

## The Analysis of the Decisions of the Sharia Court Judges on Child Rape Cases in the City of Langsa

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DOI: <http://dx.doi.org/10.29240/jhi.v7i2.4922>

Received: 02-07-2021

Revised: 16-08-2022

Published: 20-11-2022

Cite this article:

Muzakkir, M. (2022). The Analysis of the Decisions of the Sharia Court Judges on Child Rape Cases in the City of Langsa. *Al-Istinbath: Jurnal Hukum Islam*, 7(2 November), 399-420. doi:<http://dx.doi.org/10.29240/jhi.v7i2.4922>

### Abstract

This study analyzes of the Decisions of the Sharia Court Judges on Child Rape Cases in the City of Langsa Number 33/JN/2021/MS.Lgs, which gave a prison sentence for perpetrators of raping biological children, this type of research is qualitative using empirical normative legal methods (application) that will analyze the written law and apply it at the time of the case. Research is a type of normative research using a case approach; the primary data source is in the form of a first-level decision that was tried by the Mahkamah Syar'iyah of Langsa City Number 33/JN/2021 /MS.Lgs, as for the research findings, the judge gave a decision based on the Qanun Jinayat with a fine of 165 months in prison because the victim in his request to be tried by the Qanun jinayat. The things that burden the uqubat for the perpetrators are: The defendant's actions did not support the Aceh Provincial government's program in enforcing Islamic Shari'a in Aceh Province; The Defendant's actions caused anxiety and damaged the future of the Victim's Child; The defendant is the biological father of the victim's child who is supposed to protect and guide the victim's child; and while the mitigating factors for the perpetrator are that the defendant is polite at trial and has never been convicted.

**Keywords:** Child; judge's decision; rape; *jinayah*

## Introduction

*Jarimah* (criminal acts) of Rape is a crime classified as serious and gets serious attention in today's society.<sup>1</sup> This type of crime has existed for a long time and can be said to be a classic form of corruption that will always follow the development of human culture itself; it will always exist and develop even though it may not be too much different from before.<sup>2</sup> This *jarimah* (criminal acts) of rape does not only occur in urban communities that are advanced in terms of civilization and culture and have a high level of legal knowledge and awareness, but this crime of rape and harassment also thrives in rural communities that still have low awareness of legal knowledge and strongly adhere to customary norms. And traditions.<sup>3</sup>

The case *jarimah* of rape is where most difficulties and complications are found in resolving the issue, both at the level of investigation, prosecution, and the level of giving legal decisions.<sup>4</sup> The problem of proving in this *jarimah* of rape case can be seen that the perpetrator against the victim carries out the *jarimah* of rape without the presence of other people who will be witnesses for the rape act; this will have an impact on legal protection and justice for the victim later, especially women and children who are often getting immoral crimes, among corrupt crimes that befell women and children is the *jarimah* of rape,<sup>5</sup> because they are perceived by the perpetrators of rape or sexual harassment as weak and helpless.<sup>6</sup>

The legal decision given by the judge is a form of legal protection for the victim, so in this case, the state must be present firmly because if the legal decision is considered weak and there is no justice in protecting the rights of the victim, then the crime rate will be higher. It is appropriate for judges and public prosecutors to give and demand punishments for perpetrators *jarimah* of rape,

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<sup>1</sup> Umarani Azkha, Syahrizal Abbas, and Mohd. Din, "Analisis Yuridis Terhadap Rumusan Jarimah Pemerkosaan Dalam Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 (2020), <https://doi.org/10.29240/jhi.v5i2.1784>.

<sup>2</sup> Endri Ismail, "Analisis Yuridis Terhadap Legalitas Qanun Aceh No. 6/2014 Tentang Hukum Jinayat," *Kanun Jurnal Ilmu Hukum* 20, no. 1 (2018), <https://doi.org/10.24815/kanun.v20i1.9625>.

<sup>3</sup> Ferry Ardianoor, Hanafi Arief, and Hidayatullah, "Pelecehan Seksual Ditinjau Dari Hukum Pidana Indonesia," *Sosiologi* 1, no. 1 (2020).

<sup>4</sup> Liza Agnesta Krisna et al., "Discourse on the Formulation of the Jarimah of Sexual Violence against Children in the Aceh Qanun Jinayat," *Research, Society and Development* 10, no. 11 (2021), <https://doi.org/10.33448/rsd-v10i11.20059>.

<sup>5</sup> Ahmad Fatikhul Amin Abdullah, Fx. Wartoyo, and Agung Kurniawan, "Studi Fenomenologi Pelecehan Seksual Pada Wanita Melalui Sosial Media," *Jurnal Ilmu Pendidikan Dasar* 3, no. 1 (2019).

<sup>6</sup> Suprihatin Suprihatin and Abdul Muhaiminul Azis, "Pelecehan Seksual Pada Jurnalis Perempuan Di Indonesia," *PALASTREN Jurnal Studi Gender* 13, no. 2 (2020), <https://doi.org/10.21043/palastren.v13i2.8709>.

especially for biological children; there must be a deterrent effect for the perpetrators by giving the maximum punishment by the applicable laws and regulations.<sup>7</sup>

The legal protection provided starts from efforts to prevent child rape from occurring, to protect the rights of child victims *jarimah* of rape and protection efforts against the law *jarimah* of rape. Legal decisions that are demanded must also pay special attention to the fulfilment of children's fundamental rights; this is expected to be able to overcome the *jarimah* of rape that children in Indonesia often experience.<sup>8</sup>

Regarding child rape, the government is obliged constantly to fulfil the fundamental rights of children in Indonesia and pay special attention to children, especially children who are victims of rape, considering that children are human resources for the next generation. Coaching and providing good education carried out by parents, the community, and the government for children will make quality and quality resources in the future.

