

## LEGAL SANCTIONS FOR CHILD RAPE IN INDONESIA: A COMPARATIVE STUDY OF NATIONAL LAW AND ISLAMIC CRIMINAL LAW

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### Abstract

This study examines the legal framework surrounding child rape cases in Indonesia by comparing national law and Islamic criminal law. The purpose of this research is to assess the effectiveness of existing legal sanctions and explore the relevance of Islamic principles, particularly hudud and ta'zir, in addressing such crimes. Given the severe psychological and social consequences for victims, an evaluation of whether current penalties provide sufficient deterrence and justice is necessary. This study employs a qualitative legal research methodology, utilizing a normative-juridical approach. Data collection includes an analysis of statutory regulations, court decisions, and Islamic legal principles. The study focuses on Putusan Nomor 1590/Pid.Sus/2023/PN.Mdn as a case study, alongside an examination of the Child Protection Law and Islamic criminal law doctrines. The findings reveal that both national and Islamic law recognize child rape as a grave offense requiring strict punishment. While Indonesian law mandates imprisonment for perpetrators, Islamic law prescribes hudud or ta'zir penalties, depending on the offender's status. However, questions remain regarding whether national legal sanctions are adequate in providing justice and deterrence. This research offers an original contribution by bridging the gap between national law and Islamic criminal law in the context of child protection. It highlights the potential incorporation of ta'zir-based punishments into Indonesia's legal framework to enhance judicial flexibility. The study's implications suggest the need for legal reform to strengthen child protection laws by integrating principles of Islamic criminal law. This could ensure more effective deterrence and greater justice for victims.

**Keywords:** Child Rape, Legal Sanctions, Islamic Criminal Law, Child Protection, Ta'zir

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### INTRODUCTION

The application of criminal law in Indonesia has undergone significant changes with the enactment of the new Criminal Code (KUHP), replacing the colonial legacy.<sup>1</sup> This

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<sup>1</sup> Nafi Mubarak, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 27, no. 1 (2024): 15-31.

legal reform reflects a long-standing effort to align the judicial system with the needs of Indonesian society. Historically, the colonial version of the Criminal Code was implemented in 1918<sup>2</sup> after being enforced in the Dutch East Indies under the principle of *concordantie*. Before being replaced by the new Criminal Code on January 2, 2023, Indonesia's criminal law system still referred to Law No. 1 of 1946, which maintained the existence of the colonial Criminal Code.<sup>3</sup> This reform marks a crucial milestone in enforcing criminal law that is more in line with national values and the needs of modern society.

Studies on the application of criminal law in Indonesia indicate a significant influence from the Dutch legal system. The Criminal Code enforced in Indonesia was an adaptation of the *Wetboek van Strafrecht* (WvS), which had been in effect in the Netherlands since 1881.<sup>4</sup> Legal literature notes that the application of this colonial law not only persisted for a long time but also underwent various adjustments to be applicable in the colonies. Over time, Indonesia has attempted to reform its criminal law by proposing a system that better reflects the spirit of independence.<sup>5</sup> Consequently, many studies highlight fundamental differences between the colonial criminal law system and a legal system based on local values in Indonesia.<sup>6</sup>

Previous research has highlighted fundamental differences in the application of criminal law, particularly concerning sexual crimes. The old Criminal Code regulated rape under Article 287, while specific laws, such as the Child Protection Act, provided additional provisions. In the context of Islamic criminal law, rape cases may be subject to *hudud*, *qisas*, or *ta'zir* punishments,<sup>7</sup> which differ from Indonesia's positive legal

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<sup>2</sup> Dian Rahadian, B Jalil, and Mia Amalia, *Hukum Pidana: Landasan Dan Penerapannya Di Indonesia* (PT. Sonpedia Publishing Indonesia, 2024).

<sup>3</sup> David M. Bouchier, "Two Decades of Ideological Contestation in Indonesia: From Democratic Cosmopolitanism to Religious Nationalism," *Journal of Contemporary Asia* 49, no. 5 (2019): 713-33, <https://doi.org/10.1080/00472336.2019.1590620>.

