



CHILDREN HANDLING PROCEDURE IN ISLAMIC CRIMINAL OFFENSE IN ACEH

Analiansyah, Ali Abubakar

Abstrak: Undang-Undang Republik Indonesia memberikan kewenangan kepada Aceh untuk menerapkan syariat Islam di berbagai bidang, termasuk *jināyāt* (hukum pidana Islam). Pemerintah Aceh mengeluarkan *qanun* (Peraturan Daerah) yang mencakup beberapa *jarimah* (perbuatan pidana) dan pelaksanaannya menjadi kewenangan Pengadilan Syariah (Mahkamah Syar'iyah) di Aceh. Kewenangan tambahan ini berbeda dengan kewenangan Peradilan Agama di provinsi lain di Indonesia. Hakim-hakim di pengadilan-pengadilan tersebut tidak mendapatkan pendidikan khusus dalam hukum pidana, terutama kasus-kasus yang melibatkan anak-anak yang telah diatur dalam undang-undang khusus. Kewenangan tambahan dalam memeriksa dan mengadili perkara pidana di Mahkamah Syariah menimbulkan persoalan Sumber Daya Manusia (SDM) baru. Artikel ini menganalisis proses penanganan anak di Pengadilan Syariah di Aceh dengan menggunakan prinsip *lex specialis derogate legi generalis* dan *systematic lex specialis*. Hasil penelitian menunjukkan bahwa penanganan tindak pidana Islam yang melibatkan anak telah dilakukan dengan mengacu pada peraturan perundang-undangan yang ada sesuai dengan asas kekhususan. Beberapa kelemahan sumber daya manusia dan infrastruktur dapat diselesaikan dengan baik oleh Pengadilan Syariah dan Pemerintah Aceh.

Kata kunci: Hukum Pidana Islam; Prosedur Penanganan Anak; Pertimbangan Hukum Hakim; Tindak Pidana Islam

Abstract: The Law of the Republic of Indonesia authorizes Aceh to implement shari'a law in various sectors, including *jināyāt* (Islamic criminal law). This additional authority is different from the authority of the Religious Courts (Pengadilan Agama) in other provinces in Indonesia. This article analyzes the process of handling children in criminal cases in the Aceh's Shari'a Courts in Aceh using the *lex specialis derogate legi generalis* and the systematic *lex specialis* principles. The data in this study comes from legal documents and interviews with Shari'a Court judges. The results show that the handling of Islamic criminal offenses involving children has been carried out by referring to existing laws and regulations according to the principle of specificity. However, some issues arise related to human resources and appropriate facilities. Most of the judges have not obtained special training in handling children's cases, which influenced their knowledge on the issue. Moreover, children involving in legal cases are still treated using similar facilities as adults. These weaknesses, however, can be appropriately resolved by the Shari'a Courts and the Aceh Government.

Keywords: Islamic Criminal Law; Children Handling Procedure; Judge Legal Considerations; Islamic Criminal Offense

Introduction

Aceh is the only province in Indonesia that has obtained the status as a region with special autonomy. The province is permitted to carry out religious life as manifested in the implementation of Islamic law for its adherents (Buehler, 2008; Salim, 2009; Suma et al., 2020; Zada, 2015). This includes various aspects of community life, including *'aqidah* (belief/faith), worship, and morals. Law Number 11 of 2006 concerning Aceh Governance (UUPA) details the regulated areas. These are worship, *al-ahwāl al-shakhsīyyah* (family law), *mu'āmalah* (civil law), *jināyāt* (criminal law), *qadhā'* (judiciary), *tarbiyyah* (education), *da'wah* (proselytization), *syi'ār* (the promotion of religion), and defending Islam (Article 125 paragraph (1) and (2) Law no. 11 of 2006 concerning the Government of Aceh.). The scope of other privileges includes the administration of customary life, the provision of education, and the role of ulama (Muslim scholars) in determining regional policies (Article 3 paragraph (2) Law no. 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh.). The special autonomy officially began in 1999 through Law Number 44 of 1999 concerning the Privileges of the Province of the Special Region of Aceh; strengthened by Law Number 18 of 2001 concerning Special Autonomy for the Province of Aceh Special Region as the Province of Nanggroe Aceh Darussalam, and Law Number 11 of 2006 concerning the Government of Aceh

The Indonesian government granted special autonomy as an appreciation of the history of the Acehnese people in fighting the colonialists and defending Indonesia's independence. This fighting spirit was based on the values of religiosity, strong custom, and Islamic culture. These values had formed an unyielding attitude and a spirit of nationalism in opposing the colonialists and defending Indonesia's independence (The consideration element in Law no. 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh.). Moreover, the special autonomy was granted also based on the desire of the Indonesian government and the people of Aceh to end the prolonged conflict that began with the proclaiming of DI/TII (Darul Islam/Indonesian Islamic Army) in September 1953 and 1976, continued with the GAM (Gerakan Aceh Merdeka or Free Aceh Movement). These movements wanted Aceh to become an independent

state. The conflict was officially ended on 15 August 2005 with the signing of the Memorandum of Understanding between the Government of Indonesia and representatives of GAM in Helsinki, Finland, known as the Helsinki MoU (Salim, 2010).

There have been significant changes in the justice and authority of the Shari'a Court. It began with the institution's name, which changed from the Religious Court (Pengadilan Agama) to Shari'a Court (Mahkamah Syar'iyah). In terms of authority, apart from handling limited civil cases as the authority of the Religious Courts, Shari'a Courts have the authority to handle Islamic criminal cases (*jināyāt*). Despite the name change, the Shari'a Courts are still considered a part of the Religious Courts but with additional authority (Cammack & Feener, 2012). Therefore, the level of justice has not changed. At the first level, legal cases are handled by the Shari'a Courts at the Regency/City level. The appellate level is carried out by the Shari'a Courts. Meanwhile, the cassation and review (Peninjauan Kembali) are handled by the Supreme Court of Indonesia. Similarly, the administration and finance supervision remain under the umbrella of the Supreme Court like the other three courts: District Courts (Pengadilan Negeri or General Courts), State Administrative Courts (Pengadilan Tata Usaha Negara), and Military Courts (Pengadilan Militer).

