

Review of Islamic Criminal Law on the Crime of Rape

Aniksya Nabila Safikoh¹ M Yusuf Alamsyah Harahap²

¹State Islamic University Of Kh. Saifuddin Zuhri Purwokerto

²State Islamic University of North Sumatra

E-mail: nabilaaniksya6@gmail.com yusufharahap59@gmail.com

Info Artikel	Abstract
Article History Received : 2023-09-08 Revised: 2023-09-18 Published: 2023-09-30	This article aims to comprehensively discuss and assess the crime of rape within the context of Indonesian criminal law. The crime of rape is regulated under Article 285 of the Indonesian Criminal Code, which encompasses various elements that must be met, one of which is the element of violence. This element of violence is the main distinguishing factor between rape and other moral violations regulated in the Criminal Code. In the justice system, law enforcement officers impose appropriate penalties on perpetrators of sexual violence to uphold the rule of law, maintain social order, and provide a deterrent effect so that perpetrators do not repeat their actions, while also serving as a deterrent so that others do not commit similar acts.
Keywords: <i>SayKeywords: Rape Crime, Indonesian Criminal Law, Sanctions</i>	

I. INTRODUCTION

One issue in law enforcement that requires serious attention in Indonesia is the crime of rape. This is due to its extremely detrimental impact, especially for women. After being raped, women often face prolonged trauma, deep shame, difficulty establishing good social relationships, and often have to endure negative stigma from society. This suffering can include both short-term and long-term losses, encompassing physical, mental, moral, social, and even economic aspects (Harahap, 2026).

Rape is not limited to adult women; it can also affect young girls who don't yet understand what sexual intercourse is. Rape recognizes no age limit and isn't even tied to a specific location. Nowadays, even public places can be dangerous for women, who are often the targets of rape.

The crime of rape cannot be considered solely a private matter for the victim, but must be viewed as a public issue. This is due to its clearly immoral and cruel nature, which not only violates human rights but also causes physical, social, and psychological suffering for women. Rape, and the way it has been handled so far, reflects the weak protection of human rights, especially for women, from sexual violence, which is considered the most severe form of violence. Protection for women is also regulated by the UN Convention, which covers protection within the domestic sphere, not only regarding women's rights in

public spaces or outside the home. This Convention can be used as a reference for assessing increased awareness of human rights, particularly women's rights. However, the Indonesian Criminal Code still does not specifically regulate rape committed by a husband against his wife. Rape is considered a form of crime that violates women's human rights because it emphasizes gender-based discrimination (Harahap, 2026).

The crime of rape is not a new crime, but rather a type of conventional crime that has long existed and frequently occurs in society. Over time, the number of rape cases continues to increase significantly. This shows that perpetrators of rape do not seem to be afraid or unaffected by the punishment stipulated in Article 285 of the Criminal Code, which states: "Any individual who by violence or threat of violence forces a woman to have sexual relations outside of marriage can be subject to imprisonment for up to twelve years." (Harahap, 2026).

Based on the sentencing provisions contained in Article 285 of the Criminal Code, perpetrators of rape should be given a severe sentence, namely a maximum prison sentence of twelve years. However, in practice, judges often do not impose the maximum sentence stipulated in this article. Many judges instead give lighter sentences to perpetrators of rape, which is one

reason for the increasing number of rape cases in society.

II. RESEARCH METHODS

This study analyzes legal protection efforts for child victims of sexual violence from an Indonesian criminal law perspective, with the aim of preventing sexual violence. The approach used in this study is a sociological-juridical approach. The latter focuses on the application of legal principles and regulations relevant to the problem under study, while the sociological approach involves collecting primary data supported by secondary data. Primary data was obtained directly from the community and law enforcement officials relevant to the research topic.

III. RESULTS AND DISCUSSION

A. Research result

Research from various journals shows that, from an Islamic criminal law perspective, rape is considered a serious crime, categorized as zina bil-jabr (forcible adultery), an act that violates human honor and dignity. Under certain circumstances, if strict proof is met, the perpetrator can be subject to hudud punishments, such as flogging or even stoning for married individuals. However, because proving this is very difficult, in practice, ta'zir punishments are more often imposed, the form of which is left to the judge, such as imprisonment or a fine. (Harahap, 2026; Abdulsyani, 1987).

Research also shows that, compared to positive law in Indonesia, which places greater emphasis on imprisonment and victim protection, Islamic criminal law prioritizes deterrence and the moral protection of victims. Thus, Islamic law provides a firm framework for perpetrators while still maintaining fairness through flexibility in the application of sanctions. (Harahap, 2026; Arief, 1996).

B. Discussion

1. Definition of Rape

Along with the rapid development of the times, the challenges of this change are also increasing in relation to social conditions and crime rates in society which influence the

dynamics of social conditions, and on the other hand, the progress being achieved also causes the emergence of various types of crime.