The government's seriousness in protecting the fundamental rights of children, which are part of human rights (HAM), is reflected in the presence of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 on child protection. On the other hand, in realizing the welfare of children, in the province of Aceh, there is Qanun Number 6 of 2014 concerning Jinayat Law.<sup>9</sup> *Jarimah* of Rape is a criminal offence with a severe punishment in Aceh's qanun and has become the centre of public attention because of decency crimes committed by force and threats experienced by many women.<sup>10</sup>

In Aceh itself, cases of child rape continue to increase yearly; this is very important and needs to be handled professionally sexual abuse children. Cases of rape against children will significantly affect the psychological and mental development of children as victims; this will be felt by victims *jarimah* of rape, such as prolonged trauma, excessive shame when interacting with other people, fear, threats, and psychological development will be disturbed, so this results in the victim's mental development being unhealthy. Thus, the presence of law

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<sup>7</sup> Muhammad Idran, "Tinjauan Yuridis Penerapan Hukum Terhadap Pelaku Tindak Pidana Pemerkosaan Terhadap Anak Kandung," *Fiat Justisia: Jurnal Ilmu Hukum* 5, no. 3 (2015), <https://doi.org/10.25041/fiatjustisia.v5no3.336>.

<sup>8</sup> G A T Sania and A A S Utari, "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan," *Kertha Wicara: Journal Ilmu Hukum* 1, no. 1 (2019).

<sup>9</sup> Ummi Kalsum et al., "The Forms of Legal Protection for Victims of Rape in Qanun Number 6, 2014 Concerning Jinayat Law," *International Journal of Criminology and Sociology* 10 (2021), <https://doi.org/10.6000/1929-4409.2021.10.181>.

<sup>10</sup> Rizkal Rizkal and Mansari Mansari, "Pemenuhan Ganti Kerugian Anak Sebagai Korban Pemerkosaan Dalam Kasus Jinayat Aceh," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 2 (2019), <https://doi.org/10.22373/equality.v5i2.5587>.

enforcement officials is very much needed and urgent as an effort to protect victims of child rape.<sup>11</sup>

In the case of child rape, there are many difficulties in handling the cases, starting from the investigation stage of the case, proving the crime against the perpetrator *jarimah* of rape, prosecution carried out by prosecutors, to the judge's decision. This is because *jarimah* of rape victims usually occur without the presence of other witnesses. Given the very high number of crime cases where children become victims, this will significantly disturb the mental psychology of children so that the essential obligations of children's rights as victims cannot be carried out correctly.

One of the things that can be overcome. As is constantly being reported in the mass media about cases of sexual violence against children that need to be highlighted, the law needs to act as soon as possible. The form of legal protection provided starts from the prevention of acts of sexual violence against children, protection of child victims of sexual violence and protection of children who conflict with the law (child perpetrators) of sexual violence. The law is required to be able to give special attention to the interests of children; in this case, it can overcome acts of sexual violence experienced by many Indonesian children

In Aceh, handling cases *jarimah* of rape against children can be tried in two ways; Qanun Jinayat and Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 on child protection. If the claim uses the Qanun Jinayat, the case will be tried by a local Mahkamah Syar'iyah judge, while if the claim uses the Child Protection Act, the case will be heard in a district court. The use of rights in prosecuting a case will affect the regulation of differences in the judge's verdict.

One of the decisions related to the handling of *'uqubat* rape against children in Aceh is Decision Number 33/JN/2021/MS.Lgs, this decision tried the rape finger of a biological father against his child carried out by the defendant Rudi Ariyanto (RA), who is the biological father of a victim named Nazura Syaqla (NS) since 2018 when the victim was in the second grade of elementary school to the victim in the fifth grade of elementary school, in a relatively long period of about three years, the defendant's actions were only revealed and processed by law until finally being tried in the Mahkamah Syar'iyah Langsa.

Here the author is interested in studying and analyzing the judge's decision regarding how the Panel of Judges considers imposing the *jarimah* of rape the biological father on the child. What is the judge's consideration in

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<sup>11</sup> V F P Yuniar, "Penegakan Hukum Dalam Tindak Pidana Pemerkosaan Terhadap Anak Berdasarkan Qanun Jinayat Aceh," *Media Iuris*, 2019.

imposing a caning sentence on the perpetrator, and what are the things that aggravate and lighten the *'uqubat* for the perpetrator of the *jarimah* of rape a child. This research is essential because it adds to the wealth of knowledge related to the *jarimah* of rape against biological children..

## Discussion

### Settlement of Rape Cases against Children in Aceh

In the Kompas daily, it was stated that the cases that occurred in Aceh were the rape of parents against their biological children, including; On 30 March 2021, the Mahkamah Syar'iyah Aceh Besar handed down a verdict of acquittal against MA, the accused of raping biological children, 7 March 2019 the panel of judges at the Mahkamah Syar'iyah Nagan Raya sentenced MW to lashes 170 against MW, the accused of raping children, May 2021, the Mahkamah Syar'iyah Aceh handed down acquittal against DP, accused of raping children. However, the supreme court sentenced 16.5 years in prison at the cassation level. 16 September 2021, the Mahkamah Syar'iyah Aceh sentenced SU, the accused of raping biological children; however, the supreme court sentenced SU to 15 years in prison at the cassation level. 21 October 2021, Mahkamah Syar'iyah Aceh Besar judge sentenced US to 15 years in prison, accused of raping a child, 17 November 2021, Mahkamah Syar'iyah subulussalam judge sentenced NI to 12 years in prison, accused of child-raping.<sup>12</sup>

In every settlement of the finger rape case against a child in Aceh, the harshest punishment given to the perpetrator or the accused is either *'uqubat ta'zir* and imprisonment; this is often one of the options given by the panel of judges and public prosecutors in demanding their charges. On the other hand, rape victims feel that the law given is less than optimal compared to the trauma they face, both in terms of immaterial and material protection. The government, in this case, must provide legal protection for its people, which is preventive and repressive.<sup>13</sup>

Legal decisions, which are legal protections, are expected to enforce fundamental and human rights that other people have harmed, and the wider community must enjoy legal protection. The purpose of preventive legal protection is to minimize legal disputes in the future. In this case, the judge, as

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<sup>12</sup> Zulkarnaini, "Hambatan Mendapatkan Keadilan Bagi Anak Korban Pelecehan Seksual Di Aceh - Kompas.Id," accessed July 3, 2022, <https://www.kompas.id/baca/nusantara/2022/02/11/hambatan-mendapatkan-keadilan-bagi-anak-korban-pelecehan-seksual-di-aceh>.

