

A COMPARISON BETWEEN FIKIH SYAFI'IIYAH AND THE SEXUAL VIOLENCE CRIMINAL ACT LAW RELATING TO WOMEN'S LEGAL PROTECTION

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Abstract

This research is driven by the disparities in the eradication of violence against women as outlined in Law Number 12 of 2022, which pertains to Criminal Acts of Sexual Violence (UU-TPKS), and the teachings of Imam Syafi'i. The research methodology employed is library research, utilizing primary and secondary sources as data sources. Primary data is derived from scholarly sources that are directly relevant to the central topic, such as articles, newspapers, books, and scientific journals. Secondary data refers to additional data that complements and supports primary data. After conducting extensive investigation, the author discovered many findings: Law no. 12 of 2022 was enacted to safeguard the rights of those who have experienced sexual violence, as such crimes frequently manifest in society as physical, psychological, and sexual abuse. In addition to overseeing the enforcement of criminal penalties, such as monetary fines. Furthermore, Imam Syafi'i strongly highlighted that Islamic law unequivocally forbids any and all manifestations of sexual aggression. According to Shafi'i scholars, sexual assault can be penalized with Qishash, diyat, and ta'zir, depending on the specific offense.

Keywords: Gender-Based Violence, Syafi'iyah School of Jurisprudence and Legal Principles.

Abstrak

Penelitian ini didorong oleh disparitas pemberantasan kekerasan terhadap perempuan yang dituangkan dalam Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UU-TPKS), dan ajaran Imam Syafi'i. Metodologi penelitian yang digunakan adalah penelitian kepustakaan, dengan memanfaatkan sumber primer dan sekunder sebagai sumber data. Data primer diperoleh dari sumber-sumber ilmiah yang relevan langsung dengan topik sentral, seperti artikel, surat kabar, buku, dan jurnal ilmiah. Data sekunder mengacu pada data tambahan yang melengkapi dan mendukung data primer. Setelah melakukan penelusuran mendalam, penulis menemukan banyak temuan: UU No. 12 Tahun 2022 diberlakukan untuk melindungi hak-hak mereka yang pernah mengalami kekerasan seksual, karena kejahatan tersebut sering kali muncul di masyarakat dalam bentuk pelecehan fisik, psikologis, dan seksual. Selain mengawasi penegakan sanksi pidana, seperti denda moneter. Lebih lanjut, Imam Syafi'i dengan tegas menggarisbawahi bahwa hukum Islam dengan tegas melarang segala bentuk agresi seksual. Menurut ulama Syafi'i, kekerasan seksual dapat diancam dengan qishash, diyat, dan ta'zir, tergantung pada pelanggaranannya.

Kata Kunci: Kekerasan Berbasis Gender, Mazhab Syafi'iyah dan Prinsip Hukum

INTRODUCTION

Sexual assault against women is a long-standing issue that keeps coming up year after year. In several nations, such as Indonesia, this issue is a fundamental social one that requires intricate management. Two main challenges victims' bravery in speaking up and an impartial legal system that supports victims are what motivate this. In 2020, there were 226.062 recorded cases of sexual violence against Indonesian women, according to annual figures from the National Commission on Violence Against Women (Komnas Perempuan). Sexual violence against Indonesian women was reported to have occurred 338,496 times in 2021 and 339,782 times in 2022 (Siregar, 2022). Because there are still a lot of sexual assault cases in Indonesia, a number of government organizations there have proposed solutions like passing legislation that is more compassionate toward victims of sexual assault.

Human rights law number 39 of 1999 states that discrimination is defined as any form of limitation, harassment, or exclusion based on race, gender, religion, language, or political beliefs that leads to the recognition and application of human rights as well as fundamental freedoms in the legal, social, economic, and cultural spheres for both individuals and groups of people. In the meantime, torture refers to any deliberate act of punishing or frightening someone with significant pain or suffering (physical or spiritual). Witriatul Jauharyah defines sexual violence as any activity that implies or proceeds from sexual matters, carried out unilaterally, without the will of the target, and resulting in unpleasant emotions in the victim, such as shame, rage, hatred, offense, and so forth. who were the targets of the abuse?

