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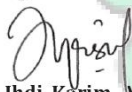
**Khilisyah Elvianda Br. Sembiring, et.al.**

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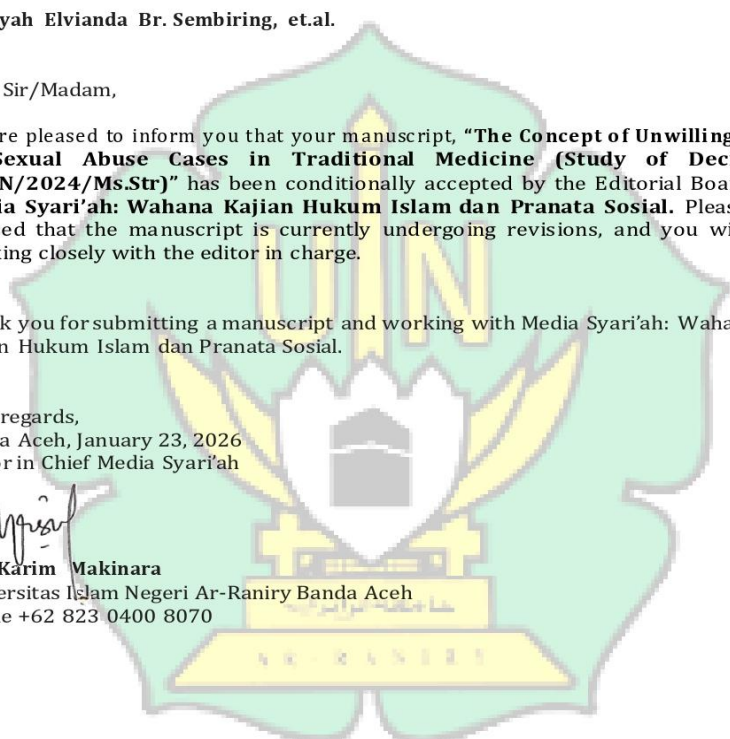
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**The Concept of Unwillingness in Sexual Abuse Cases in Traditional Medicine  
(Study of Decision 02/JN/2024/Ms.Str)**

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Received:

Accepted:

Published:

**Abstract**

Sexual harassment in traditional healing practices is a complex phenomenon, often entangled in relationships of trust, the perpetrator's authority, and the victim's vulnerability. This situation raises legal issues, particularly in assessing the victim's unwillingness. This study aims to analyze the victim's unwillingness as an element of the crime of sexual harassment in traditional healing practices, focusing on the judge's considerations in decision No. 02/JN/2024/Ms.Str of the Simpang Tiga Redelong Sharia Court. This study uses a normative juridical method with a decision study approach. Primary data in the form of court decisions are analyzed qualitatively and supported by secondary data including Aceh Qanun No. 6 of 2014 concerning Jinayat Law, victimology theory, and Islamic criminal law literature. This approach is used to examine how judges interpret the elements of sexual harassment crimes, particularly regarding the objective elements, subjective elements, and the meaning of victim unwillingness. The results of this study indicate that the objective element of sexual harassment crimes is fulfilled through the act of touching the victim's vital parts, while the subjective element is fulfilled through the perpetrator's sexual intent. Even though the victim voluntarily attended a traditional healing center, the judge considered that attendance did not necessarily indicate consent. The victim's non-consent is understood as the absence of explicit consent freely given, without coercion, psychological pressure, or manipulation of the power relationship between the perpetrator and the victim. The power relationship inherent in the perpetrator's position as a traditional healer is a significant factor in negating the element of the victim's consent. This study concludes that the victim's non-consent is an essential element in the crime of sexual harassment, which cannot be reduced to mere presence or apparent consent. These findings are expected to strengthen legal protection for victims and serve as a reference for judges in handling similar cases in the future.

Keywords: Non-consent, Criminal Procedure, Sexual Harassment, Traditional Medicine, Qanun Jinayat

### Abstract

Pelecehan seksual dalam praktik pengobatan tradisional merupakan fenomena yang kompleks, karena seringkali dibungkus oleh relasi kepercayaan, otoritas pelaku, serta kerentanan korban. Kondisi ini menimbulkan persoalan hukum, khususnya dalam menilai unsur ketidakrekaan korban. Penelitian ini bertujuan untuk menganalisis ketidakrekaan korban sebagai unsur tindak pidana pelecehan seksual dalam praktik pengobatan tradisional, dengan focus pada pertimbangan hakim dalam putusan Nomor 02/JN/2024/Ms.Str Mahkamah Syar'iyah Simpang Tiga Redelong. Penelitian ini menggunakan metode yuridis normative dengan pendekatan studi putusan. Data primer berupa putusan pengadilan yang dianalisis secara kualitatif dan didukung oleh data sekunder yang meliputi Qanun Aceh Nomor 6 tahun 2014 tentang Hukum Jinayat, teori victimology, serta literatur hukum pidana islam. Pendekatan ini digunakan untuk mengkaji bagaimana hakim menafsirkan unsur-unsur jarimah pelecehan seksual, khususnya terkait unsur objektif, unsur subjektif dan pemaknaan ketidakrekaan korban. Hasil penelitian ini menunjukkan bahwa unsur objektif jarimah pelecehan seksual terpenuhi telah terpenuhi melalui tindakan menyentuh bagian vital korban, sedangkan unsur subjektif terpenuhi melalui adanya niat seksual pelaku. Meskipun korban datang secara sukarela ke tempat pengobatan tradisional, hakim menilai bahwa kehadiran tersebut tidak serta-merta menunjukkan adanya kerelaan. Ketidakrekaan korban dipahami sebagai tidak adanya persetujuan eksplisit yang diberikan secara bebas, tanpa paksaan, tekanan psikologis, maupun manipulasi relasi kuasa antara pelaku dan korban. Relasi kuasa yang melekat pada posisi pelaku sebagai pengobat tradisional menjadi factor penting dalam meniadakan unsur kerelaan korban. Penelitian ini menyimpulkan bahwa ketidakrekaan korban merupakan unsur esensial dalam tindak pidana pelecehan seksual yang tidak dapat direduksi hanya pada aspek kehadiran atau persetujuan semu. Temuan ini diharapkan dapat memperkuat perlindungan hukum bagi korban serta menjadi rujukan bagi hakim dalam menangani perkara serupa dimasa mendatang.

