



Restitution to Victims of Rape Crimes: Examination of Judicial Decision Number 06/JN/2019/MS.Lsm

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Abstract: *Recompense for victims of rape is governed by Article 51 of the Aceh Jinayat Law, which underscores the victim's entitlement to request recompense. In reality, judges do not impose restitution punishments on all rape cases, as the victims of rape do not submit a restitution request. This results from a deficiency in comprehension concerning the procedure for seeking recompense for the victim's incurred losses. This study examines the provision of recompense for rape victims through the lens of Islamic criminal law, specifically concerning the nature and status of reparation. This paper is a normative legal analysis. Data acquisition was performed via library research. The research findings indicate that the restitution mechanism within the Qanun Jinayat is inadequately detailed, resulting in numerous rape victims being unable to seek restitution. Consequently, judges cannot impose restitution penalties without such requests from the victims. In Islamic criminal law, reparation holds an equivalent status to diyat. The method for restitution in Islam does not necessitate a request; instead, the judge explicitly determines that the culprit is obligated to pay diyat to the victim of rape for their crimes. Consequently, the government should establish an institution to provide restitution to rape victims if the perpetrator is unable to pay restitution, as the provision of restitution is contingent upon the financial capability of the perpetrator. Furthermore, standards should be established to determine the minimum reparation that the offender must provide to the rape victim, ensuring that the restitution aligns with the losses incurred by the victim.*

Keywords: Restitution, Rape Victims, Aceh Jinayat Law

Abstrak: Restitusi bagi korban *jarimah* pemerkosaan diatur dalam Qanun Jinayat Aceh Pasal 51 yang menegaskan adanya permintaan korban terhadap hukuman *uqubat* restitusi. Pada kenyataannya, tidak semua perkara pemerkosaan diputuskan *uqubat* restitusi oleh majelis hakim, karena korban pemerkosaan tidak mengajukan permintaan restitusi. Hal itu disebabkan oleh minimnya pemahaman terkait proses pengajuan restitusi atas kerugian yang dialami korban. Penelitian ini fokus pada pemberian restitusi bagi korban pemerkosaan dalam perspektif hukum pidana Islam terhadap bentuk dan kedudukan restitusi. Penelitian ini merupakan penelitian yuridis normatif. Pengumpulan data dilakukan melalui literatur kepustakaan (*library research*). Hasil penelitian menunjukkan bahwa mekanisme pemberian restitusi dalam Qanun Jinayat belum dijelaskan secara rinci sehingga para korban pemerkosaan masih banyak yang tidak bisa meminta restitusi karena kurangnya penjelasan dan majelis hakim pun tidak dapat menjatuhkan *uqubat* restitusi jika tidak ada pengajuan permintaan restitusi dari korban. Dalam hukum pidana Islam kedudukan restitusi sama dengan *diyāt*. Mekanisme dalam pemberian restitusi dalam Islam tidak memerlukan pengajuan permintaan restitusi, namun hakim langsung memutuskan bahwa wajib bagi pelaku membayar *diyāt* kepada korban pemerkosaan atas perbuatannya. Oleh karena itu pemberian restitusi yang bergantung pada finansial pelaku, seharusnya pemerintah menyediakan suatu lembaga sebagai wadah untuk pemberian restitusi kepada korban pemerkosaan jika pelaku tidak mampu membayar restitusi serta dibuatkan regulasi terkait kadar minimum *uqubat* restitusi yang harus diberikan pelaku kepada korban pemerkosaan agar restitusi yang diberikan sesuai dengan kerugian yang diderita oleh korban

Kata Kunci: Restitusi, Korban Pemerkosaan, Qanun Jinayat Aceh

A. Introduction

Crime is behavior that violates laws or social norms. Within the scope of society, crime is an event that frequently occurs in every place and time.¹ Crime is found in society in every region. One form of crime that often happens in society is rape. According to the Great Dictionary of the Indonesian Language, rape means to subdue with violence, to force with violence, to violate, and to gag. Rape means the process, method, and act of rape and violation with violence.²

¹Tanja Altunjan, "The International Criminal Court and Sexual Violence: Between Aspirations and Reality," *German Law Journal* 22, no. 5 (2021); "Conservation Criminology," in *Criminology*, 2021. Swati Kaushal, "Punishment for Crimes: An Instrument of Social Change," *Proceedings of International Young Scholars Workshop* 9 (2020); Thomas Kruessmann, "Criminal Law and Human Rights - Some Examples from the Emergence of European Criminal Law," *Russian Journal of Criminology* 14, no. 5 (2020), [https://doi.org/10.17150/2500-4255.2020.14\(5\).745-757](https://doi.org/10.17150/2500-4255.2020.14(5).745-757); Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)* (Bandung: Citra Aditya Bakti, 2014), 2.