<sup>4</sup> Mubarak, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan."

<sup>5</sup> Vivi Ariyanti, "Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Yuridis* 6, no. 2 (2019): 33-54.

<sup>6</sup> Murti Wijayanti, "Prison in Islamic Criminal Law Perspective," *International Journal of Education, Information Technology and Others (IJEIT)* 5, no. 2 (2022): 389-99, <https://doi.org/10.5281/zenodo.4730248>.

<sup>7</sup> Seva Maya Sari, *Fiqh Jinayah (Pengantar Memahami Hukum Pidana Islam)* (PT. Sonpedia Publishing Indonesia, 2023).

approach. Despite various regulations protecting children, their effectiveness remains questionable, as sexual violence cases continue to occur.<sup>8</sup> This indicates a research gap regarding the effectiveness of sanctions in the national criminal law system compared to Islamic criminal law.<sup>9</sup>

This study aims to evaluate the implementation of sanctions against perpetrators of child sexual crimes within Indonesia's criminal law system and Islamic criminal law. By analyzing Verdict No. 1590/Pid.Sus/2023/PN.Mdn, this research will examine the appropriateness of the punishments imposed on offenders from both a positive law and Islamic law perspective. Additionally, this study seeks to assess the effectiveness of these sanctions in delivering justice to victims and deterring perpetrators. Furthermore, it will explore how the differences between these two legal systems influence the implementation of criminal justice in Indonesia. Thus, this research is expected to contribute to improving the criminal law system in addressing child rape cases.

The differences between positive law and Islamic criminal law in handling child rape cases raise questions regarding the effectiveness and appropriateness of Indonesia's existing legal system.<sup>10</sup> The national criminal law provides a strong legal foundation through the Criminal Code and related laws, yet its effectiveness is still in doubt, as similar cases continue to recur. In contrast, Islamic criminal law offers stricter sanctions, such as *hudud* and *rajam*, aimed at providing stronger deterrence. The imbalance in sanction enforcement suggests the need for an evaluation of the existing legal system to enhance its effectiveness in preventing and prosecuting child sexual crimes. Therefore, analyzing both legal systems is crucial to determining the extent to which they can deliver justice and protection for victims.

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<sup>8</sup> Irfan Abdurahman, "Prinsip Asasi Hukum Qadzaf Dalam Islam Dan Kompilasi Hukum Islam," *As-Sakinah: Jurnal Hukum Keluarga Islam* (STAI Pelabuhan Ratu, 2023), <https://doi.org/10.51729/sakinah11129>.

<sup>9</sup> Muhamad Iqbal, "The Effectiveness of Criminal Law Application in an Endeavor to Suppress the Height of Bullying Violence in Indonesia as an Age Challenge," *International Journal of Art and Social Science* 3, no. 3 (2020): 196–205, <https://www.ijassjournal.com/2020/V3I3/41465751932.pdf>.

<sup>10</sup> Fitri Wahyuni, "Sanksi Pidana Pemerkosaan Terhadap Anak Menurut Hukum Pidana Positif Dan Hukum Pidana Islam," *Jurnal Media Hukum* 23, no. 1 (2016).

## **METHOD**

This study employs a qualitative approach using the normative juridical method. This approach is chosen because it aligns with the research objective, which focuses on analyzing legal materials and literature sources. The normative juridical method is a legal research approach that examines secondary data to understand social realities within a legal context.<sup>11</sup> In this study, the understanding of legal phenomena is not rigidly predetermined but develops as the analysis of various legal sources progresses. Data collection is conducted through a literature review, which includes various legal documents, books, academic journals, and fatwas relevant to the research topic.<sup>12</sup> This secondary data is systematically analyzed to gain an in-depth understanding of the legal dynamics under study. By utilizing various literature sources, this research explores diverse perspectives and provides a comprehensive overview of the legal issues discussed. The collected data is analyzed using a qualitative method, as explained by Prof. Dr. Sugiyono, who describes it as a postpositivistic method based on postpositivist philosophy.<sup>13</sup> This method is interpretative, meaning that the research findings do not solely rely on objective facts but also consider the meaning and context embedded in the data. Through this approach, the study aims to formulate a broader understanding of legal phenomena by drawing conclusions from various analyzed perspectives.