According to the findings of 15 years of monitoring by the National Commission on Violence Against Women (Komnas Perempuan), there is a wide variety of sexual violence (1998-2013). There are fifteen distinct forms of sexual violence, such as: 1) Sexual assault; 2) Sexual intimidation (including threats or actual attempts at sexual assault); 3) Sexual harassment; 4) Sexual exploitation; and 5) Trafficking in women for sex 6) forced labor, 7) enslavement to sex, 8) coerced unions, including separation, Forced pregnancy, ten) forced abortion, eleven) forced sterilization and contraception, twelve) social torture, thirteen) cruel and sexual punishment, fourteen) sexually suggestive traditional practices that injure or discriminate against women, 15) sexual control, such as by laws prohibiting discrimination on the grounds of morality and religion (Nurisman, 2022). Domestic violence accounted for 1,404 cases (65%) of all cases of violence directly reported to the National Commission on Violence Against Women, followed by public/community violence (706 cases, or 33%) and state violence (24 cases).

The Representative Council People of the Republic of Indonesia passed the Draft Law on Criminal Sexual Violence (RUU-TPKS) Number 12 of 2022 as a protective measure against the prevention of sexual violence in order to stop the rise in sexual violence cases in Indonesia. During level II decision-making at the 19th Plenary Session of the Republic of Indonesia, which was presided over by Puan Maharani, the House of Representatives of the DPR-RI passed this law on April 12, 2022. This law regulates the scope of sexual violence and its sanctions.

Following the passage of the Sexual Violence Crime Law (UU-TPKS) Number 12 of the Year, there were nine distinct categories of sexual violence crimes. These included offenses including forced sterilization, forced marriage, forced contraception, forced sexual exploitation, forced sexual slavery, and physical and non-physical forms of sexual harassment. They also covered crimes using electronic-based sexual assault. Apart from the nine categories mentioned above, criminal acts related to sexual violence also include forced prostitution, rape, lewd acts, having sex with minors, lewd acts against minors, or sexual exploitation of minors, deviating from the victim's will in terms of decency, and sexual violence in domestic settings. Furthermore, according to the terms of statutory regulations, some illegal offenses are expressly classified as criminal acts of sexual violence. The regulatory provisions of this law are applicable to both married and unmarried individuals.

In contrast, rape is recognized as a sexual violence offense by the Sexual Violence Crime Law (TPKS Law) Number 12 of 2022. The offense of rape is nevertheless regulated by article 4 paragraph 2, also referred to as the "bridge article" even if it is not specifically regulated in the Sexual Violence Crime Law (UU-TPKS) since it is deemed to be regulated in the Criminal Code/RKUHP.

In order for rape victims to be covered by all regulations outlined in the Sexual Violence Crime Law (TPKS Law). This covers every aspect, including victim rights restoration and fulfillment as well as procedural law in particular, treatment, and prevention. Whether a woman is an adult, a juvenile, or a kid, rape is a sexual assault that frequently targets women. Not only are the offenders grown men, but they are also minors and teenagers. Not even from the perspective of those who are far away, but rather from the perspective of those who are closest to you, like your spouse. A case that demonstrates that anyone can commit a crime is the rape of a spouse by his partner, sometimes known as marital rape. In marriage, rape is a form of violence where a husband forces his wife into sexual relations without taking into account her state (Wahid, 2001).

The National Commission on Violence Against Women's Annual Records show that there were 192 reports of wife rape in 2019. There were one hundred cases in 2020 (Komnas Perempuan, 2021). In 2014 saw one instance of marital rape. After being coerced into having sex by her spouse, a woman from Denpasar, Bali, passed away from an infection in her genitalia, bruises on her chest, and fractured ribs. The victim declined because her spouse didn't seem to care that she was feeling sick, had trouble breathing, and that her heart condition was getting worse.

