

LEGAL POSITION OF RESTORATIVE JUSTICE IN QANUN JINAYAT

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Abstract

The penal theory that exists is basically aimed at achieving justice, therefore the achievement model can be divided into two models, namely the retributive justice model and the restorative justice model. The retributive justice model establishes justice based on the philosophy of retaliation, while the restorative justice model is based on the philosophy of recovery. In the case of criminalization in the Criminal Code which is also maintained in the Qanun Jinayat, the philosophy of justice adopted is the first model. Thus, in the convictions of cases of offenders of jinayat offenses, Qanun Jinayat also emphasizes the principle of retributive justice. Meanwhile, the concept of restorative justice in the criminal law system in Indonesia is only applied to cases of children who are dealing with the law and are also adopted by Qanun Jinayat.

The concept of restorative justice is basically not known in the Aceh Qanun Jinayat, namely Qanun Number 6 of 2014, but based on the sound of Article 66 of this qanun "If a child who has not reached the age of 18 (eighteen) years commits or is suspected of committing Jarimah, then the child is subject to examination. guided by the laws and regulations regarding juvenile criminal justice ", then automatically every case of children who face the law will be returned to the provisions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which is familiar with the restorative justice system and diversion.

The concept of not being able to provide protection and respect for the interests of victims and perpetrators. This is a conventional mechanism that is based on the enforcement of the criminal justice system without seeing the reality in society, without looking at the interests of the community, and without seeing the benefits. Based on this description, it can be used as an adequate introduction in promoting the concept of restorative justice in the criminal justice system process in Indonesia, especially in Aceh in implementing qanun jinayat which is relevant for its philosophical roots to Islamic criminal law through the concept of diyat. Based on these problems, it is important to study more deeply related to the legal position of restorative justice in the Aceh Jinayat Qanun considering that Aceh applies Islamic law in its regulations.

Keywords: Legal Position, Restorative Justice, Qanun Jinayat

A. Introduction

Qanun jinayat is a manifestation of Islamic syari'at that is enforced in Aceh, because Islam does not only explain moral teachings to regulate human behavior, but also explains imperative teachings, both in the Quran and the sunnah.¹ In imperative teachings, there are binding sanctions that must be enforced in the world, not just a threat to the hereafter. One of them is related to criminal acts or Jinayat

The law of Jinayat is the law that governs Jarimah and 'Uqubat. As mentioned in the general provisions Jinayat Qanun Aceh, jarimah is prohibited by Islamic law, which in this Qanun is threatened with 'uqubat hudud and / or ta'zir, which meliputi khumar, gambling, seclusion, ikhtilath, adultery, sexual harassment, rape, qadzaf, liwath, and musahaqah.² While the various 'uqubat in the qanun are regulated in Article 4 which consists of hudud and ta'zir. Hudud is applied in the form of whipping, and tazir in the form of whipping, fines, imprisonment, and restitution. Based on this, it can be seen that financing is one of the alternatives given to the offenders of the crime.

Every handling of a criminal case (jinayat) law enforcement officers (police, prosecutors) are often faced with the obligation to protect two conflicting interests, namely the interests of victims who must be protected to recover their suffering because they have become victims of crime (mentally, physically, or materially), and even the interests of the accused / suspect are guilty, but the perpetrators are still human beings who have human rights that cannot be violated. This is especially true if the judge's actions have not yet been made which states that the perpetrator is guilty. Therefore, the perpetrator must be considered an innocent person (presumption of innocence).

¹ Cik Hasan Bisri, *Pilar-Pilar Penelitian Hukum Islam dan Pranata Sosial*, (Jakarta: Raja Grafindo Persada, 2004), p. 42

² Pasal 3 ayat (2) Qanun Aceh Nomor 6 Tahun 2014 tentang Hukum Jinayat.

