Reconstructing the Punishment of Jarimah Involving Sexual Intercourse with Children under the Aceh Jinayat Qanun: A Child Protection Perspective

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Abstract

This research discusses child protection within the context of sentencing for jarimah (crimes under Islamic law). Child victims of sexual intercourse in Aceh live under a layered legal system. Aceh Qanun Number 6 of 2014 on Jinayat Law contains no free-standing offence of sexual intercourse with a child, so the conduct is absorbed into the offences of sexual harassment, rape, and, in practice, zina. This article analyses how the offence is regulated in the Jinayat Qanun, identifies its problems from a child protection perspective, and formulates directions for reformulation. It uses normative juridical research with statute, conceptual, and case approaches, analysed qualitatively and prescriptively through the theory of justice, maqasid al-shari'ah, and integrative sentencing theory. The analysis shows that (1) the existing rules, although improved by Supreme Court Circular Letters No. 10 of 2020 and No. 3 of 2023 and by Aceh Qanun No. 12 of 2025, still rest on a morality-based logic; (2) the main problems are the construction of consent, the burden of proof, alternative penalties, plural legal regimes, customary settlement, and victim recovery; and (3) reformulation should shift the paradigm from morality to child protection grounded in maqasid al-shari'ah, through a free-standing offence based on the age of eighteen, proportionate punishment, child-friendly procedure, and guaranteed recovery.

Keywords: *Jinayat Qanun; Sexual Intercourse with A Child; Child Protection; Maqasid Al-Shari'ah; Reconstruction pf Punishment.*

A. INTRODUCTION

Children are the nation's future generation and must be safeguarded and protected, for they embody human value and dignity that must be respected (Lestari, 2017). It is narrated from Aisah that the Messenger of Allah said that your children are a gift bestowed upon you by Allah. Allah says, meaning: He (Allah) grants daughters to whom He wills and grants sons to whom He wills (QS. Asy-Syuura: 49) (Al-Albani, 2011).

Article 28B (2) of the 1945 Constitution guarantees every child the right to survival, growth, and development, as well as protection from violence and discrimination (Bahasa: *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945, Pasal 28B ayat (2)*). Protecting children from sexual violence is at once a constitutional obligation, an international obligation, and a development commitment. The Convention on the Rights of the Child, ratified through Presidential Decree Number 36 of 1990, makes the best interests of the child a primary consideration in all actions concerning children (Convention on the Rights of the Child, 1989, Art. 3). The 2030 Agenda for Sustainable Development (United Nations

General Assembly, 2015), implemented through Presidential Regulation Number 59 of 2017 as amended by Presidential Regulation Number 111 of 2022, sets targets to end violence against children (Target 16.2), violence against women and girls (Target 5.2), and child marriage (Target 5.3) (Bahasa: *Peraturan Presiden Nomor 59 Tahun 2017, 2017; Peraturan Presiden Nomor 111 Tahun 2022, 2022*). Sexual violence undermines every one of these preconditions for growth and development. Research on adverse childhood experiences has shown a strong association between abuse in childhood and health disorders in adulthood (Felitti et al., 1998).

Administrative data show that sexual violence is the most frequently reported form of violence. According to SIMFONI PPA, 15,396 cases of violence against children were recorded in 2025, up from 14,335 cases in the previous year, of which 11,049 involved sexual violence (Dataloka.id, 2026). These figures should be read as indicators of trends rather than of prevalence. The 2024 National Survey on the Life Experiences of Children and Adolescents found that one in two children had experienced violence, and that only a small proportion of cases were recorded in the service system (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2025). In Aceh, the Women's Empowerment and Child Protection Agency (DP3A) recorded 331 child victims of sexual violence in 2024 and 276 in 2025 (InfoPublik, 2026). DP3A officials themselves have stated that this decline does not necessarily reflect an actual decrease in incidence (The Atjeh Net, 2026). Perpetrators are frequently people close to the child, such as stepfathers, uncles, teachers, and religious teachers (ustaz) (Waspada Aceh, 2024). This pattern of power relations is evident in Lhokseumawe Mahkamah Syar'iyah Case Number 05/JN/2019/MS.Lsm, which involved the head of a pesantren (Islamic boarding school), and in Kutacane Case Number 4/JN/2022/MS.Kc, in which the victim was a sixteen-year-old female pesantren student (santriwati) (Putusan Nomor 05/JN/2019/MS.Lsm, 2019; "Penerapan Sanksi Pidana Pelecehan Seksual terhadap Anak," n.d.).

Children's vulnerability to sexual violence stems not only from physical disparity but also from disparities in knowledge, power, and access to protection. Studies of child victimisation show that perpetrators rarely begin with overt violence. The more common pattern is a gradual approach: the perpetrator builds trust, isolates the child, normalises touch, and then demands secrecy (Craven et al., 2006). Finkelhor describes this process as a series of preconditions the perpetrator must satisfy, namely motivation, overcoming internal inhibitions, overcoming external inhibitions, and overcoming the child's resistance (Finkelhor, 1984). As a result, children often neither resist nor report promptly. Summit identifies secrecy, helplessness, entrapment and accommodation, delayed and unconvincing disclosure, and retraction as characteristic of the experience of child victims (Summit, 1983), and a review of disclosure research has found that delayed reporting is indeed common (London et al., 2005). These characteristics matter for criminal law, because norms that require resistance, visible coercion, or immediate reporting will treat a victim's normal behaviour as a sign of consent.

Aceh holds special authority to regulate jinayah (Islamic criminal law). This special status derives from Article 18B(1) of the 1945 Constitution, Law Number 44 of 1999, Law Number 18 of 2001, and Law Number 11 of 2006 on the Governing of Aceh, which identifies jinayah as part of the implementation of Islamic sharia. The authority is exercised through Aceh Qanun Number 6 of 2014 on Jinayat Law and Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law (Qanun Aceh Nomor 6 Tahun 2014, 2014; Qanun Aceh Nomor 7 Tahun 2013, 2013). The Jinayat Qanun regulates ten jarimah (offences), with ‘uqubat (punishments) in the form of caning, fines in pure gold, imprisonment, and restitution, which are generally prescribed as alternatives.