²Alexander Hamilton Frey and Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, University of Pennsylvania Law Review and American Law Register (ST. Paul, MINN: West Publishing Co., 1968); S. P. G. and John Bouvier, "Bouvier's Law Dictionary," *Harvard Law Review* 28, no. 5 (1915); Oxford Paperback Reference, *Oxford Dictionary of Law, Oxford Paperback Reference*, vol. 20, 2003; Arthur English, "A Dictionary of Words and Phrases Used in Ancient and Modern Law," *Harvard Law Review* 13, no. 3 (1899).

The losses experienced by the victims due to the criminal incident include physical, mental, economic, and self-esteem.³ Rape victims experience a lot of suffering, and they have to recount and remember the bitter events they went through to be presented in court. Therefore, rape victims require legal protection to obtain justice for themselves and recover from all their suffering. In the crime of rape, the focus is more on legal protection in the form of compensation (restitution) to the victim by the perpetrator. The victim's right to compensation is an internal part of human rights in welfare and social security.⁴

In the Aceh region, it has so far been an area prone to acts of rape against both children and women. The main factor triggering the occurrence of rape crimes is the lack of education. The view of women in society has marked women as a threat or cause. This view places women in a position of powerlessness and lack of dignity. As a result, acts of rape are becoming more frequent, which are then silenced, and very few come to the forefront of the law.⁵

In the Qanun Jinayat Law Article 1 number 30, it is explained that rape is a sexual act against the vagina or anus of another person as the victim with the perpetrator's penis or other objects used by the perpetrator or against the vagina or penis of the victim with the perpetrator's mouth, or against the victim's mouth with the perpetrator's penis, with violence, coercion, or threats against the victim.⁶ The Qanun of Jinayat law categorizes the crime of rape into three parts, namely: Article 48 (intentionally committing the crime of rape), Article 49 (intentionally committing the crime of rape against someone who has a mahram relationship with the perpetrator), and Article 50 (intentionally committing the crime of rape against a child).⁷

The victim, ranging from light to severe, even to the point of killing the victim. The punishment stipulated in the qanun jinayah is considered too lenient for cases of rape when accompanied by violence. This is not comparable to the suffering and trauma experienced by the victim. Therefore, the Qanun of jinayah law includes a provision regarding restitution penalties requested by the victim or their

³Nathalina Naibaho, "Victim Protection and The Dynamic Situation of Human Trafficking: Indonesia Experience," *Indonesian Journal of International Law* 20, no. 4 (2023); Arif Gosita, *Relevansi Viktimologi Dengan Pelayanan Terhadap Para Korban Perkosaan (Beberapa Catatan)* (Jakarta: Ind Hill-Co, 1987).

⁴Edhei Sulistyono, Pujiyono, and Nur Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators," *International Journal of Criminology and Sociology* 10 (2021); Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Jakarta: Kencana Prenada Media Group, 2018).

⁵Mizaj Iskandar et al., "Law Enforcement of Jinayat Cases in Syar'iyah Court in Aceh Province Indonesia During Covid-19 Pandemic," *UUM Journal of Legal Studies* 14, no. 2 (2023): 457-82; Ahmad Fuad Fanani, "The Implementation of Sharia Bylaws and Its Negative Social Outcome for Indonesian Women," *Indonesian Journal of Islam and Muslim Societies* 7, no. 2 (2017): 153-74; Danial, "Criminalization In Islamic Penal Code: A Study Of Principles, Criminalization Methods, And Declining Variations," *Jurnal Ilmiah Peuradeun* 11, no. 3 (2023).

⁶Artikel 1, paragraph 30 on The Aceh regional regulations on Islamic Criminal Law (Qanun Hukum Jinayat)

⁷Article 1, paragraph 50 of the Aceh regional regulations on Islamic Criminal Law (Qanun Hukum Jinayat)

parents/guardians. Article 51 paragraph (1) of the Jinayah law Qanun explains that in the event of a victim's request, any person subjected to punishment as referred to in Articles 48 and 49 may be imposed a restitution punishment of no more than 750 (seven hundred fifty) grams of pure gold.

Restitution is the reimbursement given to the victim or their family by the perpetrator or a third party. Restitution in Islamic law is often equated with *diyat*. The concept of compensation is explained in the Qur'an, hadiths, and Islamic law principles. In the case of rape, the majority of jurists agree that if a man rapes a woman, he should be punished with the hadd Zina punishment, which could be either 100 lashes or stoning. People who are victims of rape can have their right to compensation determined based on *ta'zir*.⁸

The concept of Islamic criminal law is that all parties involved in a criminal act will have their rights protected. Legal protection for victims of crimes, specifically rape victims, is evidenced by the imposition of additional punishment on the perpetrator, including payment of compensation. Every man who rapes a woman, whether she is a widow or a virgin, must pay the mahar mitsil or the equivalent value of the mahar. Based on *ta'zir*, the Prophet Muhammad (peace be upon him) analogized that the dowry given to the victim of rape should be at least 500 dirhams and at most 4,000 dirhams and 4,000 dinars.

