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CONTRADICTIONS AND LEGAL CERTAINTY IN HANDLING CHILD SEXUAL ABUSE IN ACEH: NATIONAL LAW AND SHARIA PERSPECTIVES

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ABSTRACT

The implementation of Islamic criminal law in Aceh, as authorized by Law No. 44/1999 and Law No. 11/2006, has given rise to dualism in legal norms, particularly concerning the punishment of perpetrators of sexual violence against children. This issue has become increasingly urgent due to several reported cases where differences between national and regional regulations—such as Qanun Jinayat, the Criminal Code, Law No. 12 of 2022 on Sexual Violence Crimes, and Law No. 35 of 2014 on Child Protection—led to confusion in legal proceedings and inconsistency in sentencing. This research adopts a juridical-normative method supported by document analysis, focusing on primary and secondary legal materials. It also incorporates a legal philosophy approach by exploring the concept of legal certainty from both normative-positivist and Islamic legal perspectives. The findings reveal significant inconsistencies between the Qanun Jinayat and national regulations, especially in the classification of crimes, severity of punishment, and the legal standing of victims. These inconsistencies hinder legal certainty and reduce the credibility of law enforcement institutions. As a practical implication, there is a critical need for synchronization between national criminal laws and the Qanun in Aceh to ensure consistent and victim-centered justice. The Aceh Prosecutor's Office must also shift its prosecutorial approach from a perpetrator-oriented model to one that prioritizes victim protection. In Islamic jurisprudence, punishment serves not only retribution but also deterrence (zajr), reformation (islah), and moral education (tahzib). Therefore, Aceh's criminal law should be reoriented beyond formal legality to include broader considerations of public benefit (maslahah), enabling a more holistic and effective legal protection framework for victims.

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1. INTRODUCTION

Article 1 paragraph (3) of Chapter I of the Third Amendment to the 1945 Constitution confirms that the State of Indonesia is a state of law. This means that Indonesia is a state whose organizational process is based on the principle of law (*rechtstaat*), and not a state of power (*machstaat*). This means that the government system in Indonesia is based on the constitution as the basic law and does not embrace absolutism, where power is unlimited. As a consequence of these provisions, there are three fundamental principles that must be upheld by

every citizen, namely the rule of law, equality before the law, and law enforcement carried out in ways that are not contrary to the law. (Fendri, 2011) These three principles become the main foundation in state administration and are always part of the government's agenda in an effort to run democracy, especially in law enforcement mechanisms.

Criminal law in Indonesia is characterized by its complexity and the dynamic interplay between national and regional legal instruments. Aceh, as a province with special autonomy granted by Law No. 11 of 2006 concerning the Government of Aceh, holds the authority to enforce Islamic Sharia and formulate criminal law provisions through the Qanun Jinayat (Safrida, Lestari, & Maulida, 2022). However, this autonomy has created significant legal pluralism—particularly in the regulation and enforcement of sexual violence cases against children—resulting in a normative overlap between the Qanun Jinayat, the Indonesian Criminal Code (KUHP), Law No. 12 of 2022 on the Crime of Sexual Violence, and Law No. 35 of 2014 on Child Protection.

While the Qanun Jinayat introduces an Islamic legal framework emphasizing hudud and ta'zir punishments such as flogging, the national laws prioritize restorative justice, psychological recovery of victims, and procedural safeguards rooted in human rights. This duality results in conflicting definitions of offenses, varying standards of proof, and divergent sanctions. For instance, the same act of sexual violence may be prosecuted differently depending on whether it is tried under national law or regional Islamic law. Law enforcement officials—police, prosecutors, and judges—face ambiguity and often inconsistent application of justice due to the absence of clear legal hierarchy between the overlapping laws.

The urgency of this research lies in the real and ongoing impact of legal uncertainty on victims of sexual violence. Inconsistent prosecution and sentencing not only hinder access to justice but also risk revictimizing survivors by subjecting them to a process riddled with ambiguity and institutional confusion. In Aceh's socially and religiously conservative context, victims—especially women and children—are often discouraged from seeking legal redress, further deepening their marginalization. These issues are not merely procedural; they represent systemic failures that undermine public trust in the judicial system and can contribute to long-term societal disillusionment with both state and religious institutions.

