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Authority to Prosecute Sexual Violence Cases Against Women and Children Between District Courts and Syar'iyah Courts in Indonesia

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Abstract
This research is based on the same authority in adjudicating cases of sexual violence against women and children between district courts and syar'iyah courts in Aceh Province, between district courts and syar'iyah courts in Aceh Province both still adjudicating sexual violence against women and children. This study used normative juridical methods. District courts and Shar'iyah courts are both given authority by law to try cases of sexual violence against women and children, but with different sources of authority, namely the source of authority of district courts based on Article 50 of Law Number 2 of 1986 concerning General Courts Jo. Article 25 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power while the source of authority of the Shar'iyah Court is limited regulated in Articles 46 to 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law
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1. Introduction

The issuance of Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as replaced by Law Number 11 of 2006 concerning the Government of Aceh and Qanun of Aceh Province Number 10 of 2002 concerning Islamic Sharia Courts which requires the formal implementation of Islamic Sharia enforcement in the Aceh region.

Based on Article 1 paragraph (1) of Presidential Decree Number 11 of 2003, religious courts in Aceh Province were changed to syar'iyah courts. Furthermore, based on Article 1 paragraph (3) of the Presidential Decree of the Republic of Indonesia in 2003 which also changed the existing high religious court in Aceh Province to the Shar'iyah Court of Aceh Province.

In Aceh Province, the realization of the community's aspirations for the enforcement of Islamic sharia was achieved by utilizing the momentum of regional autonomy and its privileged status as well as very strong socio-political encouragement and community aspirations.[1]

There are three legal bases for Aceh so that it can be more progressive in efforts to ground the Shari'a, namely (1) Law Number 24 of 1956 concerning the Establishment of the Province of the Special Region of Aceh, (2) Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh, and (3) Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh. Several articles indicate a way for the implementation of Islamic law, such as in Article 1 point 7 of Law Number 18 of 2001 concerning Special Autonomy for Aceh Province which states that "The Nanggroe Aceh Darussalam Shar'iyah Court is an independent judicial institution in the Nanggroe Aceh region.[2]

In fact, the authority of religious courts is the same as that of syar'iyah courts. Based on Article 49 of Law Number 3 of 2006 amendments to Law Number 7 of 1989 concerning Religious Courts explain the authority of religious courts in examining, deciding and settling cases in the first instance between people of Muslim faith in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, sadaqah, and shari'ah economics.

Law Number 50 of 2009 Second Amendment to Law Number 7 of 1989 concerning Religious Courts, in the provisions of Article 3A paragraph (1) it is stated that: "Within the Religious Court, a special court may be established which is regulated by law".[3]

This provision provides the possibility for the establishment of special courts whose scope of authority is still within the scope of the authority of religious courts in general, but in cases that are special in nature and require specialized handling, so that legal expertise of religious judges who are specialists is also needed, with

[1]Mul Irawan, Zulfia Hanum Alfi Syahri, dan Muhamad Zaky Albana. 2019. *Strengthening the Implementation of the Authority of the Syar'iyah Court in Settlement of Jinayat Cases in Aceh Province*. Jakarta: Prenadamedia Group, p. 3.
[2]*Ibid.*
[3]Ernawati, *The Authority of the Syar'iyah Court in Aceh Against Jinayah Law (Relationship of Material Law and Formal Law),* Jurnal Forum Ilmiah Vol. 11 No. 3, September 2014, p 439.

their own structure, powers and procedural law in separate laws.[1] The third amendment to the Religious Court Law also confirms the existence of a new court institution which, due to demands for sociopolitical changes and the development of legal needs, has a different scope of authority from the court in general, namely the Shar'iyah Court in Nanggroe Aceh Darussalam. In the provisions of Article 3A of Law Number 50 of 2009 that the Islamic Sharia Court in Aceh Province is a special court within the Religious Court insofar as its authority concerns the authority of the Religious Court, and is a special court within the general court environment as long as its authority concerns the authority of the general court.

In addition, what distinguishes religious courts from syar'iyah courts is the additional authority in syar'iyah courts through Article 128 paragraph (2) (3) of Law Number 11 of 2006 concerning the Government of Aceh. The Shar'iyah Court is a court for every person who is Muslim and is in Aceh who has the authority to examine, adjudicate, decide and settle cases covering the fields of ahwal al-syakhsyiyah (family law), muamalah (civil law), and jinayah (criminal law) based on Islamic shari'a.

Since the issuance of the regulation, in practice there have been inconsistencies in the application of prosecution authority when dealing with cases of sexual violence against women and children. This is because there is a district court in the Banda Aceh High Court area which states that it is not authorized to hear the case, on the grounds that based on the Aceh Qanun the district court is no longer authorized. However, in practice there are also district courts that declare themselves still authorized to try cases of sexual violence against women and children.