With additional authority to handle Islamic criminal cases (*jināyāt*), the Shari'a Courts need special rules to guide ruling cases. These special rules must be stated in the qanun (regional bylaws) as mandated by Article 125 paragraph (3) of Law No. 11 of 2006. To meet the law's mandate, the Aceh Government and the Aceh People's Representative Council (DPRA) have issued some *qanuns*. Among them are the qanuns on *jināyāt*, such as Aceh Qanun No. 6 of 2014 concerning the Law of Jinayat (Qanun Jinayat) as material law and the Aceh Qanun No. 7 of 2013 concerning the Jinayat Procedure Law. The contents of the qanun are unique because they do not entirely refer to the provisions of *fiqh* (Islamic jurisprudence) but are designed with a similar format. The format is the combination of *fiqh* provisions with various new modifications resulting from the *ijtihad* (independent reasoning) of the expert council of Islamic criminal law in Aceh and the provisions of Indonesian criminal law. For example, the criminal act has several types of punishment: caning, fines, and imprisonment. These types of punishment are not recognized in *jināyāt* jurisprudence.

In Indonesia, the enforcement of the Qanun Jinayat applies *lex specialis derogate legi generali* (the special law overrides the general law). In this case, the UUPA is a special law that overrides other laws because Qanun Jinayat is an order of the UUPA. Thus, it can be said that the qanun overrides the KUHP (Indonesian Criminal Code) in certain criminal fields, such as in Islamic law-based penalties, in which some parts of the penalty contents are also regulated in the KUHP. In Indonesia, this principle does not only apply to the Qanun Jinayat, but other regulations also override the Criminal Code, such as the law on anti-corruption (Law No. 31 of 1999).

Regarding the problem of children involved in criminal cases, in Aceh, they are handled by two judicial institutions: The District Court and The Shari'a Court. When there is a legal problem, law enforcement officials (the police conducting investigations and education, the prosecutor's office carrying out the prosecution) will process the case based on the absolute authority of each judicial institution. However, in terms of criminal acts regulated in Qanun Jinayat, The Shari'a Court will handle the case.

It has been explained above that The Shari'a Court adheres to the Qanun Jinayat and Procedural Law of Jinayat. Unfortunately, both qanuns do not regulate the procedure for examining children. In other words, there is no procedure for resolving the case where children involved as perpetrators or victims. The qanun mandates that law enforcement officers use the national juvenile criminal justice laws and regulations that the District Court applied before the Qanun Jinayat was stipulated to deal with this legal vacuum. Article 66 of Aceh Qanun No. 6 of 2014 states: "If a child who has not reached the age of eighteen years commits or is suspected of committing *jarimah* (criminal acts), then the child is subject to an examination guided by the laws and regulations regarding juvenile criminal justice."

Based on the explanation above, it is known that in handling child criminal cases in Aceh, in addition to the *lex specialis derogate legi generali* principle, the *lex specialis systematis* principle is also applied. Under a particular condition, other special law must be applied. So, even though the qanun is a special law, other special laws must be used in children handling procedures. Then, questions arise. Why the qanun legislator does not make a separate procedure for handling children as in the

procedural law so that it is in line with the principle of justice in the provisions of Islamic law. The second question is whether using *the lex specialis derogat legi generali principle* is appropriate in this context.

The District Court has fulfilled all the requirements stipulated in statutory regulations, such as the availability of special judges, facilities and infrastructures. Therefore, in terms of readiness, the District Court is better prepared to deal with the juvenile criminal justice system. This is where the discussion is needed: how to handle children in conflict with the law in The Shari'a Court? Have The Shari'a Court judges carried out *ijtihad* to protect children, either as perpetrators or victims, by considering an Islamic legal concept of *maṣlahah* (benefit)?

This paper complements the existing literature on legal protection and handling cases involving children (childr, especially in Aceh. Scholars have written many studies using normative (Tedy, 2011; Friatna, 2015; and Vonda, 2017) or empirical legal approaches (Munandar, 2017; Mawar & Azwir, 2018; and Krisna & Fitriani, 2019). In his study, Sudrajat found that efforts to protect children's rights in family law in Indonesia still face many obstacles, including laws and regulations, advisory bodies, administering bodies, health facilities, budgets, and socialization (Tedy, 2011). Friatna (2015) examined child protection within the scope of Islamic law and regulatory norms as stipulated in Qanun Number 11 of 2008 concerning Child Protection. Friatna argues that child protection must be carried out by considering the community's religion, customs, and socio-culture and prioritizing the basic principles of children's rights. Like Sudrajat, Fritna also emphasized the need for socialization and optimal supports (Friatna, 2015). The research conducted by Vonda et al. explained the implementation of child protection in Banda Aceh as a manifestation of the Convention on the Child's Rights at the local government level. The commitment of the Banda Aceh government to being a Child-Friendly City was shown by the 26 fulfilled the Child-Friendly City indicators out of 31 (80%). However, at that time Banda Aceh did not yet have a Regional Regulation on Children which is a crucial part of determining a Child-Friendly City (KLA) (Vonda & Fitri, 2017).

Munandar found that the enforcement of Aceh Qanun Number 6 of 2014, concerning the Law of Jinayat, in the Aceh High Prosecutor's Office for cases involving children as perpetrators of a criminal act (crime)

faced obstacles. These are related to regulatory factors, law enforcement officials, infrastructure, and society. For example, there have been insufficient certified child investigators and the absence of regulation on the execution of children. These obstacles cause the handling process of children as perpetrators to be the same as those of handling adult perpetrators (Munandar, 2018: 209-228). This finding was corroborated by Mawar and Azwir (2018), who added that the diversion had been well carried out. Krisna & Fitriani (2019) found the dualism of authority in the trial of a sexual harassment case committed by child perpetrators in Langsa City, Aceh. This dualism occurs because there are two regulations used in legal cases involving children. First, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection stipulates that the authority to try child cases is the District Court. Second, Qanun Number 6 of 2014 concerning the Law of Jinayat which gives authority to The Shari'a Court.

Research Method

This study employs socio-legal research by examining the process of handling legal cases involving children at The Shari'a Court. Data on *jarimah* (criminal acts) cases involving children were obtained from the websites of The Shari'a Court in the district/city level from 2018 to August 2019, with a total of 64 cases.

Furthermore, data on the handling process and the available facilities needed were obtained through in-depth interviews with seven judges of The Shari'a Court in Langsa, Takengon, and Meulaboh. The data are analyzed using the *lex specialis derogate legi generalis* principle and the *systematic lex specialis* principles.

