

Determining 'Uqūbāt for Sexual Harassment and Rape from the Perspective of *Maqāshid al-Sharī'ah*: An Analysis of *Mahkamah Syar'iyah Singkil* Decision

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Abstract

This study aims to analyze the selection of the type of 'uqubat ta'zir in the verdict of sexual harassment and rape at the *Mahkamah Syar'iyah Singkil* in 2021–2023, as well as review the judge's considerations with the *Maqashid al-syariah* approach. The focus of the study includes the implementation of SEMA and its conformity with the values of *Maqashid al-syariah* in the selection of the type of 'uqubat ta'zir. This study employs a library research method, utilizing primary data in the form of decisions by the *Mahkamah Syar'iyah Singkil* and interview results, as well as secondary data from regulations, qanun, and relevant literature. The approach used is normative juridical. The results of the study can be concluded that the panel of judges has implemented SEMA Number 10 of 2020 in imposing 'uqubat ta'zir in the form of prison. The implementation of SEMA reflects preventive efforts against recidivism, as well as a form of protection and recovery for victims, and a means of legal education (*tadabbur*) for the community. Normatively, the judge's consideration follows the principles of *maqashid Sharia*, especially in the aspect of *hifz nafs*. However, the application of the values of *hifz nasl* and *hifz mal* has not been optimal, considering that there is no verdict accompanied by the obligation to pay restitution to the victim during this period. Therefore, the integration of the restitution component in the verdict is urgent to strengthen the aspects of substantive benefit and justice in the judicial system.

Keywords: Jinayat, 'Uqubat Ta'zir, Prison and Maqashid Syariah

Introduction

The Acehnese *jinayat* law stipulates that the type of 'uqubat ta'zir in the jarimah of sexual harassment and rape is in the form of whipping or imprisonment or a gold fine. At the beginning of the implementation of Qanun *Jinayat* in Aceh, prosecutors and judges tended to stipulate 'uqubat ta'zir in the form of a whip in public. Almost all *jarimah* convictions for sexual harassment and rape result in caning, while prison sentences or gold fines are rarely imposed. This choice is based on the principle of *tadabburi* (learning), because the punishment of whipping carried out in public is considered more effective in providing a deterrent effect to the perpetrator.

In its development, the application of *'uqubat ta'zir* in the form of whips, sexual harassment, and rape is considered ineffective and does not provide sustainable protection to the victim and opens up potential for recidivism. In 2020 the Supreme Court has issued SEMA Number 10 of 2020 which emphasizes that every case of rape or sexual harassment in which the victim is specifically a child, then to ensure the protection of children, the defendant must be sentenced to *'uqubat ta'zir* in the form of prison. So in recent years, there has been a significant shift in the selection of *'uqubat ta'zir*, especially in cases of sexual harassment and rape, from the original punishment of whipping to imprisonment.

The Qanun Jinayat and SEMA instruments Number 10 of 2020 are not enough to accommodate the achievement of substantial justice for the victims, so it is necessary to analyze the values of *maqashid al-syariah* in determining the selection of the type of *'uqubat ta'zir* for the perpetrators. In this article, the author wants to explain how the selection of the kind of *'uqubat ta'zir* in the verdict of sexual harassment and rape at the *Mahkamah Syar'iyah Singkil* is reviewed through the lens of *maqashid al-syariah*

Research Methods

This writing was prepared with a normative juridical approach, utilizing the library research method, which focuses on information sources in the form of literature, laws and regulations, and the decisions of judges of the *Mahkamah Syar'iyah Singkil* from 2021 to 2023. All of these sources were studied because they were related to the object of the research, namely the selection of *'uqubat ta'zir* in the case of sexual harassment and rape.

Next, the author analyzes the relevance to the principles of *maqashid al-syariah*. The method used to collect data in this writing is qualitative research by relying on primary sources in the form of copies of the decisions of the *Mahkamah Syar'iyah Singkil* combined with interviews with judges and secondary sources, such as journals, books, books, magazines, articles, and other references relevant to the research topic.