The problem is that Aceh Qanun Number 6 of 2014, in its original formulation, contains no free-standing offence of sexual intercourse with a child. Such conduct is accommodated mainly under the offences of sexual harassment of a child (Article 47), rape (Article 48), and rape of a child (Article 50) (Qanun Aceh Nomor 6 Tahun 2014, 2014, Pasal 46–50). Sexual intercourse between an adult and a child that appears to be consensual is often constructed as zina, as shown in a study of Meulaboh Mahkamah Syar’iyah Decision Number 02/JN/2018/MS.Mbo (Mansari et al., 2019). Improvements came first from judicial policy through Supreme Court Circular Letter (SEMA) Number 10 of 2020 and SEMA Number 3 of 2023, and subsequently from the qanun legislature through Aceh Qanun Number 12 of 2025. This latest amendment is still new and untested, and it leaves open several conceptual questions: why the age threshold in the qanun, 16 (sixteen) years, differs from the definition of a child in national law, 18 (eighteen) years; why zina with a child aged 16 (sixteen) to under 18 (eighteen) is retained; and how the qanun interacts with the National Criminal Code, the Child Protection Law, and the Sexual Violence Crimes Law (UU TPKS).

These questions have become urgent because three changes have occurred almost simultaneously: the entry into force of the National Criminal Code in early 2026, which extends rape to cover sexual intercourse with a child; the enactment of Aceh Qanun Number 12 of 2025; and the arrival of UU TPKS, which brings a victims' rights paradigm into Indonesian criminal law. Together they have reshaped the normative landscape in which the qanun operates. Without systematic study, these changes risk producing overlapping norms and divergent practices that are equally detrimental to children, with similar cases treated differently merely because of differences in forum, the perpetrator's religion, or the choice of provision. Nor should Aceh's special status be read as a justification for lowering standards of protection. On the contrary, that special status places on the qanun legislature the responsibility to show that sharia and child protection reinforce each other.

Existing studies generally focus on particular decisions, for example on the ‘uqubat for zina involving children (Mansari et al., 2019), restitution, and proof without eyewitnesses. This article offers a more systemic and prescriptive analysis by combining the theory of justice, maqasid al-shari’ah, and integrative sentencing theory. Its research questions are: (1) how is the offence of sexual intercourse with a child regulated in the Jinayat Qanun; (2) what problems does this regulation pose

from a child protection perspective; and (3) how should it be reformulated from a child protection perspective.

This study aims, first, to map the regulation of sexual intercourse with children in the Jinayat Qanun together with the amendments and judicial policies surrounding it; second, to identify the problems of that regulation using child protection benchmarks; and third, to formulate directions for reformulation that are theoretically defensible and can be operationalised by the qanun legislature, judges, prosecutors, and service providers. Theoretically, the article seeks to show that maqasid al-shari'ah and modern justice theory can be used together both to critique and to construct jinayat norms. Practically, it provides material for drafting amendments to the qanun, sentencing guidelines, and technical guidelines for victim recovery.

The novelty of this article lies in three respects. First, it reads the latest amendment (Qanun Number 12 of 2025) together with judicial policy and national law as a single system, rather than as isolated decisions or provisions. Second, it places the issues of the age threshold, the construction of consent, and alternative penalties within a single line of argument that culminates in a proposed norm. Third, it translates theory into testable indicators and an implementation roadmap. This claim of novelty is limited to the sources the author was able to trace and is not intended to disregard other studies that could not be reached.

Based on the background above, the problems addressed in this study are: How is the offence of sexual intercourse with a child regulated in the Jinayat Qanun? What are the benchmarks of child protection in international and national law? And what problems does the regulation pose from a child protection perspective?

B. METHOD

This study employs normative juridical research with three approaches. The statute approach is used to examine Aceh Qanun Number 6 of 2014, Number 7 of 2013, and Number 12 of 2025, the Child Protection Law, UU TPKS, the National Criminal Code (Law Number 1 of 2023), and Supreme Court circular letters. The conceptual approach is used to examine the concepts of justice, maqasid al-shari'ah, and the purposes of punishment. The case approach is applied in a limited manner to published decisions of the Mahkamah Syar'iyah. Primary legal materials consist of legislation and court decisions; secondary legal materials consist of books, journal articles, and official Supreme Court reviews; tertiary legal materials consist of dictionaries and encyclopaedias. The materials were collected through library research and analysed qualitatively and prescriptively. This design is consistent with the established distinction between approaches in normative legal research (Marzuki, 2011).

The analytical framework is structured in layers. The theory of justice, namely Rawls's justice as fairness (Rawls, 1999), placed in dialogue with the Islamic concept of 'adl, serves as the grand theory. Maqasid al-shari'ah, particularly the protection of progeny (hifzh al-nasl), life (hifzh al-nafs), and intellect (hifzh al-'aql) (Al-Syathibi, 1997), serves as the middle-range theory. Integrative sentencing theory (Muladi &

Arief, 2005) serves as the applied theory. The indicators derived from this framework include proportionality of punishment, consistency across similar cases, procedural transparency, victim recovery, and Radbruch's balance between justice, legal certainty, and utility (Radbruch, 2006). Friedman's legal system approach (Friedman, 1975), which distinguishes legal substance, structure, and culture, is used to assess how the norms operate in practice. The factors of law enforcement identified by Soekanto serve as a reminder that reforming norms is insufficient without attention to law enforcers, facilities, the community, and culture (Soekanto, 1983).

C. RESULT AND DISCUSSION

1. The Regulation of the Offence of Sexual Intercourse with a Child in the Jinayat Qanun

Zina is defined as sexual intercourse outside marriage with the consent of both parties and carries a hudud ‘uqubat of one hundred lashes. Rape is defined as sexual intercourse by force or threat without the victim's consent and carries a ta’zir ‘uqubat. Article 48 punishes rape in general with 125 to 175 lashes, a fine of 1,250 to 1,750 grams of pure gold, or imprisonment of 125 to 175 months. Article 50 punishes the rape of a child with 150 to 200 lashes, a fine of 1,500 to 2,000 grams of pure gold, or imprisonment of 150 to 200 months, while restitution is capped at 750 grams of pure gold (Article 51) (Qanun Aceh Nomor 6 Tahun 2014, 2014, Pasal 33, 48, 50–51). These penalties are alternative, so the judge selects only one type of ‘uqubat.

The structure of offences in the Jinayat Qanun shows that the element of consent is the dividing line between zina and rape. Zina rests on the consent of both parties and is punished as hudud, whereas rape rests on the absence of consent and is punished as ta’zir. This line appears rational for competent adults but is problematic for children, because a child's consent to sexual intercourse with an adult is never entirely free. A child's decision to accept an advance is often shaped by power relations, dependence, enticement, and ignorance of the consequences. A formulation that places the burden of proving consent or coercion on a situation that is inherently unequal causes the norm to operate on a mistaken assumption.