<sup>13</sup> Sitti Mawar and Azwir Azwir, "Implementasi Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat Dalam Kasus Pidana Anak-Anak," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 7, no. 2 (2018), <https://doi.org/10.22373/legitimasi.v7i2.3977>.

the executor of the court's duties, will try to be careful in making legal decisions handed down to criminals. At the same time, the repressive nature of protection is intended so that the settlement of legal disputes is included in handling the judiciary.

Efforts to fulfil rights and legal assistance in order to create a sense of security for witnesses and victims have been mentioned in Article 1 number 5 of Law Number 31 of 2014 Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims:<sup>14</sup>

*“Witness and Victim Protection Agency, abbreviated as LPSK, is an institution with the duty and authority to provide protection and other rights to Witnesses and/or Victims as regulated in this Law”*

Furthermore, in the provisions of Article 4 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, it is stated that:<sup>15</sup>

*“Witness and Victim Protection aims to provide a sense of security to Witnesses and/or Victims in providing information in every criminal justice process.”*

The content of the article that can be understood is to provide a sense of security to witnesses and victims, motivate victims and witnesses to avoid fear for the smooth running of the trial process, and foster a sense of confidence in witnesses and victims in the social life of the community, create a sense of justice, both for witnesses and victims as well as families and communities, the certainty of being free from all forms of threats and violence against women, crimes that are serious and violate human rights and cannot be tolerated as gender-based violence, the establishment of fair law enforcement for perpetrators of violence against women. The context of legal protection for rape victims always goes hand in hand with the impacts caused by rape victims, both psychological and physical.

Victims of rape do not only experience physical harm and suffering, but also victims suffer psychological losses as a result of irresponsible behaviour by the perpetrators of rape. In this case, the suffering and losses felt by rape victims are divided into three, including: *first*, physical implications, such as injuries to the body and genitals, pain during sexual intercourse, genital infections, and others. *Second*, mental implications, such as fear, prolonged trauma, high anxiety, paranoia, difficulty trusting others, feelings of disappointment in men, emotions, and others related to the victim's psyche. *Third*, the implications in social and personal life include being shunned by

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<sup>14</sup> Presiden Republik Indonesia, “Undang-Undang Nomor 31 Tahun 2014 Perubahan Atas Undang-Undang Nomor 13 Tahun 2006” (2014).

<sup>15</sup> Presiden Republik Indonesia, “Undang-Undang Nomor 13 Tahun 2006” (2006).

friends, avoiding men around them, feeling betrayed by others, and lousy husband and wife relationships.<sup>16</sup>

Based on the consequences or impacts experienced by rape victims, it is essential to have legal protection provided by the Aceh government to rape victims. The forms of legal protection for rape victims provided by the Aceh government, as stated in the Qanun Aceh concerning Jinayat Law and Governor Regulation Number 15 of 2018, are in the form of compensation as follows: *first*, the granting of the right of restitution, sanctions for restitution can be carried out on *'uqubat* imposed by a judge on a defendant or perpetrator to pay an acceptable amount of money to a rape victim who has been harmed as a result of doing *jarimah*. *Second*, the judge gave a severe sentence to the perpetrators of raping children by applicable laws, both qanuns and child protection laws. *Third*, assistance to provide legal protection for child victims of rape, in this case, will be accompanied by P2TP2A.<sup>17</sup>

In the matter of the legal decision given by the judge in the case of the rape of a biological child, the judge often imposes a sentence or *'uqubat ta'zir* imprisonment for the perpetrator. This ensures that the perpetrator is away from the victim's child for a certain period. Moreover, the perpetrator's presence in prison can indirectly provide psychological protection support for the victim's child. The victim's child will no longer meet the perpetrator in his life. Where previously, the relationship between the perpetrator and the victim's child was close because he was part of his family; then, by giving a prison sentence by the judge, the victim's child will be far apart and avoid the perpetrator for some time, not being able to meet again.

### **Procedure for the Decision of the Mahkamah Syar'iyah of Langsa City**

The Mahkamah Syar'iyah of Langsa City, in deciding the *jinayat* case, has passed the procedures and mechanisms by the applicable laws and regulations and has gone through the process before the judge's decision; this is also by the litigants following the existing mechanism at the Mahkamah Syar'iyah of Langsa City. The procedure followed by the litigating party in the case of *jinayat*, the prosecutor's office must register the case, and then the files will be examined to meet administrative completeness; the file examination is carried out by the Jinayat Junior Registrar and recorded in the registration book and prepares the suspect's detention file, Mufardisshadri discloses this as a deputy judge at the Mahkamah Syar'iyah of Langsa City.

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<sup>16</sup> Umi Aisyah and Laras Prameswarie, "Konseling Individual Bagi Anak Korban Pemerkosaan Di Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak (P2TP2A) Kabupaten Tanggamus," *Irsyad: Jurnal Bimbingan, Penyuluhan, Konseling, Dan Psikoterapi Islam* 8, no. 2 (2020), <https://doi.org/10.15575/irsyad.v8i2.1971>.

<sup>17</sup> Firqotun Naziah, "Analisis Perlindungan Hukum Terhadap Wanita Korban Pemerkosaan," *Lex Scientia Law Review* 1, no. 1 (2017).

Furthermore, the clerk will form a panel of judges to be submitted to the chairman of the Mahkamah Syar'iyah of Langsa City, as many as three judges; in the next stage, the chairman of the Mahkamah Syar'iyah of Langsa City returns the completeness of the files that have been checked to the registrar to be submitted to the panel of judges who have been determined to regulate schedule of hearings and determination of the results of the trial.

The completeness of the file is the main requirement in carrying out the trial; there is evidence, suspects, witnesses, public prosecutors and defenders. The facts in the trial that the public prosecutor proved became the basis for deciding the defendant's Mahkamah Syar'iyah of Langsa City Judge. The panel of judges consulted, and based on the prosecutor's demands, then if it has been fulfilled, the Panel of Judges can decide the case against the defendant, guilty or not.