## **RESULT AND DISCUSSION**

### **1. Criminal Law and Islamic Criminal Law Provisions on Child Rape**

The crime of rape does not only affect adult victims; a significant number of victims are minors. Rape is defined as an act of forced sexual intercourse through violence. According to the Indonesian Dictionary (KBBI), rape consists of elements in which a man forcibly engages in sexual intercourse with a woman through violence. This categorizes rape as a form of sexual violence.

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<sup>11</sup> S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).

<sup>12</sup> R M Abarca, "Sugiyono-Metode Penelitian Kuantitatif Dan Kualitatif Dan R&D," *Nuevos Sistemas de Comunicación e Información*, 2021.

<sup>13</sup> Refi Arioen et al., "Buku Ajar Metodologi Penelitian," 2023.

According to the National Commission on Violence Against Women (Komnas Perempuan), there are at least 15 behaviors that can be classified as forms of sexual violence,<sup>14</sup> including:

- a. Rape
- b. Sexual intimidation, including threats or attempted rape
- c. Sexual harassment
- d. Sexual exploitation
- e. Trafficking of women for sexual purposes
- f. Forced prostitution
- g. Sexual slavery
- h. Forced marriage, including indefinite separation (*cerai gantung*)
- i. Forced pregnancy
- j. Forced abortion
- k. Forced contraception, such as coercing a partner into unprotected intercourse or sterilization
- l. Sexual torture
- m. Inhumane punishments with sexual undertones
- n. Harmful or discriminatory traditional practices with sexual elements (e.g., female genital mutilation)
- o. Sexual control, including discriminatory regulations based on morality and religion

Violence against children encompasses all forms of physical and/or emotional abuse, sexual violence, neglect, and exploitation that harm or potentially endanger a child's health, development, or dignity in the context of a responsible relationship. Law No. 35 of 2014 defines violence against children as any act that results in physical, psychological, or sexual suffering, as well as neglect, threats, coercion, or unlawful deprivation of liberty. Naturally, every child has fundamental human rights similar to those of adults.

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<sup>14</sup> Guruh Tio Ibipurwo, Yusuf Adi Wibowo, and Joko Setiawan, "Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif," *Jurnal Hukum Respublica* 21, no. 2 (2022): 155–78.

However, the lack of sufficient attention and concrete measures for child protection remains a significant challenge.<sup>15</sup>

The protection of human rights for child victims must be the primary focus in handling such cases. Therefore, legal protection and proportional punishment for perpetrators of crimes against children are essential. According to Satjipto Rahardjo, legal protection means "providing safeguards for human rights that have been violated by others, ensuring that society can fully enjoy the rights granted by the law."<sup>16</sup>

Currently, Indonesia's criminal law is governed by the Criminal Code (KUHP), a translation of the Dutch *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvSNI).<sup>17</sup> Its legal validity is based on Article II of the Transitional Provisions of the 1945 Constitution and remains in force under Law No. 1 of 1946. Regarding child rape, Article 81 of Law No. 17 of 2016—concerning the Second Amendment to Law No. 23 of 2002 on Child Protection—stipulates that perpetrators must receive prison sentences ranging from 5 to 15 years. However, a seven-year sentence, as seen in some court rulings, does not fully comply with legal provisions, especially considering the severity of the crime.