The sexual harassment of a child (Article 47) was essentially designed for indecent acts that fall short of sexual intercourse (Qanun Aceh Nomor 6 Tahun 2014, 2014, Pasal 46–47). Consequently, cases of sexual intercourse that do not meet the coercion requirement for rape may fall into one of two equally inadequate categories: they may be qualified as sexual harassment, which carries a lighter penalty and does not reflect the gravity of the act, or as zina, which places the child in the position of a co-perpetrator. Both qualifications obscure the reality that what occurred was sexual intercourse between an adult and a child, an act recognised as a distinct crime under national law. The absence of a free-standing offence explains why judicial practice has had to find workarounds, whether through judicial policy or through interpretation.

The Supreme Court has sought to close this gap through judicial policy. Following SEMA Number 10 of 2020, judges were directed to impose imprisonment for the sexual harassment and rape of children, and a study of Mahkamah Syar’iyah

decisions in Aceh found that almost all decisions issued after the circular imposed imprisonment, with the exception of three decisions that still imposed caning ("Uqubat bagi Pelaku Jarimah Kesusilaan terhadap Anak," n.d.). SEMA Number 3 of 2023 states that the 'uqubat under Article 48 in conjunction with Article 50 may be imposed for the offence of sexual intercourse with a child. This improvement originated in the Supreme Court's internal policy rather than in a directly binding qanun norm.

Judicial policy through SEMA has considerable practical value, but its standing is limited. A circular letter is not a type of legislation within the hierarchy set out in the law on the making of legislation, so its binding force depends on judicial compliance and cannot provide certainty comparable to that of a qanun norm (Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023, 2023). Moreover, a SEMA can only guide the choice of 'uqubat from existing formulations. It cannot add elements to an offence, change the age threshold, prescribe additional penalties, or guarantee victim recovery. Improvements that stop at the level of judicial policy are therefore corrective and temporary.

Aceh Qanun Number 12 of 2025 introduces many changes. According to a review published on the Supreme Court portal, this qanun prescribes cumulative sanctions for perpetrators of sexual crimes against children (caning or a fine plus imprisonment), declares sexual intercourse between an adult and a child under sixteen to be rape (Article 50(2)), aggravates zina with a child aged sixteen to under eighteen with an additional ta'zir penalty (Article 34), and affirms restitution, compensation through the Baitul Mal, and medical, mental, and social recovery by reference to UU TPKS (Articles 51 to 51C) (Iman, 2026). These provision details are drawn from a secondary review and must be verified against the official text of the qanun before this manuscript is submitted.

Read carefully, the changes reported in that review show that Qanun Number 12 of 2025 contains three important shifts. The first is a shift from alternative to cumulative penalties, which forecloses the possibility that a perpetrator receives only a light punishment. The second is the use of a legal fiction that sexual intercourse with a child under sixteen constitutes rape, which removes the need to prove coercion for that age group. The third is the affirmation of recovery, which makes restitution, compensation, and rehabilitation part of case handling. Together they show that the qanun legislature is aware of the weaknesses of the old formulation. Yet these changes do not reach the root of the problem, because sexual intercourse with a child is still constructed as a variant of rape or zina rather than as a free-standing crime based on the age of eighteen.

The national system adopts a different construction. Articles 76D and 76E of the Child Protection Law (Law Number 35 of 2014 as amended by Law Number 17 of 2016) prohibit sexual intercourse with and indecent acts against a child by means of violence, threats, trickery, deception, or persuasion (Undang-Undang Nomor 17 Tahun 2016, 2016; Undang-Undang Nomor 35 Tahun 2014, 2014, Pasal 76D–76E, 81–82). The National Criminal Code, in force since 2 January 2026, extends rape to cover

sexual intercourse with a child without requiring violence (Article 473) and retains zina as a complaint-based offence (Article 411) (Undang-Undang Nomor 1 Tahun 2023, 2023, Pasal 411, 473). A brief comparison is presented in Table 1.

Table 1. Comparison of the Regulation of Sexual Intercourse with a Child

Instrument	Construction of the Act	Penalties and Recovery
Qanun 6/2014	Sexual harassment of a child (Art. 47); rape (Art. 48); rape of a child (Art. 50); zina if deemed consensual	Alternative: caning, gold fine, or imprisonment of 150–200 months; restitution capped at 750 grams of gold
Qanun 12/2025 (according to Iman, 2026)	Sexual intercourse with a child under 16 declared rape; zina with a child aged 16–<18 aggravated	Cumulative (caning or fine plus imprisonment); restitution, Baitul Mal compensation, recovery
Child Protection Law (Law 35/2014 jo. Law 17/2016)	Violence, threats, trickery, deception, or persuasion	Imprisonment of 5–15 years and a fine of up to IDR 5 billion; one-third aggravation for parents, guardians, caregivers, educators; additional penalties; restitution
UU TPKS (Law 12/2022)	Recognises sexual intercourse with and indecent acts against a child as crimes of sexual violence	One-third aggravation where the victim is a child; prohibition of out-of-court settlement (Art. 23); restitution and victim assistance fund
National Criminal Code (Law 1/2023)	Rape includes sexual intercourse with a child without a violence requirement (Art. 473); zina as a complaint-based offence (Art. 411)	Not detailed in this article

The comparison shows that the imprisonment term under Article 50 (approximately 12.5 to 16.7 years) appears higher than the principal penalty under Article 81(1) of the Child Protection Law. However, this comparison is misleading if detached from the alternative nature of the qanun. As long as judges may choose caning or a fine, the punishment actually served by the perpetrator may be far lighter. The national system also provides additional measures, such as chemical castration, the fitting of electronic monitoring devices, and rehabilitation (Peraturan Pemerintah Nomor 70 Tahun 2020, 2020; Undang-Undang Nomor 17 Tahun 2016, 2016), which are absent from the qanun.

This diversity of constructions is also evident in published cases. The cases cited in this article can be grouped according to their legal construction and main issue, as summarised in Table 3. This grouping is illustrative and based on the

information available in the cited sources; it is not intended as a comprehensive mapping of all decisions.

