

## Criminal Act of Sexual Abuse Against Children Based on Law Number 35 Of 2014 and Aceh Qanun Number 6 Year 2014

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### Abstract

The criminal offense of sexual harassment against children is a serious crime regulated under Law No. 35 of 2014 concerning Child Protection and Aceh Qanun No. 6 of 2014 concerning Jinayat Law. This study aims to analyze the comparison of legal regulations regarding child sexual harassment between the two laws, particularly in terms of definition, criminal sanctions, and protection of children as victims. The Child Protection Law at the national level emphasizes imprisonment and fines, while the Aceh Qanun introduces additional punishments such as whipping and using gold as the basis for fines. This study highlights significant differences between the two regulations, especially in the application of physical punishment and restitution for victims. The research concludes that the application of Sharia law in Aceh provides a distinct approach to protecting children from sexual harassment but does not fundamentally contradict national law.

**Keywords:** Sexual harassment, children, Child Protection Law, Aceh Qanun, jinayat law.

### INTRODUCTION

Sexual harassment is an unwanted sexual act or behavior that is verbal, physical or gestural in nature that makes the recipient feel offended or intimidated by the act. Sexual harassment is a problem that arises in the social interactions of our society. Sexual harassment is no longer seen as a problem between individuals, but rather a social problem related to human rights issues, especially those related to protection from all forms of torture, violence, cruelty, and neglect of human dignity.<sup>1</sup>

Of the many sexual harassment practices that occur in society, most young women who are growing up, children or even men can become victims of sexual harassment. Sexual harassment is said to often occur on public roads (33%), public transportation including bus stops (19%), and schools and campuses (15%). Meanwhile, the public transportation that most often experiences sexual harassment is: buses (36%), public transportation (30%), online motorcycle taxis and taxis (18%), KRL (18%), and conventional motorcycle taxis and taxis (6%).<sup>2</sup>

Child sexual abuse is one of the extreme crimes that harms children both physically and psychologically. It is important to take child sexual abuse prevention seriously and end it as soon as possible. This prevention can be done by enforcing strict laws, rules, and regulations regarding punishment for perpetrators of sexual violence against children. According to Article 28 B paragraph (2) of the 1945 Constitution, every child has the right to live, grow and develop, and be protected from violence and prejudice. Law Number 17 of

<sup>1</sup>A. Gunawan Setiardja, *Dialectics of Law and Morals*, 1st edition, Kanisius, Yogyakarta, 2010. p. 90

<sup>2</sup>Farah Nabila. "Punishment for Perpetrators of Sexual Harassment (Comparative Study Between Aceh Qanun Number 6 of 2014 Concerning Jinayat Law and Article 289 of the Criminal Code)". Faculty of Sharia and Law, Ar-Raniry State Islamic University, Banda Aceh. 2022, page 3

2016 also discusses children's rights and establishes laws in this area as an alternative to Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection.

Sexual violence is one of the physical violence that is included in criminal acts. The perpetrator of sexual violence does it to satisfy his desires by force. Acts of sexual violence are not only in the form of forced sexual intercourse, but other activities such as groping, even if only looking at<sup>3</sup>

Article 1 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection defines 'child protection' as all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human desires and dignity, and receive protection from violence and discrimination. Article 289 of the Criminal Code states, "Anyone who with violence or the threat of violence forces someone to commit or allow an indecent act to be committed, is threatened for committing an act that attacks moral honor, with a maximum prison sentence of nine years.

In addition to being regulated in positive Indonesian law, the crime of sexual violence against children is also regulated in the Qanun in force in Aceh Province. According to Article 48 of Aceh Qanun number 6 of 2014, the punishment for perpetrators of rape is uqubat ta'zir whipping of at least 125 times and a maximum of 175 times or a fine of at least 1,250 grams of pure gold and a maximum of 1,750 grams of pure gold or imprisonment of at least 125 months and a maximum of 175 months<sup>4</sup>

The presence of Law Number 18 of 2001 concerning Special Autonomy. provides a wider opportunity to organize and manage their own households, including economic resources, explore natural resources and human resources, and apply Islamic law in community life. The opportunity to organize and organize legal life with Islamic law as its spirit is based on a strong legal foundation. Therefore, it can be said that the implementation of Islamic law in Aceh is an order of the Law.<sup>5</sup>

The position of sharia in the Law is an embodiment of the special rights that Aceh has such as the implementation of Islamic law, education and customs. Islamic law in Aceh is the teaching of Islam that has been regulated by Qanun. The scope of the implementation of Islamic law is clearly stated in Qanun number 5 of 2000, namely:<sup>6</sup>

Article 5 paragraph (1)

<sup>3</sup>Ratna Sari, Soni Akhmad Nulhaqim, & Maulana Irfan, "Sexual Abuse of Children". Journal of Proceedings of Ks: Research and Pkm. Vol.2 No. 1. 2019, p. 14

<sup>4</sup>Angelin N. Lilua. "Legal Protection for Children as Victims of Sexual Crimes According to Indonesian Criminal Law". Jurnal Lex Privatum, Vol. Iv/No. 4/Apr/2016, page 162

<sup>5</sup>Al Yasa Abubakar and Marahalim, Islamic Criminal Law in the Province of Nanggroe Aceh Darussalam. Department of Islamic Sharia, Banda Aceh, 2006. p. 5.