Furthermore, this normative fragmentation has broader implications for Indonesia's national legal order. It challenges the principle of legal unity and raises constitutional questions about the compatibility of special regional laws with national and international human rights standards. If unresolved, these tensions may foster legal nihilism, weaken law enforcement credibility, and create jurisprudential confusion that affects judicial consistency across jurisdictions.

Given these pressing concerns, this study seeks to critically examine the synchronization and contradiction between the Qanun Jinayat and national legal instruments in the prosecution of sexual abuse cases in Aceh. The research will analyze how legal pluralism in Aceh affects justice for victims, what dilemmas law enforcers face, and how legal policies can be reformed to promote both legal certainty and substantive justice. By employing juridical-normative and philosophical-legal approaches, this study aims to generate comprehensive insights and offer policy recommendations that are socially responsive and legally coherent.

2. RESEARCH METHOD

This study uses a legal-normative approach combined with a legal philosophy approach to analyze legal certainty in the contradiction of applying criminal sanctions against perpetrators of sexual violence against children in Aceh. This type of research is normative legal in nature with a philosophical perspective, focusing on the study of legal principles, norms, and principles in the context of legal pluralism between the national legal system and Qanun Syariat. The approach used includes a legislative approach, a conceptual approach, and a philosophical approach, with data sources consisting of primary legal materials (national legislation and Qanun Aceh), secondary legal materials (literature, scientific journals, and the views of legal experts and legal philosophers). Data collection techniques were conducted through literature review, while data analysis techniques were conducted qualitatively using normative and philosophical analysis methods to identify legal contradictions and evaluate their relevance to the principles of legal certainty and justice according to legal philosophy theory.

3. RESULT AND ANALYSIS

Theory of Legal Certainty

The concept of legal certainty or legality in the Indonesian legal system when viewed factually has actually begun and developed since the colonial period, starting with the introduction of the Criminal Code (KUHP) by the Dutch colonial government. Historically, the idea of legal certainty in the application of criminal law stems from the theory of legism developed by L.J. van Apeldoorn, a Dutch jurist (Manullang, 2017). In Apeldoorn's

view, this theory was strongly influenced by the thoughts of Montesquieu and developed rapidly in the 19th century through the legism movement.

Legism is a legal doctrine that assumes that every application of law must be based on the provisions of the applicable law, with a rational and logical approach. This is based on the belief that the law is a coherent and logical system, so it can be applied objectively to various concrete cases (Andrianto, 2020).

Legal certainty is a condition in which the law is applied visibly and consistently to all individuals without exception. This principle is in line with the principle of fiat justitia et pereat mundus, which implies that the law must be upheld, even if the world is destroyed. The main purpose of legal certainty is to protect society from arbitrary actions, providing assurance that individual rights can be fulfilled in certain situations. Society is eager for legal certainty, because with order in law enforcement, social stability can be realized (Valentine, Eskanugraha, Purnawan, & Sasanti, 2023).

As an instrument that regulates social life, law has two main aspects: certainty and expediency (Nasir, 2017). On the one hand, the law is tasked with creating order through the application of clear and binding rules. However, on the other hand, the law must also provide benefits to society. In other words, the law not only functions as a tool of social control, but must also be able to provide substantive justice for each individual.

In the theory of Legal Positivism, the law is considered the only valid source of law. The judicial system in the tradition of positivism is only tasked with applying the law concretely to a case without any subjective interpretation (Rasjidi & Rasjidi, 2012). This concept is in line with the thinking of Montesquieu, who in his book states that in a republic, judges must act as spokespersons for the law, not as law makers. Judges are described as "the mouth that speaks the words of the law", so they do not have the authority to change or adjust the law based on certain circumstances (Hamzah, 2008).