The Shari'a Court in Aceh and its Authority

The term The Shari'a Court as an Islamic judiciary institution in Aceh has been known since the independence of the Republic of Indonesia on 17 August 1945. Before the independence, especially during the Japanese colonial period (1942 - 1945), the Japanese Government maintained the Islamic Courts as they had existed since the Sultanate of Aceh Darussalam and the Dutch colonial period. During the Sultanate of Aceh, the judiciary was based on Islamic law. Islamic

law was also used in courts during the Dutch colonial period. During that period, the implementation of Islamic law could be divided based on two theories: the *receptio in complexu* theory coined by Lodewijk Willem Christian Van Den Berg (1845-1925) and the *receptie* theory by C. Snouck Hurgronje (1857-1936). The first theory explains that religious law is accepted by its adherents, and customary law follows the religious law theory (Thalib, 1995: 15-16). The second theory emphasizes that Islamic law is effective among Muslims if it is aligned with customary law in Indonesia (Soekanto, 1954: 51). Despite two conflicting theories, in practice, Islamic law was carried out by both the judiciary and the society. After independence, Hurgornje's theory was refuted by Hazairin (1906-1975), an expert on Indonesian customary law, by issuing a *receptie* exit theory that emphasizes that the Indonesian people were exceptionally familiar with the belief in God and religious law. This provision has been stated in the 1945 Constitution. In this theory, Hazairin emphasizes that the law applied to Muslims is Islamic law (Hazairin, 1968: 6-7).

At the beginning of the independence, the status of the Islamic Court in Aceh was uncertain, mainly because it did not have a solid legal basis. However, on 1 August 1946, Aceh and several other areas in Sumatra, such as Tapanuli, Central Sumatra, Jambi, Palembang, and Lampung, established the Shari'a Court as part of the independence revolution. The basis for establishing the Shari'a Court in Aceh was the Sumatran Governor's Wire Letter (Telegram) Number 189 dated 13 January 1947, followed by the Deputy Head of the Sumatra Provincial Religious Service No. 226/3/djaps dated 22 February 1947. At that time, the governor was Mr T. Muhammad Hasan. Based on the Telegram of the Head of the Sumatra Provincial Religious Service addressed to the Aceh Regional Religious Office in *Kutaraja* Number 896/3/djaps, the authority of the Islamic Courts was to decide cases relating to (1) Marriage, divorce, reconciliation, financial support, and so on; (2) Inheritance; (3) Endowment assents (*waqf*), grants, a donation (charity), and so on; and (4) *Bayt al-Māl* (Islamic public financial institution)

Subsequently, the Aceh government discussed this matter with the Aceh House of Representative Worker Agency. As a result, the Worker Agency assembly, through its decision, dated 3 December 1947 Number

35, decided: (1) strengthening the Instruction of the Head of the Religious Affairs Bureau of Sumatra regarding the rights of the Shari'a Court; (2) Verdicts issued by the Shari'a Courts were considered similar to the verdicts of the District Judges; and (3) while waiting for the stipulation from the Province, the *faraid* (inheritance) was determined as the authority of the Shari'a Courts and no longer handled by to Lower Judges or District Judges.

The Shari'a Courts obtained a robust legal basis after the Government issued Government Regulation Number 29 of 1957 concerning the Establishment of a Religious Court/Shari'a Court in Aceh. The government issued this Government Regulation after receiving pressure from 17 Acehnese ulama (Muslim scholars) through the Ministry of Religion in Jakarta. After the ratification of the Religious Court/Shari'a Court in Aceh, other regions in Indonesia, especially areas outside Java and Madura, also demanded the establishment of the Religious Court/Shari'a Court. The government responded well to these demands by revoking Government Regulation Number 29 of 1957 and replacing it with Government Regulation Number 45 of 1957 concerning the Establishment of Religious Courts/Shari'a Courts outside Java and Madura. In 1980, through the Decree of the Minister of Religion No. 6/1980, the Indonesian government named the Religious Courts for the Islamic courts outside Java and Madura, and parts of South and East Kalimantan, including those in Aceh.

Since 2001, the term Religious Court in Aceh has been changed back to Shari'a Court or The Shari'a Court, but it remains part of the Religious Court. Qanun No. 10 of 2002 concerning Islamic Justice Courts in Article 2 paragraph (3) mentions that The Shari'a Court is part of the Religious Court. This provision has been previously regulated in Law no. 18 of 2001 concerning Special Autonomy as the Province of Nanggroe Aceh Darussalam, which was later replaced by Law no. 11 of 2006 concerning the Government of Aceh. Article 128 paragraph (1) of Law no. 11 of 2006 concerning the Government of Aceh states that Islamic Justice Courts in Aceh, as part of the national justice system, are conducted by The Shari'a Court free from any influences.

The Shari'a Court is part of the Religious Courts in Indonesia and is under the supervision of the Supreme Court, as the District

Courts, State Administrative Courts, and Military Courts (regulated in Article 21 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power). Since it is part of the Religious Courts, the absolute authority of The Shari'a Court in civil matters is limited and is the same as the Religious Courts. The authority of The Shari'a Court is in settlement of disputes that occur among Muslims regarding marriage, inheritance, wills, grants, endowments, *zakāt* (alms), *infāq* (disbursement of wealth), *sadaqah* (voluntary charity), and shari'a economics (Sufiarina & Fakhriah, 2012: 328).

Apart from the authority in handling the aforementioned cases, the Shari'a Court in Aceh also handles Islamic criminal cases (*jināyāt*), regulated in Article 128 paragraph (3) of Law no. 11 of 2006 concerning Aceh Government. This article states: "The Shari'a Court has the authority to examine, judge, decide and settle cases related to the *al-aḥwāl al-shakhṣiyyah* (family law), *mu'āmalah* (civil law), and *jināyāt* (criminal law) based on Islamic law". Paragraph (4) of Article 128: "Further provisions regarding *al-aḥwāl al-shakhṣiyyah* (family law), *mu'āmalah* (civil law), and *jināyah* (criminal law) as referred to in paragraph (3) shall be regulated by the Qanun of Aceh".

The scope of authority has not changed because to have more authority must be regulated in a Qanun as mandated by paragraph (4) of Article 128. Therefore, the authority still entirely refers to Article 49 of Law no. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning the Religious Courts, which explains the scope of the authority of the Religious Courts. Furthermore, the procedural law used to handle the cases on *al-aḥwāl al-shakhṣiyyah* and *mu'āmalah* are the same as the law in the Religious Court. Because until now, no other procedural law has been made. This provision is stated in paragraph (2) of Article 132 of Law no. 11 of 2006.

