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Restitution Mechanism for Rape Victims in Aceh: An Analysis of The Normative Shortcomings of Qanun Jinayat

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Abstract

This research examines the restitution mechanism for rape victims in Aceh. The rules on restitution for rape victims set out under Article 51 of Qanun Jinayat in Aceh are intended to protect the victims; however, they are deemed ineffective, given that the restitution implemented by the judges of Mahkamah Syar'iyah only covered 6% of the total victims, 9% of the prosecutions by prosecutors. The victims have no chance of recovering from the physical injuries, psychological trauma and social trauma. This article was written based on the use of normative legal research methods. Legal materials comprise legislation, Qanun, Mahkamah Syar'iyah rulings, and district court rulings. The research results were analysed in light of the concepts of justice in Islamic criminal law and feminist legal theory. The research results reveal several points to ponder: (a) regulating the minimum uqubat for restitution at 250 grams of pure gold calculated according to the cost spent on recovering the victim, as well as the principles of justice and the maslahat (public benefit) in the context of Islamic criminal law; (b) regulating the obligations of Mahkamah Syar'iyah judges in determining the losses that the aggrieved parties have to take, particularly in terms of setting the amount of uqubat restitution according to the studies on victimology and the theory of feminist law that prioritises gender equality. If the defendant lives in poverty (gharim), the restitution status shifts to a compensation obligation to be paid by the state through baitul mal. However, the defendant must serve a jail sentence instead of probation. Rule amendments are consistent with the concept of justice and legal certainty in Islamic criminal law. The findings of this research should expand access to justice for victims, without restricting judges' freedom to decide cases or violating the human rights of defendants facing financial difficulties, thereby narrowing criminal disparities.

INTRODUCTION

Rape victims are subject to protection under criminal law (Singhs & Dixit, 2023), which should align with the feminist law movement for the sake of justice (Carroll, 2022). However, criminal judgements generally tend to be punitive, prioritising punishment rather than victim protection (Hancock et al., 2021). This is what happens in Indonesia (Heryanto et al., 2020).

In 2024, Indonesia was declared to be in emergency over rape cases, with women as the victims (Rosmalinda et al., 2021) and the highest cases occurring in the Province of Aceh (Hasbi et al., 2025; TEMPO, 2024). Since 2014, Muslim criminal offenders (often referred to as *jarimah*) in rape cases in the Province of Aceh have been tried at *Mahkamah Syar'iyah* (Shariah Court) under Articles 48, 49, and 50 of Qanun Aceh No. 6 of 2014 concerning Qanun Jinayat. Rape is categorised as one of the ten criminal offences of *jinayat*, and the regulations governing this case must comply with Qanun (Syahr et al., 2023). Qanun Jinayat is a special criminal law in Aceh that adheres to Islamic law, officially formulated in Indonesian legal language (Yusuf, 2021), and is equal in status to regional regulations (Afandi & Bagaskoro, 2024).

Article 51 of Qanun Jinayat asserts that every rape victim is entitled to *uqubat* restitution, which is paid by the rapist to the victim, amounting to 750 grams of pure gold. This regulation seemingly favours the rape victims (Rahmatillah, 2022). Nevertheless, in its imposition, the judges of *Mahkamah Syar'iyah*, with their authority to judge rape offenders, have not properly given access to *uqubat* restitution for victims (Febriandi et al., 2021). Court decisions have often been unjust to the victims since the punishment imposed on offenders is deemed mild (Adiningsih & Arifin, 2023), undermining the position of women as victims (Febriandi et al., 2021; Wahyuni, 2022).

From a normative perspective, two factors have led to the low restitution amount distributed to rape victims: a) regulatory provisions set out in Article 51 of Qanun do not regulate the minimum *uqubat* restitution distributed to the victims (Fajri, 2019) judges refer to the financial capabilities of the defendant in deciding the amount of restitution, which is deemed discriminative (Hasbi et al., 2025) and not gender-neutral (Ramadhita et al., 2023), thereby neglecting the rights of the rape victims and leading to sentencing disparities (Nurazizah & Humaira, 2022) and varied, irrational restitution amounts (Fajri, 2019) for the same substantive matters and characteristics of the cases (Hamdi, 2024).

The minimum *uqubat* restitution refers to the minimum amount of restitution that the Judges of the *Mahkamah Syar'iyah* must order in a court decision following the victim's application for restitution. The minimum amount of the *uqubat* restitution is equal to the minimum amount payable in Canada, where judges are required to sentence defendants in accordance with laws enacted by Parliament (Penney et al., 2024).

