

# Comparison of Islamic Criminal Law and National Law Regarding the Criminal Act of Rape Against Minors

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| Info Artikel   | Abstract   |
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| <p><b>Article History</b><br/>           Received : 2022-07-03<br/>           Revised: 2022-07-18<br/>           Published: 2022-07-30</p> <p><b>Keywords:</b><br/>           Rape Against Minors,<br/>           Islamic Criminal Law,<br/>           National Law, Victim<br/>           Protection, Maqashid<br/>           Al-Shari'ah</p> | <p><i>This study examines the comparison between Islamic criminal law and Indonesian national law regarding the crime of rape against minors, focusing on legal regulation, sanctions, and victim protection. The increasing number of sexual violence cases against children in Indonesia highlights a significant gap between existing legal frameworks and their practical implementation. Therefore, this research aims to analyze how both legal systems regulate such crimes, to identify their similarities and differences, and to assess the relevance of Islamic criminal law in strengthening national law. This research employs a normative-empirical legal approach by analyzing statutory regulations, Islamic legal sources (Qur'an, Hadith, and classical as well as contemporary fiqh), and secondary data from official reports and relevant scholarly studies. The data are analyzed qualitatively using descriptive and comparative methods. The findings reveal that Indonesian national law provides explicit and comprehensive regulations, including strict criminal sanctions and mechanisms for victim protection, such as restitution and rehabilitation. However, its implementation remains suboptimal due to structural and cultural challenges. In contrast, Islamic criminal law emphasizes the protection of human dignity and strictly punishes perpetrators while exempting victims from liability, incorporating both punitive and restorative elements. In conclusion, both legal systems recognize rape against minors as a serious crime, yet differ in their legal construction and application. Islamic legal principles, particularly maqashid al-shari'ah, offer significant contributions in enhancing a more just, victim-oriented, and holistic legal framework within the national system.</i></p> |

## I. INTRODUCTION

The crime of rape against minors is one of the most serious forms of sexual violence and has multidimensional impacts, including psychological, social, and legal ones. This phenomenon not only reflects a moral crisis in society but also demonstrates weaknesses in the legal protection system for vulnerable groups. In recent years, cases of sexual violence against children in Indonesia have increased significantly. Data from the Ministry of Women's Empowerment and Child Protection shows that sexual violence is one of the most prevalent forms of violence experienced by children, with figures continuing to rise annually (KemenPPPA, 2022). This is further supported by a report by the Indonesian Child Protection Commission, which confirms that children are often victims of rape perpetrated by those closest to them, such as family or their own social circle (KPAI, 2023).

This phenomenon demonstrates a gap between applicable legal norms and the empirical reality on the ground. Normatively, Indonesia already has various regulations governing child protection, such as Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Both regulations substantially address criminal sanctions, victim protection mechanisms, and the state's responsibility to guarantee children's rights. However, various studies show that the implementation of these regulations still faces obstacles, including low victim reporting, difficulties in providing evidence, and the potential for re-victimization in the judicial process (Melysa Wahab Kilo, 2025; Abdul Munir & Rahmat Amin Siregar, 2024). In addition, the disparity in judges' decisions in cases of child rape also shows that the consistency of law enforcement is not yet optimal (Arifin, 2019).

On the other hand, from the perspective of Islamic criminal law, rape (al-ightishab) is seen as a very disgraceful act and a serious violation of human honor. Islamic law places protection of the soul (hifz al-nafs) and honor (hifz al-'irdh) as part of the fundamental maqashid al-shari'ah (Al-Syatibi, 2004). In the Qur'an it is stated:

وَلَا تَقْرُبُوا الزَّوَاجَ ۖ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

*"And do not approach adultery; indeed adultery is a cruel act and a bad path"*(QS. Al-Isra: 32).

This prohibition encompasses not only adultery in the narrow sense, but also all forms of sexual violation, including forced sexual intercourse that harms the victim. The hadith of the Prophet Muhammad (peace be upon him) also emphasizes:

لا ضرر ولا ضرار

*"You must not endanger yourself and you must not endanger others"* (HR. Ibn Majah).

This principle forms the basis for victim protection in Islamic law. Even in classical Islamic jurisprudence, Imam Malik, in his Al-Muwatta', explains that perpetrators of rape are not only subject to criminal punishment but are also required to provide compensation to the victim as a form of accountability (Malik, 2005). This view demonstrates that Islamic law focuses not only on punishing the perpetrator but also on rehabilitating the victim.

