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Children's Willingness in Jarimah Zina: Inconsistencies in Child Protection in the Juvenile Criminal Justice System in Aceh Post Qanun Number 12 of 2025

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Abstract:

Child protection in Indonesia rests on a categorical principle: every individual under 18 is entitled to unconditional protection under Law No. 35/2014 and the Convention on the Rights of the Child. This principle is contested within Aceh's Qanun Jinayat, particularly following Qanun Aceh No. 12 of 2025. Purpose this study examines whether the Qanun applies consistent child protection standards, focusing on the contradiction between Article 33 (*zina*, requiring consent) and Article 50(2) (which classifies sex with a child under 16 as rape regardless of consent). Methods normative legal research analyzing Qanun Aceh No. 12/2025 and Syar'iyah Court decisions through descriptive-comparative analysis. Findings *kerelaan* (consent) is applied inconsistently: children under 16 are absolutely protected, while those aged 16–18 may lose protected status if consent is proven, despite being simultaneously deemed too legally immature (*ahliyyah*) for full criminal responsibility. Implications, The Qanun has not yet achieved consistent child protection; judicial guidelines should treat minors' consent as legally void regardless of apparent willingness. Originality first study identifying *kerelaan* as the specific mechanism revoking child protection status within Aceh's Islamic criminal law.

Keywords: Child Criminal Responsibility; Qanun Jinayat; Consent; Child Protection; Legal Capacity; Aceh

INTRODUCTION

Child protection is a constitutional mandate that is binding on all levels of government in Indonesia, including local governments that have special authority. Article 28B paragraph (2) of the 1945 Constitution guarantees the right of every child to survival, growth and development, as well as protection from violence and discrimination, a guarantee that was then further elaborated through Law Number 35 of 2014 concerning Child Protection and Law Number 11 of 2012 concerning the Child Criminal Justice System (SPPA Law). These two regulations place children, including children who are in conflict with the law, as subjects that must be fostered and rehabilitated, not merely objects to be punished (Dyah et al., 2025). The issue of criminal liability for children becomes much more complex when it takes place in areas that have a special criminal justice system based on sharia, as is the case in Aceh Province, because there children who commit jarimah must be assessed not only from the perspective of national criminal law, but also from the framework of the Jinayat Law which has its own criminal logic (Sumardi et al., 2021).

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Aceh's authority to enforce Islamic sharia is sourced from Law Number 44 of 1999 concerning the Implementation of Provincial Privileges of the Special Region of Aceh and strengthened by Law Number 11 of 2006 concerning the Government of Aceh. On the basis of these two laws, Qanun Aceh Number 6 of 2014 concerning the Jinayat Law was born which regulates various jarimah and uqubat, including whipping as the main sanction. Since its inception, the provisions regarding criminal responsibility for children in the qanun have left a normative vacuum, because the absence of a firm regulation is often interpreted as equalizing the criminal threat between children and adults, especially in jarimah such as rape and khalwat (Rizanizarli et al., 2023) (Khairah & Putra, 2025). Such a situation is clearly vulnerable to clashing with the principle of special treatment of children that has become a common norm, both in national child criminal law and international human rights standards.

The specific starting point of this research is the issuance of Qanun Aceh Number 12 of 2025 concerning Amendments to Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat, which brings a number of fundamental changes to the regulation of child criminal liability. These changes include raising the minimum age limit for Children of Jarimah Perpetrators (APJ) who can be held criminally responsible to 16 (sixteen) years, limiting the threat of uqubat against APJ to a maximum of one-third of the threat to adult perpetrators, except for APJ who repeat jarimah adultery, and strengthening legal protection for child victims of sexual violence (Fanisa et al., 2025). This change is a step forward that should be appreciated, but its implementation in the field leaves important questions about the extent to which these provisions are truly in line with the principles of restorative justice and diversion that are the spirit of the SPPA Law, as well as how the authority of the Sharia Court, the police, and the prosecutor's office is synchronized so that there is no overlap in interpretations (Dewi et al., 2025).

The urgency of this problem is even more evident when examined from the data on violence against children in Aceh, which shows a consistent increasing trend as presented in Table 1.

Table 1. Trends in Cases of Violence Against Children in Aceh Province (2022–2024)

Year	Number of Cases	Remarks
2022	571 cases	Baseline before the surge
2023	634 cases	Up ±11% from 2022
January–August 2024	445 cases	Data is incomplete (4 months have not been recorded); North Aceh, Central Aceh, and Bireuen are the highest regions

Source: Aceh Women's Empowerment and Child Protection Office (DP3A), as reported in Dialeksis.com (2024) and Waspada Aceh (2024).

This figure does not reflect the actual dark number, considering that most cases of sexual violence against children, especially those committed by close people, are not reported due to social stigma (Waspada Aceh, 2024). Similar patterns are also seen at the national scale, as summarized in Table 2.