The law often puts forward the rights of suspects / defendants in solving criminal cases, while the rights of victims are neglected, as stated by Andi Hamzah. related to the rights of the suspect without paying attention to the rights of the victims ". In solving criminal acts, it is also found that many crime victims lack adequate legal protection, both immaterial and material protection, as stated by Geis: too much attention has been paid to offenders and their rights, to neglect of the victims.³

The position of the victim seems to have been discriminated against by the criminal law, even though in the context of a criminal act, the victim is basically the party who is most disadvantaged. Therefore, ideas began to develop voicing that the orientation of Indonesian criminal law, which has been more offender oriented, that is, the perpetrator of the crime is the main focus of criminal law, to be changed immediately. The development of thought and the need for attention to victims is based on two schools of thought. First, the idea that the state is also guilty in the event of victims and the state should take responsibility in the form of providing compensation or restitution. Second, there is a new school of thought in criminology that leaves a positivist approach towards critical criminology.⁴

The existence of the compensation system as a form of criminal system is still recognized. Starting from the ancient days of the kingdom until now, especially among indigenous peoples in Indonesia, its existence is still recognized as a form of punishment system. In the Acehese community, the pattern of dispute resolution that has been applied since the ancient kingdom uses a mediation pattern⁵ by involving the perpetrators, victims, the families of the parties, as well as the local community including traditional leaders

³ Gilbert Geis, '*Victims and Witness Assistance Program*', Dalam: Sanford H. Kadish (Ed), *Encyclopedia of Crime and Justice*, Volume 4, (Newyork: The Free Press: A Division of Macmillan Inc, 1983), p. 1600.

⁴ Chaeruddin dan Syarif Fadhillah, *Korban Kejahatan dalam Perspektif Viktimologi dan Hukum Pidana Islam*, (Jakarta: Ghalia Press, 2004), p.45-46

⁵ M. Adli Abdullah, *Konsep Mediasi dalam Masyarakat Aceh*, dalam Muhammad Siddiq, Et,Al, *Hukum dan Keadilan*, (Banda Aceh: Aceh Justice Resource Centre, 2009), p. 55

B. Discussion

1. Restorative Justice In *Qanun of Jinayat*

The concept of restorative justice is a process of resolving legal violations by bringing the criminal and victim together who are seated in a meeting together to discuss about case.⁶ Based on this opinion, it can be understood that restorative justice is a peaceful settlement together between the criminal and the victim by means of deliberation.

The main objective of restorative justice is the creation of a fair judiciary. In addition, it is hoped that the perpetrators, victims, and society will play a big role in it. Victims are expected to receive appropriate compensation and are mutually agreed upon with the perpetrators to compensate for losses and reduce the suffering they have experienced. In restorative justice, the perpetrator must take full responsibility so that the perpetrator is expected to realize his mistake.

The realization of restorative justice must be embodied in statutory regulations as the legal basis for its implementation. One of the laws and regulations that accommodate restoration justice is Qanun Number 6 of 2014 concerning the Law of the Law and in it there are articles that contain the concept of restoration justice.

Article 51 paragraph 1 states that “in the victim's request, everyone who is subject to the uqubat as referred to in articles 48 and 49 (concerning rape) can be subject to a maximum restitution of 750 grams of pure gold . in paragraph 2, it says " the judge in determining the amount uqubat restitution needs to consider the ability finance condemned ", even in article 3 states "in terms of jarimah must be done because forced by power that cannot be avoided, then uqubat restitution to victims charged to the coercive and perpetrator.⁷

⁶ Marlina, *Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice*, Cet I, (Bandung: Refika Aditama, 2009), p. 180.