<sup>6</sup>Ridwan Nurdin. "The Position of Aceh's Qanun Jinayat in the Indonesian National Criminal Law System". Miqot Journal Vol. Xlii No. 2 July-December 2018, page 357

*In order to realize Aceh's special status in the field of organizing religious life, every person or legal entity domiciled in the region is obliged to uphold the implementation of Islamic law in their lives..*

Article 5 Paragraph (2)

*The implementation of Islamic law as referred to in paragraph (1) includes:*

- a. Faith;*
- b. Worship;*
- c. Mua'malah;*
- d. Morals;*
- e. Islamic education and preaching/amar ma'ruf nahi mungkar;*
- f. Baitul Mal;*
- g. Community;*
- h. Spreading Islam;*
- i. Defense of Islam;*
- j. Qadha;*
- k. Criminal law;*
- l. Munakahat; and*
- m. Mawaris.*

The Criminal Code in question is Aceh Qanun Number 6 of 2014 concerning the Criminal Code which regulates 10 crimes and is different from the rules in force in the Criminal Code including Maisir, khalwat, Ikhtilath, Zina, sexual harassment, Rape, Qadzaf, Liwath and Musahaqah. (Neisanti, 2022).

In the Criminal Code and also the Aceh Qanun, sexual harassment of children has been protected. However, both of them certainly have differences in terms of punishment, fines and so on. Based on the background above, the author chose the title of this research, namely: "**Criminal Acts of Sexual Harassment Against Children Based on Law Number 35 of 2014 and Aceh Qanun Number 6 of 2014**".

### **Formulation of the problem**

The main problems in this research are:

1. How the Law Arranges Crime of Sexual Abuse Against Children in Indonesian Positive Law
2. How It Compares Law Number 35 of 2014 concerning Child Protection and Aceh Qanun Number 6 of 2014 concerning Crime of Sexual Abuse Against Children?

### **Research purposes**

The objectives of this research are:

1. To know and study the Legal Regulations Crime of Sexual Abuse Against Children in Indonesian Positive Law
2. To find out and study comparisons Law Number 35 of 2014 and Aceh Qanun Number 6 of 2014 concerning the Crime of Sexual Harassment Against Children.

## LITERATURE REVIEW

### Definition of Sexual Harassment

In the Big Indonesian Dictionary (“KBBI”), harassment comes from the word *leceh* which means to look down on, humiliate or be worthless. While the word *sexual* comes from the word *seks*. Sex is very often interpreted as biological sex, namely: male and female. So the word *sexual* (adjective) is the nature of something related to sex or gender, and things related to sexual intercourse between men and women, and other things that contain elements of sexual desire or lust. Thus, sexual harassment according to KBBI is two words that are made into one which means to degrade, humiliate women.<sup>7</sup>

Sexual harassment is behavior of a sexual nature that is unwanted and not desired by the recipient or victim and results in disturbing the recipient of the harassment, behavior that can be classified as an act of sexual harassment such as forcing to engage in sexual activities, derogatory statements that are sexually or sexually oriented, sexually oriented jokes, requests to perform sexual acts that the perpetrator likes and also statements or behavior that have sexual connotations, these actions can be conveyed directly or indirectly/implicitly.<sup>8</sup>

Child sexual abuse itself is defined as an act of coercion to have sexual intercourse or other sexual activities, carried out by adults against children, with or without violence, which can occur in various places regardless of culture, race and social strata. The victims can be boys or girls, but are generally girls under 18 years old.<sup>9</sup>

Forms of sexual harassment according to the statement above can be categorized as:<sup>10</sup>

#### a. Verbal sexual harassment

Verbal sexual harassment is more often carried out in the form of words/utterances directed at other people but directed at something related to sex, this harassment can take the form of:

- 1) Joking, teasing the opposite sex or the same sex, or asking questions about sex in discussions or chats that are not specifically about sex.
- 2) Sexually oriented whistling
- 3) Telling or asking another person about sexual desires or sexual activities that the person has engaged in, which makes the person uncomfortable.
- 4) Criticizing or commenting on physical appearance that refers to sexual aspects, for example the shape of a person's buttocks or the size of their genitals.