Islam likewise rejects the concept or definition of violence against women, with the exception of the Sexual Assault Crime Law (UU-TPKS), which governs the proscription of sexual violence. Islamic doctrine forbids violence in its entirety. Women have the same rights as males to make decisions, according to Imam Syafi'i, who also said that women's rights are recognized in Islam. There are, nevertheless, a number of viewpoints surrounding the actions and behaviors of sexual violence (Hidayatuna, 2013). The notion of violence against women is ambiguous in the book *al-Umm*. Violence, in the opinion of Imam Syafi'i, is defined as any deed or speech directed towards a person, particularly a lady or wife, that results in more severe physical or psychological suffering than is permitted by Islamic law. One could argue that, in contrast to the violence mentioned in the Sexual Violence Crime Law, the extent of violence in Islamic jurisprudence is still more extensive (UU-TPKS).

The extent of sexual violence and witnesses are governed by the Sexual Violence Crime Law (UU-TPKS). However, the breadth of sexual violence is not sufficiently covered in Syafi'i Fiqh. A wife who declines to have personal relations with her husband is considered haram, according to the priests of the five schools of thought. There is no question that *urf* is the standard by which a wife should be judged in terms of her obedience and submission, and that standard is met when a wife agrees to have sex with her husband without objecting. According to Imam Syafi'i, the author of the book *al-Umm*, a husband has certain rights towards his wife, one of which is "if the man (husband) wants to have sexual intercourse, he must not refuse it and he must not feel reluctant (Syafi'i, 1983).

RESEARCH METHODS

The research methodology employed in this study is library research, and it is based on an analysis of literacy (library). Thus, books, encyclopedias, journals, magazines, publications, and documents, as well as other information pertinent to the topic of discussion, are the sources of data and study materials used from libraries. Because this study was conducted at a library, data were gathered from a variety of primary and secondary sources (Wibisono, 2003). Original data are found in primary sources, whereas data derived from primary data are found in secondary sources. Laws, Imam Syafi'i literature, and literacy materials relevant to the topic of the study serve as primary sources for this research. To gather complete and accurate data, the strategy employed in collecting data in this research is to use documentation procedures. Using this method, researchers will look at a variety of primary and secondary sources that are connected to the subject of study.

DISCUSSION

Violence Against Women in Law Number 12 of 2022

The Sexual Violence Crime Law is not meant to excuse promiscuous and deviant sexual activity because it is against Pancasila, religious norms, and national cultural values, and because our nation is founded on the Almighty God. An attempt to amend the law to handle these different issues is the Law on Criminal Sexual Violence. The goals of this legal change are as follows: Prevent sexual assault in all its forms, Treat, shield, and recuperate victims, Implement law enforcement and provide offenders with rehabilitation, Establish a culture free from sexual assault and Make sure that there are no further cases of sexual assault.

The Poor Law's definition of the system, which indicates that the welfare state's ideology places the greatest emphasis on citizens' rights through social protection, is consistent with the welfare state theory. Everyone living in the state has a right to protection, but victims of sexual assault are especially entitled to it. For the victims to go through the legal process, the government must provide them with protection and support. All citizens are targeted by this welfare state philosophy, irrespective of their race, socioeconomic standing, age, skin tone, or culture (Sitompul, 2015).

The Sexual Violence Crime Law (UU-TPKS) addresses punishment and has a deterrent effect on offenders in addition to victim protection. Under the Uniform Sexual Violence Crime Law (UU-TPKS), the offender is required to compensate the victim or their heirs for both material and immaterial losses. If a perpetrator receives a prison sentence of four (four) years or more, the judge is required to request compensation from them. In addition, the judge may impose additional penalties, such as the revocation of custody or guardianship rights, disclosure of the perpetrator's information, and confiscation of profits obtained from the sexual violence crime. In addition, the offender was given rehabilitation. This rehabilitation attempts to ensure that the culprit can carry out his duty again as an individual, citizen or family member by restoring disturbances to his physical, psychological and social situations. This rehabilitation is under the supervision of the prosecutor and the minister of social affairs and the minister of health.

According to the criminological labeling theory, judges have the authority to impose extra punishments, such as disclosing the identity of the offender, which is in violation of the Human Rights of the Perpetrator in Article 16 paragraph 2. This relates to the Criminological Labeling Theory, which holds that a perpetrator can be given a negative label in order to draw attention from the public. In this scenario, the individual will be the subject of ongoing scrutiny for the crimes they have committed. Because of their negative reputation in society, this person believes that trying to better oneself is pointless. The labeling victim is negatively impacted by the labeling, in theory. He is a victim of labeling despite being a sexual violence perpetrator. It is evident from criminology to what degree past offenders of sexual assault are capable of committing their crimes once more (Lathif, 2022).