In 2018, a rape case occurred in the city of Jantho, Aceh Besar Regency, and was decided by the Jantho Sharia Court with case number 7/JN/2018/MS.Jth. The defendant has the initials MI, and the victim has the initials HS, both of whom are still minors. MI (initial) was proven legally guilty of committing the crime of child rape and was sentenced to *ta'zir* punishment of 4 (four) years and 5 (five) months in prison. In this case, the Jantho Sharia Court did not implement the *ta'zir* sentence because the victim's party never requested compensation. Moreover, the judge did not implement restitution punishment because the provisions in the qanun did not explain the mechanism or procedure for restitution. However, it differs from the case at the Sharia Court Lhokseumawe in 2019 with case number 06/JN/2019/MS.Lsm. The defendant is 26 years old, and the victim is 12. The defendant was proven guilty and convicted of the crime of rape. The defendant was sentenced to 160 (one hundred sixty) months in prison. In this case, the victim's parents filed a restitution claim with a stamped application, requesting the Lhoksumawe Sharia Court Judges to grant restitution. The victim's parents requested restitution of 559 (five hundred fifty-nine) grams of pure gold. However, in the public prosecutor's charges, the amount of restitution stated is 93.75 (ninety-three point seventy-five) grams of pure gold.

Regarding the above issue, it can be seen that the Sharia Court Jantho did not implement restitution punishment because no one ever submitted a request, and the qanun did not explain the mechanism for granting restitution. Meanwhile, the Qanun

⁸Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law," *Samarah* 7, no. 1 (2023).

implements restitution penalties at the Sharia Court Lhokseumawe. In the case that occurred in the Sharia Court Lhokseumawe, the panel of judges granted restitution based on Article 51 of Qanun Aceh Number 6 of 2014 concerning Jinayat Law, and Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts. Although the qanun does not explain the mechanism for providing restitution, the judge should not overlook it. Because the victims very much need restitution as they have suffered materially and immaterially. The purpose of the research is to understand the form of restitution provided to rape victims in Decision Number 06/JN/2019/MS.Lsm is viewed under Islamic criminal law. This research is qualitative, with data obtained through interviews and the study of judges' decision documents. The data obtained were then subjected to in-depth analysis. The results of the analysis are summarized in the form of conclusions.

B. Restitution According to Positive Law

It seems there is no text provided for translation. Please share the text you'd like me to translate; I'll gladly assist you! In victim protection, there is the principle of equality before the law, one of the characteristics of a state governed by law. Likewise, victims must receive legal services in the form of legal protection. Victim protection is all efforts to fulfill rights and provide assistance to give a sense of security to the victim, which the Government must carry out.⁹ The 1945 Constitution of the Republic of Indonesia regulates human rights in Articles 28 A to 28 J, which serve as the fundamental guidelines for victim protection.¹⁰

Etymologically, restitution is compensation, reimbursement, or surrendering a portion of payment that has not yet been claimed.¹¹ According to the Black Law Dictionary, restitution is restoring everything to the rightful owner, making good or giving an equivalent for every loss, damage, injury, or suffering, and the distribution of compensation.¹²

From the above definition, it can be understood that restitution is compensation given by the perpetrator to the victim of their actions based on the judge's ruling—restitution is an effort to restore the victim's losses, both material and non-material. The payment of compensation aims to alleviate suffering, serve as a

⁹G Violin and Y K Nafi, "Protection of Online Gender-Based Violence Victims: A Feminist Legal Analysis," *The Indonesian Journal of Socio-Legal* 1, no. 2 (2022); Abdul Wahib and Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi Atas Hak Asasi Perempuan* (Bandung: Refika Aditama, 2011); Windy Triana and Milah Karmilah, "Gender Awareness in Islamic Legal Education," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019).

¹⁰Chepi Ali Firman Zakaria, Ade Mahmud, and Aji Mulyana, "Legal Protection for Child Victims of Sexual Assault in a Restorative Justice Perspective," *Jurnal Penelitian Hukum De Jure* 23, no. 1 (2023); Zoe Rodgers, "Examining Victims' Experiences of Community Protection Notices in Managing Anti-Social Behaviour," *International Review of Victimology* 29, no. 3 (2023).

¹¹Kemendikbud, *Kamus Besar Bahasa Indonesia, Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2019).

