

## **Criminal Law Disparities against Perpetrators of Sexual Violence against Children Based on Islamic Law in Indonesia**

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### **Abstract**

This research aims to elucidate how criminal law disparities against perpetrators of sexual violence against children manifest based on Islamic law in Indonesia. The legal disparities indicate that child victims of sexual violence have not received comprehensive legal justice. This study adopts a qualitative descriptive approach, collecting data through exploration and reading online media with the keywords 'sexual violence against children in Indonesia' on the Google search engine. This paper reveals that legal imbalances have undermined the value of justice for child victims of sexual crimes, affecting them both psychologically and physically, and leading to other consequences such as dropping out of school, forced marriage to the perpetrator, and suicide. This study is crucial to bring about justice based on Islamic law for child victims of sexual crimes, juxtaposed with Pancasila justice. It highlights that the criminal legal disparities in cases of sexual violence consistently place children as the disadvantaged objects of legal justice. True legal inequality would not occur if the application of the law is based on Islamic Law grounded in divine values, as the punishment

for perpetrators of sexual violence in Islam can be judged as *budud* crimes, *qhisas* crimes, and *ta'zir* crimes.

**Keywords:** Disparities; criminal law; child sexual violence

## Introduction

Sexual violence against children not only places them in a disadvantaged position but also exposes the imbalance in the enforcement of law in Indonesia, both in terms of "*das sein*" (what is) and "*das sollen*" (what ought to be). Children, as victims, not only suffer from moral and material losses, but more importantly, they lose legal protection in the social reality of society. The Ministry of Women's Empowerment and Child Protection (KemenPPPA) has revealed that, at least, there were 1,191 cases of sexual violence against children throughout the year 2021.<sup>1</sup> Sexual violence even occurs within institutions that are supposed to be the protectors and nurturers of children, who are considered the hope for the future of the nation.<sup>2</sup> As seen in Islamic boarding schools in various regions.<sup>3</sup> Moreover, sexual violence also occurs in places of worship, as exemplified by the case at the Depok Church of Saint Herculanus Parish.<sup>4</sup> Sexual violence against children continues to persist over time, with nearly half of the child victims experiencing severe psychological pressure. Rahman asserted that children are supposed to receive protection from sexual violence in accordance with the mandate of Law No. 35 of 2014.<sup>5</sup> Therefore, according to Sholeh<sup>6</sup>, legal protection for children must be applied fairly to prevent further instances of sexual violence.

The study of sexual violence has traditionally tended to overlook women and children as victims, leaving them inadequately protected by the law.<sup>7</sup> Sexual

<sup>1</sup> Raynaldo Ghiffari Lubabah, "KemenPPPA Catat Kekerasan Seksual Tertinggi Sebanyak 7.191 Kasus," *Jumat*, 4 Juni 2021 13:55, 2021.

<sup>2</sup> Angger Sigit Pramukti dan Fuady Primaharsya, *Sistem Peradilan Pidana Anak* (Yogyakarta, Indonesia: Pustaka Yustisia, 2015).

<sup>3</sup> Dony Indra Ramadhan, "Facts of the Rape of 12 Female Students by Islamic Boarding School Teacher in Bandung," *Thursday*, December 9, 2021, 08:14 WIB, 2021; Adhar Muttaqin, "Inappropriate Remarks by Cleric 'Obeying the Teacher is a Must' Facilitate the Seduction of 34 Female Students," *Sunday*, September 26, 2021, 13:22 WIB, 2021; Chuk Shatu Widarsha, "Cleric Who Assaulted 3 Female Students Known to Have Virginity Test Tactics," *Tuesday*, January 21, 2020, 16:40 WIB, 2020; Hermawan Mappiwali, "Revealed! Head of Islamic Boarding School in South Sulawesi Assaulted 3 Female Students during Quran Memorization Session," *Friday*, November 12, 2021, 15:21 WIB, 2021.

<sup>4</sup> Ade Ridwan Yandwiputra, "Terpidana Kekerasan Seksual Anak Di Gereja Depok Bayar Uang Restitusi Ke Korban," *Senin*, 29 November, 2021.

<sup>5</sup> Rahman, "Implementasi Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak Terhadap Perkara Tindak Pidana Perdagangan Anak (Child Trafficking)," *Legal Opinion* 5, no. 1 (2017).

<sup>6</sup> (2001)

<sup>7</sup> H. Maulana Wadong, *Advokat Dan Hukum Perlindungan Anak* (Jakarta, Indonesia: PT. Grasindo, 2000).

violence is an act often legitimized by power dynamics and enforcement.<sup>8</sup> Women and children are frequently rendered as vulnerable subjects, struggling to attain justice in cases of sexual violence.<sup>9</sup> This situation perpetuates the continuous occurrence of sexual violence against children.<sup>10</sup> Sexual violence encompasses a wide spectrum, ranging from rape, harassment, and sexual discrimination, and is even intertwined with conflicts.<sup>11</sup>

This paper aims to address existing shortcomings by analyzing how sexual violence against children continues due to the lack of legal justice. Equitable law is crucial for children who are the victims of sexual violence, aiming to ensure the realization of their rights within legal protection frameworks. To achieve this, at least three questions can be posed: (1) What are the disparities in criminal acts of sexual violence against children? (2) How is the law enforced regarding non-criminal acts of sexual violence against children? (3) What are the implications of legal disparities in legal protection for children who are the victims of sexual violence? These questions pave the way to elucidate how legal disparities affect children who become the victims of sexual violence, ultimately striving to establish fair laws.

This writing is founded on the argument of the significance of legal protection for children who are victims of sexual violence. Legal distortions create a void in the presence of legal justice for these children. As Barda Nawawi Arief mentioned, legal protection for children is a part of the fundamental rights and freedoms of children.<sup>12</sup> Furthermore, Maidin Gultom emphasized that legal protection for children is the responsibility of the entire society, as children are assets for the nation and its future.<sup>13</sup> Article 69 of the

<sup>8</sup> Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi Atas Hak Asasi Perempuan* (Bandung, Jawa Barat, Indonesia: PT. Refika Aditama, 2001).

<sup>9</sup> Muhammad Rustamaji, "Biomijuridika: Pemikiran Ilmu Hukum Pidana Berketuhanan Dari Barda Nawawi Arief," *Undang: Jurnal Hukum* 2, no. No. 1 (2019): 193–222, <https://doi.org/10.22437/ujh.2.1.193-223>.

<sup>10</sup> Ingunn Bjørnseth and Attila Szabo, "Sexual Violence Against Children in Sports and Exercise: A Systematic Literature Review," *Journal of Child Sexual Abuse* 27, no. 4 (May 19, 2018): 365–85, <https://doi.org/10.1080/10538712.2018.1477222>.

<sup>11</sup> Pinky Mahlangu et al., "Preliminary Evidence of Promise of a Sexual Violence Risk Reduction Intervention for Female Students in South African Tertiary Education Institutions," *Global Public Health*, November 13, 2021, 1–17, <https://doi.org/10.1080/17441692.2021.1998574>; James Garbarino, "Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones," *Global Public Health* 5, no. 4 (July 1, 2010): 447–48, <https://doi.org/10.1080/17441691003641807>; Myriam Denov and Antonio Piolanti, "Identity Formation and Change in Children and Youth Born of Wartime Sexual Violence in Northern Uganda," *Journal of Youth Studies* 24, no. 9 (October 21, 2021): 1135–47, <https://doi.org/10.1080/13676261.2020.1801994>.

<sup>12</sup> Barda Nawawi Arief, "Beberapa Aspek Pengembangan Ilmu Hukum Pidana (Menyongsong Generasi Baru Hukum Pidana Indonesia)," *Pidato Pengukuhan Guru Besar Pada Fakultas Hukum Universitas Diponegoro*, 1994.