Results and Discussion

Definition of *Ta'zir*

Word *ta'zir* is isim masdar, an Arabic word عَزَّرَ - يُعَزِّرُ which means to reproach, reprimand, scold, slander. According to the language, *ta'zir* is also called *ta'dib*, which means to give a lesson. *Ta'zir* also interpreted *ar rad wa al man'u*, meaning to reject and prevent. According to the term put forward by Imam Al-Mawardi (Almaany.com, 2010-2025), *ta'zir* is a punishment given for an offense or criminal act that is not definitively specified in the law. The type and form of punishment vary, depending on the case and the perpetrator. Although different from *had*, *ta'zir* has the

same goal, which is to improve the behavior of the perpetrator and prevent others from committing similar offenses. (Mawardi, p. 236)

In article 1, number 19 of Qanun Number 6 of 2014, it is explained that *ta'zir* is a type of *'uqubat* stipulated in the qanun with a form of punishment that is optional, and the amount is determined within the maximum and/or minimum limit. According to Qanun Jinayat, the main *'uqubat ta'zir* includes the punishment of whipping, imprisonment, or fines, while additional *ta'zir* includes coaching by the state, restitution and restitution to parents/guardians, dissolution of marriage, revocation of permits and rights, confiscation of property, and social work. In summary, *ta'zir* is a type of punishment that is not directly determined by *the Sharia*, but is the result of the *ijtihād* of the scholars and is determined by *ulil amri* or the government.

In the current implementation of the *Jinayat* law in Aceh, only two types of punishment are applied to perpetrators who violate qanun *jinayat*, namely the hudud punishment and the *ta'zir* punishment.

Definition of *Maqashid Syariah*

The word "*maqashid*" is the plural word or jama' of the morphology of the word *قصد يقصد* and the word *maqashid* (مَقَاصِد) is the plural form of *Maqṣad* (مَقْصِد), which means purpose, intention, and intend. While the second word is (Almaany.com, 2010-2025) *Sharia* can be interpreted as a law or code. In terms, it can be interpreted that *maqashid Sharia* are the goals of Islamic *Sharia* contained in every rule of Allah. According to Imam Ahmad Raisuni, giving the meaning of *maqashid Sharia* is the goals set by the *Sharia* to realize the benefits of mankind. Meanwhile, according to Imam al-Shatibi, he defines the *maqashid* of *Sharia* by dividing it into the first part (Sutisna, 2021, p. 53) (Ar-Raisuni, 1995, p. 7). *Qashdu as Shari'* (Allah's purpose) and *Qashdu Mukallaf* (purpose of mukallaf) (Syatibi, p. 5).

This *maqashid* places the *Sharia* as the goal of the problems of creatures or humans. Then, *maqashid* is divided into three important parts, which are *daruriyyah*, *hajiyyah*, and *Tahsiniyyah*. *Dharuriyah*, i.e. *maslahah*, must exist and be the main (*essence*) because to ensure the benefit of the world and the hereafter, if the needs of *dharuriyah* are not met, then the benefits of the world will also be lost and cause damage in human life, hinder enjoyment, and bring real losses (Syatibi, p. 8). *Maqashid daruriyyah* consists of five things, namely maintaining religion (*al-din*), soul (*al-nafs*), descendants (*an-nasl*), treasure (*al-mal*), and the intellect (*al-'aql*). While *maqashid hajiyyah* includes the essential needs for human life in order to be able to live prosperously and avoid difficulties. If these needs are not met, there will be scarcity and suffering. While *maqashid tahsiniyyah* is related to the things that should exist for the perfection of human life, although it does not cause misery, it still makes life feel less perfect (Ar-Raisuni, 1995, p. 146).

Tabulation of Research Object Decisions

In this study, the author collected data from the *Mahkamah Syar'iyah Singkil* decisions over three years, namely 2021, 2022, and 2023, to be analyzed. During this period, 28 cases were recorded, including 9 cases of sexual harassment, 18 cases of rape cases, and 1 case of rape involving child perpetrators. The details are as follows: (Sujarwo, 2025)