The Shari'a Court, as explained above, also handles criminal offenses based on Islamic law (*jināyāt*); but limited to matters regulated in the Qanun of Aceh, as mandated by paragraph (4) of Article 128 of Law No. 11 of 2006. This provision is legally binding on The Shari'a Court. Therefore, this court is not given the authority to resolve all violations as regulated in the books of *fiqh*. Until now, several qanuns containing the scope of authority of The Shari'a Court are still in effect, such as in Aceh Qanun Number 11 of 2012 concerning the Implementation of

Islamic shari'a in *'aqidah* (faith), Worship and the promotion of Islam (*shi'ar*). Some violations regulated include the spreading of heretical beliefs; insulting Islam; leaving Friday prayers for men three times in a row without any hurdle ruled in shari'a; the refusal to grant permission to pray by companies and public transportation; violations during Ramadan, and dress code violation (Article 20 to Article 23 Qanun No. 11 of 2012 concerning the Implementation of Islamic shari'a in the context of Aqidah, Worship, and Islamic *Shi'ar*). This was confirmed by Aceh Qanun Number 8 of 2015 concerning the Guidance and Protection of *'Aqidah*.

Another qanun that regulates the authority of the Shari'a Court is Qanun No. 6 of 2014 concerning the Jinayat. Matters regulated by the Qanun Jinayat are *khamr* (alcoholic beverages); *maysir* (gambling); *khalwat* (unmarried woman and man (not mahram or unmarriageable kin) being in an isolated place with the willingness of both parties which leads to adultery); *ikhtilāt* (acts of intimacy such as making out, touching, hugging, and kissing between men and women who are not husband and wife with the willingness of both parties, either in a private or public place); adultery; sexual harassment; rape; *qadhaf* (accusing people of committing adultery, without the presence of four witnesses); *liwāt* (homosexuality); and *musāhaqah* (lesbianism).

Qanun Number 8 of 2015 on Guidance and Protection of *'Aqidah* adds the blasphemy as another criminal offense against *'Aqidah*. In total, the Qanun regulates eleven matters.

Based on the explanation above, it can be seen that in the Indonesian legal system, the position of The Shari'a Court is within the scope of the Religious Courts for Muslims. The difference between the Religious Court and the The Shari'a Court lies in the authority to settle *jināyāt* cases (Islamic criminal) which exclusively are granted to The Shari'a Court. The authority in marriage law and *mu'amalah* (Islamic civil law) remains the same.

Applicable Legal Principles

In the enforcement of the law, there are legal principles used as guidance. In this paper, only two principles are discussed: the *lex specialis derogat legi generali* principle (special law overriding general

law) and the *lex specialis systematis* principle (systematic special law). These two principles are used to examine the application of the Qanun Jinayat in Aceh. The *lex specialis derogat legi generali* principle is one of the preferred principles in law. This is to determine which law to be implemented if a case violates several regulations. Purnadi Purwacaraka and Soerjono Soekanto said that the purpose of these principles is to apply the law that specifically mentions the event, even though the more general law, which also includes the specific event in its scope, can also be applied (Purbacaraka, Purnadi and Soerjono Soekanto, 1983: 8).

Hiariej said that *the lex specialis derogat legi generali* principle is a decisive legal principle in the application stage from a penal policy perspective. This stage implements criminal laws and regulations that have been violated due to concrete events (*ius operatum*) through the law enforcement process. Therefore, the *lex specialis* principle is important for law enforcement officials when applying criminal laws and regulations to criminal cases (Eddy, 2015: 503-510).

The principle of *lex specialis derogate legi generali* is mentioned in Article 63 paragraph (2) of the Criminal Code. It stipulates that "*if an action is included in a general criminal provision, but is also included in a special criminal provision, then only that specific one is applied*". It means that if there is a criminal act that violates two or more of criminal law, then the special criminal law is imposed on the perpetrator.

The *systematic lex specialis* principle explains two or more contradicting special norms/regulations and decides which norm/rule should be enforced. In this situation, the norms/rules enforced are the ones that contain a more specific norm. The two special rules do not always have to be conflicted, but they can also have something in common. So, this principle is related to determining which rules should be used. In this case, the interpretation must be used systematically. Therefore, this systematic special law will help determine which law should be applied in the judicial process.

In Indonesia, the systematic specificity principle (*systematische specialiteit*) can be found in Article 14 of Law Number 31 of 1999 concerning the Eradication of Criminal Act of Corruption. Article 14 states: "Anyone violating the provision of the Law which strictly

states that the violation of the provision in the law as a criminal act of corruption is subjected to the provision governed in this law”.

This principle extends the *lex specialis derogat legi generali* principle in Article 63 paragraph (2) of the Criminal Code. Article 63 paragraph (2) regulates the use of specific criminal law provisions when a criminal act is found in both specific and general criminal regulation. Having the law on Corruption Eradication as an example, it can be seen that the Law no. 31 of 1999 is applied, although the provisions on acts categorized as corruption are also regulated in the Criminal Code, such as the embezzlement crime.

The principle of *lex specialis* is dynamic but limited, primarily to determine which special laws should be enforced and which provisions are applied in a particular law. To determine which special law is enforced, the principle of *systematische specialiteit* or systematic specificity is applied. It means that the criminal provisions are specific if the legislators intend to impose criminal provisions as a specific criminal provision or it will be of a more specific law from a specific existing law (Adji, 2009).

Case Overview

This section describes the number of juvenile-related *jināyāt* cases in Aceh from 2018 to (August) 2019. The part elaborates the number of cases in the past two years involving children as perpetrators or victims and mentions the types of offenses. The number of *jināyāt* cases involving children from 2018 and (August) 2019 at the Shari’a Courts in Aceh was 64 cases. In seven cases, the children act as perpetrators, while in 57 cases, the children are the victims. The followings are the details:

1. In 2018 there were 46 cases, with five cases involving children as the perpetrators. The types of *jināyāt* were:
 - a. Alcoholic beverage: 1 case
 - b. Sexual harassment: 3 cases
 - c. Rape: 1 case

The children as victims were in 41 cases, with the following details:

- a. Adultery: 6 cases
 - b. Sexual harassment: 16 cases
 - c. Rape: 19 cases.
2. In 2019 there were 18 cases, with two cases where children acted

as perpetrators and the remaining 16 cases involving children as victims. Two children as perpetrators were in the sexual harassment cases. The children as victims are in the case of:

- a. Adultery: 4 cases
- b. Sexual harassment: 9 cases
- c. Rape: 2 cases
- d. Intermingling (*khalwat*): 1 case.

