Legal protection for victims of sexual violence in Indonesia in the perspectives of victimology and *fiqh jinayah*

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<th>History of Author</th>
<th>Abstract</th>
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<tr>
<td>Vivi Ariyanti</td>
<td>Sexual violence is a global problem that violates human rights and fundamental freedoms. This paper examines the laws and regulations that guarantee the protection of victims according to Indonesian laws and Islamic law. Regarding Indonesian laws, besides the basic rules in the form of the Act on the Crime of Sexual Violence, there are also ministerial regulations (Regulation of the Minister of Education and Culture, and Regulation of the Minister of Religion) that protect and guarantee the safety of everyone from acts of sexual violence. This is the concern of higher education institutions, so that they are on the right track to address the issue of sexual violence with more passion and precision. The issues of sexual violence have received greater attention in universities, so that intensive prevention and response efforts are very important, with the aim of combating sexual violence in universities, navigating the application of laws and regulations relating to sexual violence, and more broadly, fostering a culture of respect, inclusion and courtesy towards others. These national laws are in line with the Islamic precepts regarding protection of citizens in the maqasid al-shariah concept, in which acts of sexual violence can fall into all three categories of <em>jarimah</em>: <em>qisas</em>, <em>hudud</em>, and <em>ta’zir</em>, depending on the type of crime committed.</td>
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**Keywords:** Legal Protection; Victims; Sexual Violence; Victimology; Jinayah

**Introduction**

Progressive law in Indonesian legal practice is recognized as an alternative to law enforcement. Progressive law, initiated and advocated by Satjipto Rahardjo, emphasizes how law is seen not only textually but also contextually. Progressive law provides justice not only in what is stated by laws and regulations (law in the book) but also what society needs (law in action). Herein lies the importance of having an understanding between academics and legal practitioners. Progressive law departs from a humanistic perspective. Thinking progressively means having the courage to get out of the mainstream of thought of legal absolutism, and to position law relative to all humanistic issues.

As part of the government’s efforts to promote the elimination of gender-based crimes, universities need to take steps to identify, analyze and share good practices and strengthen synergy and shared understanding among academics and practitioners regarding access to justice for victims of sexual violence. The progressive legal paradigm in tackling and dealing with cases of sexual violence needs to be echoed again. Philosophically forming laws and drafting laws must be in line with the basic needs of society, and progressive law strengthens these basic needs of society. Progressive law is claimed to be able to provide substantive justice, as well as welfare for society.

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Contemporary legal issues increasingly illustrate how social justice can be seen from various aspects, one of which is the aspect of gender justice. Justice is often associated with the gender status of a victim of a crime, especially women, because women are an element of society that is seen as the weakest and most vulnerable to becoming a victim of a crime. On the other hand, women are also seen as having more difficulty accessing justice when the cases that befall them are related to crimes of sexual violence. For example, cases of rape, where the perpetrators often escape prosecution due to a lack of evidence and the absence of witnesses; criminal threats for rape victims who have abortions; victimization and blaming of women victims of sexual violence. These are all examples of the problems faced by women in Indonesia when seeking legal justice. Instead of getting justice as expected, many of the women have become victims again as a result of the legal system that is not in favor of women victims, and law enforcement officials who do not have a gender equality perspective.4

The central question studied by this paper is how laws and regulations can provide effective protection for victims in the context of complex situations, such as situations that contain aspects of power relations and situations characterized by limited abilities of a person, such as persons with disabilities. This study specifically focuses on discussing the elements of protection needed for victims of sexual violence through the mechanism of legislation. This study also attempts to identify problems that may arise from handling acts of sexual violence in higher education institutions, what actions are effective to strengthen the protection of victims in tertiary institutions and what strategies are available to address the challenges that may exist. This study is analyzed using a victimological approach and fiqh jinaya or Islamic criminal law.