⁷ Dinas Syariat Islam, *Hukum Jinayat dan Hukum Acara Jinayat*, (Banda Aceh: Dinas Syariat Islam, 2015)p. 32-33

In addition, in article 58 paragraph 1 it is stated that "in the event of a request from the accused (qadzaf), every person who is subject to the uqubat as referred to in article 55 can be subject to a maximum restitution of 400 grams of pure gold. in paragraph 2 it is stated that "the judge in determining the law for restitution as meant in paragraph 1 needs to consider the financial capacity of the convicted person and the material loss of the accused, and in paragraph 3 it is stated that" in the event that the finger as meant in paragraph 1 is carried out because it is forced by a power which is not can be avoided, then the restitution law for the accused is borne by the coercive and the perpetrator.⁸

Based on these two articles, an analysis can be carried out that in the qanun jinayat regulating restoration justice, this is evidenced by the involvement of the perpetrator, the victim and even the judge who must consider the finances of the perpetrator for restitution , besides that restitution is carried out at the victim's request.

In the explanation of article 51 paragraph 3 it is explained that the Aceh Qanun Number 7 of 2013 concerning the Procedural Law of Jinayat, compensation for victims is stated as compensation not restitution.⁹The victim receives appropriate compensation agreed upon with the perpetrator to compensate and reduce the suffering suffered and the perpetrator must take full responsibility so that the perpetrator can realize his mistake.¹⁰

2. Element Of Restorative Justice in Qanun Jinayat

Restorative justice rests on a humane relationship between victim and offender and focuses on the impact that crime has on all parties, not only on the victim, but also on society and the offender himself. Therefore, in punishment which is based on the perspective of restorative justice, there are four elements

⁸ Ibid, p. 37

⁹ Ibid, p. 74

¹⁰ Yusi Amdani, *Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam dan Adat Aceh*, Jurnal Al-'adalah Vol. XIII No. 1 Juni 2016, p. 65

that play a role, namely the crime victim, the community, the state and the offender. Conflict resolution through mediation between victims and perpetrators has created creative attitudes, namely asking the perpetrator to personally take responsibility for his actions by dealing with victims and making agreements to promote active community and victim involvement in the judicial process and enhance the quality of justice that is felt by both the perpetrator and the victim. So, the elements of restorative justice in punishment are compensation / restitution , mediation, reconciliation, healing and forgiveness.¹¹

Restitution as referred to by Qanun Hukum Jinayat is a certain amount of money or assets, which the Jarimah perpetrator, his family, or a third party must pay based on the judge's order to the victim or his family, for suffering, loss of certain assets, or compensation for certain actions.

The elements or elements of *restorative justice* which are restitution are contained in article 4 paragraph 4 Qanun Hukum Jinayat , where it is stated in the main law there is a concept of fines and restitution, both of which are one of the elements contained in the *restorative. justice*. Apart from that, in verse 5 it is also mentioned about additional ta'zir Uqubat which stipulates restitution by parents / guardians and social work.¹²

Regarding the mediation element in the qanun Hukum Jinayat, there is no text that the settlement of Jarimah in the Qanun Hukum Jinayat may be resolved through mediation, except in Jarimah Khalwat, but in Jarimah Khalwat there are no victims who are harmed, so in terms of restorative justice, Jarimah This does not meet one criterion of restorative justice, namely the existence of victims, even though the qanun gives a signal that it can be resolved by means of a customary court that prioritizes deliberation.

¹¹ Eva Achjani Zulva, *Keadilan Restoratif di Indonesia (Studi tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif dalam Praktek Penegakan Hukum Pidana)*, Disertasi Program Doktor Ilmu Hukum Fakultas Hukum UI, p. 1.

¹² Dinas Syariat Islam Aceh, *Hukum Jinayat dan Hukum Acara Jinayat*, (Banda Aceh: Dinas Syariat Islam Aceh, 2015) p. 12-13

According to a study, it is stated that if Jarimah zina wants to be resolved through mediation, it is okay with the condition for the adulterer to be flogged first, then mediation will be carried out whether the perpetrator will be married because it is a family disgrace, especially if the perpetrator was pregnant or paid a fine and apologized to the local community because it is a disgrace to the village so that the perpetrators deter.¹³