Meanwhile, Gustav Radbruch proposed four main principles in understanding legal certainty:

1. Law is positive, which means that the law must be contained in laws and regulations.
2. The law is based on facts, not on subjective or moral considerations.
3. The facts that form the basis of the law must be formulated clearly, to avoid misinterpretation and to be easily applied in practice.
4. Positive law should not be volatile, as too frequent changes can lead to uncertainty in the legal system (Kamalia & Adityo, 2025).

In the concept of the "Book Priority Doctrine", Radbruch stated that the purpose of law includes justice, expediency, and legal certainty. However, he emphasized that justice should be the top priority, while legal certainty serves to ensure that the law is recognized as a rule that must be obeyed by all parties (Huijbers, 1990). This thought is reinforced by Van Apeldoorn, who states that legal certainty also means that the law must be able to provide predictability in its application to concrete cases (Apeldoorn, 1990).

According to Bisdan Sigalingging, real legal certainty is not only contained in the law in the books (written law), but must also be implemented in accordance with the principles of legal justice in practice (Halilah & Arif, 2021). In this case, a good law is not only a formally written law, but also a law that can be enforced fairly and is not influenced by subjective factors.

This view is in line with the thoughts of Lawrence M. Friedman, a Professor at Stanford University, who stated that legal certainty must be supported by three main elements:

1. The substance of the law, namely the legal rules written in legislation.
2. The legal apparatus, which includes judges, prosecutors and other law enforcers responsible for the application of the law.
3. Legal culture, namely public awareness and attitudes in respecting and obeying the law (Remaja, 2014).

Legal certainty is a principle that ensures the clarity of norms in a legal system so that it can be used as a guide for the community in carrying out its rights and obligations. The existence of legal certainty guarantees that the applicable regulations have firmness in their application, so as not to cause many diverse interpretations. According to Van Apeldoorn, legal certainty can be interpreted as a provision that can be applied concretely in a particular case. Thus, this principle provides a guarantee that the law is actually enforced, so that individuals who are entitled according to the law can obtain their rights, as well as ensuring that every legal decision can be implemented effectively.

As stipulated in Law No. 44/1999 and Law No. 11/2006 as the formal basis for the enactment of Islamic Sharia in Aceh, it would be unethical to exclude the views of Islamic legal philosophy in looking at this problem. Slightly different from the view of Western jurists, the Islamic legal philosophy expert Asy-Syatibi takes a different approach in understanding justice and legal certainty. In Syatibi's paradigm, this theory is based on three main principles, namely maslahah (benefit), tashil (convenience), and 'adam al-kharaj (avoiding difficulty). Maslahah, in Syatibi's view, is a fundamental concept that is at the core of all his ideas in compiling and constructing a complete legal system. This concept emphasizes that law is not only oriented towards positivistic normative certainty, as happens in the Indonesian legal system, where there is often a separation between legal certainty and justice (Z. Nur, 2023).

Basically, Syatibi argues that the main purpose of the Sharia revealed by Allah is to realize human benefits, both in this world and in the hereafter. The word "maslahah" itself etymologically comes from the root word s-l-h, which means something good, not corrupt, right, pious, honest, and just. In its rational sense, maslahah refers to a cause, means, or end that produces goodness. Thus, in the context of justice, maslahah does not only mean something that is textually commendable, but also reflects the efforts and goals in upholding justice.

Maslahah in the context of legal justice must be realized to ensure human safety in this world and the hereafter. Syatibi emphasized that the enforcement of legal justice is part of the essential needs (doruriyat), which includes five main aspects: the maintenance of religion, soul, mind, offspring, and property. These five aspects are known as Ushul al-Din, Qawa'id al-Syari'ah, and Kulliyah al-Millah in Syatibi's thought. In the view of Khalid Mas'ud, who quotes Syatibi's thought, sharia deals with legal certainty and justice in order to protect and fulfill human needs. Thus, al-'is (justice) is the main purpose of sharia and is at the core of the discussion of maqâsid syarî'ah (the purpose of Islamic law).

