

Restorative Justice in the Criminal Act of Rape (Analysis of the KUHP & *Qanun Jinayat*)

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Abstract. *The crime of rape is one of the serious violations of human rights that requires effective and fair legal handling. In Indonesia, the crime of rape is regulated in the Criminal Code (KUHP) which applies nationally, as well as the Qanun Jinayat in Aceh, as an implementation of Islamic law. This study aims to analyze existing regulations related to the crime of rape in Indonesia, and to explore the potential for the application of restorative justice in handling rape cases. This study uses a qualitative method with a descriptive approach, where the researcher acts as the main instrument in collecting and analyzing data. This approach aims to explore more deeply the differences in regulations between the Criminal Code and Qanun Jinayat, and to assess their impact on the legal process and the welfare of victims. The results of the study indicate that although both regulations are firm in providing sanctions for perpetrators of rape, there are still weaknesses in protecting victims, especially in terms of mental and social recovery. Therefore, the application of restorative justice is considered important to involve victims and perpetrators in a more humane resolution process, with the aim of restoring social balance and providing opportunities for victims to recover. This study concludes that there needs to be a reform in the justice system that pays more attention to aspects of justice for victims, by combining legal sanctions and a restorative approach.*

Keywords: *Jinayat; Rape; Restorative; Qanun.*

1. Introduction

Rape is a form of sexual crime committed by an individual or group of individuals against the victim without consent, with clear and deliberate intent. This act not only causes physical impacts, but also leaves serious psychological and emotional wounds for the victim. (Aulia & Afifah, 2019). In reality, rape cases continue to increase and often involve a variety of methods, ranging from simple to very complex. In fact, in some cases, rape is accompanied by cruel acts such as physical torture, which can lead to death or mutilation of the victim. This crime attracts attention because it involves sexual crime

behavior aimed at satisfying sexual desires that are not in accordance with applicable legal and moral norms. Rape victims often face double losses. In addition to having to undergo medical treatment to treat physical injuries, they also have to bear the costs of transportation, medicine, and other treatments.(Al Hikmah et al., 2023). In the investigation process, the victim's human rights are often ignored. Victims often face insensitive and harsh examinations, without the assistance of competent medical personnel. This often results in relatively light sentences for the perpetrators, which are not commensurate with the suffering experienced by the victim. The regulation of sanctions for perpetrators of rape in the criminal justice system is still influenced by various factors, such as the government system, economy, and politics. Article 285 of the Criminal Code (KUHP) is the legal basis for this crime, with a maximum prison sentence of twelve years. However, the impact of rape is much greater than just a prison sentence. The victim not only experiences sadistic treatment, but also loses self-confidence and feels that her honor has been violated.

Indonesia, as a country consisting of various ethnicities, religions, and customs, has a legal system that reflects this diversity. The principle of *Bhinneka Tunggal Ika* is the basis for respecting differences in unity. Since independence, Indonesia has developed a national legal system that accommodates various customary traditions.(Harahap et al., 2024). Customary law, as an unwritten rule of conduct, remains recognized as long as it does not conflict with positive law. The Indonesian legal system itself refers to the European Continental or Civil Law system, which is still valid according to Article 1 of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia (UUDNRI). However, in practice, there is still tension between customary law and positive law, especially when both have differences in assessing an action. Rape can be committed by individuals or groups, and the perpetrators can be punished under Article 55 paragraph (1) of the Criminal Code, which states that perpetrators who commit rape together will be sentenced to prison. However, in some cases, the perpetrators may not realize that their actions constitute a criminal offense, which causes the law to fail to ensnare them. Judges, as law enforcers, are expected to be able to make decisions based on the law and social justice, both from positive law and customary law.(Dewanto, 2020). However, there are still judges who tend to adhere to the positivist view, which only considers law as written provisions in the law. In fact, customary law as unwritten law also has an important role in society.