The basis of the general court states that it is still authorized to examine and prosecute types of criminal cases of sexual violence against women and children because the authority given to the general court comes from the law in general and specifically. Meanwhile, the authority of the Shar'iyah court to adjudicate criminal cases of sexual violence against women and children comes from Qanun Aceh.

The Shar'iyah Court in adjudicating cases of sexual violence against women and children is limited to Article 46 to 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law. Meanwhile, the general judiciary in adjudicating cases of sexual violence against women and children is provided through law.

The source of the authority of the Shar'iyah court to examine cases of sexual violence against women and children through Law Number 11 of 2006 concerning the Government of Aceh and Aceh Qanun Number 6 of 2014 concerning Jinayat Law, but on the other hand there is Aceh Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children which reaffirms the authority to adjudicate public courts to try cases of violence against women.

The criminal court in question is a general court in this case the district court as in Article 50 of Law Number 2 of 1986 concerning General Court Jo. Article 25 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which states that the district court has the duty and authority to examine, decide and resolve criminal cases and civil cases.

Based on the explanation above, it can be seen that until now the same Shar'iyah court in Aceh Province has the same authority in adjudicating aspects of criminal law, with different dimensions, at the practical level and the application of law creates new conflicts and problems, namely which legal realm should take precedence or the choice of law that should take precedence.

2. Dicussion

1. Authority to Adjudicate General Courts

The authority of the General Court can be seen in the provisions of Article 50 of Law Number 2 of 1986 concerning General Courts Jo Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts Jo Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts, which specifies that the District Court has the duty and authority to examine, prosecute, decide and settle criminal and civil cases in the first instance.[2]

The District Court as part of the General Court is a court for the people in general, which is tasked with examining and trying criminal cases and civil cases. While other courts include special courts, because they only try certain cases and are intended for certain groups of people as well, such as the Religious Court is only authorized to examine Islamic civil cases for people who embrace Islam, the Military Court is only authorized to examine and try criminal and administrative cases within the military, the State Administrative Court is authorized to examine and adjudicate administrative disputes between the people with State Administration officials.[3]

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[1] *Ibid.*

[2] See: Law Number 2 of 1986 concerning General Courts in conjunction with Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts Jo Law Number 49 of 2009 concerning Second Amendments to Law Number 2 of 1986 concerning General Courts.

[3] Gunawan dan Hendri Darma Putra, *Authority of the General Courts in Handling and Resolving Land Disputes Based on the Law on General Courts. Journal of Glorification of the Law: Number 1 Volume 3.* April 2020, p. 64.

In accordance with Law Number 2 of 1986 Jo Law Number 8 of 2004 Jo Law Number 49 of 2009 it is stated that the authority of the General Court is in accordance with the provisions of its articles.[1]

Absolute authority/competence is a separation of authority involving the division of powers between judicial bodies, seen from the types of courts, concerning the granting of power to adjudicate.[2] Article 24 paragraph (2) of the 1945 Constitution and Article 18 of Law No. 48 of 2009 concerning Judicial Power which states that judicial power consists of General Courts, Religious Courts, Military Courts, and State Administrative Courts.[3]

Absolute authority or absolute authority is concerned with the division of power (authority) to adjudicate between judicial environments.[4] The regulation of the absolute competence of the District Court in hearing, adjudicating and deciding civil cases is based on the provisions as stipulated in Article 132 RV (Reglement op de Rechtsvordering) S-1847-52 jo S-1849-63, Article 134 HIR (Herzien Indlandsch Reglement), Article 136 HIR; Article 160 Rbg (Reglement tot regeling van het rechtswezen in de gewesten buiten Java en Madura) s. 1927-227. The essence of the regulation regarding absolute competence regulated in the three rules of civil procedure law essentially regulates the absolute authority of the State Court related to the type of subject matter, disputes over a case that does not enter the power of the district court, the dispute concerned regarding the issue does not become the absolute authority of the district court.[5]

In criminal cases, it is basically a matter of dispute over the authority to adjudicate as stipulated in Part Two, Chapter XVI is the authority to adjudicate relatively. That is, which district court or high court has the authority to try a case. The guideline basis for determining the adjudicating authority for each district court in terms of relative competence is regulated in Part Two, Chapter X, Article 84, Article 85, and Article 86 of Law No. 8 of 1981 concerning the Code of Criminal Procedure.[6]

Starting from the provisions formulated in the three articles, there are several criteria that can be used by the District Court as a benchmark to test its authority to try cases delegated to it. The criteria include the place where the crime was committed (locus delicti) and the residence of the accused and the residence of most of the witnesses called. The second principle determines relative authority based on where most witnesses live. If the witnesses to be called are mostly residing in or closer to a District Court, the District Court has the most authority to examine and adjudicate. This principle is regulated in Article 84 paragraph (2) of the Code of Criminal Procedure (and at the same time excludes or removes the principle of locus delicti).

