



**RESPONSIBILITY FOR THE CRIMINAL ACT
OF RAPE
(CASE STUDY DECISION NUMBER
3/JN/2023/MS.MRD)**

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ABSTRACT

Case of rape in Aceh, particularly in Meureudu, is increasingly widespread, with minors as the primary victims. The highlighted case involves the rape of a mentally challenged woman by a pornography addict named Din Kohler. The incident occurred during the celebration of the Prophet Muhammad's birthday at Meunasah Meureudu. The perpetrator, Din Kohler, who is divorced, unleashed his deviant sexual desires on the victim. The case was reported by the victim's mother and forwarded to the police. Despite the perpetrator attempting reconciliation, the victim refused, and the perpetrator fled, becoming a Wanted Person (DPO). The perpetrator was eventually arrested after a month in hiding. Discrepancies in the statements between the victim and the accused created issues in the verdict number 3/JN/2022/MS.Mrd. This study employs a qualitative approach with an empirical juridical research type. The legal research method gathers data from behavior and conduct through interviews and direct observation. The research focuses on the application of sanctions by the Meureudu Sharia Court in accordance with Aceh Qanun Number 6 of 2014 concerning Jinayat Law, especially in verdict Number 3/JN/2022/MS.Mrd. Criminal sanctions are a form of punishment imposed by the state on perpetrators of crimes, with the aim of changing the perpetrator's behavior and create a deterrent effect. In this case, the judge's decision is based on Aceh Qanun Number 6 of 2014 on Jinayat Law, where the defendant is sentenced to 'Uqubat Ta'zir imprisonment for 43 months. The judge referred to the evidence and testimonies presented in court. The judge's considerations in this decision involve the use of evidence, physical evidence, and elements of the criminal act, as well as aggravating and mitigating factors for the defendant.

Keywords: Accountability, Criminal Acts, Rape.

INTRODUCTION

The Republic of Indonesia is a country based on law (*rechtstaat*), not based on power (*machtstaat*). The Indonesian state is a country whose power is to run its government based on legal sovereignty (rule of law) and aims to implement legal order. The rule of law must include three basic legal ideas, namely justice, expediency and certainty. Therefore, in a state the law must not ignore "sense of public justice". Indonesia is a rule of law based on Article 1 paragraph 3 of the 1945 Constitution, which states that "The State of Indonesia is a State of Law".

As a legal state, the objectives of the Republic of Indonesia are also clearly stated in the 1945 Constitution of the Republic of Indonesia that the state aims to protect the entire Indonesian nation and all of Indonesia's blood, promote general welfare, educate the life of the nation, participate in world peace efforts based on independence, lasting peace and social justice. In the aim of the Republic of Indonesia, there is protection for the community and there are guaranteed community rights in every aspect of their lives. However, the facts that are happening in society are starting to be inversely proportional to the goals of our country

Nowadays, various kinds of legal problems are starting to occur. Human behavior patterns become increasingly deviant and inconsistent with the norms that apply in society, which can ultimately lead to violations and even crimes. Crime is a name or term given by people to evaluate certain actions as evil. However, judgments about crime still seem to be relative, depending on who the person is doing the judging. This is based on the fact that what someone calls a crime is not always recognized by other people/parties as a crime. Crimes at the level of acceptance by all groups still often give rise to differences of opinion regarding the severity of punishment that should be given to perpetrators of crimes

Rape is an act of violence that is considered very detrimental and disturbs the peace and order of life, especially for the victim. Currently, the crime of rape does not only occur in big cities with relatively more advanced culture and legal awareness or knowledge, but also occurs in rural areas where traditional values and customs are still relatively adherent.

The meaning/definition of this criminal act in Dutch terms is translated from the term *strafbaarfeit* which theoretically is the creation of Dutch and Indonesian legal experts to date. The term *strafbaarfeit* has caused debate among scholars in Indonesia and scholars outside Indonesia.

According to Van Hamel, criminal acts are human behavior that is formulated in law, is against the law and deserves to be punished and is carried out with mistakes. Meanwhile, according to Utrecht, a criminal act is behavior that is against the law, there is a maker (*dader*) who is responsible for his behavior in the sense of the word responsible.