The difference between the understanding of customary law and positive law often creates gaps in the judicial system.(Hutabarat et al., 2024). For example, an act that is considered normal based on customary law may be considered a violation of positive law and must be subject to criminal sanctions. This situation shows the need to bridge the gap between the two legal systems, so that justice can be upheld by considering the cultural and traditional aspects that exist in society. The law will be upheld properly if it reflects the values of justice that apply in society. If legal reform is unable to ensure justice, the legal system will experience a decline in prevention and law enforcement efforts. For an act to be considered a crime, the act must fulfill the elements regulated by law, both formally and materially, in accordance with the principle of legality. This principle states that no act can be punished except based on previously regulated criminal provisions. The Criminal Code distinguishes criminal acts into two forms, namely crimes (*misdrifven*) and violations (*overtredingen*)(Pura, 2023). Rape is included in the category of crimes because it meets the elements regulated in the laws and regulations. However, the understanding of the crime of rape is more widely known in the context of

culture and society, although in the Criminal Code the term used is "threatened because of rape."

Rape victims can be individuals or groups, both living and deceased. There is an argument that rape should be considered a crime rather than a violation, because criminal law functions to protect, guarantee a sense of justice, and provide legal certainty for society. The problem of victims of crime, including rape, raises various problems in society, especially for victims and their families. If there is no adequate attention and service, this can indicate injustice and lack of welfare development in society.(Nasution, 2024). Victims must receive attention to their needs, and perpetrators must be held accountable for their actions. Women and children are often considered vulnerable to various forms of crime, including rape. Factors such as economic, family, and environmental factors can cause them to be trapped in crime. Therefore, protection and support for this vulnerable group are very important in prevention and law enforcement efforts. However, in reality, women and children are often victims of crime, and handling their cases is often difficult because the crimes occur within the family environment or involve people close to them. This makes victims reluctant or afraid to report the crimes that befell them.

Cases of sexual violence, including rape, have seen a worrying increase in recent years.(Nasution, 2024). The perpetrators use various modes of operation, from casual approaches to coercion, even utilizing technology such as social media to ensnare victims. Some cases occur in environments that should be safe, such as households, educational institutions, and social communities. Rape is a very cruel and inhumane crime, with serious and long-term impacts on victims.(Hasibuan & Harahap, 2022a). Victim satisfaction cannot be achieved simply by punishing the perpetrator with a prison sentence that is often too light. There needs to be additional punishment, such as fines and material compensation, to provide more complete justice for the victim. Article 27 paragraph (1) of the 1945 UUDNRI states that everyone has the same position in the eyes of the law. However, in practice, women are often victims of discrimination, including in cases of rape. Feminist Legal Theory emerged in the 1970s to examine how the law affects women and how discrimination against women can be corrected through the law.(Azizah, 2021). Sexual violence reflects the unequal position of women in sexual relations with men, and should be considered a violation of human rights.

Mahfud MD offers a restorative justice approach as a solution to achieve harmony in society.(Amin, 2024). This approach, which has long been applied by indigenous communities, emphasizes reconciliation and restoration of relationships between victims, perpetrators, and the community. However, this approach has drawn criticism from various groups, such as the Institute for Criminal Justice Reform (ICJR) and the National Commission on Violence Against Women, who argue that this approach may not provide sufficient protection for victims, especially in cases of rape. They emphasize the importance of considering victims' rights and avoiding a culture of impunity for perpetrators of sexual violence. The legal gap in protecting rape victims is also a serious concern. Although laws on witness and victim protection have been in place, there are still shortcomings in the regulation of norms governing legal protection for rape victims. This needs to be remedied by establishing provisions on victims' rights and the state's obligation to provide compensation if the perpetrator is unable to pay compensation. These steps aim to ensure that victims receive adequate protection and that law enforcement reflects the principles of justice and equality.