**Keywords:** *Ketidakrekaan, Jarimah, Pelecehan Seksual, Pengobatan Tradisional, Qanun Jinayat*

### INTRODUCTION

The Judge of the Simpang Tiga Redelong Sharia Court ruled in his decision Number 02/JN/2024/Ms.Str that a defendant is legally and convincingly proven to have committed sexual harassment during the traditional medical process. According to the Judge's consideration in the decision, the defendant had fulfilled the elements of sexual harassment in accordance with article 1 paragraph (27) and was punished with article 46 of the Jinayat Law. However, the ruling leaves a vagueness that deserves further attention. Because, in fact, patients who come to undergo traditional medicine do so voluntarily without any coercion. In this case, the victim was even known to have come up to three times with her husband, and

the treatment process took place in an open place with the presence of the defendant's wife and the victim's husband. These facts raise questions about the fulfillment of subjective elements in the criminal act of sexual harassment, especially related to the element of coercion or involuntariness on the part of the victim as required in article 1 paragraph (27) of Qanun Jinayat.

Previous studies have shown that sexual crimes in traditional medicine practices in Indonesia are divided into three main patterns. First, sexual abuse under the guise of spiritual medicine (Aghief Dzulnasri, Mansyur, Mathius, & G Assegaf, 2023), such as abuse of patients (Ningsih, Roza, & Ahmad Tohar, 2023), even minors (Fatmawardi, 2017), by the perpetrator who takes advantage of the position as a healer. This case is generally subject to articles of obscenity in the Criminal Code and the Child Protection Law (Khovshov Zanuba Dalil, Asmawi, & Fathudin, 2024). Second, the abuse of traditional massage services as a cover for covert prostitution practices (Naseh Husein & Helvis, 2024; Oktarino, 2014), which is widely found in salons (Esa Dilaga & Erianjoni, 2025), massage parlor (Ahsan, 2019; Alib Widsyafitratul Fanani, 2021; Stuart Scott, 2024; Meka, Erika, & Soeprapto, 2012), or reflection (Arif Prasetyo, Adawiyah, Vania Avelya Martina Simanjuntak, Uly Dhea, & Elvina Cisevi Odela Girsang, 2025; Rain, 2023), and acted upon based on articles 296 and 506 of the Criminal Code as well as Regional Regulations on Public Order. Third, negligence of traditional medicine that leads to physical losses (Aurora Bare Mau, K. Medan, & Vitus Wilhelmus, 2025; Hasliani & Sri Rezeky Wulandari, 2023; Suwito, Nelda, & Zulfikar, 2020; Yusuf, Daeng M, Permata Karni, Astri Andhini, Kurniawati, & Milthree Saragih, 2023). Legal responsibility is imposed through articles 359-361 of the Criminal Code regarding forgetfulness. However, there have not been many studies that have highlighted in depth the aspect of fulfilling the subjective element, especially the unwillingness of the victim in the crime of sexual harassment. This is the focus of this research based on the case of the Simpang Tiga Redelong sharia court decision which shows ambiguity in assessing power relations, victim vulnerability, and forms of consent *non-verbal* in the context of traditional medicine.

Theory of judge's judgment (*Judicial Consideration*) underlying that the judge's decision is not only taken from the text of the law, but must also include the value of substantive justice, trial facts, transparent, systematic, argumentative legal interpretation, legal facts, norms, and relevant legal theories (Iftitah Isnantiana, 2017). The judicial commission explained that legal considerations are the "Crown of Judges" which reflects the principles of justice, certainty, and usefulness (Marzuki et al., 2024). However, it is also necessary to emphasize the importance of comprehensive judicial considerations, because unequal consideration of only certain aspects can cause injustice in the verdict (Nurhafifah & Rahmiati, 2015). Therefore, the context of a sexual harassment case with the concept of victim involuntariness is a crucial element that must be considered in the judge's consideration. Based on this, the formulation of the problem in this study is, first, how are the elements of sexual harassment in traditional medicine, and

second, how are the forms of the element of involuntariness in the decision Number 2/JN/2024/Ms.Str.

## DISCUSSION

### 1. Traditional Medicine, Sexual Abuse and Elements of Voluntariness

Traditional medicine is a whole range of knowledge, skills, and practices that are based on theories, beliefs and experiences that come from various cultures, both explainable and unexplainable. Used in Health maintenance as well as the prevention, diagnosis, repair or treatment of physical and mental illnesses (World Health Organization, 2013). In Islam, traditional medicine is understood as a form of non-medical treatment that comes from hereditary knowledge, relying on natural ingredients, spells, and prayers. In Islamic law, traditional medicine is allowed as long as it does not contain elements *Shirk*, *Bid'ah* or practice *khurafat*. The Qur'an and hadith provide the basis that every disease has a cure and that it is the basis for the justification of traditional medicine practices (Sonjaya, 2022). Treatment facilities are generally taken by a person who is sick or unwell by establishing treatment both medically and traditionally. Medical has a meaning related to medicine that can be accounted for and has been recognized by science in the field of medicine, while traditional medicine is a hereditary treatment and recognized by the community.