Sexual Violence Offences

Sexual violence is physical and psychological/emotional violence—in the form of coercion, threats, and deception—against other people because of their sex or gender. The World Health Organization (WHO) states that sexual violence is a major public health concern and a violation of human rights that has well-established long-lasting detrimental consequences.5 Sexual violence includes a range of behaviors such as rape or attempted rape, sexual coercion, unwanted contact, and unwanted non-contact experiences such as harassment. Sexual violence is a serious problem and the government is committed to preventing it, both in society and in educational institutions. Effectively addressing all forms of sexual violence entails shifting societal norms and attitudes. While achieving complete pre-emptive prevention is a complex and lengthy endeavor, altering cultural perspectives is a feasible objective that has the potential to yield positive outcomes.6

Laws and regulations regarding crimes in Indonesia, including the currently applicable Criminal Code, do not recognize the term crime of sexual violence. However, there are several articles in the Criminal Code (KUHP) that can be used to charge sexual violence. These articles that can be traced to the problem of sexual violence are “crimes against decency” (Chapter XIV, Articles 281-297) and

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“decency violations” (Chapter VI Book III, Articles 532-535). For example, this can be seen in cases of rape, which are classified as “crimes against decency”. By including rape in the articles regarding crimes against decency, it means that rape is considered a crime against ethics, even though empirical cases show that rape is also life threatening or a crime against person. The articles of the Criminal Code regarding the crime of sexual violence do not provide adequate protection for victims and the wider community, so that more detailed laws are necessary to govern instances of sexual violence as criminal offenses. For example, the rape article in the Criminal Code has made it too difficult for victims to prove the case they experienced.

The enactment of Law Number 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS) answers this problem. The preamble to the Sexual Violence Law letter (c) emphasizes that “legislation relating to sexual violence has not been optimal in providing prevention, protection, access to justice and remedy, has not met the needs of the rights of victims of acts of sexual violence, and has not been comprehensive in regulating procedural law”.

Article 4 Paragraph (1) Law no. 12 of 2022 states that “sexual violence as criminal offenses consist of: (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 (i) electronic-based sexual violence”. In addition, Article 4 Paragraph (2) states that “Criminal acts of sexual violence also include: (a) rape; (b) obscene act; (c) intercourse with a child, obscene acts against a child, and/or sexual exploitation of a child; (d) acts of violating decency that are contrary to the will of the victim; (e) pornography involving children or pornography that explicitly contains violence and sexual exploitation; (f) forced prostitution; (g) the criminal act of trafficking in persons for sexual exploitation; (h) sexual violence within the household; (i) the crime of money laundering, the predicate of which is a crime of sexual violence; and (j) other criminal acts that are expressly stated as Sexual Violence Crimes as regulated in the provisions of laws and regulations”.

In general, the legal substance that is visible in statutory regulations is limited to the provisions of the existing articles, even though crimes of sexual violence can develop according to technological developments. So that, legislation regarding crimes of sexual violence may not fully provide adequate protection for victims. For this reason, it becomes imperative to enhance various components of the legal framework, including the structural setup and legal ethos. The application of the fairness principle by law enforcement personnel, notably judges, becomes essential to ensure equitable treatment for individuals who have suffered from sexual violence. This is particularly crucial in cases where there are no established laws and regulations to safeguard the rights of victims, ultimately aiming to deliver justice.

Victimological Perspective on the Protection of Sexual Violence Victims

The process of becoming a victim of a crime is called victimization, that is unintentional exposure of a person to a crime. Criminal victimization refers to someone who is the victim of a violent crime (rape or sexual assault) or property crime (robbery and theft). People with disabilities may be at increased risk of becoming victims of crime. Criminal victimization is an ongoing problem.

