

The Forms of Legal Protection for Victims of Rape in Qanun Number 6, 2014 concerning Jinayat Law

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Abstract: Victims are legally entitled to legal protection either indirectly or directly. One form of protection for rape victims as stated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law is contained in Article 48 concerning indirect legal protection and Article 51 concerning direct legal protection in the form of restitution. However, in its implementation, victims have not received maximum legal protection. The forms of legal protection for rape victims in Qanun Number 6 of 2014 concerning the law of jinayat are in the form of indirect legal protection (in the abstract) and direct legal protection (in concreto). The lack of regulation causes direct legal protection for rape victims in Aceh Province has not been maximally obtained.

Keywords: Legal Protection, Victims, Rape, Qanun, Jinayat.

INTRODUCTION

Rape is a crime committed against women who take advantage of women as weak creatures and are considered to satisfy men's sexual desires. The existence of women as men's sexual objects greatly influences women's daily lives, so a woman must always face violence, coercion, intimidation, and physical and psychological torture from men. Attention and protection of the interests of women as victims of the crime of rape either through the criminal justice process or through other social care facilities is an absolute part that needs to be considered in criminal law policies, both by the executive, legislative and judicial institutions, as well as by social institutions that there is (Eddyono, 2017).

The need for legal protection for victims of rape crime cannot be separated from the impact felt by the victim after the crime of rape occurred. Victims are those who suffer physically and mentally as a result of the actions of the perpetrators that are contrary to the interests and human rights of those who suffer. Arif Gosita further explained the meaning of "they" namely (Muladi, 2005):

- a. Individual victims of individual victims (primary victimization);
- b. victims who are not individuals, for example, a body, organization, institution. Victims are impersonal, commercial, collective (secondary

victimization) in general involvement, social harmony, and execution of orders for example in violation of state regulations and provisions (tertiary victimization).

Legal protection for victims can also be seen in the VII International Congress of the United Nations (Prevention of the crime of the treatment of offenders) in Milan (Italy) in 1985. This congress mandates that member states of the Congress always pay attention to victims in matters as follows (Rizkal, 2021):

1. Access to justice and fair treatment (the opportunity to obtain justice and fair treatment);
2. Payment of compensation (restitution) by non-criminal perpetrators to victims, their families or, other people whose lives depend on the victim. This compensation should be formulated in the form of criminal sanctions in the applicable legislation;
3. If the convict is unable, the state is expected to pay financial compensation to the victim, his family, or those who are dependents of the victim;
4. Material, medical, psychological, and social assistance to victims, either through the state, volunteers, the community.
5. There is a change in legislation,
6. Victims of abuse of power,
7. Victims of violations of internationally recognized standards. In particular, congress calls for

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attention to victims of crime because they have become victims of exploitation, victims of deprivation of rights and acts of violence, especially sexual problems (sexual assault) and not domestic violence.

8. Victims as a result or influence of a policy in the field of manpower that interferes with employment or creates unemployment can be seen as an "abuse of power" in a broad sense.

Furthermore, congress also stated that: "victims must be treated with compassion and respect for their dignity. The victims have the right to get a sense of justice and compensation quickly, as stipulated in the national legislation of each country for the losses that the victims have suffered.

The provision of legal protection for victims of rape is a manifestation of the goals of the Indonesian state which are contained in the opening of the fourth paragraph of the 1945 Constitution and are also contained in Article 28D of the 1945 Constitution which contains: "Every citizen has the right to receive recognition of guarantees, protection and legal certainty fair and treated equally before the law". Legal protection for victims of the crime of rape is needed because of the consequences after the crime of rape, the victim is the party who is greatly harmed, both material and immaterial losses, as well as physical and psychological losses

The definition of a victim in a broad sense is a person who suffers or is harmed as a result of a violation, whether it is a violation of criminal law (penal) or violations outside of criminal law (non-penal) or also includes victims of abuse of power (victim abuse of power). Meanwhile, victims in a narrow sense are victims of crime, which are included in this group are victims of crimes regulated in criminal law regulations.

One form of protection for rape victims is listed in Qanun jinayat number 6 of 2014 which is contained in Article 48 concerning indirect legal protection and Article 51 concerning direct legal protection in the form of restitution. Victims are legally entitled to legal protection either indirectly or directly. However, in its implementation, victims have not received maximum legal protection.