In these two theoretical levels, the law receives different interpretations. Legal positivism embraced by Western legal scholars and adopted by the Indonesian legal system tends to prioritize the theoretical level and rule out norms as living law. While the theory of legal certainty in an Islamic perspective prioritizes harmonization between law at the theoretical level (law in the book) and law at the practical level (law in the action). The concept of legal certainty according to Syâtibî is fundamentally different from legal certainty in the context of the Indonesian legal state. In the Indonesian legal system, legal certainty is still normative-positivistic, which emphasizes written rules and formal procedures without clearly directing the purpose of the rule of law itself. In other words, although Indonesia has established itself as a state of law, there is no clear vision of the direction and goals to be achieved through this principle. Borrowing Satjipto Rahardjo's question in his book State Law that Makes Its People Happy, there is a fundamental question that needs to be answered: "State of law for what?" (Rahardjo, 2009).

Contradictions in Criminal Regulation of Sexual Harassment against Children in Qanun and Legislation

1. Definition of Sexual Harassment in Qanun Jinayat (Aceh Qanun No. 6 Year 2014)

   As the only region that has its own legal products based on Islamic Sharia, sexual harassment in the Aceh Qanun discussed as sexual harassment, slightly different from lewd acts which in the Qanun are discussed with khalwat and ikhtilath. In terms of sexual harassment, this is regulated in Aceh Qanun No. 6 Year 2014 on Jinayat Law. The definition of sexual harassment according to Qanun Aceh No. 6 of 2014 is immoral acts or obscene acts intentionally committed by someone in public or against other people as victims, both men and women without the victim's will.17 Forms of actions included in this category include groping, kissing, or other actions that violate the norms of decency (Anam, Fauzi, Setyorini, & Rohmah, 2022).

   In Article 47, a person who commits sexual abuse against a child is punished with 'Uqubat Ta'zir, which can be a maximum of 90 lashes, a maximum fine of 900 grams of pure gold, or a maximum imprisonment of 90 months,19 twice as much as sexual abuse committed against an adult or non-child as stipulated in Article 46 (Harahap, 2023).

   However, the shortcoming in the formulation of sexual harassment in the Aceh Qanun is that its scope is still narrower than the national regulation, because it emphasizes more on the physical aspects and relationships between opposite sexes, without regulating non-physical forms of sexual harassment or digital models that are increasingly prevalent in the modern era.

2. Definition of Sexual Harassment in the Old and New Criminal Code

   Sexual harassment in the old Criminal Code was factually not specifically addressed as sexual harassment. However, in terms of sexual harassment, the old Criminal Code narrated it as obscene acts. Regarding obscene acts, it is regulated in Article 289 with a maximum penalty of 9 (nine) years, and if the victim is a child, it is regulated in Articles 290 and 294 with a maximum penalty of 7 (seven) years.

   In the Criminal Code 2023, sexual harassment is regulated in several articles that categorize such acts as obscene acts. One of the articles that directly regulates sexual harassment is Article 413 paragraph (1) letter b which regulates sexual harassment committed by force, threat, abuse of power, or deceit, which is punishable by a maximum imprisonment of 9 (nine) years. Regarding the crime of sexual harassment where the victim is a child, it is regulated in Article 415b which is also punishable by a maximum imprisonment of 9 (nine) years.

   Article 418 of the new Criminal Code also provides several additions regarding sexual harassment, which reads: "Any person who commits fornication with a biological child, stepchild, adopted child, or a child under his/her supervision entrusted to his/her care or education, shall be punished with a maximum imprisonment of 12 (twelve) years".

The new Criminal Code has also accommodated technological developments by adding provisions related to electronic-based sexual harassment in Article 414 letter c, namely sexual crimes that are also published as pornographic content, punishable by the same imprisonment, which is a maximum of 9 (nine) years.20

Although the form of punishment contained in the new Criminal Code is still considered not optimal to repay the actions of a sex offender, especially against a child who will automatically affect the entire life of the child, but one thing that needs to be "slightly" appreciated from the formulation of the new Criminal Code is the progressiveness of its view in seeing the potential for social media-based sexual harassment. This regulation signals that the government has begun to adapt the criminal law to address the growing forms of sexual harassment in the digital era. Although there is already a law that regulates pornography, its inclusion in the Code provides additional assurance of the magnitude of sin for perpetrators of sexual harassment.