If rape victims do not receive any restitution or receive only a small amount of restitution, they may not be able to financially cover the whole cost of recovery. Restitution should support recovery for short-term and long-term impacts, including physical injuries, psychological damage, and pharmaceutical needs (Miles et al., 2024). The rape victims often suffer from Post-Traumatic Stress Disorder (hereinafter, PTSD) (Purdue & Vars, 2023), and 80% of the victims in Indonesia have suffered from PTSD with varied levels of severity (Solichah, 2013).

Previous data and studies report poor substance in Article 51, thereby needing further analysis to address the following issues: (a) why should Article 51 be amended? (b) Which regulatory provisions require changes? (c) How should the legal wording be formulated to ensure more just regulations for victims from an Islamic law perspective, align with other Qanun laws in Aceh, and remain compliant with national legislation? The House of Representatives of Aceh, along with other legislators (governors) will need to amend Article 51 by inserting regulatory provisions regarding: (a) "the minimum threshold of *uqubat* as restitution", (b) "the obligation of judges to consider the losses of victims" when determining the amount of restitution, and (c) "the alteration from restitution into compensation in case of the offender failing to pay the restitution".

The changes to be made for Qanun must, however, adhere to Islamic law and be aligned with Indonesia's national law (Krisna et al., 2021) to provide more effective protection for victims through restitution (Yuningsih & Munawir, 2025). Minimum legal certainty through restitution is also evident in the national law of Indonesia (Adiningsih & Arifin, 2023; Hendriana et al., 2024), Canada (Wemmers, 2020), and America (Martin & Fowle, 2020). The absence of an amendment to the legal provision regarding restitution will result in a disproportionate amount of restitution compared to that proposed by prosecutors and will fail to help victims recover, thereby undermining their position (Zuriah et al., 2023).

Prior studies mostly focus more on the identification of the shortcomings of the rules governing restitution and the implementation of Qanun (Aljamalulail et al., 2024; Djawas et al., 2024; Fajri, 2019; Wahyuni, 2022), overlooking scientific legal solutions to the issues faced by the legislators in Aceh, particularly in amending Article 51 of Qanun on the basis that the Supreme Court judges could refer to.

In other words, there are legal loopholes in Article 51 of the Qanun regarding the minimum amounts the defendants must pay to recover the victim's loss (Fajri, 2019). The mechanism for settling the loss through restitution in cases bound by a court decision is also not appropriately governed (Aljamalulail et al., 2024; Djawas et al., 2024; Fajri, 2019; Wahyuni, 2022). These loopholes leave judges without appropriate guidelines for sentencing (Nasrullah et al., 2024). Therefore, the amounts of restitution decided by the Judges of *Mahkamah Syar'iyah* are not equal to the loss that the victim has to bear (Aljamalulail et al., 2024; Djawas et al., 2024; Febriandi et

al., 2021). *Mahkamah Syar'iyah* tends to recommend smaller amounts of restitution, as referred to in Qanun, compared to the amounts recommended by judges of the district courts outside Aceh, which do not base the restitution amounts on Article 51 of Qanun (Aljamalulail et al., 2024; Wahyuni, 2022). These district courts include those in Bandung, Wonosobo (Badrudduja & Widowaty, 2023), Purwokerto, Bantul, and Yogyakarta (Toga et al., 2022). Therefore, judges cannot facilitate restitution effectively (Djawas et al., 2024) without explicit regulations concerning restitution in Qanun (Febriandi et al., 2021).

The legal loopholes in Article 51 of Qanun and the incompleteness of the regulations on the payment mechanism of restitution in Qanun indicate that Qanun needs to be revised. This is to encourage legislators to care more about the victims of the injustice, while judges could take into account not only the defendant's financial capability but also the victim's loss, particularly vulnerable women, holistically (Green et al., 2021). Only considering the defendant's financial capability will create problems, as evident in England (Miers, 2014).

The perspective of critical victimology serves as a relevant reference for examining the regulatory formulation aimed at filling the legal loopholes in Article 1 of Qanun Jinayat. Although victimology initially focused on victims' behavioural aspects (Matskevich, 2023) and status (Yeghiazaryan, 2025), over the past two decades its focus has shifted towards research that promotes the realisation of restorative justice (Fattah, 2002). This shift is grounded in four theoretical perspectives used to identify victims in relation to the interplay among choice, power relations, and the suffering experienced by victims (Walklate, 2016), including positivist, radical, critical, and cultural victimology (Walklate et al., 2019). Critical victimology offers numerous advantages in understanding rape victims in Aceh (Aljamalulail et al., 2024; Heryanto, et al., 2020; Moulia & Sari, 2021), as it has proven to be more effective in encouraging legislators to facilitate legal protection for the victims while also addressing their financial needs according to criminal law frameworks in several countries (Fattah, 2002; Mazur, 2024; Rubanov, 2024).