<sup>13</sup> Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dan Perempuan* (Bandung: PT Refika Aditama, 2014); Maidin Gultom and Henny Saida Flora, "Application of Restorative

Child Protection Law outlines at least seven rights of children in legal protection, encompassing information, handling, safeguarding, post-sexual violence recovery, healthcare services, facilities, and the right to remove sexual content. As long as legal disparities persist in cases of sexual violence against children, and there is no equitable law for children who are victims of sexual violence, these issues will continue.

Previous studies regarding sexual violence against children tend to focus on the sanctions imposed on perpetrators and the disparity in judges' verdicts. This can be observed in a study conducted by Triniti Handayani<sup>14</sup>, which explains that perpetrators of sexual violence aged 14 to 18 can undergo diversion as long as their punishment does not exceed 7 years of imprisonment and does not involve repeated criminal acts. Furthermore, Nathalia and Tunggal<sup>15</sup> utilized an integrative theory, suggesting that chemical castration is administered with the aim of both retribution and rehabilitation for the perpetrators of sexual violence exhibiting signs of pedophilia. Chemical castration for perpetrators not suffering from pedophilic disorders is considered a form of retribution for their committed crimes. In line with this perspective, Irwan Safaruddin Harahap<sup>16</sup> examined legal protection for child victims of sexual violence using progressive law based on Pancasila, assessing the lack of legal adequacy in providing protection for children who are victims of sexual violence.

The legal disparity study was also conducted by Uis Loim et al.<sup>17</sup>, examining how judicial rulings in cases of child sexual violence are influenced by two factors. First, internal factors stem from the judges themselves, as they possess discretion in imposing sanctions guided by their conscience. Second, external factors arise due to the absence of specific sentencing guidelines for child sexual violence, leading to discrepancies in legal judgments. Additionally, Deny Dwi Kurniawan and Galuh Indah Purnama<sup>18</sup> investigated how sentences

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Justice in the Crime of Theft," *The International Journal of Humanities & Social Studies*, 2022, <https://doi.org/10.24940/thejhss/2022/v10/i12/hs2212-012>.

<sup>14</sup> Triniti Handayani, "Perlindungan Dan Penegakan Hukum Terhadap Kasus Kekerasan Seksual Pada Anak," *Jurnal Hukum Mimbar Justitia*, 2018, <https://doi.org/10.35194/jhmj.v2i2.33>.

<sup>15</sup> Tunggal S. and Nathalina Naibaho, "PENJATUHAN KEBIRI KIMIA BAGI PELAKU KEJAHATAN SEKSUAL TERHADAP ANAK DALAM PERSPEKTIF FALSAFAH PEMIDANAAN," *Jurnal Hukum & Pembangunan*, 2020, <https://doi.org/10.21143/jhp.vol50.no2.2594>.

<sup>16</sup> Irwan Safaruddin Harahap, "Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Dalam Perspektif Hukum Progresif," *Jurnal Media Hukum*, 2016, <https://doi.org/10.18196/jmh.2015.0066.37-47>.

<sup>17</sup> and Daud Dima Tallo Loim, Januaria Yustina Uis, Rudepel Petrus Leo, "Disparitas Putusan Hakim Dalam Kasus Kekerasan Seksual Terhadap Anak," *COMSERVA* 3, no. 1 (2023): 369-385., <https://doi.org/DOI:10.59141/comserva.v3i1.775>.

<sup>18</sup> Deny Dwi Kurniawan and Galuh Indra Purnama, "Disparitas Pidana Dalam Pasal 81 Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak (Studi Di Pengadilan Negeri Sukoharjo Dan Pengadilan Negeri Boyolali) Disparity Of Sentencing In

for perpetrators of child sexual violence differ due to varied interpretations of Article 81 paragraph (2) of Law Number 23 of 2002. Lack of guidelines and miscommunication among judges are cited as causes of disparity in sentencing perpetrators of child sexual violence. This paper attempts to fill the void in the issue of criminal legal disparities for perpetrators of sexual violence against children based on Islamic law, where justice derived from religious law embodies divine justice and is conceived for the welfare of humanity.

The justice of Islamic law is often overlooked in its implementation, mainly because Islamic law is perceived as a religious legal conception within the judicial process, despite its crucial contribution to the legal state.<sup>19</sup> Additionally, the concept of Islamic law derived from the Quran, Hadith, and Ijma' illustrates that legal justice cannot be separated from its religious aspect.<sup>20</sup> Correspondingly, Damanhuri Fatah<sup>21</sup> asserted that Islamic legal justice embodies the concept of divinity and humanity, with the concept of al-‘Adah al-Muhakkamah serving as a foundation for law implementation in accordance with the texts found in the Quran and Hadith. Moreover, Zulkifli<sup>22</sup> elaborated that justice in Islamic law implies equality, balanced justice, contextual justice, and divine justice. The legal disparities for perpetrators of child sexual violence should ideally be upheld with utmost fairness, ensuring that children, as victims, receive fair legal certainty.

This study conceptualizes children, in line with Chan and Heide<sup>23</sup>, as individuals aged below 18 years old. The study solely focuses on discussing cases, treatments, and implications of legal disparities concerning perpetrators of sexual violence against children. Consistent with this, the choice to examine legal disparities regarding perpetrators of sexual crimes against children in this study is based on three considerations. First, the issue of children as victims of

Article 81 Act Number 23 Of 2002 On Child Protection (Researched In Sukoharjo District Court And Boyolali District Court),” *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 2, no. 1 (April 1, 2013), <https://doi.org/10.20961/RECIDIVE.V2I1.32010>.

<sup>19</sup> Zuhriani, “Kontribusi Nomokrasi Islam (Rule of Islamic Law) Terhadap Negara Hukum Pancasila,” *Al-‘Adalah*, 2014; Nur Ali Rahman, “{MANAJEMEN} {PENGEMBANGAN} {SDM} {KEPENDIDIKAN} {BERMUTU} {DI} {PERGURUAN} {TINGGI},” *EL-HARAKAH (TERAKREDITASI)* 8, no. 3 (April 2008): 289, <https://doi.org/10.18860/el.v8i3.4601>.

<sup>20</sup> Hj Darmawati and Anggi Anggraini, “Hubungan Hukum Islam Dengan Hukum Positif,” *Jurnal Sulesana*, 2018; Ade Mulyana, “EPISTEMOLOGI, ONTOLOGI DAN AKSIOLOGI HUKUM ISLAM,” *MUAMALATUNA*, 2020, <https://doi.org/10.37035/mua.v11i1.3324>.

<sup>21</sup> Damanhuri Fatah, “Implementasi Nilai Keadilan Dalam Kajian Hukum Islam,” *Al-Manahij: Jurnal Kajian Hukum Islam*, 2011, <https://doi.org/10.24090/mnh.v5i2.609>.

<sup>22</sup> Zulkifli Zulkifli, “TUNTUTAN KEADILAN PERSPEKTIF HUKUM ISLAM,” *JURIS (Jurnal Ilmiah Syariah)*, 2018, <https://doi.org/10.31958/juris.v17i1.1005>.

<sup>23</sup> Heng Choon (Oliver) Chan and Kathleen M. Heide, “Weapons Used by Juveniles and Adult Offenders in Sexual Homicides: An Empirical Analysis of 29 Years of US Data,” *Journal of Investigative Psychology and Offender Profiling*, 2008, <https://doi.org/10.1002/jip.87>.

sexual violence is a central concern that has not been comprehensively addressed in previous studies. Second, legal disparities concerning sexual crime perpetrators represent a contextual practice with significant motives that require analysis as a lesson learned. Third, legal disparities regarding perpetrators of sexual violence against children have predominantly disregarded the subjective well-being of children post-sexual violence towards a more negative trajectory. These considerations form the basis for this study to focus on legal disparities concerning perpetrators of sexual crimes against children based on religious perspectives, aiming to provide a more comprehensive understanding both empirically and conceptually.

