

Sexual Violence and the Politics of Criminal Law in Indonesia: A Gender Equality Approach and *Maqāsid al-Sharī'a*

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Abstract: This article examines the criminal law policy in Indonesia regarding the increasing incidence of sexual violence crimes, primarily affecting women. The study adopts a literature research approach, utilizing data from legal regulations in Indonesia and various scholarly works related to the subject. Employing a gender equality approach and *maqāsid al-sharī'a*, the article concludes that while Indonesia possesses legal regulations addressing sexual crimes, these laws are dispersed across different statutes, resulting in diminished effectiveness. The enactment of the Law on Sexual Violence (UU TPKS) in 2022 signifies a noteworthy development in Indonesia's legal framework concerning sexual violence. This legislation is structured in a more organized and comprehensive manner, incorporating several reforms. Consequently, it instills optimism for enhanced endeavors to eliminate and prevent sexual violence. From an Islamic standpoint, the regulation of sexual violence aligns with the fundamental principles and objectives of Islamic law (*maqāsid al-sharī'a*). These principles aim to actualize the well-being and benefit of humanity while simultaneously preventing crimes that pose threats to human existence and dignity.

Keywords: *Politics of criminal law; sexual violence; gender equality; maqāsid al-sharī'a*

Abstrak: Artikel ini mengkaji kebijakan hukum pidana di Indonesia dalam mengatasi praktik tindak pidana kekerasan seksual yang cenderung meningkat dari waktu ke waktu dan perempuan adalah pihak yang paling banyak menjadi korban tindak kejahatan ini. Artikel ini merupakan penelitian kepustakaan yang sumber datanya didasarkan pada peraturan-peraturan hukum di Indonesia dan sejumlah karya ilmiah yang berkaitan dengan topik kajian ini. Menggunakan pendekatan kesetaraan gender dan *maqāsid al-sharī'a* artikel ini menyimpulkan bahwa Indonesia sebenarnya telah memiliki sejumlah

peraturan hukum tentang tindak pidana kejahatan seksual. Namun demikian, aturan-aturan hukum tersebut disusun secara parsial dan tersebar di berbagai peraturan perundang-undangan sehingga menjadikannya kurang efektif. Lahirnya Undang-undang Tindak Pidana Kekerasan Seksual (UU TPKS) pada tahun 2022 menandai adanya perkembangan baru dalam pengaturan hukum tindak pidana kekerasan seksual di Indonesia. Undang-undang ini disusun secara lebih sistematis dan komprehensif dengan sejumlah pembaruan yang ada di dalamnya sehingga ia telah memberikan harapan baru bagi upaya pemberantasan dan pencegahan terhadap praktik kekerasan seksual. Dalam perspektif Islam, pengaturan tentang tindak pidana kekerasan seksual ini selaras dengan prinsip dasar dan tujuan disyariatkannya hukum Islam (*maqāsid al-shari'a*), yang ingin mewujudkan kebaikan dan kemaslahatan umat manusia dan sekaligus mencegah terjadinya tindakan kejahatan yang bisa mengancam eksistensi dan kehormatan manusia.

Kata kunci: *Politik hukum pidana; kekerasan seksual; kesetaraan gender; maqāsid al-shari'a*

Introduction

Sexual violence is basically part of a crime. Sexual violence continues to occur from time to time in numbers that cannot be said to be small. In 2020, cases of physical (non-verbal) sexual violence in various forms reached quite high numbers, including: sexual abuse (1,136 cases), rape (762 cases), sexual harassment (294 cases), and sexual intercourse (156 cases).¹ This figure is of course less than the number that actually exists or occurs and has not been or is not reported.²

This sexual violence basically includes physical and non-physical violence.³ However, many people focus more on physical

¹ Laili Nur Anisah, "Tindak Pidana Perzinaan RUU KUHP: Perlindungan Hukum Versus Kriminalisasi Perempuan," *Jurnal Perempuan* 23, no. 2 (2018): 321. See too: Iqbal Kamalludin et al., "Politik Hukum Dalam Kebijakan Hukum Pidana LGBT," *Cita Hukum*, 6, no. 2 (2018): 319, <https://doi.org/10.15408/jch.v6i2.7805>.

² Carina Petersson et al., "Teenagers' and Young Adults' Sexual Behaviour and Its Associations with Exposure to Violence, among Visitors at a Youth Centre in Sweden," *Sexual & Reproductive Healthcare* 34 (2022): 100781, <https://doi.org/https://doi.org/10.1016/j.srhc.2022.100781>.

³ This sexual harassment is included in one type of sexual violence. In Article 4 of the Law on the Elimination of Sexual Violence, it is explained that sexual

sexual violence. The increasingly rapid development of technology has opened up opportunities for perpetrators of morality crimes to commit acts of sexual violence against women through online media.⁴ During the Covid-19 pandemic, when many people could not carry out activities outside the home and the use of online media increased, this was also accompanied by an increase in cases of sexual violence in cyberspace.⁵ In 2019, 281 cases of sexual violence in cyberspace were reported and in 10 months of 2020 there were 659 cases. Sexual violence is mostly carried out by the younger generation because they are the ones who use online media the most. These young people are the group most vulnerable to becoming perpetrators and victims of online sexual violence. However, women remain the majority of victims (reaching 71%) of online sexual violence practices.⁶

In 2021, there was an increase in complaints to the National Commission on Violence Against Women regarding cases of sexual violence, namely 1933 cases or the equivalent of 81%. This increase in complaints is of course a challenge for Komnas Perempuan. If calculated from 263 working days in 2021, the average number of cases that must be handled by Komnas Perempuan is around 16 cases/per day which are only handled with limited resources. This number has almost doubled compared to cases that occurred in 2020, where the average number of cases that Komnas Perempuan had to respond to

harassment is sexual aggression carried out against another person through physical or non-physical activities related to a person's body parts and sexual desires as well as intimidating, insulting, defaming, or degrading the victim's dignity. See Article 4 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence of the Republic of Indonesia.

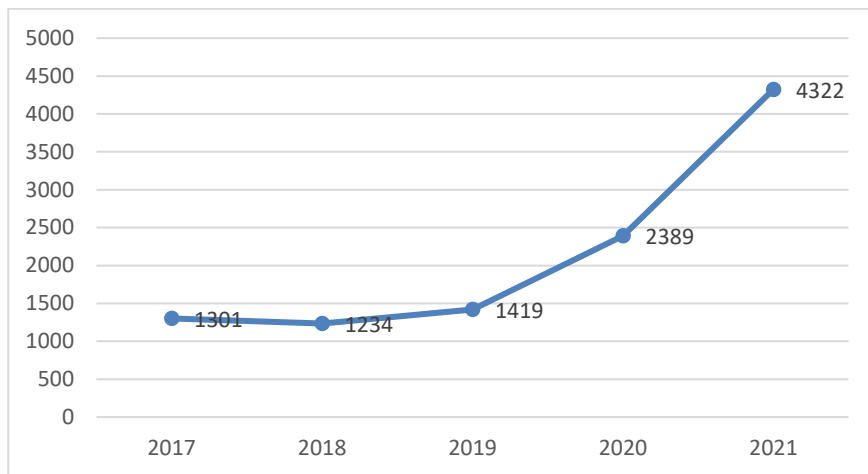
⁴ Viani Picchetti et al., "Association between Lifetime Sexual Violence Victimization and Selected Health Conditions and Risk Behaviors among 13–24-Year-Olds in Lesotho: Results from the Violence Against Children and Youth Survey (VACS), 2018," *Child Abuse & Neglect* 134 (2022): 105916, <https://doi.org/https://doi.org/10.1016/j.chiabu.2022.105916>.