METHOD

This research employs a normative legal method, utilising both doctrines and court decisions to evaluate the normative standards of regulations (Hutchinson, 2015; Taekema, 2018) and to perfect the existing norms (Hutchinson & Duncan, 2012). The regulations enacted in statutory law could be amended based on the study's evaluation of law implementation in the social context (Negara, 2023). The legal materials were collected based on the following procedure: the author obtained data on the implementation of regulations on rapes, including Qanun Jinayat, as available in the directory of court verdicts at the Supreme Court official website. There were 72 copies of the decisions of the *Mahkamah Syar'iyah* on rape cases between 2016 and 2025, and

two of them ordered that restitution be provided for nine rape victims. These two verdicts were compared with those delivered by other courts outside Aceh.

The comparison of the indictments of the court decisions concerned and the legal norms analysed based on doctrinal-qualitative methods (Hutchinson, 2015) were used as a basis for justification to prove that the regulations set out in Article 51 of Qanun have not adequately protected rape victims. The suggested wording for the revision of Article 51 is philosophically, juridically, and theoretically discussed to reinforce the research findings. This research not only discovers new regulations in the social context but also reveals how these regulations are correlated with moral justice and the sense of justice that society should consider reliable (Al-Fatih, 2023).

RESULTS AND DISCUSSION

The Urgency of Legal Rules on the Minimum Amount of *Uqubat* Restitution

The urgency of the provision regarding the minimum threshold of restitution in Article 51, paragraph (1) stems from the court decision on restitution based on Qanun Jinayat that disadvantages the rape victims (Devy & Yunus, 2022; Zuriah et al., 2023), hampering the victims from properly accessing justice (Aljamalulail et al., 2024; Darmawan et al., 2024; Ricardo et al., 2024). Moreover, the amount of restitution provided is too small, only 15 to 30 grams, compared to the cost needed to recover the psychological conditions of the victims (equal to 2,323 grams) (Djawas et al., 2024). Only 5% of the total victims received restitution.

Furthermore, the amount of restitution for rape victims provided based on the regulations set out in Qanun, as decided by *Mahkamah Syar'iyah*, was smaller than that of restitution tried in district courts outside Aceh based on the Criminal Court. According to Qanun in Aceh, one victim received 15 grams of gold (USD$ 1,140), and five victims received 30 grams each, totalling USD$ 2,280 (Djawas et al., 2024). In contrast, the restitution decided by the District Court of Bandung, for example, amounted to Rp 85,830,000 (USD$ 5,1520) (Oktaviani & Hermawan, 2024), the District Court of Yogyakarta Rp. 81,650,000 (USD$ 4,990.86) (Ricardo et al., 2024; Sabril et al., 2023), and the District Court of Malang Rp 44,000,000 (USD$ 2,750).

Compared with prosecutors' proposed restitution outside Aceh, Aceh accounts for a lower percentage, ranging from 6.25% to 31.25%. However, the restitution granted by courts outside Aceh based on the Criminal Court's decision tends to be higher. For instance, in Yogyakarta, the restitution was granted at 10% (Badrudduja & Widowaty, 2023), in Salatiga at 98%, and in Wonosobo at 100% (Toga et al., 2022).

All the decisions on the amounts of restitution issued by the *Mahkamah Syar'iyah* indicate a disproportionate amount of restitution, as determined by prosecutors and judges, and fail to address the victims' needs to recover their losses (Rahayu et al., 2024). Compared to Spain, in the context of crimes other than rape, the amount received by the victims in Aceh is even lower than the amount of restitution received

by the victims of other crimes in Spain, which accounts for €1911, or equal to 40 grams of gold, or USD$2,235.

This low level of restitution is due to the legal loopholes in Article 51, which sets no minimum threshold for restitution that judges must determine (Fajri, 2019). These loopholes indicate the need to revise Article 51 by establishing a new norm as the legal basis for fairly guaranteeing the recovery of the victims concerned. This new norm should set out the minimum amount of restitution that a defendant has to provide (Fajri, 2019; Rahmi, 2019).

The amount of restitution to help recover the physical and psychological conditions of the rape victim should be at least equal to 250 grams of gold, or 750 grams as the maximum threshold. These amounts should cover the cost of medicine, rehabilitation, and recovery. Psychological recovery, for instance, in some cases, may involve recovery from trauma for life. Victims may suffer from material and immaterial losses, such as PTSD at varied levels, and some others suffering from acute traumatic conditions have to be monitored during their recovery for the rest of their lives (Idoko et al., 2020; Kristanto & Waluyo, 2022; Mushtaque et al., 2022). This trauma may be caused by social exclusion, loss of self-confidence, and heightened suicidal ideation (Solichah, 2013).

