 concerning Jinayat Law which was ratified on October 23 2015. One of the rules regulated in Aceh Qanun No. 9 of 2019 concerning the Implementation of Treatment for Women and Children and

Aceh Qanun No. 6 of 2014 concerning Jinayat Law is restitution. Restitution is a certain amount of money or property, which must be paid by the perpetrator, his family, or a third party based on a judge's order to the victim or his family, for suffering, loss of certain assets, or compensation for costs for certain actions (Qanun Aceh No. 6 of 2014). According to the Protection of Witnesses and Victims, restitution or compensation in criminal law is compensation given to the victim or their family by the perpetrator or third party. The Restitution Policy in its application in society really helps protect victims who experience the impact of rape crimes and so on, where victims receive compensation in the form of compensation from the perpetrator and/or third parties, the role of witness and victim protection institutions also really brings a positive aura to victims who You should be protected and given comfort for what you are experiencing. The implementation of restitution for victims of sexual violence in Banda Aceh is currently still very minimal. It is still difficult for victims of sexual violence to prove when they were victims of sexual violence. Apart from that, the lengthy judicial process often results in cases being delayed and not followed up. What's sad is that when the case submitted by the victim receives SP3 or is declared no longer actionable, the victim is sued again by the perpetrator of sexual violence for defamation, and so on. The Qanun Jinayat itself is still not perfect, meaning that the Qanun Jinayat Procedural Law must be reviewed, because there are several shortcomings such as the execution process not being able to run, the LPSK still not playing its optimal role, and so on.

## References

1. Robert Lily, Teori Kriminologi Kontek dan Konsekuensi (Bandung: Prenada Media, 2015), hlm 11.
2. Dikdik M. Arief Mansur Elisatri Gultom, Urgensi Perlindungan Korban Kejahatan Antara Norma Dan Realita (Jakarta: Raja Grafindo, 2008), hlm 25.
3. Muladi, Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana (Semarang: Badan Penerbit Universitas Diponegoro, 2002), hlm 177.
4. Supriyadi Widodo Eddyono, Masukan Terhadap Perubahan UU No. 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban (Jakarta Selatan: Koalisi Perlindungan Saksi Dan Korban, 2006), hlm 25.
5. Soerjono Soekanto dan Sri Pamudji Penelitian Hukum Normatif. Rajawali Press, Jakarta, 2011, hlm.14.
6. Varia Peradilan, Langkah Pencegahan Penanggulangan Tindak Kekerasan Terhadap Wanita (Thun XIII, 1997), hlm 145.
7. Undang-Undang Nomor 1 Tahun 1946 tentang KUHP
8. Nahdiatuzzahra Ayu, Kekerasan Terhadap Anak (Purwokerto: Universitas Jenderal Soedirman, 2013), hlm 29.
9. Sujoko, "Implementasi Tuntutan Ganti Kerugian dalam Pasal 98 KUHP Terhadap Tindak Pidana Pemerkosaan di Wilayah Hukum Semarang" (Semarang: Fakultas Hukum Universitas Diponegoro, 2008), hlm 73.
10. *Ibid.*
11. Qanun Aceh No.9 Tahun 2019 tentang Penyelenggaraan Penanganan Terhadap Perempuan dan Anak
12. Qanun Aceh No.4 Tahun 2014 tentang Jinayat