Proceedings of The 3rd International Conference on Science and Islamic Studies
ISSN: 3024-9058 (Online - Elektronik)
Volume: 3, 2025
Publisher: Program Pascasarjana, UIN Alauddin Makassar

SEXUAL VIOLENCE AS A CRIME IN ISLAMIC LAW: NORMATIVE FOUNDATIONS AND CONTEMPORARY RELEVANCE

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ABSTRACT

Sexual violence is a crime that continues to increase year by year and has multidimensional impacts on victims, society, and the legal system. In Indonesia's criminal justice system, sexual violence is regulated under Law Number 12 of 2022 on Sexual Violence Crimes. However, various challenges exist in enforcing laws against sexual violence, particularly related to evidentiary barriers, victim protection, and the effectiveness of punishment. In Islamic law, sexual violence is viewed as a serious crime that violates dignity (‘ird), demeans human honor, and threatens public welfare. This act is considered not only a violation against the victim personally but also a violation of God’s rights and human rights, thus holding a very serious position in criminal fiqh (fiqh jinayah). This paper discusses the concept, classification of crimes (jarīmah), evidentiary mechanisms, and sanctions for sexual violence in criminal fiqh, while also examining its relevance in strengthening the national legal system. Using a normative method through statutory, conceptual, and comparative approaches, this study shows that Islamic criminal law offers principles of dignity protection, deterrence, and flexibility in discretionary punishment (ta’zir) that can enrich modern penal policies.

Keywords: Sexual violence, Islamic criminal law, jarimah, ta’zir, fiqh jinayah.

1. INTRODUCTION

Sexual violence is one of the most serious and complex forms of human rights violation, and has become a global issue that continues to rise over time. It is a serious problem facing Indonesia and has gained national attention. Reports from government institutions and civil society organizations indicate a significant increase in sexual violence cases year by year, especially against women and children. In Indonesia, this phenomenon is evident both in the number of cases and the variety of forms of violence that occur. Annual data from various institutions, including the National Commission on Violence Against Women (Komnas Perempuan), shows that reports of sexual violence against women and children have increased significantly. Even now, sexual violence not only occurs in physical forms but has also evolved into digital-based crimes through social media and the internet, such as online harassment, cyber sexual exploitation, and non-consensual distribution of intimate content. The diversity of

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these forms shows that the crime is dynamic and continues to develop with social and technological changes. Sexual violence has become one of the most prominent issues in legal, social, and moral discourse in Indonesia. Various institutions, including Komnas Perempuan and the Ministry of Women's Empowerment and Child Protection (Kementerian PPPA), consistently note that the rate of sexual violence remains at an alarming level, requiring more serious handling and a more comprehensive legal approach.

The impact of sexual violence on victims is extensive and multidimensional. Physically, victims may experience injuries, sexually transmitted diseases, and other medical conditions. Psychologically, most victims suffer deep trauma such as anxiety, depression, guilt, prolonged fear, and post-traumatic stress disorder (PTSD). Often, this trauma has long-term effects and affects the victim's ability to live a normal social life. Socially, victims often face stigma, discrimination, and ostracism. Many victims feel ashamed, blamed, or considered responsible for the incident, making them reluctant to report or seek help. This situation exacerbates gender inequality and reinforces a "culture of silence" around sexual crimes. The impact of sexual violence is not only felt by the victim individually but also affects the social structure of society. It creates insecurity, weakens moral values, and erodes public trust in law enforcement institutions. When sexual violence cases are not handled properly, it can lead to the erosion of justice and a decline in the legitimacy of the legal system. Additionally, the high rate of sexual violence also indicates a power imbalance in relationships and the failure of social protection systems to ensure a safe environment for women and children as the most vulnerable groups.

In response to the increasing sexual violence in Indonesia, the government enacted Law Number 12 of 2022 on Sexual Violence Crimes (Undang-Undang TPKS). This law is a major advancement in the national legal system as it provides a more comprehensive definition of sexual violence, expands the types of sexual crimes, and strengthens victims' rights to protection, recovery, and access to justice. However, the implementation of TPKS Laws still faces various challenges in practice. Evidentiary barriers are a major issue because sexual crimes often occur without witnesses, in private spaces, and physical evidence is not always available. Furthermore, law enforcement officials still need to improve their capacity to handle victims sensitively and professionally. Other challenges include the lack of support facilities for victims, strong patriarchal culture, and public perceptions that are not fully supportive of victims.

