

PROTECTION OF VICTIMS OF SEXUAL VIOLENCE REVIEWED FROM THE PERSPECTIVE OF LAW NUMBER 12 OF 2022 AND ISLAMIC LAW

Hoky Anita¹, Al Khitami Ghifari², Rahayu Dewi³, Mila Monica⁴, Dewi Rifka⁵, Noor Aditia⁶

Universitas Brawijaya, Indonesia

*Corresponding Author: anitacarolina911@gmail.com

Article Info

Article history:

Received :
Acceptance :
Published :
Available online

<http://aspublsher.co.id/index.php/perspektif>

E-ISSN: xxxx-xxxx

How to cite:

Anita, H., Ghifari, Al Khitami., Dewi, Rahayu., Monica, Mila., Rifka, Dewi & Aditia, Noor. (2024). "Protection Of Victims Of Sexual Violence Reviewed From The Perspective Of Law Number 12 Of 2022 And Islamic Law". Perspektif: Journal of Social and Library Science, Vol. 2, No. 2, pp. 74-81, 2024



This is an open access article under the [CC BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license

ABSTRACT

Protection of victims of sexual violence is reviewed from the perspective of Law Number 12 of 2022 and Islamic law. Islam is a religion that is centered on the Qur'an, the holy book and the direct word of Allah SWT. All forms of actions and instructions are already stated in the holy book. In community life, there must be limitations and rules in regulating behavior and actions that are not considered to interfere with the rights of others. This is indicated by the existence of laws which mean that there are regulations that regulate relations between humans, to maintain order and peace. One of the problems faced by the country is sexual violence. Sexual violence can cause physical and psychological trauma to victims, including post-traumatic stress disorder, depression, and anxiety. This study uses comparative and descriptive methods. The descriptive method can be interpreted as a description of problems that occur in the present or are ongoing, by describing the condition of the subject or object in the study based on actual facts or as they are. The comparative method examines previous research data as a comparison of the law on sexual violence according to Law Number 12 of 2022 with the law on sexual violence according to Islam.

Keywords: Sexual violence, Law, Islam

1. INTRODUCTION

Islam is a religion that is centered on the Koran, the holy book and direct words from Allah SWT. revealed to the Prophet Muhammad saw. as the last prophet and apostle of Allah. In the Islamic religion, everything, good deeds, good and bad words are listed in their entirety in the Al-Qur'an. How beautiful is Islam, which has arranged everything in such a way as to create and maintain peace between mankind. As well as to protect and provide guidance to the people. If you do a good

action, the response you get will also be good. If you do a bad action, the impact will also be bad. the form of retribution received by humans for all the actions they have taken can be received in this world and in the hereafter.

To prevent humans from doing bad things and having a bad impact on the environment as well as themselves, that is why boundaries and rules appear in social life to regulate behavior and actions so that every action taken is not considered to be disturbing other people, where this product is called law. This is shown by the existence of law which means that there are regulations that regulate relations between human beings, to maintain order and peace. According to KBBI, law is a statute, regulation and so on to regulate social interaction. In Indonesia, which is a country of law, every action that is considered a violation will definitely be sanctioned. However, it should be remembered that the law in Indonesia does not only talk about laws -law as written law but there are also unwritten laws such as customary law and religious law. Because in community life there will always be forms of deviation and various forms of crime. One of the problems that has always been a serious problem faced by countries throughout the world including Indonesia is a problem of sexual violence. Sexual violence is a serious topic to discuss because of its devastating impact on victims and society as a whole. Sexual violence can cause physical and psychological trauma to victims, including post-traumatic stress disorder, depression, and anxiety, and other health problems. In addition, victims of sexual violence can also experience reproductive and sexual health problems, such as sexually transmitted infections and unwanted pregnancies.

Sexual violence also has a broader impact on society. It can create an unsafe environment and undermine public trust in institutions and government. Sexual violence can also worsen gender inequality and social injustice, because the victims are often women and children, and the perpetrators are often not punished firmly. In Indonesia alone, this problem is always a hot topic for discussion. In Indonesian, violence Sexual is defined as any act that degrades, insults, harasses, and/or attacks a person's body and reproductive function. Sexual violence can also be defined as any sexual act committed by one or more people against another person without consent or with coercion or threats. .

Because this is a serious problem, there needs to be a law to prevent ongoing cases of sexual violence. The Law on Sexual Violence is very important because it provides legal protection for victims and encourages the prevention of sexual violence. The law can provide severe sanctions for perpetrators of sexual violence in order to reduce sexual violence and provide justice for victims. In addition, laws can provide support and assistance to victims of sexual violence, such as access to health care and psychological support. Gender-based violence laws can also raise public awareness of the importance of respecting human rights and ending gender-based violence. Opening the wider community's view of the importance of protecting and respecting the rights and freedoms of others. Research and writing

that discusses the legal protection of sexual violence against victims has been widely conducted starting from the perspective of positive law applicable in Indonesia as well as in the perspective of Islamic law. There are also many views and thoughts related to the problem of sexual violence that have been discussed by the public.