⁵ Dorothy L Espelage et al., "Violence Perpetration Prevalence among Colorado (United States) High School Students across Gender, Racial/Ethnic, and Sexual Identities," *Preventive Medicine* 161 (2022): 107146, <https://doi.org/https://doi.org/10.1016/j.ypmed.2022.107146>.

⁶ "Pelecehan Seksual Online Meningkatkan Di Masa Pandemi | SOSBUD: Laporan Seputar Seni, Gaya Hidup Dan Sosial | DW | 06.01.2021," 2021, <https://www.dw.com/id/pelecehan-online-meningkat-di-masa-pandemi/a-56135089>.

was 9 cases per day. This shows the high number of cases of sexual violence that occur in Indonesian society.⁷

Figure 1: Graph of the Number of Sexual Violence Cases in Indonesia from 2017 to 2021



Sources: National Commission on Violence Against Women report⁸

The Indonesian government actually has a number of legal regulations that regulate criminal acts of sexual violence. However, until mid-2022, regulations regarding sexual crimes will not be adequate. Apart from that, a number of these regulations also do not fully support and protect the rights of victims. In cases of sexual violence, women are basically in an unequal position. Women are positioned in the space of male power, which continues to be recorded as a mosaic of human history and civilization. As a legal state, Indonesia has actually determined that every citizen is positioned and treated fairly and equally and that they are all protected constitutionally to have a safe and peaceful life. However, in reality, there are still many citizens, especially women, who are treated unfairly and unequally. In fact, quite a few of them experience sexual harassment and violence as a result of

⁷ Komnas Perempuan, “Perempuan Dalam Himpitan Pandemi: Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak, Dan Keterbatasan Penanganan Ditengah Covid-19,” *Catabu* 2021, vol. 138, 2021. See too Kamalludin et al., “Politik Hukum Dalam Kebijakan Hukum Pidana LGBT,” 319.

⁸ Komnas Perempuan.

this inequality.⁹ This condition of course makes their lives unsafe and uncomfortable.

A number of scholars have conducted research related to sexual violence. Yonna and Anna, for example, examine cases of sexual violence that exist and occur in Indonesia and India and how these two countries regulate and handle cases or acts of sexual violence.¹⁰ Utami examines the factors that dominate the occurrence of acts of sexual violence against women, which according to him are caused by a patriarchal culture, where men have special rights compared to women.¹¹ Meanwhile, Prianter reviewed various efforts made by the government to tackle sexual violence against women.¹² On the other hand, Rosania and Eko studied the importance of formulating and ratifying legal regulations, including the Criminal Code Bill, which can protect women from acts of sexual harassment and violence.¹³ Apart from that, there is also the work of Starucht and Eccless which examines the structured culture of violence in the world of work,¹⁴ and Fatura who examines the existence of patriarchal culture as one of the causes of legal policies that are made that tend not to have gender equality.¹⁵

⁹ Kamalludin et al.

¹⁰ Yonna Beatrix Salamor and Anna Maria Salamor, "Kekerasan Seksual Terhadap Perempuan (Kajian Perbandingan Indonesia-India)," *Balobe Law Journal* 2, no. 1 (2022): 7, <https://doi.org/10.47268/balobe.v2i1.791>.

¹¹ Utami Zahirah Noviani P et al., "Mengatasi Dan Mencegah Tindak Kekerasan Seksual Pada Perempuan Dengan Pelatihan Asertif," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 5, no. 1 (2018): 48, <https://doi.org/10.24198/jppm.v5i1.16035>.

¹² Prianter Jaya Hairi, "Problem Kekerasan Seksual: Menelaah Arah Kebijakan Pemerintah Dalam Penanggulangannya Sexual Violence Problems: Analyzing the Direction of Government Policy in Handling the Problems," *Negara Hukum* 6, no. 1 (2015): 23, <http://www.komnasperempuan.or.id/wp-content/>.

¹³ Eko Soponyono Rosania Paradiaz, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 64.

¹⁴ R M T Staruch and S J Eccles, "A Report on the State of Bullying & Harassment within Plastic Surgery in the United Kingdom," *Journal of Plastic, Reconstructive & Aesthetic Surgery* 75, no. 11 (2022): 3905–23, <https://doi.org/https://doi.org/10.1016/j.bjps.2022.02.084>.

¹⁵ Fara Novanda Fatura, "Telaah Tindak Pidana Pelecehan Seksual Secara Verbal Dalam Hukum Pidana Indonesia," *Recidive* 8, no. 3 (2019): 141.

In contrast to previous studies, this paper examines criminal law regulatory policies (penal policies), especially those relating to criminal acts of sexual violence, which is one component of criminal policy. The study in this paper focuses on the analysis of policy making or formulation of substantive criminal law legislation to address criminal acts of sexual violence. More specifically, this paper examines the regulation of sexual violence in Indonesia based on gender equality and how Islam views and evaluates the policy of regulating criminal law. To examine and answer this problem, this paper uses a juridical-normative approach by utilizing gender equality theory, which is based on the principles of justice, equality, equal rights between men and women, as well as fair protection of basic human rights.¹⁶ This gender perspective is important to use because gender inequality has in fact become one of the factors causing sexual violence. Apart from that, the issue of sexual violence will also be seen and studied from the perspective of basic values or objectives of Islamic law (*maqāsid al-shari'a*). This is intended to see how Islam views the practice of sexual violence in society and the extent to which existing regulations or regulations are in harmony or in accordance with the objectives of Islamic law itself.