According to Moeljatno, he interprets the term *strafbaarfeit* as a criminal act and defines this criminal act as an act that is prohibited by a legal rule, a prohibition which is accompanied by sanctions in the form of certain penalties for anyone who violates these rules. It can also be said that criminal acts are actions that are prohibited by law and are subject to criminal penalties as long as it is remembered that the prohibition is aimed at the act (i.e. an event or situation caused by the person's behavior, while the criminal threat is aimed at the person who caused the crime).

Rape cases in Indonesia are increasingly widespread, especially in Aceh in the city of Meureudu. Most of the victims are minors. This is different from the case that the author took, namely a criminal case of rape committed by a pornographic film addict against a mentally retarded woman. The beginning of this case occurred when village residents were celebrating the birthday of the Prophet Muhammad SAW in Meunasah Meureudu, the victim named Rina, 44 years old, lived with her mother named Rohani, 61 years old. Rina is a mentally retarded woman. The perpetrator of the rape, Nasri Nasruddin alias Din Kohler, 47 years old, a resident of Gampong Geunteng, Meurah Dua District, Pidie Jaya Regency, turned out to be an addict of pornographic films and therefore committed sexual deviations against mentally retarded women.

The difference between this research and previous research is that previous research focused on the process of handling women who are victims of sexual violence. Meanwhile, the author in this

research focuses on implementing sanctions against perpetrators of sexual violence against women with mental retardation using Aceh Qanun Number 6 of 2014 concerning Jinayat Law

RESEARCH METHODS

This research contains two problem formulations, namely how to apply the sanctions given by the judge to the perpetrator of the crime of rape at the Meureudu Syar'iyah Court, what is the basis for the judge's consideration in handing down a decision to the perpetrator of the crime in Decision Number 3/JN/2022/MS. Mr. The type of research used is empirical juridical, namely a legal research method based on facts taken from a person's behavior and attitude, the research is taken from interviews and real behavior carried out through direct observation, and uses data collection methods in this research, namely the field research method. , where the data source is obtained directly from the object in question.

RESEARCH RESULTS AND DISCUSSION

A. Application of Sanctions Given by Judges to Perpetrators of the Crime of Rape at the Meureudu Sharia Court

Criminal Sanctions are a type of punishment that is threatened or imposed on acts or perpetrators of crimes that can harm or endanger legal interests. Basically, criminal sanctions act as a means to change the behavior of criminals, although sometimes these sanctions are also seen as a threat to human freedom. Roslan Saleh emphasized that criminal sanctions are a response to violations of the law, a form of punishment deliberately imposed by the State on criminals. As a form of punishment, criminal sanctions are directed at the perpetrators of violations or perpetrators of crimes.

Criminal sanctions have stricter characteristics when compared to the imposition of sanctions in civil law or administrative law. Providing criminal sanctions in criminal cases aims to create a deterrent effect for perpetrators, with the hope of reducing the level of crime in society. This deterrent effect is expected to intimidate perpetrators of criminal acts, so that they are afraid to commit similar criminal acts in the future. The purpose of this deterrent effect is to prevent the repetition of criminal acts that have been committed.

Criminal sanctions consist of two words, namely sanctions and criminal. Sanctions mean threats, in the form of criminal threats (*strafbedreiging*) and have the task of ensuring that norms that have been established in law and statute are obeyed as a legal consequence of the violated norms. Sanctions are also defined as the result of an action or a reaction to another thing carried out by a human or social organization. In essence, sanctions aim to restore the balance of the social order which has been disturbed by violations of the rules in its original state

According to G.P. Hoefnagels that sanctions in criminal law are a reaction to legal violations that have been determined by law, starting from the detention of the suspect and the prosecution of the defendant until the verdict is passed by the judge. Meanwhile, criminal comes from the word *straf* (Dutch), which is basically suffering (*nestapa*) that is deliberately imposed or imposed on someone who has been proven guilty of committing a criminal act. So, criminal sanctions are one of the most effective means used to tackle crime, but crime is not the only means, so if necessary, it is used in combination with social efforts. Therefore, it is necessary to develop the principle of *multimum remedium*, not *premium remedium*. So it can be concluded that criminal sanctions are a tool that is available to deal with major crimes or dangers as well as to deal with threats.

