

Comparison Legal Perspective of Criminal Sanctions for Sexual Crime Against Children in Indonesia



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ABSTRACT: In Indonesia, protection for victims of sexual violence against children is inadequate, because the sanctions regulations are not oriented towards protecting victims. The purpose of this research is to analyze and find regulations on criminal sanctions in cases of sexual crimes against children in Indonesia that have not been based on justice for victims, to analyze and find weaknesses in criminal sanctions regulations in cases of sexual crimes against children in the perspective of victim protection in Indonesia. This type of research is normative juridical, and to solve research problems secondary data is used which is obtained by conducting literature studies. The results of the study were then analyzed using a qualitative descriptive method. The results of the study show that criminal sanctions in cases of sexual crimes against children in Indonesia have not been based on justice, because criminal sanctions that can be imposed are only imprisonment and fines where if a fine is paid, the money goes into the state treasury which results in the recovery of children in victims of violence psychologically and materially are not assisted in the payment of the fine. There is no regulation regarding the amount of restitution that must be given to victims of sexual violence and is still limited to the realm of prosecution of perpetrators of sexual violence against children, not preventive efforts.

KEYWORDS: Legal protection, Sexual Violence, Children, Indonesia

I. INTRODUCTION

Technological developments and currents of globalization in the field of information and communication are one of the causes of behavioral deviations or unlawful acts committed by perpetrators of sexual crimes against children as well as a lack of attention, affection, and supervision from the child's parents, causing children to easily fall prey to into an unhealthy environment. This form of protection for children needs to be done from an early age when the child is still in the mother's womb until the child is not yet 18 years old. the right of the child to live, and respect for the child in expressing his opinion [1].

Sexual crimes have a high level of quantity in Indonesia, and not infrequently the victims in cases of this type of crime are children who are underage. The perpetrators of this crime are very diverse, ranging from family, people they know, friends of family or friends of people they know, caregivers, and people who are completely unknown. There is not a single specific characteristic or personality type that can be identified from a perpetrator of sexual crimes against children. In other words, anyone can become a perpetrator of sexual crimes against children. The ability of the perpetrator to control the victim, either through deception or threats and violence, makes this crime difficult to avoid. All cases of sexual violence against children were only revealed after the incident occurred, and not a few had fatal consequences.

Sexual crimes against children include enticing or forcing a child to take part in sexual activities or encouraging a child to engage in inappropriate sexual behavior including sexual acts, or non-contact sexual interactions with a child such as exhibitionism or voyeurism where an adult watches a child being naked or orders or forces a child to engage in sexual activities with another person while the perpetrator is watching or recording these sexual activities. Children are a group that is very vulnerable to sexual violence because children are always in a position of being weak or helpless and have a high dependence on the adults around them. This is what makes children helpless when threatened not to tell what happened [2].

Sexual crimes against children are moral and legal violations, as well as physical and psychological harm. Sexual crimes against children are like an iceberg phenomenon, or it can be said that if one victim reports behind him, there are several people who become victims but do not report it. This phenomenon of sexual crimes against children shows how a safe world for children is getting narrower and harder to find. How could it not be, the world of children, which should be filled with joy, coaching, and cultivating goodness, must turn around to become a blurry picture and a portrait of fear because children have now become the subject of sexual crimes [3].

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The government, regional government and other state institutions have the obligation and responsibility to provide special protection for children. Special protection for children as referred to in Article 59 paragraph (2) letter J is given to child victims of sexual crimes.

Article 81 of the Child Protection Law, regulates criminal sanctions and fines for anyone who threatens violence, persuades, gives tricks to have intercourse with them or with other people with minors. Imprisonment for perpetrators from a minimum of 5 years and a maximum of 15 years with a maximum fine of 5 billion Rupiah.

Article 82 of the Child Protection Law contains punishments for perpetrators who commit or allow acts of obscenity against minors. Sanctions for perpetrators of sexual abuse are sentenced to a minimum of 5 years and a maximum of 15 years with a maximum fine of 5 billion Rupiah.

In Indonesia, perpetrators of sexual crimes against children are not only subject to imprisonment, but they are also subject to fines. Regarding the provisions on fines for perpetrators of sexual crimes against children, Sri Endah Wahyuningsih stated that fines do not accommodate the interests of children as victims but only accommodate the interests of the state, namely as income to the state treasury which does not provide any benefit for children as victims of sexual crime [4].