METHOD

The type of research used is normative or doctrinal juridical research, namely legal research using

secondary data sources, also known as library research or document study. The approach used is the legal approach by examining the laws and regulations related to the problem to be studied. The research is the analytical description. Data sources in the form of secondary data consist of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection technique was carried out through library research. All data were analyzed qualitatively

RESULTS AND DISCUSSIONS

The theory of legal protection is a very important theory because it focuses on the study of providing legal protection to people who are in a weak position, either financially weak or legally or juridically weak. The term legal protection theory comes from English, namely legal protection theory, in Dutch it is called *theorie van de wettelijke beschrijving*, and in German it is called *theorie der rechtliche schutz*.

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

Legal protection protects human rights that have been harmed by others. This protection is given to the community so that they can enjoy all the rights granted by law. In other words, legal protection is a variety of legal efforts that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party

Soerjono Soekanto also argues that legal protection can be divided into 2 (two), namely:

1. Preventive Legal Protection. The protection is provided by the government to prevent violations before they occur. This is contained in-laws and regulations to prevent a violation and provide signs or limitations in carrying out an obligation.
2. Repressive Legal Protection. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed.

Rape victims have not received adequate legal protection, both immaterial and material protection. In

this regard, Geis also argues: "too much attention is spent on criminals". Thus, causing the victim's rights to be neglected. The low position of the victim in handling criminal cases was also stated by Prassell who stated: "the victim is a forgotten figure in the study of crime, victims of assault, robbery, theft, and other forms of violation are ignored, while the police, courts, and academics are concentrated or focused. to criminals." The emergence of victims caused by criminal acts or rape crimes must receive legal protection, because so far in every criminal justice process, the position of rape victims is only as an object of examination as a victim-witness. His representation by the prosecutor in court proceedings did not change the events he experienced. Sentencing for rape does not relieve the pain and trauma suffered by the victim. Jarimah or the crime of rape is a crime that must get further attention and thought, especially regarding legal protection for rape victims.

Muladi in this case argues that victims are people individually or collectively who suffer losses, whether physical or mental losses, emotional losses, economics, or disruption of very fundamental substantive rights due to actions or entities that violate the criminal rules of each. -each country, including abuse of power. Victims of rape are legally entitled to legal protection from the state, both indirect protection, and direct protection. The form of legal protection for rape victims is indirectly listed in Aceh Qanun Number 6 of 2014 concerning Jinayat Law article 48, while legal protection for rape victims directly in the form of restitution is listed in Aceh Qanun Number 6 of 2014 concerning Jinayat Law article 51. In its implementation, rape victims in Aceh Province have not received direct legal protection in the form of restitution from criminals.

The forms of legal protection for victims of rape in Qanun Number 6 of 2014 concerning the law of jinayat are:

1. Indirect Legal Protection

Aceh Qanun Number 6 of 2014 concerning jinayat law regulates 3 (three) things, namely criminal offenders, criminal acts (jarimah), and criminal threats ('uqubat). The regulation of the Jarimah (criminal act) of rape which is indirect legal protection in Article 48 of the Aceh Qanun Number 6 of 2014 which reads: "Everyone who deliberately commits a Rape Jarimah is threatened with 'uqubat Ta'zir lashes of at least 125 (one hundred and twenty-five) times, a maximum of 175 (one hundred and seventy-five) times or a fine of at

least 1,250 (one thousand two hundred fifty) grams of pure gold, a maximum of 1,750 (one thousand seven hundred fifty) grams of pure gold or a minimum imprisonment of 125 (one hundred twenty-five) months, maximum 175 (one hundred and seventy-five) months."