Regarding the case of rape, it is a very deviant behavior carried out by humans who have crossed the limits of humanity. The social impacts experienced by rape victims are serious physical and mental impacts. The physical consequences of the victim are: (1) experiencing physical organ damage in the form of fainting and damage to the hymen; (2) allows the victim to contract a disease that is transmitted to the victim in the form of a sexually transmitted disease; (3) the occurrence of unwanted pregnancy. And victims are also vulnerable to long-term trauma accompanied by other psychological impacts. There are also those who feel limited in their relationships with other people,

whether it be sexual relations accompanied by fear of pregnancy resulting from rape. Rape victims will experience enormous psychological trauma and will likely feel a strong urge to commit suicide.

In cases of rape, the party who suffers the most harm is the victim who should receive legal protection, one of which is the form of payment of compensation for the incident she experienced in the form of medical costs, both physical and spiritual, or for her family, if she experienced a long trauma, and she herself is the backbone of the family. In Islam, legal protection for victims of criminal acts has been regulated, namely in the form of compensation (diyat). And diyat is the basic punishment for criminal acts of murder and ill-treatment both intentionally and unintentionally (khata'). Even though it is a punishment, the assets given are for the victim or his family, not for the State treasury.

Based on this research, the author found the application of sanctions to perpetrators of rape who have been tried and received a judge's decision, the decision is as follows: Remembering Article 46 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law and all other statutory provisions relating to the case This; JUDGE 1. Declare that the Defendant _____ has been legally and convincingly proven guilty of committing the crime of "Intentionally committing sexual harassment" as regulated and punishable by crime in Article 46 of the Aceh Qanun Number 6 of 2014 concerning the Jinayat Law, in the Second Indictment of the Public Prosecutor; 2. Sentenced 'Uqubat to the Defendant _____ with 'Uqubat Ta'zir in prison for 43 (forty three) months minus the time the defendant was in detention with an order that the defendant remain in detention.

The judge at the Meureudu Sharia Court applied criminal sanctions based on the demands of the public prosecutor and also referred to the evidence and witnesses that had been presented before the judge in the courtroom of the case. This decision was handed down in Meureudu in a deliberative meeting of the Panel of Judges on Wednesday 27 April 2022 to coincide with 25 Ramadhan 1443 H, by us Yusnardi, S.HI., M.H., as Chairman of the Panel, Shoim, S.HI., and Widia Fahmi, S.H., as Member Judges. The decision was pronounced on the same day in a trial open to the public by the Chairman of the Panel accompanied by the Member Judges, assisted by Rinaldi, S.HI., as Substitute Registrar, attended by Dedy Syahputra, S.H., as Public Prosecutor at the District Attorney's Office. Pidie Jaya and the Defendant accompanied by them.

According to the author, the decision and application of punishment to the perpetrator of this rape was unfair to the victim in this rape case, this was because the victim did not receive compensation from the perpetrator. Meanwhile, in Aceh Qanun no. 6 of 2014 concerning Jinayat Law has regulated compensation for rape victims, speaking through the legal aspects contained in article 51 which reads:

If there is a request from the victim, every person who is subject to 'uqubat as intended in article 48 and article 49 can be subject to 'uqubat restitution of a maximum of 750 (seven hundred and fifty) grams of pure gold.

The judge in determining the amount of restitution uqubat as referred to in paragraph (1) needs to consider the financial capabilities of the convict.

In the event that the jihad as referred to in paragraph (1) is carried out because it is forced by some power that cannot be avoided, then the 'uqubat restitution for the victim is borne by the person who forced it and the perpetrator.