The victims, as legal subjects (Ma'shumiyyah, 2023), would suffer more without proper recovery, which is often costly.

1. Physical injuries, including bruises and vagina rips (Basile et al., 2021); serious and chronic health issues (Sujana, 2024), including chronic pelvic pain (Farahi & McEachern, 2021), anogenital injury, hymen injury, infectious sexual diseases, reproduction organ damage, cardiometabolic diseases, and other infectious diseases (Smith et al., 2022), with the percentage of infection reaching 33.9% of the total victims (Tenaw et al., 2022); this includes syphilis, HIV, and hepatitis B (Adeniyi et al., 2025), also significant problems of reproduction organ, either permanently or temporarily, which may lead to substantial morbidity (Kidie et al., 2025).
2. Physical health issues, including temporary PTSD (Schmitt et al., 2021) or long-term PTSD and depression (Högbeck & Möller, 2022), and somatic conditions (Fryszer et al., 2022). Sixty per cent of victims experience impaired sexual functioning for up to six months following rape. This includes reduced libido and arousal, dyspareunia, decreased lubrication, a lower level of satisfaction in sexual relationships, difficulty achieving orgasm, and other sexual disorders. Where the victim had a prior history of sexual dysfunction, the impact tends to be more severe (Högbeck & Möller, 2022).
3. Adverse impacts related to personal relationships between victims and members of the community include, for example, strained relationships between victims and family members and other social relations (Dhaka et al.,

2020), humiliation (Kidie et al., 2025), shame (Schmitt et al., 2021), negative stigma towards victims, particularly from men (Dhaka et al., 2020), and a decline in self-esteem within the community (Kidie et al., 2025; Schmitt et al., 2021). Rape victims often face negative stigma from society (Rezky & Putri, 2024), are blamed, and experience repeated victimisation, which worsens their suffering. For instance, victims are blamed for their clothing, appearance, and behaviour, which are perceived as provoking or creating opportunities for rape (Kazmi et al., 2023; Kidie et al., 2025; Murray et al., 2023; Schmitt et al., 2021; Tenaw et al., 2022). Such societal perceptions are found in countries with predominantly Muslim populations, including Aceh (Febriandi et al., 2021; Hasbi et al., 2025) and Pakistan (Kazmi et al., 2023).

If restitution is provided per amended rules, equal to 250 grams of pure gold as the minimum amount for the victim who is not *mahram* to the convicted, and 325 grams of pure gold for the victim as *mahram* to the convicted, this scheme could help recover the victim from physical injuries, trauma, and social impacts. In the context of the conditions that the victim is suffering from, the severity of the punishment imposed to the convicted, even the death penalty, will not alleviate the suffering that the victim has to bear (Barua & Hossain, 2022), given that recovery requires cost that the victim may not be capable of paying on their own (Farahi & McEachern, 2021; Fryszer et al., 2022). The concept of *Diyya* (restitution) from the offender to the victim should represent restorative justice (Absar, 2020).

Therefore, a new phrase needs to be added to Article 51, paragraph (1), stating "The minimum threshold of 250 (two hundred and fifty) grams of pure gold". This phrase is to perfect Article 51, paragraph (1) into "When requested by the victim, every person who is subject to paying *uqubat* as referred to in Articles 48 and 49 shall pay 250 (two hundred and fifty) grams of pure gold as the minimum value, and 750 (seven hundred and fifty) grams of pure gold as the maximum value."

Determining the minimum threshold of restitution of 250 grams of pure gold refers to the analogy of the value difference of 500 grams of pure gold between the minimum amount of fine imposed and the maximum amount of fine referred to in Articles 48, 49, and 50. This value difference should serve as a reference for the amount of *uqubat* restitution, given that the provisions of rape as a criminal offence regulated in Article 51 refer to the provisions of rape as a criminal offence in Articles 48, 49, and 50. On this basis, the restitution amount in Article 51 is 750 grams of pure gold, meaning that if the downward range of 500 grams is applied, the minimum value in Article 51 should be 250 grams.

This threshold of restitution value should serve as a reference for the judges of the *Mahkamah Syar'iyah* in determining restitution. Although this value limit is governed by the Penal Code of Indonesia 2023 and several statutory laws, judges have failed to apply these rules for certain considerations. However, most judges remain compliant

with these rules (Purwoko, 2023). This compliance is also seen in Canada, as such rules are the will of the parliament (Penney et al., 2024). If the severity of punishment imposed under a court verdict is below the minimum criminal sentencing governed in a particular statutory article, the judges delivering the sentencing are considered violating the law and the legality principle (Ronaldi et al., 2019; Syahputra et al., 2024; Zahantoro et al., 2023) and acting unjustly (Darma et al., 2024).