Based on the two-year data above, more children were found to be victims, 57 children. Detail types of offenses involving children as the victim can be seen in the table below:

Table 1. Types of offense involving children as victims.

| No. | Type of Offense | Number | Percentage |
|-----|-------------------|--------|------------|
| 1 | Adultery | 10 | 17,5% |
| 2 | Sexual Harassment | 25 | 43,9% |
| 3 | Rape | 21 | 36,8% |
| 4 | Sexual Harassment | 1 | 1,8% |

Data is taken from the Shari'a Court Decision from 2018 to August 2019.

The data above shows that from several offenses stipulated in the Qanun Jinayat, children were very vulnerable to two types of offenses, i.e., sexual harassment and rape.

Handling of Children in conflict with the Law at the Shari'a Court Special Judges for Children

In 2019, when this research was conducted, the number of judges at the Shari'a Court in Aceh was 130 judges. They were placed in Aceh Shari'a Court and in 23 district/city Shari'a Courts. The distribution of Shari'a Court judges can be seen in the table below.

The table shows that there were twelve Shari'a Courts with only three judges, and there was a Shari'a Court that only had two judges. Meanwhile, one Shari'a Court had a very conspicuous number of judges: 19 judges (the Banda Aceh Shari'a Court). In addition, there were five more Shari'a Courts with a considerably huge number of judges. The

Bireuen Shari'a Court had 12 judges, the Aceh Shari'a Court, the Lhokseumawe Shari'a Court, the Takengon Shari'a Court had ten judges, and the Sigli Shari'a Court had nine judges.

Table 2. Number of Judges Based on the Shari'a Court

| No. | <i>Shari'a Courts</i> | Number of Judges |
|--------------|-------------------------------------|------------------|
| 1 | Banda Aceh Shari'a Court | 19 |
| 2 | Bireuen Shari'a Court | 12 |
| 3 | Aceh Shari'a Court | 10 |
| 4 | Lhokseumawe Shari'a Court | 10 |
| 5 | Takengon Shari'a Court | 10 |
| 6 | Sigli Shari'a Court | 9 |
| 7 | Sabang Shari'a Court | 5 |
| 8 | Calang Shari'a Court | 5 |
| 9 | Meureudu Shari'a Court | 4 |
| 10 | Blangkejeren Shari'a Court | 4 |
| 11 | Simpang Tiga Redelong Shari'a Court | 4 |
| 12 | Lhoksukon Shari'a Court | 3 |
| 13 | Idi Shari'a Court | 3 |
| 14 | Kutacane Shari'a Court | 3 |
| 15 | Sinabang Shari'a Court | 3 |
| 16 | Sinabang Shari'a Court | 3 |
| 19 | Tapaktuan Shari'a Court | 3 |
| 18 | Meulaboh Shari'a Court | 3 |
| 19 | Jantho Shari'a Court | 3 |
| 20 | Langsa Shari'a Court | 3 |
| 21 | Blangpidie Shari'a Court | 3 |
| 22 | Sukamakmur Shari'a Court | 3 |
| 23 | Subulussalam Shari'a Court | 3 |
| 24 | Kuala Simpang Shari'a Court | 2 |
| Total | | 130 |

Source: Data is taken from the websites of the Shari'a Court in Aceh.

Based on the author's observation, two situations occur due to the limited number of judges in some Shari'a Courts: the effectiveness in resolving cases and the need for judges certified as juvenile judges. Some judges stated that they had to work until dusk (outside office hours) to settle cases, especially when there were many cases. The effectiveness here was related to the objectivity of judges in solving cases. Islamic law regulates that every judge must not be hungry and angry (emotionally unstable) during solving cases (Asqalani, n.d.: 651). A person's emotion is unstable once he/she is tired. If there are only three judges, all of them will be busy attending the trials. This should be the concern of the Aceh Shari'a Court or the Supreme Court, considering that some Shari'a Courts had a considerable number of judges, while the others had only a few judges.

For example, judges at the Meulaboh Shari'a Court said that it is hard for them to resolve all cases properly due to the limited number of judges. Therefore, the judges hope that more judges would be appointed at the Meulaboh Shari'a Court. A similar concern was also conveyed by the judges of the Langsa Shari'a Court (Interviews with informants at the Langsa and Meulaboh Shari'a Courts).

Moving on to the discussion of the juvenile judge, the juvenile judges are judges who have attended training to handle cases of children involving in legal cases. Those judges have received certificates as juvenile judges. One of the requirements that must be fulfilled by the Shari'a Courts to handle children's cases is to have a juvenile judge. This provision is a mandate from the Law on the Criminal Justice System for Children (Law no. 11 of 2012 concerning the Criminal Justice System for Children, Article 1 number 10).

Table 3. Juvenile Judge

| No. | Shari'a Court | Number of Judge | Number of Juvenile Judge |
|-----|---------------|-----------------|--------------------------|
| 1. | Langsa | 3 | 3 |
| 2. | Takengon | 10 | 10 |
| 3. | Meulaboh | 3 | 3 |

Source: Results of interviews with informants at the 3 Shari'a Courts.

The data is obtained from the three Shari'a Courts: the Langsa Shari'a Court, the Takengon Shari'a Court, and the Meulaboh Shari'a Court. The data shows that all judges serving in the three Shari'a Courts already had certificates as juvenile judges.

Based on the data above, it can be seen that the three Shari'a Courts have been able to exercise their absolute authority in criminal offenses, both for adults and children. However, according to available information, until mid-2019, there was still a Shari'a Court that did not have juvenile judges. Therefore, the public prosecutor brought the criminal case involving the children to the District Court, even though the District Court was not authorized to carry out the trial (Halim, 2020).

Facilities and Infrastructure

The facilities and infrastructure needed in resolving criminal offenses involving children are a special courtroom and a waiting room for a children's court. It is regulated in Article 53 paragraphs (1) and (2) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). First, Paragraph (1) states: "children will be tried in a special courtroom for children". Then, Paragraph (2) states: "the waiting room for the trial of children is separated from the adult waiting room".

The study shows that the Shari'a Court in Langsa, Takengon, and Meulaboh have not yet had a particular room for children as stipulated in article 53 of the Juvenile Criminal Justice System Law. Based on data from informants: "In general, the Shari'a Court in Aceh does not yet have a special courtroom for children as stipulated by UU-SPPA (Juvenile Criminal Justice System)". Due to the unavailability of a child-friendly courtroom, the trial must be held in the adult courtroom. This condition was also applied to the court waiting room (Wiyono, 2019: 80).