¹²Matthew Hall, "Victims of Crime: Constructions, Governance and Policy," in *Victims of Crime*, 2017.

substitute for the loss of certain assets, or act as a reimbursement for funds that have been used for the benefit and welfare of the victim. Legal protection can provide a sense of security to the victims so that they are free from various threats, so they do not feel intimidated regarding their rights, soul, body, and family. In harmony with the principles and meaning of victim protection being carried out well, the victims receive protection, and the community can also be protected.

C. Restitution in Islamic Law

In Islamic law, restitution is known as *diyat*. *Diyat* etymologically comes from the word *wadayan-diyatan*, which means to flow. Meanwhile, in terminological terms, *diyat* is the property that must be paid and given by the perpetrator to the victim or their guardian as compensation for the injury caused by the perpetrator's wrongdoing.¹³ *Diyat* is a punishment in the form of property that is given to the victim if they are still alive or to the guardian/family if they are deceased, not to the state (government).¹⁴ In other words, *diyat* is an act by someone against the soul and body, whether the act results in death, injury, or the dysfunction of the victim's body, whether done intentionally or unintentionally.¹⁵

D. Legal Basis for Restitution

It seems that no text has been provided for translation. Please share the text you would like me to translate. Provisions regarding compensation for crime victims in positive law in Indonesia are found in several laws and government regulations. The laws regulating restitution sanctions include the Criminal Procedure Code (KUHAP), Law Number 26 of 2000 on Human Rights Courts, Law Number 15 of 2003 on Terrorism Crimes, Law Number 13 of 2006 on the Witness and Victim Protection Agency in conjunction with Law Number 31 of 2014 on the Revision of Law Number 13 of 2006, Law Number 21 of 2007 on the Eradication of Human Trafficking, Law Number 35 of 2014 on the Revision of the Child Protection Law, and Law Number 11 of 2012 on the Juvenile Justice System.

¹³Rusjdi Ali Muhammad, "Reconciliation for the Settlement of Criminal Cases: Reactualization of Local Wisdom in Indonesian Criminal Law [Upaya Perdamaian Untuk Penyelesaian Perkara Pidana: Reaktualisasi Kearifan Lokal Dalam Hukum Pidana Indonesia]," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (November 19, 2021): 171; Ali Sodikin, "Restorative Justice Dalam Tindak Pidana Pembunuhan: Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 49, no. 1 (2015): 1-10.

¹⁴Abd al-Qadir 'Awdah, *Al-Tasyri' Al-Jina'i Al-Islami; Muqaranan Bi Al-Qanun Al-Wadh'i*, II (Kairo: Maktabah al-Taufiqiyah, 2013); Al-Sayyid Sabiq, *Fiqh Al-Sunnah*, III (Kairo: Dar al-Fath li I'lam al-'Arabi, 1996); Muhammad Abu Zahrah, *Al-Jarimah Wa Al-Uqubah Fi Al-Fiqh Al-Islami*, ed. Muhammad Rafiki, V, vol. V (Kairo: Maktabah Tawfiqiyah, 2014).

¹⁵Dedy Sumardi, "Hudûd Dan HAM: Artikulasi Penggolongan Hudûd Abdullahi Ahmed An-Na'im," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 35, no. 2 (December 2, 2011); Source Journal, "Lessons Learned from the Implementation of Islamic Shari' Ah Criminal Law in Aceh, Indonesia Author (s): Hasnil Basri Siregar Stable URL : <https://www.jstor.org/stable/27639135> LESSONS LEARNED FROM THE IMPLEMENTATION OF ISLAMIC SHARPAH CRIMINAL LAW I" 24, no. 1 (2018): 143-76.

In addition, there are Government Regulation Number 3 of 2002 concerning Restitution and Compensation for Victims of Human Rights Violations, Government Regulation Number 44 of 2008, Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Become Victims of Crimes, and Government Regulation Number 7 of 2018, which are restitution and compensation regulations as manifestations of the Witness and Victim Protection Law. The form of restitution that crime victims are entitled to receive, according to Government Regulation Number 7 of 2018, is compensation provided by the perpetrator to the victim or their family, which includes compensation for the loss of wealth or income, compensation for suffering directly related to the crime, reimbursement of medical treatment costs, and reimbursement of psychological treatment costs. Islam mandates the obligation to pay restitution (*diyāt*) to protect life and property from crime, restore losses, and serve as a warning to those who violate.