Meanwhile, compensation rules are not regulated in the Aceh qanun jinayat, except regarding wrongful arrests and people who are detained after being released by the Syar'iyah Court, and this is stated in article 68 in Aceh Qanun No. 6 of 2014. And for the rape case that occurred in Meurudu, the Syar'iyah Court which has the authority to try the rape case that occurred made a decision without any compensation decision being received by the victim in the form of restitution or compensation. The resulting verdict is only a prison sentence for the perpetrator. The conditions for

criminal responsibility are that a person who has committed an unlawful act must be able to take responsibility and intentionally carry out the act.

B. The Judge's Basic Considerations in Handing Down Decisions on Criminal Perpetrators in Decision Number 3/JN/2022/MS.Mrd

The judiciary has a crucial role in establishing and implementing positive legal norms through judges' decisions. Legislation in a country can be made well, but efforts to ensure public safety and achieve people's welfare will lose their meaning without independent judicial power. The judiciary must be free and impartial, which is reflected in an independent judicial system, so that it can become an important element of the rule of law.

As executor of judicial power, judges have the authority to interpret and apply applicable laws and regulations through their decisions. The judge's main role is to provide decisions on cases submitted, especially in the context of criminal cases where a negative evidence system is applied. This system basically indicates that certain rights or events are considered proven without the need to prove them, apart from the evidence regulated by law. Apart from that, the judge's decision is also influenced by the judge's personal beliefs which are based on strong moral integrity.

The judge's considerations are one of the most important aspects in determining the realization of the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully, well and carefully.

Contextually, there are three main ideas contained in the concept of judge's freedom in carrying out the functions of judicial power, namely:

- a. Judges only obey the law and principles of justice;
- b. No party, including the government, can influence or direct the decisions that will be taken by the judge;
- c. There are no consequences applied to the judge's personality in carrying out his judicial duties and functions.

According to Mackenzie, there are several theories or approaches that can be used by judges in making decisions in a case, namely as follows:

- a. Balance theory The concept of balance in this case refers to the balance between the requirements stipulated by law and the interests of the parties involved or related to the case. This includes a balance regarding aspects of society and the interests of the defendant.
- b. The theory of art and intuition approaches. The judge's conclusion of a decision is a form of the judge's discretion or authority. As a form of discretion, in making decisions the judge adapts to the circumstances and the appropriate punishment for each perpetrator of a criminal act. In this context, the judge will consider the situation of the defendant or public prosecutor in a criminal case. An artistic approach is used by judges in making decisions, based more on instinct or intuition than on the judge's knowledge
- c. The scientific approach theory is based on the view that the criminal decision-making process must be carried out in a structured and careful manner, especially in the context of considering previous decisions to ensure consistency in the judge's decisions. This scientific approach reminds

that judges, in deciding a case, should not only rely on intuition or instinct alone, but must be equipped with legal knowledge and the judge's scientific understanding of the case that must be tried.

d. The Experience Approach Theory emphasizes that a judge's experience can be a support in dealing with the cases he handles on a daily basis. With his experience, a judge can understand the impact of decisions taken in criminal cases on the perpetrator, victim and society.

e. The Ratio Decidendi theory, based on a fundamental philosophical basis, considers all aspects related to the substance of the matter in dispute. This theory looks for statutory regulations that are relevant to the substance of the case as a legal basis for decision making. Judges are expected to motivate their decisions clearly to uphold the law and provide justice for all parties involved in the dispute.

f. The wisdom theory, introduced by Made Sadhi Astuti, is actually related to the judge's decision in cases brought to juvenile court. The main aspect of this theory highlights the joint responsibility of government, society, family and parents in guiding, developing, educating and protecting children. The goal is for children to grow into individuals who are beneficial to their families, communities and countries.

Among the law enforcement officers who are most dominant in carrying out law enforcement are judges. The judge ultimately determines the decision on a case on the basis of law and justice in accordance with his conscience. When a judge makes a decision, if many people think the judge is unfair, the decision remains valid and has legal force.

In a court process the judge has full authority and the judge presides over the trial. Prosecutors and lawyers in trials must submit and obey the judge. Prosecutors and lawyers can submit objections and rejections but in the end the judge will determine the decision.