Table 1: *Tabulation of Jarimah Harassment and Rape Verdicts in 2021-2023*

Yes	Number	Jarimah	Types of 'uqubat Verdict			Attempt Law	Victim	
			Cmbk	Prison	Fine		L/P	Age
1	2/JN/2021/MS.Skl	Rape	-	172 months	-	150 months	P	8 yrs
2	3/JN/2021/MS.Skl	Rape	-	170 months	-	-	P	12 yrs
3	4/JN/2021/MS.Skl	Q. Sexual	-	60 months	-	-	P	16 yrs
4	11/JN/2021/MS.Skl	Rape (Adultery)	100 kl	20 months	-	-	P	16 yrs
5	15/JN/2021/MS.Skl	Rape	-	130 months	-	-	P	24 yrs
6	1/JN/2022/MS.Skl	Q. Sexual	-	60 months	-	-	P	7 yrs
7	2/JN/2022/MS.Skl	Rape	-	150 months	-	-	P	5 yrs
8	3/JN/2022/MS.Skl	Q. Sexual	-	33 months	-	-	P	14 yrs
9	5/JN/2022/MS.Skl	Rape	-	160 months	-	160 months	P	16 yrs
10	6/JN/2022/MS.Skl	Q. Sexual	-	20 months	-	-	P	16 yrs
11	9/JN/2022/MS.Skl	Q. Sexual	-	30 months	-	-	P	8 yrs
12	14/JN/2022/MS.Skl	Rape	-	160 months	-	-	P	9 yrs
13	1/JN/2023/MS.Skl	Q. Sexual	-	20 months	-	-	P	17 yrs
14	2/JN/2023/MS.Skl	Rape	-	150 months	-	-	P	9 yrs
15	3/JN/2023/MS.Skl	Rape	-	150 months	-	-	P	16 yrs
16	4/JN/2023/MS.Skl	Rape	-	150 months	-	-	P	19 yrs
17	5/JN/2023/MS.Skl	Q. Sexual	-	24 months	-	-	P	7 yrs

18	6/JN/2023/MS.Skl	Q. Sexual	-	70 months	-	-	P	14 yrs
19	7/JN/2023/MS.Skl	Rape	-	180 months	-	-	P	12 yrs
20	8/JN/2023/MS.Skl	Rape	-	160 months	-	-	P	7 yrs
21	9/JN/2023/MS.Skl	P. Sexual (Rape)	-	150 months	-	-	P	16 yrs
22	10/JN/2023/MS.Skl	Rape	-	160 months	-	-	P	16 yrs
23	11/JN/2023/MS.Skl	Rape	-	150 months	-	-	P	14 yrs
24	12/JN/2023/MS.Skl	Rape	-	160 months	-	-	P	15 yrs
25	13/JN/2023/MS.Skl	Rape (adultery)	100 kl	100 months	-	-	P	15 yrs
26	14/JN/2023/MS.Skl	Rape (adultery)	100 kl	80 months	-	-	P	17 yrs
27	15/JN/2023/MS.Skl	Rape	-	180 months	-	180 months	P	14 yrs
28	1/JN- Anak/2023/MS.Skl	Rape	-	70 months	-	-	P	15 yrs

Source: Summary from the case file of the Mahkamah Syar'iyah Singkil case file

Based on the results of the analysis of the content of the above decisions, the author can conclude about the state of the case of sexual harassment and rape at the Singkil Syar'iyah Court during the period from 2021 to 2023, which is as follows:

o Year 2021:

There was 1 case of sexual harassment with a sentence of 60 months imprisonment, and 4 cases of rape with a prison sentence of between 130–172 months. One of the cases (No. 11/JN/2021/MS.Skl) involved adultery with a child, with a penalty of 100 lashes and 20 years in prison. All of the victims were minors, except for one case.

o Year 2022:

There were 4 cases of sexual harassment with a prison sentence of between 20-60 months, and 3 cases of rape with a sentence of 'uqubat between 150-160 months. All of the victims were children under 18 years old. A case was appealed, and the preliminary verdict was upheld.

o Year 2023:

There are 4 cases of sexual harassment with a prison sentence of 20–70 months, and 12 cases of rape with a sentence of 150–180 months. Two cases (No. 13/JN/2023/MS.Skl and 14/JN/2023/MS.Skl) were proven to have committed

adultery with a child and were sentenced to 100 times of *'uqubat* whipping and *'uqubat* to 100 and 80 months in prison, respectively. One case involved the perpetrator and the child victim (No. 1/JN-Anak/2023/MS.Skl), with a *'uqubat* sentence of 70 months in prison. Almost all of the victims were under the age of 18, except for one case, who was 19 years old. Only one case was appealed, and the verdict was upheld.