E. Provision of Restitution to Victims of Rape Crimes in Decision Number 06/JN/2019/Ms.Lsm

1. Case Background

The crime of rape, as detailed in decision Number 06/JN/2019/MS.Lsm took place between March 2019 and April 2019, around 04:00 WIB. The perpetrator entered the victim's bedroom, woke her up, and then invited her to commit the heinous act. After hearing the perpetrator's invitation, the victim felt scared and immediately hugged a bolster and lay face down on her bed. Seeing the victim lying face down, the perpetrator became even more eager to engage in sexual intercourse. The perpetrator immediately pulled and forcibly opened the victim's pants to the thighs below the victim's buttocks. Then the perpetrator pinned the victim's body from behind while hugging her, and then the perpetrator rubbed his erect penis against the victim's anus until he ejaculated. After satisfying his sexual pleasure, the perpetrator returned to his bedroom and left the victim in a state of emotional and psychological distress, unable to resist the perpetrator's desires. The victim experiences prolonged trauma, depression, behavioral changes, and psychological disturbances as a result of the perpetrator's actions. The case was first reported by Sy (initials) as the victim's father to the Lhoksumawe Police after the father confirmed the incident with the victim. In his report, the victim's father did not witness the act of rape directly but heard from his wife that the victim had been raped by his teacher at the traditional Islamic boarding school (*Dayah*). The victim did not tell the father about the incident directly, but told the housemaid. The victim said she did not want to go to school or return to traditional Islamic boarding school (*Dayah*), but the victim did not explain why she did not want to go to school. When asked by the victim's mother, the victim finally recounted the rape incident she experienced. From that story, the victim's mother told it to the victim's father, then the victim's father confirmed the story with the victim, and the victim confirmed the incident.

2. Judge's Considerations

In deciding a case, the panel of judges needs to consider several factors to determine the verdict for a defendant. One of the considerations for the judge in deciding a case is the aggravating and mitigating factors. These factors can be the reason for increasing or decreasing the sentence for the defendant. In the case of decision number 06/JN/2019/Ms/Lsm, the judges have considered aggravating and mitigating factors.

Aggravating factors:

- a. The defendant's actions do not support the Aceh government's efforts to enforce Islamic Sharia.
- b. The defendant's actions have ruined the victim's future;
- c. The defendant committed the act repeatedly (more than once);
- d. The defendant's actions caused prolonged trauma to the victim.

Mitigating factors:

- a. The defendant is still young;
- b. The defendant has never been convicted;
- c. The defendant was polite in court.

3. Judge's Decision

In determining the verdict for a case, the panel of judges conducts deliberations, of course considering and weighing the demands of the public prosecutor based on the article violated by the defendant, then the chronology of the case, and aggravating and mitigating factors. After going through that process, the panel of judges delivers their verdict by adjudicating according to the article violated by the defendant and the imposed sentence. In the case mentioned above, the defendant was found guilty of committing the crime of rape, and the judges decided to sentence the defendant to 160 months in prison and ordered restitution to the victim, amounting to 15 grams of pure gold.

F. Review of Islamic Criminal Law on the Form and Position of Restitution in Decision Number 06/JN/2019/Ms.Lsm

In Islamic criminal law, rape is the act of forcibly having sexual intercourse with a woman that Sharia does not permit, whether she is a free woman or an enslaved person.¹⁶ As for the evidence discussing compensation (*diyat*), it can be found in Surah an-Nisa: 92.

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ
مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ

¹⁶Muhammad Nur, Muhammad Salda, and Hamdani Hamdani, "The Politics of Criminal Law on The Protection of Rape Victims Based on the Qanun of Jinayah in Aceh," *Kanun Jurnal Ilmu Hukum* 23, no. 2 (2021).

وَإِنْ كَانَ مِنَ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ
فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا

Meaning: And it is not lawful for a believer to kill a believer (another) except by mistake, and whoever kills a believer by error (should) free a believing enslaved person and pay the blood money to the family of the slain (believer), unless they (the family of the slain) forgive. If the slain person is from a people (non-believers) with whom you have a treaty (peace agreement), then the killer should pay the blood money to the family of the slain person and free a believing enslaved person. Whoever does not obtain it, then let him (the murderer) fast for two consecutive months for the acceptance of repentance from Allah. And Allah is All-Knowing, All-Wise.

As discussed in the previous chapter, compensation in Islam is known as *diyat*, which means property that must be paid and given by the perpetrator to the victim or the guardian as compensation for the harm caused by the perpetrator's wrongdoing. Islamic law regulates the payment of compensation to the victim, stating that *diyat* in cases of intentional murder must be paid in cash. In contrast, for unintentional murder, it can be paid in installments (on a schedule).¹⁷

In Islamic law, parties involved in criminal acts will have their rights protected. Legal protection for victims of crimes, especially rape, is evidenced by additional penalties imposed on the rapist, such as compensation to the victim. Men who commit the crime of rape against women, whether they are married or virgins, are required to pay the equivalent of a dowry mahar *mitsil*.¹⁸