Based on the type of therapy, there are three traditional treatment methods, namely (World Health Organization, 2013): *herbal medicine*, using plants or plant extracts for medicine, such as herbal medicine and traditional Chinese medicine (TCM). *Manual Therapy*, Involving physical techniques such as massage and acupuncture (*chiropractic*). and *Ritual Healing*, Involves spiritual practices, prayers, or rituals for healing, such as traditional medicine of tribes in Africa or Latin America. However, traditional medicine in Islam can be categorized into three main forms (Sonjaya, 2022). First, herbal treatment, which is treatment that uses natural ingredients such as honey, *habbatussauda*, and plant herbs that are recommended in the hadith. Second, spiritual medicine, such as *ruqyah*, prayers *Syar'i*, and spells that do not contain *Shirk*. Third, cultural medicine, which is a healing practice based on local traditions or customs, as long as it does not contradict Islamic teachings. All three are recognized in Islamic law as long as they do not involve the practice of *Shirk*, *Superstition*, or violation of sharia norms and applicable positive laws.

Sexual harassment is a form of gender-based violence that is recognized by the *World Health Organization* (WHO) as a form of violation of women's human rights and a serious threat to physical and mental health. WHO defines sexual harassment as sexual acts or behaviors that are unwanted by the victim, whether physical or non-physical, that can cause fear, shame, humiliation, or threat. These forms of sexual harassment can be in the form of unauthorized body touching, sexually explicit comments or jokes, suggestive body movements, to non-verbal gestures or communications that contain sexual content (Organization, 2021). A similar meaning is also explained in the initial study of the level of sexual harassment in Aceh

that sexual harassment is any form of sexually charged behavior that is carried out without the consent of the victim and causes discomfort, humiliation, or threat (Bahri & Fajriani, 2015).

WHO classifies sexual harassment in various contexts such as the workplace, educational institutions, healthcare environments, and public spaces. Sexual harassment not only has an impact on the physical aspect, but can also cause psychological disorders such as depression, trauma, anxiety, and post-traumatic stress disorder (PTSD). WHO emphasizes that one of the main characteristics of sexual harassment is the imbalance in the power relationship between the perpetrator and the victim, as well as the lack of consent from the victim to the act (Organization, 2021). Based on the Aceh Regional Education Council, sexual harassment is categorized into four main forms, first, verbal, such as obscene speech, whistling. Second, non-verbal, in the form of body movements or harassing gazes. Third, physical, non-consensual bodily contact such as touching or touching sensitive parts. Fourth, psychological, which is in the form of sexual pressure or threats that affect the victim's mental state.

In moral deliction, willfulness is the boundary between legally valid acts and criminal acts. If the victim consents to the sexual act voluntarily, consciously, and not under duress, then the act cannot be punished (Stanley Simamora, 2023). However, the willingness given due to pressure, fear, and ignorance of the law is considered a legal defect. WHO defines "consent is agreement given freely and voluntary, with full understanding, and without any form of coercion" (Organization, 2021). Consent must be *reversible*, meaning that the victim has the right to withdraw his consent at any time. This confirms that silence does not mean consent, and that willingness is not only a matter of verbal action, but also of the accompanying emotional and psychological conditions. In a civil context (Agung setya Budi, 2023; Iqbal Sanjaya, 2022) and human rights (Alifa, 2022; Prsetiyo, 2024), willingness in general is a person's willingness to accept an action without any pressure, coercion or manipulation. However, in the legal context, especially sexual harassment, voluntariness must be understood firmly and actively because true voluntary consent requires full awareness, without structural pressure, and an equal situation between the parties involved, as raised in studies of Islamic law, human rights, and state regulations.

In modern victimology, the assessment of willingness cannot be made based solely on the external attitude of the victim (Fatin Maulida Rahma & Afifah, 2024). The victim often does not show explicit rejection because he is in a state of fear, shock, or is in a power relationship with the perpetrator. Therefore, willingness must be assessed in a social, psychological and structural context, not solely from the victim's expression. This is also supported by the theory of victimization, which states that requiring the victim to prove his or her rejection explicitly exacerbates the trauma (Sunarso, 2014). But in a progressive legal approach, legal understanding must go beyond the text and pay attention to the value of substantive justice (Laili & Rizki Fadhila, 2021). Willingness cannot be interpreted only formally, but must be seen from the social reality and complex relationships between

perpetrators and victims. Based on research in the context of buying and selling (Iqbal Sanjaya, 2022), Marriage (Agung setya Budi, 2023), to rehabilitation (Prsetiyo, 2024), willingness can be categorized into two, namely, first, explicit will, When a person expresses his or her consent directly through words or concrete actions. Both are implicit willingness, when consent is shown through passive attitudes or non-verbal gestures such as silence or non-refusal.

## 2. Elements of Sexual Abuse in Traditional Medicine

Sexual abuse in traditional medicine is an act that contains sexual content, is carried out without the consent of the victim, and takes place in the context of treatment services based on local traditions or cultures. These actions can be physical touch, sexually suggestive comments, or psychological manipulation that takes advantage of the patient's position of trust in the medic. In many cases, victims initially come voluntarily to seek medical services, but later become victims of abuse because the perpetrator inserts sexual acts outside of legitimate medical procedures. Articles that have been reviewed show that this situation often occurs because the healer holds authority or is considered to have "special abilities", so the victim tends to be reluctant or unable to refuse. In Indonesia's positive legal perspective, sexual harassment is regulated in the Criminal Code and strengthened by the provisions in Qanun Aceh Number 6 of 2014 which affirms the element of "contrary to the will of the victim" as an important element. Meanwhile, from the perspective of Islamic law, any form of action that degrades a person's honor and self-esteem, including sexual harassment. The voluntary element of coming for treatment is often used by the perpetrator as a justification, although legally and morally it does not negate the element of harassment if the act is carried out without the victim's will.