A child who is a victim of a sexual crime must also experience losses because of the crime he has experienced. These losses can be in the form of material losses and immaterial losses. In addition, the losses experienced by children who are victims of sexual crimes also include expenditures used to accommodate the child's needs for recovery, both physically and psychologically, from the condition after the crime occurred against him. Thus, the sentencing of the perpetrators of criminal acts is not enough to provide access to justice for victims.

To fulfill a sense of justice for child victims, the existing legal system must also be able to provide compensation to child victims and the victim's family for material and immaterial losses suffered by victims and their families. This is one of the reasons for the formation of Law Number 12 of 2022 concerning Crimes of Sexual Violence. One of the reasons behind the presence of this law is because laws and regulations relating to sexual violence have not been optimal in providing prevention, protection, access to justice, and recovery. In addition, the existing laws and regulations also do not meet the needs of the rights of victims of sexual violence crimes and are not yet comprehensive in regulating procedural law. This regulation will complement the compensation and restitution mechanisms in both the Criminal Procedure Code, the Law on the Crime of Trafficking in Persons, the Law on the Prevention of Domestic Violence, the Law No. 31 of 2014 concerning Protection of Witnesses and Victims [5].

Law No. 12 of 2022 concerning Crimes of Sexual Violence, one of which regulates the matter of restitution for victims of criminal acts of sexual violence. Restitution is a compensation payment that is charged to the perpetrator, or a third party based on a court decision or decision that has permanent legal force, for material and/or immaterial losses suffered by the victim or his heirs.

Referring to Article 30 Paragraph (2) of Law No. 12 of 2022 concerning Crimes of Sexual Violence, restitution can be given in 4 forms, namely: compensation for loss of wealth or income; Compensation for losses caused by suffering directly related to the crime of sexual violence; reimbursement of medical and/or psychological treatment costs; and/or compensation for other losses suffered by the victim because of the crime of sexual violence.

Then, according to Article 31, restitution can be deposited in advance at the district court clerk's office where the case is examined. Restitution deposited can be returned to the perpetrator if: the case is not prosecuted because there is insufficient evidence or it turns out that it is not a crime; and/or based on a court decision that has obtained permanent legal force, the defendant is acquitted or released from all lawsuits. The same article states that investigators can confiscate the assets of perpetrators of crimes of sexual violence as guarantees for restitution with the permission of the local district court.

The time for granting restitution refers to Article 33 Paragraph (1) of the TPKS Law, restitution is given no later than 30 days from the receipt of a copy of the decision or court order. Prosecutors are required to submit a copy of the court decision containing the granting of restitution to the convicted perpetrator of sexual violence, the victim, and the Witness and Victim Protection Agency (LPSK) within 7 days of receiving the copy of the court decision.

If the grant of restitution is not fulfilled within the specified time limit, the victim or his heirs must notify the court about this. Next, the court will issue a written warning to the restitution provider to immediately fulfill the obligation to provide restitution to the victim/his heirs. "The judge in his decision ordered the prosecutor to auction off the confiscation of the restitution guarantee as long as no payment of restitution is made within 30 (thirty) days after the court decision which has obtained permanent legal force,"

Furthermore, referring to Article 33 Paragraph (7), if the assets of the convict confiscated are not sufficient for the cost of restitution, then the convict is subject to a substitute imprisonment which does not exceed the threat of the principal sentence. If the convict in question is a corporation, then a part of the place of business and/or corporate business activities will be closed for a maximum of 1 year. Then, as Article 35 of the TPKS Law reads, if the convict's confiscated assets are not sufficient to pay for restitution, the state will provide compensation for underpaid restitution to the victim in accordance with a court decision [6].

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The compensation referred to is paid through the Victim Assistance Fund which can be obtained from philanthropy, the community, individuals, corporate social and environmental responsibility, and other legitimate and non-binding sources as well as the state budget in accordance with statutory provisions.

In practice in court, in their demands the Public Prosecutor very rarely demands payment of restitution to the perpetrators of child sex crimes, this is because according to the regulations, to submit demands for payment of restitution to the Defendant who commits child sexual crimes, the Public Prosecutor requires an application for payment of compensation from the parents or the guardian of the victim's child, or the victim's child's heir, as well as a person who is specially authorized by the person, guardian or heir of the victim's child, the application must be submitted before the Prosecution stage, so it can be submitted at the Investigation stage at the Police or when the file is ready transferred to the Attorney General. Without a request for compensation, the Public Prosecutor cannot submit a claim for payment of restitution to the accused perpetrator of a child sexual crime [7].