This paper is normative library research, where the data is based on library sources. The primary data sources in this research are a number of Indonesian legislative products, which include the Criminal Code, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2004 concerning the Elimination of Domestic Violence,

¹⁶ Dennis E Reidy et al., "Chapter 6 - The Culture of Masculinity and Sexual Violence: Raising Boys to Be Nonviolent Men," ed. Lindsay M Orchowski and Alan D B T - Engaging Boys and Men in Sexual Assault Prevention Berkowitz (Academic Press, 2022), 125–48, <https://doi.org/https://doi.org/10.1016/B978-0-12-819202-3.00013-4>; L N Macedo and M Scanavino, "Evaluation of the Psychometric Properties of the Sexual Violence Behavior," *The Journal of Sexual Medicine* 19, no. 5, Supplement 2 (2022): S231–32, <https://doi.org/https://doi.org/10.1016/j.jsxm.2022.03.527>; Lynnmarie Sardinha et al., "Global, Regional, and National Prevalence Estimates of Physical or Sexual, or Both, Intimate Partner Violence against Women in 2018," *The Lancet* 399, no. 10327 (2022): 803–13, [https://doi.org/https://doi.org/10.1016/S0140-6736\(21\)02664-7](https://doi.org/https://doi.org/10.1016/S0140-6736(21)02664-7); Allison K Groves et al., "Eviction, Intimate Partner Violence and HIV: Expanding Concepts and Assessing the Pathways through Which Sexual Partnership Dynamics Impact Health," *Social Science & Medicine* 305 (2022): 115030, <https://doi.org/https://doi.org/10.1016/j.socscimed.2022.115030>.

Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Law Number 35 of 2014 concerning Child Protection, and Law Number 12 of 2022 concerning Crimes of Sexual Violence, and Law Number 1 of 2023 concerning on the Criminal Code (KUHP). Meanwhile, the primary legal material comes from research reports and scientific works related to sexual violence in general and sexual violence that occurs in Indonesia. The data that has been collected is then read and processed by examining key concepts related to acts of sexual harassment and violence. The data analysis technique is carried out through three stages, namely identification of legal facts or issues, legal research and discovery to find legal concepts, and application of legal concepts and norms to existing facts or issues.

Gender Equality in the Formulation of Criminal Laws for Sexual Violence

Understanding gender does not mean talking about biological sex groupings, which are divided into only men and women. More broadly, gender is a social construction, which pays attention to aspects of masculinity or femininity. Gender differences between men and women are actually the result of a long process involving biological characteristics. Therefore, gender inequality is influenced by various social and cultural factors. It is created, socialized, reinforced, or even created by culture or society.¹⁷ UNICEF provides a definition of gender, as follows:

Gender is a social and cultural construct, which distinguishes differences in the attributes of men and women, girls and boys, and accordingly refers to the roles and responsibilities of men and women. Gender-based roles and other attributes, therefore, change over time and vary with different cultural contexts. The concept of gender includes the expectations held about the characteristics, aptitudes, and likely behaviors of both women and men (femininity and masculinity). This concept is useful in

¹⁷ Fitri Lestari, "Seks, Gender, Dan Konstruksi Sosial," 2015, <https://www.jurnalperempuan.org/wacana-feminis/seks-gender-dan-konstruksi-sosial>.

analyzing how commonly shared practices legitimize discrepancies between sexes.¹⁸

The above shows that the differences between men and women and also the characteristics of both are influenced by the social system and culture of society. Gender-based roles of men and women and other specific things are very likely to change over time and cultural changes in society. The concept of gender includes expectations of the characteristics, abilities and behavior expected of men and women (femininity and masculinity). This concept is helpful for examining how common and accepted behaviors support gender inequality.

The rights inherent in men and women are closely related to the issue of gender differences and are often unequal and unfair. Therefore, legal protection is needed that is preventive and repressive at the same time. Preventive legal protection is legal protection that emphasizes the opportunity given to the public to submit objections before a government decision takes definite form. Meanwhile, repressive protection is a form of legal protection that is more focused on resolving disputes that arise, and that everything has been fought for so that everyone can easily get what is their right.¹⁹

Before the passing of the Sexual Violence Crime Law on May 9 2022, the existing Indonesian criminal law system was still not fully able to provide legal protection for women.²⁰ There are many cases of injustice between men and women. In the world of work, for example, many women are paid less than men and they also work more in unorganized sectors even though they have no less abilities than men.²¹ This is what makes gender equality a problem today. If related to feminist legal theory or feminist legal theory, the importance of creating equal and fair relations between men and women is actually closely related to the historical perspective of the feminist movement which

¹⁸ South Asia UNICEF, *Glossary Of Terms And Concepts*, UNICEF, 2017, <https://doi.org/10.1163/ej.9789004171039.i-588.59>.

¹⁹ Zulkifli Ismail et al., "Kesetaraan Gender Ditinjau Dari Sudut Pandang Normatif Dan Sosiologis" 26, no. 28 (2020): 158.

²⁰ M Ali Zaidan, "Perempuan Dalam Perspektif Hukum Pidana," *Jurnal Yuridis* 1, no. 2 (2014): 230.

²¹ Kemenkeu, "Ini Pentingnya Kesetaraan Gender Untuk Sebuah Negara," 2019, <https://www.kemenkeu.go.id/publikasi/berita/ini-pentingnya-kesetaraan-gender-untuk-sebuah-negara/>.

uses law as a tool to improve the weak position of women when compared to the position of men. According to historical records, men have shown prejudice in their conceptions of human nature, gender potential, and social diversity. Because men are the creators of legal norms and legal theory, it can be concluded from several current facts that men dominate the field of law and legal theory. The emergence of gender inequality and injustice is also related to legal standards and the results they produce which are a reflection of masculine values.²² Because the rule of law is dominated by male culture, it is not surprising that women's rights are neglected. This can be seen from the decisions of judges who often impose sentences that are not optimal and on the other hand, the victim's perception is often ignored.

According to the Ministry of Women's Empowerment and Child Protection, Indonesia has passed a number of laws to protect women from acts of physical violence. However, the level of violence against women in Indonesia is still high. Prostitution and human trafficking are two criminal acts of sexual violence that pose serious threats to Indonesian women, especially those who are less fortunate and have less education. The emergence of acts of sexual violence is partly due to inequality between men and women and this is a common theme.²³ This is partly reinforced by the existence of a sexist mindset that is hostile and rooted in stereotypes towards women.²⁴

This practice of sexual violence occurs in an unlimited space. It can occur in public or private spaces. A study conducted by the Indonesian Ministry of Health in 2004 showed that 90% of women admitted to having experienced sexual harassment in their work.²⁵

²² Dudi Badruzaman, "Keadilan Dan Kesetaraan Gender Untuk Para Perempuan Korban Kekerasan Dalam Rumah Tangga (Kdrt)," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 3, no. 1 (2020): 113, <https://doi.org/10.29313/tahkim.v3i1.5558>.

²³ Olatunde C.A. Johnson, "Equality Law Pluralism," *Columbia Law Review* 117, no. 7 (2017): 1979.

²⁴ M. Carmen Herrera, Antonio Herrera, and Francisca Expósito, "Stop Harassment! Men's Reactions to Victims' Confrontation," *European Journal of Psychology Applied to Legal Context* 6, no. 2 (2014): 47, <https://doi.org/10.1016/j.ejpal.2014.06.006>.