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worldwide, and it can have long-term negative repercussions for those who experience it.⁹

Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims states in Article 1 number 3 that victims are “people who suffer physical, mental and/or economic losses as a result of an act of criminal”. Theoretically, a victim of a crime is defined as someone who has suffered losses as a result of a crime and/or whose sense of justice has been directly disturbed as a result of their experience as a target of crime.¹⁰ In the Indonesian criminal justice system, the interests of victims of crime are represented by the Public Prosecutor who is part of the state’s protection of society as a logical consequence of social contract theory and social solidarity theory.¹¹

Someone who can become a victim of violence must be seen to what extent the victim’s role is in the event of a crime occurring, so that it can be seen more clearly what kind of victim’s rights are in accordance with justice, both for the victim himself and for the perpetrator. In this regard, Stephen Schafer formulates a typology of victim precipitation typology from a victimological perspective, as follows:

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<th>Table</th>
<th>Schafer’s Victim Precipitation Typology</th>
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<td>1.</td>
<td>Unrelated Victims (no victim responsibility)</td>
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<tr>
<td>2.</td>
<td>Provocative Victims (victim shares responsibility)</td>
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<tr>
<td>3.</td>
<td>Precipitative Victims (some degree of victim responsibility)</td>
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<tr>
<td>4.</td>
<td>Biologically Weak Victims (no victim responsibility)</td>
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<tr>
<td>5.</td>
<td>Socially Weak Victims (no victim responsibility)</td>
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<tr>
<td>6.</td>
<td>Self-Victimizing (total victim responsibility)</td>
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<tr>
<td>7.</td>
<td>Political Victims (no victim responsibility)</td>
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The table above explains the typology of victims according to Schafer, which states that: 1) Unrelated Victims means that there is no responsibility from the victim for the occurrence of a crime (no victim responsibility), the victim is just someone who is unlucky to be the target of the perpetrators of crime (simply the unfortunate target of the offender); 2) Provocative Victims are

¹¹ Rena Yulia, Viktimologi Perlindungan Hukum terhadap Korban Kejahatan (Yogyakarta: Graha Ilmu, 2010), 28.
victims who share responsibility with the perpetrators (victim shares responsibility), namely in a situation where the perpetrator reacts to some of the actions or behavior of the victim; 3) Precipitative Victims are victims who are partially responsible (some degree of victim responsibility), namely victims who leave themselves open to becoming victims by placing themselves in dangerous places or times, dressing inappropriately, acting, or saying things that wrong, etc.; 4) Biologically Weak Victims means no responsibility from the victim (no victim responsibility), namely parents, children, weak people, and people who because of their physical condition are attractive targets for criminals; 5) Socially Weak Victims means no victim responsibility, such as immigrants, minorities, and others who are not adequately integrated into society are seen as easy targets by perpetrators; 6) Self-Victimizing is the responsibility of the victim itself (total victim responsibility), that is, individuals who are involved in crimes such as drug use, prostitution, gambling, and other activities where the victim and the crime are related to one another; and 7) Political Victims is no responsibility from the victim, namely individuals who become victims because they oppose people in power or they are made victims so that they remain in a subservient social position. 12

Article 5 Paragraph (1) of Law Number 31 of 2014 states that witnesses and victims have the right to: obtain protection for the security of their personal, family and property, and to be free from threats relating to testimony that they will, are currently giving, or have given; participate in the process of selecting and determining forms of security protection and support; provide information without pressure; get a translator; free from ensnared questions; obtain information regarding the progress of the case; obtain information regarding court decisions; obtain information in terms of the convict being released; identity withheld; get a new identity; get a temporary residence; get a new residence; obtain reimbursement of transportation costs as needed; get legal advice; obtain temporary living expenses assistance until the Protection deadline expires; and/or receive assistance. However, the rights mentioned above are granted to witnesses and/or victims of criminal acts in certain cases in accordance with the decree of the Witness and Victim Protection Agency (LPSK or Lembaga Perlindungan Saksi dan Korban). 

