



## LEGAL PROTECTION FOR VICTIMS OF SEXUAL VIOLENCE IN THE UNIVERSITY ENVIRONMENT (NATIONAL CRIMINAL LAW AND ISLAMIC LAW)

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**Abstract:** This study discusses legal protection for victims of sexual violence in higher education based on National Criminal Law and Islamic Law. In the National Criminal Law, victim protection is regulated in detail in Permendikbudristek Number 30 of 2021, specifically Articles 10 to 19, which regulate assistance, protection, victim recovery, and the imposition of administrative sanctions. Criminal sanctions for perpetrators are also regulated in Articles 289 to 296 of the Criminal Code. From the perspective of Islamic Law, victim protection is based on the principle of justice and respect for human dignity by applying hudud and ta'zir laws according to the level of the perpetrator's guilt, although it has not been specifically regulated in national legislation. The synergy between the provisions of Islamic Law and National Criminal Law is expected to provide comprehensive protection and encourage effective and just law enforcement for victims of sexual violence in higher education environments..

**Keywords:** Legal Protection, Sexual Violence, Higher Education

### INTRODUCTION

According to Law Number 35 of 2014, violence is any act against a child that results in physical, psychological, sexual misery or suffering, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty. Violence experienced by women extends beyond sexual violence to sexual harassment, which is considered indirect sexual violence. According to Till (in Kusumiati; 2001:6), various forms of sexual harassment include gender harassment, seduction, bribery, sexual coercion, and sexual imposition.

This sexual harassment is dominated by behavior that seduces and tempts women to fulfill men's sexual desires. Sexual violence in higher education is a serious problem that requires special attention from various parties, including educational institutions, the government, and the wider community. Universities, while supposed to be safe and conducive spaces for students to pursue their education, often become locations for acts of sexual violence that harm victims physically, psychologically, and socially.

This phenomenon not only disrupts the victims' academic process but also impacts the institution's reputation and

creates an unhealthy atmosphere for the entire academic community. Therefore, legal protection for victims of sexual violence in higher education is crucial to guarantee their rights and provide a deterrent effect for perpetrators. However, effective legal protection requires a strong and comprehensive legal foundation, encompassing both national positive law and the religious law embraced by the majority of Indonesians, namely Islamic law.

### **MAIN PROBLEM**

How is legal protection for victims of sexual violence in higher education institutions implemented in Indonesia, and to what extent is it effective when reviewed from the perspective of national law and Islamic law?

### **METHOD OF RESEARCH**

This study employs a normative juridical research method, focusing on the analysis of legal norms governing sexual violence in higher education. It uses a statutory approach by examining relevant legislation, particularly Law Number 35 of 2014 on Child Protection and other applicable regulations, as well as a conceptual approach grounded in legal doctrines and scholarly opinions. In addition, a comparative approach is applied to analyze the alignment between national positive law and Islamic law in providing legal protection for victims. The data used are secondary data consisting of primary legal materials (laws and regulations), secondary legal materials (books, journal articles, and expert opinions), and tertiary legal materials. Data are analyzed qualitatively through legal interpretation to assess the adequacy and effectiveness of legal protection

for victims of sexual violence in higher education institutions.

## **RESEARCH RESULT AND DISCUSSION**

### **1. Legal Protection Under National Criminal Law**

Under National Criminal Law, legal protection for victims of sexual violence in higher education is specifically regulated through Ministerial Regulation Number 30 of 2021. Articles 10 to 19 specifically regulate the handling mechanism for victims of sexual violence, focusing on assistance, protection, and recovery. This assistance aims to help victims cope with trauma, obtain justice, and restore their psychosocial well-being so they can return to normal activities in the academic environment. The protection stipulated in these articles is not only reactive but also preventive.

Universities are required to establish a special task force tasked with handling complaints of sexual violence transparently and fairly, as well as conducting outreach and education to prevent sexual violence on campus. An accessible and responsive complaint procedure is essential to ensure victims feel supported and are empowered to report without fear. The primary goal is to create a safe, healthy, and comfortable university environment for the entire academic community by ensuring the protection of victims' rights and providing legal certainty in handling cases of sexual violence.

The imposition of administrative sanctions against perpetrators of sexual violence in higher education

institutions is specifically regulated in Articles 12, 14, and 16 of the Regulation of the Minister of Education, Culture, Research, and Technology (Permendikbudristek) Number 30 of 2021. This provision is part of a systematic effort to prevent and address the rampant sexual violence in higher education institutions, while also providing protection and justice for victims. These administrative sanctions are imposed in response to evidence of sexual violence committed by the perpetrator, with the decision being made by the university leadership based on the recommendations of the special task force handling the case.