Amid these challenges, the perspective of Islamic criminal law offers interesting alternatives and contributions to be studied in depth. In Islamic thought, human dignity is an inalienable human right. Any act that demeans a person's dignity, including sexual violence, is considered a very serious violation. In Islamic legal tradition, sexual violence is viewed not only as a crime against the individual but also as a violation of God’s rights and a threat to the moral order of society. Islamic criminal law or fiqh jinayah has long regulated the protection of a person's dignity and sexual integrity through the concept of hifz al-‘ird (protection of dignity) as one of the main objectives of Sharia (maqasid al-syari’ah). The Islamic criminal law framework offers a comprehensive penal system through the concepts of hadd (fixed punishment), ta’zir (discretionary punishment), and qisas/diyat (retaliation/compensation). The concept of hadd provides strict sanctions for certain sexual crimes that clearly meet their legal elements. Meanwhile, ta’zir provides space for judges or state authorities to determine the most appropriate punishment based on the severity of the crime, social conditions, and the impact caused. The flexibility of ta’zir is highly relevant for addressing modern sexual violence, whose

forms and modi operandi are constantly evolving. Qisas/diyat provides protection for victims when sexual violence results in physical injury or even death. These three concepts illustrate a penal system that is not only repressive but also restorative, preventive, and adaptive to social changes.

In addition to penal concepts, evidence in Islamic law shows a high level of compatibility with modern evidentiary mechanisms. The concept of qarinah (circumstantial evidence) allows judges to consider indirect evidence such as autopsy results, biological evidence, digital evidence, medical records, or the victim's psychological condition. This confirms that Islamic criminal law is not rigid and can adapt to technological developments and contemporary forensic methodologies. Thus, in-depth study of sexual violence crimes from the perspective of Islamic criminal law is very important, both to enrich academic discourse and to make a real contribution to strengthening the national legal system. The Islamic legal approach that emphasizes dignity protection, substantive justice, deterrence, and victim recovery can add value to the enforcement of sexual violence laws in Indonesia. Furthermore, the integration of Islamic criminal law principles can provide a new direction in the reform of Indonesia's criminal law towards a more humane, just, and moral system that aligns with societal values.

Previous studies on sexual violence have predominantly examined the issue from either the perspective of positive law or Islamic criminal law as separate legal frameworks. Research focusing on Indonesia's Law Number 12 of 2022 on Sexual Violence Crimes (TPKS Law) generally emphasizes legal protection for victims, criminal sanctions, and implementation challenges within the national criminal justice system. Meanwhile, studies in the field of *fiqh jinayah* mainly discuss the doctrinal concepts of *zina*, *ightisab* (rape), *ta'zir*, and *hudud* without systematically relating these principles to the contemporary legal framework governing sexual violence in Indonesia. Consequently, there remains limited scholarly discussion that integrates Islamic criminal law principles with the evolving penal policy established under the TPKS Law.

Furthermore, existing literature has paid relatively little attention to the normative compatibility between Islamic criminal law and modern criminal justice mechanisms, particularly regarding victim-centered protection, evidentiary standards, discretionary punishment (*ta'zir*), and restorative approaches. Most previous studies remain descriptive and doctrinal, focusing on legal concepts rather than exploring how Islamic criminal law may contribute to strengthening contemporary criminal law reform in addressing increasingly complex forms of sexual violence, including technology-facilitated sexual violence.

The novelty of this study lies in its integrative analysis of sexual violence by examining Islamic criminal law (*fiqh jinayah*) not merely as a classical legal doctrine but as a normative framework capable of enriching Indonesia's contemporary criminal law policy. This study demonstrates the relevance of Islamic legal principles including the protection of human dignity (*hifz al-'ird*), protection of life (*hifz al-nafs*), the flexibility of *ta'zir*, and the concept of *qarinah* in evidentiary law in supporting the implementation of the TPKS Law. By bridging classical Islamic legal thought with modern penal policy, this article offers a new perspective on strengthening victim protection, substantive justice, and the effectiveness of law enforcement against sexual violence in Indonesia.