2. Authority to adjudicate religious courts/syar'iyah courts

Based on Article 49 letter (1) of Law No. 3 of 2006 whose articles and contents are not amended in Law No. 50 of 2009 concerning the Second Amendment of Law No. 7 of 1989 concerning Religious Courts, that Religious Courts are tasked and authorized to examine, adjudicate and settle cases in the first instance between people of Muslim faith in the field of sharia economics. Similar to the general court, the religious court/sharia court also applies relative authority and absolute authority.

1) Relative Authority

Relative authority is the authority to try a case involving territory or jurisdiction, or is defined as the power of one type and one level of court, in contrast to the power of courts of the same type and the same level of others, for example between the Central Jakarta Religious Court and the South Jakarta Religious Court.[7]

2) Absolute Authority

Absolute power is the power of the Court relating to the type of case or the type of court or the level of court, in contrast to the type of case or the type of court or other level of court.[8] Against this absolute power, the Religious Court is required to examine the case brought against it whether it includes absolute power or not. If it clearly does not include its absolute power, the Religious Court is prohibited from accepting it.

In other terms it is called "Van Rechsmacht Attribute". The absolute authority of the Religious Court is Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, stating: Religious courts have the duty and authority to examine, decide, and settle cases in the first instance between persons of Muslim faith in the fields of: a. marriage; b. inheritance; c. wills; d. grants; e. endowments; f. zakat; g. infaq; h. sadaqah; I. Shari'ah Economy.

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[1]*Ibid.*
[2]https://bahasan.id/mengenali-kewenangan-atau-kompetensi-pengadilan-dalam-menangani-perkara/. Retrieved December 14, 2022.
[3]*Ibid.*
[4]Guidelines for the Implementation of Court Duties and Administration in the Four Judiciary Environments. 2012. Jakarta: Mahkamah Agung, p. 52.
[5]Michael Agustin,https://manplawyers.co/2022/03/29/hal-ihwal-mengenai-kompetensi-absolut-pengadilan- negeri/. Diakses pada tanggal 14 Desember 2022.
[6]M. Yahya Harahap, 2012. *Discussion of Problems and Application of the Criminal Procedure Code: Court Examination, Appeal, Cassation, and Judicial Review.* Jakarta: Sinar Grafika*, p.* 96. See also Soenarto Soerodibroto, tt. The Criminal Code & Criminal Procedure Code are complemented by Supreme Court Jurisprudence *dsan Hoge Raad.* Jakarta: Soenarto & Assocites, p 29.
[7]Roihan A. Rasyid. 2002. *Religious Courts Procedural Law*. Jakarta: Raja Grafindo Persada, hlm 25.
[8]*Ibid,* p 27.

Based on the Explanation of Article 49 of RI Law Number 3 of 2006 concerning Amendments to RI Law Number 7 of 1989 concerning Religious Courts states that dispute resolution is not only limited to the field of shari'ah banking, but also in other shari'ah economic fields. By "among persons of Muslim faith" we mean persons or legal entities who themselves voluntarily submit themselves to Islamic law on matters within the jurisdiction of religious courts/sharia courts in accordance with the provisions of this article.

3. **Authority to adjudicate religious courts/syar'iyah courts after the enactment of the Aceh Government Law**

The issuance of Law Number 18 of 2001 concerning Special Autonomy for Aceh Province as replaced by Law Number 11 of 2006 concerning the Government of Aceh and Qanun of Aceh Province Number 10 of 2002 concerning Islamic Sharia Courts which requires the formal implementation of Islamic Sharia enforcement in the Aceh region.