The causative factor for the absence of a request for compensation from the victim's family or their proxies could be due to the victim's family not understanding the regulation, it could also be due to a lack of information provided by law enforcement officials who handle child sexual offences. With the problems contained in the regulation of criminal sanctions in cases of sexual crimes against children at this time, it is very important to carry out a reconstruction of the regulations on criminal sanctions in cases of sexual crimes against children, so that in the regulation of criminal sanctions in cases of sexual crimes against children who can only provide justice for child victims of sexual crimes.

II. RESEARCH OBJECTIVES

1. Analyze the regulation of criminal sanctions against sexual crimes against children in Indonesia
2. Analyze and find weaknesses in the regulation of criminal sanctions in cases of sexual crimes from the perspective of a comparative study of law.

III. RESEARCH METHOD

The approach method in this research is sociological juridical, with secondary data sources. secondary data obtained by conducting a literature study. The data that has been obtained is analyzed using an analysis knife in the form of theories and opinions of scholars and from the applicable regulations using a qualitative descriptive method.

IV. RESEARCH RESULTS

Comparison of Criminal Sanctions in Cases of Sexual Offenses Against Children in Malaysia and Sweden, Regulations regarding criminal acts, criminal responsibility, and punishment in rape crimes in Malaysia and Sweden are more complete than those in Indonesia. In this case the author will discuss criminal acts, criminal responsibility, and punishment in rape crimes in Malaysia and Sweden.

A. Malaysian

This research with a comparison of rape regulation in Malaysia and Indonesia is intended to examine the similarities and differences in the regulation of the two countries, then it can be studied about the weaknesses and shortcomings of the regulation of rape in both Indonesia and Malaysia [8].

a. Rape using objects

Malaysia Penal Code includes an article regarding rape using objects, which is contained in Article 377 CA which reads

“Anyone who has sexual relations with another person by inserting an object into another person's vagina or anus without his consent shall be subject to imprisonment for not less than 5 years and not more than 30 years and may be subject to caning.

Exception This does not apply to the inclusion of any object into the vagina and anus of other people is carried out for medical and legal enforcement purposes. In this article, it does not apply to the entry of any object into another person's vagina or anus if the purpose is medical or legal. Whereas regarding rape using objects, the Criminal Code does not yet regulate rape using objects.

b. Elements of the victim's consent

The Indonesian Criminal Code does not yet regulate the element of consent for rape victims, it only discusses acts of rape committed with threats of force or violence. Whereas in the Malaysian Penal Code there is an element of the victim's consent, but this element is obtained from threats to the victim, this can be seen from the elucidation of Article 375 which reads "a man is said to have committed "rape" except in subsequent cases where it is excluded, such as with consent when the consent has been obtained by placing him in fear of death or harm to himself or others or obtained based on a misunderstanding of facts and the man knew or had reason to believe that consent was given as a result of such misunderstanding, with the consent of the victim where consent is obtained by exploiting a position of power or because of a professional relationship or other relationship of trust, and with or without his consent when he is under the age of 16.

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c. Criminal sanctions

Malaysian Penal Code contains two criminal sanctions, namely imprisonment and caning. While the Indonesian Criminal Code sanctions for the crime of rape are only subject to imprisonment.

d. Length of criminal sentence

According to the Indonesian Criminal Code, the length of criminal punishment for perpetrators of rape, in article 285 of the Criminal Code, carries a maximum sentence of twelve years, in which the sanctions imposed are very low for perpetrators of rape. If the sentence limit set is only the maximum limit without any minimum limit, therefore the lightness of the sanction imposed is very dependent on the Judge's considerations, and often cases of rape are punished with light sentences.

In fact, until now there has been no court in Indonesia which has handed down a maximum (twelve years) to the perpetrators of rape. The formulation of this article does not provide an alternative, meaning that there is only one principal punishment that threatens the perpetrator of the crime of rape without determining the minimum sentence limit for the crime of rape. This is different from the Malaysian Penal Code, the length of criminal punishment for perpetrators of rape is a minimum of 8 years and a maximum of 30 years. The minimum sentence imposed is high, and this will deter the perpetrators.

e. Rape Object

In Article 285 of the Criminal Code the object of rape is a woman without an age limit with violence or threats of violence or threats of violence or coercion, acts of coercion are acts shown to other people by suppressing the will of that person which is contrary to the will of his heart so that he accepts the will of the person who suppresses it, Article 286 of the Criminal Code the object is a woman who is unconscious or helpless. R. Soesilo explained that fainting means not remembering or not being aware of himself, for example by giving poison or medicine to drink so that the person does not remember anymore, the person who fainted cannot know what happened to him. Helpless means not having strength or power at all.