Table 2. National Indicators of Children Facing the Law and Violence Against Children

Indicator	Quantity	Period	Source
Children in conflict with the law (suspect/complainant/reported party)	40,079 children	January 2024	National Police Brief, quoted in Wulan et al. (2025)
Child violence cases recorded by the Ministry of PPPA	28,831 cases	2024	Ministry of PPPA, quoted in Wulan et al. (2025)
Komnas Anak Complaints (up 34%; 56% sexual violence)	4,388 complaints	2024–early 2025	Komnas Anak, quoted in Wulan et al. (2025)
National PPA Report	14,039 reports	as of July 3, 2025	Coordinating Ministry for PMK (2025)

Source: Coordinating Ministry for PMK (2025).

This data series confirms that child criminal liability, both in its position as perpetrator and victim, is not just a normative issue, but an urgent policy issue that has a direct impact on the lives of hundreds of children every year in Aceh.

The fundamental challenge behind this research lies in the existence of two special criminal law regimes that apply simultaneously to the same legal subject, namely children. On the one hand, the SPPA Law places restorative justice, diversion, and the protection of the future of children as the main principles of the administration of justice (Pujiani et al., 2022). On the other hand, the Jinayat Law, although it has been revised through Qanun Number 12 of 2025, still maintains the physical character of uqubat such as a whip, even though the threat has been reduced by one-third for children (Aprilianda et al., 2022). This normative tension raises serious questions about the consistency of the application of the principle of lex specialis derogat legi generali, when the SPPA Law and the Jinayat Law Qanun both claim specificity in dealing with children who conflict with the law (Wibowo et al., 2025). Without clarity on how these two regimes should be run in synergy, the potential for disparities in verdicts and legal uncertainty for children in Aceh will continue (Wijatmoko et al., 2023).

A number of previous studies have touched on the issue of child protection in the criminal justice system in general (Dyah et al., 2025). examine the implementation of restorative justice and diversion in the SPPA Law nationally, and found that the lack of clarity of technical regulations is the main obstacle to the effectiveness of the restorative approach, while emphasizing the importance of clarity of norms oriented towards child protection as a subject of law. (Handoko & Santoso, 2025) examining child protection in the SPPA Law from the perspective of Islamic law and politics, concluding that children are seen as a mandate that must be maintained, although the study has not specifically touched on the interaction between formal Islamic law in the form of qanun and the national juvenile criminal justice system. (Ismanto et al., 2026) conducted a cross-jurisdictional comparative analysis of the age of criminal responsibility for children by integrating findings of adolescent developmental neuroscience, but this study focused on global comparisons and did not reach the context of regional Islamic criminal law in Indonesia.

More contextually relevant research comes from Riska et al. (Dewi et al., 2025), which examines the authority of judges in implementing restorative justice for children based on Supreme Court Regulation Number 1 of 2024. This study found that the disharmony of regulations between law enforcement agencies, namely the police, prosecutor's office, and courts, is the main structural obstacle to the effective implementation of restorative justice. These findings provide a useful analytical framework regarding the importance of regulatory synchronization, even though the object of study is the general judiciary, not the Syar'iyah Court that implements Jinayat Law. Meanwhile, research that specifically discusses children in Qanun Jinayat, regarding the category of children facing the law after the 2025 qanun amendment, regarding the completion of khalwat by children, is still descriptive and limited to certain types of jarimah, so it does not provide a comprehensive picture of how children's criminal responsibility should be applied consistently in all types of jarimah after the latest qanun changes (Fanisa et al., 2025).

Child protection in Indonesian law is built on an absolute categorical principle: everyone who is under the age of 18, including those who are still in the womb, is defined as a child and has the right to protection without exception, as affirmed in Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This principle is categorical, not gradual, in the sense that the status of a "protected child" should not be diminished or lost simply because of a particular element in a legal event. The same principle is also reflected in the Convention on the Rights of the Child, which defines a child uniformly as any individual under the age of 18 without any gradation of internal capacity for the purpose of protection from exploitation (United Nations, 1989). When this categorical principle is applied in a special criminal law system such as the Jinayat Law in Aceh, which has its own criminal logic, the potential for normative clashes becomes inevitable.

Qanun Aceh Number 12 of 2025 concerning Amendments to Qanun Aceh Number 6 of 2014 concerning the Jinayat Law presents the clash in real terms through two articles that regulate similar situations, namely sexual relations involving children, but with completely opposite legal

consequences. Article 33 regulates the jarimah of zina, which definitively requires the element of willingness of both parties as its constituent element (Article 1 number 26 of Qanun Number 6 of 2014). Because of this element, a child who has reached the age of 16 years but has not yet reached 18 years old, and has sexual intercourse on the basis of willingness, can be qualified as a perpetrator of adultery and threatened with uqubat, as seen in the precedent of Decision Number 02/JN/2018/MS. Mbo where the willingness of a 16-year-old child is also considered as a fulfilled element (Mansari et al., 2022). On the contrary, Article 50 paragraph (2) stipulates that sexual relations with children under the age of 16 are absolutely categorized as rape, without considering voluntariness at all, so that children in this category are positioned as victims who are entitled to restitution.