To support the enforcement of Islamic shari'a in Aceh, it can be more progressive in efforts to ground the shari'a, namely (1) Law Number 24 of 1956 concerning the Establishment of the Province of the Special Region of Aceh, (2) Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh, and (3) Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh. Several articles indicate a way for the application of Islamic law, such as in Article 1 point 7 of Law Number 18 of 2001 which states that "The Aceh Shar'iyah Court is an independent judicial institution in the Nanggroe Aceh region.[1]

The difference between religious courts and syar'iyah courts is that there is additional authority in the syar'iyah court through Article 128 paragraph (2) (3) of Law Number 11 of 2006 concerning the Government of Aceh. The Shar'iyah Court is a court for every person who is Muslim and is in Aceh who has the authority to examine, adjudicate, decide and settle cases covering the fields of ahwal al-syakhsyiyah (family law), muamalah (civil law), and jinayah (criminal law) based on Islamic shari'a.[2] Initially, the authority of the Shar'iyah Court was also regulated in Article 49 Qanun of Nanggroe Aceh Darussalam Province Number 10 of 2002 concerning Islamic Sharia Courts concerning the Power and Authority of the Sharia Court.[3]

Further provisions regarding the fields of ahwal al syakhsiyah (family law), muamalah (civil law), and jinayah (criminal law) as referred to in paragraph (3) are regulated by Qanun Aceh Law Number 11 of 2006 concerning the Government of Aceh. Further as in Article 129.

Paragraph (1) In the event of an act of jinayah committed by two or more persons together among them of non-Muslim religions, non-Muslims may choose and submit voluntarily to jinayah law.

Paragraph (2) Every person of non-Muslim religion commits jinayah acts that are not regulated in the Criminal Code or criminal provisions outside the Criminal Code apply jinayah law.

Paragraph (3) Acehnese residents who commit jinayah acts outside (1) Aceh shall apply the Criminal Code. Aceh Qanun Number 6 of 2014 concerning Jinayat Law gives authority to the district syar'iyah court to try jinayat cases that have violated the jarimah.[4]

Based on articles 71 and 72 of the Aceh Qanun Number 6 of 2014 concerning Jinayat Law, in the process of enforcing Islamic criminal law / jinayat the Shar'iyah court is only allowed to try cases delegated using the types of criminal cases that have been listed in the Aceh qanun.

Based on the above legal regulations, it can be stated that the district court as the executor of judicial power has the authority to try civil and criminal cases, including criminal cases of sexual violence against women and children. Likewise, the Shar'iyah court, based on Law Number 11 of 2006 concerning the Government of Aceh Jo. Qanun Aceh Number 6 of 2014 concerning Jinayat Law is also given the authority to try cases related to sexual violence against women and children. Thus, both the district court and the Shar'iyah court have the same authority.

Sexual violence against women is acts committed both physically and nonphysically directed against the body, sexual desires, and/or reproductive organs with the intention of degrading a person's dignity and dignity based on his sexuality and/or decency including non-physical sexual harassment, physical sexual abuse, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, violence electronic-based sexual, rape, lewd acts, child copulation. Obscene acts against children, and/or sexual exploitation of children, acts violating decency against the will of the victim, pornography involving children or pornography that explicitly contains sexual violence and exploitation, forced prostitution, trafficking in persons intended for sexual exploitation, sexual violence within the household, money laundering crimes whose original

[1] *Ibid.*
[2] Article 128 paragraph (2) (3) of Law Number 11 of 2006 concerning the Governance of Aceh
[3] Nanggroe Aceh Darussalam Provincial Qanun Number 10 Year 2002 Concerning Islamic Sharia Courts.
[4] *Jarimah are prohibitions in Islamic law that already have hudud provisions and takzir when carried out. Meanwhile, according to Article 1 of Qanun Aceh Number 6 of 2014, Jarimah is an act that is prohibited by Islamic Sharia which in this Qanun is threatened with 'Uqubat Hudud and/or Ta'zir. Uqubat is a punishment that can be imposed by a judge against the perpetrators of Jarimah. Hudud is a type of 'Uqubat whose shape and size are strictly determined in the Qanun. Ta'zir is a type of 'Uqubat that has been determined in a qanun whose form is optional and the amount is within the highest and/or lowest limits.*

crime is a criminal act of sexual violence and other criminal acts or equivalent forms of sexual violence including electronic-based sexual violence.

4. Differences in authority to prosecute cases of sexual violence against women and children between the general court and the religious court/syar'iyah court

Article 72 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, the Shar'iyah court in adjudicating cases of sexual violence against women and children is only limited to the provisions of the jarimah which is expressly regulated in Aceh Qanun Number 6 of 2014 concerning Jinayat Law. So that in addition to what is expressly regulated in the qanun is not the authority of the Shar'iyah court and is still the authority of the general court, in this case the district courts include:

1) The defendant is not Muslim

a) The scope of Aceh Qanun Number 6 of 2014 concerning Jinayat Law in Article 5 of this Qanun applies to:
b) a) Every Muslim who performs Jarimah in Aceh;
c) b) Any non-Muslim religious person who performs Jarimah in Aceh together with Muslims and chooses and submits voluntarily to Jinayat Law;
d) c) Any non-Muslim religious person who commits Jarimah acts in Aceh that are not regulated in the Criminal Code (KUHP) or criminal provisions outside the Criminal Code, but are regulated in this Qanun;;

Based on these provisions, the authority to prosecute cases of sexual violence against women and children as long as it is for non-Islamic religious people who commit jarimah acts in Aceh where the act is regulated in the Criminal Code and other regulations and the perpetrator chooses not to submit himself to jinayat law, then the perpetrator applies absolutely to the provisions in the Criminal Code.