This paper employs a literature review approach using a descriptive qualitative method, where the data are gathered through exploration and examination of themes related to "sexual violence against children in Indonesia," yielding 6,170,000 findings through the search engine google.com. Subsequently, this data are elaborated and extensively explored, focusing on the forms, treatments, and impacts of criminal law disparities concerning sexual violence against children. The acquired data also reflect sentencing for perpetrators of sexual violence against children, the situation of children as victims, and the impacts of sexual violence on children. This research is further reinforced by information obtained from websites, books, and articles, serving as supporting data in this paper. The data is then systematically reduced and described in tabular form along with classifications and concise citations. Finally, it is verified to derive an overall conclusion from the data presented in this paper. These three stages are thematically conducted to analyze the data inductively. Subsequently, a process of restatement, interpretation, and reflection regarding Islamic legal justice concerning sexual violence against children, encompassing treatments, implications, and forms, is carried out to foster justice based on Islamic principles.

## **Discussion**

### ***Legal Ambiguity of Sexual Violence***

Criminal acts of sexual violence often target children and women as vulnerable subjects. Such instances of sexual violence are experienced by victims who are children, perpetrated by parents, uncles, siblings, and even by teachers who are meant to guide and serve as role models for children in their everyday lives within the community.<sup>24</sup> Child victims of sexual violence lack legal certainty in law enforcement, leading to frequent violations of their rights. The

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<sup>24</sup> Arini Fauziah Al haq, Santoso Tri Raharjo, and Hery Wibowo, "Kekerasan Seksual Pada Anak Di Indonesia," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat*, 2015, <https://doi.org/10.24198/jppm.v2i1.13233>; Raden Muhammad Arvy Ilyasa, "Kajian Hukum Dan Viktimologi Dalam Kasus Kekerasan Seksual Pada Anak Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2022, <https://doi.org/10.15294/ipmhi.v2i1.53748>.

enforcement of just laws serves as a boundary to shield children from sexual violence; however, the main challenge in law enforcement often lies within the enforcers themselves.<sup>25</sup> Sexual violence is a component of moral wrongdoing and norms across various religions worldwide, with these religious values being universal. In essence, sexual violence can be deterred by the role of religion as a way of life, supported by cultural values within Indonesian society known as the Eastern culture.

The legal uncertainty surrounding perpetrators of sexual violence is influenced by several factors. Among these are numerous criminal laws related to child sexual violence, both stipulated in the 1945 Constitution, the Criminal Code, the Law on the Ministry of Women's Empowerment and Child Protection, the Law on Sexual Violence Crimes (IPKS), the National Commission on Violence Against Women and Children, and the Indonesian Child Protection Commission (KPAI). Each of these institutions and legal frameworks has its own provisions in determining punishment for perpetrators of sexual violence against children, leading to ambiguity in law enforcement itself. In line with this, Fred (2021) states that justice must align with a robust and clear legal framework, although judicial decisions are sometimes influenced by various factors, such as trial facts and humanistic considerations in determining sentencing for perpetrators.<sup>26</sup> Therefore, there is a necessity for a clear and stringent legal framework concerning perpetrators of sexual violence against children. At the very least, the punishment should correspond appropriately to the actions perpetrated against the child victims, aiming to establish the principle of legal justice in Indonesia.

Speaking of umbrella policies in law enforcement for child protection refers to an approach that encompasses various aspects of law enforcement related to safeguarding children's rights and interests within an integrated framework or strategy. The primary aim of this approach is to shield children from various risks, including abuse, exploitation, violence, and inequality, by utilizing diverse available law enforcement tools. Umbrella policies in law enforcement for child protection acknowledge the complexity of issues involving children and strive for a coordinated and comprehensive approach. In this context, collaboration among the government, non-governmental

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<sup>25</sup> N Rohmah, ... N Rifanda - ... Jurnal Psikologi Dan, and undefined 2015, "Kekerasan Seksual Padaanak: Telaah Relasi Pelaku Korban Dan Kerentanan Pada Anak," *Ejournal.Uin-Malang.Ac.Id*, 2015, <http://ejournal.uin-malang.ac.id/index.php/psiko/article/view/6398>.

<sup>26</sup> H Abdurrachman, RA Nugraha, and N Majestya, "Palu Hakim Versus Rasa Keadilan Sebuah Pengantar Disparitas Putusan Hakim Dalam Tindak Pidana Korupsi," 2020, [https://books.google.com/books?hl=id&lr=&id=fhr3DwAAQBAJ&oi=fnd&pg=PP1&dq=D+ISPARITAS+HUKUM+PIDANA+TERHADAP+PELAKU+KEKERASAN+SEKSUAL+PADA+ANAK&ots=-\\_hbKAEx5R&sig=QJF7UuKBQCGfYsDkzNY7NFP3Nyg](https://books.google.com/books?hl=id&lr=&id=fhr3DwAAQBAJ&oi=fnd&pg=PP1&dq=D+ISPARITAS+HUKUM+PIDANA+TERHADAP+PELAKU+KEKERASAN+SEKSUAL+PADA+ANAK&ots=-_hbKAEx5R&sig=QJF7UuKBQCGfYsDkzNY7NFP3Nyg).

organizations, and the broader community is crucial to achieve more effective child protection goals.

Legal sentencing for perpetrators of sexual violence against children has often been deemed inadequate in addressing the victims' sense of justice. This can be observed in the disparity between the punishment received by the perpetrator, which is significantly lighter than the impact suffered by the victim. This legal uncertainty often fails to deter perpetrators, leading to recurrent crimes even after serving their sentences.<sup>27</sup> Furthermore, court rulings against perpetrators of sexual violence vary widely; for instance, perpetrator A received a 1-year prison sentence, while perpetrator B, in the same scenario, received an 8-year sentence, highlighting legal discrepancies among perpetrators in the eyes of the law. On the other hand, within Islamic law, a muhsan individual committing adultery can face a punishment of 100 lashes, while zina ghoiru muhsan can result in the punishment of stoning to death.<sup>28</sup> However, these sentences are applicable only in some Islamic countries.

The disparity in criminal law regarding sexual violence, when not enforced fairly, leads to significant repercussions for its victims due to the injustice in legal proceedings.<sup>29</sup> However, sexual violence might not solely arise from a desire for possession; numerous underlying factors compel perpetrators to commit such acts.<sup>30</sup> Biological and social factors, for instance, play a crucial role. Sexual violence inflicts severe damage to the victim's vital organs, often resulting in physical harm. Socially, victims of sexual violence experience psychological trauma stemming from coercion, threats, and pressure inflicted during these acts.<sup>31</sup> The fundamental reason behind perpetrators committing sexual violence is to satisfy their lust upon victims who lack the ability to resist or fight back against such actions, particularly women and children, who often

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<sup>27</sup> Abdurrachman, Nugraha, and Majesty.

<sup>28</sup> Rokhmadi Rokhmadi, "Hukuman Rajam Bagi Pelaku Zina Muhsan Dalam Hukum Pidana Islam," *At-Taqaddum*, 2017, <https://doi.org/10.21580/at.v7i2.1209>; Kahar Muzakir, "Zina Dalam Perspektif Hukum Islam Dan Kitab Undang Undang Hukum Pidana," *Formosa Journal of Science and Technology*, 2022, <https://doi.org/10.55927/fjst.v1i1.664>.