3. Definition of Sexual Harassment in the Sexual Violence Crime Law (Law No. 12 of 2022 - TPKS Law)

Unlike the Criminal Code and Qanun Jinayat, the Law on Sexual Violence (UU TPKS) provides a broader and more specific scope in defining sexual harassment. In Article 6, this Law divides sexual harassment into two categories, namely non- physical sexual harassment and physical sexual harassment. Non-physical sexual harassment is addressed in Article 6 letter (a), which is acts that are sexual in nature but do not involve physical contact, such as speech, gestures, or electronic-based harassment. Examples of these acts are catcalling, degrading sexual comments, or dissemination of sexual content without the victim's consent. The sanction is imprisonment for a maximum of 9 months or a maximum fine of Rp10 million.

Meanwhile, physical sexual harassment is discussed in Article 6 letter (b), which is an act or action that involves direct physical contact with the victim's body without consent, such as touching sensitive body parts, groping, kissing, or other actions that violate decency. Regarding the punishment, this article divides it into 2 (two):

a. If it is with the intention of degrading the dignity of a person based on his/her sexuality and/or decency that is not included in other more severe criminal provisions, the perpetrator may be subject to a maximum imprisonment of 4 years and/or a maximum fine of IDR 50 million.
b. If it is with the intention of unlawfully placing someone under their control, either inside or outside of marriage, the perpetrator is subject to a maximum imprisonment of 12 years and/or a maximum fine of Rp300 million.

As a form of state attention to children, although in general the crime of sexual harassment or sexual-related offenses is a complaint offense, it does not apply if the victim is a child.21 The TPKS Law can be a step forward in the protection of victims of sexual harassment because it outwardly accommodates various forms of sexual violence, including those that occur in the digital realm (See Article 14). In addition, this law also emphasizes victim protection and recovery, which previously received less attention in the national legal system.

4. Definition of Sexual Harassment in the Child Protection Law (Law No. 35 Year 2014) In the context of children, sexual abuse is regulated in Law No. 35/2014 on

Child Protection, which does not explicitly mention the term "sexual abuse", but categorizes it as "obscene acts". According to Article 76E, every person is prohibited from committing violence or threats of violence, deceit, a series of lies, or inducing a child to commit or allow himself to be treated obscenely. This can take the form of physical or non-physical contact, such as coercion to watch or participate in sexual acts. Obscene acts are punishable by a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah).22 Furthermore, Article 81 paragraph (1) regulates the coercion of children to have sexual intercourse, with a minimum imprisonment of 5 years and a maximum of 15 years and a maximum fine of IDR 5 billion. Meanwhile, Article 82 paragraph (1) states that every person who commits obscene acts against children can be punished with the same punishment.

The Child Protection Law also discusses punishment for perpetrators who have a relationship with the victim, such as parents, guardians, teachers, or other parties responsible for the care of children. In this case, the punishment can be increased by one third of the basic punishment in accordance with Article 81 paragraph (3) and Article 82 paragraph (2).

From the various laws and regulations above, it can be concluded that the legal definition and approach to sexual harassment in Indonesia is still pluralistic. Aceh's Qanun Jinayat emphasizes moral aspects and

relationships between the opposite sex in an Islamic perspective, while the Criminal Code defines sexual harassment in the category of obscene acts with limited sanctions. The TPKS Law comes as a more comprehensive legal breakthrough by accommodating various forms of sexual harassment, including those that are non-physical and digital-based. Meanwhile, the Child Protection Law provides stronger protection for victims of sexual harassment who are minors, with more severe penalties for perpetrators.