Table 2. Typology of Cited Cases and the Legal Issues They Raise

Case Type	Cited Case	Prominent Legal Issue
Zina involving a child	Meulaboh MS Decision Number 02/JN/2018/MS.Mbo	The child is positioned within a zina construction; risk of the perpetrator hiding behind a claim of mutual consent
Sexual harassment of a child involving power relations	Kutacane MS Decision Number 4/JN/2022/MS.Kc (sixteen-year-old santriwati victim)	Abuse of authority; whether the type and severity of 'uqubat match the seriousness of the act
Rape of a child and restitution	Lhokseumawe MS Decision Number 05/JN/2019/MS.Lsm (head of a pesantren)	Enforcement of restitution; the perpetrator's ability to pay; institutional power relations
Rape of a child without eyewitnesses	Tapaktuan MS Decisions Number 11/JN/2024/Ms.Ttn and 17/JN/2025/Ms.Ttn	Proof beyond the four-witness requirement; judicial ijtihad on ta'zir evidence
Rape of a child with the maximum penalty	Sigli MS Decision (October 2025), 200 months' imprisonment	Choice of penalty type; the upper limit of the penalty; consistency with similar cases
Child perpetrator	Banda Aceh MS Decision Number 1/JN.Anak/2024/MS.Bna	Conversion of corporal punishment into rehabilitative guidance; tension with juvenile criminal justice

2. Child Protection Benchmarks in International and National Law

Assessing the problems of the regulation in the Jinayat Qanun requires clear benchmarks. These benchmarks do not derive from a single source but from layers of international and national norms that complement one another and, for Aceh, are binding through the hierarchy of legislation. At the international level, the Convention on the Rights of the Child defines a child as every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. The Convention also obliges states to protect children from all forms of violence (Article 19) and from sexual exploitation and sexual abuse (Article 34), to guarantee the child's right to be heard (Article 12), and to ensure the physical and psychological recovery and social reintegration of child victims (Article 39) (Convention on the Rights of the Child, 1989, Arts. 1, 3, 12, 19, 34, 39). The Committee on the Rights of the Child has affirmed that the best interests of the child constitute a substantive right, an interpretive principle, and a rule of procedure (Committee on the Rights of the Child, 2011, 2013), and Indonesia is also bound by the Optional Protocol

on the sale of children, child prostitution and child pornography (Undang-Undang Nomor 10 Tahun 2012, 2012).

At the national level, the Child Protection Law defines a child as a person under eighteen years of age and establishes non-discrimination, the best interests of the child, and respect for the views of the child as its principles (Undang-Undang Nomor 35 Tahun 2014, 2014, Pasal 1 angka 1). UU TPKS introduces a paradigm that differs from traditional criminal law, namely the victim's right to treatment, protection, and recovery, a formulation of evidence better suited to victims, and a prohibition on settlement outside the judicial process (Undang-Undang Nomor 12 Tahun 2022, 2022). The Witness and Victim Protection Agency provides channels for restitution and compensation (Undang-Undang Nomor 31 Tahun 2014, 2014), while the Juvenile Criminal Justice System Law governs the treatment of child offenders, including diversion and restrictions on imprisonment (Undang-Undang Nomor 11 Tahun 2012, 2012). The National Criminal Code subsequently extended rape to include sexual intercourse with a child (Undang-Undang Nomor 1 Tahun 2023, 2023, Pasal 473).

From these layers of norms, six benchmarks can be formulated to assess the Jinayat Qanun. The first is the age of eighteen as the threshold of protection. The second is the best interests of the child as a primary consideration in formulating and applying norms. The third is protection from sexual exploitation without requiring proof of violence. The fourth is recovery as a right of the victim rather than a mere consequence of a judgment. The fifth is respect for the child's voice and child-friendly procedural treatment. The sixth is the prohibition of out-of-court settlement. The six benchmarks and their implications for the qanun are summarised in Table 3.

Table 3. Child Protection Benchmarks and Their Implications for the Jinayat Qanun

Benchmark	Normative Source	Implications for the Qanun
Age threshold of eighteen	CRC Art. 1; Child Protection Law Art. 1 point 1	A free-standing offence based on the age of eighteen; no age group falls into the zina construction
Best interests of the child	CRC Art. 3; General Comment No. 14	Every penal and procedural choice is assessed by its impact on the child
Protection from sexual exploitation	CRC Arts. 19 and 34; Law 35/2014 Arts. 76D–76E	Coercion is not a required element; the child's consent does not negate the perpetrator's culpability
Recovery as a right	CRC Art. 39; UU TPKS; GR 43/2017	Restitution, compensation, and rehabilitation form part of the judgment
The child's right to be heard and child-friendly procedure	CRC Art. 12; UU TPKS	No repeated examinations; accompaniment; evidence suited to the nature of the crime

Prohibition of out-of-court settlement	UU TPKS Art. 23	Prohibition of reconciliation, customary settlement, and marriage of the victim to the perpetrator

At the regional level, the Aceh Qanun on Child Protection is also a point of reference (Qanun Aceh Nomor 11 Tahun 2008, 2008). These benchmarks are not intended to override Aceh's authority. That authority remains recognised within the framework of the law on the governing of Aceh, but the exercise of special authority still takes place within a national legal system that guarantees children's rights. Indeed, the benchmarks can be read as an embodiment of the public good (maslahah) that sharia itself seeks, as will be elaborated in subsection 4.4.

3. Problems of the regulation from a child protection perspective

a. The construction of consent and zina

Zina presupposes two competent parties who both desire sexual intercourse. When intercourse between an adult and a child is prosecuted as zina, the child risks being positioned as a participant, and the perpetrator may hide behind a claim of mutual consent. This contradicts fiqh itself. The concept of criminal responsibility rests on taklif, which requires puberty (baligh) and sound mind, and the pen that records deeds is lifted from a child until puberty ("hadith on the lifting of the pen," n.d.). Classical fiqh also distinguishes consensual intercourse from coerced intercourse, and punishment is imposed on the perpetrator, not on the woman who was raped (al-zuhaili, n.d.; sunan abi dawud, n.d.; sunan al-tirmidhi, n.d.). This distinction, already recognised in the fiqh tradition, provides an internal foundation for reconstruction. Within rawls's framework, a legal institution that treats a child victim as a culpable party cannot be accepted from the standpoint of the most vulnerable**.**

b. The burden of proof

Zina as a hudud offence, requires four witnesses or a confession. Victims or families who report without sufficient evidence risk being accused of qadzaf (false accusation of zina), which is itself an offence. Judges have indeed adopted a more flexible ta'zir approach in rape cases without eyewitnesses, as seen in tapaktuan mahkamah syar'iyah decisions number 11/jn/2024/ms.ttn and 17/jn/2025/ms.ttn ("analisis putusan peradilan jinayat aceh nomor 11/jn/2024/ms.ttn dan 17/jn/2025/ms.ttn," 2026). However, this approach depends on the individual ijtihad of judges and has not become a settled norm, so legal certainty for victims remains weak in radbruch's terms (radbruch, 2006).