The Criminal Code contains provisions that govern sexual harassment and moral offenses. Books that contain content that is deemed offensive to the public with the intent to broadcast, show, or post it in public, as well as pictures, writings, or objects that contain such content and insert it into the nation, forward it, release it there, or have supplies and openly circulate letters without being asked, offering them as available, or showing them as obtainable, are subject to a minimum of nine months' imprisonment and a maximum of one year and six months' imprisonment, or a maximum fine of four thousand five hundred rupiah. Because the discussion in the Criminal Code does not fully discuss the specifics of criminal acts of sexual violence, the Law on Crimes of Sexual Violence (UU TPKS) makes it possible to make improvements that are more specific than the criminal law. Sexual harassment or sexual violence that is not regulated in the Criminal Law is used as a guideline for enforcing sentences based on the TPKS Law.

As per article 4, the Sexual Violence Crime Law (UU TPKS) has made nine types of sexual violence illegal. These include forced marriage, forced sterilization, forced contraception, forced sexual harassment, forced exploitation, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. An innovative solution to address the issue of sexual assault in criminal law is the criminalization of the nine kinds of Criminal Sexual Violence (TPKS). This law serves as a guide for the Indonesian State as it takes action to combat crimes involving sexual violence (TPKS), from victim rehabilitation to handling and prevention (TPKS) (Nurisman).

The following is an explanation of the criminal penalties for sexual violence in article 1 paragraph 1 based on the many forms of sexual violence crimes:

"The maximum penalty for non-physical sexual harassment is nine (9) months in jail and/or a fine of IDR 10,000,000.00 (ten million rupiah) for anyone who engages in non-physical sexual acts directed at the body, sexual desires, and/or reproductive organs with the intent to degrade a person's dignity based on sexuality and/or morality." "Individuals who engage in physical sexual acts directed towards the body, sexual desires, and/or reproductive organs with the intention of degrading someone's honor and dignity due to their sexual orientation or morality and who are not covered by other, more severe criminal provisions that carry a maximum prison sentence. a maximum fine of IDR 50,000,000.00 (fifty million rupiah) or four (four) years."

Criminal sexual assault offenders may also be subject to social and medical rehabilitation in addition to punishment. Lawrence Meiri Friedmant said that law enforcement has 3 (three) components that cause whether the law can be implemented or not, namely related to the substance,

structure and legal culture (Anggraeni and Humaeroh, 2021). The Sexual Violence Crime Law (TPKS Law) is a provision of the Indonesian Special Criminal Code, and if this statutory provision contains a form, it is called *Lex Specialis*. Legal guarantees regarding disgraceful acts, namely sexual violence or sexual harassment against women or men, are strictly regulated in the TPKS Law.

The goal of the Sexual Violence Crime Law (TPKS Law), also known as a *lex specialis*, is to establish a new framework for the criminal justice system by requiring victims to follow the legal procedure in order to fulfill their rights and pursue justice. Since victims of sexual assault obviously face several dangers and losses, as well as the potential for trauma due to negative perceptions from those around them, the TPKS Law facilitates the development of more victim-friendly pathways (Ayu and Budiarsih, 2022).

The prevention of all sexual violence crimes, as well as their treatment, protection, and restoration of victims' rights, are governed by the Sexual Violence Crime Law (UU TPKS). international collaboration as well as coordination between the federal government and regional governments to enable the successful prevention and treatment of sexual assault victims. In addition, community involvement in victim prevention and healing is mandated to foster a culture free from sexual violence. The TPKS Law contains four innovations, including:

- a. Apart from qualifying the type of Crime of Sexual Violence (TPKS), there are also other criminal acts which are expressly declared as TPKS as regulated in other statutory provisions.
- b. There are comprehensive procedural legal arrangements starting from the stages of investigation, prosecution and examination in court while still paying attention to and upholding human rights, honor and without intimidation.
- c. The victim's right to treatment, protection and recovery from the occurrence of a Crime of Sexual Violence (TPKS) is the state's obligation and is carried out in accordance with the victim's conditions and needs.
- d. TPKS cases cannot be resolved outside the judicial process, except for child perpetrators.