From the above explanation, the authors intend to examine the following issues:

1. What is the basic concept of sexual violence crimes from the perspective of Islamic criminal law (fiqh jinayah)?
2. How is the classification of crimes (jarimah) and sanctions for sexual violence crimes according to fiqh jinayah?
3. To what extent is the relevance of the Islamic criminal law perspective to strengthening the penal system for sexual violence crimes in Indonesia?

2. METHODS

This study uses a normative juridical approach, which positions law as written norms and doctrines applicable in society. This method was chosen because the study focuses on analyzing the concepts, norms, and principles of Islamic criminal law and their relevance to the Indonesian legal system in addressing sexual violence crimes. The normative juridical approach allows researchers to study in depth the legal structure contained in primary and secondary legal sources. Several approaches used in this study include :

1. Statutory Approach: This approach is used to examine relevant positive law provisions, such as Law Number 12 of 2022 on Sexual Violence Crimes (Undang-Undang TPKS), the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and other regulations related to victim protection and law enforcement in sexual violence cases.
2. Conceptual Approach: This approach aims to understand key concepts in Islamic criminal law, such as jarimah, hadd, ta'zir, qisas/diyat, dignity ('ird), and maqasid al-syari'ah. This approach is necessary to gain a comprehensive theoretical understanding of how sexual violence is positioned in the Islamic legal structure.
3. Comparative Approach: This approach is carried out by comparing the principles of Islamic criminal law with the provisions of Indonesian positive law. The aim is to find points of relevance, differences in characteristics, potential for harmonization, and the contribution of Islamic law in strengthening the penal system against perpetrators of sexual violence.

Data sources in this study come from primary legal materials such as the Qur'an, hadith, classical fiqh books, and contemporary Islamic legal literature. Meanwhile, secondary legal materials are obtained from academic books, scientific journals, official institution reports, and other supporting documents. Data analysis is conducted qualitatively through text interpretation, concept understanding, and legal interpretation based on the principles of fiqh jinayah and modern criminal law theory.

3. RESULTS AND DISCUSSION

Sexual violence crimes (TPKS) are a very concerning phenomenon today. Rapid developments through different modi operandi and motives have become a source of anxiety for society. In response to this, the government's seriousness in addressing TPKS is evident through the enactment of Law Number 12 of 2022 on Sexual Violence Crimes. The enactment of TPKS Laws has brought fresh hope to the Indonesian nation amid anxiety over sexual violence issues. Although TPKS Laws has been implemented, there are certainly challenges in its application, such as victim protection, evidentiary barriers, and the lack of a substantive justice

perspective in court decisions, which are some of the issues that often arise. This situation indicates a need to strengthen the ethical, philosophical, and normative foundations in addressing sexual violence so that positive law not only operates procedurally but also achieves the goal of comprehensive protection and recovery for victims. To address this, the authors attempt to theoretically examine the perspective of Islamic criminal law on sexual violence, thereby providing new insights and paradigms in enforcing laws against sexual violence crimes.

3.1. Basic Concept of Sexual Violence Crimes from the Perspective of Islamic Criminal Law (Fiqh Jinayah)

In Islamic criminal law (fiqh jinayah), sexual violence is understood as all forms of violation that attack a person's dignity (‘ird) and physical integrity without right. These acts can include forced sexual intercourse, harassment, molestation, sexual exploitation, and rape. The basic principle in Islamic Sharia places human dignity as sacred and must be protected, on par with the protection of life, religion, reason, and property. Therefore, all forms of violation against dignity are viewed as serious crimes that not only harm the victim as an individual but also disrupt the moral and social stability of society. The term sexual violence in classical fiqh literature is often described through several concepts such as ightisab (rape), taharrush jinsy (sexual harassment), al-fahisyah (lewd conduct), and al-zina al-mukrah (forcible adultery/fornication). Scholars have determined that sexual violence falls into the category of major crimes (jarimah) because it involves elements of coercion, intimidation, and attack on dignity.