From these two articles, it appears that Qanun Number 12 of 2025 actually applies two different definitions of children in the same legal text. Children under 16 years old are treated according to the categorical principle of the Child Protection Law, which is absolute and unconditional protection. However, children aged 16 to under 18 years old, which is expressly still included in the definition of child according to Article 1 number 1 of Law Number 35 of 2014, can actually lose their protection status solely because of the existence of an element of willingness, and have the potential to be treated as a perpetrator, not as a child who must be protected. This inconsistency becomes even more problematic when it is associated with the accountability arrangement of the Child Perpetrator of Jarimah (APJ) who repeats the adulterous jarimah, which actually confirms that the category of "child as adultererers" is systematically maintained in the qanun, not just an editorial error (Fanisa et al., 2025).

The significance of this problem can be seen from data compiled by the Aceh Syar'iyah Court, which recorded an increase in adultery cases from 29 cases in 2022 to 38 cases in 2023, while rape cases also increased from 161 to 177 cases in the same period (AJNN, 2024; Antero Aceh, 2024). This data is not sorted by the age of the parties involved, so it is not known exactly how many of these adultery cases actually involve children aged 16 to under 18 who have the potential to be treated as perpetrators, not as protected children. The absence of disaggregated data actually reinforces the urgency of normative studies, because without textual clarity on the boundaries between "protected children" and "children who can be punished", judicial practices have the potential to produce disparities in treatment that cannot be systematically accounted for.

The fundamental problem behind this research is therefore not just a question of how much of a threat to children is imposed, but a matter of conceptual consistency in defining who is entitled to the status of "protected child". If voluntariness can be a reason to revoke the protection status of a child aged 16-17 years in the context of adultery, while the absence of willingness (coercion) in children under 16 years old is actually a reason to affirm this status, then Qanun Number 12 of 2025 basically makes voluntariness a criterion that determines whether or not the principle of child protection applies, a criterion that is not known at all in the Child Protection Law or the Children's Criminal Justice System Act, both of which treat all children under 18 years of age uniformly without voluntary conditions (Pujiani et al., 2022).

Several previous studies have touched on the issue of children in the practice of adultery, but no one has explicitly formulated it as a problem of inconsistency in legal protection. (Islam Negeri Ar-Raniry et al., 2024) examined the irregularities of decisions that do not impose uqubat for children even though the element of willingness is proven, but the study is limited to one decision before Qanun Number 12 of 2025 is issued and does not place its findings within the framework of overall regulatory consistency (Fanisa et al., 2025). Maps the categories of children dealing with the law after the change in qanun, but it is descriptive and has not tested whether the categories are consistent with each other (Mansari et al., 2022). View children as a mandate in a moral-theological framework, but do not touch on the textual contradiction between Article 33 and Article 50 paragraph (2) specifically. This gap is what this research aims to fill.

Qanun Aceh Number 12 of 2025 formally states its commitment to child protection, in fact applying inconsistent standards of protection for children under 18 years old, because it distinguishes between treatment solely based on the existence or absence of willingness, an element whose validity itself is questionable when relied on subjects who do not yet have full legal proficiency (rusyd). This

argument is tested through a systematic comparison between the provisions of Article 33 on adultery and Article 50 paragraph (2) on rape, associated with the definition of child in the Child Protection Law and the principle of the best interest of the child in the Convention on the Rights of the Child.

The novelty of this study lies in the placement of these inconsistencies as the main object of analysis, not just a side note of a broader study of juvenile criminal law reform. By placing two articles that regulate similar situations but produce opposite consequences as units of analysis, this study provides a more precise diagnosis than previous studies that tend to discuss child protection in the Jinayat Law in general without showing specifically which articles contradict each other and why.

In closing, it can be emphasized that exposing these inconsistencies is not just an academic exercise, but a necessary first step before this regulation can be thoroughly evaluated from the perspective of child protection. As long as Qanun Number 12 of 2025 has not explicitly stated that the status of a child as a protected subject cannot be aborted by willingness, seemingly progressive articles such as Article 50 paragraph (2) risk running side by side with articles that secretly maintain loopholes for children to be treated as perpetrators. This research is therefore directed to show emphatically that Qanun Aceh Number 12 of 2025 is inconsistent in providing protection for children, as a basis for normative improvement recommendations in the next part of the discussion.

METHODS

This study is a prescriptive normative legal research project employing a qualitative approach. It aims to examine the legal norms governing the offense of zina (illicit sexual intercourse) involving children under Aceh Qanun Number 12 of 2025, identify the legal issues therein, and formulate a reconstruction of the regulations capable of ensuring legal certainty and protection based on the principle of the best interests of the child. The study utilizes statutory, conceptual, case, and comparative approaches (Fajar & Achmad, 2017).

These approaches are employed to analyze the alignment of the regulations in Aceh Qanun Number 12 of 2025 with prevailing legislation, legal concepts, Mahkamah Syar'iyah (Sharia Court) judicial practices, and national legal provisions concerning child protection and the juvenile criminal justice system. The data sources for this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include Aceh Qanun Number 12 of 2025, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Child Protection, Law Number 1 of 2023 concerning the Criminal Code, and relevant Sharia Court (Mahkamah Syar'iyah) rulings. Secondary legal materials comprise books, scholarly journals, research findings, and expert opinions, while tertiary legal materials include legal dictionaries, encyclopedias, and other supporting reference sources (Moleong, 2014).