²⁵ Kemenpppa, "Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak," 2017, <https://www.kemenpppa.go.id/index.php/page/read/31/1436/hak-perempuan-untuk-mencapai-kesetaraan-gender>.

Likewise, it can affect both women and men, although women are more vulnerable to acts of violence and sexual harassment.²⁶ Because cases of sexual violence and harassment often occur in this country, legal protection is needed for victims by creating a separate offense for sexual harassment. This is not only intended for those who are vulnerable to acts of sexual violence, but also for society in general. To uphold public decency and maintain social harmony, sexual harassment must be regulated.

Male victims, like female victims, face a number of obstacles when trying to stop sexual harassment. There is a feeling of guilt, worry about being judged weak, worry about being laughed at or even accused of making things up. Several examples of sexual harassment cases include the Wonogiri predator case,²⁷ perpetrators of sexual violence in Cilacap,²⁸ to the football coach who sexually assaulted 7 children in Jambi, he has been a victim in the past.²⁹ Some perpetrators of sexual violence are former victims. Victims who have overcome trauma will recall their experiences and have a tendency to instantly relive them through feelings, visual perception, hearing, and even smell associated

²⁶ “Survei Pelecehan Di Ruang Publik (2019) – Koalisi Ruang Publik Aman,” 2019, <http://ruangaman.org/survei2019/>.

²⁷ “Pengakuan Predator Seksual Di Wonogiri: Saya Dulu Pernah Menjadi Korban” Halaman All - Kompas.Com,” 2021, <https://regional.kompas.com/read/2021/01/12/16482541/pengakuan-predator-seksual-di-wonogiri-saya-dulu-pernah-menjadi-korban?page=all>.

²⁸ “Terungkap! Pelaku Sodomi 30 Bocah Di Cilacap Pernah Jadi Korban Serupa,” 2020, <https://news.detik.com/berita-jawa-tengah/d-5106518/terungkap-pelaku-sodomi-30-bocah-di-cilacap-pernah-jadi-korban-serupa>.

²⁹ Suwandi, “Pelatih Sepak Bola Sodomi 7 Anak, Pelaku Pernah Jadi Korban Dan Gabung Grup LGBT” Halaman All - Kompas.Com,” 2021, <https://regional.kompas.com/read/2021/02/04/20090041/pelatih-sepak-bola-sodomi-7-anak-pelaku-pernah-jadi-korban-dan-gabung-grup?page=all>; Cheryl Regehr, Kaitlyn Regehr, and Arija Birze, “Traumatic Residue, Mediated Remembering and Video Evidence of Sexual Violence: A Case Study,” *International Journal of Law and Psychiatry* 81 (2022): 101778, <https://doi.org/https://doi.org/10.1016/j.ijlp.2022.101778>; Ellen Turner et al., “Referral of Sexual Violence against Children: How Do Children and Caregivers Use a Formal Child Protection Mechanism in Harare, Zimbabwe?,” *SSM - Qualitative Research in Health* 2 (2022): 100184, <https://doi.org/https://doi.org/10.1016/j.ssmqr.2022.100184>; Sardinha et al., “Global, Regional, and National Prevalence Estimates of Physical or Sexual, or Both, Intimate Partner Violence against Women in 2018.”

with the previous trauma.³⁰ This is a lesson in criminal law that must be used to create a victim-centered and gender-neutral justice system.

Jennifer McGrath as written by Eko Soponyono expressed the "Victim Theory", especially the "Victim Emergence Theory". He said:

The victim precipitation theory suggests that some people cause or initiate a particular confrontation that may eventually lead to that person becoming victimized by injury or death. Such precipitation on the part of the Victim can either be active or passive. Active precipitation exists when the Victim knowingly acts in a provocative manner, uses fighting words or threats, or simply attacks first. In cases of rape, courts have presented not-guilty verdicts based upon whether or not the Victim acted in any way that seemed to consent to sexual relations such as the manner in which a woman was dressed.³¹

Even though crimes of sexual violence are crimes against humanity, the current law cannot be applied retroactively. There needs to be reform in the field of criminal law related to sexual harassment with a victim orientation that maintains gender equality so that it can be applied retroactively in order to achieve the goals of restorative criminal law.³² Next, to understand gender justice or what is called Gender Equity,³³ is essentially the practice of treating boys and girls equally, men and women fairly, and most importantly, in terms of outcomes. Special, temporary measures can be used in the name of gender equality to correct past systemic prejudice or discrimination. Equality means ensuring that men, women and children of all ages have the same opportunities, both before and after they cross the finish line.

³⁰ Jill Gentile and Kenneth Feiner, "To Tell the Truth, (Re)Tell One's Tale: On Pedophilia, Taboo Desire, and Seduction Trauma-- Introduction to The Tale and Leaving Neverland: A Panel on Two Films on Childhood Sexual Abuse," *Studies in Gender and Sexuality* 22, no. 2 (2021): 72, <https://doi.org/10.1080/15240657.2021.1913341>.

³¹ Eko Eko Soponyono, "Kebijakan Perumusan Sistem Pemidanaan Yang Berorientasi Pada Korban Dalam Bidang Hukum Pidana Formil," 2012, 33.

³² Iqbal Kamalludin and Barda Nawawi Arief, "Kebijakan Formulasi Hukum Pidana Tentang Penanggulangan Tindak Pidana Penyebaran Ujaran Kebencian (Hate Speech) Di Dunia Maya," *Law Reform* 15, no. 1 (2019): 183, <https://doi.org/10.14710/lr.v15i1.23358>.

³³ UNICEF, *Glossary Of Terms And Concepts*, 3.

It is about treating both sexes fairly and equally, taking into account the different needs of men and women, cultural barriers, and historical discrimination against certain groups. Equality is a tool, the result is equality.³⁴ It is a form of punishment or retaliation that reflects the instincts and self-consciousness brought about by wrongful hurt.³⁵

Indonesia has a legislative framework to protect women, especially under Law Number 23 of 2004, although it is still only intended to protect women within the household sphere. Through the conventions mentioned above, the United Nations has obliged its member countries to harmonize their respective criminal laws with universal provisions, such as the Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women who have been ratified by Indonesia. It appears that the proclamation is rarely used as a guide for dealing with gender-based issues.³⁶

Indonesia's Criminal Law Policy in Combating Sexual Violence

Sexual violence is a crime. However, until early 2022, regulations regarding crimes in the form of sexual violence are still very inadequate. Therefore, various cases of acts of violence continue to occur and affect many Indonesian people. It not only occurs and affects communities with low levels of education, but also occurs in communities with high levels of education. The National Commission for Women has proposed a legal basis for a draft law on the elimination of sexual violence with the aim of combating sexual violence in Indonesia. In 2017, a draft law intended to address and eliminate the practice of sexual violence was drafted under the name Draft Law on the Elimination of Sexual Violence. However, in 2020, the Draft Law was removed from the priority list of the National Legislation Program.