Before the issuance of Aceh Qanun Number 6 of 2014 concerning the Law of Jinayat, cases of adultery can be resolved in the village according to family customs and with the agreement of both family parties, if there is no agreement then it will be delegated to the Syar'iyah Court. After the issuance of Aceh Qanun Number 6 of 2014 concerning the Law on Adultery, cases of adultery can no longer be resolved by custom and every citizen who or Wilayatul Hisbah (WH) who catches the perpetrator of adultery must be submitted to the authorities.¹⁴

In Islamic Criminal Law, one of the fingers accommodating "forgiveness" is the finger of murder, namely in the law of qishash. Even though, the concept of qishâs, which contains "retribution", is basically not an objective of punishment, but a reflection of the occurrence of a crime or criminal act. Islamic law recognizes the provisions of qishas in its punishment system, but Islamic law prioritizes the good for everyone, including the perpetrator and the victim. One of the virtues is forgiveness.¹⁵

As for the law to forgive the perpetrator of a criminal act according to Islamic law is circumcision, where every wound suffered by the victim must be done qishash. Whoever obliges qishash must forgive mutlaq without a substitute and must reply to that forgiving attitude with kifarat.¹⁶

¹³ Suhartini dan Syandi Rama Sabekti, *Penyelesaian Tindak Pidana Zina Melalui Mediasi Perspektif Hukum POSitif dan Hukum Islam*, Jurnal Bina Mulia Hukum volume 4 nomor 1 tahun 2019, p. 85

¹⁴ Ibid

¹⁵ Yusi Amdani dan Liza Agnesta Krisna, *Konsep Meminta Maaf Sebagai Hukuman Dalam Perkara Pidana*, Jurnal Hukum Ius Quia Iustum, Volume 26 Issue 1 Januari 2019, p. 79

¹⁶ Abu Ismail Muhammad Rijal, *Indahnya Hukum Qishash*, https://d1.islamhouse.com/data/id/ih_articles/single2/id_Indahnya_Hukum_Qishash.pdf, diakses pada tanggal 8 Mei 2020

One of the concepts related to apology is the concept of al sulhu. In language, the word al-shulhu means to end a quarrel / dispute. Therefore, Etymologically, sulh means "to end a quarrel or dispute". In terms of terminology, sulh is defined as "a type of contract (agreement) to end resistance (dispute), between two opposing people"

One of the applications of the concept of al-shulhu in criminal law is in criminal cases committed by children. The concept of crime that is put forward in solving children who are faced with the law is the concept of restorative justice. Apart from that, another criminal case that can be carried out for conciliation in a criminal case is a traffic violation case. As long as the victim does not experience death, the peace process can be carried out.¹⁷

Based on several concepts and explanations of the elements of *restorative justice* in the Jinayah qanun as a whole it has not been accommodated properly, even the jinayat law qanun does not regulate murder (*alqatla*), where there is a concept of forgiveness which is part of *restorative justice* , but in every case Jarimah, which is contained in the qanun Hukum Jinayat, already contains restitution or compensation from the perpetrator to the victim.

3. Application of Restorative Justice in the Settlement Cases Children who Conflict with the Law in Qanun Jinayat

The application of restorative justice in resolving cases of children who berhadapan by law, must be seen through the rulings of the Court of Sharia in Aceh, following some Syariah Court's decision related to the settlement of cases of children in conflict with the law (ABH).

In principle, restorative justice (Diversion) is intended as an effort to prevent and keep children away from the judicial process, detention and imprisonment, deprivation of liberty and punishment can only be done as a last resort, and avoid stigmatization of children. In line with the correctional philosophy, the

¹⁷ Yusi Amdani dan Liza Agnesta Krisna, *Konsep Meminta Maaf*, p. 83

correctional system is essentially a system of treatment / guidance of lawbreakers which aims at restoring the unity of life, life and livelihood. As a treatment system, the correctional function becomes very vital and strategic in the juvenile criminal justice process. The strategic role of the correctional facility starts to move from the investigation process to the guidance stage after serving a sentence, from pre-occupation, adjudication and post-adjudication .¹⁸

The trial process for child offenders according to Qanun Number 7 of 2013 concerning jinayat procedural law is guided by law number 11 of 2012 concerning the juvenile justice system