The processing of legal materials involves the stages of inventorying, classification, systematization, and analysis of all gathered materials. Subsequently, the legal materials are analyzed qualitatively using methods of legal interpretation, legal argumentation, and deductive reasoning to identify regulatory weaknesses, analyze their application in judicial practice, and formulate a regulatory reconstruction aligned with the principles of legal certainty and the best interests of the child.

RESULTS

Willingness as a Constitutive Element of Adultery: Testing Children's Legal Capacity to Give Consent

Voluntariness as a Doctrinal Dividing Line between Adultery and Rape

Definitively, Article 1 number 26 of Qanun Aceh Number 6 of 2014 formulates adultery as sexual intercourse outside a valid marital bond based on the mutual willingness (*rida*) of both parties, a formulation that is maintained in Qanun Aceh Number 12 of 2025. Within the Jinayat legal system, willingness is not merely a factual circumstance surrounding the act but constitutes an essential legal element that determines the legal qualification of the offence. When sexual intercourse occurs with

the free and voluntary consent of both parties, the conduct is classified as *jarimah zina*, thereby positioning each participant as a perpetrator (*dader*) who bears equal criminal responsibility and may be subjected to *uqubat*. Conversely, where consent is absent due to coercion, threats, deception, or exploitation of a victim's vulnerability, the legal qualification shifts from adultery to rape, with the victim recognized solely as a protected legal subject who cannot incur criminal liability (Nursiti et al., 2022). Thus, the concept of willingness functions as the principal normative boundary separating two offences that carry fundamentally different legal consequences.

Although this distinction is theoretically coherent in cases involving two legally competent adults, its application becomes significantly more problematic when one or both participants are children. In such circumstances, the legal issue extends beyond the factual question of whether the child appeared to consent to sexual intercourse. Instead, the decisive issue concerns whether a child's consent can possess legal validity in light of the child's evolving capacity, psychological maturity, and limited ability to appreciate the consequences of sexual activity. Contemporary child protection law generally presumes that children do not possess the same legal capacity as adults to provide valid consent in matters affecting their fundamental rights and welfare. Consequently, reliance on apparent willingness alone risks overlooking the inherent imbalance of power, maturity, and decision-making capacity that characterizes sexual relations involving children.

This normative tension exposes a fundamental weakness in the formulation adopted by Qanun Aceh Number 12 of 2025. By retaining willingness (*rida*) as the decisive element for distinguishing adultery from rape without providing a specific legal standard for assessing consent involving children, the Qanun creates uncertainty regarding the criminal status of minors who engage in consensual sexual intercourse. Such an approach potentially conflicts with the best interests of the child principle embodied in the Convention on the Rights of the Child, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 35 of 2014 concerning Child Protection, all of which recognize children primarily as rights holders requiring special legal protection. Consequently, the absence of a child-specific conception of legally valid consent may lead to inconsistent judicial interpretation, unequal application of the law, and the criminalization of children whose developmental vulnerability should instead warrant protection rather than punishment.

Judicial Precedents: Acknowledged Willingness, Questionable Accountability

Review of Decision Number 02/JN/2018/MS. Mbo, as analyzed by Mansari (Mansari et al., 2022), provides a sharp illustration of this dilemma. In the case, the panel of judges stated that the element of "against a child" had been proven because the victim was 16 years old, and also stated that the intercourse occurred on the basis of the willingness of both parties without coercion, so that normatively it meets the formula of adultery in Article 1 number 26. Nevertheless, uqubat is ultimately imposed only on adult male offenders, while the child is not subjected to any punishment, an inconsistency that the author of the article himself views as a juridical anomaly, given that the principle of adultery should require both parties to be sentenced to 'uqubat (Mansari et al., 2022). This precedent actually revealed a deeper problem in the court at that time de facto has acknowledged that the cruelty of a 16-year-old child cannot be treated on an equal basis with the will of an adult, although Qanun Number 6 of 2014 has not provided an explicit normative basis to justify such different treatment. In other words, judicial practice has first fumbled with a principle that has only gained a textual foothold after Qanun Number 12 of 2025 was issued.

The judicial reasoning in Decision Number 02/JN/2018/MS.Mbo, as examined by Mansari et al. (2022), provides a compelling illustration of the legal dilemma surrounding the application of adultery provisions to children. In this case, the panel of judges concluded that the element of "against a child" had been fulfilled because the victim was sixteen years old. At the same time, the court established that the sexual intercourse had occurred on the basis of the mutual willingness (*rida*) of both parties and without any element of coercion, thereby satisfying the normative definition of adultery under Article 1 paragraph (26) of Qanun Aceh Number 6 of 2014. From a purely textual perspective, this finding logically placed both participants within the legal construction of *jarimah zina*, which, according to the Qanun, should result in equal criminal responsibility and the imposition of *uqubat* upon both perpetrators.

Despite this legal characterization, the court ultimately imposed *uqubat* only on the adult male offender, while the sixteen-year-old girl was not subjected to any criminal sanction. Mansari et al. (2022) identify this outcome as a juridical anomaly because it departs from the principle of equal liability that underlies the offence of adultery. If mutual willingness constitutes the decisive element distinguishing adultery from rape, then both participants should theoretically bear identical legal consequences. The decision therefore reveals an inconsistency between the normative structure of the Qanun and its practical application. Rather than adhering strictly to the literal wording of the law, the judges exercised a form of substantive legal reasoning by differentiating the criminal responsibility of the adult offender from that of the child, even though the applicable legislation at the time did not expressly authorize such differentiation.