The wording of Article 51, paragraph (2), which does not require judges to consider the losses of the victim, often affects women, given that most rape victims in Aceh are female. Overlooking the rights of women as rape victims is also evident outside Aceh, although the Supreme Court prohibits it (Ramadhita et al., 2023). Qanun Jinayat is not supposed to overlook the rights of women in this context (Hasbi et al., 2025), and all parties should be protected within judicial systems (Djawas et al., 2024), without ruling out the characteristics of Islamic principles in Aceh (Zulkifli et al., 2022). Article 51, paragraphs (1) and (2) do not put victims as a priority (Hasbi et al., 2025). Therefore, new regulations need to be inserted into Article 51 by adding the phrase "the obligation of judges to consider the losses of the victim". In a complete regulatory phrase, Article 51, paragraph (2) should read "In determining the amount of *uqubat* restitution as referred to in paragraph (1), judges shall take into account the financial capability of the convicted person and shall consider the losses of the victim."

If amended, judges of the *Mahkamah Syar'iyah* would have a legal basis to balance the amount of restitution so that it is proportionate to both the interests of the convicted person and the losses suffered by the victim, in line with feminist legal theory in the criminal justice process (Rinde et al., 2025), to ensure justice. The feminist legal theory framework positions criminal law as an instrument for protecting women, not merely as a means of deterrence, but also as a mechanism for restoring women's status as crime victims (Rinde et al., 2025).

A logical consequence of amending the rules on the minimum amount of restitution in paragraph (1) and imposing an obligation on judges to consider losses in paragraph (2) is that the amount of restitution payable by convicted persons will increase. However, to date, some convicted persons are unwilling or unable to pay restitution due to financial incapacity (Hendriana et al., 2024). Some convicted persons choose to serve substitute imprisonment rather than pay restitution (Wemmers, 2020).

To ensure that convicted persons who are unable to pay restitution, and that rape victims in Aceh, always receive restitution, technical regulations on the payment of restitution need to be set out in the Aceh Qanun or a Governor's Regulation (Febriandi et al., 2021). Such regulations could be used by *Mahkamah Syar'iyah* judges as a legal basis for issuing operative orders requiring that: (a) if the convicted person fails to pay restitution, the prosecutor auctions the convicted person's assets to satisfy the restitution, and if this is still insufficient, the government should pay the restitution through the *baitul mal* (Djawas et al., 2024). This approach would uphold the rights of

victims while assisting financially incapable convicted persons. It is grounded in Islamic fiqh, which holds that the state is obliged to assist perpetrators of rape in settling compensation that cannot be paid due to economic problems by distributing to them, as "*gharim*", funds from the zakat treasury administered by the *baitul mal* (Moulia & Sari, 2021), since, in principle, restitution determined by the *Mahkamah Syar'iyah* must be received by rape victims (Djawas et al., 2024).

The regulations regarding the transfer of status from restitution to compensation are required to fulfil the legal provisions in Article 78, paragraph (2), of the Qanun concerning the Handling of Violence against Women and Children, in line with what is outlined in the Law concerning Criminal Sexual Violence. Moreover, the regulations governing this status transfer in Qanun Jinayat adhere to the principle of Islamic law that prioritises the offender's rehabilitation and a problem-solving approach (Mustafa, 2021).

The solution of restitution payment through *baitul mal*, as the author has found based on Article 78, paragraph (1) of Qanun No. 9 of 2019 concerning the Handling of Violence against Women and Children, is by assigning *baitul mal* to provide compensation for the victim or the victim's heirs in accordance with the statutory law governing compensation. The regulatory provisions in this article comprise the right to restitution for the victim, requirements, and the administration of the restitution as governed under (a) Article 7, perfected by Article 7 A of Law concerning Witnesses and Victims, (b) Article 19 of the Government Regulation No. 7 of 2018, as amended to Government Regulation No. 35 of 2020 concerning the Provision of Compensation, Restitution, and Aid to Witnesses and Victims.

To deter offenders, those financially unable to pay restitution must serve a jail sentence as a substitute. This proposal of regulatory provisions for Qanun Jinayat is congruous with Article 33, paragraph (7) of Law concerning Criminal Sexual Violence, which requires the defendant to serve a jail sentence to replace restitution, and the substitute imprisonment must be imposed proportionally, not exceeding the standard criminal sentencing. This also aligns with Article 78, paragraphs (1) and (2), of Qanun No. 9 of 2019 concerning the Handling of Violence against Women and Children, which states that the administration of compensation must adhere to the legislation.