Studies on the crime of rape from the perspective of Indonesian criminal law, especially in the Criminal Code and Aceh *Qanun Jinayat*, are still limited, although this topic has been widely studied. The problem of sexual violence against women is a global issue, but victims often do not involve law enforcement agencies because of stigma and community judgment. This causes victims, especially women and children, to often hide their suffering. Several studies related to this theme include, Azman Mohd Noor in his article "Rape: A Problem of Crime Classification in Islamic Law" explains that in Islamic law, rape is considered a serious crime whether it occurs with violence or without violence. Dewi Nivitrianti in her thesis "Indonesian Law and Policy on Rape" examines access to justice for rape victims in West Java and Lombok, finding that there is protection for victims in the legal process. Natangsa Surbakti in the journal "*Penegakan Hukum Pidana Islam di Aceh*" discusses the enforcement of Islamic criminal law in Aceh and the obstacles that exist in the sharia justice system, which reduces the jurisdiction of civil courts. Chairul Fahmi in "Revitalization of the Implementation of Sharia Law in Aceh" examines the implementation of Islamic law in Aceh, which is not yet fully effective because there are still many violations. Abdul Gani Isa in his dissertation "Formalization of Islamic Law in Aceh" expressed support for the implementation of fiqh in positive law as reflected in the Aceh *Qanun*.

This study aims to propose a restorative justice approach in regulating the crime of rape in the Criminal Code and *Qanun Jinayat*, with the aim of providing punishment that focuses on learning and changing the perpetrator's behavior as well as compensation for the victim.

2. Research Methods

This study uses a qualitative design with the researcher as the main instrument, because the problems are casuistic in nature and cannot be applied to other research.(Djulaeka & Devi Rahayu, 2020). A descriptive approach is used to describe and explain restorative justice in preventing rape crimes, especially in the analysis of the Criminal Code and *Qanun Jinayat*. Data were collected through two main methods, namely library research and field research.(Muhaimin, 2020). Document study is used to collect secondary data from various related literature, with content analysis techniques to systematically analyze writings and documents. In addition, interviews were conducted with related sources to deepen understanding of legal regulations and law enforcement practices. Data analysis was conducted through a sociological and legal approach to understand the social and humanitarian impacts and legal aspects of the crime of rape. Synchronization of laws and regulations with interviews with sources was used to understand the application of the law in practice. Qualitative and deductive analysis was conducted to test the material truth of the case, as well as to explore understanding of non-legal aspects related to the problem of rape. With this approach, this study aims to provide a comprehensive understanding of the crime of rape, applicable legal regulations, and its impact on society and victims of crime.

3. Results and Discussion

3.1. Implementation of the Restorative Justice Approach as a Basis for Judges' Considerations in Resolving Rape Crimes

Law has a fundamental function as a protector of human interests, encompassing basic individual and collective rights, and ensuring the continuation of harmonious community life.(Hasibuan & Harahap, 2022b). To realize this function, the implementation of the law must be carried out professionally, transparently, and accountably. Professionalism in law enforcement is an absolute requirement for the legal process to run smoothly, without interference from subjective interests that ignore the principle of justice. This ensures that the law is not only a normative instrument, but also a guardian of the rights and obligations of all parties involved.

Indonesia, as a country of law, affirms this principle in Article 1 Paragraph 3 of the 1945 Constitution, which states that "The State of Indonesia is a country of law." All forms of implementation of state power, whether by legislative, executive, or judicial institutions, must be based on law. The existence of law is not merely a formality, but a guideline for every policy and action of the state apparatus. Policies implemented must be subject to legal principles to provide equal justice and ensure that no party is unfairly advantaged or disadvantaged.

Restorative justice is one of the approaches regulated in various laws and regulations in Indonesia. Law No. 48 of 2009 concerning Judicial Power and Law No. 3 of 2009 concerning the Supreme Court regulate the principles of restorative justice in the judicial system. The Supreme Court, as the highest judicial body, is expected to adopt and implement this approach. Restorative justice offers a different perspective from the traditional approach, focusing on victim recovery, perpetrator responsibility, and repairing social relationships damaged by crime.(Wagiu et al., 2022).

In the context of rape, the restorative justice approach emphasizes the restoration of victims' rights, perpetrator accountability, community involvement, reducing the effects of formal court trauma, preventing recurrence of crimes, and solution-focused justice. Restoration of victims' rights includes psychological, emotional, and social recovery. Victims are given space to be heard and their suffering acknowledged, and receive compensation and psychosocial support. This approach also allows for dialogue between victims and perpetrators, which can help victims restore their sense of security and dignity.(Consistency, 2018). The perpetrator's accountability in restorative justice is not only limited to criminal punishment, but also involves admitting guilt, apologizing, and participating in the recovery process. The perpetrator is encouraged to understand the impact of his actions and participate in rehabilitation programs. This aims to reduce the risk of recidivism (repeating crimes) by building awareness and moral responsibility of the perpetrator. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System regulates the principle of diversion, namely the transfer of the settlement of children's cases from the criminal justice process to outside the courts, as part of the restorative justice approach.