Based on literature reviews, sexual harassment can be categorized based on its form into three main aspects. First, the physical aspect, including the act of touching sensitive parts of the body, touching, or manipulating the body that is not relevant to the purpose of treatment. Second, the *verbal*, in the form of sexual remarks, seductions, or questions that cause discomfort. Third, the *non-verbal*/ psychological, such as body movements, gazes, or situations created by the perpetrator to build an unnatural closeness. Some studies also add aspects of power relations, namely the abuse of trust or the position of the medical authority to abuse (Ningsih et al., 2023). These aspects intersect, where physical actions are usually preceded or accompanied by verbal communication or non-verbal gestures that manipulate the victim. Understanding this category is important to identify the form of abuse as a whole, because not all victims experience abuse in physical form alone. Based on article 1 paragraph (27) of Qanun Jinayat Number 6 of 2014, the element of "contrary to the will of the victim" is the key to determining the occurrence of harassment. In Islamic law, any form of action that violates honor without clear permission from the party concerned is seen as an unlawful act and can be punished *ta'zir* according to the level of violation.

In the context of analyzing the elements of sexual harassment in traditional medicine, the aspect of the perpetrator's intention (*mens rea*) is crucial. The elements of sexual abuse in traditional medicine generally include several important components. First, there is a sexual element, either in the form of direct or symbolic actions, which can be identified from the acts, words, or symbols used by the perpetrator. Second, the victim's unwillingness, where the action is carried out without clear consent or with consent obtained through manipulation. Third, the absence of medical or medical relevance, means that the perpetrator's actions do not have a valid justification in traditional treatment methods. Fourth, abuse of power relations, where the perpetrator takes advantage of his status as a healer or respected figure to avoid the victim's rejection. Fifth, psychological or physical impact on the victim, such as shame, trauma, or health problems. These elements complement each other to distinguish sexual harassment from legitimate treatment in traditional contexts. This element is in line with the provisions of criminal law that distinguish between intentional acts and those that occur due to negligence. Qanun Jinayat underlines that acts done with the aim of satisfying sexual desires, even though they are wrapped up in traditional medicine reasons, still fall into the category of sexual harassment. The intention can be seen from intentional actions that are not relevant to the treatment procedure, such as touching sensitive body parts without medical reasons or valid rituals according to customs and religion.

In practice, sexual abuse in traditional medicine often occurs in environments that are socially considered safe, such as a treatment home or therapy room (Meka et al., 2012). Local cultures that place the healer in a high position often make the victim reluctant to resist or question the action he or she receives. In criminal law, this situation can be considered a form of abuse of position or position, as stipulated in articles that regulate the abuse of power or trust. Qanun Jinayat and the Consumer Protection Law both emphasize the importance of protecting weak or laypeople from exploitation. With enclosed room conditions, lack of third-party supervision, and lack of standard medical procedures increase the risk of sexual harassment. Some cases show that acts of sexual harassment are carried out in front of family members or other people, but wrapped up as part of the treatment process so that they are not immediately realized as a violation. This context makes identifying abuse more difficult, especially when the victim still trusts the healer or feels embarrassed to disclose the incident. Within the legal framework, these social and cultural conditions also affect the proof of the element of involuntariness in court.

Theoretically, sexual abuse in traditional medicine can be analyzed using the perspectives of victimology and criminology. Victimology highlights the vulnerability of victims due to power relations, information inequality, and cultural pressures (Sunarso, 2014). In criminology, this phenomenon can be seen as the abuse of positions of authority for sexual gain, which is often protected by the "normalization" of traditional medicine cultures. In some areas, traditional medicine is not only a medical alternative, but also part of respected

traditions and customs (Ningsih et al., 2023). This condition often makes the community reluctant to criticize or reject the actions of the perpetrators for fear of being considered against customs or tarnishing the family's good name. In the perspective of Islamic law, this kind of act constitutes a violation of honor (*ird*) in Maqashid Syariah (Muflih, 2013). Law Number 12 of 2022 concerning the crime of sexual violence emphasizes that the cultural context cannot be used as a justification for acts of harassment. This analysis confirms that understanding the elements of sexual abuse in traditional medicine is not enough to look at physical acts, but must also consider the social, cultural, and power relations contexts that surround them.

In the development of modern criminal law, the concept of involuntariness is no longer understood simply as the absence of verbal resistance or rejection from the victim. Willingness must be understood contextually in considering the psychological condition of the victim, the power relationship between the victim and the perpetrator, and the social and cultural situation surrounding the event (Safitri & Arifin, 2018). In the context of sexual crimes, many victims experience what is referred to as *frozen response*, that is a condition where the victim is unable to resist due to fear and confusion. Therefore, the absence of active rejection cannot automatically be interpreted as a form of consent. In addition, the concept of *abuse of power* in international criminal law is also relevant to explain the phenomenon of sexual harassment in traditional medical services (Eddyono & Astari, 2021). Abuse of power occurs when the perpetrator takes advantage of his position or status to obtain sexual advantage from the victim. In such a situation, the victim's consent becomes legally flawed because it is not given freely. This principle is in line with the views of the World Health Organization and UN Women which affirm that legitimate consent must be given without domination, manipulation, or pressure of any kind.