c. The coercion requirement and patterns of grooming

The rape route requires proof of coercion or threat, whereas perpetrators of child sexual abuse more often use persuasion, enticement, emotional manipulation, or their authority as parents, teachers, or religious figures. The Child Protection Law anticipates this through its reference to trickery, deception, and persuasion. Qanun 12/2025 closes this gap with a legal fiction that zina with a child under sixteen constitutes rape, but children aged sixteen to under eighteen are still constructed as

parties who engage in intercourse voluntarily. This is inconsistent with the definition of a child in the Convention on the Rights of the Child and in national law.

d. Alternative penalties and disparity

The choice between caning, a gold fine, or imprisonment opens the door to disparity. In October 2025, the Sigli Mahkamah Syar'iyah imposed 200 months' imprisonment in a child rape case, the upper limit under Article 50 (Mahkamah Syar'iyah Sigli, 2025), while after the issuance of SEMA Number 10 of 2020 some decisions still imposed caning ("Uqubat bagi Pelaku Jarimah Kesusilaan terhadap Anak," n.d.). Public caning risks exposing the identity of the victim and the family, who often come from the same community as the perpetrator. Brief corporal punishment also does not ensure that the perpetrator is separated from the victim and involves no rehabilitation of the perpetrator. Within integrative sentencing theory, such punishment fails to fulfil the functions of prevention, correction, and the restoration of balance at the same time.

e. Plurality of regimes and forum shopping

The same act may be prosecuted under the Jinayat Qanun before the Mahkamah Syar'iyah or under the Child Protection Law and the Criminal Code before the district court, depending on the perpetrator's religion, the public prosecutor's policy, and the choice of law available to non-Muslims. As a result, the penalties, the availability of additional measures, restitution, and access to services differ for acts that are factually identical. This situation contravenes the principles of equality before the law and access to justice (Targets 16.3 and 16.b).

f. Customary settlement and marriage

Gampong (village) customary justice is valuable for minor cases (Qanun Aceh Nomor 9 Tahun 2008, 2008; Qanun Aceh Nomor 10 Tahun 2008, 2008), but in cases of child sexual violence it is risky: custom emphasises community harmony, whereas it is the child who needs to be restored; power relations weaken the bargaining position of the child and her mother; and customary sanctions provide no medical or psychological recovery. When the act is framed as a disgrace (aib), amicable settlement or marriage of the victim to the perpetrator becomes a shortcut. This practice contravenes Article 23 of UU TPKS, SDG Target 5.3, and the best interests of the child (Undang-Undang Nomor 12 Tahun 2022, 2022, Pasal 15).

g. Recovery of victims and child perpetrators

Restitution is recognised, but its enforcement is hampered by perpetrators' inability to pay (Sinurat et al., 2023). The effectiveness of the Baitul Mal compensation mechanism under Qanun 12/2025 is not yet known. If it does not function, child victims bear the costs of their own treatment, counselling, and education. On the other hand, cases involving child perpetrators, such as Banda Aceh Mahkamah Syar'iyah Decision Number 1/JN.Anak/2024/MS.Bna, which converted corporal punishment into rehabilitative guidance ("Penyimpangan Seksual Pemerkosaan Sesama Jenis di Kalangan Anak di Bawah Umur Ditinjau dalam Perspektif Hukum Pidana Islam," 2026), reveal a tension between the firmness of jinayat sanctions and juvenile criminal justice.

h. The age threshold and the legal fiction

The distinction between children under sixteen and children aged sixteen to under eighteen raises a problem of coherence. National law has in fact moved towards harmonising and raising age thresholds, as reflected in the increase of the minimum marriage age to nineteen following a Constitutional Court decision (Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017, 2017; Undang-Undang Nomor 16 Tahun 2019, 2019). In this context, retaining a sixteen-year threshold in the offence of sexual intercourse creates an inconsistency: a seventeen-year-old is considered not mature enough to marry, yet mature enough to be a party who voluntarily engages in intercourse with an adult. Yet it is precisely this age group that, in many cases, is situated in unequal educational and caregiving relationships, such as pesantren students (santri), school pupils, and children living with relatives.

i. Secondary victimisation and barriers to reporting

The burden of proof, the risk of a qadzaf accusation, and the possibility of the child being positioned as a party to zina reinforce existing barriers to reporting. The Ministry of Women's Empowerment and Child Protection itself has stated that many victims do not dare to report (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2025). Repeated examinations by investigators, prosecutors, and judges increase the risk of re-traumatisation, while the public execution of caning may reveal the victim's identity. An environment that blames the victim aggravates the impact of the violence itself. Barriers to reporting are therefore not merely a cultural matter but also a consequence of the design of norms and procedures.

j. Institutional power relations

The formulation of Qanun Number 6 of 2014, as examined in this article, does not explicitly provide aggravation for perpetrators who are parents, guardians, caregivers, educators, or religious figures, whereas the Child Protection Law does contain such aggravation (Table 1). Such aggravation is important because perpetrators in these positions have access, trust, and authority that make it difficult for the child to refuse or to complain. Cases involving the head of a pesantren and a santriwati victim show that power relations are not a hypothesis but a pattern that emerges in published cases. The absence of clear aggravation leaves the assessment of power relations to judicial discretion.

k. Child perpetrators

Cases involving child perpetrators present a different problem, because children in conflict with the law are also subjects of protection. National law provides for diversion, rehabilitative guidance, and restrictions on imprisonment for them. Imposing corporal punishment or penalties that disregard these principles may contravene the best interests of the child, whereas treating all cases involving child perpetrators leniently may leave victims without justice and recovery (Note: The application of Law Number 11 of 2012 to child perpetrators in jinayat cases requires further study in light of the provisions of Aceh Qanun Number 7 of 2013 and the practice of the Mahkamah Syar'iyah). Reformulation must therefore clearly

distinguish between adult perpetrators, child perpetrators, and child victims, and ensure that victim recovery proceeds regardless of the perpetrator's status.

l. Data limitations and the monitoring of decisions

Available data are limited to service and report figures, which reflect only cases that enter the handling pathway. DP3A officials themselves caution that a decline in figures does not necessarily mean a decline in incidence. Furthermore, there appears to be no integrated database tracking jinayat decisions in child sexual intercourse cases by type of ‘uqubat, the presence or absence of restitution, and its actual enforcement. Without such monitoring, evaluating the effectiveness of the SEMA and Qanun Number 12 of 2025 will be difficult and disparities will be hard to correct. A summary of the problems, their root causes, and their impacts on children is presented in Table 5.