Why did the Shari'a Court not prepare courtrooms and waiting rooms for children? Because it is impossible not to involve children, either as perpetrators, victims or witnesses, to enforce Islamic criminal offenses. This is understandable because the current Shari'a Court buildings are Religious Court buildings that primarily only handle civil cases and do not require a special room for children. However, with the addition of authority to the Shari'a Court, such as handling Islamic

criminal offenses, the Shari'a Court should have responded quickly to the need for a special room for children.

To overcome the problem, the Shari'a Court provides an "emergency" room for examining children. This "emergency" room is only used for the process of examining child perpetrators and victims. However, there is a firm intention from the Shari'a Court to comply with the demands of the SPPA Law. One informant said: *"The judge at the Shari'a Court has made various efforts to adhere to the UU-SPPA even though the standard has not been reached just yet"* (Ir, Deputy Chief Justice of the Meulaboh Shari'a Court. Interview, 9 July 2019).

This lack of facilities has caused a problem. For example, in Meulaboh Shari'a Court, child perpetrators and victims were sitting in the same waiting room (Ir, Deputy Chief Justice of the Meulaboh Shari'a Court. Interview, 9 July 2019). The SPPA Law does not want this to happen. This can cause adverse psychological conditions to children and even their families (Ir, Judge of the Meulaboh Shari'a Court. Interview, on 9 July 2019). Moreover, the unavailability of a special room for juvenile court and a special waiting room for children has resulted in the less optimal protection of children.

Handling Procedure

The SPPA Law requires special provisions for the handling procedure of children in conflict with the law. These special provisions are applied from the beginning of the case. The police that handles the children's cases is the special police for children. Also, the prosecutors must be special prosecutors who know how to deal with cases related to juveniles. Article 15 paragraph (3) letter c determines that the requirement to be appointed as an investigator is to attend technical training on juvenile justice. Then, Article 41 paragraph (2) letter c states that the requirement to be declared as Public Prosecutor has attended technical training on Juvenile Justice (Analiansyah & Rahmatillah, 2015).

Informants of this research argue that officials handling children's cases have met the requirement of SPPA Law. The officials are the police, prosecutors, and judges at the Shari'a Court. All procedures have been carried out by the certified officials (having attended technical training on juvenile justice). Knowing this information, it can be understood

that the handling of children in conflict with the law in Islamic criminal offenses was carried out by proper officials who understand their duties well. On this basis, children should receive protection in undergoing the judicial process from investigation, prosecution, trial, and execution.

The research also observed the handling process stages in the field. The observation of the handling stages reveals that the process is divided into two, litigation and non-litigation. In the litigation, the handling assists children in conflict with the law. Meanwhile, in the non-litigation, the handling is for diversion. The diversion program is the transfer of settlement of juvenile cases from criminal justice to non-criminal justice processes. The settlement is carried out in an amicable discussion involving family, village officials, and customary law.

Children in conflict with the law handled by the Shari'a Court get legal assistance from trusted individuals. One informant said: *"There is special assistance for children; they are accompanied by their parents"*. If the child is a victim, then she/he is accompanied by a parent or a guardian or a trusted person. In case of being a perpetrator, the assistance is provided by PKBAPAS (Community Guidance of the Correctional Center) from the investigation to trial stages. Other parties involved include those from PEKSOS (Pekerja Sosial or Social Workers) (Ir, Judge of the Meulaboh Shari'a Court, interview on 9 July 2019; Mursyid Syah, Judge of the Langsa Shari'a Court, interview on 10 August 2019), and sometimes by the psychologist (MS, Judge of the Langsa Shari'a Court. Interview, on 10 August 2019).

Furthermore, the implementation of diversion is carried out by perpetrators and victims, accompanied by their families, village administrators, and religious advisors. Diversion aims to amicably resolve the dispute between perpetrators and victims, to settle juvenile cases outside the judicial process. This is to prevent children from being deprived of their liberty, encourage society's participation, and inculcate a sense of responsibility in children.

To resolve the juvenile offenses, Shari'a Court judges have made diversion efforts. In its implementation, the process involves various parties, as mentioned above. This diversion stage has started since the investigation process. If the diversion is successful, then the police shall ask the Chief Justice of the Shari'a Court to determine the result of the

diversion and state that the diversion is successful. If it is not successful, then the diversion process is carried out by the prosecutor acting as the plaintiff. A successful diversion leads to the issuance of a diversion by the head of Shari'a Court. However, should the diversion by the prosecutor failed, the settlement shall be carried out by litigation (AP, Judge at Meulaboh Shari'a Court. Interview, on 10 July 2019).

Moreover, the application of diversion in Shari'a Courts is dynamic and diverse. Meulaboh Shari'a Court received relatively more cases than those of the Takengon Shari'a Court. The Takengon Shari'a Court handled many dispensations of child marriage under the age of 19 for women and 21 for men, as stipulated in Law no. 1 of 1974 concerning Marriage. The minimum age of marriage, according to this law, is 19 years for women and 21 years for men, as also stipulated in the Indonesian Islamic Law Compilation (KHI). This shows that the settlement of Islamic criminal offenses, such as cases of *khalwat* (unmarried man and woman being in an isolated place), intermingling, and adultery, are resolved through diversion (Analiansyah, 2019: 58).

The diversion implementation process does not stop at the police, and prosecutors continue their duties until the case is brought for the Shari'a Court's judicial process. In implementing the diversion and judicial process, judges at the Meulaboh Shari'a Court involve PKBAPAS (Community Guidance of the Correctional Center) to accompany children as perpetrators. As for child victims, they are accompanied by PEKSOS (Social Workers) from the Social Service. However, not all diversion processes are thriving; and the judge decides to punish the child offender. In fact, for some instances, judges do not recommend the use of diversions, such as in rape and sexual harassment cases (Ir, Deputy Chief Justice of the Meulaboh Shari'a Court. Interview, on 9 July 2019; Decision on Case Number 11/JN/2016/MS.Ttn).

For example, the Shari'a Court once decided to punish a child offender of a sexual abuse case (Case Number 11/JN/2016/MS.Ttn). In this verdict, the judge sentenced a 14-year-old child to one month's imprisonment. This child is a recidivist who has been convicted of returning to his parents/guardians based on decision Number 10/JN/2016/MS.Ttn.

Based on the above description, it can be understood that the Shari'a Court also used the SPPA Law in the handling procedure against children who conflicted with the law. Nevertheless, the material law enforced by the Shari'a Court is Qanun Jinayat. Meanwhile, the District Courts enforce general crimes (other than the provisions of *jināyāt* as stipulated in the Qanun Jinayat).