Children who are in conflict with the law need to get special protection so that their rights are still fulfilled. The child protection aspect emphasizes children's rights, not children's obligations, because children are not legally burdened with obligations. There are 4 aspects of child protection, namely First. The state must interfere in matters of child protection, because children cannot fend for themselves. Second. Every decision regarding children must always lead to the principle of the best interests of the child, third. Child protection must be carried out early and continuously. Fourth. Protection of children requires contributions from various sectors of life and all levels of society. In crime prevention paradigm of contemporary child, every child who commit criminal not be prosecuted through the criminal justice or jinayah, but can be resolved by non-litigation.¹⁹

Article 16 paragraph 1 of Law Number 23 Year 2002 regarding Child Protection explicitly states that "Every child has the right to receive protection from being subjected to abuse, torture or inhuman punishment". Regarding the imposition of inhuman sentences, Article 45 of the Criminal Code (KUHP) provides protection for children, namely in prosecuting people who are not yet old enough (minderjarig) for committing an act before the age of 16, the judge

¹⁸ Direktorat Bimkemas dan Pengentasan Anak, Pedoman Perlakuan Anak di Lembaga Pembinaan Khusus Anak (LPKA), p. 1

¹⁹ <https://www.pta-medan.go.id/index.php/2016-12-22-04-37-57/artikel-anda/2323-peradilan-jinayat-anak-di-mahkamah-syariah>, diakses pada 8 Mei 2020

can determine to order that the guilty be returned. to their parents, guardians, or their maintenance without any punishment and Article 46 paragraph 1 of the Criminal Code also explains that if the judge orders the guilty to be handed over to the government, then they are put in the state education house, in order to receive education from the government or in the future in other ways , or submitted to a certain person or to a legal entity, foundation or charity to carry out his education, or in the future, on the responsibility of the government by other means in the two cases above not later than the age of eighteen years.²⁰

Likewise Qanun Number 7 of 2013 concerning the procedural law of jinayat has protected children from the imposition of inhuman sentences, which is contained in article 141 letter (h), namely "the demands of the public prosecutor cannot be accepted, if the prosecuted finger fulfills the reason: the defendant is still under under 12 (twelve) years of age when doing Jarimah ”. This means that the minimum age limit for children is 12 (twelve) years who can be brought before the Shari'ah Court. Article 149 paragraph 6 of Qanun Number 7 of 2013 states "The Chief Judge of the Panel may determine that children who have not reached the age of 18 (eighteen) years are not allowed to attend court, unless otherwise stipulated by law". This provision is different from Article 153 paragraph 5 of the Criminal Procedure Code (KUHAP), namely "The Chief Judge of the Session can determine that a child who has not reached the age of seventeen years is not allowed to attend trial" From the description above it can be concluded that the age limit of children in Jarimah case according to Qanun Number 7 of 2013 is 12 years old until not yet 18 years old.²¹

According to article 222 paragraph 6 Qanun Number 7 of 2013, the trial of the finger case conducted by children at the Syari'ah Court is guided by the laws and regulations regarding the Juvenile Court. The Law on Juvenile Court is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Of course,

²⁰ Ibid

²¹ Ibid

the trial of the Jarimah case by child offenders is to prioritize the restorative justice approach (article 5 paragraphs 1 of Law Number 11 of 2012). The Sharia Court must also have a special judge for children, because not all judges have an interest in the problem of children who commit fraud according to the Supreme Court Circular (SEMA) Number 6 of 1987 concerning child trial procedures.

Since published Law No. 11 Year 2012 on juvenile criminal justice system that converts Law No. 3 of 1997, and then in all levels of the criminal justice process, there are opportunities for law enforcement to do a diversion, including the judges of the Child. The objectives of diversion are to achieve peace between the victim and the child, resolve child cases outside the judicial process, prevent children from being deprived of their liberty, encourage the community to participate and instill a sense of responsibility in children.