The Qur’an strictly prohibits approaching adultery/fornication (QS. Al-Isra: 32) and condemns all lewd acts that undermine societal morality. Qs. Al-Isra: 32 states:

وَلَا تَقْرَبُوا الزِّنٰٓى اِنَّهٗ كَانَ فَاحِشَةً ۗوَسَاۤءَ سَبِيْلًا

“And do not approach zina (adultery way.”

Thus, sexual violence is positioned as a criminal act that contradicts the objectives of Sharia (maqasid al-syari’ah), particularly ḥifẓ al-‘ird (protection of dignity) and ḥifẓ al-nafs (protection of life). Sexual violence is viewed not only as a violation against the victim but also as a violation of public morality and social order. Therefore, sexual violence crimes from an Islamic perspective hold a high legal position and require strict and just handling.

From the perspective of Islamic criminal law, sexual violence is viewed not merely as an individual violation but also as a form of public crime (jinayah ‘ala al-mujtama). This concept emphasizes that the harm caused by sexual violence has a broad impact on social order, moral values, and public safety. Therefore, Islam prescribes strict sanctions that may include hadd, ta’zir, or qisas/diyat depending on the form and severity of the case. This strictness shows that Islamic law places sexual violence as a serious crime that requires maximum protection for victims and the enforcement of substantive justice. Thus, the conceptual framework of Islamic law provides a strong normative basis for addressing and preventing sexual violence in modern society.

3.2. Classification of Crimes (Jarimah) and Sanctions for Sexual Violence Crimes According to Fiqh Jinayah

In the context of sexual violence, scholars place various forms of violation such as rape (ightisab), sexual harassment, exploitation, and molestation into certain crime categories (jarimah) based on their severity and legal elements. This classification serves as the basis for determining appropriate sanctions for perpetrators, ranging from fixed punishment (hadd) for acts that meet the elements of zina, to discretionary punishment (ta'zir) which is flexible for various forms of sexual violence that do not meet the requirements of hudud but still cause serious harm to victims and society. Qisas or diyat may be imposed if sexual violence results in physical injury or death.

Thus, understanding the classification of crimes and their sanctions is very important to see how Islamic criminal law provides a comprehensive, strict, and adaptive response to various forms of sexual violence. This shows that fiqh jināyah not only emphasizes the penal aspect but also victim protection, crime prevention, and the maintenance of social stability and morality. Sexual violence crimes in fiqh jināyah are classified into several crime categories based on the severity of the violation and the evidence presented :

1. Hudud Crimes: If sexual violence leads to complete zina (sexual penetration without Sharia-justified cause) and all its legal elements are met, the perpetrator may be sentenced to hudud punishment. However, the majority of scholars distinguish between consensual zina and rape. Because rape occurs through coercion, the victim is not punished, while the perpetrator may be sentenced to severe punishment based on ta'zīr provisions.
2. Ta'zir Crimes: Most sexual violence cases, such as harassment, molestation, non-consensual touching, sexual intimidation, and non-penetrative coercion, fall into the category of ta'zīr crimes. In this context, judges have the authority to impose sanctions based on the level of harm caused. Ta'zīr punishment may include imprisonment, flogging, fines, exile, or other forms deemed appropriate to provide deterrence.
3. Qisas/Diyat Crimes: If sexual violence causes physical injury, serious harm, or even death, the perpetrator may be subject to qishāṣ (retaliation in kind) or diyat (compensation). This shows that Islamic law provides full protection for the physical and psychological safety of victims.

This classification shows that Islamic law has a flexible and layered penal system that allows for the proportional application of sanctions to different forms of crime.

3.3. Relevance of the Islamic Criminal Law Perspective to Strengthening the Penal System for Sexual Violence Crimes in Indonesia

Islamic criminal law has strong relevance to the development of the Indonesian legal system, particularly in addressing the increasingly complex issue of sexual violence. As a country with a majority Muslim population, Indonesia has a sociological proximity to Sharia principles. These values emphasize the importance of protecting dignity (hifz al-'ird), protecting life (hifz al-nafs), justice, and preventing harm. These fundamental principles are reflected in Islamic criminal law and are aligned with the spirit of national legal reform that prioritizes victim protection, crime prevention, and the enforcement of substantive justice.