<sup>29</sup> H Abdurrachman, RA Nugraha, and N Majesty, "Palu Hakim Versus Rasa Keadilan Sebuah Pengantar Disparitas Putusan Hakim Dalam Tindak Pidana Korupsi," 2020, [https://books.google.com/books?hl=id&lr=&id=fhr3DwAAQBAJ&oi=fnd&pg=PP1&dq=D+ISPARITAS+HUKUM+KEKERASAN+SEKSUAL&ots=-\\_hbJElu6O&sig=7uFIk-UH4wL3h1IOJfdi49AShw](https://books.google.com/books?hl=id&lr=&id=fhr3DwAAQBAJ&oi=fnd&pg=PP1&dq=D+ISPARITAS+HUKUM+KEKERASAN+SEKSUAL&ots=-_hbJElu6O&sig=7uFIk-UH4wL3h1IOJfdi49AShw).

<sup>30</sup> Asnath Natar, "Disrupsi Seksualitas Feminis: Meninjau Pelecehan Dan Kekerasan Perempuan Pada Praktik Adat Sifon Masyarakat Suku Atoin Meto," *Musawa Jurnal Studi Gender Dan Islam* 19, no. 1 (2020), <https://doi.org/10.14421/musawa.2020.191.57-69>.

<sup>31</sup> Ine Vanwesenbeeck, "Sexual Violence and the MDGs," *International Journal of Sexual Health* 20, no. 1–2 (June 18, 2008): 25–49, <https://doi.org/10.1080/19317610802157028>.



become vulnerable subjects and objects of sexual violence.<sup>32</sup> Moreover, these actions can potentially lead to sexual violence within domestic settings.<sup>33</sup>

Sexual violence can occur within the victim's closest circles, such as within the household,<sup>34</sup> leading to greater psychological and social implications for the victim.<sup>35</sup> This phenomenon is significant within society, with children often becoming victims of sexual violence. Besides being vulnerable subjects incapable of self-protection, they also exhibit high dependency, which often provides opportunities for perpetrators outside the family to commit sexual violence. Perpetrators are usually individuals known to the victim.<sup>36</sup> Yoga sought to illustrate this by examining cases of sexual violence against children, particularly instances involving physical and emotional violence, which can detrimentally impact the victim's psychological health.<sup>37</sup> A study conducted on sexual violence victims in Bengkulu provides tangible evidence that sexual violence against children is highly probable, especially when the perpetrator is a close acquaintance or a family member.

Sexual violence involving close relatives as perpetrators can be observed through three discussions below:

**Table 1:** Forms of Sexual Violence by Parents

Forms	Victims	Cases	Sources
Obscenity	13-year-old child	“A” was molested by her stepfather three times at home in the Bogor area while her mother was at work and the victim was	<a href="https://news.detik.com/berita/d-5974416/anak-korban-ayah-tiri">https://news.detik.com/berita/d-5974416/anak-korban-ayah-tiri</a>

<sup>32</sup> Luh Made Khristianti Weda Tantri, “Perlindungan Hak Asasi Manusia Bagi Korban Kekerasan Seksual Di Indonesia,” *Media Iuris* 4, no. 2 (2021), <https://doi.org/10.20473/mi.v4i2.25066>.

<sup>33</sup> Dara Manista Harwika and Amelia Puspita Sari, “Perlindungan Hukum Terhadap Korban Pelecehan Seksual Di Kosan Umum (Studi Pada Wilayah Rungkut),” *DiH: Jurnal Ilmu Hukum* 17, no. 2 (2021), <https://doi.org/10.30996/dih.v17i2.5233>.

<sup>34</sup> Bagir Manan, Ali Abdurahman, and Mei Susanto, “Pembangunan Hukum Nasional Yang Religius: Konsep Dan Tantangan Dalam Negara Berdasarkan Pancasila,” *Jurnal Bina Mulia Hukum* 5, no. 2 (March 26, 2021): 176–95, <https://doi.org/10.23920/JBMH.V5I2.303>.

<sup>35</sup> A Jamaludin - JCIC: Jurnal CIC Lembaga Riset Dan and undefined 2021, “Perlindungan Hukum Anak Korban Kekerasan Seksual,” *Journal.Cicofficial.Com* 3, no. 2 (2021): 1–10, <https://doi.org/10.51486/jbo.v3i2.68>.

<sup>36</sup> S Linggama - Lex Crimen and undefined 2018, “Pelaksanaan Pemeriksaan Praperadilan Berkaitan Dengan Masalah Penahanan Bagi Tersangka Oleh Penyidik Menurut UU No. 8 Tahun 1981,” *Ejournal.Unsrat.Ac.Id*, accessed March 6, 2022, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/20549>.

<sup>37</sup> Tateki B Yoga Tursilarini Balai Besar Penelitian dan Pengembangan Pelayanan Kesejahteraan Sosial, KS RI Kementerian Sosial, and Jl Kesejahteraan Sosial No, “Dampak Kekerasan Seksual Di Ranah Domestik Terhadap Keberlangsungan Hidup Anak,” *Ejournal.Kemosos.Go.Id*, 2017, <https://ejournal.kemosos.go.id/index.php/mediainformasi/article/view/2277>.

		traumatized when she returned home to her mother.	<a href="#"><u>cabul-di-bogor-trauma-hingga-takut-pulang-ke-ibu</u></a>
Rape	14-year-old child	A father had the heart to rape his 14-year-old biological child for 8 months, the victim even became pregnant as a result of the rape. The victim finally told her older sister and then reported the incident to the Balaraja Police.	<a href="https://news.detik.com/berita/d-5968023/bejat-bapak-di-tangerang-perkosa-anak-gadisnya-hingga-hamil"><u>https://news.detik.com/berita/d-5968023/bejat-bapak-di-tangerang-perkosa-anak-gadisnya-hingga-hamil</u></a>
Rape	13-year-old child	A YPI stepfather (29) had the heart to rape his 13-year-old stepson until she was 8 months pregnant, in the Kumpoh Ulu area, Muaro Jambi Regency. Then the victim's mother reported the incident to the Kumpoh Police. The perpetrator himself was arrested by the police while he was at Camp Block-A PT. EWF.	<a href="https://news.okez.com/read/2021/12/22/340/2521223/ayah-perkosa-anak-tiri-hingga-hamil-8-bulan"><u>https://news.okez.com/read/2021/12/22/340/2521223/ayah-perkosa-anak-tiri-hingga-hamil-8-bulan</u></a>
Obscenity	15-year-old child	HA (49) raped her own biological child NS (15) until she became pregnant in 2019. The victim was taken to the accommodation and then forcibly raped by her father. Next, the victim, accompanied by her mother, reported the incident to the Central Lombok Police after experiencing bleeding because the perpetrator gave her alcohol to abort the fetus in her child's womb.	<a href="https://news.okez.com/read/2021/11/06/340/2497516/ayah-perkosa-anak-gadisnya-berulang-kali-hingga-hamil-divonis-15-tahun-penjara"><u>https://news.okez.com/read/2021/11/06/340/2497516/ayah-perkosa-anak-gadisnya-berulang-kali-hingga-hamil-divonis-15-tahun-penjara</u></a>
Sexual harassment	11-year-old child	A father with the initials A (49) had the heart to rape his own 11-year-old biological child. The incident occurred because the perpetrator threatened his child with a machete so that the child would obey the perpetrator's wishes. The act itself occurred when his wife was busy at the	<a href="https://www.tribunnews.com/regional/2021/09/17/guru-ngaji-lecehkan-3-anak-tetangga-orangtua-sudah-curiga-anaknya-kerap-bawa-uang-saat-pulang"><u>https://www.tribunnews.com/regional/2021/09/17/guru-ngaji-lecehkan-3-anak-tetangga-orangtua-sudah-curiga-anaknya-kerap-bawa-uang-saat-pulang</u></a>

shop. In fact, according to the perpetrator's confession, this depraved incident had been carried out approximately 20 times. Knowing this, the victim's mother finally reported the perpetrator to the Depok Police and it was immediately followed up.