³⁴ United Nations Educational Scientific and Cultural Organizations UNESCO, "Baseline Definitions of Key Concepts and Terms," *UNESCO's Gender Mainstreaming Implementation Framework*, no. April (2003): 1, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/BSP/GENDER/PDF/1_Baseline_Definitions_of_key_gender-related_concepts.pdf.

³⁵ R. Anant Deogaonkar, "The Philosophy of Death Penalty," *International Journal of Criminal Justice Sciences* 15, no. 1 (2020): 51, <https://doi.org/10.5281/zenodo.3820088>.

³⁶ Ismail et al., "Kesetaraan Gender Ditinjau Dari Sudut Pandang Normatif Dan Sosiologis," 155.

In the context of eradicating and eliminating acts of sexual violence, the Draft Law on the Elimination of Sexual Violence Bill is actually very important and urgent to be included in the Prolegnas priority list.

The Draft Law on the Elimination of Sexual Violence is basically part of criminal politics. The goal is to result in the overall achievement of criminal political goals, such as preserving society for the happiness of its members, fostering a vibrant and healthy cultural life, and advancing social welfare or achieving equality. Law enforcement in the form of providing criminal sanctions, which is basically a procedure for actualizing legal objectives and realizing legal ideas, can also be seen as part of how the law operates.³⁷ According to Nawawi Arief, the definition of punishment must start from a balance between two main objectives, namely protecting society and protecting people, because it has been determined that enforcing protection is the ultimate goal of criminal politics. In this situation, society as a whole can be protected. The phrase "policy" or politics in Dutch means legal politics or criminal law policy. The politics of criminal law refers to how to find, create and establish good and superior criminal law. A good legislative regulation can create certainty and justice because it does not give rise to multiple interpretations.

In an effort to create good and superior law, the preparation and formation of criminal law must go through the stages of formulation (legislative policy), application (judicial method), and execution (executive/administrative procedures).³⁸ The procedure begins with the creation stage, which is the duty and authority of lawmakers and law enforcement officers. Meanwhile, the most strategic stage of criminal strategy is legislative policy. This is due to the fact that strategic weaknesses in legislative policies can hamper efforts to prevent and eradicate crime at all stages of application and execution, such as positive law in Indonesia currently which is still considered unable to protect the rights of victims of sexual violence and arrest the perpetrators.

³⁷ Esmi Warassih Pujirahayu, "Pranata Hukum Sebuah Telaah Sosiologis" (Semarang: Suryandaru Utama, 2005), 38.

³⁸ Barda Nawawi Arief, "Kebijakan Reformulasi Ancaman Pidana Mati Tindak Pidana Korupsi Dalam Peraturan Perundang-Undangan," *Masalah-Masalah Hukum* 42, no. 1 (2013): 26, <https://doi.org/10.14710/mmh.42.1.2013.23-33>.

This concept of formulating criminal law (penal) was first found in the Draft Law on the Elimination of Sexual Violence. In the Sexual Violence Crime Bill, sexual violence has an expanded definition. Article 1 Paragraph (1) of the Draft Law on the Elimination of Sexual Violence defines sexual violence as:

Any act of humiliating, insulting, attacking, and/or other acts against a person's body, sexual desires and/or reproductive function, by force, against a person's will, which causes that person to be unable to give consent in a free state due to unequal power relations and/ or gender relations that result or may result in physical, psychological, sexual suffering or misery, economic, sexual, social, cultural and/or political losses.³⁹

Article 11 of the Draft Law on the Elimination of Sexual Violence further states the forms of sexual violence into nine types of criminal acts. The formulation is ordered from the lightest to the most serious, namely: (a) sexual harassment, (b) sexual exploitation, (c) forced contraception, (d) forced abortion, (e) rape, (f) forced marriage, (g) forced prostitution, (h) sexual slavery and (i) sexual torture.⁴⁰ Sexual acts that attack the victim's sexuality or sexual organs through physical or non-physical contact are referred to as sexual violence or harassment.⁴¹ All of these acts fall into the category of sexual violence, whether committed or occurring within the scope of personal relations, households, work relations, public spaces, or other special situations.⁴²

Specifically relating to sexual harassment, the Draft Law on the Elimination of Sexual Violence divides it into two categories, namely physical and non-physical sexual harassment. Sexual harassment is defined as sexual acts carried out in the form of physical or non-physical acts against other people, which relate to parts of a person's body and are related to sexual desires, resulting in other people being

³⁹ Article 1 Paragraph (1) Draft Law on the Elimination of Sexual Violence. [Rancangan Undang-undang Penghapusan Kekerasan Seksual].

⁴⁰ Article 11 Paragraph (2). See too: Muhammad Sahidin Rizal Maulana, "Naskah Akademik Rancangan Undang-Undang Tentang Penghapusan Kekerasan Seksual," 13 Ekp § (2017), 76.

⁴¹ Article 11 Paragraph (2).

⁴² Article 11 Paragraph (3).

intimidated, insulted, humiliated or humiliated.⁴³ Non-physical harassment includes whistling, teasing, making sexual comments, showing pornographic content when having sexual urges, caressing or caressing body parts, and making sexual movements that make someone feel uncomfortable, offended, humiliated, and can endanger their health and safety.⁴⁴ NK Endah Triwijati further stated that the category of non-physical sexual harassment, or what is often called catcalling, is making jokes, teasing people of the same or opposite sex, or asking questions about sexuality, whistling in a sexual tone, informing or asking questions. Sexual desires or sexual practices of others in a way that makes others feel uncomfortable, and criticizing or making comments about physical characteristics that contribute to aspects of sexuality, such as one's body shape or the size of one's genitals.⁴⁵

After going through a long process, the Draft Law on the Elimination of Sexual Violence was finally ratified by the government and promulgated on May 9 2022 under the name of Undang-undang Tindak Pidana Kekerasan Seksual (the Sexual Violence Crime Law).⁴⁶ This law contains 12 (twelve) chapters and 93 articles. In the Sexual Violence Crime Law,⁴⁷ criminal acts of sexual violence are defined as "any act that fulfills the elements of a criminal act as regulated in this law and other acts of sexual violence as regulated in the Law to the extent regulated in this Law".⁴⁸ Regulations regarding criminal acts of sexual violence are based on the principles of: (a) respect for human dignity; (b) non-discrimination, (c) best interests of victims, (d) justice,

⁴³ Article 12 Paragraph (1).

⁴⁴ Maulana, *Naskah Akademik Rancangan Undang-Undang Tentang Penghapusan Kekerasan Seksual*, 24.

⁴⁵ Indah Aidina Prihadi, "Gagasan Kriminalisasi Terhadap Pelecehan Seksual Secara Verbal Dalam Pembaharuan Hukum Pidana Di Indonesia," *JOM Fakultas Hukum Universitas Riau* VI, no. 2 (2019): 10–11.