Article 48 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law stipulates several types of 'uqubat ta'zir, namely flogging, fines, and imprisonment. In the explanation of this article, it is not explained who the subject of the rape finger is. The term for everyone in this article is anyone can do the act, both men and women. The purpose of the perpetrator of the jarimah in this qanun is the mukallaf, namely the person who is burdened with the law or make 'alaihi, namely the person to whom the law is enforced. In legal studies, mukallaf is often referred to as a legal subject, namely a person or legal entity who can assume rights and obligations

From the article above, it can be seen that the 'uqubat against the perpetrator of rape is threatened with ta'zir punishment in the form of an alternative punishment that can be chosen by the prosecutor in filing charges against the defendant and the judge can also choose a decision against the defendant. The alternative formulation system is a system where imprisonment is formulated alternatively with other types of punishment. Based on the sequence of types of criminal sanctions from the heaviest to the lightest. Thus, the judge is allowed to choose the type of crime listed in the article (Mulyadi, 2004).

The caning punishment does not have a significant impact on the victim, because the victim has been psychologically disturbed as a result of the act. However, in criminal justice, both the victim and the victim's family always want the harshest punishment for the perpetrators of rape. Although, the punishment is indirect legal protection for the victim. The form of victim protection in article 48 of the jinayat qanun is abstract protection or indirect protection. The existence of the formulation of criminal acts in various laws and regulations is evidence that there has been indirect protection in abstract against the interests and human rights of victims of criminal acts. It is said so because criminal acts according to the qanun jinayat are not seen as acts of attacking the interests of a person (victim), personally and concretely, but are only seen as violations of norms or legal order in abstract. As a result, victim protection is also not direct and in concreto, but only in abstract. This statement is

because criminal acts or *jarimah* according to the *qanun jinayat* are not seen as acts that attack the interests of the victim, both personally and concretely, but can only be seen as a violation of norms or legal order in abstracto. As a result, legal protection for victims is also not direct (in concreto), but only indirect legal protection (in abstracto). Thus, the system of sanctions and criminal responsibility is not directly and concretely aimed at legal protection for victims indirectly (in abstracto).

2. Direct Legal Protection

In addition to indirect forms of legal protection in the form of imposing severe punishments for perpetrators of criminal acts or rape crimes as regulated in Article 48, Qanun number 6 of 2014 concerning *judicial jinayat* is also the basis for direct legal protection for rape victims in the form of restitution. Restitution is defined as a form of payment of compensation for victims of crime due to material and immaterial losses suffered by the victim and their heirs which is the result of a judge's decision that has permanent legal force.

Restitution by the Principle of Restoration in the Original Condition (restitution in integrum) is an effort that the victim of a crime must be returned to its original condition before the crime occurred, even though it is based on the fact that the victim can't return to her original condition. This principle emphasizes that the form of recovery for victims must be as complete as possible and cover various aspects arising from the consequences of the crime.

The provision of restitution restores the condition of the victim to his freedom, legal rights he has, a social status he bears, the life of his family, citizenship, place of residence, restoration of his job, and recovery of his assets. In practice in many countries, the concept of restitution has developed and is given to victims of crime for their suffering as a result of the crime they have experienced. Based on this concept, the victim and his family are entitled to appropriate and fair compensation from the perpetrator or a third party who must be held responsible. The compensation will include the return of the victim's property or payment for the damage and loss suffered by the victim, reimbursement of costs incurred as a result of the victim's fall, providing services, and restoring rights (Geis, 1981).

Restitution is an additional *uqubat ta'zir* regulated in the Qanun of the *Jinayat Law*. Additional *Ta'zir* as stipulated in Article 4 Paragraph (5) consists of:

- a. development by the state;
- b. Restitution by parents/guardians;
- c. return to parents/guardians;
- d. termination of marriage;
- e. revocation of permits and revocation of rights;
- f. confiscation of certain goods;
- g. social work.

The regulation regarding this restitution can be seen in the provisions of Article 51 of Aceh Qanun Number 6 of 2014 which contains:

- a. If there is a request from the victim, every person who is subject to an *uqubat* as referred to in articles 48 and 49 may be subject to an *uqubat* of restitution for a maximum of 750 (seven hundred and fifty) grams of pure gold.
- b. The judge in determining the amount of '*uqubat* restitution as referred to in paragraph (1) needs to consider the financial capacity of the convict.
- c. If the *Jarimah* as referred to in paragraph (1) is carried out because it is forced by an unavoidable power, then the *uqubat* of restitution for the victim is charged to the coercion and the perpetrator.