Sexual violence experienced by children in Indonesia often involves close relatives as perpetrators, with parents being one of them. As depicted in Figure 1, sexual violence against Indonesian children is not uncommonly perpetrated by the child's own parents, whether biological fathers or stepfathers. This sexual violence takes various forms such as harassment, molestation, rape, forced touching, and fondling. The victims of such sexual violence by their relatives are typically around the ages of 11, 13, 15, and under the age of 18.

**Table 2:** Forms of Sexual Violence by Teachers

Forms	Victims	Cases	Sources
Physical and verbal	4 11-Year-Old Girls	A teacher with the initials IS (36) was arrested by the Pekalongan Police because he was involved in a case of sexual harassment against female students during exams.	<a href="https://www.detik.com/jateng/hukum-dan-kriminal/d-6187611/cabuli-4-siswi-seorang-guru-sd-di-pekalongan-ditangkap">https://www.detik.com/jateng/hukum-dan-kriminal/d-6187611/cabuli-4-siswi-seorang-guru-sd-di-pekalongan-ditangkap</a>
Invited to watch pornographic videos and kiss	7 Schoolgirls	A teacher in Kediri City with the initials IM (37) sexually harassed 7 of his female students. Before being reported, the perpetrator had conducted mediation several times in similar cases which resulted in the perpetrator not being reported to the police station.	<a href="https://surabaya.pas.com/read/2022/07/23/082820678/guru-sd-di-kediri-yang-diduga-cabuli-siswa-dipecat-kasusnya-diusut-polisi">https://surabaya.pas.com/read/2022/07/23/082820678/guru-sd-di-kediri-yang-diduga-cabuli-siswa-dipecat-kasusnya-diusut-polisi</a>
Obscenity and harassment	11 female students	Cases of sexual abuse and violence committed by teachers also occurred in West Sumatra, where a Koran teacher, ZH (58), committed sexual abuse and violence against 11 of his underage Koran students. And	<a href="https://www.detik.com/sumut/hukum-dan-kriminal/d-6199795/guru-ngaji-cabuli-11-anak-di-sumbar-kpai-buka-suara">https://www.detik.com/sumut/hukum-dan-kriminal/d-6199795/guru-ngaji-cabuli-11-anak-di-sumbar-kpai-buka-suara</a>

		the perpetrator has been arrested by police from the Padang Panjang Police.	
Obscenity and verbal	2 Santri reciting the Koran	An unscrupulous Koran teacher in Batam had the heart to molest 2 of his students in the prayer room toilet in the Teluk Bakau area, Nongsa District, Batam. The perpetrator launched his action accompanied by a threat not to complain about this to their parents. MS (48) has now been detained at the Nongsa Police.	<a href="https://daerah.sindonews.com/read/830021/194/bejat-guru-ngaji-di-batam-cabuli-2-santri-di-toilet-musala-1658149631">https://daerah.sindonews.com/read/830021/194/bejat-guru-ngaji-di-batam-cabuli-2-santri-di-toilet-musala-1658149631</a>
Sexual harassment	18 Students	A teacher has committed acts of sexual harassment and violence against 18 of his female students. The perpetrator with the initials MMT (37) is a teacher in South Minahasa. After one of the victims told his parents about this, the perpetrator was finally reported and arrested by the South Minahasa Police	<a href="https://regional.kompas.com/read/2021/10/14/212618278/18-siswi-mengaku-jadi-korban-pelecehan-seksual-oknum-guru-di-minahasa">https://regional.kompas.com/read/2021/10/14/212618278/18-siswi-mengaku-jadi-korban-pelecehan-seksual-oknum-guru-di-minahasa</a>

Sexual violence experienced by children in Indonesia also occurs quite often within the school environment, involving teachers as perpetrators of sexual violence. As observed in Figure 2, instances of sexual violence carried out by teachers are not uncommon, taking the form of harassment, molestation, physical and verbal abuse, kissing, and exposure to pornographic material. Elementary school girls, junior high school girls, vocational high school girls, and female Islamic boarding school students are among the victims of sexual violence perpetrated by their teachers.

**Table 3:** Forms of Sexual Violence by Close Relatives

Forms	Victims	Cases	Sources
Rape	14-year-old child	An uncle with the initials F (32) had the heart to sexually abuse his own niece N (14) until the victim gave birth to a baby, and has now been processed at the Bogor Police.	<a href="https://www.grid.id/read/043394841/remaja-14-tahun-diperkosa-paman-dan-tetangga-sampai-hamil-dan-melahirkan-pelaku">https://www.grid.id/read/043394841/remaja-14-tahun-diperkosa-paman-dan-tetangga-sampai-hamil-dan-melahirkan-pelaku</a>

			<a href="#"><u>kini-masih-bebas-berkeliaran-hingga-buat-korban-ketakutan?page=all</u></a>
Rape and molestation	Children under 18 years old	Sexual violence against children has occurred again. In Padang, West Sumatra, 2 girls were raped by close family members, namely their grandfather, older sibling and even their own uncle.	<a href="https://www.kompas.tv/article/233280/kekerasan-seksual-2-bocah-perempuan-diperkosa-kakek-kakak-dan-paman"><u>https://www.kompas.tv/article/233280/kekerasan-seksual-2-bocah-perempuan-diperkosa-kakek-kakak-dan-paman</u></a>
Rape	4th grade elementary school children (SD)	The sexual violence in Padang was carried out by the victim's grandfather, uncle and older brother aged 5 and 7 years. There are four people who are perpetrators of crimes against rape victims.	<a href="https://www.cnnindonesia.com/nasional/20211118111348-12-722849/dua-anak-di-padang-jadi-korban-pemerkosaan-kakek-paman-kakak"><u>https://www.cnnindonesia.com/nasional/20211118111348-12-722849/dua-anak-di-padang-jadi-korban-pemerkosaan-kakek-paman-kakak</u></a>
Rape and molestation	18-year-old child	LPS (18) became a victim of harassment and rape by her father and neighbors and gave birth to a son. The perpetrators are none other than the victim's biological father with the initials S (46) and his neighbor SRN (40) in Cijulang, Pangandaran, and the two perpetrators have been detained at the Pangandaran Police.	<a href="https://cirebontribunnews.com/2022/08/16/gadis-disabilitas-dinodai-ayah-kandung-dan-tetangga-hingga-hamil-kini-sudah-melahirkan"><u>https://cirebontribunnews.com/2022/08/16/gadis-disabilitas-dinodai-ayah-kandung-dan-tetangga-hingga-hamil-kini-sudah-melahirkan</u></a>
Got laid	12-year-old child	A child, AJ (12), experienced sexual violence by his neighbor with the initials SR (43). After the victim told his parents, the victim was immediately taken to the South Tangerang Police.	<a href="https://megapolitan.kompas.com/read/2022/05/10/14463401/bocah-12-tahun-diduga-alami-kekerasan-seksual-oleh-tetangga-ayahnya-lapor"><u>https://megapolitan.kompas.com/read/2022/05/10/14463401/bocah-12-tahun-diduga-alami-kekerasan-seksual-oleh-tetangga-ayahnya-lapor</u></a>

When observed in Table 3, the sexual violence experienced by children in Indonesia is also prevalent when perpetrated by the victim's own parents. Sexual violence committed by the victim's close relatives often manifests in acts such as rape, sexual assault, and molestation. The ages of children subjected to sexual violence by their parents typically range between 4, 8, 12, 15, and under 18 years old.