Article 287 of the Criminal Code applies to women who are under 15 years old or not yet ready to marry if it is not clear how old they are. According to Adami Chazawi, the notion "not yet the time to get married is not the time to have sexual intercourse, both physically and psychologically. Physically it can be seen in the face or body that is still like a child like the bodies of children in general, if psychologically it can be seen in their behavior, for example they are still playing around in general children who are not yet 15 years old.

Article 288 of the Criminal Code states that the object of sexual intercourse is with a wife who is not yet ready to marry, if the act results in injury, the meaning of what is prohibited in this article is not having intercourse with a wife who is not yet ripe for marriage but having intercourse which causes the wife who is not yet ripe for marriage to suffer injuries physical injury, serious injury or death.

Whereas the object of rape in the Malaysia Penal Code, in Article 375A the object of rape is a woman where she is the wife of the perpetrator who is under fear or receives threats so that she will have sex with the perpetrator. Second, Article 376 the object of rape is a woman who is not the wife of the perpetrator, and the perpetrator asks for sexual intercourse without her consent, and women under 16 years of age with or without her consent.

f. Bloody Rape

Malaysia Penal Code already regulates incestuous rape, as stated in Article 376A which reads

"A person is said to have committed rape in marriage or incest if he has sexual relations with someone who is not permitted according to law, religion and community norms to marry".

From year to year, incest rape has increased, from 2016 to 2021, in Malaysia there were 3,272 cases of incest rape. This case involved a parent, a brother or sister and Datuk. While the Indonesian Criminal Code does not yet regulate incest rape, there have been many cases of incest rape.

Explicitly in Indonesia the regulation of inbreeding rape is contained in Law No. 35 of 2014 concerning Child Protection contained in Article 76D which reads "everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with another person" and Article 81 reads "(1) any a person who violates the provisions referred to in Article 76D shall be subject to imprisonment for a minimum of 5 years and a maximum of 15 years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs), (3) in the case of a crime as referred to in paragraph (1) is committed by parents, guardians, nannies, educators, or educational staff, then the penalty is added to 1/3 of the threats referred to in paragraph (1)".

g. Rape in conjugal relations within marriage

The Indonesian Criminal Code has not regulated it, but explicitly in the Law on Domestic Violence No. 23 of 2004 contained in Article 8 reads "Sexual violence as referred to in Article 5 letter c includes:

- 1) coercion of sexual relations committed against people who live within the scope of the household.
- 2) coercion of sexual relations with someone within the scope of the household with another person for commercial purposes and/or certain purposes,

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Article 46 reads: "Every person who commits acts of sexual violence as referred to in Article 8 letter a, shall be punished with imprisonment for a maximum of 12 (twelve) years or a maximum of Rp. 36,000,000." Article 47 reads "Anyone who forces a person to who resides in the household having sexual relations as referred to in Article 8 letter b, shall be subject to imprisonment for a minimum of 4 (four) years and a maximum imprisonment of 15 (fifteen) years or a fine of at least Rp. 12,000,000 (twelve) million rupiahs) or a maximum fine of Rp. 300,000,000.- (three hundred million rupiahs)", and Article 48 reads "In the event that the actions referred to in Articles 46 and 47 result in the victim receiving an injury that gives no hope of recovery at all, experiencing mental or psychiatric disorders for at least 4 (four) weeks continuously or 1 (one) year not consecutively, death or death of the fetus in the womb or resulting in If the reproductive organs fail to function, shall be punished with imprisonment of at least 5 (five) years and imprisonment for a maximum of 20 (twenty) years or a fine of at least Rp. 25,000,000 (twenty-five million rupiah) and a maximum of Rp. 500,000,000. - (five hundred million rupiah).", the PKDRT Law uses the term "sexual violence". According to the author, the term sexual violence is broader than the term rape, because sexual violence can include various other forms of acts that are still related to one's sexuality, for example, obscenity, sexual harassment, rape and so on. Meanwhile, the Malaysia Penal Code regulates rape in marital relations, this is regulated in Article 375A.

