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ANALISIS PERBANDINGAN PENGATURAN  
UNSUR DAN SANKSI TINDAK PIDANA  
PERKOSAAN ANTARA QANUN NOMOR 6  
TAHUN 2014 TENTANG HUKUM JINAYAT  
DENGAN UNDANG-UNDANG NOMOR 1  
TAHUN 2023 TENTANG KITAB UNDANG-  
UNDANG HUKUM PIDANA

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### Abstrak

Di Aceh, tindak pidana perkosaan diatur dalam Qanun Nomor 6 Tahun 2014 tentang Hukum Jinayat. Dalam perjalanannya, ada berapa kritik terhadap pengaturan hukum pidana perkosaan Qanun tersebut sehingga perlu perbandingan hukum. Tesis ini membandingkan pengaturan perkosaan Qanun tersebut dengan UU Nomor 1 Tahun 2023 tentang KUHP. Perbandingan berfokus untuk mengetahui persamaan dan perbedaan serta kekuatan dan tantangan pengaturan unsur tindak pidana dan sanksi pidana perkosaan antara keduanya.

Jenis penelitian tesis ini penelitian hukum normatif, pendekatan penelitian perbandingan hukum pidana, sifat penelitian preskriptif analitis, sumber data adalah data sekunder yang diperoleh dari hasil studi kepustakaan dan peraturan perundang-undangan. Pisau analisis yang digunakan teori perbandingan hukum Constantinesco, teori hukuman dan teori keadilan.

Hasil penelitian terdapat perbedaan pengaturan unsur dan sanksi tindak pidana perkosaan antara KUHP 2023 dengan Qanun Hukum Jinayat 2014. KUHP 2023 mengatur persetubuhan tanpa unsur kekerasan atau ancaman kekerasan terhadap korban anak dan orang tak berdaya merupakan perkosaan, Qanun Hukum Jinayat tidak mengatur demikian. KUHP 2023 mengatur sanksi pidana kumulatif bagi pelaku perkosaan terhadap anak, Qanun Hukum Jinayat mengatur pidana tunggal alternatif; KUHP 2023 tidak mengatur sanksi cambuk dan sanksi restitusi dalam perkosaan, Qanun Hukum Jinayat mengaturnya.

Berdasarkan kesimpulan tersebut, penulis menyarankan Aceh mempertimbangkan untuk memperbaharui pengaturan Qanun Hukum Jinayat dalam hal; mengatur persetubuhan tanpa unsur kekerasan atau ancaman kekerasan terhadap korban tertentu seperti anak dan orang tidak berdaya merupakan perkosaan, mengatur sanksi pidana kumulatif bagi pelaku perkosaan terutama perkosaan terhadap anak, mempertahankan eksistensi sanksi cambuk serta mengoptimalkan sanksi restitusi.

Kata Kunci: *Perbandingan Hukum, Perkosaan, Qanun Hukum Jinayat, KUHP*

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COMPARATIVE ANALYSIS OF ELEMENTS OF  
CRIMINAL ACTS AND TYPES OF CRIMINAL  
SANCTIONS FOR RAPE BETWEEN QANUN  
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CONCERNING CRIMINAL LAW BOOKS

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***Abstract***

*In Aceh, the crime of rape is regulated in Qanun Number 6 of 2014 concerning Jinayat Law. Along the way, there has been a number of criticisms of the Qanun's rape criminal law regulations so that legal comparisons are needed. This thesis compares the Qanun's rape regulations with Law Number 1 of 2023 concerning the Criminal Code. The comparison focuses on finding out the similarities and differences as well as the strengths and challenges of regulating the elements of criminal acts and criminal sanctions for rape between the two.*

*This type of thesis research is normative legal research, a criminal law comparative research approach, prescriptive analytical research, the data source is secondary data obtained from the results of literature studies and statutory regulations. The analytical knife used is Constantinesco's comparative legal theory, punishment theory and justice theory.*

*The research results show differences in the regulation of elements and sanctions for the crime of rape between the 2023 Criminal Code and the 2014 Jinayat Law Qanun. The 2023 Criminal Code regulates sexual intercourse without elements of violence or threats of violence against child victims and helpless people as rape, the Jinayat Law Qanun does not regulate this. The 2023 Criminal Code regulates cumulative criminal sanctions for perpetrators of child rape, the Jinayat Law Qanun regulates alternative single penalties; The 2023 Criminal Code does not regulate caning sanctions and restitution sanctions for rape, the Jinayat Law Qanun regulate it.*

*Based on these conclusions, the author suggests that Aceh consider updating the Qanun Jinayat Law regulations in terms of; regulating sexual intercourse without elements of violence or threats of violence against certain victims such as children and helpless people constitutes rape, regulating cumulative criminal sanctions for perpetrators of rape, especially rape against children, maintaining the existence of caning sanctions and optimizing restitution sanctions.*

*Keywords: Comparative Criminal Law, Rape, Qanun Hukum Jinayat, Criminal Code*