More fundamentally, this decision demonstrates that judicial practice had already recognized the limitations of treating a child's apparent willingness as legally equivalent to the consent of an adult. Although the court did not explicitly articulate the doctrine of the best interests of the child, its reasoning implicitly acknowledged that the developmental immaturity and legal vulnerability of a sixteen-year-old child justified different legal treatment despite the existence of factual consent. In this respect, the judiciary anticipated a principle that lacked an explicit normative foundation under Qanun Aceh Number 6 of 2014. The subsequent enactment of Qanun Aceh Number 12 of 2025 represents an attempt to respond to this normative gap; however, as will be demonstrated in this study, the new Qanun still fails to establish a comprehensive legal framework for assessing the validity of children's consent and for determining their criminal responsibility in cases of consensual sexual intercourse. Consequently, the inconsistency observed in Decision Number 02/JN/2018/MS.Mbo remains relevant and continues to expose unresolved tensions between legal certainty, child protection, and the application of Islamic criminal law in Aceh.

Age Gradation as a Limiting Instrument of Willingness in Qanun Number 12 of 2025

Qanun Number 12 of 2025 answers this gap through an age gradation that works as a legal limit on the validity of the will itself, not just the age limit for criminal responsibility. There are at least three schemes that can be identified from the results of synchronization of various available secondary sources. First, for sexual intercourse with a child under the age of 16, Article 50 paragraph (2) stipulates absolutely that the act is categorized as rape, without giving any room at all for the defense that the child "willing" the act. This provision basically establishes Irrebuttable presumption that children under 16 years of age do not have the legal capacity to give a lawful will, however factually "voluntary" the act may seem. Second, for intercourse between adults and children aged 16 to under 18 years with the existence of "willingness" as regulated in Article 33 declaring the child as a perpetrator and aggravating the threat to the adult perpetrator with uqubat hudud 100 lashes accumulated with additional ta'zir in the form of whipping or fines and imprisonment, in this case children aged 16-18 years are positioned not to obtain the right to restitution as victims based on Articles 51 and 51A. Third, the special arrangement regarding the accountability of Children of Adultery (APJ) who repeat the adultery indicates that the category of "child as adultererer" is maintained, but seems to be intended for a different context, namely when both parties to the adultery are both children (peer relations), not when one of the parties is an adult.(Mansari et al., 2022). This can be seen in the Syariah Court decision table involving children in the practice of adultery and rape.

Table 3. of Syar'iyah Court Decisions on Adultery Involving Children

Decision Number	Courts	Child Status	Amar's Summary/Considerations
02/JN/2018/MS. Mbo	MS Meulaboh	Child (16 years old) as a party to adultery with an adult perpetrator	The willingness is proven, but the judge does not impose uqubat on the child. Analyzed by Mansari et al. (2022) who concluded that children should be sentenced to uqubat hudud because they are 16 years old and proven to be voluntary; the reasons

			why the judge did not punish: the child was considered a victim, the prosecutor did not file charges against the child, and the judge's limited understanding of his authority asked the prosecutor for an explanation
8/JN/2024/MS. LSK.	MS Lhoksukun	Child (16 years old) as a party to adultery with an adult perpetrator	The defendant was sentenced to 100 lashes and 5 months in prison.
1/JN-Anak/2020/MS-Lsk	MS Lhoksukon, North Aceh	Children as perpetrators of adultery (Article 33 of Qanun No. 6/2014)	Sentenced to 1 year of coaching, not whipping uqubat, because he is still a minor (RRI Lhokseumawe, 2020)
[Defendant Khairul Insan bin Iskandar Hasyim]	MS Idi, East Aceh	Adult perpetrators commit adultery with children (Article 37 paragraph 1 of Qanun No. 6/2014)	Sentenced to uqubat hudud whipping 100 times + ta'zir whipping 5 times. Source: Directory of Supreme Court Decisions
1/JN. Anak/2024/MS. Bna	MS Banda Aceh	Children as perpetrators of jarimah liwath (not heterosexual adultery, but same-sex morality)	The judge conducts adaptive ijtihad: corporal punishment is transferred to LPKA coaching due to the status *of ghairu mukallaf* and the impact of exposure to pornography (Jurnal Justicia, 2026)
1/JN ANAK/2022/MS.Skm	MS Subulussalam	Children as perpetrators of rape (not adultery, but important comparators)	Analyzed by Trisiyah, Asy'ari, Efendi, & Hidayat (2023) on the judge's consideration of imposing uqubat on the perpetrator's child
2/JN/MS. Sus/2021	MS Subulussalam City	Children as victims of rape (adult perpetrators)	The perpetrator was sentenced to 160 months in prison; All evidence was returned to the victim

Data : Author's analysis of data (Mansari et al., 2022)

Two Definitions of Children in One Legal Text

Textual analysis of Qanun Aceh Number 12 of 2025 shows that this regulation factually operates two different definitions of child, even though they are both in the same legal text and regulate events that are substantially similar, namely sexual relations involving children. Article 50 paragraph (2) stipulates that sexual relations with children under the age of 16 are absolutely categorized as rape, without the requirement of proof of voluntariness at all (Supreme Court of the Republic of Indonesia, 2026). At this point, the definition of a child who uses qanun is fully consistent with the categorical principle of Article 1 number 1 of Law Number 35 of 2014: the status of a "protected child" is absolute and cannot be aborted by any factual circumstances, including the child's own willingness.