Implementation of SEMA Number 10 of 2020

The Supreme Court, as the highest state court, has the function of regulating, where it is authorized to regulate matters necessary for the smooth running of the judiciary if it has not been adequately regulated in the law. In addition, the Supreme Court can establish its procedural law if it is deemed necessary to complement the existing procedural law for judicial institutions under it throughout Indonesia, both from the General Court, the Religious Court, the State Administrative Court, and the Military Court. And with this authority, the Supreme Court has enforced the consistent application of the chamber system, which aims to maintain uniformity of the law, reduce differences (*Disparity*) in the verdict. Through the chamber system, as a concrete step, the Supreme Court directs the chamber chairman to accommodate and find solutions to various judicial technical and non-technical problems from the courts of first instance and appeals. These issues are discussed in the Plenary Meeting of the Chamber and concluded in the form of directions, instructions, or suggestions outlined in the Circular Letter of the Supreme Court every year. This system also aims to maintain legal uniformity and consistency of decisions, and has been implemented regularly since 2012 (Agung, 2010, pp. 29-29).

From November 29 to December 1, 2020, the Supreme Court held a Plenary Meeting of the Chamber to discuss judicial technical and non-technical issues, including the formulation of the Plenary of the Religious Chamber related to *Jinayat*. The results are outlined in the Supreme Court Circular Letter Number 10 of 2020, dated December 18, 2020, specifically at point C, number 3 letter (b), which reads as follows:

"In the case of rape / sexual harassment jarimah where the victim is a child, to ensure the protection of the child, the defendant must be sentenced to 'uqubat ta'zir in the form of prison. Meanwhile, if the perpetrator of the crime is a child, then the uqubat follows the provisions of Article 67 paragraph 1 of Qanun Aceh Number 6 of 2014 concerning Jinayat Law and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System."

The plenary formulation of the chamber was born from the anxiety of the people of Aceh who consider that the punishment of caning for perpetrators of sexual abuse and rape, especially against children, is not proportional to the physical and psychological impact experienced by victims who still have a long future.

Criticism from various circles emerged in the hope that (Zuhra, 2020, p. 12). *Uqubat* Prison is enforced because it is considered more effective as a means of learning for perpetrators to repent, realize their mistakes, and regret their actions. In addition, this punishment is considered more appropriate to protect children and provide a deterrent effect. However, if there are still weaknesses, especially in the aspect of procedural law, it is necessary to revise it for the sake of benefit (Fuadhi, 2023, p. 103).

According to the author's analysis, the supreme court judges in the Plenary of the Religious Chamber applied the interpretation *Teleological* or *Sociological* against Article 47 and Article 50 of Qanun Jinayat. This is done because the written law is permanent, while the needs of the community continue to grow. The goal is to bridge the gap between legal norms (*positivity*), which gives the choice of the type of *'uqubat*, with the reality of the law (*Legal reality*) that demands punishment that provides a deterrent effect and continued protection for the victim. With this approach, the meaning of the two articles is narrowed so that it is no longer (Hasibuan, 2023, p. 142). Forum of Choice for the judge in choosing the type of *'uqubat*, in addition to prison,

Problems arise if SEMA's instruction is interpreted that in cases with child victims, the perpetrator must be sentenced to *'uqubat* in prison for the deterrent effect and protection of the victim. The word "must" in legal language is imperative, namely mandatory and binding, and has implications for sanctions if violated. This has the potential to interfere with the independence of judges as instructed in Article 32, paragraphs (4) and (5) of Law Number 3 of 2009 concerning the Supreme Court. So that even though it uses the diction "must", the instruction is understood as the word "can" or "recommended" and needs to be considered by judges because SEMA aims to reduce disparities and create harmonization of the application of law, but its application still depends on the legal facts of the trial and the beliefs of the judge who is responsible in this world and the hereafter.