2. RESEARCH METHOD

The method used in this writing is comparative and descriptive. The descriptive method can be interpreted as a description of problems that occur in the present or are ongoing, by describing the condition of the subject or object in the study based on actual facts or what they are. The comparative method examines previous research data as a comparison of the law on sexual violence according to Law number 12 of 2022 with the law on sexual violence according to Islam.

3. RESULT AND DISCUSSION

Protection of Victims According to Law Number 12 of 2022

Sexual violence is still a frightening behavior for this nation. Not only women, this problem also often befalls children and men, because it is not limited to gender. Sexual harassment behavior is a despicable act that can be measured by the existence of violated rules or norms, norms based on social and cultural values as a system of behavior and guidelines for the actions of community members that may be related to religious norms. Perpetrators of sexual harassment can be charged using the obscenity article as regulated in Articles 289 to 296 of the Criminal Code or Articles 414 to 422 of Law 1/2023 while still paying attention to the provisions of the elements of each criminal act. Not only related to criminal law, the occurrence of sexual violence also violates the human rights of the victim. In addition to violating rights, this also contradicts the values of Pancasila. It should also be noted that the Indonesian legal system guarantees the human rights of every citizen. It is stated in the 1945 Constitution of the Republic of Indonesia in Articles 28A-28J. Article 28A explains that everyone has the right to live and the right to defend their life and livelihood. Sexual violence is a very dangerous act that violates human rights, one of the many crimes against human dignity, and is a form of discrimination that must be eliminated so that it does not easily occur. It has also been very clearly explained in Law No. 12 of 2022.

Regarding Article 1(1) of Law Number 12 of 2022, the crime of sexual violence is an act that falls into the category of sexual violence. It is regulated by law and is not regulated by this law. Previously, the term sexual violence in the academic text of the TPKS Law included three types of sexual violence that could find standards in applicable laws and regulations. this law and other acts of rape determined by

law as long as the law requires it. The purpose of establishing this law, on the one hand, is to prevent all forms of sexual violence, handle, protect victims and compensate; the third tool for law enforcement and rehabilitation of perpetrators of crimes; then the fourth is to create an environment free from sexual violence; and ultimately to ensure that sexual violence does not happen again. According to Article 4, acts that are included in acts of sexual violence consist of: Not non-physical sexual harassment, but physical sexual harassment, mandatory contraception, mandatory sterilization, forced marriage, sexual exploitation, sexual harassment, sexual captivity, sexual violence that utilizes electronic media.

In addition to the categories mentioned, there are also criminal acts of sexual violence that contain: Rape, cruelty, sexual intercourse with children, indecent acts against children, and/or sexual harassment against children, violations of morality against the will of the victim, pornography with children or pornography that explicitly contains violence and sexual harassment, forced prostitution, criminal acts of human trafficking whose purpose is human trafficking, sexual violence within the family environment.

The criminal sanctions contained in these laws and regulations vary greatly depending on the type of sexual violence committed by the perpetrator against the victim. For example, in Article 5 there is a maximum sentence for non-physical sexual activity of 9 months. Physical sexual harassment is listed in Article 6 sexual desire directed at the body and/or reproductive organs with the degradation of human dignity or to bring someone under his control at will against the law both within and outside of marriage can be punished with a maximum imprisonment of 4-12 years. Meanwhile, for sexual harassment by coercion of others The use of contraceptives with violence or threats and so on, can be sentenced to a maximum of 5-9 years in prison according to the provisions of Articles 8-9.

Another thing is forcing a good marriage on children or others for any reason, including in the name of cultural activities in accordance with the provisions of this article 10 which can result in a maximum prison sentence for the perpetrator of 9 years. There are also those who have the position of an official, but deliberately exploit it, this position is used to threaten and intimidate the victim. With or shame based on discrimination, the purpose is sexual violence against the person is subject to Article 11 or 12, and the maximum sentence is 12 to 15 years in prison. Sexual slavery is also regulated in this law, where someone is sexually exploited the person is threatened with a maximum prison sentence of 15 years. Although sexual violations produced electronically are fine such as recording, taking pictures or anything other than people will be threatened with a maximum prison sentence of 4 years

Considering the existence of the Sexual Violence Act, it is appropriate to be used as a basis for good and comprehensive regulation. In addition to the various forms of protection that have been described, victims are entitled to other forms of protection, including protection of the safety of people, family and property, as well

as freedom to give or threats related to giving statements. Protected from coercion to provide information, without difficult questions, concealment of identity (pseudonym), given a new identity, given temporary or new housing, given legal advice. According to the Witness and Victim Protection Law Number 31 of 2014, all of these rights are granted to victims. Protection of victims of crime must be considered in the criminal process in order to achieve the objectives of investigating crimes that have occurred. To ensure that the public is satisfied that justice can finally be upheld and criminals are punished to the maximum extent possible according to what they have done.