A crime in criminal law refers to an act prohibited by criminal law and punishable by law. Rape falls under the category of sexual crimes, occurring when someone forces another person to engage in sexual intercourse through vaginal penetration with the penis, either by force or violence. The Great Indonesian Dictionary defines rape as an act of coercion or a violation committed with violence. Meanwhile, rape refers to the process or method of carrying out the act (Santoso, 1997; Harahap, 2026).

The term "rape" comes from the Latin word "rapere," which means to steal, force, seize, or carry away. In the past, rape was often committed as a means of seizing a woman as a wife. Furthermore, the crime of rape encompasses not only sexual intercourse but also various types of assaults involving the genitals, committed with violence and coercion by the perpetrator against the victim. (Prima Pena Team, 2000).

The crime of rape as stated in Article 285 of the Criminal Code states: "Anyone who by force or threat forces a woman who is not his wife to have sexual relations is deemed to have committed rape and can be sentenced to a maximum of twelve years in prison."

Article 285 of the Criminal Code stipulates that rape involves sexual intercourse between a perpetrator and a victim who is not his wife, accompanied by threats of violence. Rape is characterized by penile penetration into the vagina, carried out with threats and physical violence against the victim by the perpetrator.

2. Factors Causing Sexual Violence Crimes (Rape)

Advances in science and technology, population growth, changes in social structures, and shifts in social and cultural values have had a significant impact on the motives, character, form, frequency, intensity, and methods of committing violent crimes. Various factors, both direct and indirect, contribute to and influence the emergence of violent crimes (Abdulsyani, 1987).

Every individual is influenced by their family, environment, and social interactions. Violent crimes committed by individuals can be seen as internal factors, namely, influenced by their personality or mental state. These negative traits can drive individuals to commit crimes. This personality type is shaped by various factors, including:

- a. Religious aspects, where the lack of positive influence from religious teachings makes a person less educated in terms of mental and morals.
- b. Educational factors, where a lack of education causes a person to not think properly and maturely before acting, so that he more often acts in a manner that is different from criminal acts.
- c. A bad social environment can shape a negative personality.
- d. Environmental elements that are less than supportive can lead to the formation of a bad personality.
- e. The economic aspect, where financial challenges, especially for immigrants (both transmigrants and urbanization) who do not have work skills, can cause someone to have difficulty meeting their living needs, which in turn can form a negative personality and encourage them to commit acts of deviance or criminal acts.

Some external factors that can encourage someone to commit violent crimes include:

- a. The victim aspect, where the victim's presence can trigger a crime. Victims typically stand out from others around them, such as having a luxurious appearance, carrying valuables, and often being unaware. This creates an opportunity or intention for perpetrators, particularly in cases of violent theft.
- b. Macroeconomic factors, such as economic crises, rising prices of goods or basic necessities, and high unemployment rates, can encourage individuals in these situations to seek wrong solutions or commit crimes to meet their living needs.
- c. Drug abuse factors, someone who is addicted to illegal drugs will do anything wrong, even to the point of committing violent crimes to get what they want.

Rape is a type of violent crime related to moral norms. Various factors can trigger this crime, including the victim's environment and position, which can incite the perpetrator to commit the crime. Furthermore, the relationship between the perpetrator and the victim, such as family, siblings, or relatives, often influences the incident, with perpetrators finding it easier to commit rape due to their closeness to the victim.

3. Sanctions for the Criminal Act of Rape in the Criminal Code

Every year, the number of rape cases experiences a significant increase, indicating that the criminal justice system is not yet effective in preventing crime. This is due to the criminal sanctions given by judges to rape perpetrators, which tend to be light and varied, thus causing disparities in sentencing (Disparity in sentencing according to Molly Cheng: the imposition of different sentences for similar crimes). (Arief, 1996; Harahap, 2026)

Article 285 of the Criminal Code stipulates that "Anyone who by violence or threat of violence forces a woman who is not his wife to have sexual relations with him, shall be punished with a maximum imprisonment of twelve years." In addition, Article 291 paragraph 2 of the Criminal Code stipulates that, "If one of the crimes in Articles 285, 286, 287, 289, and 290 results in death, the perpetrator shall be sentenced to a maximum imprisonment of fifteen years." Thus, the punishment for perpetrators of rape is more focused on giving heavier prison sentences.

Imprisonment is the primary form of punishment involving deprivation of liberty. According to Jescheck, as cited by Roni (2012:126), imprisonment is often referred to as *das Rückgrat des Straffensystems* (the main pillar of the penal system). Imprisonment can be imposed for life or for a fixed term. Life imprisonment means the convict will serve his entire life in prison, making it a permanent sentence, or *poena proxima morti*, meaning the closest possible punishment to the death penalty. Meanwhile, a fixed term of imprisonment can be imposed up to a

maximum of 20 years and is not applied to crimes punishable by death.