Article 12 stipulates the obligation of higher education institutions to provide comprehensive protection to victims and witnesses of sexual violence so they can continue their education or work without disruption. This protection includes ensuring continued education for student victims, ensuring continued employment for educators and education personnel, protection from physical and non-physical threats, including facilitating reporting to law enforcement, ensuring identity confidentiality, and providing information on rights and protection facilities at higher education institutions.

Article 14 classifies administrative sanctions into three levels: light, moderate, and severe. Light sanctions can take the form of a written warning or a written apology published internally or through the mass media. Moderate

sanctions include temporary dismissal from office without any official rights, and for students, they can include suspension, revocation of scholarships, or reduction of other rights.

Severe sanctions can include permanent dismissal from office or student status. These sanctions are imposed proportionally and fairly, taking into account various factors such as the impact of the violence on the victim, their status (e.g., if they have a disability), and the perpetrator's position, which may be an important position within the university, as stipulated in Article 16.

Criminal sanctions for perpetrators of sexual violence in Indonesia are also comprehensively regulated in Articles 289 to 296 of the Criminal Code (KUHP). These articles regulate various forms of sexual violence, with varying penalties depending on the type and severity of the act and the victim's condition. Article 289, for example, threatens perpetrators who use violence or threats of violence to force another person to commit or allow indecent acts to be committed with up to nine years in prison. This demonstrates a firm legal response to sexual violence involving physical violence or intimidation.

Furthermore, Article 290 stipulates penalties for perpetrators who commit indecent acts against defenseless individuals, such as minors or those who have not yet married, with a prison sentence of up to seven years. This provision emphasizes special protection for

vulnerable groups who are often victims of sexual violence, if the crime results in serious injury or death. Article 291 provides even harsher penalties, namely up to 12 years' imprisonment for serious injury and up to 15 years for death.

The following articles, such as Articles 292 to 296, regulate various other forms of sexual violence, including indecent acts with minors of the same sex, forcing minors to commit indecent acts using money or promises, and indecent acts committed by officials against their subordinates. Penalties vary from five years in prison to a fine, depending on the type of offense and the perpetrator. Furthermore, Article 296 stipulates sanctions for those who facilitate indecent acts as a habit or livelihood, with the potential for up to one year and four months in prison or a maximum fine of IDR 15 million. This demonstrates that the law not only implicates the primary perpetrators but also those who facilitate or profit from sexual violence.

## **2. Legal protection Based on Islamic Law**

Legal Protection Based on Islamic Law In the context of Islamic law, regarding the protection of victims, especially victims of violence, Islamic law prioritizes respect for human dignity, namely human dignity, which must be protected from all forms of abuse and oppression. Although national legislation does not specifically regulate the protection of victims of sexual violence or other forms of violence with reference to Islamic

law, the principles of Islamic law remain a strong moral and normative foundation for providing such protection. Islamic law regulates the application of proportional punishments appropriate to the level of culpability of the perpetrator through two main types of punishments: hudud and ta'zir.

1. Hudud punishments are punishments established in Islamic law for certain crimes, known as hudud crimes. These punishments are definitive and cannot be changed by humans. Their purpose is to maintain public welfare, justice, and order. In cases of sexual violence, hudud punishments such as whipping or stoning can be applied if the evidence and evidentiary requirements are met in order to provide a deterrent effect and maintain moral and social order. In Islamic law, adultery is a major sin and an offense that is regulated by strict punishment to maintain morality and public honor. Referring to the book *Total Healing with Wirid Asmaul Husna* by Rizem Aizid, in Islamic law there are several different punishments for perpetrators of adultery. Thus, the act of adultery is divided into two, namely zina muhsan and zina ghairu muhsan.

### a) Adultery (Zina Muhsan)

Adultery (Zina Muhsan) is adultery committed by a married person or someone who already has a husband or wife. This means a married person who fails to protect

themselves from others who are not their mahram (mahram). The punishment for adultery (Zina Muhsan) is stoning to death, although this punishment is not specified in the Quran.