### 3. The Form of the Element of Involuntariness in Decision 02/JN/2024/Ms.Str

Based on the review of decision Number 2/JN/2024/Ms.Str, the Panel of Judges of the Simpang Tiga Redelong Sharia Court determined that the elements of sexual harassment have been met. This element refers to article 1 paragraph (27) and is punished according to article 46 of Qanun Aceh Number 6 of 2014. The defendant was proven to have touched the victim's body parts for no reason justified by the sharia, even though it was done in the context of traditional medicine. The judge considered that this action met the objective element (*Actus Reus*) in the form of sexual acts, the subjective element (*Mens Rea*) in the form of disguised sexual intentions, and the abuse of power relations as a traditional medicine. The element of involuntariness is the difference between treatment and abuse, even though the victim comes voluntarily with her husband. Initial willingness to seek treatment does not automatically mean willingness to all actions that occur, so the victim's objection during the incident is considered a valid refusal. These findings are in line with victimology which emphasizes that power relations and social context can mask forms of victim's unwillingness in seemingly voluntary situations.

Based on the analysis of the elements of sexual harassment, it can be seen that the objective element in the form of physical acts by touching the victim's vital organs has been proven through witness statements and *visum*. While the subjective element, namely the existence of malicious intentions (*mens rea*) and the sexual intent of the perpetrator, evidenced by repeated patterns of actions and victim testimonies. This is also strengthened by the element of willingness that is the dividing line between medical action and harassment. Then, in the context of traditional medicine, aspects such as an open practice room, the presence of the victim's partner, and the patient's initial willingness to undergo therapy are part of the reason for doubts in fulfilling the element of *jarimah*. This study is in line with the theory of Satjipto Rahardjo that the law should not be purely textual, but also pay attention to the social context and substantive justice (Laili & Rizki Fadhila, 2021). However, the assessment of subjective and objective elements becomes complex because there is often no clear separation between medical and non-media actions.

The objective element, such as physical contact with the victim's body, has been fulfilled in this case. However, in many cases of traditional medicine, proof of sexual intent (*mens rea*) is a challenge in itself. In this verdict, the judge argued that the defendant had sexual intent because he touched the victim's sensitive area without any indication of a clear medical need. This analysis is in line with the theory of victimology and the doctrine *News Reus* in the criminal law which states that criminal offenses must be proven from two aspects, namely acts and intentions. Previous research has also highlighted how in unequal relationships, involuntariness can be disguised under the guise of healing or power relations (Prsetiyo, 2024). The findings of the decision document show the fulfillment of the following elements:

1. Elements of sexual acts  
The defendant made direct contact with the victim's genitals, which is included in the definition of sexual acts according to Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat.
2. The element of involuntariness  
The victim did not give consent explicitly or implicitly. In fact, the victim expressed his objection in his testimony.
3. Elements of malicious intent (*mens rea*)  
The judge considered that there was a covert sexual purpose, because the act did not have a clear medical relevance in the treatment process.
4. Elements of abuse of position or power relations  
The defendant took advantage of his status as a traditional healer, which in practice had a power relationship with the patient.

This fact occurs in the context of the Acehnese people who still believe in traditional medicine practices as an alternative to healing. In indigenous peoples, traditional medicine often has a high social position and is believed to be able to cure non-medical diseases such as

spiritual disorders. This creates an unequal relationship between patients and physicians. In this case, the victim came voluntarily with her husband, indicating that initially there was no element of coercion. However, when the medical practice took place, there was a deviant act by the defendant. In such conditions, the element of victim involuntariness is a crucial aspect in distinguishing between treatment therapy and acts of harassment. This context makes it clear how distrust of traditional medicine can be manipulated by perpetrators to commit acts of abuse (Suparman & Laila, 2023).

#### 4. Interpretation of the Element of Involuntariness in Decision Number 02/JN/2024/Ms.Str

The interpretation of the element of the victim's unwillingness in decision Number 02/JN/2024/Ms.Str shows that the panel of judges did not place voluntariness as a formalistic concept. The judge did not necessarily conclude that there was a willingness just because the victim came voluntarily to the traditional medicine place and followed the treatment process from the beginning. On the contrary, the judge assessed that the willingness must be directly related to the type of action carried out and the context of the relationship between the perpetrator and the victim. This approach reflects the understanding that consent is not comprehensive, but rather limited to a specific goal, i.e. treatment, not to actions that go beyond those limits. Later in his deliberations, the judge implicitly distinguishes between consent to the treatment process and consent to sexual touching. Even if the victim is present voluntarily, such attendance can only be interpreted as prior consent to seek treatment, not as consent to the act of touching a vital body part that has no medical relevance. Thus, the judge emphasized that the element of involuntariness is still fulfilled when the perpetrator commits an act that is outside the scope of the victim's initial consent.

In the judge's opinion, the element of sexual acts includes any act of touching, groping, or making physical contact with a certain area of the body that is considered sexually sensitive, without a justified reason under sharia or law. In this case, the defendant was proven to have made direct contact with the victim's genitals during the traditional treatment process. Although traditional medicine may involve physical contact, such touching must have a clear medical or therapeutic purpose. The facts of the trial show that the defendant's actions have no relevance to reasonable healing methods, but rather lead to sexual behavior. This is strengthened by witness statements and the results of the autopsy which showed physical contact in the victim's genital area. Thus, the element of sexual acts in article 1 paragraph (27) of Qanun Jinayah has been fulfilled, because the acts committed have a sexual content and are not in accordance with legal norms of treatment, both legally positive, Islamic and customary.

Based on the facts of the trial, the victim came to the defendant's house three times, including with her husband, and the treatment was carried out in an open room. At first glance, this can be interpreted as the victim's willingness to receive therapy. However, according to victimology, legitimate willpower must be free from the influence of power

relations, manipulation, or deception. In this context, the defendant's status as a traditional healer and respected community figure creates an imbalance in relationships, where the victim is in a position of trust and dependence. This makes the approval given vulnerable to exploitation (Alfani, 2020). In Islamic law, the principle of *Ridha* requires that consent be given sincerely without any element of fraud or actions that are contrary to the original purpose of the interaction. The fact that the defendant touched the victim's genitals without medical relevance cancels out the meaning of *Ridha*, so that the element of involuntariness is substantively fulfilled even though the victim does not make physical resistance.