However, in the context of Indonesian national law, the values of Islamic criminal law have not been fully integrated into the positive legal system. Yet, as a country with a Muslim majority, these values have great potential to enrich the substance of national law, particularly in terms of victim protection. Furthermore, previous studies tend to discuss the issue of rape separately from Islamic law and national law. Huda (2018) emphasizes the normative aspects of Islamic criminal law, while Rahmawati (2020) focuses more on the effectiveness of national law. This indicates a research gap: the lack of an integrative and in-depth comparative study between the two legal systems, particularly in the context of rape of minors.

Based on this description, the research problem can be formulated as follows:

1. How is the criminal act of rape against minors regulated in Islamic criminal law and national law?
2. How do the concepts, sanctions, and victim protection compare in the two legal systems?
3. How relevant are the values of Islamic criminal law in strengthening the national legal system in handling the crime of rape against children?

This problem formulation is important to study considering the increasing cases of sexual violence against children which demand a more responsive, comprehensive and just legal system.

Thus, this research has high urgency, both theoretically and practically. Theoretically, this research is expected to enrich comparative criminal law studies between Islamic law and national law. Practically, this research is expected to contribute to the formulation of more effective legal policies to protect children as victims of sexual crimes. Furthermore, this research is also original because it integrates normative and empirical approaches and comprehensively examines the comparison between classical and contemporary Islamic criminal law and Indonesian positive law within a single, coherent and contextual analytical framework.

## II. RESEARCH METHODS

This research is a legal study with a normative-empirical approach that aims to analyze the comparison of Islamic criminal law and national law regarding the crime of rape against minors. The normative approach is carried out through a review of applicable laws and regulations, specifically Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, as well as sources of Islamic law including the Qur'an, hadith, and fiqh literature. Meanwhile, an empirical approach is used by examining secondary data from official agency reports and the results of relevant previous research to observe the implementation of the law in the field (Melysa Wahab Kilo, 2025; Abdul Munir & Rahmat Amin Siregar, 2024).

This study uses a legislative, conceptual, and comparative approach to examine and compare the two legal systems in terms of regulations, sanctions, and victim protection. The data used consists of primary, secondary, and tertiary legal materials obtained through literature review. Furthermore, the data is analyzed qualitatively using descriptive and comparative techniques to identify similarities, differences, and the relevance of Islamic criminal law in strengthening national law, using the perspective of maqashid al-shari'ah as an analytical framework (Kamali, 2008).

### III. RESULTS AND DISCUSSION

#### A. Research result

The research results show that the regulation of the crime of rape against minors in Indonesian national law has undergone significant development, both in terms of legal substance and victim protection. Normatively, provisions regarding rape against children are regulated in Law Number 35 of 2014 concerning Child Protection, which amends Law Number 23 of 2002, and is strengthened by Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. In this regulation, rape against children is categorized as a serious crime with the threat of severe penalties, including maximum imprisonment, additional penalties in the form of chemical castration, and the disclosure of the perpetrator's identity under certain conditions. Furthermore, national law also emphasizes the aspect of victim protection through the right to rehabilitation, restitution, and assistance during the legal process (Faisal Afda'u, 2022; BPSDM, Ministry of Law of the Republic of Indonesia, 2022).

However, empirically, the implementation of these provisions still faces various obstacles. Data from the Ministry of Women's Empowerment and Child Protection shows that cases of sexual violence against children remain high and tend to increase annually, with many cases going unreported due to social stigma, family pressure, and low trust in law enforcement (KemenPPPA, 2022). Research by Faisal (2022) also shows that victims often experience re-victimization

during the judicial process, both in the form of negative questions and a lack of psychological protection during the legal process (Faisal Afda'u, 2022). Furthermore, disparities in judicial decisions in similar cases indicate that the application of the law is not yet fully consistent and does not orientate itself towards the best interests of child victims.

On the other hand, in Islamic criminal law, research shows that rape (al-ightishab) is not viewed solely as adultery, but rather as a crime with an element of coercion (ikrah) that eliminates the victim's responsibility. Therefore, the victim is not subject to sanctions, while the perpetrator can be subject to severe punishment, either in the form of hudud or ta'zir, depending on the evidence and the circumstances of the case. In classical fiqh literature, Imam Malik explained that perpetrators of rape must be punished and provide compensation to the victim as a form of accountability for the losses incurred (Malik, 2005). This opinion demonstrates a concern for victim recovery that is in line with the principle of restorative justice in modern law.

Furthermore, from the perspective of maqashid al-shari'ah, child rape is a serious violation of the main objectives of sharia, namely the protection of life (hifz al-nafs) and honor (hifz al-'irdh). Therefore, Islamic law provides legitimacy to impose strict and proportionate sanctions to prevent similar crimes and protect society from moral decay (Al-Syatibi, 2004; Kamali, 2008). In contemporary practice, several countries that adopt Islamic legal principles also show a tendency to combine a strict punishment approach with victim protection, although the implementation varies depending on the legal system of each country (Huda, 2018).