Sexual abuse against children is an act that is highly condemned in the Indonesian legal system. However, the regulations governing the criminalization of sexual abuse against children in Indonesia are still pluralistic, with different approaches between the Qanun Jinayat in Aceh and national laws and regulations, such as the Criminal Code, the Child Protection Law, and the Child Protection Law (PA Law). Regulatively, in Aceh, with its special autonomy authority based on Law No. 44/1999 on the Implementation of Aceh Privileges and Law No. 11/2006 on the Government of Aceh, Aceh actually has its own legal products to handle cases of sexual abuse against children. However, due to overlapping regulations, there is sometimes confusion for law enforcers to choose the legal material to be imposed on sexual abuse defendants.

The existence of Qanun Jinayat that regulates sexual abuse against children faces major challenges in terms of harmonization with laws and regulations, especially Law No. 11/2012 on Juvenile Justice System (SPPA Law) and Law No. 35/2014 on Child Protection (PA Law). In the aspect of punishment, the SPPA Law and PA Law stipulate imprisonment for perpetrators of sexual abuse against children, while the Qanun Jinayat focuses more on flogging. The optional model applied in Qanun Jinayat makes the flogging option more dominantly chosen by the perpetrators of jinayat acts. Firdaus D Nyak Idin in his writing Andi Rachmad et al. stated that as a result of the application of punishment based on Qanun Jinayat which does not impose imprisonment on the perpetrators, but rather keeps them in the community, this raises concerns about the potential for repetition of criminal acts, especially if the perpetrators are returned to their social environment without an effective rehabilitation mechanism (Rachmad, Amdani, & Ulya, 2021). Based on the above, overlapping regulations in the criminalization of sexual abuse against children in Aceh, in a positivistic view, have the potential to cause legal uncertainty.

Legal Certainty in the Regulation of Child Sexual Abuse Crime in Aceh

The fifth principle of Pancasila mandates that Social Justice must be upheld for all Indonesian people (Bintang, Bayuandri, & Safitri, 2024). In this paradigm, every legal product must be based on the spirit of finding justice, so that legal certainty is something that absolutely must exist and legal uncertainty can be declared contrary to the principles of Pancasila. Indeed, this is the spirit that must be aspired to and implemented in the process of law enforcement in Indonesia.

However, regarding the criminalization of sexual abuse against children in Aceh, the initial hypothesis leads to the existence of legal uncertainty. The inconsistency in legal regulation seems to be apparent when we look at Article 5 letter b of Qanun Jinayat, which states that every non-Muslim who commits jarimah in Aceh together with Muslims can voluntarily submit themselves to the Jinayat Law. The construction of this article has the potential to cause uncertainty in law enforcement, because non-Muslims who commit criminal offenses can be subject to the provisions of Qanun Jinayat if they choose to submit to it. However, if they do not voluntarily submit themselves, then they have the opportunity to choose another law that may be more lenient. Conversely, if the provisions in Qanun Jinayat are more favorable, they can choose to submit to Qanun Jinayat only. From the perspective of the perpetrator, this situation opens space for the existence of favorable uncertainty in criminal law enforcement, because the prevailing system allows flexibility in choosing a law that is more favorable to the perpetrator. This legal uncertainty has the potential to cause ---- either one or all of these legal materials --- to become a second choice for the perpetrators of criminal acts. In this case, the sacredness of legal products has the potential to be played, and does not guarantee the existence of a solid foundation for the cause and effect of a criminal act.

In other cases, such as rape, where the punishment in Qanun Jinayat is more severe compared to the Criminal Code (KUHP), the perpetrator can avoid the more severe punishment by choosing the rules in the Criminal Code. In this problem, legal uncertainty not only targets the perpetrators of criminal acts, but also the victims. This puts the victim in an uncertain position, because Article 5 letter b only gives the right to choose for the perpetrator, legal uncertainty is more in favor of the perpetrator than providing protection for victims of crime. In this level, Qanun Jinayat has shortcomings. In this case, it is important to see the paradigm of the purpose of punishment in the perspective of Islamic law. According to Muh. Tahmid Nur, the purpose of punishment in Islam is not only as a form of retribution24 , but also includes aspects of deterrence25 and reformation. In addition, punishment in Islam also has an educative purpose (al-tahzib) for society. All of these objectives are an inseparable unity in their application, with the main objective of realizing human benefit (M. T. Nur, 2013).