Based on the provisions above, it can be concluded several things, namely: first, the initiative to request restitution comes from the wishes of the victim himself or his family. This provision is less favorable for rape victims. At least, two reasons cause the provision to be less in favor of the victim, namely (Frassel, 1979):

- a. Sometimes the victim and her family are not aware of the provisions that provide an opportunity for her to get restitution fees by asking the judge for it. If the victim and her family do not have the initiative to ask for it, it means that the victim's rights have been neglected.
- b. The victim needs coordination with the Public Prosecutor (JPU) so that the restitution stipulated in the Qanun can be properly realized. Restitution will be difficult to obtain when lacking coordination with the Public Prosecutor (JPU) who handles the victim's case because the public prosecutor will file for restitution through his indictment.

It is different when the Qanun regulates that restitution is directly integrated into the main punishment other than flogging, fines and imprisonment are added to restitution. Although not requested by the victim, the public prosecutor can sue directly through a claim to the panel of judges following the applicable procedural law. However, the next problem is that the procedural law and implementing regulations also do not regulate the mechanism for requesting restitution. This is a note to be updated in the future so that there are implementing regulations that specifically regulate requests for restitution by victims or victims' families (Marabessy, 2021).

Second, the maximum nominal amount that can be decided by the judge in the event of a request for restitution should not be more than 750 (seven hundred and fifty) grams. This means that according to the rule of law, the judge may only decide that the restitution may not exceed the nominal that has been regulated in article 51 of the jinayat qanun. Third, in deciding the amount of restitution is determined by the judge through his considerations. The thing that will be considered by the judge in the event of a claim for restitution is the financial capacity of the perpetrator. No rule becomes a parameter for judges to see and measure the ability of the defendant. Fourth, if the perpetrator commits rape due to pressure or coercion from another person, the one who is punished is the party who ordered him to act because the perpetrator acted on the basis, not of his own will but an element of coercion from another party.

Further arrangements regarding restitution are regulated in Aceh Governor Regulation Number 5 of 2018 concerning the Implementation of the Jinayat Procedural Law. Article 35 Paragraph (3) of the governor's regulation determines that the restitution as referred to in paragraph (1) letter b is carried out by paying money or gold by the decision of the Syar'iyah Court. This provision only provides instructions to law enforcement that restitution is paid in money or gold based on the decision of the Syar'iyah Court.

Article 35 paragraph (3) of the Aceh Governor Regulation number 5 of 2018 above does not regulate the mechanism for providing restitution for rape victims as a form of direct legal protection (in concreto). Taking into account the regulatory shortcomings that regulate the mechanism for providing restitution for rape victims, since the Qanun on Jinayat Law and the procedural law on jinayat were ratified, the public prosecutor has not indicted the application for restitution.

The Jinayat Law Qanun is a material law that only contains provisions that cannot be carried out and are threatened with criminal sanctions for people who violate them. There should be provisions in the jinayat procedural law for the procedure for requesting restitution by the victim or the victim's family. However, until now there has been no regulation on the procedure for requesting restitution in the qanun. The lack of regulation has caused direct legal protection in the form of restitution for rape victims in Aceh Province to have not been maximally obtained

CONCLUSION

The forms of legal protection for rape victims in Qanun Number 6 of 2014 concerning the law of jinayat are in the form of indirect legal protection (in abstract) and direct legal protection (in concreto). Legal protection for rape victims indirectly by imposing punishments for perpetrators of rape in the form of 'uqubat ta'zir, namely caning, fines, and imprisonment. Legal protection for victims of rape directly (in concreto) in the form of restitution is regulated in Article 4 paragraph (5), Article 51 of Qanun Number 6 of 2014 concerning Jinayat, and Article 35 paragraph (3) of the Aceh governor's Regulation Number 5 of 2018 concerning the implementation of the law. jinayat event. In the Qanun and Pergub, there is no regulation on the procedure for the mechanism for requesting restitution. The lack of regulation causes direct legal protection for rape victims in Aceh Province has not been maximally obtained. It is hoped that the Aceh government and the Aceh House of Representatives (DPRA) will complete the jinayat event qanun and the governor's regulation number 5 of 2018 concerning the implementation of the jinayat procedural law in order to regulate the mechanism for restitution requests by victims or their families so that legal protection for rape victims can be directly fulfilled.

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