The phenomenon of close relatives perpetrating sexual violence against children, driven by specific motives, aims to escape various demands, whether moral, economic, or legal. Criminal activities against children are not a new occurrence. A study conducted by Ermaya Sari aimed to explore the relationship between the perpetrator of sexual violence and the victim.<sup>38</sup> Rohmah provided evidence that sexual violence frequently occurs, even at the hands of perpetrators known to the victims, such as neighbors, teachers, biological fathers, stepfathers, and grandfathers.<sup>39</sup> Apart from the psychological burden on victims of sexual violence, there are long-lasting psychological impacts whose duration remains undetermined.<sup>40</sup>

To understand the forms of sexual violence commonly occurring in children, these include forms such as touch, coercion, and visual images as part of indirect sexual contact. Meanwhile, direct sexual contact involves physical touching or displaying materials that lead to sexuality, both in direct and visual ways. Subsequently, sexual violence against children may take the form of incest, rape, or sexual exploitation.<sup>41</sup> From these findings, it's evident that sexual violence perpetrated against children is often accompanied by sexual exploitation by the offenders.<sup>42</sup>

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<sup>38</sup> Sri Hennyati Ermaya Sari Bayu Ningsih, "Kekerasan Seksual Pada Anak Di Kabupaten Karawang," *Neliti.Com* 4, no. 2 (2018), <https://www.neliti.com/publications/267040/kekerasan-seksual-pada-anak-di-kabupaten-karawang>.

<sup>39</sup> Rohmah, ..., and 2015, "Kekerasan Seksual Padaanak: Telaah Relasi Pelaku Korban Dan Kerentanan Pada Anak."

<sup>40</sup> I Islawati, I Paramastri - Jurnal Psikologi, and Undefined, "Program 'Jari Peri' Sebagai Pelindung Anak Dari Kekerasan Seksual," *Journal.Ugm.Ac.Id* 42, no. 2 (2015): 115–28, <https://journal.ugm.ac.id/jpsi/article/view/7167>; ED Purbararas, "Problema Traumatik: Kekerasan Seksual Pada Remaja," *Journal.Iainkudus.Ac.Id*, 2018, <http://journal.iainkudus.ac.id/index.php/Ijtimaia/article/view/4289>.

<sup>41</sup> Thathit Manon Andini et al., "IDENTIFIKASI KEJADIAN KEKERASAN PADA ANAK DI KOTA MALANG," *Jurnal Perempuan Dan Anak* 2, no. 1 (April 21, 2019): 13–28, <https://doi.org/10.22219/JPA.V2I1.5636>.

<sup>42</sup> Nining Sholikhah, "Pendampingan Anak Korban Kekerasan Dan Eksploitasi Seksual Melalui Trauma Healing Dengan Media Teater Di Kota Surakarta," *Engagement: Jurnal Pengabdian Kepada Masyarakat* 4, no. 1 (2020): 14–30, <https://doi.org/10.29062/engagement.v4i1.71>.

## Disparity in Criminal Law Regarding Sexual Violence against Children

Legal disparity isn't a new phenomenon in society, especially in developing countries.<sup>43</sup> Despite the existence of law enforcement facing much opposition both nationally and internationally,<sup>44</sup> Indonesia, in particular, ranks as one of the countries with a significant percentage of inequality in law enforcement for similar cases.<sup>45</sup> Legal disparity can be classified as an impediment to the fair administration of justice in the trial process experienced by defendants.<sup>46</sup> It has become commonplace in the societies of these developing nations, grounded in one of the main driving factors: the limited understanding of judges regarding legal decisions that are considered appropriate punishments in line with prevailing norms and acceptability.<sup>47</sup>

Legal disparities are deeply embedded at various levels within the evolving legal system amidst society.<sup>48</sup> Furthermore, as highlighted by Kulwa (2020), there exists a state legitimacy overlapping regarding the limits of sanctions imposed on perpetrators of a crime.<sup>49</sup> On the other hand, the legitimacy established by the state, as stipulated in Law No. 8 of 1981, asserts that judges, empowered by the law to adjudicate and decide cases, must consider the truth from juridical, philosophical, and sociological standpoints.<sup>50</sup> Throughout this process, this law encounters various contradictions, exemplified by Judgments No. 20/Pid.B/2017/PN Mrh and No. 42/PID/2017/PT BJM, where the former found the defendant guilty of a sexual offense, yet the High Court of Banjarmasin in Appeal Judgment No. 42/PID/2017/PT BJM acquitted the defendant.<sup>51</sup> These legal disparities arise due to differing judicial beliefs in comprehending the evidence of the

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<sup>43</sup> Matthew Hall, Emily Greenman, and George Farkas, "Legal Status and Wage Disparities for Mexican Immigrants," *Social Forces* 89, no. 2 (2010), <https://doi.org/10.1353/sof.2010.0082>.

<sup>44</sup> (JohnKilatu & Kulwa, 2020)

<sup>45</sup> RV Sagala, "Ketika Negara Mengatur Kekerasan Seksual," 2020, <https://books.google.com/books?hl=id&lr=&id=ujdMEAAAQBAJ&oi=fnd&pg=PA3&dq=DISPARITAS+HUKUM+KEKERASAN+SEKSUAL&ots=IrljPgSQERG&sig=IIW8h0R3NP10CZas68brOXp9nHI>.

<sup>46</sup> W Ramdani, "DISPARITAS PUTUSAN PENGADILAN NEGERI SELONG NOMOR: 184/Pid. Sus/2017/PN Sel. DENGAN PUTUSAN PENGADILAN NEGERI PRAYA NOMOR: 9/Pid," 2020, <http://repository.ugr.ac.id:1015/864/>.

<sup>47</sup> (Firdaus et al., 2019; Umum et al., 2018)

<sup>48</sup> Heather J. Smith, "The Doublespeak Discourse of the Race Disparity Audit: An Example of the White Racial Frame in Institutional Operation," *Discourse*, 2021, <https://doi.org/10.1080/01596306.2021.1931035>.

<sup>49</sup> Scott Phillips, "Legal Disparities in the Capital of Capital Punishment," *Journal of Criminal Law and Criminology* 99, no. 3 (2009): 717–56.

<sup>50</sup> (Crimen & 2018)

<sup>51</sup> MB Dermawan, "Disparitas Putusan Tindak Pidana Perkosaan (Studi Putusan Nomor 20/Pid. B/2017/Pn Mrh Dan Putusan Nomor 42/Pid/2017/Pt Bjm)," 2018, <http://repository.ub.ac.id/14079/>.

defendants' charges.<sup>52</sup> Similar cases of such disparities occur in various places and proceedings across Indonesia.<sup>53</sup>

This study demonstrates that children who are victims of sexual violence not only suffer physical and non-physical impacts but also face discriminatory treatment from society, schools, and families. Discriminatory treatment, in concept,<sup>54</sup> involves unequal treatment toward individuals or groups based on specific categories or distinctive attributes such as race, ethnicity, religion, or social class, both in adults and children. Globally, the discriminatory treatment experienced by victims of sexual violence has long-term implications for their quality of life, particularly regarding the discriminatory treatment received from society, schools, and families by child victims of sexual violence.

So far, studies on sexual violence were first addressed by Gupta<sup>55</sup> in his book titled "Selective Discrimination against Female Children in Rural Punjab, India," affirming that child victims of sexual violence in India often experience discriminatory treatment from society. However, previous research on sexual violence has not thoroughly explored the long-term implications of sexual violence, particularly the discriminatory treatment faced by children as victims of sexual violence. Therefore, discussions on the implications of the discriminatory treatment received by children as victims of sexual violence are considered crucial according to Steiner et al.,<sup>56</sup> as these actions have resulted in numerous negative consequences for the future quality of life of these children.

**Table 4:** Legal Disparities of Perpetrators of Child Sexual Violence

Forms	Verdicts	Cases	Sources
Rape	20 years	A Depok District Court judge sentenced the father who raped his biological child to 20 years in prison in Mekarjaya, Sukmajaya, Depok. The victim's father with the initials A (48) was found guilty in this case.	<a href="https://news.detik.com/berita/d-6177802/ayah-pemeriksa-anak-kandung-di-depok-divonis-20-tahun-penjara">https://news.detik.com/berita/d-6177802/ayah-pemeriksa-anak-kandung-di-depok-divonis-20-tahun-penjara</a>

<sup>52</sup> Sagala, "Ketika Negara Mengatur Kekerasan Seksual."