#### b. Non-verbal sexual harassment

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<sup>7</sup> Verlin Ferdina, Ndah Jacinda, Naomi Jesica. "Law Enforcement Against Sexual Harassment Through Information Technology (Cyber) Reviewed From Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions". *Jurnal Panorama Hukum* Vol. 4 No. 2 December 2019, page 93

<sup>8</sup> NK Endah Trwijati, *Sexual Harassment: Psychological Review*, Savy Amira Women's Crisis Center Psychology, University of Surabaya, Surabaya. 2017, p.1

<sup>9</sup> N. Katjasungkana, *Sexual Abuse of Children*, Mitra Wacana. Jakarta, 2010, p.14

<sup>10</sup> Fausiah Fiti and Julianti Widury, *Adult Clinical Abnormal Psychology*, University of Indonesia Press. Jakarta, 2005, p. 62

Non-verbal harassment is the opposite of verbal harassment, where verbal harassment uses words or written invitations. In this non-verbal category, actions are used more but there is no direct contact between the perpetrator and the victim, for example:

- 1) Showing one's genitals in front of other people, either in private or in public,
- 2) Staring at another person's sexual parts with a seductive look,
- 3) Rubbing genitals against another person

c. Physical sexual harassment

In this category of sexual harassment, there is physical contact between the perpetrator and the victim, which can be classified as a light or serious act, for example:

- 1) Touching someone's body with sexual content and not desired by the victim.
- 2) Rape or forced sexual intercourse.
- 3) Hugging, kissing or patting someone who is sexually oriented.

Other forms of sexual abuse of children other than those committed by adults are divided into several types, namely:<sup>11</sup>

a. Incest

Sexual behavior that occurs within the immediate family circle where within the immediate family no marital relationship is permitted, for example father and child, mother and child, siblings, grandfather or grandmother and grandchild and also applies between uncle and nephew or aunt and niece.

b. Pedophilia

Sexual disorders characterized by a sense of sexual attraction in adults towards children, this can be caused by 2 factors, namely the result of a person's childhood experiences that do not support their level of development or the experience of a person who was a victim of abuse by a pedophile in their childhood.

c. Child pornography

Like pornography in general, pornography for children is almost the same, except that children are the objects or subjects of the pornography. A simple example is that children are forced to see or hear images, videos, or real sexual acts, including reading writings that lead to sexual activity.

d. Extrafamilial sexual abuse

Unlike incest, the difference lies in the perpetrators. Extrafamilial sexual abuse is not carried out within the family but in public areas such as schools, daycare, or playgrounds. (Yuwono, 2015).

## Understanding Child Protection

Child protection is something that includes activities that are direct and indirect from actions that endanger children physically or psychologically. Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the development and growth of children naturally, both physically, mentally, and socially. Child

<sup>11</sup> Smantor Dwi Yuwono, Application of Law in Cases of Sexual Violence Against Children, Pustaka Yustisia. Yogyakarta, 2015, p.44

protection is a manifestation of justice in a society, thus child protection is attempted in various areas of national and social life.<sup>12</sup>

Article 1 number 2 of Law Number 35 of 2014 concerning Child Protection, "Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate, optimally in accordance with human dignity and honor, and receive protection from violence and discrimination. The purpose of child protection is to guarantee the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination, in order to realize quality, noble, and prosperous Indonesian children.

The definition of child protection can also be formulated as:<sup>13</sup>

- a. A manifestation of justice in a society. This justice is social justice, which is the main basis for child protection.
- b. A joint effort to protect children to exercise their rights and obligations in a humane and positive manner.
- c. A human problem that is a social reality. According to the actual proportion, in terms of child protection dimensions, it has mental, physical and social aspects, it means that the understanding, approach, and handling of children are carried out in an integrative, interdisciplinary, intersectoral, and interdepartmental manner.
- d. A result of interaction between certain parties, due to the existence of an inter-relation between existing phenomena and their mutual influence. So it is necessary to examine, understand, and appreciate who (objects and legal subjects) are involved as components in the existence of child protection. In addition, it is also necessary to examine, understand, and appreciate which symptoms affect the existence of child protection. Child protection is a complex and difficult problem so that its resolution must be carried out simultaneously and together.
- e. An individual action that is influenced by certain social elements or certain communities, such as interests that can be motivations, social institutions (family, school, Islamic boarding school, government and so on), social values, norms (law), status, roles and so on. In order to understand and appreciate properly the reasons why people carry out Child Protection as an individual action (individually or together), the related social structure elements must be understood.
- f. It can be a legal action (juridical) that can have legal consequences that must be resolved by referring to and based on the law. There needs to be a regulation based on the law to prevent and take action on the Implementation of Child Protection that causes mental, physical, and social suffering to the child concerned.

<sup>12</sup>Wiyono, *Juvenile Criminal Justice System in Indonesia*, Sinar Grafika, Jakarta, 2016. p. 27.

<sup>13</sup>Arif Gosita, *Legal Aspects of Child Protection and the Convention on the Rights of the Child*, Rajagrafindo Pesada, Jakarta, 2019, p. 264.

- g. It must be attempted in various areas of life and family life, society, state and nation. The level of child protection in a society or nation is a benchmark for the level of civilization of that society and nation.
- h. It is a field of national legal development. Ignoring the issue of child protection will disrupt national development and the welfare of the people and children. Participating in national development is the right and obligation of every citizen.
- i. It is a field of voluntary service that is broad in scope with a new style (innovative, unconventional).