Sentencing in rape cases must take into account the psychological trauma suffered by victims and the need to impose a deterrent effect on perpetrators. A prison sentence in such cases may be deemed inadequate given the long-term psychological impact on victims, which often includes severe trauma and deep social consequences. Judge Muliawan, S.H., M.H., of Jayapura Class 1A District Court, stated that perpetrators of sexual violence against children deserve the harshest punishment, including the death penalty. However, the death penalty remains controversial as it is seen as a human rights violation and is not permitted under Indonesia's criminal justice system. Nevertheless, society must also consider the human rights of victims and the suffering of their families.

From the perspective of Islamic criminal law, this crime falls under *jarimah hudud*. In *fiqh jinayah* (Islamic criminal jurisprudence), any form of unlawful sexual intercourse is classified as *zina* (adultery/fornication), and offenders must be punished, regardless of

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<sup>15</sup> Irwan Safaruddin Harahap, "Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Dalam Perspektif Hukum Progresif," *Jurnal Media Hukum* 23, no. 1 (2016).

<sup>16</sup> Satjipto Raharjo, *Penegakan Hukum Suatu Tinjauan Sosiologis* (Yogyakarta: Genta Publishing, 2009).

<sup>17</sup> Tim Penerjemah Badan Pembinaan Hukum Nasional Departemen Kehakiman, *Kitab Undang-Undang Hukum Pidana: Terjemahan Resmi Dari Wetboek van Strafrecht (WvS)* (Jakarta: Sinar Harapan, 1983).

their marital status. In Islam, the punishment for zina is a hadd (fixed penalty).<sup>18</sup> If the rapist is *ghairu muhsan* (unmarried), the punishment is 100 lashes and exile for one year.<sup>19</sup> However, if the perpetrator is muhsan (married), the punishment is rajam (stoning to death).

This ruling is supported by a hadith of Prophet Muhammad (peace be upon him), which states:

*"Take from me, take from me, indeed Allah has set a path for you. The virgin and the virgin who commit zina shall be flogged 100 times and exiled for a year. But if a married man commits zina with a married woman, they shall be flogged 100 times and stoned to death."*

The prescribed punishment for this crime, in cases where the perpetrator is muhsan, is execution by rajam, where the offender is buried up to their chest and stoned until death. This is because the perpetrator in such cases is considered legally married. Although the punishment of rajam is not explicitly mentioned in the Qur'an, its validity is established through the words and actions of the Prophet Muhammad. Historical records show that the Prophet ordered rajam for Ma'iz bin Malik and Al-Ghamidiyah, and this punishment was also implemented during the era of the Khulafa al-Rashidun (the Rightly Guided Caliphs).<sup>20</sup>

Another prescribed punishment related to zina or rape is flogging and exile. Unlike rajam, which is not explicitly mentioned in the Qur'an, the punishment of flogging for jarimah zina (fornication/rape) is clearly stated in hadiths. In a narration by Al-Bukhari, it is reported:

*"From Zaid bin Khalid Al-Juhani, he said: I heard the Prophet (peace be upon him) order that an unmarried fornicator be flogged 100 times and exiled for one year."* (Narrated by Al-Bukhari)<sup>21</sup>

In Islamic criminal law, there is no fundamental distinction between rape and zina, except in the manner in which the crime is committed. Zina involves mutual consent, and

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<sup>18</sup> Faisal Nawi Nasution, "Tinjauan Hukum Islam Terhadap Pidana Anak Pelaku Pemerkosaan Dalam Hukum Positif," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 4, no. 2 (2017): 153–202.

<sup>19</sup> Sri Yunarti, "Fiqh Jinayah," 2022.

<sup>20</sup> Ade Jamarudin, M Khoirul Anam, and Ofa Ch Pudir, "Bahaya Riba Dalam Ekonomi Islam Dalam Perspektif Al-Qur'an," *Jurnal Shidqia Nusantara* 1, no. 1 (2020): 94–114.