SEMA Number 10 of 2020 has been in effect since early 2021, so the object of this research includes the verdict on sexual harassment and rape cases from 2021 to 2023. Based on previous information, the *Mahkamah Syar'iyah Singkil* has applied the type of *'uqubat ta'zir* in the form of imprisonment in cases of sexual harassment and rape, both with child and adult victims. Although not all rulings explicitly mention the SEMA rules, the judges still prioritize philosophical considerations to choose the type of *'uqubat* that is most fair for the victim. As in the consideration of the decision of Jinayat Decision Number 1/JN/2021/MS.Skl, the panel of judges considered the following:

"Considering that, in the matter of sentencing the Defendant, the Judge did not agree with the Public Prosecutor's demand that the Defendant be sentenced to imprisonment for 175 (two hundred) months. The purpose of punishment is not an act

of revenge but the purpose of punishment is more intended as a preventive effort or as a preventive effort so that the act does not repeat itself to the convict himself or others so that they do not follow to commit a criminal act as well as as an effort to improve so that the convict realizes his mistakes and can improve himself in the future”.

Review of Maqashid al-Syariah

The criminal proof system in Indonesia adheres to the principle of *Negative Legal*, which is the judge's conviction based on valid evidence according to the law. This principle is also affirmed in jurisprudence, such as the Supreme Court of the Republic of Indonesia Decision No. 1158 K/Pid/1985 dated December 14, 1987, which is explicitly used as the basis for legal considerations. The same applies in the procedural law of *Jinayat*, where the system of proof is also negative, as stipulated in Article 180 of Qanun Number 7 of 2013 concerning the Procedural Law of *Jinayat*. Based on Qanun Jinayat also regulates that there are still alternative types of (Dini Nabillah, 2022, p. 250). *'uqubat ta'zir* between whipping, imprisonment, or fines. In this case, the judges of the *Mahkamah Syar'iyah* are given the freedom to exercise *ijtihad* to choose the type of *Uqubat* which is considered to provide the most sense of justice to the community.

Then the Supreme Court issued SEMA Number 10 of 2020 to provide a reinterpretation of the choice of type *'uqubat* in the Qanun Jinayat, especially for cases of sexual abuse and rape of children. However, the SEMA does not bind the judges, as previously described. Meanwhile, for adult victims, there is still a legal vacuum both in Qanun Jinayat and in SEMA rules. Therefore, judges of the Syar'iyah Court in Aceh need to have a deep understanding of the concept of *maqashid al-shari'ah* in the enforcement of the law of jinayat. This understanding is an important instrument for judges in choosing the type of *'uqubat*, especially when there are no other written rules that provide instructions, to realize justice and benefits for the community.

This is in line with Imam al-Syatibi, who stated that the main purpose of Islamic law is to realize the benefit and welfare of the ummah. It divides *maqashid shari'ah* into two aspects: *al-wujūd* (bring benefits) and *al-'adam* (prevent damage). This principle is the basis for law enforcement, including in determining the type of *'uqubat* that is fair and beneficial to society (Syatibi, p. 8).

The relevance of the selection of the type of *'uqubat* by the judge in the case of sexual harassment and rape can be attributed to the concepts of *al-wujūd* and *al-'adam* in the maqashid of shari'ah according to Imam Syatibi, especially in the essential aspect of *dharuriyah*. In this case, the judge of the *Mahkamah Syar'iyah* needs to consider at least three main values: *hifz an-nafs* (safeguarding the soul), *hifz an-nasl* (safeguarding offspring), and *hifz al-mal* (safeguarding honor/self-respect), as a philosophical basis in determining the right and fair type of *'uqubat*. Whatever the description is as follows:

1. *Hifz an-Nafs* (Safeguarding the Soul)

Based on the legal facts in the verdict studied, the majority of victims of sexual harassment and rape are minors, where the perpetrator often commits his actions through coercion, lurement, coercion, or threats, which result in physical and mental harm to the victim. For example, in the rape case number 15/JN/2021/MS.Skl, the defendant threatened to kill the victim with intimidating words by saying "don't tell people If it wasn't for you, I'd kill your mother." Or by tricking the victim, as in case number 5/JN/2022/MS.Skl, where after raping the victim's child, the defendant gave Rp20,000 and threatened, "don't tell your mother."