Table 4. Summary of Problems, Root Causes, and Impacts on Children

Problem	Root Cause	Impact on Children
The construction of consent and zina	The offence was designed for competent adults	The child risks being positioned as a culpable party
Burden of proof and risk of qadzaf	Zina as hudud requiring four witnesses; ta’zir evidentiary rules not yet standardised	Victims or families reluctant to report; weak legal certainty
Coercion requirement and grooming	Rape requires coercion or threat	Intercourse obtained through persuasion and power relations is not adequately captured
Age threshold of sixteen	Legal fiction applies only to children under sixteen	Children aged sixteen to under eighteen are less protected
Alternative penalties and disparity	Choice of caning, gold fine, or imprisonment	The penalty served may be light; risk of exposing the victim's identity
Plurality of regimes and forum shopping	The Qanun, Child Protection Law, UU TPKS, and Criminal Code apply side by side	Different treatment for the same act; unequal access to recovery
Customary settlement and marriage	Orientation towards community harmony and the construction of disgrace (aib)	The child and her mother pressured to accept reconciliation; recovery unmet
Recovery and enforcement of restitution	Dependence on the perpetrator's ability to pay; Baitul Mal mechanism untested	Costs of treatment, counselling, and education borne by the victim

In friedman's framework (friedman, 1975), the legal substance is changing through qanun 12/2025, but the structure (the capacity of investigators, prosecutors, judges, and recovery services, including the linkage between the jinayat justice pathway and the uptd ppa network) and the legal culture (a culture of shame or disgrace, poverty, and patriarchy) are not necessarily moving at the same pace. The common root of all these problems is the use of formulations designed to regulate morality and decency to address a crime that is, in essence, a deprivation of children's rights.

4. A Maqasid Al-Shari'ah Review of the Problems

This subsection tests the identified problems against the maqasid framework. The test asks whether each of the fundamental interests of sharia is protected or, on the contrary, threatened by the existing formulations and practices.

a. Protection of progeny (*hifzh al-nasl*)

In the classical understanding, the protection of progeny is often associated with safeguarding lineage (nasab) and the prohibition of zina. This understanding, however, needs to be broadened towards the protection of the generation: a child whose growth and development are damaged by sexual violence is a generation endangered. A narrow reading that views extramarital intercourse solely as a violation of decency shifts the focus from the child to the morality of the perpetrator and the victim, even though the most tangible harm is suffered by the child. The zina construction of sexual intercourse between an adult and a child therefore contradicts the maqasid in their broader sense, because it formally protects lineage while substantively neglecting the child.

b. Protection of life (*hifzh al-nafs*)

Sexual violence leaves long-lasting psychological effects. Research on adverse childhood experiences shows an association between abuse in childhood and health disorders in adulthood (Felitti et al., 1998). The protection of life requires that medical and psychological recovery be regarded as a dharuriyyat (essential) need, not a mere supplement. Provisions that defer recovery or make it contingent on the perpetrator's ability to pay do not meet this requirement.

c. Protection of intellect (*hifzh al-'aql*)

Sexual violence disrupts a child's cognitive development, education, and capacity for decision-making. A child who drops out of school because of stigma, or because of relocation resulting from the case, loses access to education, which in turn diminishes their future capacity. Recovery must therefore include educational support, and a settlement that marries the victim to the perpetrator directly contradicts the protection of intellect because it ends the child's schooling.

d. Protection of property (*hifzh al-mal*)

The costs of treatment, counselling, and education borne by victims and their families reveal the property dimension of these cases. Restitution and compensation are not merely additional sanctions on the perpetrator but means of restoring the victim, as far as possible, to the position before the harm occurred. The baitul mal, as

the manager of community funds, can serve as a guarantor when the perpetrator is unable to pay, and this is one of aceh's distinctive contributions to victim recovery.

e. Protection of property (*hifzh al-mal*)

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This test yields two conclusions. First, every problem identified in subsection 4.3 can be traced to a conflict with one or more of the fundamental interests of sharia. Second, this conflict does not stem from sharia itself but from the way formulations designed to regulate morality are used to address crimes against children. The proposed reformulation therefore does not mean abandoning sharia, but restoring the relationship between the law and its objectives.

The maqasid test also offers guidance on the tension between hudud and ta'zir. Hudud are provisions whose limits are fixed by revealed texts (nas), whereas ta'zir is left to the authorities with due regard for the public good. Sexual intercourse between an adult and a child is more appropriately placed within the ta'zir framework, which allows the qanun legislature to determine elements, aggravating circumstances, and recovery in accordance with the needs of child protection, rather than being forced into the hudud category, whose evidentiary requirements are strict and which presupposes two competent parties. This position is consistent with the practice of the jinayat qanun itself, which places rape in the ta'zir category.

5. Reformulating the offence of sexual intercourse with a child from a child protection perspective

In this article, reformulation is understood as a restructuring that preserves the core values of the qanun while correcting its weaknesses. The directions of reformulation are set out as follows.

a. First, shifting the paradigm from decency to child protection

Maqasid al-shari'ah evaluates law by its real benefit (maslahah), not by its formal shape (auda, 2008). The protection of progeny, life, and intellect demands comprehensive protection for children, including the right to recovery. Punishment that stigmatises victims or obstructs reporting contradicts the maqasid themselves. The regime for enforcing morality (khalwat, ikhtilath, zina) must therefore be firmly separated from the regime for protecting child victims of sexual violence.

b. Second, formulating a free-standing offence of sexual intercourse with a child

This offence should be based on the age of eighteen, in line with the Convention on the Rights of the Child and the Child Protection Law; it should not require violence or coercion; and it should affirm that the child's consent does not negate the perpetrator's culpability. The formulation should cover trickery, persuasion, and abuse of power relations, and provide aggravation for parents, guardians, caregivers,

educators, and religious figures. With a free-standing offence, sexual intercourse with a child would no longer depend on the zina category or on proof of coercion.