Protection of victims of crime is part of the protection of human rights. In social life, human rights are often violated, either by individuals, groups or the state. As a result of these violations, of course this can lead to an imbalance in the victim and his family, such as an imbalance in the financial aspect if the victim is the head of the family and the pillar of family life, the physical aspect which causes the victim to stop doing activities, the psychological aspect which manifests as the emergence of psychological shock or instability, temporarily or permanently, from the victim. 13

Sexual violence is widespread globally and threatens men and women of all ages from children to adults. Research shows that certain groups are at significantly greater risk of becoming victims of sexual violence, for example, women, children, racial/ethnic minorities, and gender minorities. 14 However, an increasing number of large-scale comparative studies show that persons with disabilities are at greater risk of being sexually victimized throughout their lives than individuals who are not disabled. 15 For this reason, the enactment of the Law Number 12 of 2022 concerning Crimes of Sexual Violence is an effort to protect vulnerable people, including people with disabilities and children,

13 Ariyanti, “Konsep Perlindungan Korban dalam Sistem Peradilan Pidana Nasional dan Sistem Hukum Pidana Islam”.
15 Amborski, et al.
from actions of sexual violence. The government emphasized that “the enactment of the Sexual Violence Law, which is lex specialis in nature, is expected to be able to provide legal protection, thereby guaranteeing certainty and meeting the legal needs of society, especially for vulnerable groups, including persons with disabilities”.16

Law Number 12 of 2022 provides special protection for persons with disabilities and child victims of sexual violence. The law states that the crime of non-physical sexual violence as stipulated in Article 5 and physical sexual violence in Article 6 is a complaint offense, which can be prosecuted if there is a complaint to the authorities. However, Article 7 paragraph (2) states that the complaint offense does not apply to victims with disabilities or children, which reads “The provisions referred to in paragraph (1) do not apply to victims with disabilities or children”. This means that sexual violence against people with disabilities is not a complaint offense, so that anyone who sees the crime can report it to the authorities.

The National Commission for the Protection of Women (hereinafter referred to as the Women’s Commission) found that cases of persons with disabilities becoming victims of sexual violence increased during the 2017-2019 period. Data recorded at the Women’s Commission, during 2017, were 47 cases of violence including sexual, physical and psychological violence, increasing to 89 cases in 2018 and 87 cases in 2019. Intellectual mental disabilities are the most vulnerable with 47 percent.17 Apart from that, the Indonesian Association of Women with Disabilities (HWDI or Himpunan Wanita Disabilitas Indonesia) also conducted a brief survey on women with disabilities and sexual violence, in the range of 15-65 years totaling 55 respondents, as many as 80 percent of whom experienced gender-based violence; 15 percent of them had been raped and 10 percent were sexually exploited.18

In addition, Law Number 12 of 2022 regulates in detail regarding evidence in proving the crime of sexual violence. Not only evidence that has been regulated in the Criminal Procedure Code (KUHAP), but there are also a number of additions that make it easier for victims to access justice; for example, Article 25 Paragraph (1) of Law Number 12 of 2022 states that the testimony of a witness and/or victim is sufficient to prove that the defendant is guilty if accompanied by 1 (one) other valid evidence. Article 25 Paragraph (3) includes a provision that allows for supporting evidence in cases where the only available witness is the victim of the crime. This evidence can come from someone who has relevant information about a sexual violence case, even if that person didn’t directly witness the incident, see it firsthand, or personally experience it. The key requirement is that the person’s statement is related to the crime in question.

Regarding the imposition of sentences, Law Number 12 of 2022 additionally mandates an increase of one-third to the primary criminal punishments when a sexual violence offense takes place involving both specific conditions of the perpetrator and particular circumstances of the victim. For instance, if the criminal regulations mentioned in Article 5, Article 6, and Article 8, aligned with Article 14, are applicable, the penalty will be elevated by one-third if the offense occurs within the

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family unit or is perpetrated by professionals assigned with tasks, and other situations as detailed in Article 15. In addition, the sentencing aspect also includes restitution as the main punishment, as regulated in Article 16. In the event that the perpetrator is incapacitated and there is no third party to pay restitution to the victim, the state will provide compensation in the amount of underpaid restitution to the victim in accordance with the court’s decision (Article 35).

The victim protection paradigm can also be seen from Article 23, which states that cases of sexual violence cannot be resolved outside the court process, unless the perpetrator is a child. This shows that settlement by amicable means, for example, is no longer possible to implement in cases of sexual violence. In addition, victims are given the right to treatment, protection and recovery from the time the crime of sexual violence occurred, as stipulated in Articles 66 to 71.