The victim suffered physical and mental losses, as in case number 2/JN/2023/MS.Skl. The panel of judges considered evidence in the form of a Visum Et Repertum Letter, which showed a tear in the victim's hymen, as well as the results of a Forensic Psychology examination that indicated a PTSD (Post-Traumatic Stress Disorder) response in the victim. This PTSD arises as a result of traumatic events that disrupt the victim's cognitive, affective, moral, sexual, and interpersonal functions, reflecting the profound psychological impact of the defendant's actions.

From the description of the data above, it can be understood that every victim of rape and sexual harassment experiences a threat to life, physical damage, and prolonged trauma. By concept *Al-Wujud* and *Al-'Adam* deep *Hifz An-Nafs*, every individual should protect the souls of other human beings to stay safe and healthy. In addition, everyone should also make preventive efforts so as not to damage or hurt the lives of others. This is because *maslahah* covers all forms of pleasure, both physical and spiritual, and is related to the mind and soul. Meanwhile, the fact that *mafsadah* is everything that causes pain and suffering, both physical and spiritual, and affects the mind and soul. (Milhan, 2022, p. 94)

In choosing the type of *'uqubat*, the judge must consider the protection of the victim's life, the long-term impact on the perpetrator, and the community. This type of *'uqubat* in prison can be an effective solution, not only as a physical punishment, but also for the rehabilitation of the perpetrator and to provide a deterrent effect. This approach helps judges uphold the values of *the shari'ah maqashid* in the field of *hifz an-nafs*, prevent damage, and ensure the welfare of the community, especially in cases of sexual harassment and rape.

The selection of the type of *'uqubat* prison is appropriate to support the protection of the soul (*hifz an-nafs*) in the concept of *al-wujud* and *al-'adam* for the following reasons:

- ***Al-wujud:***
 - a. Most of the victims are vulnerable minors who need protection from crime. Therefore, prison sentences provide more effective protection to maintain the safety of the victim's life.
 - b. Prison can prevent perpetrators from meeting victims, especially those who have mahram relationships, thereby reducing the potential for deeper trauma in victims.
 - c. Prisons also support efforts to bring benefits to the community, namely protecting children from acts of violence and preventing perpetrators from repeating their actions.
- ***Al-'adam:***
 - a. The perpetrator is often a close person of the victim, such as an uncle, grandfather, or stepfather, so that prison prevents them from repeating their actions (recidivism) and protects the victim from potential future acts of violence.
 - b. The selection of prison sentences serves as a preventive measure to prevent other children from becoming victims of sexual abuse and rape.
 - c. Prison sentences also play a role in preventing further damage in society by providing a deterrent effect to perpetrators and setting an example to the community on the importance of avoiding such acts.

2. *Hifz an-Nasl* (taking care of the offspring)

Islam highly values and takes care of one's offspring (*hifz an-nasl*), which is one of the five main principles in the maqashid of Sharia. This concept emphasizes that offspring are a gift that must be maintained for human survival and societal stability. Based on the concept of Imam Syatibi in terms of *Al Qaeda* and *Al 'Adam*, then to keep *hifz nasl* can be taken in two ways, namely realizing *hifz nasl* in terms of *al-Wujud*, for example, getting married legally, and keeping *hifz nasl* in terms of *al-'Adam*, for example, limits for adulterers and *muqdzif* (Kasdi, 2014, p. 57).

In the research data, one case with registration number 15/JN/2023/MS.Skl was obtained, where the victim's child was raped by the defendant until she became pregnant, the defendant, a 30-year-old man who was married and lived about 100 meters from the victim's house, was often visited by a 14-year-old victim because he had a stall at his house, based on the admission in the trial that the defendant had sexual intercourse with the victim's child 5 (five) times, The defendant persuaded the victim by giving money of up to Rp100,000.00 so that he could repeat his actions several times. During the trial, the victim was 4 months pregnant, traumatized, and reluctant to return to school due to embarrassment. In the end, the defendant was sentenced to '*uqubat* in prison for 180 months by a panel of judges.

From the case, it is clear that the defendant's actions injured the honor of the concept of *nasab* in Islam, by having intercourse to cause a pregnancy outside of a legal marriage. The victim's child will give birth without the presence of a legally and religiously valid father, as well as without a guarantee of alimony, which ultimately damages his lineage. The victim's family also refused to marry their child to the defendant.