Community involvement is also an important aspect in restorative justice. The community not only plays a role as an observer, but also as a supporter of victims and perpetrators in the recovery process. The community can provide psychosocial support to victims and help perpetrators reintegrate into the community. In addition, the community also plays a role in preventing sexual violence through education and awareness programs. Article 27 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) emphasizes the importance of community participation in preventing and handling sexual violence.

The formal criminal justice system often causes secondary trauma for victims, especially in cases of rape. Formal and intimidating court processes can prolong the suffering of victims. Restorative justice offers a more trauma-friendly alternative, by allowing victims to participate in a more dialogic and supportive process. This approach reduces the psychological distress of victims and provides space for more holistic recovery. Article 183 of the Criminal Procedure Code (KUHAP) states that the judge's conviction in passing a sentence must be based on valid evidence and convictions formed during the trial. In the context of restorative justice, the involvement of perpetrators in the dialogue process and their willingness to take responsibility can be considered as evidence that shows the perpetrator's good faith and remorse.(Panjaitan & Harahap, 2023).

Preventing recurrence of crime is the main goal in criminal law enforcement. Traditional approaches that focus on punishment often fail to achieve long-term prevention because they do not include the aspect of rehabilitation. Restorative justice offers a more comprehensive solution by involving perpetrators in rehabilitation programs and dialogue with victims. This is expected to reduce the risk of recidivism by building awareness and responsibility of perpetrators. Article 5 of Law No. 48 of 2009 concerning Judicial Power requires judges to explore and consider the legal values and sense of justice that live in society. The restorative approach reflects the spirit of Indonesian society that upholds the values of recovery, peace, and reconciliation(Wagiu et al., 2022).

Solution-focused justice is at the heart of restorative justice.(Panjaitan & Harahap, 2023). This approach does not only look at punishing the perpetrator, but also at ways to repair the damage that has been done. Judges can consider decisions that lead to long-term solutions, such as rehabilitation programs, counseling, and social support for victims. This approach creates a model of justice that not only punishes, but also heals and repairs. Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence introduces strict rules regarding the resolution of sexual violence cases, including a prohibition on settlement outside the judicial process except for child perpetrators. This shows that restorative justice does not apply to adult perpetrators in cases of sexual violence, but is still applied to child perpetrators in accordance with the principle of diversion in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Although restorative justice offers many benefits, its application in rape cases requires caution. Not all victims are ready or comfortable to engage in mediation or dialogue with the perpetrator. Therefore, this approach must be carried out voluntarily and with consideration for the victim's psychological well-being. Judges need to ensure that all parties involved receive adequate support, both emotionally, psychologically, and legally.

Overall, restorative justice offers a more humane and solution-oriented approach to handling rape crimes. This approach allows for the creation of justice that not only punishes the perpetrator, but also restores the victim and repairs the social damage caused. However, its implementation requires a clear regulatory framework, special training for mediators, and a commitment to ensuring that the rights and safety of victims remain a top priority. Thus, restorative justice can be an effective alternative in creating more holistic and sustainable justice, in line with the principles of law and the values of justice that live in Indonesia.

3.2. The Restorative Justice Approach is Used to Provide Legal Protection in the Form of Compensation to Victims of Rape Crimes

Law enforcement in Indonesia cannot be separated from Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP). KUHAP acts as a normative basis in the criminal justice system, regulating the procedures that must be followed by law enforcement officers, such as the police, prosecutors, and judiciary, in handling criminal acts, from investigations to the implementation of court decisions.(Yahya Harahap, 2000). Law enforcement in Indonesia is often associated with the imposition of criminal sanctions on lawbreakers, which is a form of law enforcement in a criminal context. The concept of law enforcement in the narrow sense emphasizes the imposition of punishment on perpetrators of crimes. In criminal law theory, as expressed by Sauer, there are three main elements that underlie criminal law enforcement, namely unlawfulness, culpability, and punishment. These three elements are interrelated in determining whether an action can be categorized as a crime and the form of sanction that must be imposed.