a. Rape with violence/threats of violence in the Indonesian Penal Code and the Malaysian Penal Code both laws and regulations both regulate this matter. In the Criminal Code there is Article 285 which reads " whoever by force or threat of violence forces a woman who is not his wife to have intercourse with him, is punished for raping with a maximum prison sentence of 12 years", in the Malaysian Penal Code there is Article 376 letter c reads " whoever committing rape during or right before and after the violation occurred, making threats against the victim who is sentenced to imprisonment for a period of 20 years is also subject to caning." The crime of rape requires coercion from the perpetrator against the victim, in which coercion is carried out with violence or threats of violence, meaning that if the intercourse is carried out with the consent of the victim, then it is not a criminal act of rape.

b. Rape with minors (women who are not yet able to marry) is equally regulated, in the Indonesian Criminal Code there is Article 287 which reads "(1) whoever has intercourse with a woman who is not his wife, he knows or should reasonably suspect, that the woman's age is not 15 years is enough if it is not clear how old she is, that the woman is not yet marriageable, is sentenced to a maximum of nine years in prison" and while in the Malaysia Penal Code there is Article 376 letter d which reads " anyone who commits rape without or with his consent when he is under the age of 16 years shall be punished with imprisonment for a period of approximately 20 years and can also be subject to caning. In the Indonesian Penal Code, rape with a minor (a woman who cannot be married) means under 15 years of age, while in the Malaysian Penal Code, underage means under 16 years of age. Based on the data above, there are several similarities, namely that it is explained in detail regarding criminal sanctions for the perpetrators of the crime of rape, then regarding the elements in rape, the two laws have the same element, namely the element of threats against women. While the differences between the two laws and regulations are regarding the type of punishment handed down to the perpetrator, the legal system, regulation of rape using objects, the element of consent in rape, fifth regarding the length of criminal punishment, incest rape and rape in husband- wife relations. From these similarities and differences, it can be drawn into the advantages and disadvantages of the arrangement of the two countries for future legal reforms.

B. Sweden

In Swedish law itself, regulations on the protection of children by parents are regulated in Swedish Children and Parents Code Chapter 6, contains that parent as adults are obliged to provide for the needs of children for care, protection, good parenting, education, and maintenance. So, when a child experiences vulnerability or protection is not guaranteed which leads to sexual assault on the child, the state or the international community has a role to play in taking steps to protect and guarantee the safety of the individual child.

Sexual crimes that occur against children are moral and legal violations. It is listed in Swedish Penal Code, chapter 6: Sexual Crimes , Section 4 related to illegal sexual acts against children, contains the age of not being permitted to have sexual activity at the age of 18 and under or is categorized as a minor, so if sexual activity occurs by an adult against a child under the age of 18 who has stipulated in Swedish law, it is considered illegal sexual acts against children. Meanwhile, the types of actions that can be categorized as sexual crimes include: intentional sexual touching (touching sensitive body parts such as buttocks, breasts, genitals), rape, sexual harassment (physical: unwanted touching such as kissing, patting, glancing or staring lustfully; verbal: unwanted verbal remarks or comments about a person's body parts that are sexually suggestive; gestures: body language such as leering, finger gesturing, lip licking; psychological/emotional: persistent requests or solicitations of a humiliating nature/ sexual harassment), exhibitionism (someone showing private parts in public).

When compared to the policies of other countries, Sweden can be an example of a country that regulates prostitution. Swedish Penal Code Chapter 6 sections 1-10 namely:

Such as rape, sexual coercion, sexual exploitation of children, someone who has sexual relations with a child under the age of 15, sexual abuse of a child and serious sexual abuse of a child, someone who has sex with his own child, exploitation of children to pose sexual intercourse, purchase of sexual acts from children, sexual abuse.

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Swedish Penal Code, chapter 6: Sexual Crimes, Section 11:

“A person who, otherwise than as previously provided in this Chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for at most one year. The provision of the first paragraphs also applies if the payment was promised or given by another person”

(A person who, other than those mentioned earlier in this chapter, engages in casual sexual intercourse in return for payment, shall be punished for the purchase of sexual services by a fine or a maximum imprisonment of one year).