Thus, the results of this study indicate that both national law and Islamic criminal law recognize child rape as a serious crime that must be dealt with firmly. However, there are differences in normative and implementation approaches, particularly regarding the requirements for proof, types of sanctions, and victim protection mechanisms. These findings provide an important basis for further analysis in the discussion section to assess the

strengths and weaknesses of each legal system and the possibility of integrating Islamic legal values into strengthening national law.

## B. Discussion

### 1. Regulation of the Criminal Act of Rape against Children in Islamic Criminal Law and National Law

In Indonesia's national legal system, regulations regarding the crime of rape against minors have undergone significant developments, particularly through Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Within the positive legal framework, rape against children is understood not only as a violation of morality but also as a serious violation of human rights, particularly the child's right to protection from violence. The elements of the crime are formulated in detail, including acts of coercion, threats of violence, deception, or abuse of power against the child victim. Furthermore, the national legal system has adopted a more progressive approach by broadening the definition of sexual violence and strengthening the victim's position in the judicial process (Faisal Afda'u, 2022).

Furthermore, national law also introduces various forms of sanctions, encompassing not only primary criminal penalties but also additional penalties, such as chemical castration, the installation of electronic detection devices, and the disclosure of the perpetrator's identity. This demonstrates a paradigm shift from mere punishment to deterrence and community protection. However, empirically, the implementation of these norms still faces structural and cultural obstacles, such as the limited capacity of law enforcement officers to handle victim-based cases and the existence of social stigma that discourages victims from reporting (Ministry of Women's Empowerment and Child Protection, 2022).

On the other hand, in Islamic criminal law, the provisions regarding rape (*al-ightishab*) are not formulated in written statutes as in national law, but rather through interpretation of the primary legal sources, namely the

Qur'an, the Hadith, and the *ijtihad* of scholars. Rape in Islamic law is understood as a form of sexual intercourse carried out by force without the victim's consent, thus substantially different from adultery, which requires the consent of both parties. Therefore, victims in rape cases are not subject to sanctions, because the element of intent (*al-qasd*) is not fulfilled in the act.

In classical Islamic jurisprudence, Imam Malik explicitly stated that perpetrators of rape must be punished and compensated to the victim, as stated in *Al-Muwatta'* (Malik, 2005). This opinion shows that Islamic law is not only oriented towards punishing the perpetrator, but also towards the rehabilitation of the victim. Furthermore, other scholars such as Ibn Qudamah in *Al-Mughni* also emphasized that rape is a crime that can be subject to severe punishment, either in the form of *hudud* or *ta'zir*, depending on the available evidence. Thus, although not formally codified, Islamic criminal law has a strong normative framework in regulating the crime of rape.

### 2. Comparison of Concepts, Sanctions, and Victim Protection

Conceptually, national law and Islamic criminal law share similarities in viewing rape as a serious crime that violates human honor and dignity. However, fundamental differences lie in the legal construction and approach used. National law employs a positivistic approach by explicitly formulating norms in statutory regulations, while Islamic law employs a normative approach based on Sharia principles that is more flexible and contextual. This difference has implications for how the two legal systems define the elements of a crime and the mechanisms for establishing proof.

In terms of proof, national law recognizes various forms of evidence, such as witness testimony, expert testimony, post-mortem examinations (*visum et repertum*), and electronic evidence. This provides greater scope for proving rape, especially in cases involving child victims. In contrast, under Islamic law, the standard of proof for imposing *hudud* punishments requires very strict standards, such as four witnesses who directly

witnessed the incident. However, in practice, if these requirements are not met, the perpetrator can still be subject to ta'zir punishment, which gives the judge flexibility to determine the sanction based on the available evidence and the severity of the crime (Huda, 2018).

In terms of sanctions, national law tends to use a retributive approach combined with preventive elements. The sanctions imposed aim to deter perpetrators and prevent similar crimes from occurring in the future. However, in some cases, this approach is not entirely effective, as demonstrated by the persistently high rate of sexual violence against children (KemenPPPA, 2022). On the other hand, Islamic criminal law combines strict punishments (hudud) with flexible punishments (ta'zir), allowing for adjustments to social conditions and the severity of the crime. This approach allows for a more contextual application of substantive justice.