Mufardisshadri, in his explanation, said that every *jinayat* case in the Mahkamah Syar'iyah of Langsa City was not included in the judge's decision to acquit the defendant, including the prosecution for the *jinayat* case of the father's rape against his biological child, which is the focus and reference in this study. This is based on the completeness of the evidence and testimony from the victim's witness regarding the fingering action the defendant has carried out. And supported by an explanation of the facts of the trial by the Public Prosecutor (JPU).<sup>18</sup>

### **Analysis of Judges' Decisions at the Mahkamah Syar'iyah of Langsa City**

In case Number 33/JN/2021/MS.Lgs, the Mahkamah Syar'iyah of Langsa City, has tried the case of the rape of a biological child committed by the defendant to his child, located in one of the Kalam villages in the Mahkamah Syar'iyah of Langsa City.

In the public prosecutor's demand for the case of the rape of a biological child in the decision letter number 33/JN/2021/MS.Lgs instructed the panel of judges at the Mahkamah Syar'iyah of Langsa City who examined and tried the case by deciding that the defendant RA was legally and convincingly guilty of committing rape against a biological child, which violated Article 50 of Aceh Qanun Number 6 of 2014 concerning *Jinayat* Law, which reads:

*“Any person who intentionally commits rape, as referred to in Article 48 against children, is threatened with ‘uqubat ta’zir whipping at least 150 times, a maximum 200 times or a fine of at least 1,500 grams of pure gold, a maximum of 2,000 grams of pure gold or imprisonment for a minimum of 150 months, a maximum of 200 months”.*

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<sup>18</sup> Interview with Mufardisshadri, 12 Mei 2022.

The Public Prosecutor (JPU) demanded the defendant *Jarimah* for raping her biological child, namely the perpetrator RA, with *'uqubat ta'zir* in the form of the heaviest imprisonment of 180 months, with the support of evidence in the form of; one piece of a yellow long-sleeved nightgown with hello kitty printed on it, one piece of long red pants with white print with Louis Vuitton in it, one piece of purple underwear, one piece of blue short-sleeved shirt that reads Adidas, one piece of grey Punggol pants. Moreover, it stipulates that the defendant is burdened with paying court fees of five thousand rupiahs.<sup>19</sup>

In this case, the perpetrator of raping his biological child has made a defence (*pledoi*) through his attorney so that the perpetrator or defendant is released because he is not convinced that he has committed rape against those charged with him.<sup>20</sup>

The public prosecutor (JPU), in this case, has brought in witnesses and gave their statements, including; *First*, Nazura Syaqla (NS), the relationship between the victim's witness and the defendant is the victim's biological father, in the testimony of the victim's witness revealed that the victim's witness and his sister lived with his uncle and aunt in Langsa City, the victim's biological mother lived in Malaysia after the divorce and the witness's biological father the victim lives in Pangkalan Brandan, the victim's biological father always stays at his uncle's house every time he visits the victim's witness and sleeps together in his uncle's room with the victim's witness and his sister.<sup>21</sup>

In his statement on Sunday, 22 August 2021, he visited Langsa and forced him to eat rice, and then the victim's witness fell asleep. When he woke up saw the defendant in his pants open to his knees, and the victim's witness saw that the defendant was taking off his pants, then the defendant was on top of him and groping his body. The victim witnessed and inserted the genitals into the victim's genitals to release sperm in the underwear used at that time. This act was carried out from the victim's witness in the second grade of elementary school to the fifth grade of elementary school.<sup>22</sup>

The fact revealed by the victim's witness that the victim's witness was traumatized, frightened and sick made the victim's witness be treated at a hospital in Langsa City; the defendant not only inserted the genitals of the victim's witness but also into his rectum. All the things said by the victim's witness; the defendant did not confirm except on 2 August 2021, it was confirmed that the defendant slept in the room with the victim and his sister.

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<sup>19</sup> Mahkamah Syar'iyah Kota Langsa, "Putusan Nomor 33/JN/2021/MS.Lgs" (2021), p.11.

<sup>20</sup> Mahkamah Syar'iyah Kota Langsa, p.12.

<sup>21</sup> Mahkamah Syar'iyah Kota Langsa, p.13.

<sup>22</sup> Mahkamah Syar'iyah Kota Langsa, p.13.

*Second*, Muhammad Irsan (MI), who is the biological uncle of the victim's child, has given his testimony under oath that on the testimony of the witness, the defendant expressed objections and did not confirm it except that on 22 August 2021, it was confirmed that the defendant was in Langsa and sleeping in one room with the victim's child and younger siblings; *third*, witness Zailia Purtaina (ZP), Whereas based on the testimony of the witness, the defendant stated that he did not object and confirmed it, except for the defendant inserting his finger into the vagina of the victim's child; the defendant denied it; *fourth*, Dery Pratama, S.H, a police officer and as a witness to the arrest of the defendant, who picked up the defendant at the Kerinci Police Station whom members of the Kerinci Police had arrested. The witness who arrested the defendant knew that the defendant had committed rape against his biological child every time the defendant visited the house of the victim's aunt. In his confession, when the defendant was arrested, the defendant did not fight back, and there was no attempt to abuse the defendant; then, the defendant was taken to the Langsa City Police Station for further investigation.<sup>23</sup>

*Fifth*, Meygi Saputra (MS) is the witness who arrested and picked up the defendant from the Kerinci police station, whom the police had arrested. The basis for the defendant's arrest was a report from the victim. The defendant did not admit that he had raped his biological child. On the other hand, the defendant, when met with the victim that the defendant, as the biological father, had raped him and that based on the testimony of the witness who arrested the defendant, the defendant stated that he had no objections and confirmed it.<sup>24</sup>

Moreover, in front of the trial, the Public Prosecutor presented evidence in the form of one piece of a yellow long-sleeved nightgown with the image of hello kitty, one piece of red and white trousers with a Louis Vuitton inscription, one piece of purple underwear, one piece of blue short-sleeved shirt It reads Adidas, one piece of grey Ponggol pants. Moreover, the evidence has been confiscated by the applicable legal provisions after confirmation to the defendant and witnesses. The defendant admits that the evidence shown belongs to the victim who was used by the victim when committing rape. The defendant confirmed that what belonged to the defendant was the clothes. A t-shirt that says Adidas and Punggol pants; the defendant does not know whom it belongs to.<sup>25</sup>

Other evidence submitted by the public prosecutor is documentary evidence, in the form of, first, the results of Visum Et Repertum No: VeR/091/X/2021 dated 11 September 2021 on behalf of Nazura Syaqlia signed by dr. Netty Herawati, M.Ked (For), Sp. F.M, Sp. OG., M.Kes, a doctor at

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<sup>23</sup> Mahkamah Syar'iyah Kota Langsa, p.14.