However, in addition to the conventional retributive approach, a more progressive approach that is oriented towards the interests of victims has also developed, namely restorative justice. Restorative justice offers a new paradigm in law enforcement, where the emphasis is not solely on punishing the perpetrator, but also on efforts to restore the victim's condition and repair the losses caused by the crime. This approach involves all parties affected by the crime, including the perpetrator, victim, and community, in a more comprehensive and sustainable resolution process. In the context of rape, the restorative justice approach can provide more significant legal protection for victims. Rape cases, as crimes that are very detrimental both physically, psychologically, and socially, require comprehensive recovery efforts for victims. This approach allows victims to receive adequate compensation for the losses experienced, in addition to rehabilitation efforts and psychological support needed to overcome post-incident trauma.(Panjaitan & Harahap, 2023).

The application of restorative justice does not mean ignoring the aspect of giving punishment to the perpetrator. The perpetrator must still be held accountable for his actions before the law, but this approach opens up space for the process of social reintegration for the perpetrator after serving his sentence. Thus, restorative justice seeks to create a balance between victim recovery, imposing sanctions on the perpetrator, and restoring social harmony that has been disrupted due to the crime. Although the Criminal Procedure Code provides formal guidelines regarding law enforcement procedures, the application of restorative justice can be integrated as an approach that complements the existing justice system. Law enforcement that focuses solely on the retributive aspect, such as imposing punishment on the perpetrator, is often considered insufficient to provide a sense of justice for the victim. Therefore, the implementation of the principles of restorative justice, especially in cases involving victims with complex losses such as rape, can provide more holistic and fair legal protection.(Al Hikmah et al., 2023).

Restorative justice is a legal approach that focuses on restoring and repairing relationships between victims, perpetrators, and society as a whole.(Maulana & Agusta, 2021). In this concept, the emphasis is placed on the restoration of losses experienced by the victim and the responsibility that must be borne by the perpetrator to repair the damage that has occurred. In contrast to the retributive legal approach which tends to focus on punishing the perpetrator, restorative justice aims to create a more comprehensive and inclusive solution, with the hope that all affected parties can be involved in a more meaningful and sustainable resolution process.(Agastya, 2024). In

the context of serious crimes such as rape, the implementation of restorative justice presents a complex challenge but is still considered relevant in an effort to provide justice that is more oriented to the needs of victims. Rape is a crime that leaves deep physical and psychological wounds for victims, as well as having a significant social impact. The restorative approach in rape cases does not only focus on punishing the perpetrator, but also on how to provide full recognition of the suffering experienced by the victim and efforts to restore their dignity.

One of the key elements of restorative justice in rape cases is compensation. Compensation in this case is not only seen as a material form, but also as an acknowledgement of the victim's suffering and the restoration of the dignity that has been taken away. This form of compensation can be in the form of direct restitution from the perpetrator to the victim, which reflects the perpetrator's personal responsibility to repair the harm caused.(Nugraha, 2023). However, often in serious cases such as rape, the perpetrator may not have the ability to provide adequate restitution. In such situations, the state can take a role by providing compensation to the victim, which aims to cover the gap in the perpetrator's ability to fulfill his obligations. Compensation from the state also confirms the state's responsibility to protect and restore victims of serious crimes such as rape. In addition, the restorative justice process is not only limited to fulfilling material aspects, but also includes a process of dialogue and reconciliation between the victim and the perpetrator, involving the community as a third party. Through this process, victims have the opportunity to express their suffering directly to the perpetrator, and the perpetrator is given space to admit their mistakes and take responsibility for their actions.(Panjaitan & Harahap, 2023).