In Qanun Jinayat, the objective element of sexual harassment is reflected in the presence of physical acts/communication with sexual nuances "*Against the will of the victim*"; This is explicitly contained in the definition of article 1 paragraph (27) of the Qanun Jinayat and is criminally threatened in article 46 (Section "Sexual Harassment"). This means that touching sensitive parts that are not relevant to the needs of therapy is *News Reus*, regardless of the setting of the practice room. The subjective element concerns inner attitude/intention: whether the action is carried out with awareness and a sexual purpose (*mens rea*). The judgment can be drawn from the mode, the area of the body touched, the frequency, and the absence of adequate medical/spiritual justification. The national framework strengthens this, Law Number 12 of 2012 concerning the Crime of Sexual Violence affirms the prohibition of various forms of violence/sexual harassment and places consent (*consent*) that is valid as a distinguishing boundary, so that "coming for treatment" does not automatically whiten all forms of contact (Jaya Hairi & Latifah, 2023). Thus, a combination of actions that are not relevant to therapy plus indications of sexual purpose usually meet both elements.

In the perspective of criminal law, voluntariness means consent that is given freely, consciously, and without pressure, either explicitly or implicitly. This consent is only valid if it is given with a full understanding of the consequences of the action to be taken. In contrast, involuntariness refers to a condition in which the victim does not give consent, either through verbal rejection, gestures of rejection, or when consent is given under pressure, threats or manipulation (Alifa, 2022). In the context of victimology, willingness cannot be assumed just because the victim was voluntarily present at the scene. Power relations, trust in perpetrators, and socio-cultural situations can blur the line between willing and unwilling. Therefore, in the case of traditional medicine, involuntariness must be analyzed by considering the context of the physician-patient relationship, where the position of the perpetrator's authority often limits the victim's ability to refuse expressly even if present voluntarily.

In victimology, willingness is seen as a legitimate element only if the victim has the full capacity to make free decisions without any manipulation or domination of other parties. Unequal power relations, such as between traditional medicine and patients, can make consent pseudo- (*Pseudo-consent*), where the victim seems to agree outwardly but inwardly rejects (Marlina, 2019). Meanwhile, Islamic law affirms the principle of *Düsseldorf* as a

condition of *muthlak* in interactions, including those involving one's body (Muflih, 2013). *Düsseldorf* must be born from a heart that is free from coercion, deception or moral pressure. The Qur'an and Hadith reject any form of use of position or belief to obtain misleading approval. Thus, both from the perspective of victimology and Islamic law, unwillingness is measured not only by explicit refusal, but also by the existence or absence of the true freedom of the victim to accept or reject the act.

The argument that patients "come voluntarily" is often misused to infer consent (*consent*) thoroughly. Normatively and criminologically, it is wrong. Valid consent must be voluntary, specific, conscious, and withdrawable at any time, not a blank check for all subsequent actions. In traditional healing services, there is a power relationship: the patient is in a sick/distressed position, while the healer holds symbolic authority/expertise. The international literature on the prevention of sexual violence emphasizes that exploitation/harassment is rooted in power inequality, so that "willingness" can become pseudo-or distorted, for example due to the pressure of norms, suggestions or fear (CAPSEAH Organization, n.d.). SEAH protection principles (*Sexual exploitation, Abuse, and Harassment*) and guide *UN Women* affirming that consent must be firm and unambiguous, the unequal situation of power weakens its validity (WOMEN, 2018). Therefore, the fact of "voluntarily attending" does not justify intimate contact that is not relevant to the therapy or is carried out without specific consent for the action.

In Indonesia, traditional health services have regulatory legitimacy. Government Regulation No. 103 of 2014 and Minister of Health Regulation No. 15 of 2018 require safe, beneficial, documented practices, and respect for client rights, including adequate information and consent to interventions. This standard is important because in a culture that places high trust in traditional healers, patients tend to be obedient and have difficulty refusing, so *informed consent* must be rigorously tested: whether the patient is given an explanation of what to touch, why, the alternatives, and that he or she has the right to refuse. In addition, the public/open of the practice room or the presence of a third party does not automatically negate harassment. The key remains in the relevance of the action to therapy and a firm willingness. If the action deviates from the proper procedure according to the Minister of Health, let alone targeting sensitive areas without clinical needs, then the indicators of unwillingness and abuse of power are strengthened, even if the patient comes alone.

## CONCLUSION

The most important results of this study show that the concept of involuntariness in the context of sexual abuse in traditional medicine practice is not as simple as the difference between agreeing or disagreeing. Without this research, the crucial aspect of the power relationship between traditional medicine and patients would not be explored in depth. Decision Number 2/JN/2024/Ms.Str shows that even though the victim comes voluntarily

for therapy, unwillingness still arises when there is contact with sensitive body areas that are not relevant to the healing process. The fact that the victim was even present with her husband shows that socially the victim was not in a state of coercion, but the law still considered the act to be harassment because there was no explicit consent. This study reveals that social relations, belief positions, and cultural context of the Acehnese people play a major role in influencing the interpretation of the element of involuntariness, this has rarely been reviewed in previous studies.