<sup>24</sup> Mahkamah Syar'iyah Kota Langsa, p.15.

<sup>25</sup> Mahkamah Syar'iyah Kota Langsa, p.15.

Langsa Hospital; *second*, photocopy of the birth certificate number 207/CSL/IST/KTL/2012 in the name of the victim's child issued by the Department of Population and Civil Registration of Langsa City on 23 April 2012, the evidence has been matched with the original and is found to be correct; *third*, photocopy of Family card number 1174052708190009 in the name of the head of the Syafrina family issued by the Langsa City Population and Civil Registration Office on 27 August 2019, the evidence has been matched with the original and is found to be appropriate.<sup>26</sup>

During the trial process, the defendant's attorney also presented the following witnesses who supported the defendant: *first*, Ernita, who is the younger sister of the defendant, in giving testimony, this witness did not take an oath in giving her testimony. In his statement as a witness that acquitted the defendant, on 25 August 2021, the defendant was in Pangkalan Brandan, to be precise, at the house until 1 September 2021; on 24 August 2021, the defendant was in Langsa. The defendant went to Langsa from 19 August 2021 to 25 August 2021; the witness often heard that the defendant always contacted his son before the defendant went to Langsa, and the witness had also seen the defendant make video calls with his children. Then on 8 September 2021, the defendant received a call from his son. The witness asked the victim's child about the rape incident, and the victim's child answered that it was like his father; the victim's son explained that at the time of the incident, the room lights were dim. The latter said that if his child had haemorrhoids recur, the witness met the victim's child at school after the defendant was arrested and confirmed that the child was healthy and in good condition.

Furthermore, on 24 August 2021, the witness saw on the defendant's Facebook account uploading a photo of the defendant with the victim's child, who showed a happy expression with the defendant. According to the witness's testimony, the rape was committed by the defendant, then when reaffirmed, the victim's child replied that his face was similar to that of the defendant. Moreover, the rape occurred when the defendant returned to Langsa.<sup>27</sup>

Second, the other witness who was mitigating was Sella Safira; the relationship with the defendant was the nephew of the witness who was mitigating the defendant whose oath was taken; provide information which is as follows: the defendant and his wife are divorced, but the witness does not remember the year of the divorce, in the knowledge of the witness, that the defendant was arrested for allegedly raping the victim's child. However, the witness believed that the defendant was innocent because the defendant had never committed an act of raping his biological child, even from the family intending to adopt the child; the witness had written this on his Facebook

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<sup>26</sup> Mahkamah Syar'iyah Kota Langsa, p.16.

<sup>27</sup> Mahkamah Syar'iyah Kota Langsa, p.17.

account, but the victim's biological mother responded by threatening to kill the defendant, and The Facebook status was created after the alleged rape that was alleged to the defendant. The witness deleted the Facebook status.<sup>28</sup>

*Third*, Silvia Shalsabilla (SS) whose relationship with the defendant is a nephew, under oath, gave a statement which essentially is as follows: That the Defendant and his wife are divorced, but do not know the year of divorce; On August 25 to 28, 2021, the defendant was in Pangkalan Brandan, precisely at the witness' house, because the defendant was ordered to paint the house by his parents; The witness confirmed that the defendant was in Langsa to meet his sick son and on 26 August 2021, saw the defendant making a video call with his son. Moreover, the witness knows that in September 2021, There was no objection to the witness's statement, and the defendant confirmed it.<sup>29</sup>

The defendant at the trial has given information which is essential as follows; the defendant knows that he is being investigated in terms of criminal acts of sexual harassment and rape of minors, and the defendant is accused of being the perpetrator; the defendant appeared in court accompanied by legal counsel on behalf of Mas'ud S.H., M.H., Nano Eka Yudha, S.H., Dody Sanjaya, S.H., M.H., and Muhammad Yan Rizal Adha, S.H.; and has never been convicted in a criminal case; the defendant admitted that he had divorced his wife and had three children with his ex-wife who is currently working in Malaysia and the defendant worked in a factory in Kerinci. The defendant confirmed that he had been arrested for child rape on behalf of Nazura Syaqlia, who was his biological child, on 29 September 2021; That at the time of the arrest, the police officer was present with and showed the arrest warrant and the defendant was in Langsa from 19 August 2021 to 25 August 2021. Then the defendant returned to Pangkalan Brandan.<sup>30</sup>

On the night of 22 August 2021, the defendant took the children to the study; then, the defendant sat in the coffee shop while waiting for his son to come home from the Koran. Then the defendant took them home and then slept together until morning, in the defendant's confession that the victim never complained of pain in her genitals. In the defendant's confession before the trial, the defendant did not exist and had never committed any act of sexual harassment or rape against his biological child.<sup>31</sup>

The defendant's knowledge that the victim had haemorrhoids as a result of a doctor's examination caused him to bleed during defecation and that haemorrhoids were inherited from his grandmother. The defendant never knew that the victim had ever received a post-mortem by a doctor, in the knowledge

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<sup>28</sup> Mahkamah Syar'iyah Kota Langsa, p.18.

<sup>29</sup> Mahkamah Syar'iyah Kota Langsa, p.19.

<sup>30</sup> Mahkamah Syar'iyah Kota Langsa, p.20.

<sup>31</sup> Mahkamah Syar'iyah Kota Langsa, p.20.

of the defendant that the victim had never been in an accident or rape that caused damage to the victim's vagina.

In the judge's consideration, based on the evidence of the Investigator's Examination Procedure, the letter of delegating the case from the Public Prosecutor, and the defendant's confession, it turns out that the Defendant is domiciled within the jurisdiction of the Mahkamah Syar'iyah of Langsa City, then formally this case is included in the authority of the Mahkamah Syar'iyah of Langsa City to tried him by the provisions of Article 128 paragraph (3) of Law Number 11 of 2006 concerning the Government of Aceh, in jo. the Qanun of the Province of Nanggroe Aceh Darussalam Number 10 of 2002 concerning the Islamic Shari'a Courts, in jo. Article 5 of Qanun Aceh Number 7 of 2013 concerning the Jinayat Law in jo. Article 5 of Qanun Aceh Number 6 of 2014 concerning Jinayat Law.