Legal protection for children is one way to protect the nation's future. Legal protection for children concerns all applicable legal regulations. This legal protection is considered necessary because children are part of society who have physical and mental limitations. Therefore, children need special protection.<sup>14</sup>

Child protection is closely related to five pillars, namely, parents, family, community, government, local government and the state. All five are related to each other as organizers of child protection. In its simplest form, child protection seeks to ensure that every child's rights are not harmed. Child protection complements other rights, ensuring that children will receive what they need so they can survive, develop and grow. However, in reality, the condition of children in Indonesia is still very concerning, especially regarding the problems of child labor, street children, and children who are victims of sexual violence, sexual exploitation, and commercial sexual exploitation.<sup>15</sup>

### **Overview of Qanun**

The word “qanun” in Arabic is similar to the word “kanon” in Greek or “kaneh” in Hebrew. All of these words have similar meanings, namely legal norms, legislation, or laws. The highest level of qanun in a country is usually called “al-qanun al-asasi” or the most fundamental qanun, in this case the basic law or constitution<sup>16</sup>The term qanun in Arabic is a verb form of qanna. which means to make law which means to make law (to make law, to legislate). In its development, the word qanun means regulatory law, and UU<sup>17</sup>

Article 31 paragraph (2) of Law Number 18 of 2001 concerning Special Autonomy for the Special Region of Aceh Province as the Province of Nanggroe Aceh Darussalam states that the provisions for implementing this Law concerning the authority of the Government of the Province of Nanggroe Aceh Darussalam are stipulated in the Qanun of the Province of Nanggroe Aceh Darussalam. Meanwhile, the definition of Qanun, in Article 1 number 8, states that "The Qanun of the Province of Nanggroe Aceh Darussalam is a Regional

<sup>14</sup> Marlina, *Juvenile Justice in Indonesia*, PT. Refika Aditama. Bandung, 2009, page 95

<sup>15</sup> Rini Fitriani. “The Role of Child Protection Organizers in Protecting and Fulfilling Children's Rights”. *Samudra Keadilan Law Journal*. Volume 11, Number 2, July-December 2016, page 251

<sup>16</sup> Shidarta. Etymology of “Qanun” and its position as a source of law. <https://Business-Law.Binus.Ac.Id>. Accessed August 15, 2023

<sup>17</sup> Ridwan Nurdin. “The Position of Aceh's Qanun Jinayat in the Indonesian National Criminal Law System”. *Miqot Journal* Vol. Xlii No. 2 July-December 2018, page 357

Regulation as the implementation of the law in the territory of the Province of Nanggroe Aceh Darussalam in the context of implementing special autonomy.<sup>18</sup>

Article 1 point 21 of Law No. 11 of 2006 concerning the Government of Aceh states, "Aceh Qanun is a statutory regulation similar to a provincial regulation that regulates the implementation of government and the lives of the people of Aceh. Article 1 point 22 of the law states, "District/city Qanun is a statutory regulation similar to a district/city regulation that regulates the implementation of government and the lives of the people of the district/city in Aceh

Qanun can be equated with Regional Regulations in other Provinces in Indonesia, but basically the understanding of Qanun which is equated with regional regulations is actually not right. Qanun is a legal regulation that is enforced in Aceh whose contents must be based on Islamic law which is the specialty of Aceh, this is different from other regions where the rules in their regional regulations do not have to be based on Islamic law. In addition, unlike other regional regulations in Indonesia, Qanun regulations can contain legal rules on material and formal procedural law in the Sharia Court (Religious Court for areas outside Aceh).<sup>19</sup>

## **METHOD**

### **Types of research**

This type of research is normative legal research, namely by using a statutory regulatory approach. The focus of normative legal research, in accordance with the unique character of legal science, lies in the legal review or legal study of positive law, which includes three layers of legal science, consisting of legal dogmatics review, namely the review carried out on identification in positive law, especially statutes. While at the level of legal theory, a review is carried out on theories that can be used. The type of research in this study is normative legal research that critically and comprehensively examines the legal enforcement of traffic violations.

### **Problem Approach**

The problem approach used in this study is the statutory regulatory approach. The statutory regulatory approach is used because what will be studied is the legal rules related to this study. This approach is carried out by examining all laws and regulations related to police discretion through penal mediation. This approach requires understanding the hierarchy and principles of laws and regulations.

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<sup>18</sup>Al Yasa' Abubakar and M. Daud Yoesoef. "Qanun as the Implementation Regulation of Special Autonomy in the Province of Nanggroe Aceh Darussalam". Indonesian Legislation Journal, Vol. 1 No. 3 - November 2004, p.16

<sup>19</sup>Aidilfan. "The Position of Qanun in the View of Law No. 12 of 2011 Concerning the Formation of Legislation". Politica Journal: Vol. 6, No. 2, 2019, page 27



## Source of Legal Material

Primary legal materials consist of laws and government regulations, court decisions that have permanent legal force, other related regulations such as the Criminal Code, Law Number 35 of 2014 concerning Child Protection and Aceh Qanun Number 6 of 2014 concerning Jinayah. Secondary legal materials are materials that provide explanations regarding primary legal materials such as research, proceedings related to research. Tertiary legal materials are materials that provide instructions or explanations for primary legal materials and secondary materials such as dictionaries, encyclopedias (wikipedia) and tables related to the object of research.