## BIBLIOGRAPHY

- Aghief Dzulnasri, M., Mansyur, M., Mathius, D., & G Assegaf, S. Z. (2023). LAPORAN KASUS: Pemeriksaan Forensik Pada Kasus Asusila Berupa Pemeriksaan Berkedok Pengobatan Spiritual. *ARMADA: Jurnal Penelitian Multidisiplin*, 1(10), 1217-1224. <https://doi.org/https://doi.org/10.55681/armada.v1i10.898>
- Agung setya Budi, A. (2023). Kawin Paksa Dalam Perspektif Hukum Islam dan Konteks Kajian Hak Asasi Manusia. *Jurnal Dunia Ilmu Hukum*, 1(2).
- Ahsan, Z. (2019). *Penegakan hukum prostitusi terselubung terhadap panti pijat refleksi di Kecamatan Cibinong*. Universitas Islam Negeri Syarif Hidayatullah Jakarta.
- Alfani. (2020). *Perlindungan Korban dalam Sistem Hukum Indonesia*. Bandung: Refika Aditama.
- Alib Widsyafitratul Fanani, M. (2021). *Penyalahgunaan Panti Pijat Sebagai Sarana Prostitusi Terselubung : studi di Kecamatan Kepanjen-Kabupaten Malang*. Universitas Brawijaya.
- Alifa, F. (2022). PENAFSIRAN “PERSETUJUAN KORBAN” PADA CAKUPAN BENTUK KEKERASAN SEKSUAL DALAM PERMENDIKBUDRISTEK (Kajian Pasal 5 Nomor 30 Tahun 2021). Universitas Islam Negeri Ar-Raniry, Banda Aceh.
- Arif Prasetyo, M., Adawiyah, R., Vania Avelya Martina Simanjuntak, M., Uly Dhea, A., & Elvina Cisevi Odela Girsang, N. (2025). ANALISIS HUKUM PENYALAHGUNAAN PIJAT REFLEKSI SEBAGAI PROSTITUSI TERSELUBUNG BERDASARKAN PERDA KOTA MEDAN NO.6/2003. *Jurnal Kertha Semaya*, 1(7), 1366-1374. <https://doi.org/https://doi.org/10.24843/KS.2025.v13.i07.p04>.
- Aurora Bare Mau, C., K. Medan, K., & Vitus Wilhelmus, B. (2025). Pertanggungjawaban Pidana Terkait Kelalaian Pengobatan Tradisional Pada Suku Kemak di Kampung Sadi Kabupaten Belu Dalam Perspektif Hukum Positif Indonesia. *Desentralisasi: Jurnal Hukum, Kebijakan Publik, Dan Pemerintahan*, 2(1). <https://doi.org/https://doi.org/10.62383/desentralisasi.v2i1.394>
- Bahri, S., & Fajriani. (2015). SUATU KAJIAN AWAL TERHADAP TINGKAT PELECEHAN SEKSUAL DI ACEH. *Jurnal Pencerahan Majelis Pendidikan Daerah Aceh*, 9(1).
- CAPSEAH Organization. (n.d.). A Common Approach to Protection from Sexual

- Exploitation, Abuse and Harassment. Retrieved from <https://capeah.safeguardingsupporthub.org/common-approach?utm>
- Eddyono, R., & Astari, E. (2021). *Kejahatan Seksual: Teori dan Praktik Penegakan Hukum*. Yogyakarta: Pustaka Pelajar.
- Esa Dilaga, W., & Erianjoni, E. (2025). Motif Pengguna Jasa Prostitusi Terselubung di Salon Kota Payakumbuh. *Jurnal Perspektif: Jurnal Kajian Sosiologi Dan Pendidikan*, 8(2), 212–218. <https://doi.org/https://doi.org/10.24036/perspektif.v8i2.1024>
- Fatin Maulida Rahma, S., & Afifah, H. (2024). Legal Protection for Victims of Marital Rape from the Perspective of Victimology (Study of Bantul District Court Decisions Number 126/Pid.Sus/2023/PN.Btl). *Journal of Public Representative and Society Provision*, 4(3), 141–150.
- Fatmawardi, N. (2017). *KAJIAN YURIDIS PUTUSAN PENGADILAN KASUS PENCABULAN TERHADAP ANAK DITEMPAT PENGOBATAN TRADISIONAL/ALTERNATIF DI KABUPATEN BANDUNG DIHUBUNGKAN DENGAN UU NO 35 TAHUN 2014 TENTANG PERLINDUNGAN ANAK*. Universitas Pasundan.
- Hasliani, H., & Sri Rezeky Wulandari, A. (2023). Analisis Yuridis Dalam Perlindungan Hukum Bagi Pasien Layanan dan Pengobatan Kesehatan Tradisional. *Jurnal Gema Keadilan*, 10(1).
- Iftitah Isnantiana, N. (2017). Legal Reasoning Hakim dalam Pengambilan Putusan Perkara di Pengadilan. *ISLAMADINA: Jurnal Pemikiran Islam*, XVIII(2), 41–56.
- Iqbal Sanjaya, M. (2022). KERELAAN DALAM TRANSAKSI JUAL BELI MENURUT TEKS AYAT DAN HADIS AHKAM JUAL BELI (TELAAH YURIDIS DAN SOSIOLOGIS) . *SENTRI: Jurnal Riset Ilmiah*, 1(2).
- Jaya Hairi, P., & Latifah, M. (2023). Implementasi Undang- Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. *Pusat Analisis Keparlemenan Badan Keahlian Sekretariat Jenderal DPR RI*, 14(2).
- Jenita Tesalonika Tundoong, N. (2024). PROSTITUSI TERSELUBUNG DALAM TRANSAKSI JASA PIJAT MELALUI FACEBOOK. *Jurnal Fakultas Hukum UNSRAT Lex Privatum*, 13(5).
- Khovshov Zanuba Dalil, A., Asmawi, & Fathudin. (2024). Problematika Pembuktian Pada Kasus Pelecehan Seksual Dalam Perspektif KUHP dan Fiqh Jinayah. *MAVISHA: Law and Society Journal*. <https://doi.org/https://ejournalhub.org/index.php/mavisha>
- Laili, A., & Rizki Fadhila, A. (2021). Teori Hukum Progresif (Prof. Dr. Satjipto Rahardjo, S.H.). *SINDA: Comprehensive Journal Of Islamic Social Studies*, 1(1). <https://doi.org/https://doi.org/10.28926/sinda.v1i1.966>
- Marlina. (2019). *Victimologi: Aspek Teori dan Praktik dalam Sistem Peradilan Pidana di Indonesia*.
- Media Syari'ah*, Vol..., No..., 20..