However, once the child passes the age of 16, the definition changes. Article 33 regulates the practice of adultery with the constitutive elements of the willingness of both parties (Article 1 number 26 of Qanun Number 6 of 2014), and does not contain exceptions for children aged 16 to under 18 years. As a result, children in this age range, which are expressly still covered by the definition of child according to the Child Protection Law, can be qualified as adulterers if the element of willingness is proven, as reflected in the precedent of Decision Number 02/JN/2018/MS. Mbo, where the willingness of a 16-year-old child is also considered as a fulfilled element in the judge's assessment (Mansari et al., 2022). Table 4 summarizes this comparison directly.

Table 4. Comparative Table of Legal Treatment of Children in Article 33 and Article 50 Paragraph (2) of Qanun Aceh Number 12 of 2025

Variabel	Article 50 Paragraph (2)-Child < 16 Years Old	Article 33-Children 16 to < 18 Years
Determinants	Irrelevant; Unwillingness is not considered	Willingness to be a constitutive element
Qualification of finger	Rape (absolutely)	Zina
Child status	Victims	Potential perpetrators
Consequences for children	Protected, right of restitution	Potentially threatened by uqubat
Conformity with Article 1 number 1 of Law 35/2014	Consistent	Inconsistency

Source: Synthesized by authors from the Supreme Court of the Republic of Indonesia (2026) and Mansari et al. (2022).

Willingness as an Unknown Criterion in the Child Protection Framework

The second finding shows that willingness, as a criterion that distinguishes the treatment in Table 1, is actually not a recognized or recognized criterion in the Indonesian child protection legal framework. Both Law No. 35 of 2014 and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System treat all individuals under the age of 18 as children in uniform, without opening up the possibility that the child's willingness or will can abort his or her protected status (Pujiani et al., 2022); (Dyah et al., 2025). The same principle is found in the Convention on the Rights of the Child (United Nations, 1989), which defines the child categorically without gradation of internal capacity for the purpose of protection from exploitation. Thus, Article 33 of Qanun Number 12 of 2025 includes a new variable, namely willingness, which has no equivalent or justification in the legal framework of child protection that is referenced in this qanun.

This finding is strengthened by the regulation regarding the accountability of the Child Perpetrator of Jarimah (APJ) who repeats the adulterous jarimah. This provision emphasizes that the category of "child as an adulterer" is not an intentional editorial negligence, but a category that is systematically maintained and even aggravated by the consequences of repetition. That is, the qanun consciously

maintains space for 16–18-year-olds to lose the status of "protected child" and move to "punished child", a status shift that depends entirely on one variable, namely willingness.

The above findings, taken together, show that Qanun Aceh Number 12 of 2025 applies different standards for child protection depending on the presence or absence of an element of willingness, a criterion that is not rooted in national or international child protection legal frameworks, systematically maintained through the provisions of the adultery APJ. However, if you look at several sharia court rulings regarding adultery committed by adults with children aged 16-18 years, the judge sentenced only one of them, while the child was only used as a consideration to determine whether the adultery was proven or not. This can be seen in the decision of the sharia court This finding is the basis for the central argument that will be elaborated in the next part of the discussion, namely that this qanun is inconsistent in providing protection for children.

The Dividing Point: The Child of the Adulterer versus the Child of the Victim of Rape

From the above synthesis, it can be formulated that Qanun Number 12 of 2025 actually no longer places "willingness" as a single concept that applies uniformly to all children, but as a concept whose validity is graded according to three variables: the absolute age of the child, the equality of the age of the partner, and the existence or absence of a power relationship. Table 3 below summarizes those differentiators as the core analytical contribution of this section.

Table 5. Matrix of Differentiation of Children of Adultery Perpetrators and Children of Rape Victims After Qanun Aceh Number 12 of 2025

Variabel	Child of Rape Victim (Absolute Victim)	Children as Parties to Adultery with Adults	Children as APJ Zina (Peer Relations)
Child's age	Under 16 years old	16 to under 18 years old	16 to under 18 years old
Couple status	Anyone (adult/child)	Adults	Fellow Children (APJ)
Legal status of voluntary	Not recognized at all (Article 50 paragraph 2)	It is factually acknowledged, but does not exempt adult offenders from severe 'uqubat (Article 34)	Recognized and become a constitutive element of adultery between APJs
Consequences for children	The victim has the right to restitution (Articles 51, 51A)	Tend to be positioned as a victim/protected party	Potentially sentenced to 'uqubat as APJ, with a one-third reduction for the first offense
Consequences for adult couples	Threatened with rape	Threatened with cumulative hudud + ta'zir (Article 34)	Irrelevant

Source: Synthesized by the author from the Supreme Court of the Republic of Indonesia (2026), the Buntok Religious Court (2026).