The punishment in the form of paying compensation, analogous to the dowry, refers to the amount of dowry given by the Prophet Muhammad (peace be upon him) to his wife. Restitution or compensation for the victim of rape is at least 500 dirhams and at most 4,000 dirhams. The compensation given to the rape victim, according to the opinion of the fuqaha, is that if a man forces a woman to commit adultery, the woman must receive an appropriate dowry, whether she is a free woman or an enslaved person. Regarding the victim, they are entitled to compensation in the form of a dowry, and if the rape is accompanied by assault, the victim receives a *diyat*. The judge determines the amount of compensation received by the victim.¹⁹

The mechanism for obtaining compensation in Islam does not require the victim to file a compensation request. The Prophet Muhammad immediately decreed

¹⁷Ali Sodiqin, "Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 357-78, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/22675>; Abu Zahrah, *Al-Jarimah Wa Al-Uqubah Fi Al-Fiqh Al-Islami*;

¹⁸Elda Maisy Rahmi, Ali Abu Bakar, and Suhaimi Suhaimi, "Pelaksanaan 'Uqubat Restitusi Terhadap Korban Perkosaan," *Kanun Jurnal Ilmu Hukum* 21, no. 2 (2019).

¹⁹Kalsum et al., "The Forms of Legal Protection for Victims of Rape in Qanun Number 6, 2014 Concerning Jinayat Law."

that the perpetrator must pay compensation in the form of a dowry to the woman he *hadd* raped, along with the physical punishment. Regarding the amount of compensation to be paid by the perpetrator, the Prophet Muhammad did not consider or inquire about the perpetrator's financial condition.

Restitution (compensation) can be taken from the *Bait al-Mal* in Islam. The perpetrator of murder or injury, after receiving forgiveness from the victim or their family, is unable to fulfill the payment of *diyat*. This is in line with establishing *Bait al-Mal*, which is for the benefit of Islam and the welfare of the Muslim community. Based on the above explanation, Islam has provided solutions to cases of rape, even since the time of the Prophet Muhammad. Islam offers legal protection for women who are victims of rape.²⁰

In Aceh Qanun Number 6 of 2014, the form of restitution given to rape victims is in the form of pure gold up to a maximum of 750 grams, and it also needs to consider the financial situation of the convicted. Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law explains that the status of restitution for victims is referred to as compensation, not restitution. The provision indicates that the determination of compensation for rape victims relates to the articles that regulate compensation, namely Article 1 number 40 and Articles 101 to 104. Article 1 point 40 of the Jinayah Procedural Law explains that compensation is a punishment imposed by the judge on the defendant to pay a sum of money to the crime victim or other parties harmed due to the crime committed by the defendant.

The victim can file restitution based on Article 4, paragraph (1) of Government Regulation Number 43 of 2017, which consists of:

1. Parents or guardians of a child who is a victim of a crime;
2. The heir of a child who is a victim of a crime;
3. A person authorized by the guardian or the heir of a child who is a victim of a crime with a special power of attorney.

As previously explained, the restitution provisions for rape victims in the Qanun Jinayat are regulated in Article 51, which states:

- (1) In the event of a request from the victim, any person subjected to punishment as referred to in Article 48 and Article 49 may be imposed with a Restitution punishment of up to 750 (seven hundred fifty) grams of pure gold.
- (2) The judge, in determining the amount of Restitution punishment as referred to in paragraph (1), needs to consider the financial capability of the convict.
- (3) If the crime referred to in paragraph (1) was committed out of necessity due to an unavoidable force, then the restitution penalty for the victim shall be imposed on the one who compelled and the perpetrator.

²⁰Siti Zubaidah Ismail, "Constructing Some Possibilities for Compensation as Part of Legal Remedies for Rape Survivors: The Case of Malaysia," *European Journal of Social Sciences* 26, no. 2 (2011).

The above provision contains three elements related to the right to compensation for rape victims, namely: a) restitution is mandatory for the perpetrator of rape on the condition that there is a request from the victim, meaning the victim will not receive restitution if they do not submit a request; b) the maximum amount of restitution that the victim can request is 750 grams of pure gold; c) the amount of restitution that the victim will receive depends on the financial capability of the perpetrator, meaning the victim has the opportunity to receive restitution according to the amount requested, less than the amount requested, or not receive any restitution at all because the perpetrator is unable to pay.

The mechanism or procedure for requesting restitution for rape victims, as stipulated in Article 51 of the Qanun Jinayat, refers to the compensation rules in the Qanun Acara Jinayat regulated in Articles 101 to 104, as follows.