The principles of juvenile justice according to Law Number 11 of 2012 are First. Child protection is to protect and protect children who are in conflict with the law so that children can face a long future. Second. Justice is that every settlement of children's cases must reflect a sense of justice for the child. Third. Non-discrimination is the absence of different treatment based on ethnicity, religion, race, class, gender, ethnicity, culture and language, the legal status of the child, the order of the child's birth, and the physical and / or mental condition. Fourth. It is in the best interest of the child that all actions and decisions regarding children are always the main consideration. Fifth. Appreciation for children's opinion is to give freedom to children in order to develop their creativity and intellectuality (reasoning power). Sixth. The survival and development of children are the most basic human rights for children who are protected by the state, government, society, family and parents. Seventh. Guidance and guidance of the Eighth children. Proportional means that all treatment of children must pay attention to the limits of their needs, age and condition. Ninth. Deprivation of freedom and punishment as the last resort means that children cannot be deprived of their

freedom. Tenth. Avoidance of retaliation is the principle of keeping retaliation at bay in the criminal justice process.²²

In the following, the author will present some of the decisions of the Sharia Court; yes related to the application of *restorative justice* in the settlement of cases of children in conflict with the law, the decisions include:

P representative of the Aceh Sharia Court Number 01 / JN.Anak / 2017 / MS-Aceh against the appeal filed by the Prosecutor Tapaktuan, the Aceh Sharia Court in its decision stated that it strengthened the decision of the Tapaktuan Syar'iyah Court Number 0001 / Anak / 2017 / MS Ttn, declared the perpetrator's child legally and convincingly proven guilty of committing sexual abuse against the child, imposing the punishment of 'uqubat' on the offender's child by 'uqubat of 5 (five) lashes.²³

Decision of the Syar'iyah Meulaboh Court Number 01 / JN / 2017 / MS.MBO on cases of children who face the law related to cases (Jarimah) of sexual abuse against children. During the trial, the child as the perpetrator was not detained and the child was accompanied by his biological mother. In the verdict, children who are dealing with the law have also issued a recommendation letter from the social research agency, where their recommendation is that in giving decisions to children, pay attention to the child's age, the sense of justice for the victim and the efforts of both parties related to settlement. Cases through peaceful and familial efforts. In the verdict, the judge sentenced the child to uqubat ta'zir in prison for 15 months or 1 year and 3 months.

The case of the finger of rape of children, where in its consideration it was stated that before the case was submitted to the Syar'iyah Court, a peaceful way had been made between the perpetrator and the victim's family, this effort was

²² <https://www.pta-medan.go.id/index.php/2016-12-22-04-37-57/artikel-anda/2323-peradilan-jinayat-anak-di-mahkamah-syariah>, diakses pada 8 Mei 2020

²³ Liza Agnesta Krisna dan Rini Fitriani, *Dualisme Kewenangan Mengadili Perkara Anak Sebagai Pelaku Kejahatan Pelecahan Seksual DI Kota Langsa Aceh*, Jurnal Yuridis Vol. 5 No.2 Desember 2018, p. 273

proposed by the local village officials, but the victim's family was not willing to make peace, even done up to three times.²⁴

This shows that although the fingers of sexual harassment are not clearly stated in relation to settlement by way of *restorative justice*, the community basically continues to practice settlement by prior deliberation in order to find the right solution that does not harm the victim.

C. Conclusion

According to philosophy, the concept of restorative justice is equated with the concept of *diyat* in Islamic criminal law, or *al-isti'adah* that within this concept there is another consequence of '*uqubat* addition that is fine, then the by-laws *jinayat* law there are some that contain fines, while vaguely defined the article is as follows:

- 1) Article 15 concerning *khamar*, in that article in addition to *uqubat hudud*, there is a mention of a maximum fine of 400 (four hundred) grams of pure gold.
- 2) Article 16, those who deliberately produce liquor, are also subject to a maximum fine of 600 grams of pure gold
- 3) Article 16 paragraphs 2, for those who deliberately buy. Carrying, transporting is subject to a fine of 200 grams of pure gold
- 4) Article 17, if the perpetrator includes children, he will be fined 800 grams of pure gold.
- 5) Article 18, concerning *Maisir* also states a fine of 120 grams of pure gold
- 6) Article 20, a *maisir* facility provider will be fined as much as 450 grams of pure gold
- 7) Article 21, for offenders who include children in the *maisir*, a maximum fine of 450 grams of pure gold will be imposed.