<sup>21</sup> Muhammad Al-Bukhari, "Sahih Al-Bukhari" (Dar UI-Hadith, 1978).

both male and female participants are punished, whereas rape involves coercion or violence against the victim (forced zina). According to Islamic law, a raped woman must not be punished, as she is a victim of coercion (*ikrah*) and oppression (*zulm*). The legal penalty for rape crime is solely imposed on the male perpetrator, as he is the one who committed the crime.

## **2. Judge's Verdict in the Child Rape Case under Decision Number 1590/Pid.Sus/2023/PN.Mdn**

The researcher briefly outlines the chronology of the incident, stating that the defendant, in October 2022 and on Tuesday, November 1, 2022, at approximately 11:00 AM WIB—or at least at another time in 2022 and November 2023—at Jl. Benteng Hulu Gg. Sukur Link. I, Medan Tembung District, Medan City, or at another location within the jurisdiction of the Medan District Court, "intentionally engaged in deceit, a series of lies, or persuaded a child to engage in sexual intercourse with him or another person."

This case was subsequently brought to trial, and the prosecutor charged the defendant under Article 81, Paragraph (1) in conjunction with Article 76D of Indonesian Law No. 35 of 2014, which amends Indonesian Law No. 23 of 2002 on Child Protection, in conjunction with Article 6, Letter C of Law No. 12 of 2022 on Sexual Violence Crimes. The relevant legal provision states:

*"Anyone who violates the provisions as referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years, and a fine of up to Rp5,000,000,000.00 (five billion rupiah). The criminal provisions referred to in Paragraph (1) also apply to anyone who intentionally engages in deceit, a series of lies, or persuades a child to engage in sexual intercourse with them or another person. Meanwhile, Paragraph (3) states that if the crime referred to in Paragraph (1) is committed by a parent, guardian, caregiver, educator, or educational personnel, the sentence shall be increased by one-third of the penalty stipulated in Paragraph (1)."*

Additionally, Article 76D stipulates that "no person shall commit violence or threats of violence to force a child into sexual intercourse with them or another person." The prosecutor, in this case, sought a sentence of 8 (eight) years of imprisonment for the defendant.

The researcher outlines the key considerations of the judge in rendering the verdict. The indictment presented by the public prosecutor was a single charge, stating that the defendant had violated Article 76D and was subject to penalties under Article 81, Paragraph (1) of the Child Protection Act. The judge's considerations were documented in Decision Number 1590/Pid.Sus/2023/PN.Mdn.

Furthermore, the panel of judges took into account several key factors in reaching their decision:

Aggravating Factors:

- a. The defendant's actions were in violation of statutory regulations, religious norms, cultural norms, and moral norms.
- b. The defendant's actions could cause psychological trauma to the child victim.

Mitigating Factors:

- a. The defendant was respectful during the trial.
- b. The defendant had no prior criminal record.

However, in determining the final sentence, the judge imposed a lesser punishment than what was requested by the prosecutor. The court sentenced the defendant to 7 years of imprisonment and a fine of Rp. 100,000,000 (one hundred million rupiah). If the fine is not paid, it shall be replaced with an additional imprisonment term of 5 (five) months.

### **3. Islamic Criminal Law Assessment of Judge's Decision No. 1590/Pid.Sus/2023/PN.Mdn**

In its ruling, the court declared that all elements of Article 81(1) in conjunction with Article 76D of Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection, in conjunction with Article 6(c) of Law No. 12 of 2022 on Sexual Violence Crimes, had been proven under the primary alternative indictment. Therefore, the defendant was found guilty of committing a criminal act involving violence or threats of violence to coerce a child into engaging in sexual intercourse with them or another person by abusing trust arising from a relationship, taking advantage of the child's vulnerability, or engaging in lewd acts against an incapacitated individual.