## RESULT AND DISCUSSION

Children as the future of the nation who are also classified as a vulnerable group for a crime should be protected from any threat of crime that may occur to them, including the crime of sexual harassment. Children's rights to survival, growth and development, participation and protection from violence and discrimination as part of human rights must be realized as much as possible in the life of the nation and state. Therefore, any act that is contrary to the guarantee of these human rights must be prosecuted through the realization of effective and efficient law enforcement.<sup>20</sup>

Child protection efforts require the role of the community through Child Protection Institutions, religious organizations, non-governmental organizations (NGOs), community organizations, social organizations, media and educational institutions. Thus, for the sake of human progress and civilization in general, everyone has an obligation to protect children according to their abilities. This means that every child has the right to fulfill their obligations to fight for their survival, development and protection.

Aceh, which has been nicknamed the veranda of Mecca through the Qanun on Jinayat Law, seeks to protect human rights through the implementation of effective and efficient law enforcement efforts for every act of violating sharia that occurs by regulating every act that is not permitted in religion with the threat of appropriate punishment as regulated in the Al-Quran and Hadith.

In Aceh Qanun Number 6 of 2014, it is regulated regarding jinayat law, namely the law that regulates Jarimah and 'Uqubat which are the authority of the Sharia Court. Jarimah is an act that is prohibited by Islamic law which in this qanun is threatened with 'Uqubat hudud and/or ta'zir. While u'qubat is a punishment that can be imposed by a judge on the perpetrator of jarimah. Hudud is a type of 'Uqubat whose form and amount have been determined in the qanun explicitly. Then Ta'zir is a type of 'uqubat that has been determined in the qanun whose form is optional and its amount is within the highest and/or lowest limits.<sup>21</sup>

<sup>20</sup>Rochaety, Nur, "Upholding Human Rights Through Legal Protection for Women Victims of Violence in Indonesia", *Jurnal Pendidikan*, Vol.7.1, 2007 p. 24.

<sup>21</sup>Irfina Assughra, Fuadi, Muhammad Natsir. "The Urgency of Changing the Qanun Jinayat as a Fulfillment of Child Protection in Aceh". *Meukuta Alam Student Scientific Journal* Volume 4, Number 1, June 2022, 92

Aceh Qanun Number 6 of 2014 concerning Jinayat Law does not regulate concretely regarding criminal offenses with child victims as regulated in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. As stated in Article 76D of the Child Protection Law which states that, "Everyone is prohibited from committing violence or threats of violence to force a child to have sexual intercourse with him or with another person". Furthermore, Article 76E states that, "Everyone is prohibited from committing violence or threats of violence, forcing, committing trickery, committing a series of lies, or persuading a child to commit or allow indecent acts to be committed"<sup>22</sup>

In Aceh Qanun Number 6 of 2014 concerning Jinayat Law, Article 46, section six states: Any person who intentionally commits a crime of sexual harassment is threatened with 'Uqubat Ta'zir' of a maximum of 45 (forty-five) lashes or a maximum fine of 450 (four hundred and fifty) grams of pure gold or a maximum imprisonment of 45 (forty-five) months.<sup>23</sup>

Sexual harassment as a crime regulated in the Qanun Hukum Jinayat has basically regulated several threats of punishment for each perpetrator, including imprisonment, flogging and fines. The imposition of flogging is considered not to have a balanced impact or repercussions that are commensurate with the losses experienced by the victim, both physically and psychologically, especially when associated with child victims who still have a fairly long future in the future.<sup>24</sup>

In this case, the sanctions for perpetrators of immoral crimes with child victims are the same as for adult victims in Qanun Number 6 of 2014 concerning Jinayat Law. So that Qanun Number 6 of 2014 concerning Jinayat Law seems not to provide protection for children who are victims of criminal acts.

### ***1. Legal Arrangements Crime of Sexual Abuse Against Children in Indonesian Positive Law***

Sexual harassment in the sense of committing indecent acts against children is an act that violates and is against the law so that criminal law plays an important role in resolving cases of criminal acts of morality and seeking the truth of the legal facts of sexual harassment incidents. The legal regulations for the crime of sexual harassment are spread across several laws and regulations, including:

#### **a. Sexual Abuse Against Children according to the Criminal Code**

In the Criminal Code (KUHP) the term harassment is not known, because in the Criminal Code only recognizes the term indecent acts. Sexual harassment in the Criminal

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<sup>22</sup>Liza Agnesta Krisna, Rini Fitriani, "Dualism of Authority to Judge Cases of Children as Perpetrators of Sexual Harassment Crimes in Langsa City-Aceh", *Jurnal Yuridis* Vol. 5 No. 2, December 2018, pages 262-276

<sup>23</sup> Andi Rachmad, Yusi Amdani, Zaki Ulya, "Contradictions in the Regulation of Punishment for Perpetrators of Sexual Abuse of Children in Aceh", *Journal of Law and Justice*, Vol. 10 No. 2, 2021, page 320

<sup>24</sup>Ahmad Mahyani, Adam Yuriswanto, and Ahmad Mahyani, "Castration as an Additional Punishment", *Jurnal.Untag-Sby.Ac.Id*, No.14, 2018, p.40.