Judging from the concepts of *al-wujud* (maintaining the continuity and honor of the offspring) and *al-'adam* (preventing damage to the offspring), the defendant deserves to be sentenced to *'uqubat ta'zir* in the form of imprisonment and the payment of financial restitution (compensation), as a form of protection for *the hifz an-nasl* for the following reasons:

- ***Al-wujud:***
 - a. Restitution in the form of money is needed to assist the victim in the process of childbirth and care for a child born as a result of the perpetrator's actions, as a form of fulfilling responsibility for the survival of the child.
 - b. The selection of prison sentences and the granting of restitution is a form of *jalbu al-mashālih* (bringing benefits), because it helps to ensure the safety and future of the victim and the child who is born.
- ***Al-'adam:***
 - a. The selection of *the type of 'uqubat* in prison prevents perpetrators who live close to the victim, or have a mahram relationship, from committing *recidivism*.
 - b. The combination of prison sentences and restitution serves as a form of *social tadabbur* so that the community does not neglect the importance of maintaining *nasab*, as well as preventing the birth of children without *nasab* and alimony from the father's side due to the act of *jarimah*.

3. *Hifz al-Mal* (Safeguarding Property)

Hifz al-mal (safeguarding wealth) is one of the five main *maslahat* in the maqashid of shari'ah. Islam pays great attention to property, both in its fulfillment and its protection from damage. This concept is in line with the approaches of *al-wujūd* (fulfillment of benefits) and *al-'adam* (prevention of damage) put forward by Imam Syatibi.

Based on the data of the verdict studied, all victims of sexual harassment and rape suffered material and immaterial losses, including physical, mental, and traumatic disorders that caused victims to be reluctant or forced to drop out of school. Of the 18 cases of rape by an adult perpetrator and one case by a child perpetrator, the victim suffered physical damage such as the tearing of the hymen

based on *visum et repertum*, as well as mental losses in the form of trauma that affected cognitive, affective, moral, sexual, and interpersonal functions.

The physical and mental losses suffered by the victim cannot be replaced by material, but according to the expert witness (Psychologist) in case 2/JN/2023/MS.Skl, the victim showed trauma and behavioral changes, so he needed assistance and psychological recovery to maintain long-term mental health and for the psychological recovery needed by the victim, as explained by the expert, requires significant funds, that must be expelled by the victim's child or his family to ensure long-term recovery and well-being.

Based on the analysis of the concept of *hifz al-mal* (safeguarding property), it can be concluded that the appropriate type of *'uqubat* to be imposed on the defendant is in the form of *'uqubat* imprisonment and restitution for the following reasons:

- ***Al-wujud:***
 - a. The combination of *the punishment of 'uqubat* prison with restitution of a sum of money for the cost of treatment, recovery, and the cost of moving the victim's school is a form of accountability for the perpetrator's actions. This aims to maintain the continuity of the offspring and the health of the victims.
 - b. The selection of the type of *'uqubat* prison and restitution to bring benefits (*jalbu al-mashâlih*), namely the safety of the victim from physical and mental losses.
- ***Al-'adam:***
 - a. The selection of the type of *'uqubat* imprisonment and restitution to implement the principle of *tadabbur* from qanun jinayat to the wider community, to avoid acts of sexual harassment and rape, to maintain the continuity of offspring and prevent further damage to society.
 - b. The selection of a *'uqubat* type of prison to prevent other children from similar losses would incur a large recovery cost. It is also a preventive effort (*dar'u al-mafâsid*) that protects the soul and the offspring.

As a conclusion to the analysis, it can be concluded that the concepts of *al-wujud* and *al-'adam* in the *maqashid al-syariah* according to Imam al-Syatibi are an important philosophical foundation for a judge in determining the type of *'uqubat* for the perpetrators of *jarimah*, especially sexual harassment and rape. In terms of *hifz an-nafs* (safeguarding the soul), the judge should choose *'uqubat* prison. Meanwhile, in terms of *hifz an-nasl* (safeguarding offspring) and *hifz al-mal* (safeguarding property), the judge needs to choose *'uqubat* imprisonment and restitution to compensate the victim.