Jakarta: Kencana.

Marzuki, S., Shidarta, Dwi Harijanti, S., Imran, E.J Sumampouw, N., Lubabin Nuqul, F., ... Suprihatiningsih. (2024). *BUNGA RAMPAI: MEMOTRET PERTIMBANGAN PUTUSAN HAKIM DARI BERBAGAI PERSPEKTIF*. (F. Rahma Hidayati, Ed.) (Cetakan Pe). Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia.

Maulana, R. (2023). *PERSEPSI MASYARAKAT TERHADAP TEMPAT REFLEKSI PASCAKASUS PELECEHAN SEKSUAL DI PEUNAYONG*. Universitas Islam Negeri Ar-Raniry.

Meka, Erika, C., & Soeprapto. (2012). *Relasasi Kekuasaan dan Aliran Uang Dalam Bisnis Panti Pijat (Studi Fenomenologis Pada Beberapa Panti Pijat yang melakukan Praktek Prostitusi dikecamatan Oebobo, Kota Kupang)*. Universitas Gadjah Mada.

Muflih, A. (2013). *Pengobatan Dalam Islam*. Universitas Islam Negeri Alauddin Makassar.

Naseh Husein, M., & Helvis, H. (2024). Penegakan Hukum Pidana terhadap Praktek Prostitusi Terselubung pada Panti Pijat Tradisional di Indonesia. *Federalisme: Jurnal Kajian Hukum Dan Ilmu Komunikasi*, 1(3).  
<https://doi.org/https://doi.org/10.62383/federalisme.v1i3.54>

Ningsih, E., Roza, E., & Ahmad Tohar, A. (2023). Budaya Perdukunan Dalam Shamanic Psychotherapy (Kajian Terhadap Pengobatan Tradisional Melayu). *Jurnal Kesehatan Dan Teknologi Medis*, 6(3).  
<https://doi.org/https://journalpedia.com/1/index.php/jktm/index>

Nurhafifah, & Rahmiati. (2015). Pertimbangan Hakim dalam Penjatuhan Pidana Terkait Hal yang Memberatkan dan Meringankan Putusan. *Kanun Jurnal Ilmu Hukum*, XVII(66), 341–362.

Oktarino, A. (2014). *Penyalahgunaan Izin Panti Pijat Sebagai tempat Praktek Prostitusi Terselubung di Kota Palembang*. Universitas Sriwijaya.

Organization, W. H. (2021). *Violence Against Women Prevalence Estimates 2018: global and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women*. Geneva.

Prsetiyo, A. (2024). *KETERPAKSAAN DAN KERELAAN KORBAN PENYALAHGUNAAN NARKOBA DALAM MENJALANI TERAPI REHABILITASI DI IPWL YPI NURUL ICHSAN AL ISLAMI PURBALINGGA*. Universitas Islam Negeri PROF. K. H Saifuddin Zuhri, Purwokerto.

Safitri, N., & Arifin, B. (2018). *Hukum Pidana Kontemporer di Indonesia: Pendekatan Analitis untuk Penegakan dan Kebijakan*. Jakarta: Prenadamedia Group.

Sonjaya, S. (2022). Pengobatan Tradisional dalam Perspektif Hukum Islam dan Peraturan Perundang-undangan tentang Kesehatan di Indonesia. *Jurnal Pemuliaan Hukum*, 5(1).

- Stanley Simamora, A. (2023). Pengaturan Pidana Tindak Pidana Kekerasan Seksual dalam Hukum Positif di Indonesia . *Locus: Jurnal Konsep Ilmu Hukum*, 3(4).
- Sunarso, S. (2014). *Viktimologi Dalam Sistem Peradilan Pidana*. (Tarmizi & Suryani, Eds.) (Cetakan Kedua). Jakarta Timur: SINAR GRAFIKA.
- Suparman, R., & Laila, N. (2023). *Hukum Pidana Bagian Umum dan Pidana Khusus*. Jakarta: RAJAWALI PERS.
- Suwito, C., Nelda, F., & Zulfikar, W. (2020). PERTANGGUNGJAWABAN HUKUM TERHADAP PENGOBAT TRADISIONAL AKIBAT KELALAIANNYA DALAM PELAYANAN PASIEN. *Gagasan Hukum*, 2(2).
- WOMEN, U. (2018). *Guidance Note on Campus Violence Prevention and Response: Ending Violence Against Women Section UN Women*. New York: UN WOMEN. Retrieved from [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/Campus-violence\\_note\\_guiding\\_principles.pdf?utm](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/Campus-violence_note_guiding_principles.pdf?utm)
- World Health Organization. (2013). *WHO Traditional Medicine Strategy 2014- 2023*. China.
- Yusuf, Daeng M, M., Permata Karni, D., Astri Andhini, R., Kurniawati, S., & Milthree Saragih, G. (2023). Tinjauan Yuridis Terhadap Pelayanan Kesehatan Tradisional Dan Pertanggung Jawaban Hukum Terkait. *INNOVATIVE: Journal Of Social Science Research*, 3(2). <https://doi.org/https://j-innovative.org/index.php/Innovative>