<sup>53</sup> N Rahayu, "Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia," 2021, <http://repository.uibharajaya.ac.id/8658/>.

<sup>54</sup> Theodorson & Theodorson (1969)

<sup>55</sup> Das Gupta (1987)

<sup>56</sup> Steiner et al. (2021)



Rape	7 years	The rape case committed by AT (21), son of Bekasi City DPRD member, Ibnu Hajar Tanjung, has ended. AT was found guilty of raping a minor and was finally sentenced to 7 years in prison. "Having been sentenced to 7 years in prison," said AT's attorney, Bambang Sunaryo, when contacted by detik.com, Friday (12/3).	<a href="https://news.detik.com/berita/d-5839864/akhir-kasus-pemerkosaan-anak-anggota-dprd-bekasi-berujung-ronis-7-tahun-bui">https://news.detik.com/berita/d-5839864/akhir-kasus-pemerkosaan-anak-anggota-dprd-bekasi-berujung-ronis-7-tahun-bui</a>
Rape	8.5 years	An uncle in Tulang Bawang, Lampung with the initials AR (50) was sentenced to 8.5 years after being proven to have raped his underage niece ML (16).	<a href="https://www.rmollampung.id/paman-di-tuba-divonis-85-tahun-kasus-perkosaan-keluarga-terdakwa-sebut-kurang-bukti-jaksa-beripenjelasan">https://www.rmollampung.id/paman-di-tuba-divonis-85-tahun-kasus-perkosaan-keluarga-terdakwa-sebut-kurang-bukti-jaksa-beripenjelasan</a>
Getting raped	Free	A perpetrator of the rape of a 14-year-old child in Blangpidie, West Aceh, was acquitted by the Sharia Council (MS) of Blangpidie, Southwest Aceh.	<a href="https://m.medcom.id/nasional/daerah/zNArMy8b-terdakwa-pemerkosa-anak-di-aceh-divonis-bebas">https://m.medcom.id/nasional/daerah/zNArMy8b-terdakwa-pemerkosa-anak-di-aceh-divonis-bebas</a>
Rape	19 years	A perpetrator of the rape of a minor MMS (69) was sentenced to 19 years in prison by a Depok district court judge, Wednesday (3.8/2022) for committing sexual harassment and violence against 10 female students in Depok.	<a href="https://megapolitain.kompas.com/read/2022/08/03/19305011/oknum-guru-ngaji-yang-cabuli-10-santriwati-di-depok-divonis-19-tahun?page=all">https://megapolitain.kompas.com/read/2022/08/03/19305011/oknum-guru-ngaji-yang-cabuli-10-santriwati-di-depok-divonis-19-tahun?page=all</a>

The sentences imposed on perpetrators of sexual violence in Indonesia often appear to be less than fair for the victims, as evidenced by the data presented in Table 4, illustrating legal disparities in criminal sanctions for sexual

violence perpetrators. This disparity arises from various reasons determined by the panel of judges, resulting in varying penalty sanctions ranging from 7 to 20 years. This variation is perceived as unjust, considering the harm suffered by child victims of sexual violence aged around 14, 15, 16, and 17 years. In some cases, perpetrators even receive acquittals.

Criminal legal disparities against perpetrators of child sexual violence are undoubtedly influenced by several internal factors involving judges and parties in the trial. External factors contributing to legal disparities stem from the abundance of legal regulations, becoming part of legal inequality. This can be observed in Law No. 35 of 2016 concerning the minimum and maximum limits of punishment, which creates loopholes leading to criminal legal disparities for perpetrators of sexual violence. Furthermore, there is a need for a shared legal conception serving as a reference for judges to provide sentences for perpetrators of sexual violence against children.

Given the implications of the discriminatory treatment received by child victims of sexual violence, knowledge and conceptualization of sexual violence are essential to ensure appropriate attitudes and treatment towards children as victims. In addition to state support in the form of regulations to prevent sexual violence, the crucial role of society and families is also indispensable in treating children as victims of sexual violence in line with the needs and interests of the child's future.<sup>57</sup>

### **Justice Based on Islamic Law**

Sexual violence is not confined to Indonesia; it is a global issue that has turned into a daunting specter. Countries worldwide have sternly punished perpetrators of sexual crimes. In China, for instance, during 2011-2012, two teachers were sentenced to death for molesting and raping 13 elementary school children. In some cases, rapists have faced mutilation. Meanwhile, Saudi Arabia enforces Islamic law rigorously, imposing severe punishments such as beheading for crimes like drug trafficking, murder, rape, armed robbery, and apostasy.<sup>58</sup> In Iran, an Islamic state, the law allows the family of a rape victim to kill the perpetrator as a form of honor killing. Between 2010 and 2014, at least 8,000 honor killings were recorded.<sup>59</sup> Although Islamic law does not explicitly outline penalties for rapists, it asserts that convicts in rape cases fall under the category

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<sup>57</sup> Umarani Azkha, Syahrizal Abbas, and Mohd. Din, "Analisis Yuridis Terhadap Rumusan Jarimah Pemerkosaan Dalam Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," *Al-Istinbath: Jurnal Hukum Islam*, Vol 5, No 2 November (2020), 2020, <https://doi.org/10.29240/jhi.v5i2.1784>.

<sup>58</sup> "Arab Saudi Hukum Pancung Pemerkosa," accessed August 17, 2022, <https://news.detik.com/internasional/d-2848479/arab-saudi-hukum-pancung-pemerkosa>.

<sup>59</sup> Bijan Pirnia, Fariborz Pirnia, and Kambiz Pirnia, "Honour Killings and Violence against Women in Iran during the COVID-19 Pandemic," *The Lancet Psychiatry*, 2020, [https://doi.org/10.1016/S2215-0366\(20\)30359-X](https://doi.org/10.1016/S2215-0366(20)30359-X).

of hirabah, where the sanctions may include death penalty, crucifixion, and amputation of hands and feet, administered in a crossed manner.<sup>60</sup>

Islamic law has regulated legal responsibilities for every action undertaken by a mukallaf.<sup>61</sup> Crimes in Islam themselves consist of several elements, namely al-Rukun Syar'i (formal law), al-Rukun Maddi (material elements), and al-Rukun Adabi (moral elements). The punishments in the form of had and ta'zir are imposed with the aim of prevention and education.<sup>62</sup> Criminal acts of sexual violence against children are significant offenses in Islamic law, not only jeopardizing the future of children, which is guaranteed by religion and the state, but also posing a moral issue in all aspects of life.<sup>63</sup> Islamic law is based on clear objectives in the concept of maqasid al-Sharia to preserve religion, life, property, intellect, and lineage.<sup>64</sup> Therefore, the enforcement of justice based on Islamic law becomes crucial to be applied in the judicial process.

The penalties for rape perpetrators vary significantly across different countries. In Afghanistan, someone convicted of rape may face execution by shooting within four days.<sup>65</sup> In Jordan, those found guilty of raping a child may receive the death penalty.<sup>66</sup> Meanwhile, India imposes a life sentence for perpetrators of child rape.<sup>67</sup> Qatar and Bahrain may issue sentences ranging

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<sup>60</sup> Fitri Wahyuni, "Sanksi Pidana Pemerkosaan Terhadap Anak Menurut Hukum Pidana Positif Dan Hukum Pidana Islam," *Jurnal Media Hukum* 23, no. 1 (June 30, 2016), <https://doi.org/10.18196/jmh.2015.0071.95-109>.

<sup>61</sup> Topo Santoso, *Menggagas Hukum Pidana Islam: Penerapan Syariah Islam Dalam Konteks Modernitas* (Bandung, Jawa Barat, Indonesia: Asy-Syaamil Press & Grafika, 2000), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=234691>.