Making sure the present Sexual Violence Crime Law (UU TPKS) can be fully and successfully applied is the next stage. The government, community, and relevant parties must be dedicated to putting the Sexual Violence Crime Law's management, protection, and recovery measures into practice (TPKS Law). In order for this law to be more than just a regulation and to influence law enforcement when it comes to sexual assault cases. The preparedness of the regional technical implementation units and integrated service units of the central government to protect women and children is monitored by the community and cross-social institutions (Hasanudin, 2022).

Victims of sexual violence have access to legal guarantees and help thanks to Law Number 12 of 2022 regulating Criminal Sexual Violence. This law's more severe criminal penalties are meant to serve as a deterrence for those who would otherwise commit violent crimes, such as perpetrators, and prevent them from engaging in sexual violence. Of fact, this regulation might be considered quite a remedy for resolving instances involving victims of sexual violence.

Imam Syafi'i's Perspective on Violence And Criminal Acts of Violence Against Women in Law Number 12 of 2022

In other words, legal protection refers to the various legal measures that must be taken by law enforcement officials to provide a sense of security, both mentally and physically, from disturbances and various threats from any party. Legal protection is the defense of human rights that are violated by others, and it is provided to the community so that they can enjoy all the rights granted by law (Raharjo, 2000).

A location of shelter or an act of protection is what is meant by protection. offering defense to the vulnerable. Legal protection refers to the safeguarding of legal subjects in compliance with the law. This includes both written and unwritten forms of coercion (repressive) and prevention (preventive), all in the service of enforcing the law (Hadjon, 1987). According to Philipus M. Hadjon, there are two types of legal protection, including:

- a. Means of legal protection of preventive law. In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision. The goal is to prevent disputes from occurring. Preventive legal protection means a lot for government actions that are based on freedom of action because with preventive legal protection the government is encouraged to be careful in making decisions based on determined actions.
- b. Repressive legal means of protection. Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into this category of legal protection.

The idea of human rights protection and recognition, which aims to constrain and impose obligations on society and the government, is the foundation and source of the legal protection against government action. As per Law Number 12 of 2022 about Crimes of Sexual Violence, legal protection is an example of how the legal function works to fulfill legal objectives, namely justice, benefit, and legal certainty. The significance of a law which is defined as something that has advantages, fosters goodness or something positive, and guards against harm was also discussed by Imam Syafi'i. The law itself can be protected by law enforcement against calamities or damage that poses a risk to human safety. In essence, the existence of legal protection is a statement about obtaining advantages or avoiding challenges (Mukri, 2011).

The definition of protection in Law Number 12 of 2022 concerning Crimes of Sexual Violence is further defined as all actions taken by the Witness and Victim Protection Agency (LPSK) or other organizations to uphold the rights of Witnesses and/or Victims and to give them a sense of security. according to the guidelines set forth in legislative regulations. The Criminal Procedure Code, the Criminal Code, and the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims are the general legal frameworks that provide legal protection for victims in Indonesia. These two laws

define protection as all actions taken by the Witness and Victim Protection Agency (LPSK) or other institutions in compliance with the law in order to uphold rights and offer support to give victims and/or witnesses a sense of security.

According to article 14c paragraph 1 of the Criminal Code, which states, "*With the order referred to in Article 14a, unless a fine is imposed, in addition to determining general condition that the convict will not commit a criminal act, the judge can stipulate a special condition that the convict within a certain time, which is shorter than the probation period, must compensate all or part of the losses caused by the criminal act,*" protection for victims can be provided through a court decision under the Criminal Code (KUHP). According to Imam Syafi'i, Islamic law offers victims a way out. Women who are forced to commit zina (rape) are not required to face punishment, and the person who pushed them must offer sadaqah (Syafi'i, 1969).