Article 101:

- (1) If an act that forms the basis of the accusation in a criminal case examination by the District/City Sharia Court causes harm to another person, the Chief Judge of the Panel, upon the request of that person, may decide to combine the compensation claim with the criminal case.
- (2) As in paragraph (1), the request can only be submitted before the Public Prosecutor submits the 'Uqubat demand.
- (3) In the case of jinayat, where the presence of the Public Prosecutor is not required, the request must be submitted before the Judge delivers the verdict.

In the case of a criminal offense that does not require the Public Prosecutor to be present, the request must be submitted no later than before the Judge delivers the verdict.

Article 102:

- (1) If the aggrieved party requests the consolidation of their lawsuit with the jinayat case as referred to in Article 101, then the District/City Sharia Court shall consider the authority to adjudicate the lawsuit, the validity of the lawsuit's basis, and the obligation to compensate for the costs incurred by the perpetrator of the crime.
- (2) Except in cases where the Mahkamah Syar'iyah Kabupaten/Kota declares it does not have jurisdiction to adjudicate the lawsuit as referred to in paragraph (1) or the lawsuit is declared inadmissible, the Judge's decision only includes the determination of the obligation to pay compensation caused by the perpetrator of the crime.
- (3) The compensation decision automatically becomes legally binding if the criminal decision also becomes legally binding.

Article 103

- (1) The judge allows the defendant to submit a response to the lawsuit filed by the victim.
- (2) The judge allows the parties to prove the lawsuit or response by presenting evidence.
- (3) The final opportunity must be given to the defendant.

Article 104:

- (1) If there is a merger between civil and criminal cases, the merger will automatically occur during the examination at the appellate and cassation levels.
- (2) If no appeal is filed against a criminal case, an appeal regarding the compensation penalty decision is not permitted.

From the regulations outlined above, it can be concluded that based the Aceh regional regulations on Islamic criminal procedure law (Qanun Hukum Acara Jinayat), there are two stages that a rape victim must go through to obtain restitution, namely: the victim must submit a restitution request before the public prosecutor files the *'uqubat* (sanction) charge, and the victim must be able to prove the claimed damages.

In practice, the implementation of restitution penalties has been minimal so far. The reasons include the absence of restitution requests from the victims due to a lack of knowledge regarding this right, compounded by insufficient explanations in the qanun about the implementation and mechanism for requesting restitution to serve as a guideline for prosecutors or judges.

In the rape case that occurred in 2019, which was decided by the Lhokseumawe Sharia Court with decision Number 06/JN/2019/MS.Lsm, the panel of judges sentenced the defendant to 160 months in prison and ordered restitution of 15 grams of pure gold. The perpetrator was found guilty of violating Article 48 of the Qanun Jinayat Law, which pertains to the crime of rape. In this case, the victim's parents filed a restitution request to the judges to be imposed on the perpetrator for the actions committed against the victim. The rape victim must receive restitution in the form of compensation for the loss of wealth, compensation for suffering as a result of the crime, and reimbursement for medical and psychological care costs. The impact of the incident caused the victim to suffer from mental disorders and depression. As a result, the victim had to undergo several psychological treatments and has spent a total of Rp. 1,723,655,904, or the equivalent of 2,323 grams of pure gold.

The restitution provision in the above case is wildly disproportionate to the losses suffered by the victim. The victim's mother only requested restitution of 559 grams of pure gold, which is a quarter of the total loss suffered by the victim, and the Public Prosecutor, in their indictment, ordered the payment of 93.75 grams of pure gold. However, the judge's decision was very far from the amount imposed on the perpetrator and was unjust to the victim, given what they had suffered. Article 50, paragraph (2) explains that the judge must consider the convicted's financial capability in determining the amount of restitution punishment. The above case states that the perpetrator is a teacher at an Islamic boarding school (*dayah*) and cannot pay the restitution amount requested by the victim's mother or the Public Prosecutor.

The actions taken by the perpetrator have caused the victim to suffer from prolonged trauma, depression, behavioral changes, and psychological disturbances.

The verdict of the panel of judges at the Lhokseumawe Sharia Court not only imposed restitution but also added a prison sentence of 160 months. The verdict was sufficient to prevent the defendant from repeating the offense and served as an effort to improve behavior and distance the defendant from the victim, the victim's family, and the community.

If we relate the above theories to the decision of the Lhokseumawe Sharia Court, justice for the rape victim is not found. The rights of the rape victim are too often neglected, and more attention is given to the condition of the perpetrator, both financially and ethically, during the trial.

In the mechanism or procedure for granting restitution in the above case, to obtain restitution, the victim's party (parent or guardian) must first submit a restitution request, which is then given to the panel of judges to consider how much restitution the victim will receive. In this case, the victim will not receive restitution if the victim does not submit a restitution request. According to the Lhokseumawe Sharia Court ruling, the defendant paid a restitution penalty to the victim amounting to 15 grams of pure gold. The judge considered the amount of restitution by referring to Article 51, paragraph (2) of the Jinayah Law Code, which states that the amount of restitution punishment considers the financial capability of the convicted. If the amount of restitution considers the perpetrator's finances, this harms the victim because, in several cases of rape, the perpetrators belong to the economically disadvantaged.