c. Third, structuring penalties to be proportionate and consistent

Alternative penalties that allow imprisonment to be substituted by caning or a gold fine should be replaced by cumulative penalties or special minimum thresholds, accompanied by sentencing guidelines to reduce disparity. Ta'zir allows for long-term imprisonment, additional penalties, and recovery obligations, but its flexibility must be regulated so that it does not turn into uncertainty. Within the integrative theory, punishment must be justifiable in terms of the aims of prevention, correction, conflict resolution, and the restoration of balance, and must not degrade human dignity. The execution of punishment must also ensure the separation of the perpetrator from the victim and include rehabilitation of the perpetrator.

d. Fourth, strengthening child-friendly procedural law

The Jinayat Procedural Law should affirm the evidentiary status of the child victim's testimony, visum et repertum, psychological expert testimony, and electronic evidence, as well as examinations that are not repeated and are accompanied at every stage, as introduced by UU TPKS. It should also affirm that a report by the victim or their family of sexual intercourse with a child cannot be treated as qadzaf, and that the victim's identity must be protected. A clear norm offers greater certainty than case-by-case ijtihad.

e. Fifth, guaranteeing recovery

Restitution, compensation through the Baitul Mal, and medical, psychological, and social rehabilitation must form part of the judgment rather than an add-on. This is consistent with Government Regulation Number 43 of 2017 on restitution for child victims and with SDG Targets 3.4 and 3.7 (Peraturan Pemerintah Nomor 43 Tahun 2017, 2017; Undang-Undang Nomor 35 Tahun 2014, 2014, Pasal 71D). Implementation requires clear technical guidelines so that progressive provisions do not remain mere text.

f. Sixth, closing off out-of-court settlement

The qanun should expressly prohibit the settlement of sexual intercourse with a child through customary justice, reconciliation, or marriage of the victim to the perpetrator, drawing a clear line between the customary and criminal domains. Custom may still play a role in prevention and social reintegration, without replacing the criminal process.

g. Seventh, harmonising the system without eliminating Aceh's special status

Integration with the National Criminal Code, the Child Protection Law, and UU TPKS should be regulated to prevent forum shopping, including clarity on the availability of additional measures for perpetrators. The positions of adult perpetrators, child perpetrators, and child victims must also be clearly distinguished, with child perpetrators processed according to the principles of juvenile criminal justice. At the level of structure and culture, reconstruction requires an integrated referral system between the jinayat courts and UPTD PPA services, capacity building

for officials, and the strengthening of the view that child protection is a sacred trust (amanah).

These seven directions can be realised through more than one legislative option. The first option is to amend the Jinayat Qanun by adding a free-standing offence of sexual intercourse with a child, complete with its elements, aggravating circumstances, and penalties. The second option is to use a referral technique, whereby the qanun provides that the act is punishable under the applicable provisions of national law. The third option combines the two: the qanun contains a free-standing offence whose elements are aligned with national law, accompanied by transitional provisions and a clause preventing forum shopping (Note: The choice between amending the qanun and referring to national law should be read together with the provisions on the authority to make qanun in Law Number 11 of 2006 and the provisions on the making of legislation. The limits of this authority require further examination in future research). A comparison of the three options is presented in Table 6.

Table 5. Comparison of Legislative Options for Reformulation

Option	Strengths	Weaknesses
Free-standing offence in the qanun	Aceh's special status is preserved; the norm is clear and easy for Mahkamah Syar'iyah judges to apply	Risk of misalignment with changes in national law if not updated
Referral technique to national law	Aligned with the national system; changes at the national level are absorbed automatically	Blurs the distinctiveness of the qanun; raises questions of authority and of the availability of formulations
Hybrid: an aligned free-standing offence and an anti-forum-shopping clause	Balances special status and alignment; greater certainty	Requires careful drafting and harmonisation as well as periodic updating

6. The Proposed Draft Norm

This section presents a draft formulation intended as material for discussion rather than as a final text. Article numbers are deliberately left blank and penalty figures are not specified, since both must be adjusted to the structure of the jinayat qanun and to the outcome of deliberations with stakeholders. Each component is explained together with its rationale.

a. First component: definition and elements of the offence

The formulation defines a child as a person under eighteen years of age and provides that any adult who engages in sexual intercourse with a child shall be punished as a perpetrator of the offence of sexual intercourse with a child, whether by violence or threat of violence or by trickery, a series of lies, persuasion, or abuse of a

relationship of trust, authority, or dependence. The formulation affirms that the child's consent neither negates unlawfulness nor constitutes a defence. The rationale is that the child protection benchmarks (table 4) do not require violence, and the legal fiction at the age of sixteen creates the inconsistency described in subsection 4.3.

b. Second component: aggravation

The formulation adds aggravation where the perpetrator is a parent, guardian, caregiver, educator, education personnel, religious figure, or a person with authority over the child; where the victim suffers serious injury, mental disorder, a communicable disease, pregnancy, or loss of reproductive function; where the act is committed against more than one child or repeatedly; and where the perpetrator is a recidivist. This aggravation follows the pattern of the child protection law and uu tpks so that no disparity arises between forums.

c. Third component: penalties

The formulation prescribes a principal ta'zir 'uqubat of imprisonment with minimum and maximum limits set by the qanun legislature, using the principal penalty in article 81 of the child protection law as a benchmark, together with additional 'uqubat in the form of restitution, compensation, rehabilitation of the perpetrator, publication or restriction of certain rights insofar as consistent with the principle of protecting the victim's identity, and revocation of the right to teach or care for children. Caning is not made a principal 'uqubat for this offence, in line with the direction of judicial policy in sema number 10 of 2020 and with the need to protect the victim's identity. The penalties are cumulative or include a special minimum so that imprisonment cannot be replaced by a disproportionate sanction.

d. Fourth component: procedural provisions

The formulation affirms that the testimony of the child victim, the results of visum et repertum, the testimony of a psychological or psychiatric expert, medical records, and electronic evidence constitute valid evidence; that a report by the victim or their family of sexual intercourse with a child cannot be prosecuted as qadzaf; that the examination of the child is conducted with accompaniment, without unnecessary repetition, and with identity protection; and that proof does not require four witnesses. These provisions align the jinayat procedural law with the paradigm of uu tpks (qanun aceh nomor 7 tahun 2013, 2013).

e. Fifth component: recovery and the prohibition of out-of-court settlement

The formulation provides that restitution is decided together with the principal penalty and that, where the perpetrator is unable to pay, the state bears the cost through a compensation mechanism with the baitul mal; guarantees medical, psychological, and social rehabilitation as well as educational support; prohibits settlement through reconciliation, customary justice, or marriage of the victim to the perpetrator; and affirms that the role of custom is limited to prevention and social reintegration. This formulation incorporates the provisions of uu tpks and the principle of recovery under the convention on the rights of the child.

f. Sixth component: child perpetrators and harmonisation

The formulation provides that perpetrators who are still children are processed according to the principles of juvenile criminal justice, including the consideration of diversion insofar as it does not deprive the victim of the right to recovery, and that cases of sexual intercourse with a child may not be channelled into a different forum merely to obtain a lighter sanction. The formulation also contains transitional provisions governing pending cases and an obligation on the government of aceh to issue technical guidelines.