Code can be categorized as an act of morality. Morality has the meaning of good manners, politeness, civility, customs and order. Sexual intercourse is divided into several types, namely:<sup>25</sup>

- 1) Sexual intercourse by force is regulated in Article 285 of the Criminal Code.
- 2) Unforced intercourse is regulated in Articles 286 and 287 of the Criminal Code.
- 3) Sexual intercourse with a child is regulated in Article 289 of the Criminal Code.

According to Charles Sorongan, crimes in the field of morality are crimes related to sexual matters, which can be grouped into 3 sexual crimes against children, namely:<sup>26</sup>

- a. The crime of attacking public morality is the crime of pornography against minors.
- b. Crimes against morality in terms of sexual intercourse, namely:
  - 1) having sex with a woman who is not his wife and is not yet 15 years old
  - 2) having intercourse with a wife who is not yet ready to be married.
- c. Crimes against morality regarding indecent acts, namely
  - 1) indecent acts against an unconscious person, a person under 15 years of age, etc.
  - 2) encouraging minors to commit obscene acts
  - 3) obscene acts towards children, stepchildren and so on
  - 4) the crime of facilitating obscene acts by his children, stepchildren, adopted children and others who are not yet adults

According to Laden Marpaung, there are several acts of sexual abuse that can be categorized as acts of harassment, namely:<sup>27</sup>

1. Gender harassment: sexually offensive or demeaning remarks and behaviors about women. Examples include derogatory comments, images or writings that demean women, lewd jokes or humor about sex or women in general.
2. Soliciting behavior: Sexually offensive, inappropriate, and unwanted behavior. Examples include repeated unwanted sexual advances, insisting on dinner, drinks, or dates, sending incessant letters and phone calls even after being rejected, and other solicitations.
3. Sexual bribery: Coercion of sexual activity or other sex-related behavior under threat of punishment. Examples include negative job evaluations, revocation of promotions, and death threats.
4. Sexual violations: Serious sexual violations (such as forced touching, feeling, or grabbing) or sexual assault

The criminal acts and sanctions for criminal acts of sexual harassment against children in the Criminal Code are regulated in the following articles:

Article 287 paragraph (1)

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<sup>25</sup>Dody Suryandi, Nike Hutabarat, Hartono Pamungkas. "Implementation of Criminal Sanctions against Perpetrators of Sexual Violence Against Children". Darma Agung Journal Volume 28, Number 1, April 2020, page 85

<sup>26</sup>Charles Sorongan. "Criminal Sanctions Against Perpetrators of Child Molestation According to the Criminal Code".. Lex Crimen Journal Vol. VIII/No. 10/Oct/2019, page 7

<sup>27</sup>Laden Marpaung, Crimes Against Morality and the Problem of Prevention, Jakarta; Sinar Grafika. 2016, p. 3

*Anyone who has sexual intercourse with a woman outside of marriage, knowing or reasonably suspecting that she is under fifteen years of age or, if her age is not clear, is not yet marriageable, shall be punished by a maximum imprisonment of nine years..*

Article 289

*Anyone who by violence or threat of violence forces someone to commit or allow an obscene act to be committed against him/her shall be punished for damaging decency with a maximum prison sentence of nine years.*

Article 291

*If one of the crimes described in Articles 287 and 289 causes serious bodily injury, the sentence is a maximum of twelve years' imprisonment and if it causes death, the sentence is a maximum of fifteen years' imprisonment.*

Article 294 paragraph (1)

*Whoever commits an obscene act with his minor child, stepchild or adopted child, pet child, or with a minor who is entrusted to him to care for, educate or look after, or with a minor or subordinate person who is a minor, shall be punished by imprisonment forever. seven years*

b. Sexual Harassment according to the Child Protection Act

Sexual harassment of children is not only regulated in the Criminal Code but is also regulated in more specific regulations, namely Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection and amended for the second time by Perpu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as stipulated as a Law by Law Number 17 of 2016 concerning the Stipulation of Perpu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into a Law relating to criminal acts of indecency.

namely, among others, Article 76D (sexual intercourse with a child) and Article 76E (child molestation), as follows:

Article 76D

*Every person is prohibited from committing violence or threatening violence to force a child to have sexual intercourse with him or another person..*

Article 76E

*Every person is prohibited from committing violence or threats of violence, forcing, using trickery, telling a series of lies, or persuading a child to commit or allow indecent acts to be committed.*

Article 81

- 1) Any person who violates the provisions as referred to in Article 76D shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5 billion.*
- 2) The criminal provisions as referred to in paragraph (1) also apply to any person who intentionally commits deception, a series of lies, or persuades a child to have sexual intercourse with him or another person.*