2) Scope of enactment

Aceh Qanun Number 6 of 2014 concerning Jinayat Law as Article 5 letter a states this Qanun applies to every Muslim who performs Jarimah in Aceh. Based on this phrase, there are two elements to apply the Aceh Qanun in terms of authority to prosecute cases of sexual violence against women and children, namely first: the perpetrator must be Muslim and commit a criminal act of sexual violence in the territory of Aceh Province.

If the perpetrator is Muslim and commits acts of sexual violence against women and children, then the perpetrator's actions are not included in the Shar'iyah court's ability to try him, then absolutely the authority of the district court by taking into account the basis of guidelines determining the authority to try for each District Court in terms of relative competence as stipulated in Part Two, Chapter X, Article 84, Article 85, and Article 86 of Law No. 8 of 1981 concerning the Code of Criminal Procedure.

3) The perpetrator's actions fall into a combination of criminal acts

The Criminal Code (KUHP) has also regulated the theory of merging criminal acts. Combined criminal acts in positive law are often termed (Dutch; samenloop, Latin: concursus) which is regulated in Chapter VI Book 1 of the Criminal Code in Articles 63-71.

Combined convictions exist because of the combination of committing criminal acts in which each has not received a final verdict. In the systematics of the Criminal Code, the regulation on the merger of criminal acts is a provision regarding measures in determining crimes (straftoemeting) that have a tendency to criminal aggravation.[1]

There are three combined forms of criminal conduct and a penal system that must be applied. The combined forms in question are first, multiple theory, second absorption theory, third mixed theory. The combination of committing criminal acts has three forms, this concursus is regulated in title VI of the Criminal Code, namely idealistic concursus (Article 62 of the Criminal Code), continuing acts (Article 64 of the Criminal Code), concursus realis (Articles 67 to 71 of the Criminal Code).

Satochid Kartanegara in his book Criminal Law I discusses four kinds of ways to provide punishment for someone who commits a combined crime, the four ways are first, the principle of absorption, the second principle of accumulation, the third principle of sharpened absorption, fourth, the system of medium coplication principles.[2]

In this discussion, the author argues that if the perpetrator commits an act that is included in several criminal provisions (Article 63 paragraph (1) of the Criminal Code) where one of the perpetrator's actions violates the articles regulated by Articles 46, 47, 48, 49 and 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law and the perpetrator's actions have also violated the provisions in the Criminal Code or other legislation, Thus, the defendant's actions fall into the category of a combination of acts (eendaadsche samenloop/concorsus idealist). For example, the act of raping women in public places, in addition to violating Article 48 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law also violates Article 281 of the Criminal

[1]Aruan Sakidjo and Bambang Pornomo, 1990. Basic Criminal Law General Rules, Codified Criminal Law. Jakarta: Ghalia Indonesia, p. 169.
[2]Satochid Kartanegara, *Hukum Pidana I*. Jakarta: Balai Lektur Mahasiswa, p 175.

Code because it damages public decency.[1] As explained in Article 63 paragraph (1) of the Criminal Code, namely: if in one act is included in several criminal provisions, then only one punishment is imposed from that provision, if the punishment is different, then the heaviest provision is imposed the principal penalty.[2]

For a combined crime of several acts, each of which must be regarded as a separate mixture and each of them becomes a crime, whether it is threatened with a similar main punishment or threatened with a similar main punishment (Articles 65 and 66 of the Criminal Code), then the defendant's actions fall into the category of a combination of several acts (meerdaadsche samenloop/concorsus realis).[3] For example, the act of taking away an immature woman, without the will of her parents or guardians but with her consent, with the intention of ensuring control over the woman, both inside and outside marriage as Article 332 of the Criminal Code followed by acts as in Article 47 or 50 Article 48 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law, then it also violates Article 281 of the Criminal Code. So this act in addition to violating Aceh Qanun Number 6 of 2014 concerning Jinayat Law also violates the Criminal Code.

Based on the explanation above, if the defendant's act falls into the category of a combination of one act (eendaadsche samenloop/concorsus idealist) or a combination of several acts (meerdaadsche samenloop/concorsus realis) in which one of the articles regulated in the Qanun while the other acts are regulated outside the qanun, then the criminal event is not the authority of the sharia court.