Sexual violence is a violation of human rights, a crime against human dignity, and a form of discrimination that must be eliminated. Sexual violence is increasingly common in society, which has a tremendous impact on victims. These impacts include physical, mental, health, economic and social and political suffering. Social impacts also greatly affect the lives of victims. The impact of sexual violence is even stronger when the victim is part of a society that is marginalized economically, socially, politically or those who have special needs, such as women in the case of their household. Therefore, a special law is needed regarding acts of sexual violence that is able to provide a material and formal legal basis at the same time so that it can guarantee legal certainty and meet the legal needs of society.

The following rights of victims are governed by Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS):

- a. victim of sexual violence has a right to rehabilitation, protection, and treatment since the crime was committed.
- b. Unless this law specifies differently, victims with disabilities have the right to reasonable accessibility and accommodations so they can exercise their rights in compliance with statutory restrictions.
- c. Government rules govern additional restrictions pertaining to the management, protection, and recovery methods mentioned in paragraph 1.

In reality, law is a means of elevating people since it contains provisions that safeguard victims' rights and give society a sense of security. In his book, Egyptian scholar Syihabuddin al-Qastalani, who belongs to the Shafi'i school of theology, asserts that humans are among God's most noble creations on earth. Every individual has the inherent right to greatness. As a result, people shouldn't be mistreated, harmed, or even desecrated. This is applicable to everyone, Muslim or not, male or female (Qastalani, 1996). In terms of human grandeur, it is recorded in God's Word:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا

And indeed We have glorified the children of Adam, We carried them on land and in the sea, We gave them sustenance from the good things and We have favored them with perfect advantages over most of the creatures that We have created.

From the explanation of this verse of the Qur'an, it may be deduced that the objective of the Islamic faith is to protect interests (benefits) in terms of beliefs, souls, minds, lineage or honor, as well as property. So it is in conformity with the Sexual Violence Crime Law in safeguarding victims of sexual violence offenses. This is in agreement with Imam Syatibi's opinion, that there are five priorities that must be protected in Islam, including preserving the soul (*al-nafs*), maintaining offspring (*al-nasb*), maintaining religion (*al-din*), and maintaining the mind (*al-'aql*) (Jaya, 1996).

On the other hand, assault and rape against women is a crime against human dignity and the perpetrators must be punished fairly. In Islamic law there are three sorts of crimes, namely *qishash*, *hudud* and *ta'zir*. *Qishash* is proper retaliation for crimes involving murder, harm or intentional cruelty. *Hudud* is a crime whose type of violation and punishment are established directly by Allah's revelation. Crimes that fall into this category are adultery, accusation of adultery, rape. Then *ta'zir* is a penalty for a given crime whose form and type are left to the judge's consideration (Agustini, dkk.).

Based on the categories above, sexual violence can take two forms or sorts of crime, namely first, adultery coupled by compulsion, abuse, looting and rape. The second is *hirabah* towards women or wives. In *fiqh*, the conditions for coercion (*ikrah*) are: the perpetrator of coercion has the authority to carry out threats, while the victim does not have the ability to resist because there is a dangerous threat.

Imam Syafi'i argued that women who are pushed into adultery cannot be punished. Jurisprudence experts from the Syafi'i school of thought, the Maliki school of thought, and the Hanafi school of thought agree that perpetrators of violent rape are subject to a double punishment, namely punishment for the adultery they commit in the form of punishment, 100 lashes or stoning in front of the general public and punishment for molestation (torturing injuring a member) (torturing injuring a member). victim's body notably *qishash*, is rewarded with a punishment commensurate with the conduct. If limited to threats, the punishment is *ta'zir*. This means that the judge's decision influences the sentencing. The position of several other jurists, such as the Syafi'i Madzhab and the Maliki Madzhab, is that overt sexual harassment constitutes *hirabah*. According to the Maliki Madzhab, deciding the form of punishment is left to the judge's consideration in accordance with the benefit (justice) of society and not based on certain interests (Husein, 2001).