In Qanun Number 6 of 2014 concerning Jinayat Law, the purpose of punishment in jinayat cases is based on several principles, one of which is the principle of benefit.27 Etymologically, maslahah mursalah means

benefit, both in terms of lafaz and meaning. Imam Al-Ghazali explained that basically, maslahah is an effort to obtain benefits and avoid harm in order to maintain the objectives of the Sharia. In the paradigm of maslahah theory, the purpose of punishment must fulfill 3 (three) elements, namely 1) taking benefits, 2) avoiding harm, 3) maintaining the objectives of sharia. Therefore, the implementation of flogging punishment in Aceh in the provisions of jinayat law is believed to provide benefits to the community, especially in preventing acts that are contrary to Islamic law.

In looking at the above phenomenon, many authors are divided into two camps, namely the flow of optimism and the flow of cynicism. Andi Rachmad et al in their research argued that this polemic can be resolved by harmonizing laws and regulations by the Government of Aceh (Rachmad et al., 2021). Amrina Habibi provides a recommendation to take the Child Protection Law in resolving child sexual abuse crimes in Aceh (Habibi, 2019). Both are correct in their views. However, if we try to see factually, the harmonization effort between Qanun Jinayat Aceh and national positive law actually seems impossible. Much deeper, the problem between these two legal products is actually not just a matter of inharmonization of legislation, but further deals with socio-political matters of Acehnese society. If we look at it, the mechanism of punishment in the Aceh Qanun is different from the paradigm of the National Criminal Code. This is because the Criminal Code has never recognized the existence of flogging punishment. However, the philosophical question that must be answered is: "Is the Aceh Qanun then necessarily wrong?".

It is clearly stated in Law No. 44/1999 on the Implementation of Aceh's Privileges that Aceh is given the freedom to implement its own Islamic Sharia (Article 3 Paragraph 2). Article 4 Paragraph (1) also states that the implementation of religious life in the region is realized in the form of the implementation of Islamic Sharia for its adherents in society. Then it is clarified by Paragraph (2) which gives Aceh the freedom to regulate the implementation of religious life, while maintaining religious harmony. Article 1 also clarifies that what is meant by Islamic Sharia is the guidance of Islamic teachings in all aspects of life.30 Law No. 11/2006 on the Governing of Aceh, Article 13 Paragraph (1) also mandates the implementation of Qanun Aceh. Based on the mandate of Article 125 of Law Number 11/2006 on the Governing of Aceh, Jinayat law (Criminal law) is part of Islamic Shari'a implemented in Aceh. So that juridically, Aceh's authority in carrying out its own model of implementing Islamic Shari'a is accommodated by the Law.

Furthermore, many Indonesians agree that the punishment model applied in Aceh is far more effective in addressing criminal behavior. In the status quo, people are fed up with the modern legal approach that does not seem to favor justice. Moreover, with the change in the paradigm of modern criminal law, the orientation is no longer putting criminal law as lex talionis or a means of revenge, but three main visions that become the paradigm of modern criminal law, namely corrective justice, restorative justice, and rehabilitative justice (Delfiandi, Mulyadi, & Trisna, 2024). The argument for the badness of law enforcement in Indonesia is also supported by a survey from the Indonesian Survey Institute (LSI) as of March 2023 which stated that nearly 30 percent of the public considered that law enforcement in Indonesia was bad (Lembaga Survei Indonesia, 2023). This suggests that the current punishment model does not provide meaningful legal satisfaction for the community.