4) The public prosecutor's indictment uses articles regulated outside the Aceh Qanun

An indictment is a type of letter used in the criminal realm at the prosecution stage. A. Karim Nasution in the Issue of Indictment in Criminal Proceedings defines an indictment as a letter or deed containing a formulation of the criminal act charged, which can be temporarily concluded from the preliminary examination which is the basis for the judge to conduct the examination. Then, if it turns out to be sufficient evidence, the defendant can be sentenced.[4]

Article 14 letter d of the Criminal Procedure Code explains that making an indictment is one of the authorities of the public prosecutor. Based on the provisions of Article 140 paragraph (1) of the Code of Criminal Procedure, an indictment is made as soon as possible if the public prosecutor believes that prosecution can be carried out from the results of the investigation.[5]

The indictment will be included by the public prosecutor when transferring the case to the district court. This is as stated in Article 143 paragraph (1) of the Criminal Procedure Code which states that the public prosecutor submits the case to the district court with a request to immediately try the case accompanied by an indictment.

The functions of an indictment can be classified into three categories:[6]

1. For courts or judges: as a basis as well as limiting the scope of examination and being a basis for weighing in making decisions.
2. For public prosecutors: as a basis for evidence or juridical analysis, criminal prosecution, and use of legal remedies.
3. For the defendant: as a basis for preparing a defense.

The basis of the authority of the Aceh Shar'iyah Court in adjudicating sexual violence cases based on Law Number 11 of 2006 concerning the Government of Aceh Jo. Qanun Aceh Number 6 of 2014 concerning Jinayat Law which further types and criminal acts of sexual violence against women and children are limited to Article 46, 47, 48, 49 and 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law. So that in the process of examining jinayat cases of sexual violence against women and children using articles outside Aceh Qanun Number 6 of 2014 concerning Jinayat Law, the ex-officio syar'iyah court must declare itself not authorized to try the case and the case must be filed in the district court, including those regulated by law.

5) The harshest punishment regulated outside Qanun Aceh

Aceh Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children in Chapter VII concerning the Authority to Prosecute Article 80 paragraph (2) explains that cases of sexual violence against children are resolved through the juvenile criminal justice system and use laws and regulations whose criminal threats are the most severe.[7]

The provisions of sanctions in a law are related to the content and nature of legal rules. Judging from its content, legal rules (legal norms) can be divided into:

(1) legal rules containing orders (gebod);

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[1]R. Soesilo. *Op.Cit., p* 80.
[2]*Ibid*, hlm 79.
[3]*Ibid,* hlm 83.
[4]Indictment Letter: Definition, Functions, and Types Accessed via https://www.hukumonline.com/berita/a/pengertian-surat-dakwaan-dan-jenisnya-lt621a08dfef9da. Diakses pada tanggal 14 Desember 2022.
[5]Lihat Pasal 14 huruf d KUHAP.
[6]Indictment: Definition, Functions, and Types, *Loc. Cit.*
[7]Aceh Qanun Number 9 of 2019 concerning Implementation of the Handling of Violence Against Women and Children in Chapter VII concerning the Authority to adjudicate.

(2) Legal rules containing prohibitions (verbocf):
(3) legal rules that contain permissibility (mogen);[1]

An order rule is a command to carry out something that is usually expressed by the word obligatory" or "must". The rule of prohibition is also a command not to do something, which is often formulated with the words "forbidden", "not allowed", or "cannot.

Judging from its nature, legal rules can be distinguished between imperative legal rules and facultative legal rules. Legal rules that contain orders and prohibitions are imperative legal rules, while legal rules that contain permissibility are facultative legal rules.[2]

The difference between imperative law and facultative law, based on its nature. That is, imperative law is coercive, while facultative law is allowed to choose.[3] Imperative legal rules (dwingenrechf) or normatiefrecht are legal rules that cannot be ruled out by parties, either through a certain act or through an agreement.

Before examining the sexual violence case file submitted to the Shar'iyah court, it must first be examined whether the perpetrator's actions are also regulated in other laws regarding imperative or facultative criminal threats? If the perpetrator's actions are regulated in other regulations, then it must be seen whether the perpetrator's actions are more severe threats of punishment in the Aceh Qanun realm when compared to existing regulations outside the Aceh Qanun?.

If it turns out that after being judged that the threat of the perpetrator's actions is more severe in regulations regulated outside Qanun Aceh, then in this case the Shar'iyah court is not authorized to try the case. However, if the perpetrator's actions are more severely punishable as in the Aceh Qanun, the Shar'iyah court has the authority to try cases of sexual violence against women and children.