In this study, the author will examine the judge's decision in the case of child rape under Decision No. 1590/Pid.Sus/2023/PN.Mdn from the perspective of both Indonesian Criminal Law and Islamic Criminal Law, as follows:

In Indonesia's criminal law system, child rape is explicitly regulated under the Indonesian Penal Code (KUHP) and specific legislation, particularly Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection. Law No. 23 of 2002 was enacted in response to the poor conditions faced by children in Indonesia. This law was introduced after the United Nations General Assembly ratified the Convention on the Rights of the Child (CRC) on November 20, 1989.<sup>22</sup>

a. Criminal Act of Rape

Child rape, as regulated under Articles 81 and 82 of the Child Protection Law, constitutes a criminal offense that violates a child's fundamental rights, particularly the right to protection from sexual violence. Article 81 stipulates strict penalties for child rape, with imprisonment ranging from a minimum of five years to a maximum of 15 years, along with fines of up to IDR 5,000,000,000. Meanwhile, Article 82 imposes even harsher penalties if the perpetrator is someone closely related to the victim (e.g., a parent or guardian).

b. Considerations in the Verdict

In Decision No. 1590/Pid.Sus/2023/PN.Mdn, the court sought to render a verdict in accordance with these provisions, considering several key aspects:

- 1) **Severity of the Crime:** Child rape is classified as an extraordinary crime, causing not only physical harm but also severe psychological trauma to the victim. Therefore, the burden of proof must be based on substantial evidence, including victim testimony, medical reports, and other relevant evidence.
- 2) **Aggravating Circumstances:** If the perpetrator has a close relationship with the victim, such as a family member or a trusted guardian, the sentence may be more severe to provide greater protection for vulnerable children.

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<sup>22</sup> B I P Tim, *Undang-Undang Perlindungan Anak* (Bhuana Ilmu Populer, 2016).

- 3) Additional Sanctions: Besides imprisonment, the court may impose additional penalties, such as mandatory rehabilitation or special supervision of the perpetrator, particularly when it concerns the psychological recovery of the victim.

Islamic criminal law, or *fiqh jinayah*, has fundamental principles distinct from Indonesia's positive law, though both share a common goal of protecting children's dignity and rights. Under Islamic law, child rape is generally classified under *zina* (unlawful sexual intercourse), which is strictly prohibited in Islam.

- a. Child Rape in Islamic Law Perspective

In Islamic criminal law,<sup>23</sup> child rape is considered a severe offense that warrants harsh punishment, depending on the circumstances surrounding the crime:

- 1) Hudud Punishment: In cases where the crime involves *zina*, defined as sexual relations outside of a lawful marriage, the perpetrator may be subjected to hudud (fixed punishments under Islamic law). These include stoning (for married offenders) or 100 lashes (for unmarried offenders). Historical precedents from the Prophet Muhammad's era indicate that perpetrators of rape were sentenced to stoning, as mentioned in the hadith narrated by Abduljabbar bin Wa'il from his father:

*"The Prophet ordered the stoning of a rapist."*

Additionally, Islamic jurists assert that if a rapist does not use weapons to threaten the victim, the punishment follows the standard ruling for *zina*—stoning for married offenders and 100 lashes plus exile for unmarried offenders.

- 2) Child Protection in Islam: Islam prioritizes the protection of children's rights. Ali ibn Abi Talib, in interpreting Surah At-Tahrim (66:6), emphasized that protecting one's family from Hellfire means teaching and guiding them properly. Children are considered a trust (*amanah*) that must be safeguarded and nurtured, making any act that harms their mental and physical well-being strictly prohibited. Moreover, in Islamic law, children are often deemed incapable of giving valid consent in matters related to *zina*, which reinforces the emphasis on their protection rather than punishment.

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<sup>23</sup> Sri Astuti et al., "Sexual Deviation of Animals Between Law and Sharia ; a Comparative Analysis," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 2 (2021): 118–29, <https://doi.org/10.24252/mh.v3i2.22017>.

b. Considerations in the Verdict from an Islamic Perspective

When evaluating the court's ruling on child rape from an Islamic legal standpoint, several factors must be considered:<sup>24</sup>

- 1) **Child's Right to Protection:** Islam strongly emphasizes child protection as a crucial aspect of social justice and morality. Hence, an Islamic criminal court would prioritize addressing the psychological and physical harm inflicted upon the child.
- 2) **Perpetrator's Accountability:** In Islamic law, perpetrators bear immense moral and legal responsibility, especially if they are close to the victim or a guardian figure. Harsh punishments may be imposed to deter similar crimes and ensure justice for the victim.