Article 285 of the Indonesian Criminal Code, which regulates the crime of rape, does not include a fine, so victims receive no direct financial compensation for their experiences, except for the satisfaction of having the perpetrator punished. Therefore, in rape cases, judges should take proactive steps with prosecutors to ensure adequate compensation and restitution commensurate with the suffering experienced by the victim and the perpetrator.

4. Actions to Reduce Sexual Violence Crimes (Rape)

The problem of crime, which continues to threaten security and social order, is a major issue for humanity worldwide. Crime can be viewed as deviant behavior that violates the law and harms society, thus requiring effective countermeasures.

In society, efforts to combat crime can be implemented through legal education, starting at an early age. This education aims to teach individuals to respect and protect the human rights of others and to prevent behavior that could harm, rob, or violate the rights of others.

Another approach to crime prevention can be seen from a criminal law perspective, namely by imposing criminal sanctions, which should be a last resort, or *ultimum remedium*, used when other measures are ineffective. Criminal sanctions function as a response to violations or crimes. One of the main goals of this repressive approach is to provide guidance to perpetrators as part of efforts to address sexual violence (rape).

Preventing rape by identifying and addressing its causal factors is no easy task, given the numerous factors that can trigger the crime. Nevertheless, efforts to reduce the number of rapes must continue, reflecting measures implemented by other countries. For example, adequate lighting in dark and deserted areas can be a solution. Furthermore, providing specific information to the public from an early age is also a crucial step in rape prevention.

5. Analysis of Islamic Criminal Law on the Act of Rape

Islamic Criminal Law, also known as *Fiqh Jinayah*, is a branch of Islamic law that regulates prohibited acts (*jarimah*) and the sanctions imposed (*uqubah*), based on clear and detailed evidence. This definition encompasses an understanding of both *Fiqh* and *Jinayah*. Based on this definition, it can be understood that Islamic Criminal Law generally consists of two main aspects: *jarimah* (criminal acts) and *uqubah* (punishment) imposed as a result of the violation.

One of the most significant classifications of crimes is based on the type of punishment they carry. Crimes can be divided into three main categories: *hudud* crimes, *qisas* and *diat* crimes, and *ta'zir* crimes.

a. Hudud Crimes

Jarimah Hudud refers to crimes that are subject to punishment that has been determined by the *Shari'a* and is a right from Allah. According to Abdul Qadir Audah, had punishment is a punishment that is regulated in Islamic law. There are seven types of *hudud* radius, namely:

1. The crime of adultery
2. *Qadzaf* crime
3. The crime of drinking alcohol
4. Theft crime
5. Crime of *hirabah*
6. Crime of *riddah*
7. Crime of rebellion

b. Qisas and diat crimes

Qisas and *diat* crimes refer to crimes punishable by *qisas* or *diat*. Both of these punishments are established in Islamic law. The difference between them and the *hadd* punishment lies in the rights granted. *Hadd* punishment, as *hudud*, is a divine right (or a societal right), while *qisas* and *diat* are human rights (individual rights).

a) Ta'zir Crimes

Ta'zir crimes refer to violations that are punishable by *ta'zir*. Linguistically, *ta'zir* means to teach a lesson. Furthermore, *ta'zir* is also interpreted as *Ar-Raddu wal Man'u*, which means to reject and prevent.

Under Islamic law, the punishment for rape is considered equivalent to that for murder, which also applies to adultery, due to the similarity between the two: sexual intercourse (coitus) between a man and a woman who are not legally married. However, in cases of rape, the woman is generally subject to coercion, thus exempting her from punishment.

During that period, the punishment for rape committed by force and coercion was considered equivalent to that for adultery, which does not involve coercion or coercion. Consequently, the majority of hadith and fiqh scholars held that rape was considered equivalent to adultery. The difference lies in the fact that in the case of adultery, both perpetrators receive punishment, whereas in rape, only the perpetrator is punished, and the victim is not. However, the potential punishment for both crimes remains the same.

According to the Hanafi school of thought, rape is understood as sexual intercourse carried out by a man with a woman without a legal marriage bond, with full awareness of the act, accompanied by the urge of sexual desire. Malikiyyah scholars define rape as the act of amukallaf having sexual intercourse with a woman who is not his wife without a legal relationship, with wrong intentions and without any desire. In the view of Syafi'iyah scholars, rape is defined as the act of inserting the penis into a haram penis without any element of skepticism, which is carried out based on sexual instinct and desire. Meanwhile, according to cleric Hanabilah, rape is considered a disgraceful act, whether it is committed through the skull or the anus. Zahiriyah scholars define rape as sexual intercourse with a person who is not permitted to view, which is carried out with full awareness of its haraam, or sexual relations that are clearly haraam.