Protection of Sexual Violence Victims from the Perspective of *Fiqh Jinayah*

*Fiqh jinayah* or Islamic criminal law provides legal protection for victims of crime. This is based on the concept of *maqasid al-shariah* (objectives of Islamic law) which consists of five main benefits, namely protection of religion, protection of life, protection of intellect, protection of offspring and protection of property. The word “protection” (*muhafazah*) is the key to understanding the purpose of sharia (*maqasid al-sharia*). Therefore, we need to broaden our perspective when discussing sharia law in this context.19 Jasser Auda states that the definition of muhafazah includes all social problems, apart from religious issues. Consequently, any actions that jeopardize these advantages, irrespective of their nature—be it homicide or depriving someone of life, harassment, theft, and the like—will be met with legal repercussions (*’uqubah*) targeting those who perpetrate such acts.20

In shaping and revising future criminal legislation, it’s important to consider the punitive measures associated with compensation (*diyat*) as prescribed by *fiqh jinayah*. The objective of compensation within *fiqh jinayah* extends beyond mere restoration for the wrongdoer and reimbursement for the victim’s damages. It also encompasses the restoration of peace of mind for both the victim and the perpetrator. The primary punitive measures in *fiqh jinayah*, comprising compensation (*diyat*) or restitution, assume the role of principal legal consequences when *qisas* cannot be executed. Moreover, they serve as substitute penal measures in situations where reconciliation is achieved between the involved parties. The establishment of harmony prompts the wrongdoer to provide *diyat* to the victim, thus facilitating a path towards reconciliation.21

In terms of sexual violence offences, *fiqh jinayah* does not provide specific terms. *Fiqh jinayah* only mentions *jarimah zina* (adultery crime) and *jarimah qazaf* (the crime of accusing adultery) for crimes related to sexuality. All sexual crimes in *fiqh jinayah*, whether against men, women, or the opposite sex and the same sex, regardless of age or sexual orientation, are considered *zina* or adultery. Meanwhile, *qazaf* is accusing someone else of committing adultery and causing defamation. In a husband-and-wife relationship, accusations of adultery against a partner can result in the breaking of the marriage bond for the reason of *li’an*.

The Quran mentions the terms *al-rafas* and *al-fahisyah* to denote bad deeds that are deplorable.

Both of these terms in the Quran can be used to describe sexual harassment both verbally and physically. For example, the sentence *fahisyah li al-mar‘ah fi al-kalam* or *ar-rafas ‘ala al-mar‘ah*, which describes disgraceful words towards women that lead to sexual harassment. The words *al-rafas* and *al-fahisyah* both refer to bad behavior or speech that deems and insults the dignity of women. Words and acts of violence that encourage sexual offences, such as body shaming that demeans a woman’s physical appearance, touching body parts, pushing, massage, rubbing limbs, and such behavior are part of *al-rafas* and *al-fahisyah*, which strictly prohibited in Islamic teachings.  

Crimes of sexual violence in Islam can be categorized into three forms of *jarimah*, namely: *qisas*, *hudud*, and *ta’zir*. The form of *jarimah qisas* in relation to sexual violence offences are all crimes of murder and/or persecution that contain elements of sexuality. Meanwhile, *jarimah hudud* in relation to sexual violence offences are crimes of adultery and *qazaf* (accusation of adultery). As for *jarimah ta’zir* in relation to sexual violence offences, they are all crimes and offences of sexual harassment other than the *qisas* and *hudud* categories. *Ta’zir* is the types of crimes of which are regulated by the state or the government.

**Challenges for Law Enforcement**

Law enforcement is a mechanism designed to materialize legal aspirations. These legal aspirations essentially encompass the intentions of the legislative body, which are translated into legal statutes. Barda Nawawi Arief emphasized that safeguarding the law equates to upholding the principles of truth and justice. This implies that the community places its trust in law enforcement agencies to uphold the principles of truth and justice embedded within the legal framework. The execution of law enforcement is shaped by three fundamental legal elements: legal substance, legal structure, and legal culture.