In this context, legal certainty in the theory of Legal Positivism is very much lacking. The approach used in legal positivism theory only focuses on law at the theoretical level (law in the book), thus ignoring and creating a gap with law at the practical level (law in the action), which creates a gap between das sein and das sollen as the source of legal problems (Wardana, 2024). Presumably we agree that justice is the highest ideal of law. However, the positivism paradigm approach used in legal studies in Indonesia seems to ignore this highest ideal. The legal adage relating to the benefit to the accused is In Dubio Pro Reo. This adage means that in case of doubt, the provisions favorable to the defendant shall apply. However, the important note is on the "doubtful" part. Thus, the approach of favoring the defendant should ideally only occur in a state of doubt, not in the entire criminal process.

Therefore, to answer the ideal law enforcement process for criminal offenders in Aceh, the main solution is not the harmonization of laws and regulations. However, the differences in penalties from these legal products must be used carefully to formulate indictments that favor every victim of criminal acts. The Prosecutor's Office, as the Law Enforcement Agency (APH) authorized to file indictments, must charge perpetrators with articles that are more favorable to victims, not favorable to perpetrators. For example, in cases of sexual abuse against children that occurred in Aceh, the indictment should use Law No. 35 of 2014 concerning Child Protection (Article 76E, Article 82 Paragraph 1, Article 82

Paragraph 1, Article 81 paragraph 3 and Article 82 paragraph 2) which provides a higher penalty than that threatened in the TPKS Law or Qanun Jinayat (Maximum 15 Years). Alternatively, a cumulative indictment can be used that harmonizes these regulations to ensnare the perpetrators of sexual harassment to the maximum extent possible. The important point is that the indictment must focus on the perpetrator, and the paradigm of punishment, in my opinion, must adopt a retributive, relative, and remedial approach. The modern criminal law model that uses corrective justice, restorative justice, and rehabilitative justice approaches should be abandoned. Because this approach has proven to have no effect in reducing the number of criminal offenses in Indonesia, as

evidenced by the poor public view of law enforcement, and the over supply of prison capacity which should only be able to accommodate 140 thousand inmates, but is now inhabited by up to 250 thousand inmates (Thea, 2023). These facts prove that law enforcement is very ineffective in preventing and reducing crime in Indonesia, so we can throw the modern criminal law paradigm into the trash can.

4. CONCLUSION

There is disharmony between the provisions in Qanun Jinayat and national legislation. This disharmony has the potential to cause legal uncertainty in a positivistic level, which is to accommodate legal certainty for the perpetrator. Differences in the applied legal system can lead to legal loopholes that allow the perpetrator to choose provisions that are more favorable to him, so that the purpose of the law in providing justice for victims is not optimal. However, injustice for victims of sexual harassment can only occur if the paradigm of punishment used is the paradigm of legal positivism. In the perspective of legal philosophy, after comparing the understanding of legal certainty by Western legal scholars and legal certainty in the Islamic view, legal certainty should not only be understood in a purely normative-positivistic framework, but must reflect the principles of justice and public benefit as described in Syatibi's thought. Syatibi asserts that the law must be placed in a framework that provides benefits to society, not prioritizing the interests of the perpetrators.

In the Islamic perspective, the purpose of punishment is not only limited to retribution, but also includes aspects of prevention (deterrence), repair (reformation), and education for the community (al-tahzib). Therefore, the regulation of punishment against criminal offenders, especially perpetrators of sexual abuse against children, should not only be oriented towards formal legal certainty, but must also consider the long-term impact on victims and the effects on society at large. The application of the law must be carried out with a maslahah and comprehensive approach so that it does not only punish the perpetrator, but also provides optimal protection guarantees for victims and educates the public so that similar cases can be prevented in the future.

In closing, there is a need for synchronization between national law and sharia law in Aceh to avoid contradictions that weaken the effectiveness of law enforcement. In this regard, the Prosecutor's Office as a Law Enforcement Official has a crucial role in formulating charges that emphasize the perpetrator as a subject to be punished, not just as an individual who can choose lighter legal provisions. The paradigm in the prosecution process must also change, from prioritizing the rights of the perpetrator to favoring the interests of the victim. In addition, local governments and child protection agencies also need to be actively involved in ensuring that the laws implemented actually provide protection for victims of sexual abuse, especially children who are the most vulnerable group to the psychological and social impacts of this crime.

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