The development of the criminal justice system in Indonesia is not only oriented towards the interests of perpetrators of crimes, but also pays attention to the rights and interests of victims.(Arief, 1996). In an ideal justice system, protection of victims is an integral part of the legal process. One form of this protection is realized in the provision of restitution and compensation to victims of certain crimes. Restitution is compensation given by the perpetrator or the state to the victim, while compensation can come from the state if the perpetrator is unable to pay restitution.(Agustini et al., 2021). Although the Law has regulated the rights of victims to protection, restitution, and compensation, previously there were no clear regulations regarding the technicalities of resolving applications to obtain these rights. To address this problem, the Supreme Court (MA) issued Supreme Court Regulation (Perma) Number 1 of 2022 concerning Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Criminal Acts. This Perma provides clarity regarding the procedures that must be followed by victims in submitting applications for restitution and compensation, including the court's procedures in resolving these applications.

Law enforcement is basically an effort to realize three basic principles of law, namely legal certainty, social benefits, and justice. Legal certainty means that the law must be applied consistently and predictably, so as to provide a sense of security for the community.(Hernawati & Suroso, 2020). Social utility emphasizes that the law must provide benefits to the wider community, especially in protecting the rights of individuals and groups. Meanwhile, justice means that the law must be enforced fairly and equally for everyone, regardless of social status, economic status, or other backgrounds. The law enforcement process does not only involve law enforcement officers such as the police, prosecutors, and judges, but also the wider community, including victims and

perpetrators of crimes. Good law enforcement is one that is able to balance the interests of all parties, including ensuring that the rights of victims of crimes are respected and protected.

Although Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking and Law No. 26 of 2000 concerning Human Rights Courts have contained provisions regarding restitution or compensation, their implementation has not been optimal to date. The low number of restitution applications received by the Witness and Victim Protection Agency (LPSK) shows that the mechanisms regulated in the law have not fully provided effective access to victims to obtain their rights.(Napitupulu, 2014). In addition, the lack of harmonization and synchronization between various laws containing provisions on restitution and compensation is also an obstacle. Because the provisions on restitution are spread across various laws, there is no standard and uniform procedure that makes it easier for victims to file claims. As a result, victims often experience confusion and difficulty in accessing their rights.

The presence of Supreme Court Regulation (Perma) Number 1 of 2022 concerning Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts can be an initial step to overcome this problem. With clearer regulations regarding the procedures for submitting restitution, it is hoped that victims of criminal acts can more easily obtain their rights. However, the success of the implementation of this Perma is highly dependent on how law enforcement officers, from the police to judges, implement these regulations in every case involving victims of criminal acts. Protection of victims' rights in the criminal justice process, especially through the restitution and compensation mechanisms, is a form of justice that not only focuses on punishing the perpetrator, but also on the recovery of the victim. In order for this goal to be achieved, all elements in the legal system need to work together to ensure that victims' rights are truly respected and protected, so that they receive complete justice.(Agustini et al., 2021).

3.3. Regulations Concerning the Criminal Act of Rape Are Regulated in the Criminal Code and *Qanun Jinayat* in the Context of the Criminal Justice System in Indonesia

The crime of rape is one of the most serious forms of crime in Indonesian criminal law, regulated through two different but complementary legal instruments, namely the Criminal Code (KUHP) and the *Qanun Jinayat* in Aceh.(Amsori, 2022). The Criminal Code, as a secular national criminal law, prioritizes the principles of rehabilitation and prevention, while the *Qanun Jinayat*, which is based on Islamic sharia, emphasizes heavier punishments with the aim of upholding public morality and providing a deterrent effect.(Yahya et al., 2024). These differences in approach reflect the philosophical differences between general criminal law and Islamic criminal law, but both aim to protect victims and uphold justice.

In the context of theory, Sutan Remy Sjahdeini explains that theory is a set of propositions that explain systematic relationships in a deductive network, which outlines problems and their interpretations.(Sutan Remy Sjahdeini, 2016). Theory has theoretical and practical benefits. Theoretically, theory is used to analyze and explore research, while practically, theory becomes the basis for studying social phenomena. According to Soerjono Soekanto, theory has five uses, including as an analytical tool, covering gaps

in knowledge, and providing direction in research.(Soekanto, 2004). Paul Edward added that theory is a basic assumption to prove scientific research, which also provides estimates for the future.