⁴⁶ Government of the Republic of Indonesia, Law of the Republic of Indonesia Number 12 of 2022 on the Crime of Sexual Violence (Undang-undang Negara Republik Indonesia Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual).

⁴⁷ Government of the Republic of Indonesia.

⁴⁸ Article 1 Paragraph (1) Law of the Republic of Indonesia Number 12 of 2022 on the Crime of Sexual Violence.

(e) expediency, and (f) legal certainty.⁴⁹ The objectives are (a) preventing all forms of sexual violence, (b) handling, protecting and recovering victims (c) implementing law enforcement and rehabilitating perpetrators, (d) creating an environment without sexual violence, and (e) and ensuring the non-recurrence of sexual violence.⁵⁰

The forms of acts that fall into the category of acts of sexual violence are further explained in Articles 4 and 5 of this law, namely (a) non-physical sexual harassment, (b) physical sexual harassment, (c) forced contraception, (d) forced sterilization, (e) forced marriage, (f) sexual torture, (g) sexual exploitation, (h) sexual slavery, and (h) electronic-based sexual violence.⁵¹ Apart from the above acts or acts, criminal acts of sexual violence also include: (a) rape, (b) obscene acts, (c) sexual intercourse, obscene acts and sexual exploitation of children, (d) acts of violating decency that go against the will victims, (e) pornography involving children, or pornography that explicitly contains violence or sexual exploitation, (f) forced prostitution (g) trafficking in persons aimed at sexual exploitation, (h) sexual violence in the domestic sphere, (i) criminal acts of money laundering which are originally criminal acts of sexual violence, and (j) other criminal acts which are expressly stated as criminal acts of sexual violence as regulated in statutory regulations.⁵²

Legal sanctions against perpetrators of criminal acts of sexual violence, both physical and non-physical, are regulated in Articles 5 to 18. However, with regard to acts of sexual harassment, they are specifically regulated in Article 5 (non-physical sexual harassment) and Article 6 (non-physical sexual harassment). Article 5 of the Sexual Violence Crime Law states that non-physical sexual violence is any sexual act carried out non-physically which is directed at the body, sexual desires and/or reproductive organs with the intention of degrading a person's dignity based on sexuality and/or his decency. Perpetrators of this criminal act of non-physical sexual harassment are

⁴⁹ Article 2.

⁵⁰ Article 3.

⁵¹ Article 4 Paragraph (1).

⁵² Article 4 Paragraph (2).

threatened with a maximum prison sentence of 9 (nine) months and/or a maximum fine of IDR 10,000,000.00 (ten million rupiah).⁵³

Meanwhile, Article 6 Paragraph (1) states that physical sexual harassment is any physical sexual act directed at the body, sexual desires and/or reproductive organs with the intention of degrading a person's honor and dignity based on their sexuality and/or decency which does not include in other more severe criminal provisions with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 50,000,000.00 (fifty million rupiah).⁵⁴ Then Paragraph (2) states that if the act is carried out with the intention of placing someone under his or her power unlawfully, either within or outside of marriage, then the person concerned is threatened with a maximum imprisonment of 12 (twelve) years and/or a maximum fine, a lot of IDR 300,000,000.00 (three hundred million rupiah).⁵⁵ Paragraph (3) further emphasizes that if the act is carried out by abusing position, authority, trust or trust which arises from deception or a relationship of circumstances or takes advantage of a person's vulnerability, inequality or dependency, coerces or through misdirection moves that person to commit or allowing sexual intercourse or obscene acts to be carried out with him or with another person, is punishable by a maximum prison sentence of 12 (twelve) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).⁵⁶

Sexual harassment as stated in Article 5 and Article 6 letter (a) is a complaint offense, unless it is committed against a person with a disability or a child.⁵⁷ The punishment for perpetrators of physical sexual crimes ranges from a maximum of 4 years in prison to a maximum fine of three hundred million rupiah. However, if the sexual crime is committed accompanied by threats, the criminal sanction can be up to 15 years in prison or a fine of IDR 1,000,000,000.00 (one

⁵³ Article 15

⁵⁴ Article 6 Letter (a)

⁵⁵ Article 6 Letter (b)

⁵⁶ Article 6 Letter (c).

⁵⁷ Article 7 Paragraphs (1) and (2).

billion rupiah),⁵⁸ and if this is done by a corporation, the legal sanctions could reach IDR 15,000,000,000.00 (fifteen billion rupiah).⁵⁹

Sexual crimes committed by individuals (not corporations) as stated in Article 5, Article 6, and Articles 8 to Article 14 may be subject to an additional penalty of 1/3 (one third), if the crime is committed within the scope of work, carried out more than once or by one person or carried out jointly by two people, carried out on children, people with disabilities, pregnant women, people who are unconscious or helpless, or in an emergency, using electronic devices, or causing the victim to suffer serious injuries or impacts severe psychological or infectious disease, or causing cessation or damage to reproductive function, or even causing the victim to die.⁶⁰

Apart from containing regulations regarding criminal acts of sexual violence and the threat of legal sanctions, the Law on Non-Criminal Sexual Violence also contains points regarding rehabilitation. This rehabilitation is offered to prisoners who are proven to have committed sexual violence or harassment. Rehabilitation is carried out under the coordination of the Prosecutor and is periodically supervised by the minister who handles government affairs in the social sector and the minister who handles government affairs in the health sector. This rehabilitation includes medical rehabilitation and social rehabilitation.⁶¹

The Sexual Violence Crime Law also regulates the rights of victims, victims' families and witnesses. Thus, the Sexual Violence Crime Law does not only side with the victim but also the victim's family and witnesses. According to Article 66, victims have the right to receive treatment, protection and recovery from the moment a criminal act of sexual violence occurs.

Meanwhile, in relation to investigations, prosecutions and trials in court, the Sexual Violence Crime Law regulates evidence and also the expansion of evidence beyond that regulated in the Criminal Procedure Code which can strengthen cases submitted to court to ensnare perpetrators of sexual violence. Article 24 states that evidence in examinations at each stage of sexual violence cases is carried out in

⁵⁸ Article 12.

⁵⁹ Article 18.

⁶⁰ Article 15.