This matrix shows that "willingness" actually serves a dual function in the latest qanun: it is completely stripped of as a pretext for defense for adult perpetrators (a protective function for children), but it is retained as an element of accountability when both parties to the adultery are both children (punitive function for children). It is this dualism of function that, according to this study's analysis, requires further scrutiny because it has the potential to cause doctrinal inconsistencies.

Doctrinal Problems: The Ahliyyah Paradox in Children Aged 16–18

The most substantial finding of this analysis is the identification of a paradox of legal capacity (ahliyyah) inherent in children aged 16 to under 18 years. In classical Islamic criminal law theory, the

capacity to be burdened with the law (taklif) and the capacity to act legally (ahliyyatul ada') are built gradually through three markers: tamyiz (the ability to distinguish between good and bad, usually from the age of seven), puberty (biological maturity), and rusyd (maturity of reason and ability to manage one's own interests, which in many matters of muamalah are only considered perfect at a higher age than puberty) (Faiza et al., 2022). The provision of Qanun Number 12 of 2025 which limits the threat of uqubat for APJ to a maximum of one-third of the adult threat is basically an implicit recognition that a child aged 16–18 years, even though he has reached puberty, Not yet fully reached the RUSYD, so that his liability must be reduced. However, at the same time, the same qanun treats the child's willingness at that age range as a legitimate enough willingness to be a constitutive element of inter-APJ adultery, which means acknowledging that the child at that age has the full ability to understand and desire the consequences of sexual intercourse. These two premises are logically difficult to reconcile: how can a legal subject who is considered not yet fully capable of assuming full criminal responsibility (so that his uqubat is reduced by one-third), at the same time being considered capable enough to give legally valid sexual consent?

This condition is significantly different from the argument put forward by Ismanto et al. (2026), which highlight the inconsistency of the age of criminal responsibility for children across jurisdictions based on evidence of adolescent developmental neuroscience without touching on the issue of sexual desire specifically (Ismanto et al., 2026). This study found that in Aceh, the inconsistency is not only a matter of what is the right age for criminal accountability, but also a question of Different domains of proficiency are assessed differently implicitly: the ability to be convicted is considered not yet full (therefore reduced by a third), while the ability to consent to sexual relations is considered full (therefore willingness becomes a weighting element when repeating). Progressive Islamic criminal law arguments that emphasize that the absence of taklif on subjects who have not been rusyd should abort criminal responsibility in its entirety (Supreme Court Circular Letter Number 3 of 2023, 2023) Ideally, it should be applied consistently in the domain of sexual desire, not only in the domain of Uqubat threats.

Comparison with the Doctrine of the Age of Consent in Comparative Law

The above argument is strengthened by comparison with the doctrine of the age of consent that is prevalent in many modern legal systems. In this doctrine, a person under a certain age is considered legally unable to give valid sexual consent (void consent), regardless of his factual willingness, precisely to protect children from unequal power relations, manipulation, and economic exploitation (grooming). This principle is consistent with the spirit of the Convention on the Rights of the Child (United Nations, 1989) and General Comment No. 24 (UN Committee on the Rights of the Child, 2019), which defines a child uniformly as any individual under the age of 18 without an internal gradation of competence for the purpose of protection from sexual exploitation. Most jurisdictions that recognize the close-in-age exemption (popularly known as the "Romeo and Juliet clause") still require two cumulative conditions before a willingness can be considered, a reasonable age proximity between spouses (usually a difference of no more than two to three years) and the absence of a power of attorney relationship (Ismanto et al., 2026). This comparative framework strengthens the argument that the APJ scheme of inter-peer adultery in Qanun Number 12 of 2025 can philosophically be maintained as long as it is really limited to peer relations without significant age and power gaps, but is at risk of being abused if its application in the field is not accompanied by strict technical guidelines regarding these two conditions.

The risk of this abuse is not just a theoretical concern. The Supreme Court of the Republic of Indonesia itself reminded that the narrative of persuasion, manipulation, or material rewards often resembles transactions that appear consensual, even though it is substantively a form of exploitation of children who are in subordinate positions. This warning should apply not only to adult relationships that have been closed through Article 50 paragraph (2) and Article 34, but also to relationships between children who appear to be of the same age but actually hide power inequality, for example due to differences in socio-economic status, popularity, or peer pressure, all of which are not captured by age criteria alone.

The problem of ambiguity of norms in dealing with sexual relations involving children aged 16-18 years is not a single phenomenon in Aceh, but is also faced by various countries that integrate elements of Islamic law into their criminal law systems, albeit with different forms of settlement. The most striking similarity lies in the tension between the concept of willingness/puberty in classical jurisprudence and the need for formal child protection as seen in the case of Pakistan, which through the Offence of Zina Ordinance 1979 had defined the age of adulthood based on puberty, so that children who have reached puberty can be prosecuted for adultery instead of being positioned as victims(Abbasi, n.d.)