Protection of Victims According to Islamic Law

Women often experience sexual violence. Society views women as weak creatures who are unable to fight violence and are underestimated, therefore women often experience inappropriate treatment such as harassment, physical, sexual and emotional violence. Intimidation, difficulty in getting help and injustice make women continue to be the targets of inappropriate behavior. According to Fuady, sexual violence has an impact on victims including depression, phobias, nightmares, long-term distrust of others, fear of others, fear of having sex, and unwanted pregnancies, even very severe trauma can cause victims to have suicidal tendencies (Fu'ady, 2011). Therefore, victims of sexual violence must be protected. Currently, Indonesia is one of the countries experiencing a crisis of sexual crimes. In the 2020 National Commission on Violence Against Women statistics, there were 431,471 cases of violence against women, of which 421,752 cases came from case data sources handled by the Religious Court, then 14,719 cases were handled by partner service provider institutions. one-third of provinces in Indonesia and 1,419 cases came from the Service and Referral Unit (UPR), a unit formed by the National Commission on Violence Against Women that receives complaints from victims who come directly to the National Commission on Violence Against Women or by telephone.

Sexual violence is contrary to the mission of all religions in the world. Of course, every religion teaches humans to do good, and especially in Islam it forbids its followers from doing bad things. Islam is a religion that has the principle of rahmatan lil alamin, which means bringing happiness to the entire universe that is commendable. Humans as creatures of God Almighty have the same position before Him. There is no difference between the two, except worship and obedience to God Almighty. Indeed, noble people are those who are most pious to Allah SWT. Pious people are people who are truly good in the eyes of Allah SWT and to their fellow human beings. People who are pious will always do good. Wherever he is, he will always do good. Islam teaches its people to do good to others and forbids people from doing injustice, one of which is oppressing anyone, both men and women. This is why Islam hates violence so much.

Victims of sexual violence experienced by someone can cause physical and psychological harm. Sexual violence is a sexual act committed by someone against another person without their consent or which cannot be avoided and causes feelings of shame, anger and trauma. Sexual violence can cause prolonged and very deep trauma. Muslims believe that any act or behavior that is contrary to Islamic law is zina, and zina is a very serious form of crime and will not be forgiven by Allah SWT. Zina is intercourse that is prohibited if it occurs outside of marriage and is done intentionally by the perpetrator.

Basically, the channeling of sexual desire is not prohibited by Islam, but regulates when, how and to whom sexual desire can be channeled. Marriage between a man and a woman is a solution to control sexual desire. According to Islamic law, a husband or wife can only satisfy their sexual needs with someone they are legally married to. Sex between two people must be consensual and when both parties want to enjoy it.

Differences in the Power of Constitution and Islamic Law Regarding the Protection of Victims of Sexual Violence

Sexual violence is an act. Whether in words or actions, that does not want to control another person and makes them engage in unwanted sexual activity. Important factors of sexual violence are coercion that is not agreed to by the victim and the victim's weakness. Children, adult women and adolescent women are victims of sexual violence that often occur. Sexual crimes can occur in the family environment, work environment or company. Protection of the interests of victims of sexual violence must be ensured through certain judicial procedures and social services. These social services are mandatory components, and these components must be considered in the formulation of criminal law and social policies in the country. In Indonesia itself, the criminal law that is used as a reference is the 1945 Constitution. In the 1945 Constitution there are articles that contain sexual violence and criminal sanctions that can be imposed on perpetrators of sexual violence. Victims of sexual violence need to be protected by law and policy because they are legal entities that have the ability to prosecute perpetrators of sexual violence. Regulations on protecting victims are clearly stated in the 1945 Constitution, but Regulations on victim protection have not clearly followed the pattern, especially in the criminal justice system in Indonesia. Currently, Indonesian law is only regulated by several laws and regulations and protection of victims of criminal acts.

Islamic law exists as a substitute or alternative law to address the problem of sexual violence crimes in society. By regulating and establishing its laws, Islamic law in the form of taklifi law and wadh'i law aims to achieve and maintain the goodness and interests that exist in human life. Asy Syathibi emphasized that sharia law is closely related to the defense of human needs and every aspect of Islamic law revealed by Allah is intended to help humanity.