The aspect of legal substance is set forth in the form of statutory rules. The law on sexual violence offences has been stipulated in the form of Law Number 12 of 2022, as stated above. The public responded positively to this legislation due to its perceived high quality and comprehensive provisions ensuring sufficient legal safeguards. The only aspect left to observe is the manner in which law enforcement agents implement the law. This is where the crucial role of the legal structure component comes into play. The legal structure represents the enduring framework of the legal system, maintaining the boundaries of the legal process and deciding the feasibility of effective law implementation.

Legal structures are law enforcement institutions, such as the police, prosecutors and courts. In efforts to enforce the law on sexual violence, law enforcement officials need to have awareness of gender equality. Recognizing and reducing gender bias in law enforcement against sexual violence is very important for law enforcement officials to protect and serve the community and increase public trust. Mitigating gender prejudice in addressing victims of sexual violence will enhance the way law enforcement handles various manifestations of gender-related violence. Gender bias remains deeply entrenched in our culture and impacts all individuals. Preventing gender bias in law enforcement

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22 Kifli, and Ismail.
practice is an integral part of combating sexual violence, and it can have real and immediate effects on the safety of individual victims in particular and society in general. In responding to reports of sexual assault, law enforcement agencies must be careful to ensure they do not base their judgments on assumptions or stereotypes about the “type of person” who could be victimized or how the victim “should behave”. Law enforcement personnel must prioritize cultivating awareness about gender equality and eradicating gender-biased perspectives when dealing with sexual violence cases. This pertains to their mindset and conduct towards others, making it an integral facet of a societal culture that promotes awareness and adherence to the law (legal culture).

Legal culture encompasses the collective disposition of community members and the prevailing value system within a society, which dictates the application of the law in that community. It constitutes the overarching factor that delineates how the legal system establishes its rightful position within the cultural fabric of the general populace. Thus, legal culture has both positive and negative influences on behavior related to law. In the context of legal protection for victims of sexual violence, legal culture is a view of how society evaluates cases of sexual violence. Frequently, there are remarks that lean towards assigning blame to the victim and presuppose that the victim bears responsibility for their circumstances. As a result, individuals who have experienced sexual violence frequently encounter various stigmatizations when grappling with the aftermath of such trauma. The most significant and prevalent stigma revolves around the notion of accountability. Given that our society tends to place blame on victims (a phenomenon known as victim blaming), these survivors often feel apprehensive about reporting violent incidents to law enforcement.

Challenges in Handling Cases of Sexual Violence in Higher Education

Sexual violence is a global problem that violates human rights and fundamental freedoms, especially for women. This type of violence denies women’s dignity and self-determination, personal development and general well-being. Female victims of sexual violence are more often diagnosed with sexually transmitted diseases, post-traumatic stress disorder, depression and anxiety disorders. Therefore, female victims of sexual violence are at greater risk of experiencing physical and/or psychological health problems. In addition, victims are also at risk of experiencing secondary victimization. To ensure comprehensive understanding of these matters among all stakeholders in higher education, integrating content concerning sexual violence, gender-based violence, and gender justice into the curriculum of educational institutions is imperative.

Moreover, it should be noted that apart from the basic rules in the form of laws, there are also institutional regulations that protect and guarantee everyone’s safety from sexual violence offences. Issues of sexual violence have received greater attention in universities in Indonesia. The issue of sexual violence and sexual harassment in higher education needs to receive more serious attention. This is because in higher education institutions, large numbers of young adults are living

independently and in close proximity to one another for the first time. For this reason, higher education institutions are required to provide a safe and secure learning and work environment. The government stipulates rules regarding the security of the campus environment from sexual violence offences. These rules include: 1) Regulation of the Minister of Education and Culture Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education Environments; 2) Regulation of the Minister of Religion Number 73 of 2022 concerning Handling and Prevention of Sexual Violence in Education Units at the Ministry of Religion; and 3) Decree of the Director General of Islamic Education Number 5494 of 2019 concerning Guidelines for the Prevention and Management of Sexual Violence in Islamic Religious Higher Education.