⁶¹ Article 17.

accordance with applicable criminal procedural law; certificates from psychologists or psychiatrists, medical records or forensic examination results, records of examinations carried out as part of investigations, information spoken, sent, received or stored electronically with optical devices or similar technology, and letters are some of the pieces of evidence additions regulated in this Law to the results of checking bank accounts.⁶²

The regulation of criminal acts of sexual harassment is basically a legal response to the never-ending social problem of sexual violence. In his first speech as Professor of Criminal Law, Barda Nawawi Arief quoted Sudarto's statement which stated that criminal law is essentially a normative social science (*normative maatschappij wetenschap*), just like legal science in general, namely normative science about human relations. Positive criminal law can be the subject of normative criminal law. Positive criminal law, whether in the form of formal criminal law or material/substantive criminal law, is a science that analyzes positive criminal law. Because criminal law only studies the norms and dogmas of positive criminal law that are currently in force (*ius constitutum*), then it is actually normative/dogmatic criminal law in the narrow sense. This positive criminal law often fails to overcome the problems faced. Therefore, changes to criminal law must use a policy-oriented approach, because it is essentially only a small component of a larger policy initiative, namely legal politics, law enforcement politics, criminal law politics, and criminal politics. Apart from that, it is necessary to modify criminal laws and regulations, namely by utilizing a values-oriented approach, namely human values, justice values, and even divine values described in the value of religiosity.⁶³

The Sexual Violence Crime Law, which was passed on May 9 2022, has a different approach in dealing with sexual violence. This is demonstrated through its description of the various forms of sexual

⁶² Article 24.

⁶³ Iqbal Kamalludin and B. N. Arief, "Kebijakan Reformasi Maqâshid Al-Syariah Dan Kontribusinya Dalam Formulasi Alternatif Keringanan Pidana Penjara," *Al-'Adalah* 15, no. 1 (2019): 183, <https://doi.org/http://dx.doi.org/10.24042/adalah.v%vi%oi.2931>.

violence, reflecting victim-centred law and a particular focus on the protection of women.⁶⁴

This law on criminal acts of sexual violence is a legal regulation that is *lex generalis* of the Criminal Code. This means that the legal regulations in the Criminal Code are more general in nature, while the The Sexual Violence Crime Law is more specific because it only focuses on one issue, namely sexual violence. Legal rules that are *lex specialis*, namely legal provisions that are specific in nature must take precedence over legal provisions that are general in nature. The The Sexual Violence Crime Law regulates various forms of sexual violence and their sanctions comprehensively. Therefore, he can handle various forms of criminal acts of sexual violence, from reporting to compensation and fulfilling the victims' rights. However, basically it still requires more technical implementing regulations. The birth of the Sexual Violence Crime Law which has been passed is a form of legal progress considering the constitutional mandate that every citizen has the right to feel safe and free from all forms of violence, including in this case sexual harassment. The birth of the Sexual Violence Crime Law is a collaborative effort to stop all forms of sexual violence, provide legal sanctions to perpetrators of sexual crimes, protect and help rehabilitate victims. In this way, an attitude and culture of mutual respect and respect will be built among citizens so that all forms of violence and sexual harassment can truly be eliminated.

Criminal Law Policy in Combating Sexual Violence from an Islamic Perspective

Sexual violence, in its various forms, is a phenomenon that has existed and occurred for a long time. It is a phenomenon that lives and develops simultaneously with and accompanies human life. No one denies that sexual violence is a crime that is contrary to religious values because it degrades human dignity. Because in Islam, humans are honorable creatures and everyone must respect and glorify them (QS. al-Isra [17]: 70). Human respect for other humans is even unconditional: regardless of race, ethnicity or gender because the only standard of nobility and distinction between humans is one level of

⁶⁴ Natasya Fila Rais, Gracia Putri Manurung, and Agnes Kusuma Wardani, "Analisis Keberlakuan RKUHP Dan RUU-PKS Dalam Mengatur Tindak Kekerasan Seksual," *Lex Scientia Law Review* 3, no. 1 (2019): 66.

piety (QS. al-Hujurat [49]:13). Apart from that, Islam also places great emphasis on the importance of appreciating, respecting and treating everyone fairly. On the contrary, Islam prohibits and opposes all forms of crime and injustice as well as acts of persecution and violence (QS. al-Ma'idah [5]: 8; QS. al-Nisa [4]: 58 and 135; QS. al-Nahl [16]: 90); and QS. al-Mumtahanah [60]: 8), including violence and sexual harassment. This is based on the fact that Islam is a religion of mercy for all nature (QS. al-Anbiya [21]:107). Therefore, Islam opposes all forms of crimes, persecution, violence, including sexual harassment, because this is contrary to the values of Islamic teachings and also the objectives of Islamic law.⁶⁵

In this context, scholars, such as al-Ghazali and al-Syatibi, have emphasized that the main aim of the enactment of Islamic law is to create goodness and benefit in life for mankind.⁶⁶ More systematically, al-Ghazali and ash-Syatibi formulated the forms of the benefit of humanity, namely the protection of five fundamental things for human existence, namely (a) protection of religion/beliefs (*hifẓ al-dīn*), (b) protection of the soul (*hifẓ al-nafs*), (c) protection of the mind (*hifẓ al-aql*), (d) protection of offspring (*hifẓ al-nasl*), and also (e) protection of property (*hifẓ al-māl*).⁶⁷ These five things are often referred to as "the five principles or basic human needs" (*al-darūriyyāt al-khams*).⁶⁸ Therefore, it must be realized in human life. The loss or injury of one or even all of these basic human needs will cause human existence as a human being to be lost or at least tarnished. Thus, the presence of religion is in order to protect the five basic human needs in order to realize human goodness and benefit.

Acts of sexual violence, in various forms, including sexual abuse, rape and sexual harassment, are of course contrary to these principles or basic human needs. Because, victims of sexual violence

⁶⁵ Fuad Mustafid, "Perdagangan Orang dalam Perspektif HAM dan Filsafat Hukum Islam", *Al-Ahkam*, 29. No. 1 (April 2019), 104; <https://journal.walisongo.ac.id/index.php/ahkam/article/view/3134/2010>.

⁶⁶ Abu Hamid al-Ghazali, *Al-Mustasfā min 'Ilm al-Usūl* (Beirut: Dār Ihyā al-Turās al-Arabi, t.t.), I: 281 and Abu Ishaq al-Syātibi, *Al-Muwafaqāt fī Usūl al-Syarī'ah* (Beirut: Dār al-Kutūb al-Ilmiyyah, 2005), I: II: 7.

⁶⁷ Al-Ghazali, *Al-Mustasfā*, I: 281.