Normatively, many principles in Islamic criminal law are aligned with modern criminal law principles in Indonesia. For example, the concept of ta'zir provides space for judges to determine proportional sanctions based on the severity of the crime, social conditions, and the impact caused. This flexibility is highly relevant to Indonesia's legal needs in addressing various forms of sexual violence, including online gender-based violence (KBGO), which was unknown in classical literature but can be accommodated through the ta'zir approach. Similarly, the concept of qarinah in evidence is very compatible with the use of forensic evidence, electronic evidence, medical records, and other modern evidentiary methods regulated under TPKS Laws.

In addition to normative value, Islamic criminal law also offers an important philosophical approach in strengthening the Indonesian legal system. Islam does not view punishment merely as a means of retaliation but also as a means of education, moral improvement, and crime prevention. This approach is aligned with the direction of Indonesian legal policy, which has begun to prioritize restorative justice and victim protection. For example, the concept of diyat, which provides compensation to victims or their families, can be understood as an early form of the recovery mechanism in restorative justice, which is increasingly being adopted in national law.

Another relevance is seen in the aspect of victim protection. In Islamic law, victims of sexual violence have a position that must be respected and fully protected, including psychologically, socially, and legally. This principle is aligned with TPKS Laws, which places victims at the center of attention by guaranteeing support, protection, and rehabilitation. By integrating Islamic values, the Indonesian legal system can strengthen moral and ethical sensitivity in handling victims, so that law enforcement is not only focused on punishment but also on respecting the dignity of victims.

From a socio-cultural perspective, the application of the Islamic criminal law approach can also help improve the legitimacy and acceptance of the Indonesian legal system by society. Because the majority of Indonesia's population is Muslim, justice values derived from fiqh jināyah have emotional and cultural proximity to the public. The integration of these values can strengthen legal compliance and enhance societal perceptions of justice, especially in sensitive issues such as sexual violence.

Thus, Islamic criminal law has significant relevance to the Indonesian legal system in terms of moral values, penal concepts, evidence models, victim protection, and the strengthening of substantive justice. The integration of Islamic legal values does not mean replacing national law but serves as an ethical and normative basis to enrich, strengthen, and adapt Indonesian positive law to the evolving social dynamics, particularly in addressing sexual violence crimes.

The above explanation shows that in this context, Islamic criminal law (fiqh jināyah) offers a highly relevant value framework to support the strengthening of the Indonesian legal system. Islam views dignity ('ird) and life safety (ḥifẓ al-nafs) as the main objectives of Sharia (maqāṣid al-syarī'ah) place human dignity and social order at their core, which is why all forms of sexual violence are recognized as severe violations that undermine human honor and threaten communal stability. The principles of Islamic law—emphasizing substantive justice, victim protection, and crime prevention—serve as a valuable normative reference to enrich the perspective of Law Number 12 of 2022 on Sexual Violence Crimes (Undang-Undang TPKS), particularly in ensuring the best interests of victims and creating deterrence for perpetrators. A key strength lies in the flexibility of Islamic criminal law through the concept of ta'zīr, which

grants judges the space to impose proportional sanctions based on the severity of the crime, social context, and the physical and psychological impact on the victim. This aligns perfectly with the spirit of TPKS Laws, which prioritizes a victim-centered approach and promotes penal measures that are more responsive to the harm caused by perpetrators. Importantly, integrating Islamic legal values does not mean replacing the national legal system; instead, it functions as a "normative complement" that can strengthen the effectiveness, legitimacy, and morality of enforcing TPKS Laws in Indonesia.

A meaningful comparison between Indonesia's Law Number 12 of 2022 on Sexual Violence Crimes (TPKS Law) and *fiqh jinayah* demonstrates that, although both legal systems originate from different normative foundations, they share a common objective of protecting human dignity and preventing sexual violence. The TPKS Law is grounded in constitutional principles, international human rights standards, and victim-oriented criminal justice, whereas *fiqh jinayah* is derived from the Qur'an, Sunnah, and classical Islamic jurisprudence, emphasizing the objectives of Sharia (*maqasid al-shari'ah*), particularly the protection of dignity (*hifz al-'ird*) and life (*hifz al-nafs*).