However, as is well known, Islamic law refers not only to the Quran but also to hadith, such as the Prophetic traditions. Hadith are not merely the words of the Prophet, but are more than that. What he uttered was revelation sent down from heaven by Allah SWT. The law of stoning adulterers has a very strong basis, as the hadith was authenticated by Al-Bukhari and Muslim. Masrud narrated from Abdullah (may Allah be pleased with him) that the Prophet (peace be upon him) said, "The blood of a Muslim is not lawful except in one of three cases: one who commits adultery, one who murders, and one who apostatizes." (Narrated by Bukhari and Muslim) Based on this hadith, it is explained that the blood of adulterers is permissible, and the form of punishment is stoning, as was the practice carried out by the Prophet Muhammad (peace be upon him).

#### b) Zina Ghairu Muhsan

Zina ghairu muhsan is an act of adultery committed by someone who is not legal or has never been married. An

example is someone who is in a relationship before marriage, but commits adultery. Surah An-Nur verse 2 emphasizes the punishment of one hundred lashes for unmarried adulterers (ghairu muhsan), with strict evidentiary requirements, namely the presence of four fair male witnesses who saw the act directly. This verse reads:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةً جَلْدَةً وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ ﴿٢﴾

Meaning: As for the adulteress and the adulteress, lash each of them with a hundred stripes, and let not pity for them prevent you from (carrying out) the religion of Allah, if you believe in Allah and the Last Day. Let (the execution of) their punishment be witnessed by a group of the believers.

If the accusation is based on only four individuals without qualified witnesses, it cannot be accepted as valid evidence to impose a hudud punishment. This is to avoid slander and maintain individual honor, in accordance with the principles of justice and respect for human dignity (karāmah insāniyyah). In the second verse, Allah SWT directly explains the punishment for those who commit adultery.

They are perpetrators, both men and women, who are subject to one hundred lashes in public. Quoted from the book *Islamic Criminal Law* by Zainuddin Ali, adultery is sexual intercourse between a man and a woman who are not married.

Meanwhile, in Islamic jurisprudence (fiqh), jurists explain that zina is sexual intercourse involving the insertion of the testicles (male genitals) into a woman's vagina, which is considered forbidden not because of doubt but because of lust. This act is considered a major sin in Islam. In addition to Surah An-Nur, verse 2, Allah SWT also forbids this act, even approaching it is prohibited. This is stipulated in Surah Al-Isra, verse 32, which reads:

وَلَا تَقْرُبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا  
(٣٢)

Meaning: Do not come near to adultery. Indeed, it is a heinous act and the worst way.

The punishment for adulterers, both women and men, is the same, namely being whipped a hundred times in front of a large crowd and being exiled for one year. The provisions that apply to this law are that the two perpetrators have never been married. If you are married, stoning is the last resort. Rizem Aizid in the book.

Jariah's Sins states that this caning punishment is only imposed on people who commit adultery ghairu muhsan or major adultery committed by men and women who are not bound by marriage.

## 2. Ta'zir punishment

Ta'zir punishment Ta'zir punishment is a punishment whose provisions are determined by the judge, while still adhering to the sharia of Allah SWT. However, specifically for ta'zir punishments, the judge has greater authority to determine the form and severity of the punishment. One of the roles of ta'zir punishments is to prevent perpetrators of hudud laws who do not meet the requirements. The main purpose of ta'zir punishment is to teach a lesson to the individual who is punished and prevent him from repeating similar crimes. The legal basis for ta'zir is in the Qur'an, Al-Maidah letter, verse 38:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا  
نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ  
(٣٨)

Meaning: Men and women who steal, have their hands cut off as retribution for what they have done and as a punishment from Allah. Allah is all-powerful, all-wise.

a) Types of Ta'zir and Conditions for Their Implementation In Islamic criminal law, ta'zir refers to a type of punishment determined by a ruler or judge for offenses not explicitly regulated in the Quran or Hadith. The following are

several types of ta'zir in Islamic criminal law:

- 1) Ta'zir in the form of corporal punishment: flogging, imprisonment, or other punishments not included in the Hudud category.
  - 2) Ta'zir in the form of fines and compensation: paying a fine or compensation to the victim or the state.
  - 3) Ta'zir in the form of supervision and restrictions: supervision, restrictions on activities, or prohibitions on certain activities.
  - 4) Ta'zir in the form of warnings: warnings, reprimands, or orders not to repeat unlawful acts. Ta'zir punishments in Islam can be categorized based on several aspects.
- b) Based on the Rights Violated:
- 1) Ta'zir of Allah's Rights: Violation of Allah's commands or prohibitions that do not fall under the categories of hudud or qisas.
  - 2) Ta'zir of Human Rights: Violation of individual or community rights.
- c) Based on the Nature of the Violation:
- 1) Sinful Acts: Violations of religious norms.
  - 2) Acts that Endanger the Public Interest: Actions that harm society at large.
- 3) Violations of the Law: Violations of applicable regulations.
- d) Based on Legal Basis:
- 1) Derived from Hudud or Qisas Crimes: Acts that almost meet the requirements for hudud or qisas, but do not fully meet them.
  - 2) Mentioned in Sharia: Acts that are prohibited in religion, but the punishment for which has not been specifically determined.
  - 3) Not Specified in Sharia: Acts for which there is no legal regulation in religion. Abdul Aziz Amir, in his book, further divides ta'zir based on the type of crime committed, such as murder, assault, violation of morality, theft, and disturbance of public order.
- e) Requirements for Implementing Ta'zir
- 1) The perpetrator must be responsible for their actions: the perpetrator must have the ability to understand and control their actions.
  - 2) The perpetrator must have the intention (niyah) to commit the unlawful act: the perpetrator must have the purpose of committing the unlawful act.
  - 3) The unlawful act must be legally proven: the evidence must be strong and irrefutable.
  - 4) The perpetrator must have the ability to understand the law: the perpetrator must have knowledge of the law being violated.

- 5) The punishment must be proportionate to the unlawful act: the punishment must be commensurate with the level of culpability of the perpetrator.
- f) The functions of ta'zir are as follows;
- a. Law Enforcement: Ta'zir serves as a law enforcement tool that imposes sanctions on violators, ensuring that the law remains respected and followed by society.
  - b. Crime Prevention: By imposing appropriate penalties, ta'zir serves to deter individuals from committing crimes, creating a deterrent effect that can reduce the rate of crime.
  - c. Social Stability: Tazir contributes to social stability by maintaining order and preventing actions that could disrupt public security.
  - d. Offender Rehabilitation: One of the functions of tazir is rehabilitation, where offenders are given the opportunity to change and correct their behavior, so they can reintegrate into society.
  - e. Community Education: Tazir also serves as a means of legal education, raising public awareness of the legal consequences of criminal acts and the importance of complying with existing norms.
  - f. Community Protection: By taking action against violations, tazir serves to protect the community from potentially harmful actions and maintain security and order.
  - g. Strengthening Moral Values: Tazir helps strengthen moral values.
- Thus, the application of ta'zir punishment aims to uphold justice comprehensively, not merely as retribution but also as a means of prevention and social recovery. Islam teaches the importance of upholding the victim's reputation and dignity, so the legal process must be conducted with utmost care and respect.
- This aligns with the *maqasid al-shari'ah* (objectives of sharia), the objectives of sharia that emphasize the preservation of religion, life, intellect, posterity, and property, all of which are closely related to the protection of human rights. However, the main challenge in implementing these Islamic legal principles is the lack of national regulations that explicitly accommodate Islamic law in the context of protecting victims of violence, so its implementation remains limited to the normative and moral realm.
- Therefore, synergy between Islamic law and national criminal law is crucial for providing comprehensive protection for victims. This synergy allows the legal process to proceed while taking into account humanitarian aspects, restorative justice, and victim recovery, while simultaneously imposing appropriate sanctions on perpetrators based on the severity of their culpability. Furthermore, this synergy also opens up space for the development of more specific and adaptive regulations addressing the protection needs of victims of sexual

violence in higher education, a significant legal gap currently present.

### **CONCLUSION**

Legal protection for victims of sexual violence in higher education is an urgent necessity to ensure the fulfillment of victims' rights and to create a deterrent effect against perpetrators. Within the framework of national law, such protection is regulated through Ministerial Regulation of Education, Culture, Research, and Technology Number 30 of 2021, which provides mechanisms for prevention, handling, protection, and recovery of victims, alongside administrative sanctions. Additionally, the Indonesian Criminal Code (KUHP) stipulates criminal sanctions for various forms of sexual violence based on the severity of the offense.

From the perspective of Islamic law, victim protection is grounded in the principles of justice and human dignity (*karāmah insāniyyah*), implemented through *hudud* and *ta'zir* sanctions. While *hudud* punishments are applied under strict evidentiary standards, *ta'zir* allows judicial discretion to impose proportional sanctions based on the circumstances of the case.

However, a significant limitation lies in the absence of formal integration of Islamic law within the national legal system in addressing sexual violence cases, resulting in its application being largely normative. Therefore, strengthening the synergy between national criminal law and Islamic law is necessary to develop a more comprehensive, just, and victim-oriented legal protection system, particularly within higher education institutions.

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