In consideration, all of the witnesses presented by the Public Prosecutor have given testimony under oath (except the witness's child victim) and to the testimony of the witnesses. However, the defendant expressed objections and did not confirm the statements of the witnesses, except for the fact that the defendant slept with the victim's child on 22 August 2021, in one room at the house of witness Muhammad Irsan and witness Zailia Purtaina formally the statements of these witnesses can be used as legal evidence according to law.<sup>32</sup>

In the judge's consideration, that 2 witnesses presented by the defendant on behalf of Sella Safira and Silvia Shalsabilla were witnesses who gave testimony under oath and gave statements based on their knowledge, then the statements of the two witnesses can be used as legal evidence according to law.

In the judge's consideration, that the witness on behalf of Ernita, whom the defendant presented, had a blood relationship with the defendant (big sister), and the public prosecutor objected to the witness, but the defendant's legal counsel still asked the Panel of Judges for the witness to continue to hear his statement, then based on Article 168 of the KUHP, the testimony of the witness is heard without taking an oath, and against the testimony of the witness, the Panel of Judges only sits him as evidence of instructions.<sup>33</sup>

In the judge's consideration, that based on the evidence in the form of testimony from witnesses presented by the Public Prosecutor and the defendant, the defendant's statement and the evidence presented at the trial, the following legal facts were obtained: *first*, the defendant is an adult, physically and mentally healthy, is Muslim; residents of Paya Bujok Seulemak Village, Langsa Baro

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<sup>32</sup> Mahkamah Syar'iyah Kota Langsa, p.21.

<sup>33</sup> Mahkamah Syar'iyah Kota Langsa, p.23.

District, Langsa City or Kampung Baru, Brandan Timur Baru District, Langkat Regency, North Sumatra Province.<sup>34</sup>

*Second*, on 22 August, 2021, the defendant was in Langsa City at the house of Muhammad Irsan who took care of the defendant's children, the defendant had divorced from the victim's child's mother several years ago, and currently the victim's child's mother is in Malaysia, on 22 August 2021 the defendant sleeps in the same room with the victim's child named Nazura Syaquia and the victim's children after previously the defendant and the victim's child ate together outside the house, and in that room there were no other adult men besides the defendant; that at midnight on that date the victim's child felt that the defendant's penis was inserted into the vagina by the defendant and the victim's child's clothes were already open when the defendant did this and the victim's child could not fight back because the victim's child's body was placed on top of the defendant, the victim's child was already bleeding in her vagina and rectum since the victim's child was still in grade two elementary school, and currently the victim's child is in grade five elementary school and this always happens when the defendant comes to visit the victim's child, and the victim's child does not dare to talk about the treatment carried out by the defendant to him because the victim's child was afraid of the defendant's threat. At one time, the victim's child had told the defendant's treatment of the victim's child that had occurred since the victim's child was in grade two elementary school.<sup>35</sup>

*Third*, the results of the Visum Et Repertum No: VeR/091/X/2021 dated 11 September 2021 on behalf of Nazura Syaquia signed by dr. Netty Herawati, M.Ked (For), Sp. F.M, Sp. OG., M.Kes, doctors at Langsa Hospital, concluded that they were found outside the coitus hole; old tears were found to the bottom at nine and twelve o'clock. In the intercourse hole, the anus was found to be slightly loose due to blunt force trauma; the evidence consists of one piece of a yellow long-sleeved nightgown with the image of hello kitty, one piece of red trousers with white motifs written with Louis Vuitton in it, one piece of purple underpants, one piece of blue short-sleeved shirt that reads Adidas, one piece of Punggol pants defendant's grey colour.<sup>36</sup>

Furthermore, the Panel of Judges will consider whether, based on the legal facts mentioned above, the defendant can be declared to have committed the *jarimah* (criminal act) charged to the defendant. In consideration of the panel of judges that the Public Prosecutor has indicted the defendant with an alternative indictment, the Panel of Judges, by taking into account the legal facts mentioned above, directly chooses the first alternative indictment as regulated in

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<sup>34</sup> Mahkamah Syar'iyah Kota Langsa, p.24.

<sup>35</sup> Mahkamah Syar'iyah Kota Langsa, p.26.

<sup>36</sup> Mahkamah Syar'iyah Kota Langsa, p.26.

Article 50 Aceh Qanun Number 6 of 2014 concerning Law Jinayat, whose elements are as follows:

*First*, the element -everyone-, considering that the element of “everyone” clearly shows here a person who is in the territory of the Aceh province as a legal subject (bearer of rights and obligations) who will be criminally responsible in this case; that what is meant by “everyone” is referring to a person as a legal subject who commits a crime. The word "everyone" indicates the person who must be responsible for the act/event accused or at least who the person who should be accused in this case is. Strictly speaking, the word “Whoever” is any person or anyone who must be made a defendant/father or anyone as a legal subject (supporting rights and obligations) who can be held accountable for all their actions. Thus, the word “every person or whoever” is historically chronologically human as a legal subject has naturally the ability to be responsible unless the law explicitly stipulates otherwise, as stated in Article 47. 48. 49, 50 of the KUHP. Jo. Article 10 letters a and b of Aceh Qanun No. 6 of 2014 concerning the Jinayat Law or no justification or excuse was found that could abolish his actions.

Based on the legal facts obtained at the trial where the witnesses have given testimony under oath and the defendant himself has admitted that the defendant present and being examined at the trial is a defendant whose identity is by what is stated in the indictment of the Public Prosecutor, after the facts can be concluded that in this case there was no personal error brought before the trial, thus on that basis the panel of judges believes that the element of “everyone” has been sufficiently fulfilled and proven legally and convincingly according to law.