<sup>62</sup> Dr Fitri wahyuni, *Hukum Pidana Islam, Hukum Islam*, 2020; Wahyuni, "Sanksi Pidana Pemerkosaan Terhadap Anak Menurut Hukum Pidana Positif Dan Hukum Pidana Islam," June 30, 2016.

<sup>63</sup> Mulizar Mulizar, Asmuni Asmuni, and Dhiauddin Tanjung, "Maqashid Sharia Perspective of Legal Sanction for Khalwat Actors in Aceh," *Al-Istinbath: Jurnal Hukum Islam; Vol 7, No 1 May (2022)*, 2022, <https://doi.org/10.29240/jhi.v7i1.3587>; Virdis Firmanillah Putra Yuniar, "Penegakan Hukum Dalam Tindak Pidana Pemerkosaan Terhadap Anak Berdasarkan Qanun Jinayat Aceh," *Media Iuris*, 2019, <https://doi.org/10.20473/mi.v2i2.13044>.

<sup>64</sup> Mohammad Rusfi, "MQASID AL-SYARIAH DALAM PERSEPEKTIF AL-SYATIBI," *ASAS*, 2019, <https://doi.org/10.24042/asas.v10i02.4529>; Nur Siyanti, "Tinjauan Maqashid Al-Syari'ah Terhadap Hukuman Kebiri Bagi Pelaku Tindak Pidana Pedophilia," *Al-Jinayah: Jurnal Hukum Pidana Islam*, 2018, <https://doi.org/10.15642/aj.2017.3.1.113-143>.

<sup>65</sup> Julienne Corboz et al., "Children's Peer Violence Perpetration and Victimization: Prevalence and Associated Factors among School Children in Afghanistan," *PLoS ONE*, 2018, <https://doi.org/10.1371/journal.pone.0192768>.

<sup>66</sup> Catherine Warrick, "The Vanishing Victim: Criminal Law and Gender in Jordan," *Law & Society Review* 39, no. 2 (June 1, 2005): 315–48, <https://doi.org/10.1111/j.0023-9216.2005.00084.X>.

<sup>67</sup> Rashmi Rai and Ambarish Kumar Rai, "Sexual Violence and Poor Mental Health of Women: An Exploratory Study of Uttar Pradesh, India," *Clinical Epidemiology and Global Health* 8, no. 1 (2020), <https://doi.org/10.1016/j.cegh.2019.06.013>.

from life imprisonment to the death penalty for rape cases. Reflecting on the laws applied in the United States, the Jessica's Law is well-known in rape cases. Under this law, a first-time rapist is sentenced to 25 years in prison, and if the same individual commits a similar offense for the second time, the U.S. court may impose a life sentence. In contrast, Indonesian law, as stated in the Indonesian Penal Code (KUHP), stipulates a 12-year imprisonment term for rape perpetrators.<sup>68</sup>

Islamic law imposes sanctions on perpetrators of sexual violence against children based on two criteria. Firstly, if committed without a weapon, the punishment aligns with the penalties for adultery, which involves flogging or stoning for married offenders. Secondly, if a weapon is used, the punishment is akin to that for robbery, in accordance with principles of justice.<sup>69</sup> The laws against sexual violence perpetrators are well-defined in Islam, such as hudud, qhisas, and ta'zir crimes. However, in Indonesia, the implementation of Islamic law for sexual crimes against children has not been realized. Nadlifa<sup>70</sup> even suggests that Islamic law can address the issue of sexual violence against children through two approaches. The first involves punishments outlined in the Quran, Hadith, and Ijma', while the second method delegates the punishment to ulil amri (the government), prioritizing justice for child victims of violence who have suffered immense harm throughout their lives.

In the context of sexual violence against children, hadd may not explicitly apply, as hadd punishments generally do not encompass sexual violence against children. The principle of qisas can be applicable if the involved parties (for example, the perpetrator and the victim's family) reach an agreement on appropriate retaliatory actions. However, qisas is usually more relevant in cases of physical violence rather than sexual violence. In the context of sexual violence against children, ta'zir punishments can be applied. Authorities may decide on an appropriate punishment based on discretion and justice, taking into account factors such as the perpetrator's age, the severity of the crime, and its impact on the victim.

Child sexual violence has long-term implications for victims, while perpetrators are only burdened by the imposed verdict. Thus far, studies related to legal disparities have been articulated by Barda Nawawi Arief, introducing the concept of the biomirejudika theory, suggesting that law, in addition to being

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<sup>68</sup> Iwan Setyawan, "Hukuman Bagi Pelaku Kejahatan Seksual Pada Anak Menurut Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak," *Kultura*, 2015.

<sup>69</sup> Selviyanti Kaawoan, "Pemeriksaan Anak Kandung Oleh Orang Tua Dalam Pandangan Islam," *Irfani* 11, no. 1 (2015); Fitri Wahyuni, "Sanksi Pidana Pemeriksaan Terhadap Anak Menurut Hukum Pidana Positif Dan Hukum Pidana Islam," *Jurnal Media Hukum; Vol 23, No 1 (2016): June*, 2016, <https://doi.org/10.18196/jmh.2015.0071.95-109>.

<sup>70</sup> Min Nuthfatin Nadlifah, "Sanksi Hukum Bagi Pelaku Pemeriksaan Terhadap Anak (Studi Komparatif Antara Pasal 81 Dan Pasal 82 Perppu Nomor 1 Tahun 2016 Dengan Hukum Islam)" 6, no. 1 (2017).

just, should also be based on divine principles.<sup>71</sup> Child victims of sexual violence experience long-term implications, both psychological and physical, often enduring discriminatory treatment.<sup>72</sup> Consequently, it is essential for the state to provide legal certainty regarding the issue of child sexual violence. This, at the very least, opens a space for dialogue between customary law, religious law, and positive law to establish legal clarity in determining verdicts for perpetrators of sexual violence against children. It is hoped that this will serve as a deterrent for perpetrators and a consequence for those contemplating the commission of sexual violence crimes.

## Conclusion

The disparity in criminal law has occurred due to several factors, including: first, the judges' varying perceptions in understanding laws related to criminal acts of sexual violence against children. Second, legal disparities arise because there is no clear and definitive legal guidance regulating cases of sexual violence against children, making the enforcement of legal justice challenging. True legal inequality would not occur if the application of the law is based on Islamic Law grounded in divine values, as the punishment for perpetrators of sexual violence in Islam can be judged as hudud crimes, qhisas crimes, and ta'zir crimes. Possible forms of punishment include a minimum prison sentence of 10 years for first-time offenders of sexual crimes against children. Other penalties may include chemical castration for perpetrators suspected of having sexual disorders and pedophilia. Finally, perpetrators of sexual crimes against children may face the death penalty if proven guilty and have committed such acts repeatedly or against numerous victims. Disparities in criminal law in cases of sexual violence against children occur not only due to the lack of clear legal provisions for sanctions against perpetrators but also the absence of legal justice for child victims of sexual violence. A more in-depth study is needed regarding how the existence of legal justice is rooted in divine values with a broader scope encompassing both perpetrators and victims, considering the dynamics of the law, to introduce a concept of justice-based law rooted in religiosity.

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<sup>71</sup> Rustamaji, "Biomijuridika: Pemikiran Ilmu Hukum Pidana Berketuhanan Dari Barda Nawawi Arief."

<sup>72</sup> Ullum Kusumaningtyas, Dewi Rokhmah, and Iken Nafikadini, "DAMPAK KESEHATAN MENTAL PADA ANAK KORBAN KEKERASAN SEKSUAL (EFFECT OF MENTAL HEALTH ON CHILDREN AS VICTIM OF SEXUAL VIOLENCE)," *Artikel Ilmiah Hasil Penelitian Mahasiswa*, 2013.

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