From the victim's perspective, the state's role needs to be improved by involving *baitul mal*, in accordance with Islamic law, for the benefit of all citizens. In this context, financially incapable individuals should be provided with assistance. Therefore, paragraph (4) needs to be inserted into Article 51 with the following wording:

> *"In the event that the defendant fails to pay any or all of the restitution, the prosecutors shall confiscate and auction the defendant's assets to cover the restitution. If the value obtained from the auctioned asset does not sufficiently cover the value of the restitution to be paid, baitul mal serves to pay for compensation, and the defendant shall replace the restitution with a jail sentence whose length shall not exceed the period of imprisonment set out under Articles 48, 49, and 50."*

The insertion of new wording regarding (1) the regulations on the minimum threshold of restitution, (2) the compulsory rules that require judges to take into account the conditions of the victims, not only the defendants that are subject to providing the restitution, and (3) the shift from restitution to compensation represents the society-based necessities which align with the Islamic teaching that the majority in Indonesia adhere to (Febriandi et al., 2021; Hasbi et al., 2025). Rehabilitation of offenders and problem-solving have always been the priority in society (Mustafa, 2021). The revision of Article 51 would position rape victims as the result of interaction between culture and ideological belief in a certain society (Walklate, 2016). Therefore, the amendments to Qanun regulations are deemed rational (Absar, 2020; Fattah, 2002; Heryanto, et al., 2020), as they comply with the rules set out in the Islamic criminal law (Absar, 2020; Lawang et al., 2022; Nasrullah et al., 2024) that is binding for the people of Aceh (Yusuf, 2021). Therefore, this point should be categorised as *Tazir* in Qanun to enable judges to refer to this law to determine the values of restitution in cases of rape crime (Royani, 2022).

The findings of this research, as a basis for filling the loopholes in Article 51 of the Qanun, are relevant to the ideas of those supporting critical victimology, who call for appreciation from defendants and the state for victims. This appreciation should be given in the form of compensation or restitution according to the restorative justice principle (Walklate et al., 2019); (Fattah, 2002).

Although the perspective of positive victimology is often used as a strong fundamental in research these days (Walklate et al., 2019), the idea of those supporting the critical victimology has always succeeded in urging stakeholders to provide protection for victims and fulfil their needs (Rubanov, 2024) in terms of financial and psychological aspects (Mazur, 2024). Some countries regulate compensation for victims of violence, restitution for offenders, and mediation between victims and offenders (Fattah, 2002). This approach is governed by the laws in North America, European countries, New Zealand, and Great Britain (Fattah, 2002), as well as in all Western liberal democratic (Miers, 2019) and Anglo-American countries (Han, 2025). The 1987 Constitution of South Korea, as elaborated in the Police Rules, requires judges to consider the victim's experience in court, particularly how the crime may affect the victim's life. This should serve as a reference for providing restitution (Han, 2025).

The Minimum Threshold Amount of Restitution: The Way to Measures of Curtailing Disparities in Sentencing and the Judicial Freedom

In the context of the amendments to be made in Article 51, adding a regulatory provision regarding the minimum limit of restitution value to paragraph (1) is inseparable from adding a binding phrase regulating the loss the victim has to bear in paragraph (2). An addition of paragraph (4) should also be made regarding the

alteration of status from restitution to compensation for financially incapable offenders and the assignment of *baitul mal* to pay the compensation. Judges should consider reasonable factors, such as the offender's financial capacity and the loss the victim must bear, in the context of the restitution value threshold set out in paragraph (2). The problem is not setting the value that exceeds the minimum limit, but rather the ability to pay the restitution. As a consequence, legal solutions are required to convert restitution into a compensation obligation for which the defendant is responsible. The state is responsible for paying the compensation if the defendant is not financially sufficient, as provided in paragraph (4). Therefore, the amendment to paragraph (2) and the addition in paragraph (3) in Article 51 of Qanun Jinayat should be the logical consequence that responds to the rules regulating the minimum amount as in paragraph (1).

Disparities in sentencing are also common in court decisions on rape cases occurring in Indonesia (Hamdi, 2024), including the issues of restitution amount/*diyat* differences (Djawas et al., 2024) in Aceh (Fajri, 2019). Such disparities also take place in the US and China (Xiong et al., 2025). In addition to disproportionality in regulatory provisions, such disparities also result from other factors, including the judicial perspectives toward criminal offences and seniority among judges (Nir & Liu, 2022), leading to minimal justice and poor credibility of the criminal justice system (Campos & Bedê, 2023).