6) Sexual violence cases are resolved through the juvenile criminal justice system

Aceh Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children in Chapter VII concerning the Authority to Prosecute Article 80 paragraph (2) explains that cases of sexual violence against children are resolved through the juvenile criminal justice system and use laws and regulations whose criminal threats are the most severe.[4]

The Juvenile Criminal Justice System is the entire process of solving children's cases facing the law, from the investigation stage to the guidance stage after undergoing a crime.[5]

The Juvenile Criminal Justice System is a criminal justice system that handles cases of Children in Conflict with the Law (ABH), which includes children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts.[6]

The latest law that regulates children facing the law is Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). This law shall enter into force two years after the date of its promulgation, i.e. July 30, 2012 as referred to in its concluding provisions. This means that this Law came into effect on July 31, 2014. This SPPA Law is a substitute for Law No. 3 of 1997 concerning Juvenile Court which aims to realize a court that truly guarantees the protection and best interests of children who face the law. Law No. 3 of 1997 concerning Juvenile Court is considered no longer in accordance with the needs of law in society and has not comprehensively provided special protection to children who face the law.[7]

The substance regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, among others, regarding the placement of children undergoing judicial proceedings can be placed in the Special Child Development Institute (LPKA). The most fundamental substance in this Law is the strict regulation of restorative justice and diversion which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children who face the law and are expected to return to the social environment reasonably.[8]

The process must aim at the creation of Restorative Justice, both for children and for victims. Restorative Justice is a process of Diversion, where all parties involved in a particular crime together overcome the problem and create an obligation to make things better by involving victims, children, and the community in finding solutions to correct, reconcile, and reassure hearts that are not based on retaliation. From cases that arise, there are times when Children are in the status of witnesses and/or victims so that Child Victims and/or Child Witnesses are also regulated in this Law. Specifically regarding sanctions against children determined based on

[1]Purnadi Purbacaraka and Soeijono Soekanto, 1993. Concerning Legal Rules. Bandung: PT. Citra Aditya Bakti, page 34 in Zairin Harahap, Arrangements Regarding Sanctions in Regional Regulations, Journal of Law No. 1 Vol 13 January 2006,p 43.
[2]*Ibid.*
[3]Soerjono Soekanto and Purnadi Purbacaraka, 1994. Various Ways of Differentiating Laws. Bandung: PT. Citra Aditya Bakti, page 22 in Zairin Harahap, Arrangements Regarding Provisions of Sanctions in Regional Regulations, Journal of Law No. 1 Vol 13 January 2006, p 43.
[4]Aceh Qanun Number 9 of 2019 concerning Implementation of the Handling of Violence Against Women and Children in Chapter VII concerning Authority to Trial.
[5]Article 1 paragraph 1 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System..
[6]Ismala Dewi, 2015. Juvenile Criminal Justice System: Justice for Restorative Justice. Jakarta: P3DI General Secretariat of DPR RI and Azza Graphic, p119.
[7]Nikmah Rosidah and Rini Fathonah, 2019. Juvenile Justice Law. Bandar Lampung: Zam-Zam Tower, page 16..
[8]Nikmah Rosidah, 2019. Juvenile Criminal Justice System. Bandar Lampung: Zam-Zam Tower, page 25.

differences in the age of children, namely for children who are less than 12 (twelve) years old are only subject to action, while for children who have reached the age of 12 (twelve) years to 18 (eighteen) years can be sentenced to action and crime.[1]

The juvenile criminal justice system based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is the basis for the authority of the general court, in this case the district court to try cases of children facing the law. Among them are expressly regulated as Article 5, Article 7 paragraph (1).[2] Article 12 paragraph (2), Article 29 paragraph (3), Article 34 paragraph (2), Article 35 paragraph (2), Article 42 paragraph (3), Article 43 paragraph (1), Article 44 paragraph (2), Article 52 paragraph (1), (2), (3), (4) and paragraph (5), and Article 43 paragraph (2).

Given the distinctive characteristics and characteristics of children and for the protection of children, cases of children facing the law must be heard in juvenile criminal courts in the general judicial environment. The judicial process of the Child case since his arrest, detention, and trial must be carried out by a special official who understands the child's problem. However, before entering the judicial process, law enforcers, families, and communities must seek a settlement process outside the court channel, namely through Diversion based on the Restorative Justice approach. The Law on the Juvenile Criminal Justice System regulates the entire process of solving cases of children facing the law from the investigation stage to the guidance stage after undergoing a crime.[3]

Based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System connected with Aceh Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children in Chapter VII concerning the Authority to Prosecute Article 80 paragraph (2), the examination process of children who face the law (child perpetrators, child victims and child witnesses in cases of sexual violence against children) in the criminal justice system must be heard in the Juvenile criminal court located in General judicial environment in this case the District Court.