4. CONCLUSION

Sexual violence has a broader impact on society. It can create an unsafe environment and undermine public trust in institutions and government. Sexual violence can also exacerbate gender inequality and social injustice, as victims are often women and children, and perpetrators are often not punished severely. Victims of sexual violence need to be protected by laws and policies because they are present as legal entities that have the capacity to prosecute perpetrators of sexual violence. Articles 289 to 296 of the Criminal Code or Articles 414 to 422 of Law 1/2023 are articles that regulate perpetrators of sexual harassment. The Indonesian legal system also guarantees the human rights of every citizen. This is stated in the 1945 Constitution of the Republic of Indonesia in Articles 28A-28J. Article 28A explains that every person or human being has the right to life and the right to regulate and defend their life and livelihood. However, the law only regulates part of it and dissolves protection for victims of criminal acts through several laws and regulations. Islamic law exists as a substitute to address the problem of crime in society. By regulating and establishing its laws, Islamic law in the form of taklifi law and wadh'i law aims to achieve and maintain the good and interests that exist in human life.

References

- Agustini, I., Rachman, R., & Haryandra, R. "Perlindungan Hukum Terhadap Korban Kekerasan Seksual: Kajian Kebijakan Hukum Pidana Indonesia dan Hukum Pidana Islam." *Rechtenstudent Journal UIN KHAS Jember*, 2(3) (2021): 342-355
- Alimuddin, Nasution, Jiwantara F. A., (2022). Rendahnya Perlindungan Hukum Terhadap Korban Kekerasan Anak Penyebab Meningkatnya Kasus Kekerasan Seksual. *Jurnal Ilmiah Ilmu Pendidikan*, 5(7) 2186-2187
- Anam, R., Fauzi, T. A., Setyorini, T. D., & Rohmah, E. I. (2022) . Hukuman Bagi Pelaku Tindak Pidana Kekerasan Seksual Di Kampus Dalam Perspektif Hukum Positif Dan Hukum Islam. *Ma'mal: Jurnal Laboratorium Syariah dan Hukum*, 3(06) 549-570.
- Asna Azizia Nikmah. (2022). Kesinkronan Peraturan Perundang-Undangan Tentang Kekerasan Seksual Pasca Lahirnya Undang-Undang No. 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual, *Novum : Jurnal Hukum*, 63-75.
- Husin, L. S. (2020). Kekerasan Seksual Pada Perempuan Dalam Perspektif Al-Quran Dan Hadis. *Al Maqashidi: Jurnal Hukum Islam Nusantara*, 3(1) 16-23
- Kifli, S., & Ismail, A. (2022). Analisis Hak Korban Korban Kekerasan Seksual dalam Rancangan Undang-Undang Penghapusan Kekerasan Seksual

- dalam Perspektif Hukum Positif dan Hukum Islam. *Wajah Hukum*, 6(2) 462-470.
- Nanda. (2022). Reformulasi Pasal 17 Ayat 1 Uu No. 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual. *Uii.ac.id* (2022). Paradiaz, Rosania, and Eko Soponyono. Perlindungan hukum terhadap korban pelecehan seksual. *Jurnal Pembangunan Hukum Indonesia*, 4(1) 61-72.
- Paradiaz, Rosania, and Eko Soponyono. (January 31, 2022). Perlindungan Hukum Terhadap Korban Pelecehan Seksual. *Jurnal Pembangunan Hukum Indonesia*, 4, no. 1 61-72.
- Potorondo, Imam C. (2022). Pasang Surut Implementasi Negara Hukum dan Demokrasi di Indonesia." *Jurnal Kertha Semaya*, 10(10) 2279-2292
- Putri Suprpto, dkk. (2021). Perlindungan Hukum Terhadap Anak sebagai Korban Tindak Kekerasan Seksual Seksual di Indonesia. *Birawa Law Journal*, 2(1) 16.
- Rizal, D., Asmaret, D., & Islami, M. H. (2022). Perlindungan Hukum Keluarga Islam Di Indonesia Terhadap Korban Kekerasan Seksual. *El-Hekam*, 7(2).
- Sangalang, R. S. (2022). Perlindungan Hukum Terhadap Korban Tindak Pidana Kekerasan Seksual Dalam Lingkungan Pendidikan." *Jurnal Ilmu Hukum Tambun Bunga*, 7(2) 176-192.
- Sartini, dkk. (2021). Perlindungan Hukum Terhadap Anak sebagai Korban Kekerasan Seksual (Studi Kasus Polisi Resort Kota Mamuju). *Indonesian Journal of Legality of Law*, 4(1) 18-25.