⁶⁸ Al-Ghazali, *Al-Mustasfā* and al-Syātibi, *Al-Muwafaqāt*. See too: Fuad Mustafid, "Perdagangan Orang", 105.

are very likely to experience physical injury. Even in cases of sexual abuse and rape, the victims can even experience psychological disorders, where their minds and souls become unstable or perhaps even shaken. This of course contradicts the principle of protection of the soul (*hifẓ al-nafs*) and reason (*hifẓ al-'aql*). Not only that, the practice of sexual violence is also contrary to the principle of protecting self-esteem and offspring (*hifẓ al-nasl*). Because in Islam, sexual relations that are justified are those carried out by two people (a man and a woman) who are in a marriage bond so that sexual abuse and rape are clearly contrary to the principle of protecting offspring. Because acts of sexual violence are contrary to the principles and values of the Shari'a, Islam includes them in the category of criminal acts that must be given legal sanctions.⁶⁹ Something is considered a crime because it harms other people, both physically and non-physically, disrupts the social order or community beliefs, threatens life, good name, honor and property, all of which must be respected, maintained and protected as a form or effort to realize goodness and human benefit.⁷⁰

In Islam, criminal acts are often referred to by terms *jināyah* and *jarimah*. Abdul Qadir Auwdah defines *jināyah* as “actions that are prohibited by the Shari'a, whether the mother's actions are related to life, property or anything else.”⁷¹ The perpetrators of these acts or crimes will be subject to legal sanctions in the form of physical or property suffering.⁷² Whereas *jarimah* are sharia prohibitions which are threatened by Allah with punishment *bad* or *ta'zīr*.⁷³ The legal sanctions against perpetrators of these crimes can be grouped into three categories, ie *qisās-diyat*, *hudūd*, and *ta'zīr*. *Qisās* is a crime whose legal sanction is in the form of retribution in kind. Crimes that fall into this category are murder, wounding and assault on purpose. *Hudūd* are types of crimes whose forms and legal sanctions have been determined by

⁶⁹ In Islam, crimes are often referred to as *jināyah* or sometimes also called *jarimah*.

⁷⁰ Al-Ghazali, *Al-Mustashfā*, I: 281.

⁷¹ Abdul Qadir Awdah, *Al-Tasyri' al-Jinā'i al-Islāmi* (Beirut: Dar al-Kutub, 1963), I: 1.

⁷² Awdah, *Al-Tasyri' al-Jinā'i*. See too: Halimah, *Hukum Pidana Syari'at Islam menurut Ahli Sunnah* (Jakarta: Bulan Bintang, 1971), 64.

⁷³ Al-Mawardi, *al-Ahkām al-Sulthaniyyah* (Mesir: Dar al-Bab al-Halabi, 1973), 219.

the text. It includes crimes in the form of adultery, accusations of adultery, stealing, robbing (*hirabah*), and rebellion. As for *ta'zīr* is a certain criminal act whose form and legal sanctions are left to the judge (ruler) taking into account the seriousness and lightness of the act committed, the existing situation and conditions, as well as the demands of the public interest.⁷⁴

When viewed from the perspective of Islamic criminal law, acts of sexual violence can be categorized as *jarimah qisās*, *hudūd* and *ta'zīr* at the same time. In the case of sexual intercourse, for example, it falls into a category *jarimah hudūd* the legal sanction is being caned 100 times or being stoned in public. However, if the sexual intercourse was carried out by force, such as sexual abuse or rape, which causes the victim to be injured or even die, then he can be subject to sanctions *jarimah qisās* and *hudūd* at the same time. He was given appropriate legal sanctions (*qisās*) for the act of injuring or killing the victim, while sanctions *hudūd* given for his act of having sex with a woman who was not his wife. Sexual harassment that is carried out without sexual intercourse or physical harm to the victim can be categorized as *jarimah ta'zīr* the form and legal sanctions are left entirely to the authorities.

In the context of regulating and providing legal sanctions against perpetrators of sexual crimes as contained in the Criminal Code,⁷⁵ or the Sexual Violence Crime Law which has just been passed, substantively it can be said that it is in harmony and in accordance with the values of Islamic law. Because, both Islamic criminal law, the Criminal Code and the Sexual Violence Crime Law were created to regulate society's life in a more orderly and peaceful manner and free from criminal acts, including crime and sexual violence. Both also stipulate legal sanctions against perpetrators of sexual crimes. Even though the types of punishment given to perpetrators of sexual crimes are not the same in Islamic criminal law and Indonesian positive law, due to differences in existing situations and conditions, both have the same spirit and goal, namely maintaining human honor and protecting

⁷⁴ Awdah, *Al-Tasyr' al-Jinā'i*. See too: Abdul Wahab Khalaf, *ʿIlm Usul al-Fiqh* (Mesir: Dar al-Qalam, 1998), 198.

⁷⁵ Government of the Republic of Indonesia, Law of the Republic of Indonesia Number 1 of 2023 Concerning the Criminal Code (Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana).

it from every action. which could endanger and tarnish his honor. Because a number of acts of sexual violence fall into the category *jarimah ta'zir*. So the existing legal sanctions are very likely to change along with changes in time and circumstances. This is the full authority of the authorities to regulate and determine it. It is in this context that Indonesian criminal law policies, both those contained in the Criminal Code and the Crime of Sexual Violence Law, can be legally justified (Islamic) and at the same time in accordance with the objectives of *syara'* who want to realize the goodness and benefit of human life and at the same time prevent and avoid all forms of evil acts that endanger humanity.

Conclusions

Sexual violence and harassment, both physical and non-physical, are part of crime. It happens a lot in Indonesian society, both in public and private spaces, both in the real world and the virtual world. The practice of sexual violence even tends to continue to increase from year to year and women are the ones who are most often victims of this crime. Until the end of 2021, Indonesia actually has a number of laws regarding sexual crimes. However, the legal regulations regarding sexual crimes are prepared partially and are spread across various laws and regulations. Apart from that, a number of new forms of sexual violence and harassment have not yet received a legal basis. Therefore, there are many things that are not actually covered and are separated from these legal regulations, thus requiring updates in terms of regulating criminal acts of violence and sexual harassment.

In May 2022, there was a new development related to the regulation of sexual crimes, with the passing of Law Number 12 of 2022 on the Crime of Sexual Violence Law (UU TPKS). The Birth of the Criminal Law Sexual Violence is a new chapter in the regulation of criminal acts of sexual violence in Indonesia. The TPKS Law is more systematic and comprehensive with a number of updates included. It was created with the aim of preventing all forms of sexual violence; handling, protecting and restoring victims; and ensuring the non-recurrence of sexual violence. In addition, these laws also have different approaches to addressing sexual violence. It reflects a victim-centered law and especially the protection of women, who have been the most common victims of sexual violence and harassment. Overall, this law is quite comprehensive in regulating criminal acts of violence and

sexual harassment with the aim of preventing all forms of sexual violence; handle, protect and recover victims; and ensure that acts of sexual violence do not recur. From an Islamic perspective, the regulation of criminal acts of sexual violence is in line with the values, basic principles and objectives of Islamic law (*maqāsid al-shari'a*), namely realizing the benefit of humanity and at the same time protecting it from all forms of evil. Therefore, no one is allowed to commit a crime and whoever does so will be threatened and subject to legal sanctions.

The enactment of Law Number 12 of 2022 concerning the Crime of Sexual Violence has of course given rise to new hope for efforts to eliminate—or at least minimize—the practice of sexual violence in Indonesia. However, the extent to which this law can be effective and able to eliminate the practice of sexual violence in Indonesia still needs to be proven and further research carried out.

Conflicts of Interest

The authors have no conflict of interest with any party in writing this article.

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