The implementation of *Lex Specialis Systematis* Principle: Result and Discussion

As previously explained, the Qanun Jinayat is a case for applying the *lex specialist derogate legi generali* principle, special law overriding general law. Naturally, in enforcing the law, the police and prosecutors have to look at the absolute authority of each judicial institution, which in this case is the authority of the District Courts and the Shari'a Courts. Typically, for the violations against Qanun Jinayat, the prosecutor must take the case to the Shari'a Courts.

It is interesting to discuss that there is still a need for another more specific law called the *lex specialis systematis* principle in applying the special law in Aceh. The special law enacted is Law Number 11 of 2012 concerning the Child Criminal Justice System (UU SPPA). This law is used in handling children in Islamic criminal offenses and general criminal offenses. However, applying the *lex specialis systematis* principle does not apply in general; it is applied explicitly to handle children

Several focuses in discussing children in criminal law include the special judges for children, exceptional facilities and infrastructures, and the handling procedures.

First, related to special judges for juvenile cases, the Shari'a Court has started to train judges to deal with children facing Qanun Jinayat. It can be ascertained that the provision for judges is solely to fulfill the requirements of the SPPA Law because the Law of Jinayat does not regulate any special education requirements for handling juveniles. In this case, the judges dealt with a considerable challenge because they have only experienced in handling civil cases. Now, they have to handle Islamic criminal cases. Another challenge was that the judges have to handle juvenile cases that require special treatment. These two challenges were made even harder for judges who transferred from the

other Religious Courts outside Aceh to the Shari'a Courts in Aceh. They must learn the special rules for applying shari'a in Aceh and the juvenile criminal justice system.

Can the judges of the Shari'a Court fulfil their duties properly when it comes to handling criminal cases? To answer this, we must look back at the education of the judges. People who can apply for a judge position must meet specific educational background qualifications, such as graduated from a law school. They are graduated with a Bachelor of Laws. In Indonesia, law school can be pursued at the law faculty at public universities or the faculty of shari'a and law at Islamic universities. UIN Ar-Raniry Banda Aceh, an Islamic university in Aceh, even provides courses in the study of shari'a in Aceh. Moreover, at the Faculty of Shari'a and Law at this University, Qanun Jinayat and Qanun Jinayat Procedural Law are explored. Other courses taught are civil law and criminal law. Judges who are not from UIN Ar-Raniry Banda Aceh are assisted by courses in Islamic civil law, Islamic criminal law, civil law and criminal law, and procedural law, which are added with other supporting courses. Thus, judges who are not from UIN Ar-Raniry Banda Aceh must study the material of the Qanun Jinayat and the Qanun Jinayat Procedural Law.

As knowledge on Aceh Qanuns is needed, all Shari'a and Law Faculties of Islamic universities critically need to offer courses on the Islamic legal system in Aceh. So, when the graduates apply for a judge position and are assigned in Aceh, they are ready to uphold their duties. A The Shari'a Court judge, who comes from a law school outside Aceh, admitted that he had to study the specific provisions and Qanun Jinayat of Aceh because it was not taught in his school (Tq, Judge at the Meulaboh Shari'a Court. Interview, 8 October 2020 in Meulaboh).

The Supreme Court has an exceptional education for judges before they are given the task of hearing cases. Among the critical subject is the provisions of the Islamic criminal justice in Aceh (EJ, Judge at the Meulaboh Shari'a Court. Interview, on 9 October 2020 in Meulaboh). This subject is essential to introduce Shari'a Court in Aceh and its functions to carry out special authority, such as to deal with Islamic criminal justice, including juvenile criminal justice.

Based on the data, it is known that the Shari'a Court in Meulaboh, Takengon, and Langsa Shari'a Court, had special juvenile judges. This shows that the Shari'a Court responded quickly to the need for juvenile judges at the Shari'a Courts.

Second, the efforts to prepare facilities and infrastructure. The Shari'a Court has realized the need to set up special facilities and infrastructure for children, such as a special courtroom for children and a waiting room for special sessions for children which are separate from adults, as requires in Article 53 paragraphs (1) and (2) of Law no. 11 of 2012. By the time this research was conducted from 2019 to 2020, the Meulaboh Shari'a Court, the Takengon Shari'a Court, and the Langsa Shari'a Court did not have a permanent facility. These Shari'a Courts were providing a temporary waiting room for children involving in criminal cases. As for the courtroom, they were using the regular courtroom used for adults.

At this stage, the Shari'a Court has practiced the SPPA Law as a specific law to follow. The Shari'a Courts are in the direction to meet the requirement even though they have not met the standard yet. This condition indicates the strong desire of the Shari'a Court to comply with the provisions of the Juvenile Criminal Justice System Law.

Regarding the courtroom, the Qanun on Procedural Law of Jinayat only regulates the standard courtroom layout for adults. The Qanun on Procedural Law of Jinayat does not require a special courtroom and waiting room for children. The setting of a standard courtroom is as follow:

- a. The table and chair of judges are situated higher than the place for the public prosecutor, defendant, legal advisers, and visitors.
- b. The clerk is located behind the right side of the chief judge.
- c. The place for the public prosecutor is located on the right side in front of the judge.
- d. The defendant and the legal advisor are located on the left side in front of the judge's and the defendant's place is on the right side of the legal advisor.
- e. The examining seat of the defendant and witness is located in front of the judge.

- f. The place for witnesses or experts who have been heard is located behind the examination chair.
- g. The visitors are seated behind the witnesses (one that has been heard);
- h. The national flag and the Aceh flag are placed on the right side of the table, the protection flag is on the left side of the judge's table, while the state emblem is placed on the upper wall behind the Judge's table.
- i. The place for the oath of confirmation is located to the left of the clerk.
- j. The place as referred to in letter A to I is given identification.
- k. The Place for the security officer is inside the main entrance to the courtroom and at other places as deemed necessary.

The layout of the juvenile courtroom, as regulated in the Decree of the Director-General of the General Courts No. 2176/DJU/SK/PS01/12/2017 concerning Minimum Standard Guidelines for Child-Friendly Court Facilities and Infrastructure, the second dictum states about the arrangement of the Child-Friendly Courtroom, as follows:

1. The court table in the children's courtroom does not use green woven fabric.
2. The court table is equipped with a nameplate for Judges/Panel of Judges, Registrar, Public Prosecutor, PK BAPAS, and Legal Counsel
3. The table for the panel of judges is equipped with three chairs in the same height as the seats for the public prosecutor and legal advisor. The table setting does not shape like a stage.
4. The table for juvenile public prosecutors and social workers is located in front of the right side of the panel of judges.
5. The table of BP BAPAS, children, parents, and legal advisors is located in front of the left side of the panel of judges.
6. The table for the substitute clerk is located to the right of the panel of judges.
7. The colour of the child-friendly courtroom is beige with brown trim, and there are no decorations/stickers for children/dolls to maintain the dignity of justice.