*Second*, the element of -deliberately committing rape- that this element is an alternative limitation or alternative element, meaning that not all of the acts must be proven, but with the proof of one act, all of these elements are fulfilled, and the Assembly can choose which element is the most appropriate.<sup>37</sup> Appropriate to be applied in the quo case, the meaning of intentional means wanting and knowing what he is doing or doing, so that the person who does the act he wants and knows about his action can be declared to have done the act intentionally, the meaning of “deliberately” can be interpreted that since the initial act that the defendant did was an act that the defendant intended from the start so that even though there was a period between his desire and his act, the act was also an act with an intentional element. In the sense of “deliberately” in Criminal Law, it is divided into three gradations; (1) Deliberately direct the results of actions according to the intentions of the person; in this case, the maker wants the consequences of his actions, and if he finds out as a result of

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<sup>37</sup> Aileen Gelpi, “Was the University Deliberately Indifferent to a Student’s Alleged Rape?,” *College Athletics and the Law* 11, no. 11 (2015), <https://doi.org/10.1002/catl.30042>.

his actions will not occur, then he will not carry out his actions, (2) Deliberately with a definite awareness of the purpose or consequences of his actions, in this case, the maker wants something but is hindered by circumstances, but he intends to fulfill his will while breaking through or removing the barrier, removing the barrier is a separate criminal event, but the maker still does it in order to achieve his main goal, (3) Deliberately with awareness of the possibility of achieving the goal or result of the act, in this case, the maker has such a way of thinking that he prefers to take the risk that it will lead to undesirable consequences than to discontinue the desire.<sup>38</sup>

In order to qualify as a deliberate act in this first indictment, the Defendant's actions must first be proven to meet the qualifications of other sub-elements, the main meanings of which are as follows: (1) The definition of "committing violence" or "Threats of violence" is a verb from "Violence" based on the provisions of Article 1 number 15 letter a of the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is any act against a child that results in suffering or suffering physically, psychologically, sexual abuse, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty. However, in context, there are differences between the two sub-elements, namely, "Performing violence" is more about real actions or actions, while "Threats of violence" are more about squeezing to commit violence or in the form of words/verbals from the perpetrator to force the victim to have intercourse, (2) Definition of "Forcing" is an act in such a way as to cause fear to others to comply with the will of the perpetrator, (3) The definition of "child" is someone who is not yet eighteen years old, including a child who is still in the womb (Article 1 point (1) concerning Amendments to Law Number 23 of 2002 concerning Child Protection), (4) The definition of intercourse, according to *Hoge Raad in Arrest* cited by Soenarto, is a competition between male and female genitalia which is usually carried out to get children, so male members must enter the female member so that they secrete semen.<sup>39</sup>

The definition of rape, as referred to in Article 1 point 30 of Aceh Qanun Number 6 of 2014, is sexual intercourse with the *faraj* (vagina) or *dubur* (rectum) of another person as a victim with the perpetrator's *zakkar* (penis) or other objects used by the perpetrator or against the victim's *faraj* or *zakkar* (penis) with the perpetrator's mouth or against the victim's mouth with the perpetrator's penis, by force or coercion or threats to the victim.

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<sup>38</sup> Aryo Fadlian, "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis," *Jurnal Hukum POSITUM* 5, no. 2 (2020).

<sup>39</sup> Soenarto. R Soerodibroto, *KUHP Dan HUHAP: Dilengkapi Yurisprudensi Mahkamah Agung Dan Hoge Raad* (Depok: Raja Grafindo Persada, 2018), p.207.

Based on the sound of article 1 point 30 of Aceh Qanun Number 6 of 2014, it can be understood that rape is not only sexual intercourse carried out with the perpetrator's *zakar* (penis) or *faraj* (vagina) but also applies to other objects such as the perpetrator's hand and so on,<sup>40</sup> while the notion of *jima'* (husband and wife relationship) In Islamic jurisprudence it is understood as "*iltiqa u khitaini wa in lam yunzal*" which means: the meeting of the two genitals (penis and vagina),<sup>41</sup> so the Panel of Judges thinks that although the male genitals have not yet entered the female genitalia, they are only touching. It includes rape if it is carried out under coercion from one of the parties.

The definition and definition of rape, according to Anne Mie, rape is an attempt to vent the lust by a man against a woman with sara according to morals and or laws that violate.<sup>42</sup> In this sense, what is abbreviated as rape, on the one hand can be seen as an act (is the act of a person who is forcibly venting his sexual desire), and on the other hand it can be seen as an event is a violation of norms and so also the rules and regulations social.

In the trial, the facts were found that although defendant did not admit that he had raped the victim's child, it was based on the testimony of the victim's child, the statements of the witnesses presented by the Public Prosecutor, and the defendant and also the results of the Visum Et Repertum from the Langsa Regional General Hospital Number: VeR/091 /X/2021 dated September 11, 2021, signed by dr. Netty Herawati, M. Ked (For), Sp.F.M., M.H, an examination has been carried out on the victim's child, Nazura Syaqla; the results are as stated in the facts of the trial, then all of the facts above are evidence of performances that are interrelated and mutually compatible between one and another. Others and all have been stated in the facts of the trial.

Based on the analysis of the definitions and the facts that emerged at the trial, the defendant was proven legally and convincingly to commit rape against the victim's child named Nazura Syaqla, so the element of committing rape has been proven and fulfilled.

*Third*, the element towards children, that what is meant by children in Aceh Qanun Number 6 of 2014 in article 1 point 40 are people who have not reached the age of eighteen years and are not married, in line with the definition of children in Aceh Qanun Number 6 of 2014 about Jinayat Law. Article 1 paragraph (1) of Law no. 35 of 2014 also explains that a child is someone who is

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<sup>40</sup> Pemerintahan Aceh, "Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat" (2014).

<sup>41</sup> Ibnu Hajar Al-Haitami, *Tuhfatul Muhtaj Bi Syarh Al-Minhaj*, Juz VI (Kairo: Maktabah At-Tijariyah Al-Kubra, 1994), p.134.