The restitution imposed on the perpetrator is part of the punishment that the perpetrator must fulfill. Restitution for rape victims is a right that must not be ignored, and in determining its amount, it is not influenced by the perpetrator's financial condition. If we look at how the Prophet Muhammad (peace be upon him) decided on the amount of compensation for the perpetrator of rape, the Prophet did not ask about the perpetrator's economic condition to then use it as a consideration in determining the amount of compensation that must be given to the aggrieved party. The Prophet Muhammad (peace be upon him) immediately decided that the perpetrator was obliged to pay compensation without the victim's family having to file a request.

The reduction in the amount of restitution because the perpetrator is unable to pay, or even the complete denial of restitution simply because the victim did not file a restitution request to the judges, as has been the case in Aceh, is a mistake and a neglect of the rights of rape victims that should not happen. Even an enslaved person is entitled to compensation for the crime of rape they have experienced, so if a free woman undergoes the same thing, she certainly deserves restitution even more.

Restitution (compensation) for rape victims in Islam is simpler and easier to implement, and the chances for victims to obtain restitution are greater compared to the compensation rules for rape victims outlined in the Qanun Jinayah. A judge determines compensation for rape victims in Qanun Jinayah and Islam. Compensation for rape victims regulated in Qanun Jinayah is in the form of pure gold. In contrast, in

Islamic law, compensation for rape victims is in the form of mahar mitsil, and if the rape is accompanied by injury, the victim also receives *diyât*. Compensation in the form of pure gold is considered more appropriate and more logical given the current conditions, namely to meet the needs and rebuild the lives of rape victims who have been devastated by physical suffering and the shame they bear.

Suppose the compensation given to the rape victim is the equivalent of a mahar mitsil plus *diyât*. In that case, it still does not meet the needs of the rape victim today because the consequences borne by the rape victim now are far greater than those in the past or during the time of the Prophet. The loss threatening the victim's future due to dropping out of school as a result of trauma, mental disturbances, and shame they endure forces the victim to accept their fate. And all that suffering is not enough to rely solely on mahar mitsil and *diyât*.

The Qanun Jinayah regulation, which requires rape victims to file a compensation request, has become one of the obstacles to the restitution process for rape victims. Almost all crime victims, whether they are victims of rape or other crimes, generally lack information or are completely unaware of their right to compensation because it is scarce for victims to request restitution.

Based on existing regulations, judges do not require perpetrators to pay restitution to rape victims if the victims do not file a restitution request. If we refer to the restitution request submitted by the victim, then if it is not submitted, the victim's right to receive compensation is lost. Therefore, making restitution a primary punishment that is inseparable from imprisonment or fines and can be decided by a judge without prior application is the right solution in realizing compensation for rape victims. Thus, the rights of rape victims to obtain compensation will not be neglected.

G. Conclusion

The form of restitution in the decision Number 06/JN/2019/MS.Lsm includes compensation for the loss of wealth, compensation for suffering due to the crime, and reimbursement for medical and psychological care costs. The restitution penalty decided by the panel of judges of the Lhokseumawe Sharia Court was 15 grams of pure gold. The defendant was not only sentenced to restitution but also to a prison term of 160 months. Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law explains that compensation for victims is referred to as compensation. The mechanism for providing compensation in the Jinayat Procedure Law is regulated in Articles 101 to 104. The position of restitution (compensation) in Islamic law is the same as *diyât*, which must be paid by the perpetrator to the victim or the victim's guardian as compensation for the losses caused by the crime committed by the perpetrator. The form of restitution in Islamic law is in the form of the provision of mahar mitsil and *diyât* if the rape is accompanied by injury.

The imposition of a sentence requiring the perpetrator to pay compensation in Islamic law does not require a request from the victim to seek compensation; instead,

the judge directly decides the amount of compensation to be imposed on the perpetrator. Islamic law regulates the compensation given to the victim without considering the perpetrator's financial situation. However, if the perpetrator cannot pay the compensation (*diyat*), then the compensation can be obtained from *Baitul Mal*. In Decision Number 06/JN/2019/MS.Lsm, the compensation imposed by the panel of judges was 15 grams of pure gold, and the mechanism for obtaining restitution in the above decision requires the submission of a restitution request first. Additionally, in determining the amount of restitution to be paid to the victim, the judge will consider the financial situation of the convict and then assess the extent of the restitution to be received by the victim.

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