The provisions of the first paragraph also apply if payment is promised or provided by another person). Based on this description, what is meant by someone other than those mentioned in this chapter is in Swedish Penal Code Chapter 6 sections 1-10 namely:

Such as rape, sexual coercion, sexual exploitation of children, someone who has sexual relations with a child under the age of 15, sexual abuse of a child and serious sexual abuse of a child, someone who has sex with his own child, exploitation of children to pose sexual intercourse, purchase of sexual acts from children, sexual abuse.

C. Criminal Sanctions for Rape Against Children According to Islamic Criminal Law

Islam has formulated some punishments for some crimes based on texts, Islamic law also takes another way in determining punishments for crimes that do not have texts, namely by submitting to the imam (ruler) regarding the determination of punishment for some crimes with punishments that are expected to result in awareness of the offender. In the Qur'an and As-Sunnah, punishments for certain crimes have been explained. That is, crimes that are generally considered to be part of a crime, judging by the evidence that shows the roots of the crime in the soul of the criminal and the magnitude of the danger to society. This is in accordance with the word of God in the letter An-Nisa verse 16. Meaning; And for two people who commit an abomination among you, then punish them both. If both repent and improve themselves, then let them. Indeed, Allah is the Recipient of repentance, the Most Merciful (QS An Nisa: 16).

Islamic criminal law is rahmatan lila'lamin. The strictness of the punishment determined by Allah is His love (grace) to humans and the natural surroundings, so that life becomes peaceful, just, peaceful, and prosperous. In other words, the strictness of the punishment that Allah has decreed for the perpetrators of criminal acts is intended as an effort to prevent harm and bring about safety, peace in life in this world and in the hereafter, directing them towards truth, justice, wisdom and explaining the path of ultimate truth. The main objectives in imposing punishment in Islamic law are prevention and teaching and education [9].

The definition of prevention is to restrain the maker from repeating his finger-action or so that he does not continue to do it, in addition to preventing someone other than the maker from doing the fingering, because he can know that the punishment imposed on the person who has done the same thing. Thus, the use of prevention is double, namely, to restrain the maker himself from repeating his actions and restraining others from doing it too and distancing himself from the finger-natured environment.

Because the purpose of punishment is deterrence, the amount of punishment must be such that it is enough to realize that goal, it cannot be less or more than the required limit, and thus there is a principle of justice in imposing punishment. Apart from preventing and frightening, Islamic law does not fail to pay attention to the makers themselves. In fact, giving lessons and trying to be good for the maker himself is the main goal, so that people's distance from the finger is not because of fear of punishment, but because of self-awareness and hatred of the finger, and distance himself from his environment, to get the pleasure of God. Awareness of this situation is of course the best tool for eradicating fingering, because a person before committing fingering he will think God certainly knows what he has done and the punishment will befall him, whether people know it or not. And he will not be able to escape the punishment hereafter. This kind of awareness is the dream of positive law scholars and rulers. Punishment, threats, or sanctions are not something that is beneficial (good), in fact, it is better if the punishment will result in bad, painful, miserable, shackles the freedom of the criminals [10].

Islamic criminal law does not provide a specific definition of rape either in the Koran or hadith. In the book of Fiqh Sunnah written by Sayyid Sabiq classifies rape as forced adultery. While Rape in Arabic is called al wath'u (Al wath'u in Arabic means intercourse or sexual intercourse). bi al ikraah (coerced sexual intercourse). While the meaning of coercion in language is to bring people to something they do not like by force. Meanwhile, according to the fuqaha, is to lead other people to do something they do not like and there is no choice for them to leave the act. So, the sanction that is applied to rapists is that if a man rapes a woman, all the jurists agree that the woman is not sentenced to adultery (had az zina), either 100 lashes or stoning. This is in accordance with the word of God in al-Quran surah al-An'am (6) verse 145 which reads: Meaning; Say, "I did not find in what was revealed to me, something that is forbidden to eat for those who want to eat it, except for the flesh of a dead animal (carcass), flowing blood, pork - because all that is dirty - or animals slaughtered not on (name)) God. But whoever is forced not because he wants and does not exceed (emergency limit), then indeed, your Lord is Forgiving, Most Merciful [11].

As for the perpetrators of rapists, Islamic criminal law divides into two groups, namely:

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1. Rape without threatening with a weapon.

People who commit this kind of rape are punished as punishment for adultery. If he is married, the punishment is stoning, and if the perpetrator is unmarried, he is punished with one hundred lashes and exile for one year. Some scholars oblige rapists to provide a dowry for women who are victims of rape [12].