<sup>42</sup> Anne Mie Friis-Rødel, Peter Mygind Leth, and Birgitte Schmidt Astrup, "Stranger Rape; Distinctions between the Typical Rape Type and Other Types of Rape. A Study Based on Data from Center for Victims of Sexual Assault," *Journal of Forensic and Legal Medicine* 80 (2021): p.79, <https://doi.org/10.1016/j.jflm.2021.102159>.

not yet eighteen years old, including children who are still in the womb; article 4 of Law number 11 of 2012 concerning the Juvenile Justice System also explains that children who are victims of criminal acts committed from now on referred to as child victim are a child who is not yet eighteen years old who has suffered physical, mental, and or economic loss caused by a criminal act.<sup>43</sup>

At the time of the incident, based on the victim's birth certificate No: 207/CSL/IST/KTL/2012, 23 April 2012, which Rizal Efendi signed, S.h., M.S.P., as the Head of the Langsa City Population and Civil Registration Service who explained that Nazura Syaqlia was the son of Rudi Ariyanto and Syafrina was born on 24 April 2010, so that at the time of the incident the victim's child was still categorized as a minor, the demands of the Public Prosecutor who sued the Defendant under Article 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law has been correct and fulfilled, from the fact that obtained in the examination at the trial the judge did not find any forgiving reasons or justifications that could erase the unlawful nature of the defendant's actions and the defendant's mistakes, then for his actions the defendant must be held accountable for the mistakes that have been made.

The defendant did not find any special provisions or exceptions to the application of the law to him based on the law as a justification and excuse for the defendant's actions. Moreover, as a Muslim community member who lives in the province of Aceh and applies Islamic Sharia, it turns out that there are no provisions that allow or justify the defendant to commit an act contrary to the Islamic Sharia. Therefore the Judge thinks that the defendant must be found guilty of his actions so that the defendant must be sentenced as stipulated in Article 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law because the defendant can be responsible for his actions, the defendant must be found guilty and must be sentenced to 'uqubat ta'zir, in accordance with the demands of the Public Prosecutor Number REG.PERK : PDM-52/LNGSA/Eku.2/11/2021, dated 13 January 2021 that the defendant was charged with 'uqubat ta'zir in the form of imprisonment for 180 one hundred and eighty months.

In defending the defendant, through his attorney, asked the Panel of Judges to be released from all charges; the *jarimah* of rape is an older adult, and the panel of judges pays attention to not only the best interests of the defendant but also the best interests of the victim's child, his family and a sense of community justice, as a manifestation of from judicial institutions that enforce law and justice based on Pancasila. This is also in line with the principle of exercising judicial power, as emphasized in Article 5 paragraph (1) of Law

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<sup>43</sup> Fikri Ariyad and Ali Masyhar, "Abortion by Rape Victim: A Dilemma in the Drat of Penal Code and Indonesian Health Law," *Journal of Law and Legal Reform* 1, no. 4 (2020), <https://doi.org/10.15294/jllr.v1i4.39659>.

Number 48 of 2009 concerning Judicial Power which emphasizes that judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society, seen From the dimension of the interests of the victim and his family, the defendant's actions had a very bad impact on the victim's child named Nazura Syaqla because it caused psychological trauma and damaged the victim's future. In addition, in several studies, the victim's family will also feel the impact of the incident as a disgrace and shame among the surrounding community.<sup>44</sup> So that it is appropriate and fair if the accused child is sentenced to *'uqubat ta'zir* in the form of a prison commensurate with his guilt.

The defendant has been subject to legal arrest and detention in this case. The period of arrest and detention must be deducted entirely from the sentence imposed, by the intent of Article 26 Paragraph 5 and Article 200 Paragraph 1 letter (l) Aceh Qanun Number 7 of 2013 concerning Jinayat Law, even though the trial examination has been completed. However, for the sake of implementing *'uqubat*, the defendant remains in custody, against the demands of the public prosecutor above the Panel of Judges will impose *'uqubat ta'zir* in the form of imprisonment, which will be mentioned in the verdict, and the judge does not impose a penalty for paying restitution to the defendant, considering the defendant's financial and economic condition.

In article 52 paragraph (2) of Aceh Qanun Number 7 of 2013, the evidence is in the form of one piece of a long-sleeved yellow nightgown with a hello kitty image, one piece of red trousers with white motifs bearing Louis Vuitton, one piece of purple underwear, one piece of blue short-sleeved shirt that reads Adidas, one piece of gray Punggol pants, the evidence belongs to the victim's child. It has value, but to avoid trauma to the victim's child, the Panel of Judges thinks that the evidence should be destroyed.<sup>45</sup>

The things that burden the *'uqubat* for the perpetrators are: The defendant's actions did not support the Aceh Provincial government's program in enforcing Islamic Sharia in Aceh Province; The defendant's actions caused unrest and damaged the future of the Victim's Child named Nazura Syaqla; The defendant is the biological father of the victim's child who is supposed to protect and guide the victim's child, but instead destroys the victim's child's future, and while the mitigating factors for the perpetrator are: the defendant behaved politely in court; The defendant has never been convicted.

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<sup>44</sup> Nacemah Abrahams et al., "Study Protocol for a Longitudinal Study Evaluating the Impact of Rape on Women's Health and Their Use of Health Services in South Africa," *BMJ Open* 7, no. 9 (2017), <https://doi.org/10.1136/bmjopen-2017-017296>.

<sup>45</sup> Mahkamah Syar'iyah Kota Langsa, Putusan Nomor 33/JN/2021/MS.Lgs, p.28.

## Conclusion

In handling cases *jarimah* of rape against children in Aceh, legal proceedings can be carried out using Aceh Qanun Number 6 of 2014 concerning the Jinayat Law or Law no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. If the claim uses the Aceh Qanun, then the decision process will be tried by a judge of the Mahkamah Syar'iyah; on the other hand, if the claim uses the Child Protection Law, the trial process will be carried out in a district court. This has implications for differences in the use of the regulation of demands for different verdicts.

The panel of judges at the Mahkamah Syar'iyah of Langsa City in Decision Number 33/JN/2021/MS.Lgs has given 'uqubat ta'zir in the form of imprisonment for 165 months, because it has been legally and convincingly proven guilty of deliberately committing a rape against a child as regulated in Article 50 of Aceh Qanun Number 06 of 2014 concerning Jinayat Law. And the 'uqubat ta'zir imposed on the defendant is considered far more fulfilling the sense of justice and fulfills the rights of the child as a victim of rape compared to the 'uqubat whipping,' but does not provide benefits to the victim because the judge does not give restitution sanctions for payments and other victims' rights.

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### **Interview**

- Interview with Mufardisshadri, Chairman Mahkamah Syar'iyah Kota Langsa, 21 Mei 2022.