7) Sexual abuse against women resolved through criminal justice

Aceh Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children in Chapter VII concerning the Authority to Prosecute Article 80 paragraph (1) explains that cases of sexual violence against women are resolved through criminal justice in accordance with laws and regulations.[4]

The Criminal Justice System is a system in a society to overcome the problem of crime. Tackling means here the effort to control crime to be within the limits of societal tolerance.[5]

The criminal justice system consists of several stages: prosecution, preliminary examination, examination before the court, execution of the convicted person. As a means to prevent and overcome crime, the criminal justice system is expected to work properly and correctly. In other words, as a means to overcome the problem of criminal acts, the criminal justice system is expected to be able to work effectively and efficiently. One of the support sub-systems that has a very important role in the implementation of the criminal justice system is the court, which contains judges who are authorized by law to adjudicate.[6]

Roeslan Saleh stated that Prosecution is a humanitarian struggle to realize the law. Therefore, trying without a human relationship between the judge and the accused is often perceived as treating an injustice.[7]

In fact, the main duty of the judge is to examine, adjudicate, and decide every case submitted to him. This is as stipulated in Law Number 48 of 2009 concerning Judicial Power, which is a substitute for the previous Law, namely Law Number 4 of 2004.[8]

The criminal justice referred to in Aceh Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children in Chapter VII concerning the Authority to Prosecute Article 80 paragraph (1) is a general court in this case the district court as in Article 50 of Law Number 2 of 1986 concerning General Court Jo. Article 25 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which states that the district court has the duty and authority to examine, decide, and settle criminal cases and civil cases. Thus, the general court in this case the district court in the jurisdiction of the Banda Aceh High Court is still authorized to try cases of sexual violence against women

3. Conclusion

District courts and Shar'iyah courts are both given authority by law to prosecute sexual violence against women and children, but with different sources of authority, namely the source of authority of district courts based on

[1]Alfitra, 2019. Juvenile Justice Procedural Law in Theory and Practice in Indonesia. Jakarta: WADE Publish page 4.
[2]Nikmah Rosidah, 2019. Juvenile Criminal Justice System. Op. Cit., p. 25.
[3]Alfitra, *Op. Cit.,* p 4-5.
[4]Aceh Qanun Number 9 of 2019 concerning Implementation of the Handling of Violence Against Women and Children in Chapter VII concerning the Authority to adjudicate.
[5]Rocky Marbun, 2015. The Criminal Justice System: An Introduction. Malang: Setara Press, page 1.
[6]https://sugalilawyer.com/sistem-peradilan-pidana/. Retrieved December 14, 2022.
[7]Roeslan Saleh, 1979. Judging as a Human Struggle, New Script. Jakarta, page 22.
[8]*Ibid.*

Article 50 of Law Number 2 of 1986 concerning General Courts Jo. Article 25 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power while the source of authority of the Shar'iyah court is limited regulated in Articles 46 to 50 of Aceh Qanun Number 6 of 2014 concerning Jinayat Law. Although there is a point of agreement between the district court and the syar'iyah court in trying cases of sexual violence against women and children, it must actually be understood that the authority of the syar'iyah court does not apply to cases involving the defendant is not Muslim, the scope of the application is criminal acts committed outside the territory of Aceh Province, the perpetrator's actions fall into a combination of several criminal acts, The public prosecutor's charges use articles regulated outside the Aceh Qanun, there are harsher penalties regulated outside the Aceh Qanun, the judicial process is resolved through the juvenile criminal justice system and cases of sexual violence against women must be resolved through criminal justice.

The authority to prosecute cases of sexual violence against women and children should not be separated between the district court and the syar'iyah court in the jurisdiction of Aceh Province. This can be done by returning the authority completely to the district court considering the philosophical basis for the establishment of the district court to try these cases so that the mastery of the material and substance of the case is more adequate. The law enforcement apparatus (APH) in handling cases of sexual violence against women and children before handling the case should first read carefully the case file handled so that unprofessional conduct does not occur, although Number 6 of 2014 concerning Jinayat Law gives authority to the Shar'iyah court to try sexual cases against women and children, but this authority cannot be fully applied because there are restrictions as in Aceh Qanun Number 9 of 2019 concerning the Implementation of Handling Violence Against Women and Children in Chapter VII concerning the Authority to Prosecute as Article 80.

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