In terms of legal substance, both Indonesian criminal law and Islamic criminal law share the objective of protecting children. However, they differ in their approaches and the types of punishments applied:

- 1) In Indonesian criminal law, child rape is punished according to national legal provisions, with an emphasis on realistic sentencing and rehabilitation principles.
- 2) In Islamic criminal law, punishments tend to be more retributive and corrective, emphasizing severe penalties for offenders while prioritizing moral rehabilitation for the victim. Physical punishments such as stoning or lashing may be considered, depending on the marital status and age of the perpetrator.

The ruling in the child rape case under Decision No. 1590/Pid.Sus/2023/PN.Mdn reflects the application of criminal law that prioritizes child protection through strict sanctions against perpetrators. From the perspective of Islamic criminal law, although it is not formally implemented in Indonesia, the crime of child rape remains a grave offense under Islamic jurisprudence. Islamic law demands that such crimes be met with appropriate punishments, whether through hudud or *ta'zir* (discretionary punishment).

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<sup>24</sup> Syarifah Syarifah, "Zina Act Review from Islamic Law in Bandar Sinembah Village Tanjung Morawa," *International Journal of Ethno-Sciences and Education Research* 1, no. 4 (2021): 71-75, <https://doi.org/10.46336/ijeer.v1i4.242>.

## CONCLUSION

This study found that national law and Islamic criminal law share similarities in viewing child rape as a serious crime that requires strict punishment. Law No. 35 of 2014 and Article 81 of Law No. 17 of 2016 prescribe imprisonment for perpetrators, while Islamic law applies *jarimah hudud* or *ta'zir*, depending on the perpetrator's status. Verdict No. 1590/Pid.Sus/2023/PN.Mdn demonstrates the national legal system's commitment to child protection, although there remains debate on whether the imposed sanctions are sufficient to serve as a deterrent and ensure justice for victims. The strength of this study lies in its comparative approach, which examines both Indonesian positive law and Islamic law in parallel to understand how child rape is addressed in both legal systems. By analyzing normative foundations and court rulings, this study provides deeper insights into the challenges and opportunities in implementing child protection policies. Additionally, it offers policy recommendations that consider the concept of *ta'zir* in Islamic law as an alternative to imposing stricter punishments on perpetrators in accordance with the severity of their crimes. However, this study has several limitations. Its analysis primarily focuses on normative aspects and does not include empirical studies on the effectiveness of legal implementation in various child rape cases in Indonesia. Moreover, limitations in accessing broader case data may affect the generalizability of the findings. Therefore, further research is needed to explore how legal decisions impact victims and how the judicial system can be more effective in providing protection and rehabilitation for child rape survivors.

## REFERENCES

- Abarca, R M. "Sugiyono-Metode Penelitian Kuantitatif Dan Kualitatif Dan R&D." *Nuevos Sistemas de Comunicación e Información*, 2021.
- Abdurahman, Irfan. "Prinsip Asasi Hukum Qadzaf Dalam Islam Dan Kompilasi Hukum Islam." *As-Sakinah : Jurnal Hukum Keluarga Islam*. STAI Pelabuhan Ratu, 2023. <https://doi.org/10.51729/sakinah11129>.
- Al-Bukhari, Muhammad. "Sahih Al-Bukhari." Dar Ul-Hadith, 1978.
- Arioen, Refi, Ahmaludin Ahmaludin, Junaidi Junaidi, Indriyani Indriyani, and Wisnaningsih Wisnaningsih. "Buku Ajar Metodologi Penelitian," 2023.
- Ariyanti, Vivi. "Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana

- Indonesia." *Jurnal Yuridis* 6, no. 2 (2019): 33–54.
- Astuti, Sri, Ana Darwis, Abdul Wahid Haddade, and Andi Muhammad Akmal. "Sexual Deviation of Animals Between Law and Sharia; a Comparative Analysis." *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 2 (2021): 118–29. <https://doi.org/10.24252/mh.v3i2.22017>.
- Bourchier, David M. "Two Decades of Ideological Contestation in Indonesia: From Democratic Cosmopolitanism to Religious Nationalism." *Journal of Contemporary Asia* 49, no. 5 (2019): 713–33. <https://doi.org/10.1080/00472336.2019.1590620>.
- Harahap, Irwan Safaruddin. "Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Dalam Perspektif Hukum Progresif." *Jurnal Media Hukum* 23, no. 1 (2016).
- Ibipurwo, Guruh Tio, Yusuf Adi Wibowo, and Joko Setiawan. "Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif." *Jurnal Hukum Respublica* 21, no. 2 (2022): 155–78.
- Iqbal, Muhamad. "The Effectiveness of Criminal Law Application in an Endeavor to Suppress the Height of Bullying Violence in Indonesia as an Age Challenge." *International Journal of Art and Social Science* 3, no. 3 (2020): 196–205. <https://www.ijassjournal.com/2020/V3I3/41465751932.pdf>.
- Jamarudin, Ade, M Khoirul Anam, and Ofa Ch Pudin. "Bahaya Riba Dalam Ekonomi Islam Dalam Perspektif Al-Qur'an." *Jurnal Shidqia Nusantara* 1, no. 1 (2020): 94–114.
- Jonaedi Efendi, S H I, S H Johnny Ibrahim, and M M Se. *Metode Penelitian Hukum: Normatif Dan Empiris*. Prenada Media, 2018.
- Mubarok, Nafi. "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan." *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 27, no. 1 (2024): 15–31.
- Murti Wijayanti. "Prison in Islamic Criminal Law Perspective." *International Journal of Education, Information Technology and Others (IJEIT)* 5, no. 2 (2022): 389–99. <https://doi.org/10.5281/zenodo.4730248>.
- Nasution, Faisal Nawawi. "Tinjauan Hukum Islam Terhadap Pidana Anak Pelaku Pemerkosaan Dalam Hukum Positif." *SALAM: Jurnal Sosial Dan Budaya Syar-I* 4, no. 2 (2017): 153–202.
- Rahadian, Dian, B Jalil, and Mia Amalia. *Hukum Pidana: Landasan Dan Penerapannya Di Indonesia*. PT. Sonpedia Publishing Indonesia, 2024.
- Raharjo, Satjipto. *Penegakan Hukum Suatu Tinjauan Sosiologis*. Yogyakarta: Genta Publishing, 2009.
- Sari, Seva Maya. *Fiqih Jinayah (Pengantar Memahami Hukum Pidana Islam)*. PT. Sonpedia Publishing Indonesia, 2023.

- Syarifah, Syarifah. "Zina Act Review from Islamic Law in Bandar Sinembah Village Tanjung Morawa." *International Journal of Ethno-Sciences and Education Research* 1, no. 4 (2021): 71-75. <https://doi.org/10.46336/ijeer.v1i4.242>.
- Tim, B I P. *Undang-Undang Perlindungan Anak*. Bhuana Ilmu Populer, 2016.
- Tim Penerjemah Badan Pembinaan Hukum Nasional Departemen Kehakiman. *Kitab Undang-Undang Hukum Pidana: Terjemahan Resmi Dari Wetboek van Strafrecht (WvS)*. Jakarta: Sinar Harapan, 1983.
- Wahyuni, Fitri. "Sanksi Pidana Pemerkosaan Terhadap Anak Menurut Hukum Pidana Positif Dan Hukum Pidana Islam." *Jurnal Media Hukum* 23, no. 1 (2016).
- Yunarti, Sri. "Fiqh Jinayah," 2022.