7. Responses to Potential Objections

The proposed reformulation will almost certainly face objections. The four most likely objections are addressed below.

a. First objection: the reformulation is seen as interfering with Aceh's special status

This objection presupposes that child protection is a value foreign to sharia. That presupposition is mistaken. As elaborated above, the protection of life, intellect, progeny, religion, and property constitutes the very objectives of sharia. The proposed reformulation is carried out through the authority of the qanun legislature, not through norms imposed from outside. Moreover, Aceh's authority over jinayah does not negate its obligation to uphold children's rights guaranteed by the Constitution and by ratified conventions (Undang-Undang Nomor 11 Tahun 2006, 2006, Pasal 129).

b. Second objection: the eighteen-year threshold is inconsistent with the concept of baligh in fiqh

Baligh is indeed the threshold of taklif, namely the threshold for the imposition of obligations and criminal responsibility. However, the threshold that determines who must be protected need not be the same as the threshold that determines who may be punished. Protective law uses vulnerability as its measure, and ta'zir allows thresholds to be set in accordance with the public good. National law itself, shaped with consideration of religious values, has raised the marriage age to protect children, and the Constitutional Court regards age thresholds as a matter of legal policy that can be adjusted in the interest of child protection (Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017, 2017).

c. Third objection: a free-standing offence without a coercion requirement may criminalise peer relationships

This concern is well founded and must be answered through careful drafting. The proposed offence targets sexual intercourse between an adult and a child, whereas cases involving perpetrators who are themselves children are processed according to the principles of juvenile criminal justice, including diversion and rehabilitative guidance. In this way, protecting victims is not traded off against the excessive punishment of children. This distinction must be expressly formulated so that it is not left entirely to prosecutorial discretion.

d. Fourth objection: cumulative penalties are considered too severe and retributive

This objection cannot be ignored, because excessive punishment also violates proportionality. Yet proportionality does not mean leniency. The severity of the penalty must be commensurate with the seriousness of the act and the vulnerability of the victim, while integrative sentencing requires that punishment also include rehabilitation of the perpetrator and not degrade human dignity. The proposed reformulation combines firm penalties with sentencing guidelines, giving judges a clear measure for imposing sentences in light of aggravating and mitigating factors.

8. Implementation Strategy and Indicators of Success

A reformulated norm will not work without an implementation strategy. That strategy is formulated in three stages. The short-term stage prioritises steps that can be taken without amending the qanun, namely the preparation of technical guidelines and sentencing guidelines by the Supreme Court and the Mahkamah Syar'iyah, the standardisation of victim-handling procedures among investigators, prosecutors, the UPTD PPA, and the Baitul Mal, and the training of officials. The medium-term stage covers amendments to the Jinayat Qanun and the Jinayat Procedural Law Qanun. The long-term stage covers the strengthening of legal culture, namely public education, the support of dayah (traditional Islamic boarding schools) and gampong, and continuous monitoring.

Table 6. Roadmap for Implementing the Reformulation

Stage	Key Steps	Implementing Actors	Indicators
Short term (0–12 months)	Technical and sentencing guidelines; integrated referral procedures; training of officials; monitoring of decisions	Supreme Court, Mahkamah Syar'iyah, Prosecution Service, Police, DP3A, Baitul Mal	Guidelines issued; referral procedures operating; database of decisions available
Medium term (1–3 years)	Amendment of the Jinayat Qanun and the Jinayat Procedural Law Qanun; transitional provisions	Government of Aceh, Aceh House of Representatives (DPR Aceh)	Free-standing offence and procedural provisions in force; sentencing disparity reduced
Long term (over 3 years)	Strengthening of legal culture; prevention in dayah, schools, and gampong; periodic evaluation	Government of Aceh, customary and religious institutions, civil society	Increased reporting; reduced pressure for out-of-court settlement; recovery realised

The success of the reformulation can be measured by the narrowing of interpretive space detrimental to children, greater certainty and speed in case handling, the fulfilment of restitution and recovery, reduced pressure for non-judicial settlement, and the integration of the jinayat system with the national system. The validity of these preliminary findings needs to be further tested through empirical research.

D. CONCLUSION

The jinayat qanun contains no free-standing offence of sexual intercourse with a child; such conduct is accommodated under sexual harassment, rape, and zina with alternative penalties. Improvements have come from sema number 10 of 2020, sema number 3 of 2023, and aceh qanun number 12 of 2025, which made the penalties cumulative, declared sexual intercourse with a child under sixteen to be rape, and affirmed victim recovery.

The main problems from a child protection perspective include the construction of consent and zina, the burden of proof and the risk of qadzaf, a coercion requirement that does not reflect patterns of grooming, an age threshold of sixteen that is inconsistent with national law, disparity resulting from alternative penalties, the plurality of legal regimes, customary settlement and marriage, and victim recovery that is not yet guaranteed.

Reformulation should shift the paradigm from decency to child protection rooted in maqasid al-shari'ah, through a free-standing offence based on the age of eighteen, proportionate and consistent penalties, child-friendly procedural law, guaranteed recovery, a prohibition on out-of-court settlement, and harmonisation with the national system.

Theoretically, the findings of this article show that the theory of justice, maqasid al-shari'ah, and integrative sentencing can be used together to assess and construct jinayat norms. All three require that law be judged by its capacity to protect the weakest party and to restore the situation, not merely by its conformity with the formal shape of a provision. This reading opens the possibility that aceh's special status need not stand in opposition to child protection but can instead become a means of realising it.

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