Some opinions of scholars regarding the punishment for rapists are:

a. Imam Malik has the same opinion as Imam Syafi'i and Imam Hambali. Yahya (a student of Imam Malik) heard Malik say that what is done in society regarding someone raping a woman, whether a virgin or not a virgin, if she is a free woman, then the rapist must pay a dowry of the same value as someone like him. If the woman was a slave, the rapist had to pay for the lost value. Had is the punishment applied to the rapist, and no punishment is applied to the raped one. If the rapist is a slave, then it is the master's responsibility unless he hands him over.

b. Imam Sulaiman Al Baji Al Maliki said that a woman who is raped, if she is a free woman (not a slave), is entitled to a reasonable dowry from the man who raped her. Had and dowry punishments are two obligations for rapists, this had punishment is related to the rights of Allah SWT, while the obligation to pay dowry is related to the rights of creatures.

Abu Hanifah and Ats Thauri argue that rapists are entitled to hadd punishment but are not required to pay a dowry. Meanwhile, according to Imam Syafi'i and Imam Hambali, whoever rapes a woman must pay a dowry for the missile.

2. Rape with a Weapon

The perpetrators of rape use weapons to threaten, are punished like robbers. While the punishment for robbers has been mentioned in the word of Allah in the letter al-Maidah (5) verse 33 which reads:

It means; The punishment for those who fight against Allah and His Messenger and make mischief on earth is only being killed or crucified, or their hands and feet are cut off crosswise, or exiled from their homes. That is a disgrace to them in this world, and in the hereafter, they will have a great punishment.

From the verse above, there are four choices of punishment for robbers, namely:

- a. Killed.
- b. crucified.
- c. The legs and arms are cut off crosswise, for example, the left hand and right leg are cut off.
- d. exiled or discarded.

From the description above, there is no mention of specific sanctions for perpetrators of child rapists, but basically perpetrators of child rapists can be subject to criminal sanctions similar to those mentioned above, because in Islamic criminal law there is no special discussion regarding criminal sanctions for child rapists, therefore in my opinion author of the sanctions that can be imposed on the perpetrators of child rape can be in the form of had, provided that the perpetrators of rape do not use weapons, if the perpetrators commit rape using weapons accompanied by threats, the perpetrators of rape can be subject to criminal sanctions in the form of the crime of robbery with punishments chosen from four types form i.e. killed; crucified; cut off the legs and arms crosswise, for example, cut off the left hand and right leg; exiled or exiled. The purpose of punishment according to Islamic criminal law is that the sanction given is a deterrent with the aim of restraining the perpetrator from repeating his finger-action or so that he does not continue to do it, besides that it aims to prevent someone other than the maker so that he does not commit the finger, because he can knowing that the punishment imposed on the person who committed the act was also imposed on other people who also committed the same act, this can be seen from the form of a threat that is harsher than the threat of punishment in positive criminal law, namely in the form of imprisonment [13].

CONCLUSIONS

1. Regulation of criminal sanctions against perpetrators of sexual crimes against children in Indonesia as victims is currently not based on justice, because in the regulation of sanctions against perpetrators only imprisonment and criminal fines where if the criminal fine is paid then the money goes into the state treasury which results in recovery psychologically and materially, child victims of sexual violence are not assisted in paying the fine.
2. From a comparative study of the regulation of criminal sanctions in cases of sexual crimes against children in Indonesia regulated in Law Number 12 of 2022 concerning Crimes of Sexual Violence, there is no regulation regarding the amount of restitution that must be given to victims of violent criminal acts sexual. In Malaysia, criminal sanctions against perpetrators of rape against children are punishable by imprisonment and there is no restitution or compensation. Meanwhile, according to Islamic law, criminal sanctions can be imposed, namely death penalty and crucifixion.

ADVICE

1. The government and the DPR are expected to be able to make improvements to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 12 of 2022 concerning Crimes of Sexual Violence to ensure the creation of law and order in Indonesia.

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2. There needs to be good cooperation between the police, prosecutors, and courts to deal specifically with cases of sexual violence against children according to the law by paying careful, thorough, and thorough attention to the applicable legal regulations so that justice is created for all parties
3. To be able to avoid acts of sexual violence against children, everyone should start from himself, it can be prevented from the slightest thing.

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