According to Bambang Waluyo, what is meant by a judge is a court organ that is considered to understand the law, on whose shoulders the obligation and responsibility have been placed so that law and justice are upheld, whether based on written or unwritten (judge a case submitted on the basis that the law does not exist or is unclear.), and nothing should be contrary to the principles and foundations of justice based on Almighty God.

A case that has been brought to court certainly has the aim of obtaining a judge's decision that has legal force. The judge's decision is often also referred to as a court decision. A judge's decision is an oral and written statement by a judge who carries out the duties and powers of an authorized judge, which aims to resolve cases where the decision has permanent legal force.

According to Prof. Dr. Sudikno Mertokusumo, S.H, a judge's decision is a statement that the judge, as an official authorized to do so, pronounces in court and aims to end or resolve a case or dispute between the parties. The definition of a judge's or court's decision is also regulated in Article 1 point 11 of the Criminal Procedure Code which explains "a court decision is a judge's statement made in an open court session, which can be in the form of punishment or acquittal or release from all legal charges in terms and according to the method regulated in the Law. -Invite this."

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1. In decision number: 3/JN/2022/MS.Mrd, the basis of consideration used by the panel of judges to decide the case was the evidence submitted by the parties, in this case the state represented by the public prosecutor and the defendant. The evidence referred to is in the form of evidence and evidence presented at trial.

In accordance with article 184 of the Criminal Code, what is meant by valid evidence is:

a) Witness testimony

Public prosecutor in case Number: 3/JN/2022/MS.Mrd. At the trial, 5 (five) witnesses were presented and based on the statements of these witnesses, the panel of judges assessed that there was suitability among them so that they could be used as legal considerations in sentencing the defendant.

b) Expert testimony

In this case the public prosecutor presented expert witnesses.

c) Letter

In this case the public prosecutor submitted evidence in the form of a Visum et Rafertum Letter from Pidie Jaya Regional Hospital Number: 445/3225/XII/RSUD-PJ/2021 dated 13 December 2021 made by Dr. UMAR DHANI, Sp. Og, on behalf of the victim witness with the conclusion: the results of

the general examination were found to be normal and the hymen had irregular tears, possibly due to blunt force trauma.

d) Statement of the defendant

In this case the defendant gave information that was in accordance with the statements of the witnesses, especially the victim witness. The defendant also frankly admitted his actions so that this strengthened the arguments of the public prosecutor's indictment.

Apart from the evidence which is the basis for consideration by the Panel of Judges in deciding this case, there is evidence in the form of evidence which has been seen and confirmed by the witnesses and the defendant at trial. The evidence presented by the Public Prosecutor is as follows:

a) - 1 (one) green negligee with floral motifs containing spots suspected to be sperm fluid.

b) - 1 (one) piece of yellow hijab with spots suspected to be sperm.

2. Elements of criminal acts proven in Decision Number: 3/JN/2022/MS.Mrd.

Defendant in case Number: 3/JN/2022/MS.Mrd. Has been charged by the Public Prosecutor with an alternative charge, namely the first charge of violating Article 48 of the Aceh Qanun Number 6 of 2014 concerning Jinayat Law or the second charge of Article 46 of the Aceh Qanun Number 6 of 2014.

Before handing down a decision, the panel of judges is obliged to consider the articles charged by the public prosecutor. The judge considered that based on the legal considerations above, the Panel of Judges was more inclined towards the second indictment of the Public Prosecutor, namely that he had violated Article 46 of the Aceh Qanun Number 6 of 2014, which states as follows: "People who deliberately commit sexual harassment are threatened with ' Uqubat Ta'zir can be whipped a maximum of 45 (forty five) times or a fine of a maximum of 450 (four hundred and fifty) grams of pure gold or imprisonment for a maximum of 45 (forty five) months)." Considering, that regarding the second indictment of the Prosecutor In general, as in Article 46 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, the elements consist of:

a) Elements of each person. The defendant at trial had his identity checked and in accordance with his identity as stated in the Public Prosecutor's Indictment Letter and the legal facts concluded that the defendant was a legal subject who was capable of being responsible for his actions and was the right legal subject or there was no error in the subject, so the judge considered that these elements were in place. fulfilled.

b) Element on purpose

The judge was of the opinion regarding sexual harassment by relating the facts obtained in the trial that it was true that the DEFENDANT had intentionally committed the crime of sexual harassment which occurred on Sunday, December 5 2021 at approximately 11.00 WIB, where the

victim was mentally retarded, because The Panel of Judges concluded that this element had been fulfilled.