However, institutional efforts to deal with sexual violence face considerable challenges. Officials and/or officers in educational institutions who handle cases of sexual violence within universities often do not understand the processes for handling victims properly and even still use stereotypical views that are gender biased towards victims. At the same time, the on-campus case handling process may be inadequate when compared to the criminal justice system. The procedures employed by educational institutions for managing cases of sexual violence have a role in addressing these incidents, yet they are accompanied by notable constraints. These limitations encompass a range of issues, including the inability to compel relevant individuals for questioning, ambiguous jurisdiction concerning off-campus incidents of sexual violence, restricted investigative capacities, and constraints on the available sanctions that can be imposed.

From a legal standpoint, universities encounter substantial challenges. Even the enforcement of criminal laws, the investigation of cases, and the prosecution of suspects involved in sexual violence frequently confront the deep-seated complexities inherent in the cases, leading to considerable complexities. Instances of sexual assault within universities encompass a broad spectrum of actions, ranging from offensive remarks to rape, and it is insufficient for universities to address these cases independently. Numerous inquiries emerge in connection with the protocol for managing cases of sexual violence within the university setting. These include considerations such as how campuses should approach reports of sexual violence that transpired months earlier, the protocol when the parties involved have already graduated, how to handle incidents occurring off-campus yet involving enrolled students, and the optimal course of action when there is a lack of identifiable forensic evidence, absence of physical proof or supporting witnesses, and limitations in compelling evidence through subpoena powers.

The handling and prevention of sexual violence cases, as stipulated by the regulations set forth by the Ministries (Ministry of Education and Culture, as well as the Ministry of Religious Affairs) as mentioned above, have drawn the attention of the higher education realm. Thus, the actions undertaken by universities in addressing cases according to existing procedures and resources are deemed appropriate, especially for those who have experienced sexual violence. Higher education institutions strive to exert their full efforts in preventing instances of sexual violence. If sexual violence

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incidents within higher education institutions cannot be fully resolved due to resource constraints, the option remains to elevate the case to the domain of public law through legal proceedings carried out by law enforcement authorities. This is particularly applicable when the case is categorized as a grave offense.

Being the most populous Muslim nation globally, Indonesia should serve as a model for other Muslim-majority countries in the prevention and management of sexual violence. This stance aligns with the ta’zir concept in Islamic criminal law. The notion of jarimah ta’zir constitutes a vast domain that the state can expand upon through legislative measures. Hence, it becomes crucial to implement rigorous prevention and control measures. University administrators share a distinct objective: countering sexual violence and harassment within educational institutions, effectively navigating the implementation of laws and regulations pertinent to sexual violence, and, on a broader scale, fostering a culture of respect, inclusivity, and politeness towards all individuals.

Conclusion

Progressive legislation serves as a highly relevant proposal for addressing legal matters in the present era. To align with societal advancements, a well-defined state legal policy direction is essential, particularly in safeguarding citizens. This concept resonates with the principles of ta’zir within Islamic criminal law of fiqh jinayah. The enactment of Law Number 12 of 2022 on Sexual Violence Crimes introduces a fresh perspective in managing sexual violence cases, encompassing dedicated safeguards for individuals with disabilities and underage victims of sexual violence. Apart from fundamental legal provisions, there are also institutional guidelines (in the form of Ministerial Regulations) established to ensure the safety of individuals against sexual violence. Nevertheless, the institutional initiatives to address sexual violence confront substantial obstacles, such as insufficient personnel, the absence of authoritative influence for university staff to manage cases, and the prevalence of gender-biased stereotypes held by officials. The prevailing national legal provisions, encompassing both laws and Ministerial regulations, align with Islamic teachings concerning the safeguarding of citizens within the framework of maqasid al-shariah. Incidents of sexual violence can be categorized under various aspects of jarimah (i.e., qisas, hudud, and ta’zir), contingent upon the nature of the offense.

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Legal protection for victims ...