Looking at the explanations of jurisprudence experts above, sexual violence is defined as forced adultery or rape. because *hirabah* has the meaning of usurping, coercion, destroying honor. So this act can be punished according to the text of the Koran. However, because Indonesia is a legal country that has regulations written in law with a general scope, in this case it is not punished according to *hirabah* standards. The law applied is the *ta'zir* law which is determined by the judge as to the type of punishment. In Islamic criminal law, sexual harassment is considered a disgraceful act. Because Islam has taught every Muslim to respect each other. Forms such as looking at women from top to bottom, sexual violence that offends feelings, pornographic images or photos and other similar forms

in Islamic law, these activities or actions can lead to adultery. Adultery is sexual intercourse that is forbidden (outside of marriage) and is intentional by the perpetrator.

Sexual violence is one of the behaviors that is categorized as a crime against humanity or a human rights violation (rape). The act's component is predicated on an immorality or adultery crime. The distinction is that coercion is a factor in rape, whereas consent is present in adultery. Legal experts refer to rape as forced adultery because of this. Rape was classified by Imam Syafi'i as zina by force (*alwath' al-ikrah*), where the offender faces harsh punishment (*had*) (Syafi'i, 1990).

Sexual violence is referred to as *at-taharrusy al-jinsi* in Arabic. According to its etymology, *at-taharrusy* means to incite animosity (*at-tahyij*), inflict harm (*al-ifsad*), and sow discord, hatred, and enmity (*al-igra*). Terminologically speaking, it indicates that any sexual conduct physical or non-physical that is utilized to assault another person is a horrible deed that need to be avoided. Sexual harassment (physical and non-physical) is called *ar-rafast* and *fakhisyah* in the Qur'an itself.

Imam Syafi'i did not condemn raped women to zina (*had al-zina*) or subject them to stoning or lashing. The Islamic legal system contains passages that prohibit forceful activities in sexual matters and offer protection to victims of sexual violence. The following is implied in surah an-Nur verse 33:

وَلَيْسَتَعْظِيفِ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّى يُغْنِيَهُمُ اللَّهُ مِنْ فَضْلِهِ ۖ وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا ۖ وَآتُوهُمْ مِّن مَّالِ اللَّهِ الَّذِي آتَاكُمْ وَلَا تُكْرِهُوا فَتَيَاتِكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا لِّتَبْتَغُوا عَرَضَ الْحَيَاةِ الدُّنْيَا وَمَن يُكْرِهْنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرِهِنَّ غَفُورٌ رَّحِيمٌ

And those who are incapable of getting married ought to keep themselves pure in order for Allah to provide them the ability via His mercy. And if you have any slaves who you know have good qualities, you should strike a deal with them and give them some of the treasure that Allah has given you. And because you wish to pursue worldly prosperity, do not force your female slaves to become prostitutes when they choose to remain virgins. And if someone pushes them, Allah will undoubtedly be Most Merciful and Forgiving toward them.

In addition to outlawing coercion and sexual exploitation, this verse provides support and guidance for victims of sexual violence, enabling them to regain their sense of safety and self-assurance. Articles about this subject are also included in Law Number 12 of 2022, which is the Crime of Sexual Violence. It includes provisions protecting victims from harm and threatening those who commit crimes involving sexual violence.

Islamic law serves as a disincentive to engage in unlawful or religiously forbidden behavior. Different kinds of penalties are suggested. Caning rapists is one of them. Islamic law views punishment as a kind of retaliation or restitution for a criminal act performed, with the goal of deterring future criminal activity (Santoso, 2001). This space in the study of jurisprudence is included in the term *Jinayah*. The general pillars of *jinayah* or the most important elements in Islamic Law in criminal acts are: The existence of an argument that prohibits the act, The existence of consequences for committing the act (punishment), the existence of elements of the criminal act either required or prohibited, having reached puberty or *mukallaf* and not being a person. Crazy (Djazuli, 2000).