The rules regarding the minimum sentencing governed under Article 51 of Qanun may help alleviate sentencing. For instance, as studied, legislators in the US propose that, through the issuance of sentencing guidelines, judges' discretion in sentencing defendants can be controlled (Nir & Liu, 2022). Legislators in China also adhere to the policy mechanism in sentencing rapists (Xiong et al., 2025). Measures taken to minimise disparities through sentencing policy and uniformity of jurisdiction in Europe and Asia have resulted in consistency and legal balance (Xiong et al., 2025). Sentencing imposed by legislators positively contributes to controlling judges' discretion and promotes integrity (Campos & Bedê, 2023). Since 2017, the UK and Wales have prioritised the position of victims in court judgments, while placing members of the public as the primary reference in sentencing (Hopkins et al., 2023).

The minimum restitution in Article 51 is essential for guiding the judges of the *Mahkamah Syar'iyah*, given that most judges have ruled in cases that are disproportionate and unjust (Febriandi et al., 2021). Some experts of the feminist theory stand against blaming rape victims. Due to this issue, judges must consider victims as legal subjects, not as property (Ma'shumiyyah, 2023), for fairer judgment (Rinde et al., 2025).

Judges in Indonesia are granted the freedom to judge cases independently of internal and external interventions (Hamdi, 2024). However, the minimum restitution imposed should not hamper the freedom of *Mahkamah Syar'iyah* judges in delivering

judgments so long as the verdicts are reasonable. Judicial independence should not exempt the judges from public accountability (Asrun & Hossein, 2023).

Judges' discretion is respected in Indonesia, as the Supreme Court Circular Letter allows judges to depart from the minimum sentence only if it is irrational. To control their behaviour, some circular letters of the Supreme Court regulate the validity of circular letters. Issues with setting the minimum restitution limit are also common in the US due to several pragmatic factors (Nir & Liu, 2022). Such related issues arise because the predictability of judges, the measures taken to foster coherence of the facts in trial sessions, and other norms are closely related to the justice principle (Campos & Bedê, 2023). Judges in Indonesia are not merely the "mouthpiece of the law"; they are obliged to seek justice values in accordance with the living law in society through their conscience (Ramadhita et al., 2023). The imposition of restitution with a minimum limit in Article 51 should serve as a basis for predictability and coherence with other norms closely related to the principle of justice (Campos & Bedê, 2023).

Rape is deemed to be a serious criminal offence worldwide, and Muslim society condemns it (Munir et al., 2021). This offence raises concern in society and causes serious losses, affecting the victims in the short- and long-term (Wemmers, 2020; Wondie et al., 2023). The responses to this offence in Aceh can be even more serious, involving exile and intimidation (Febriandi et al., 2021), while the offender is sentenced to imprisonment and the victim is compensated in the name of justice. Justice in the context of Qanun Jinayat refers to justice as understood in Islamic criminal law, which upholds equality and guarantees humanity (Alotaibi, 2021; Baehaqi, 2021). Criminal sentencing in Qanun Jinayat should therefore be fairly imposed and applied, as respect for women in Aceh is paramount (Zikri & Rodiah, 2023) and upholding human rights is essential (Nasrullah et al., 2024).

Departing from the philosophy of sentencing from the perspective of Islam, Qanun Jinayat, as an Islamic Legal Institution (Baehaqi, 2021) established by the legislators in Aceh, complies with Islamic principles (Febriandi et al., 2021). Amendments to Article 51, therefore, must reflect the values of protecting crime victims (Hasbi et al., 2025) and set out rules that are easily and uniformly followed by judicial institutions in Aceh (Baehaqi, 2021). As a consequence, the amendments to Article 51 should align with Islamic law, the Qanun, and other national statutory laws. These requirements have been met, as the system governing the minimum threshold of restitution and the determination of the minimum amount in Article 51 (1) is consistent with what is asserted in Articles 48, 49, and 50 of the Qanun Jinayat, which, in relation to fines, likewise stipulate minimum and maximum penalties expressed in units of grams of pure gold.

The amendments to Article 51 as in line with the needs of the victims for rehabilitation and the principles of Islamic law, and customary and cultural elements of Acehnese society should be applicable, as this law is based on the needs of the

members of the public as law users and the tendencies of customary judicial institution for the people of Aceh (Syahr et al., 2023). These new regulatory provisions will portray Islamic law as formulated in the contemporary Qanun that complements national criminal law (Afandi & Bagaskoro, 2024). Amendments in Article 51, paragraph (1) and (2), and the addition in paragraph (4) can serve as references for the judges of *Mahkamah Syar'iyah* to fairly deliver restitution for both the defendant and the victim. From the victimological perspective, the severity of jail sentencing, fines, and the death penalty cannot alleviate the suffering of the victim (Barua & Hossain, 2022), considering the cost taken to recover the damage caused (Farahi & McEachern, 2021; Fryszer et al., 2022).