In terms of victim protection, national law explicitly guarantees protection through various mechanisms, such as medical and psychological rehabilitation, legal assistance, and restitution. However, research shows that the implementation of these protections is still suboptimal, particularly in terms of victims' psychological recovery and protection from revictimization (Abdul Munir & Rahmat Amin Siregar, 2024). On the other hand, Islamic law normatively places the victim as a party who must be protected and not burdened with guilt, as per the principle of "لا ضرر ولا ضرار". In addition, the existence of an obligation to compensate the perpetrator to the victim shows that Islamic law has recognized the concept of victim recovery long before the development of the concept of restorative justice in modern law.

### 3. The Relevance of Islamic Criminal Law in Strengthening National Law

The values of Islamic criminal law are strongly relevant for strengthening the national legal system, particularly in addressing the crime of rape against minors. One of the most prominent aspects is the maqasid al-shari'ah approach, which

emphasizes the protection of life and honor as the primary objective of law. This approach can serve as a philosophical foundation for formulating legal policies that are more oriented toward the best interests of child victims.

Furthermore, the concept of ta'zir in Islamic law provides flexibility in imposing sanctions that can be adapted to social developments and community needs. This is crucial in the context of national laws, which often face limitations in accommodating complex social dynamics. By adopting these flexible values, national laws can become more adaptive and responsive to the ever-evolving forms of sexual crimes (Kamali, 2008).

Furthermore, the integration of Islamic legal values into national law can also be achieved by strengthening moral and ethical aspects in law enforcement. In this regard, law is viewed not only as a formal instrument but also as a means to achieve substantive justice and the public good. This aligns with the pluralistic nature of the Indonesian legal system, which accommodates various sources of law, including religious law.

Thus, Islamic criminal law is not only relevant as a normative source but also as a source of inspiration for national legal reform. The integration of these values is expected to strengthen the legal system by providing more effective protection for child victims of rape and to create a more just, humane, and welfare-oriented justice system.

## IV. CONCLUSION AND SUGGESTIONS

### A. Conclusion

Based on the results of the research and discussion, it can be concluded that the regulation of the crime of rape against minors in Indonesian national law has been formulated explicitly and comprehensively through various laws and regulations, especially the Child Protection Law and the Law on Sexual Violence Crimes, which emphasize the aspect of criminalizing the perpetrator as well as protecting and recovering the victim. Meanwhile, in Islamic criminal law, rape (al-ightishab) is understood as a sexual act with an element of coercion that

does not impose responsibility on the victim, and provides strict sanctions to the perpetrator through the hudud or ta'zir mechanism accompanied by compensation obligations, with the main basis being the protection of life and honor within the framework of maqashid al-shari'ah.

Furthermore, a comparison between the two legal systems reveals similarities in viewing rape as a serious crime, but differences in their normative approaches, evidentiary mechanisms, types of sanctions, and implementation of victim protection. National law tends to use a positivistic approach with a more flexible evidentiary system, while Islamic criminal law emphasizes strict evidentiary standards for hudud but provides an alternative through more adaptive ta'zir. In terms of victim protection, national law explicitly regulates protection mechanisms, but their implementation is not yet optimal, while Islamic law normatively positions victims as parties who must be protected without being burdened with blame.

The relevance of Islamic criminal law in strengthening national law lies in its fundamental values, particularly the maqasid al-shari'ah approach, which emphasizes the protection of life and honor, and the concept of justice that focuses not only on punishment but also on victim reparation. These values can be internalized within the national legal system to create a more comprehensive, responsive, and equitable justice system, particularly in addressing the crime of rape against minors.

## B. Suggestion

Based on the findings of this study, it is necessary to strengthen legal policies that are more comprehensive and oriented towards protecting children as victims of rape, both through improvements in legal substance and its implementation. In the context of national law, the government and policymakers need to improve the effectiveness of the implementation of the Sexual Violence Crime Law and the Child Protection Law by strengthening the capacity of law enforcement officials, particularly in a victim-oriented approach, and ensuring the existence of

standard procedures capable of preventing re-victimization during the judicial process. In addition, optimizing the provision of restitution, psychological rehabilitation, and legal assistance for victims must be a top priority, not only normatively but also in measurable and sustainable practices.

On the other hand, the values of Islamic criminal law, which emphasize the protection of honor and substantive justice, need to be internalized in national legal policy, particularly through the maqasid al-shari'ah approach, which focuses on the welfare and protection of victims. This integration need not be formalistic, but can be realized through strengthening the principles of restorative justice, providing more effective compensation to victims, and flexibility in imposing sanctions that take into account the social and psychological impacts. Thus, the synergy between national law and Islamic legal values is expected to create a more responsive, adaptive, and equitable legal system in addressing the crime of rape against minors.

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