- 3) *In the case of a criminal act as referred to in paragraph (1) being committed by a parent, guardian, person who has a family relationship, child caretaker, educator, education personnel, apparatus dealing with child protection, or being committed by more than one person together, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).*
- 4) *In addition to the perpetrators as referred to in paragraph (3), an additional 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted for committing a crime as referred to in Article 76D.*
- 5) *In the event that the criminal act as referred to in Article 76D results in more than 1 (one) victim, results in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies, the perpetrator shall be sentenced to death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.*
- 6) *In addition to being subject to the criminal penalties as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional penalties in the form of announcing the perpetrator's identity.*
- 7) *The perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to chemical castration and installation of electronic detection devices. The actions as referred to in paragraph (6) are decided together with the main criminal penalty by including the time period for carrying out the action.*

Article 82

- 1) *Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5 billion.*
- 2) *In the case of a criminal act as referred to in paragraph (1) being committed by a parent, guardian, person who has a family relationship, child caretaker, educator, education personnel, officer who handles child protection, or is committed by more than one person together, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).*
- 3) *In addition to the perpetrators as referred to in paragraph (2), an additional 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted for committing a crime as referred to in Article 76E.*
- 4) *In the event that the criminal act as referred to in Article 76E results in more than 1 (one) victim, results in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).*
- 5) *In addition to being subject to the criminal penalties as referred to in paragraphs (1) to (4), the perpetrator may be subject to additional penalties in the form of announcing the perpetrator's identity.*
- 6) *The perpetrators as referred to in paragraphs (2) to (4) may be subject to action in the form of rehabilitation and installation of electronic detection devices.*

7) *The actions referred to in paragraph (6) are decided together with the main criminal penalty, including the time period for carrying out the action.*

c. Sexual abuse of children according to the Human Trafficking Act

In Law Number 21 of 2007 concerning the Eradication of Criminal Acts

Criminal human trafficking, sexual abuse of children, is categorized as exploitation of children for sexual purposes, which is regulated in several articles, namely:

Article 2 paragraph (1)

*Any person who recruits, transports, shelters, sends, transfers or receives a person by means of threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payment or benefits even with the consent of a person who has control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).*

Article 3

*Any person who brings people into the territory of the Republic of Indonesia with the intention of exploiting them in the territory of the Republic of Indonesia or exploiting them in another country shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).*

Article 4

*Any person who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention of exploiting him/her outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).*

Article 7

- 1) *If the criminal act as referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the victim suffering serious injury, serious mental disorders, other life-threatening infectious diseases, pregnancy, or disruption or loss of reproductive function, then the criminal threat is increased by 1/3 (one third) of the criminal threat in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6.*
- 2) *If the criminal act as referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the death of the victim, the perpetrator shall be punished with a minimum of 5 (five) years' imprisonment and a maximum of life imprisonment and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah).*

#### Article 12

*Any person who uses or takes advantage of a victim of a crime of human trafficking by having sexual intercourse or other indecent acts with a victim of a crime of human trafficking, employs a victim of a crime of human trafficking to continue the practice of exploitation, or takes advantage of the proceeds of a crime of human trafficking shall be punished with the same punishment as referred to in Article 2, Article 3, Article 4, Article 5, and Article 6.*

#### Article 17

*If the criminal acts as referred to in Article 2, Article 3, and Article 4 are committed against a child, the criminal penalty shall be increased by 1/3 (one third).*

#### d. Sexual Harassment According to Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence

##### Article 6 letter c

*Any person who abuses his position, authority, trust or influence arising from deceit or a relationship of circumstances or takes advantage of a person's vulnerability, inequality or dependency, forces or by misleading that person to commit or allow sexual intercourse or indecent acts to be committed with him or with another person, shall be punished with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).*

##### Article 10 paragraph (1)

*Any person who unlawfully forces, places a person under his or another person's control, or abuses his or her power to enter into or allow a marriage to be entered into with him or another person, shall be punished for forced marriage, with a maximum prison sentence of 9 (nine) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).*

#### Article 12

*Any person who uses violence or threats of violence or abuses position, authority, trust, influence arising from deception or relationships, circumstances, vulnerability, inequality, helplessness, dependency of a person, debt trapping or giving payment or benefits with the intention of gaining profit, or exploiting the sexual organs or other organs of that person aimed at sexual desire with him or with another person, shall be punished for sexual exploitation, with a maximum prison sentence of 15 (fifteen) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).*

#### Article 13

*Any person who unlawfully places a person under his or her power or that of another person and makes him or her helpless with the intention of exploiting him or her sexually shall be punished for sexual slavery, with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).*

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence also adds a penalty of 1/3 of the principal crime for acts of recording and/or taking pictures or screenshots of sexual content, transmitting electronic information and/or electronic documents of sexual content, stalking and/or tracking using an electronic system against people who are the

objects of electronic information/documents for sexual purposes as regulated in Articles 14 and 15.

Then this law also regulates criminal acts of sexual violence committed by corporations as regulated in Article 18 which states that Corporations that commit Criminal Acts of Sexual Violence as regulated in this Law shall be punished with a fine of at least IDR 5,000,000,000.00 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah).