Sexual violence is a crime that affects the victim's honor in the context of *jinayah*. Islamic law classifies sexual violence as *zina*, and it is a type of *ta'zir*. The *Ta'zir* punishment for those who commit acts of sexual aggression takes the shape of a sentence (main punishment). Regarding the explanation of the maximum number of penalties in the *Ta'zir Jarimah*, there are a lot of disagreements among the ulama. The Shafi'i and Hambali Ulama hold that a person should not be punished for *ta'zir* more than 100 times. Ulama' Maliki believes that if the punishment for *jilid* includes benefits, it may be more than the had. Additional penalties for *jilima* offenders include criticism, exclusion from social groups, warnings against it, termination from their jobs, and public admission of their errors. The basic concept of *Jarimah Ta'zir* itself is different from *Jarimah Hudud* and *Qishas*. *Jarimah ta'zir* is related to the form of law in society. So that it gives the judges or authorities who have the right to decide a case the opportunity to make *ijtihad*, to determine what punishment will be imposed on the perpetrator of sexual harassment. It is hoped that this punishment will provide awareness or a lesson for the perpetrator so that he does not do it again.

Legal scholars in the TPKS Law share the belief that *ta'zir* punishment develops in tandem with community law by diminishing the use of corporal punishment. This law targets anything that disturbs the public peace or harms people physically or psychologically. Of course, there are crimes committed in this community that call for legal protection and clarity. The existence of rules as outlined in TPKS Law articles 68 to 71 attests to the provision of legal certainty. Law enforcement personnel base their handling of cases on these conventions. This serves as the foundation for granting victims of sexual assault the right to services from regional implementing units and central integrated service units like the Witness and Victim Protection Agency (LPSK). Victim help, restitution, and victim recovery services are mentioned in article 26 of the TPKS Law, which provides comprehensive legal protection.

The aforementioned descriptions suggest that Islamic criminal law, or *jinayah*, is consistent with positive law. Positive law and Islamic law both serve as deterrents. Just as punishment might take the form of *Qishash* and *diyat* in Islamic law, there is a gap in punitive consequences between Islamic criminal law (*jinayah*) and conventional criminal law (positive law). The death penalty, fines, and jail terms are all permissible under state criminal law. Islamic criminal law seeks to maintain the degree of benefit, impart moral and behavioral lessons, and have a deterrent effect. State law, on the other hand, focuses primarily on concentration in order to have a deterrent effect.

CONCLUSION

The goal of drafting the Sexual Assault Crime Law (UU TPKS) Number 12 of 2022 was to provide legal protection for victims of sexual violence as well as law enforcement. This objective is shown in multiple ways, namely for non-physical and physical forms of sexual violence. Legal penalties for offenders include imprisonment, fines, restitution, revocation of forgiveness or child custody, revealing the identity of the offender, asset confiscation, and rehabilitation, as outlined in Law Number 12 of 2022 on Criminal Acts of Sexual Violence (UU TPKS). both social and medical. Systematic sexual violence victims have legal protection under the Sexual Violence Crime Law (UU TPKS) Number 12 of

2022. Beginning with the legal content, which includes victim restoration, mitigation, and preventative initiatives. including payment for reparation, help with medical care and psychological rehabilitation, personal safety, and legal support while the police are investigating.

According to Imam Syafi'i, legal penalties for those who commit crimes involving sexual violence include *qishas*, *diyat*, and *ta'zir*. Sanctions, including *had* and *ta'zir*, may be applied in cases of rape and sexual violence. Based on surah an-Nur verse 2, the ulama' decided on the sentence. They agreed to execute a year-long banishment and 100 lashes as punishment. Subsequently, the judge's or sultan's policy dictates how the *ta'zir* punishment is applied. The court (imam) may inflict *ta'zir* sanctions, which include detention, physical harm (such as beatings or slaps), severe verbal warnings, executions, and the seizure or seizing of property. According to Ulama Syafi'i, a sentence serves as the *ta'zir* punishment for those who engage in sexual harassment. In reference to the *ta'zir's* greatest number of penalties, Imam Syafi'i believes that the number of punishments may surpass ten times, contingent upon the degree of disobedience against Allah. Scholars of Syafi'i hold that the essence of *ta'zir* law is its non-mandatory nature. Judges may therefore refuse to apply it in cases when it does not affect the rights of other people (*adam*). Additional penalties for *Jarimah Ta'zir* may include a strong warning, appearing in court, being fined, advised, excommunicated, fired from his job, and having his error made public.

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