²⁴ Putusan No. 03 /JN/2016/MS Ttn.

- 8) Article 25 concerning ikhtilath also states that the maximum fine is 300 grams of pure gold
- 9) Article 26, ikhtilath done with children over 10 years, then subject to a fine of 450 grams of pure gold
- 10) Article 33 concerning adultery, paragraph 2, every person who repeats the act of adultery, apart from being flogged, is also fined a maximum of 120 grams of pure gold.
- 11) Article 34, every person committing adultery with a child apart from being flogged, will also be subject to a maximum fine of 1000 grams of pure gold.
- 12) Article 46 regarding sexual harassment, then the perpetrator will be fined a maximum of 450 grams of pure gold
- 13) Article 47, sexual harassment against children, is also fined a maximum of 900 grams of pure gold
- 14) Article 48 concerning rape, the perpetrator is also subject to a fine of 1,250 grams of pure gold
- 15) Article 49, rape of mahram will be subject to a maximum fine of 1,500 grams of pure gold
- 16) Article 50, if rape is committed against a child, a fine of at least 1,500 grams and a maximum of 2000 grams of pure gold will be imposed.
- 17) Article 57 concerning Qadzaf, the perpetrator is also charged with a maximum fine of 400 grams of pure gold
- 18) Article 63 concerning liwath, the perpetrator is also subject to an additional uqubat in the form of a maximum fine of 120 grams of pure gold
- 19) Article 63 paragraph 3; if liwath is done with a child, then the uqubat is a maximum fine of 1,000 grams of pure gold.
- 20) Article 64 concerning Musahaqah, the perpetrator can be fined a maximum of 1000 grams of pure gold

21) Article 64 paragraphs 3, if the perpetrator commits intercourse with a child, an additional penalty will be imposed in the form of a maximum fine of 1000 grams of pure gold.

In some of the articles mentioned above which are contained in the qanun Hukum Jinayat, the substance of the fines or compensation that must be given to the victim has been explained and mentioned in detail, but with maximum limits, apart from that in the provisions of the qanun whether the finger is victim or does not exist victim, but still the perpetrator was charged a number of fines. Giving a number of fines to the victim is clearly a form of protection given by law to the victim, and for the perpetrator is a responsibility that must be fulfilled.

Although it is not specifically regulated in relation to *restorative justice* in Qanun Jinayat, article 24 states that " Jarimah khalwat which is the authority of customary justice is resolved according to the provisions in the Aceh Qanun concerning the development of customary life and customs and / or other laws and regulations regarding customs " .

The explanation of this article is that " the gampong customary court has the authority to settle the case of Jarimah khalwat if it occurs in the gampong and the perpetrators are residents of the gampong " . This shows that Qanun Jinayat provides opportunities for settlement of *khalwat* cases, especially with the customary law settlement model, where the main element of *restorative justice*, namely the willingness and participation of perpetrators, victims and the community in making corrections to criminal acts, is also an element of law. custom. Even the concept of customary law in Indonesia as a forum for customary justice institutions also has a concept that can be described as the root of *restorative justice* .

The settlement in this case of khalwat even though it characterizes *restorative justice* , namely deliberation, but in that finger, there is no victim whose rights must be fulfilled in the form of compensation, fines or compensation. Therefore, the position of *restorative justice* in the qanun Hukum Jinayat is still very far

from expectations and even needs to be optimized again through a *review* of qanuns in order to accommodate more deeply about the implementation of *restorative justice* .

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