Article 19 regulates other criminal acts related to sexual violence crimes, which states:

*Any person who intentionally prevents, obstructs or thwarts, directly or indirectly, the investigation, prosecution and/or examination in court of a suspect, defendant or witness in a case of sexual violence crime, shall be punished with a maximum imprisonment of 5 (five) years..*

## **2. Comparison Law Number 35 of 2014 concerning Child Protection and Aceh Qanun Number 6 of 2014 concerning Criminal Offenses Against Crime of Sexual Abuse Against Children**

Criminal acts or commonly referred to as jarimah, based on Aceh Qanun Number 6 of 2014 concerning Jinayat Law Chapter 1, what is meant by Jarimah is an act that is prohibited by Islamic Law which in this Qanun is threatened with 'Uqubat Hudud and/or Ta'zir. The fuqaha often use the word jinayat to mean jarimah. The word jinayat is a verbal noun form (masdar) of the word jana. Etymologically, the word jana is committing a sin or wrong, while jinayat is interpreted as a sinful act or wrongdoing.<sup>28</sup>

In Aceh Qanun Number 6 of 2014 concerning Jinayah, there are strict regulations regarding the criminal act of Sexual Harassment Against Children as regulated in Article 47 which states:

*Any person who intentionally commits the crime of sexual harassment as referred to in Article 46 against a child, shall be subject to 'Uqubat Ta'zir' of a maximum of 90 (ninety) lashes or a maximum fine of 900 (nine hundred) grams of pure gold or a maximum imprisonment of 90 (ninety) months.*

The following is a comparative compilation between Law Number 35 of 2014 concerning Child Protection and Aceh Qanun Number 6 of 2014 concerning Criminal Acts of Sexual Harassment Against Children as follows:

### **a. Definition of child**

There is no significant difference in the definition of a child, both in Law Number 35 of 2014 concerning Child Protection and in Aceh Qanun Number 6 of 2014 concerning Jinayah. Both of these laws and regulations limit the age of a person who is categorized as a child to 18 years, in Aceh Qanun it is emphasized with the provision that they are not

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<sup>28</sup>Tama Neisanti. "Comparative Study of Criminal Sanctions for Perpetrators of Sexual Harassment of Minors in Positive Law and Qanun Jinayat Law in Aceh". Faculty of Sharia Islamic Law, Raden Mas Said State Islamic University, Surakarta, 2022, page 35



married and in the child protection law it is emphasized including those who are still in the womb.

b. Definition of Sexual Harassment

Law Number 35 of 2014 concerning Child Protection does not provide a specific definition of sexual harassment but is categorized as indecent acts and forced sexual acts, while in Aceh Qanun Number 6 of 2014 concerning Jinayah, sexual harassment is specifically defined as regulated in Article 1 which states that Sexual Harassment is an immoral act or indecent act that is intentionally carried out by someone in public or against another person as a victim, either male or female, without the victim's consent.

c. Length of Criminal Sentence

In Law Number 35 of 2014 concerning Child Protection, the criminal sanctions for perpetrators of sexual harassment against children are a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah), while in Aceh Qanun Number 6 of 2014 concerning Jinayah Uqubat Ta'zir, the maximum is 90 (ninety) lashes or a maximum fine of 900 (nine hundred) grams of pure gold or a maximum imprisonment of 90 (ninety) months.

d. Form of Fine

Law Law Law Number 35 of 2014 concerning Child Protection applies money as a benchmark for fines with a maximum value of Rp5,000,000,000.00 (five billion rupiah) while in the Aceh Qanun Gold as a benchmark for the value of a fine is a maximum of 900 (nine hundred) grams of pure gold. The value of money will continue to experience depreciation due to inflation but the value of gold will continue to experience value

e. Forms of physical punishment

In Law Number 35 of 2014 concerning Child Protection, physical punishment in the form of imprisonment is applied, namely the restriction of physical freedom, while in Aceh Qanun Number 6 of 2014 concerning Jinayah, caning is applied as a physical punishment.

e. 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 property, or reimbursement of costs for certain actions. Both in Law Law Number 35 of 2014 concerning Child Protection and in Aceh Qanun Number 6 of 2014 concerning Jinayah both allow requests for restitution, but in Law Number 35 of 2014 concerning Child Protection the amount of restitution is not regulated, while in Aceh Qanun Number 6 of 2014 concerning Jinayah the amount of restitution is regulated at a maximum of 750 (seven hundred and fifty) grams of pure gold.

## CONCLUSION

In the perspective of the positive legal system in Indonesia, qanun is part of the legal system in Indonesia. According to Law Number 12 of 2011, the position of the Aceh Jinayat Qanun is in sixth position, equivalent to the Provincial Regulation. This means that the Aceh Jinayat Qanun is on the same level as Perda in other regions.

In the application of criminal law based on the Aceh Qanun against perpetrators of sexual harassment against children, it does not conflict with positive law, especially Law Number 35 of 2014 concerning Child Protection. In positive law, the reference for the amount of the fine is based on the amount of currency, while in the Qanun the amount of the fine is based on the value of gold.

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