From the various definitions above, it can be seen that the jurists provide different interpretations of rape. However, they agree that rape is a forbidden and intentional act of sexual intercourse. Therefore, it can be concluded that rape is a forbidden act of

sexual intercourse, committed by a man with force against a woman who is passionately engaged in sexual intercourse, and between them who are not yet married. In Islamic Criminal Law, rape is categorized as adultery with force. Therefore, the elements of rape in Islamic Criminal Law are similar to those of adultery, namely:

- a. Prohibited intercourse must be performed with full awareness and intention. This intercourse involves inserting the penis, even partially, into the vagina, with or without ejaculation.
- b. The woman who is having intercourse is not bound by marriage with the man, whether it is a valid marriage or an invalid one, such as a marriage without a guardian or a marriage that has a certain time limit.
- c. There is use of violent behavior or threats of aggression
- d. Intercourse (al-wath'u), which is the act involving the penetration of the head of the man's penis into the woman's vagina, is known as sexual intercourse.

Based on this quote, it can be concluded that the elements of rape according to Islamic Criminal Law involve sexual intercourse that occurs using violence or the threat of violence against a woman who is still alive as the victim.

Rape resulting in the victim's death, also known as murder, is a crime that not only causes unrest among individuals but also has widespread impacts on society, as it is considered a violation of legal and religious norms. Therefore, perpetrators of murder should receive appropriate punishment. Those who commit this crime (concursum) involving rape and murder are subject to very severe penalties.

Two crimes at once, whether of the same type or different. For example, rape resulting in the victim's death, which can also be categorized as murder. In Islamic Criminal Law, perpetrators who commit this combination of crimes will be given the harshest punishment of the two crimes. This is done to ensure fair punishment commensurate with the crimes committed.

Two crimes at once, whether of the same type or different. For example, rape resulting in the victim's death, which can also be categorized as murder. In Islamic Criminal Law, if someone commits a combination of crimes, the perpetrator will be given the harshest punishment of the two crimes committed.

Therefore, a perpetrator who commits rape with all the elements met, as well as premeditated murder with all the elements met, will be sentenced to death or qisas. This is because the punishment for rape will be replaced with the harsher punishment for premeditated murder.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

In law, acts of sexual violence (rape) are regulated under Article 285 of the Criminal Code, which includes elements that must be met, one of which is violence. This element of violence distinguishes rape from other crimes against morality also regulated in the Criminal Code. There are three main factors that influence someone to commit a crime of sexual violence, such as rape: the personal factors of the perpetrator, the victim, and the situation.

In general, rape is a very serious crime, and its handling requires collaboration between the government, legal institutions, the community, and other relevant institutions to protect the rights of victims and prevent sexual violence.

B. Suggestion

Parents, communities, and security forces should play an active role in protecting children from sexual violence, given the high number of cases of violence, especially involving children. Preventive measures must be implemented, one of which is the establishment of a national-scale institution that can provide protection for child victims of sexual violence.

A systems-based approach is needed to address sexual violence against children. An effective child protection system requires interconnected components. These

components include a social welfare system for children and families, a justice system that meets international standards, and mechanisms to encourage appropriate behavior within the community.

LIST OF REFERENCES

- Abdulsyani. (1987). *Sosiologi Kriminalitas*. Bandung: CV. Remadja Karya.
- Arief, Barda Nawawi. (1996). *Kebijakan legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*. Semarang: Badan Penerbit Universitas Diponegoro.
- Fuady, Munir. (2007). *Dinamika Teori Hukum*, Cetakan Pertama. Bogor: Ghalia Indonesia.
- Hariyanto. (1997). *Dampak Sosio Psikologis Korban Tindak Pidana Perkosaan Terhadap Wanita*. Jogjakarta: Pusat Studi Wanita Universitas Gajah Mada.
- Pena, Tim Prima. (2000). *Kamus Besar Bahasa Indonesia*. Jakarta: Gitamedia Press.
- Poernomo, Bambang. (1988). *Asas-Asas Hukum Pidana*. Jakarta: Ghalia Indonesia
- Prasetyo, Eko dan Suparman Marzuki. (1995). *Pelecehan Seksual*. Yogyakarta: Fakultas Hukum Universitas Islam Indonesia
- Roni Wiyanto. (2012). *Asas-Asas Hukum Pidana Indonesia*. Bandung: Mandar Maju,
- Sahetapy, J.E. (1983). *Kejahatan Kekerasan Suatu Pendekatan Interdisipliner*. Surabaya: Sinar Wijaya,.
- Santoso, Topo. (1997). *Seksualitas dan Pidana*. Jakarta: In Hill
- Weda, Made Darma. (1996). *Kriminologi*. Jakarta: Raja Grafindo Persada