Recommendation: Layered Criteria for Assessing the Validity of Children's Willingness

Based on the above analysis, this study recommends the preparation of judicial technical guidelines that contain multi-layered test criteria for the Syar'iyah Court in assessing the validity of the child's willingness before qualifying an act as adultery between APJs, instead of rape in disguise. The recommended criteria include: first, verification of the absolute age of both parties to ensure that neither party is under 16 years of age, which automatically transfers the case to the rape regime without considering the will at all; second, the assessment of the age proximity between couples, with reasonable restrictions on the age difference to be categorized as equal peer relations; third, examination of indications of power relations, including but not limited to authority relations (teacher-student, coach-foster), economic inequality, or the pattern of gradual persuasion that is characteristic of grooming; and fourth, the involvement of the child forensic psychologist in the evidentiary process to assess whether the willpower that appears on the surface is really a product of the child's free will or the result of manipulation.

The application of these layered criteria will complement, not replace, the age gradation provisions that have been regulated by Qanun Number 12 of 2025, as well as close the interpretive loophole that allows exploitative relationships between children to be disguised as ordinary consensual adultery. Furthermore, this study recommends that the Supreme Court and the Aceh Syar'iyah Court consider periodic evaluations of the implementation of the APJ scheme of inter-peer adultery, with measurable indicators in the form of the proportion of cases that show indications of hidden power relations, in order to assess whether this category is still needed or should be directed entirely to the protection and coaching mechanism as in the spirit of the SPPA Law, without the frills of the status of "adulterers" that have the potential to stigmatize real children are also vulnerable to becoming victims.

DISCUSSION

The finding that Qanun Number 12 of 2025 maintains the structure of uqubat with a quantitative reduction of one-third, instead of a full shift to a rehabilitative paradigm, shows that child criminal law reform does not always run linearly towards a single global model that is considered ideal. Contrary to the common assumption that the direction of reform is always towards the total elimination of the retributive element, this study documents the moderated model of retribution as a hybrid path that deliberately maintains religious legitimacy while gradually expanding the space for child protection. These findings shift measures of reform success from a "retributive versus rehabilitative" dichotomy to a more realistic gradation spectrum for jurisdictions with a strong basis of religious legitimacy.

Disharmony identified in substantial, structural, and cultural dimensions is also qualitatively different from the issue of inter-institutional coordination that is commonly discussed in the study of restorative justice in the general judiciary(Dewi et al., 2025). In Aceh, the disharmony is a conflict between two legal regimes that both claim specificity on the same legal subject, so its resolution requires a political-legal decision on the hierarchy of norms, not just administrative improvements such as training or technical memorandums. The root of the problem is constitutional-authority, not purely administrative-technical.

The most substantial contribution of this study is the disclosure of the dual function of willingness: stripped as a defense for adult perpetrators (protective function), but it remains a ballast element in

adultery between peer children (punitive function), without explicit criteria in the qanun text separating the two functions. These findings go beyond the conventional treatment of voluntariness as a single legal fact that is sufficiently demonstrable, and affirm that its validity now depends on the relational context (absolute age, age equality, power relations). This dual function is related to the paradox of legal capacity (ahliyyah): children aged 16–18 years are considered not yet fully capable of being punished (hence uqubat is reduced by one-third), but are considered capable enough to give legally valid sexual consent. It is different from the cross-jurisdictional criminal liability age study which frames the issue as "what is the right age (Ismanto et al., 2026), this study shows that the problem is the domain of legal proficiency that is assessed inconsistently in the same regulation, so adjusting the age figure alone will not solve the incoherence.

Finally, the analytical framework constructed, namely a moderated retribution model, a child offender-victim differentiator matrix, and a layered criteria for willingness assessment, is portable and has the potential to be adapted to other jurisdictions that combine value-specific criminal law with a universal child protection framework. It is this generalizable character that distinguishes this study's contribution from previous studies, which tend to stop at location-specific technical recommendations without an analytical framework that is portable to other contexts.

CONCLUSION

This study concludes that the reform of child criminal liability under Qanun Aceh Number 12 of 2025 has not fundamentally transformed the treatment of children involved in *jarimah zina*. Instead, the Qanun adopts a moderated retributive model, whereby children aged 16–18 years are no longer automatically subjected to *uqubat* in cases involving adult offenders, yet they remain criminally liable in consensual sexual relations with their peers. Consequently, the reform does not fully align with the rehabilitative philosophy embodied in Indonesia's Juvenile Criminal Justice System. More importantly, the study identifies a structural inconsistency in the regulation of children's legal capacity (*ahliyyah*): children are regarded as insufficiently mature to bear criminal responsibility in one context, while simultaneously being presumed legally capable of giving valid sexual consent in another. This inconsistency creates legal uncertainty and weakens the realization of the best interests of the child as a guiding principle of child protection.

The principal finding of this study is that the concept of voluntariness (*rida*) performs a dual legal function within the offence of *jarimah zina*. In relationships between adults and children, voluntariness operates as a protective mechanism that excludes children from criminal punishment. However, in consensual relations between children, the same concept functions as a basis for attributing criminal liability, thereby producing a paradox in the application of legal capacity and criminal responsibility. These findings demonstrate that the coherence of criminal legislation should not be evaluated solely through its compatibility with external legal frameworks, but also through the internal consistency of the legal concepts upon which the regulation is constructed.

Conflict of Interest

All authors state that there is no conflict of interest.

Use of artificial intelligence (AI)

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