3. Factors that aggravate and mitigate the defendant

a) Aggravating matters

i. The Defendant's actions do not support the Aceh Provincial government's program in enforcing Islamic Sharia in Aceh Province;

ii. The Defendant's actions were very disturbing and damaged public morals;

iii. The defendant's actions damaged the victim's mind and caused trauma;

iv. The Defendant took advantage of the victim's weaknesses/deficiencies (mental disorders);

v. The defendant is the victim's neighbor.

b) Mitigating circumstances

i. The defendant behaved politely during the trial;

ii. The defendant admitted and regretted his actions and promised not to repeat his actions;

iii. The defendant has never been convicted.

Meanwhile, in deciding this case, the panel of judges, based on these considerations, had fulfilled the elements of sexual harassment; Considering, that because all the elements of Article 46 Aceh Qanun Number 6 of 2014 concerning Jinayat Law have been legally fulfilled and the Panel of Judges is convinced of the Defendant's guilt, the Defendant is declared legally proven and is convicted guilty of committing acts of Sexual Harassment as charged by the Public Prosecutor in indictment.

According to the author, the judiciary has a crucial role in establishing and implementing positive legal norms through judges' decisions, and judges must be free and impartial, reflected in an independent judicial system, to maintain justice and the interests of society. Judges have the authority to interpret and apply statutory regulations through their decisions, especially in criminal cases. The judge's decision is influenced by the judge's moral integrity and personal beliefs. There are several theories or approaches used by judges in making decisions, including balance, artistic and intuitive approach, scientific approach, experiential approach, Ratio Decidendi theory, and wisdom theory.

The judge's basis for deciding a case is that the judge considers the evidence presented by the parties, including statements from witnesses, experts, letters, instructions and statements from the defendant. Proven criminal elements are also the basis for the judge's consideration in deciding a case. Judges also consider aggravating and mitigating factors in deciding a case. The judge's decision shows the application of Jinayat law (Islamic law) in Aceh Province, which influences the court process and the judge's decision. Although the judge's decision takes into account Jinayat law in Aceh, the decision must also be in accordance with Indonesian positive law.

CONCLUSION

Based on the results of this research, it can be concluded as follows: Criminal sanctions are a form of punishment that is applied or threatened against acts or perpetrators of crimes that can harm or endanger legal interests. In cases of rape, the application of criminal sanctions by the Meureudu Sharia Court is carried out based on Aceh Qanun Number 6 of 2014 concerning Jinayat Law. A sentence of 43 months in prison was given to the perpetrator. However, the application of these

criminal sanctions is unfair to victims, because they do not include compensation or compensation as regulated in the Aceh Qanun. It is important to pay attention to legal protection for rape victims involving aspects of compensation, both restitution and compensation, in accordance with applicable legal provisions. Although criminal sanctions are important for tackling crime, it is necessary to ensure that aspects of justice and recovery for victims are also taken into account in legal decisions. The basis for a judge's considerations in deciding a case is that the judge takes into account various evidence presented by the relevant parties, including statements from witnesses, experts, written documents, instructions, and statements from the defendant himself. Apart from that, the judge also considers the proven elements of the criminal act as the basis for the decision. Factors that mitigate or aggravate the defendant's position are also taken into consideration by the judge in deciding the case. The judge's decision reflects the application of Jinayat law in Aceh Province, which influences the course of the judicial process and the outcome of the judge's decision. However, even though the Jinayat law is considered, the judge's decision must also be in accordance with the provisions of positive law that apply in Indonesia in general.

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