In this study, the theory used is "Justice, Maqashid Al-Syari'ah, and analysis of the fall of criminal law determined by the judge." Justice, as a derivative of the word "fair," means not biased and siding with the truth. John Rawls put forward the principle of justice as fairness, which includes individual freedom and social equality. Justice in criminal law aims to create a balance between the interests of victims, perpetrators, and society.(Djamaludin & Arrasyid, 2024). Maqashid Al-Syari'ah, as the goal of sharia, aims to protect religion, soul, mind, descendants, and property. This concept is relevant in analyzing whether positive criminal law, as regulated in the Criminal Code and *Qanun Jinayat*, has provided benefits for society.(Jauhar, 2009).

In the context of rape, restorative justice offers a more holistic approach, not only focusing on punishing the perpetrator, but also on victim recovery and social harmony. This approach involves the victim, the perpetrator, and the community in the resolution process, with the aim of restoring the losses experienced by the victim and giving the perpetrator responsibility to repair the damage that has occurred. Restorative justice also emphasizes the importance of compensation, both material and non-material, as a form of recognition of the victim's suffering.(Al Hikmah et al., 2023).

The normative legal basis for the crime of rape in Indonesia is regulated in Law No. 23 of 2002 concerning Child Protection, which was later revised to Law No. 35 of 2014. Article 20 of the Child Protection Law stipulates that the state, government, society, family, and parents are responsible for protecting children. In the Criminal Code, the crime of rape is regulated in Article 285, with a maximum prison sentence of 12 years. However, in cases of rape of minors, the sentence can be increased to 15 years in prison based on Law No. 17 of 2016. The *Qanun Jinayat* in Aceh regulates heavier penalties, such as caning and fines, for perpetrators of rape, with more specific provisions based on the relationship between the victim and the perpetrator. The empirical legal basis for the crime of rape is also supported by Law No. 35 of 2014, which defines a child as someone who is not yet 18 years old. In the Civil Code, Article 330 states that a person is considered a minor if he has not reached the age of 21 or is not married. This difference in definition shows the complexity in handling rape cases, especially when the victim is a minor.

In Islamic law, the crime of rape is considered a serious crime that violates human rights. Sayyid Sabiq and Al-Jauzairi refer to rape as "الوطع بالاكراه" or "الزناء بالاكراه," which means forced intercourse.(Agustini et al., 2021). The punishment for rape in Islamic law can be the death penalty, flogging, or a fine, depending on the severity of the crime and the relationship between the victim and the perpetrator. The *Qanun Jinayat* in Aceh adopts this principle by implementing flogging and a fine for rape perpetrators, as regulated in Articles 48, 49, and 50 of *Qanun* Number 6 of 2014.

The aspect of *uqubah* (punishment) in *Qanun Jinayat* reflects the principles of justice and legal certainty. Caning and fines are applied to provide a deterrent effect and restore justice to the victim. However, the implementation of this punishment must take into account the social and economic conditions of the perpetrator, as well as the psychological impact on the victim. Legality Protection Theory emphasizes the

importance of legal protection for children, both in the national and international contexts. Children as the next generation of the nation must be protected from violence and exploitation, by providing the opportunity to grow and develop optimally. Law enforcement against rape in Indonesia requires integration between national criminal law (KUHP) and sharia law (*Qanun Jinayat*) (Hadi, 2022). The restorative justice approach can be a solution to create a balance between victim recovery, imposing sanctions on perpetrators, and restoring social harmony. Law No. 35 of 2014 concerning Child Protection and *Qanun Jinayat* Number 6 of 2014 provide a strong legal basis to protect victims and uphold justice. However, the implementation of this law must be supported by a deep understanding from law enforcement officers and the community, as well as a commitment to provide holistic protection for victims of rape.

4. Conclusion

The application of the restorative justice approach in rape cases aims to improve the relationship between the perpetrator and the victim, with a focus on the victim's recovery through broader legal protection, including compensation. This approach is different from the retributive approach which emphasizes punishment, because restorative justice also considers efforts to restore the victim's psychological and welfare. In the Indonesian legal system, the crime of rape is regulated in the Criminal Code nationally and the *Qanun Jinayat* in Aceh, with both describing differences in the handling of rape cases that can affect the outcome of the legal process. Although existing regulations already provide sanctions for perpetrators, more attention should be paid to fulfilling the rights of victims through a more comprehensive approach such as restorative justice.

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