This approach not only encourages the enforcement of Sharia values for the benefit of (*al-wujud*), but also prevents all forms of damage and harm (*al-'adam*) that

can threaten the sustainability of religion, soul, intellect, descendants, and property. By understanding and applying this principle, judges in the *Mahkamah Syar'iyah* are expected to be able to present substantive justice that is in line with Sharia values and social reality.

Problems and Solutions of Jinayat Restitution

During the 2021-2023 period, the *Mahkamah Syar'iyah Singkil* has never decided to impose restitution on the perpetrator, due to technical factors in the field. This was confirmed directly by the Registrar of the *Mahkamah Syar'iyah Singkil* in an interview. Based on article 1 number 20 of Qanun Number 6 of 2014, it is explained that restitution is a certain amount of money or property, which must be paid by the perpetrator of Jarimah, his family, or a third party based on the judge's order to the victim or his family, for suffering, loss of certain property, or reimbursement for certain actions (Sujarwo, 2025).

The Qanun Jinayat rules and the regulations of the governor of Aceh province have not comprehensively regulated the technicalities of applying for compensation or restitution. In fact, in article 51 paragraphs (1) and (2) of Qanun Aceh Number 6 of 2016 it is stated that restitution can be imposed if there is a request from the victim, but only for the perpetrator who is sentenced to *'uqubat* based on articles 48 and 49, without including article 50 which regulates the rape of children. This seems to show that Qanun Jinayat has not accommodated requests for restitution from the children of rape victims, even though the majority of rape victims are children. This condition is contrary to Article 2, paragraph (1) of PERMA Number 1 of 2022, which expressly states that restitution applies specifically to "child-related crimes," making the status of child victims the main basis for providing restitution. Therefore, this PERMA clarifies that compensation in Qanun Number 7 of 2013 is equated with restitution according to the provisions of PERMA.

The obstacle to submitting restitution lies in the need for a written request from the victim or family, which is difficult to fulfill due to the traumatic condition. The victim must also include written evidence at the trial, or a decision on the value of restitution from LPSK if it goes through the institution. In addition, the defendant's ability to pay restitution is a problem, so the role of Baitul Mal as a special autonomous institution is needed to assist in its implementation.

From the problem of restitution that has been explained, the author offers several solutions to ensure the achievement of *maqashid al-syariah*, especially in maintaining offspring (*hifz an-nasl*) and property (*hifz al-mal*), as follows:

1. Revision of Qanun Jinayat

Adding provisions in Article 51 paragraph (1) of Qanun Aceh Number 6 of 2016 to explicitly mention the rape of children regulated in Article 50, to allow victims of rape of children to apply for restitution.

2. *Formulation of the Religious Chamber through the Supreme Court Circular Letter*

If the revision of the qanun cannot be carried out, then the Supreme Court can issue a circular that interprets that Article 51 paragraph (1) of the Aceh Qanun Number 6 of 2016 also includes restitution given to victims of child rape as regulated in Article 50.

3. *Burden of Restitution as Ex Officio of the Panel of Judges*

A new rule is needed that states that the panel of judges can legally impose restitution on the defendant *ex officio* under the facts of the trial without the need to submit.

4. *Optimizing the Implementation of Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children*

Optimizing the duties and functions of Baitul Mal in establishing policies and mechanisms for assisting women facing the law (APH) and children facing the law (ABH) who are victims of sexual harassment and rape.

Conclusion

Based on the above explanation, it can be concluded that in the decision of the *Mahkamah Syar'iyah Singkil* in 2021–2023, the panel of judges has chosen the type of *'uqubat Ta'zir* in the form of imprisonment for the perpetrators of sexual harassment and rape in line with the provisions of SEMA No. 10 of 2020, even including adult victims, to prevent recidivism and protect victims. These rulings are also in line with the principles of *maqashid Sharia* reviewed from the aspects of *al-wujud* and *al-'adam*, especially *hifz an-nafs* (safeguarding the soul), but have not fully fulfilled the principles of *hifz an-nasl* (safeguarding offspring) and *hifz al-mal* (safeguarding property), because there is no verdict accompanied by a restitution verdict for the victim.

The punishment of the type of prison alone is still considered imperfect to achieve substantive justice for the victims, where the victims get nothing from the punishment. From the perspective of *Maqashid Sharia*, the addition of punishment in the form of restitution payments to the victim is a necessity that must be considered by the judges.

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