A significant difference lies in the scope of criminalization. The TPKS Law explicitly recognizes various forms of sexual violence, including sexual harassment, forced contraception, forced marriage, sexual exploitation, electronic-based sexual violence, and other non-physical forms of abuse. In contrast, classical *fiqh jinayah* primarily discusses offences such as *ightisab* (rape), *zina*, and acts violating public morality. Nevertheless, through the doctrine of *ta'zir*, Islamic criminal law provides flexibility for state authorities to criminalize emerging forms of sexual violence that were unknown in classical jurisprudence, including technology-facilitated sexual offences. This demonstrates that *fiqh jinayah* possesses adaptive capacity despite its classical origins.

The two legal systems also differ in their approach to punishment. The TPKS Law prescribes imprisonment, fines, restitution, rehabilitation, and additional sanctions aimed at protecting victims and preventing reoffending. By contrast, *fiqh jinayah* classifies sanctions into *hudud*, *ta'zir*, and *qisas/diyat*, depending on the nature of the offence and the available evidence. While *hudud* applies only under strict evidentiary requirements, most contemporary sexual violence cases can be addressed through *ta'zir*, allowing judges to impose proportional punishments according to the severity of harm and public interest. In this respect, both systems recognize judicial discretion, although they operate within different normative frameworks.

Another important point of comparison concerns evidentiary standards. The TPKS Law accepts various forms of modern evidence, including forensic examinations, medical records, electronic evidence, expert testimony, and victim testimony. Similarly, Islamic criminal law recognizes the concept of *qarinah* (circumstantial evidence), enabling judges to consider indirect evidence when establishing the occurrence of a crime. Although classical Islamic jurisprudence traditionally emphasized witness testimony and confession in *hudud* offences, many contemporary Muslim jurists acknowledge that forensic science and digital evidence may constitute valid *qarinah* within the framework of *ta'zir*. Consequently, the evidentiary approaches of both systems are increasingly compatible in addressing modern sexual violence.

The most significant convergence between the TPKS Law and *fiqh jinayah* lies in victim protection. The TPKS Law explicitly guarantees victims' rights to protection, medical treatment, psychological recovery, legal assistance, restitution, and rehabilitation throughout the criminal

justice process. Likewise, Islamic criminal law views victims as individuals whose dignity and physical integrity must be protected and restored. The principles of *hifz al-'ird*, *hifz al-nafs*, and justice (*al-'adl*) require the State to prevent further victimization while ensuring accountability for perpetrators. Therefore, despite differences in legal sources and institutional structures, both legal systems share a common commitment to safeguarding victims and maintaining social justice.

4. Summary

Islamic criminal law frames sexual violence as a grave offense that violates human dignity and endangers public welfare. Through its classification of crimes into hudud, ta'zir, and qisas/diyat, it provides a comprehensive framework for addressing such acts - one that balances strictness with flexibility. Its adaptive evidentiary mechanism, particularly the use of qarinah (circumstantial evidence), ensures relevance in contemporary contexts. Core principles like dignity protection and deterrence serve as critical references for strengthening Indonesia's legal system, especially in implementing Law Number 12 of 2022 on Sexual Violence Crimes (Undang-Undang TPKS). By positioning dignity ('ird) as a key objective of Sharia (maqasid al-syari'ah), Islamic criminal law recognizes sexual violence as a serious crime (jarimah) that violates both divine and human rights. The layered penal system of hadd, ta'zir, and qisas/diyat enables proportional sanctions tailored to the crime's severity and its impact on victims and society. Thus, the perspective of Islamic criminal law offers valuable conceptual and normative guidance to enrich modern penal policies, enhancing victim protection and deterrence. Its emphasis on justice, prevention, and victim recovery holds significant potential for integration into Indonesia's legal system, contributing meaningfully to addressing the growing complexity of sexual violence.

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