In terms of the sitting arrangement, the special setting of the child-friendly courtroom is the table position for the panel of judges. In the child-friendly courtroom, the judge's table is in an equal position to the seats of the public prosecutor and legal advisor. None of them is higher than the others. Whereas in the Qanun on Procedural Law of Jinayat, the judges' seats and tables are higher than the public prosecutor, defendant, legal advisers, and visitors. The stage-like arrangement is not mentioned in the Qanun, but it can be seen in the seat arrangement of the courtroom. In addition, the table is also covered with green fabric. This is not applied in the child-friendly courtroom tables.

The purpose of designing a special courtroom for children is to create a comfortable atmosphere for children and eliminate the stilted impression of a trial. This provision is believed to be able to eliminate trauma for children. In the judicial process, children as perpetrators are positioned as people who need help, understanding, and affection. For this reason, the juvenile justice process must use a persuasive-educative approach and a psychiatric approach, which means avoiding legal processes that are solely oriented towards punishment (Jufri Ahmad, 2011).

Indonesia is one of the countries that pay attention to the protection of children in conflict with the law. Indonesia is a full member of the United Nations that must adopt the United Nations' recommendations. One of which is in the handling of children in conflict with the law. The United Nations regulates that the entire process of handling children in conflict with the law must refer to the child's welfare. A child-friendly justice system is a part of strengthening democracy and the law of a country. This child-friendly justice has been outlined in the Standard Minimum Rules for the Administration of Juvenile Justice on 29 November 1985, known as the Beijing Rules. Furthermore, the UN issued a resolution, The UN Guidelines for the Prevention of Juvenile Delinquency, on 14 December 1990, known as the Riyadh Guidelines. In this regard, Indonesia has ratified The UN Convention on the Rights of the Child (UNCRC), adopted by the UN in 1989 and ratified by Indonesia through a Presidential Decree in 1990 (Davies & Robson, 2016).

Regarding the law, prior to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, Indonesia uses the KUHP (Criminal

Code), Articles 45, 46, and 47. Furthermore, in 1997, Indonesia passed Law no. 3 of 1997 on Juvenile Court. The enactment of Law No. 3 of 1997 is the beginning for Indonesia as a country with a legal unification that specifically regulates the mechanism for resolving children in conflict with the law. UU no. 3 of 1997 eliminates the enforcement of Articles 45, 46, and 47 of the Criminal Code. Law that was enacted after Law no. 3 of 1997 is Law no. 11 of 2012 concerning the Criminal Justice System for Children. Law no. 11 of 2012 simultaneously revokes and declares that Law No. 3 of 1997 no longer applies (Rosidah, 2009: 91-94).

Regarding the children handling procedure, Qanun Jinayat only regulates the prohibition for Judges, public prosecutors, legal counsels, and registrars to wear their respective clothes and attributes, as regulated in Article 222 paragraph (2). Therefore, judges, public prosecutors, legal counsels, and registrars have their attributes and clothing to differentiate one another. Apart from Article 222 above, the Shari'a Court entirely refers to Law no. 11 of 2012. This indicates that the Islamic Religious Court in Aceh does not stand alone but in the same position as other Indonesian justice systems. This also explains how the Islamic Criminal Justice System suits the context throughout times and places.

Third, the handling procedure of children in conflict with the law by the Shari'a Court has followed the provisions contained in the SPPA Law. There is an interesting point that needs to be explained. Although the Shari'a Court is relatively new in handling *jināyāt* offences, it can immediately follow the provisions of the SPPA Law. This achievement needs to be underlined because the experience of the board of judges is also relatively new, especially judges for the judges who previously served outside Aceh and never handled Islamic criminal offenses. The Religious Court judges outside Aceh have only handled civil cases based on their absolute authority.

In the historical development of religious courts in Indonesia, in 2009 through Law no. 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning the Religious Courts Article 3 A paragraph (1) and (2) permitted the establishment of a special court in the Religious Court. Paragraph (1) states: *Within the religious court, a special court regulated by law can be established*. Furthermore, paragraph (2) states: *Islamic Shari'a Court in Nanggroe Aceh Darussalam Province is a special court within the religious court, as long as its authority is related*

to the authority of the religious court, and is a special court within the domain of general justice, as long as its authority is related to the authority of the general judiciary.

The interesting point from paragraph (2) above is that it places the Shari'a Court as a special court in two judicial institutions. First, it is a special court within the religious court and a special court within the general court. Second, the Shari'a Court carries out special rules in deciding the case on Islamic criminal offenses. In its position as a special court, in terms of handling children in conflict with the law, the Shari'a Court must implement a more specific law, the SPPA Law.

Regarding the handling procedures, the SPPA Law emphasizes the settlement of criminal cases outside the courts by having the diversion process. The process has started since the handling by the police until a case is submitted to the Shari'a Court. In Indonesia, the SPPA Law is the first law that determines the implementation of diversion against children who are in conflict with the law. Even though there has been a previous law on the handling of children, Law no. 3 of 1997 on Juvenile Court. The fundamental difference between this law and the SPPA Law is in the diversion, which is only regulated in the SPPA Law.

Conclusion

In handling criminal cases involving children, The Shari'a Court in Aceh still needs more competent judges and adequate facilities and infrastructures to enforce the Qanun Jinayat. The system requiring the transfer of judges to another court every two years is problematic. The new judges from outside Aceh are mostly not familiar with handling legal cases involving children. However, judges continue to strive to protect children through *ijtihad*, which ensures that the examination and trial processes for juvenile crimes continue to refer to the provisions of the law, especially Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). In addition to the SPPA Law and the Qanun, *ijtihad* is carried out based on the principle of *maslaha* (benefit). The critical point is the State, especially the Aceh Government, put some efforts to implement Islamic law within the framework of the national legal system. Although the material object regulated differs from the General Court, the handling procedure refers to the same

law, SPPA law. This situation also shows that the enforcement of the Qanun Shari'a in Aceh uses the direction provided by the legislation in the form *lex specialis derogate legi generalis* and the principle of *systematic lex specialis*.

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Analiansyah¹, Ali Abubakar²

^{1,2}Universitas Islam Negeri Ar-Raniry Banda Aceh

E-mail: ¹analiansyah@ar-raniry.ac.id, ²aliabubakar@ar-raniry.ac.id