The amendments made to perfect Article 51, paragraphs (1) and (2) are relevant to the needs of Muslicm society in upholding human rights (Nasrullah et al., 2024). Integrating sharia and customary values, as well as the civilisation of Acehnese society, into Article 51 will help create an adaptive and responsive legal mechanism in a modern community (Karimullah, 2022), while enabling women who are rape victims to receive protection and proportional *uqubat* restitution (Febriandi et al., 2021).

The notions that support the proposed amendments to Qanun by making it relevant to the conditions of Muslims and the local tradition of Aceh align with Tongat's opinion (Tongat, 2024), arguing that perfecting the criminal law in Indonesia must adhere to the conditions of society as law users. If the substance of Qanun Jinayat, following the amendments, is based on the concept of Islamic law (Rahmatillah, 2022), is adjusted to Acehnese culture and the Indonesian legal system, upholds dignity, honour (Hasbi et al., 2025), and collective interest, (El-Bassiouny & El-Naggar, 2025) and the moral value of every human being (Alotaibi, 2021), then the Islamic law can guarantee justice for all (El-Bassiouny & El-Naggar, 2025; Karimullah, 2022).

In terms of validity and content harmony, the Qanun Jinayat does not conflict with Indonesian legislation (Afandi & Bagaskoro, 2024). The amended Article 51 provides legal certainty and justice for the Muslim community of Aceh, entrenched in the principles of Islam, legality, justice, balance, public benefit, protection of human rights, and public education (Oslami, 2022). The legality and amendment of the restitution provisions in Article 51 of the Qanun Jinayat may encourage good practice within the *Mahkamah Syar'iyah* of Aceh. Where clear formal rules exist, as in Indonesia's national criminal law, numerous restitution rulings and their enforcement have proven fair to victims, including restitution in assault cases amounting to more than 25 billion (Hendriana et al., 2024), and the execution of orders confiscating all of a convicted person's assets to satisfy restitution (Oktaviani & Hermawan, 2024).

The finding of this new legal norm is consistent with the idea of kaleidoscopic justice, implying that rape victims not only call for imprisonment for the offenders, but they also wish them to consider holistic solutions, hear the voice of the victims in

courts, be responsible for the recovery, and recognise the dignity of the victims (McGlynn & Westmarland, 2019). Therefore, the options to provide justice lie in the hands of judges. This idea also aligns with the thought of those in support of critical victimology, where they try to combine the concept of ideal victim with intersectionality to deconstruct the paradigm of blaming the victim by attracting the attention of stakeholders based on class, gender, race, culture, and other aspects of identity to form social victimisation (Walklate, 2016). Consequently, the inclusive status of the victims are recognised in the state's political economy, culture, and ideology (Miers, 2019; Walklate, 2016; Walklate et al., 2019), particularly given that female victims have unique needs to be addressed ("Feminist Victimology," 2010; McLeer, 1998).

CONCLUSION

The research findings in this study aim to address the legal loopholes discussed above. The minimum threshold of restitution and the reconstruction of the new model of restitution payment are essential, particularly when the defendant is financially incapable. The *first* finding is that the regulations set a minimum amount of *uqubat* restitution at 250 grams of pure gold. This point should be inserted into Article 51 to fill the existing legal gap. This amount is determined based on the calculation of the cost needed for the recovery, access to justice, and the principle of victim protection in Islamic criminal law that upholds the principle of welfare. The *second* finding concerns the regulations requiring the Judges of *Mahkamah Syar'iyah* to take into account the financial capability of the defendants and the victims' losses. This consideration should serve as the basis for determining the amount of *uqubat* restitution and as a logical consequence of protecting victims from a critical victimology perspective. This perspective calls for the appreciation of the victims in the system of criminal trial and gender equality, while fostering the recovery of the victims according to the ideology and culture. The third finding concerns shifting the status of restitution to compensation payable through the state's *baitul mal*. This particularly applies to financially incapable defendants, as the state's effort to protect victims and provide aid to financially incapable (*gharim*) individuals. All the contents and wording suggested for the revision of Article 51, paragraphs (1), (2) and the addition of paragraph (4) comply with the justice and legal certainty principles, while horizontally harmonious to Qanun and vertically to the national legislation in Indonesia.

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