

## Sanctions for Rape Crime in Decision Number 156/Pid.Sus/2020/PN.Pkb. Perspective of Islamic Criminal Law

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### Abstract

Rape is a serious crime that violates the law and human dignity. However, court rulings, such as Decision No. 156/Pid.Sus/2020/PN.Pkb, often impose light sentences that are not commensurate with the serious impact experienced by the victims. This study aims to examine the chronology of the case, the reasons behind the judge's decision to impose a lenient sentence, the impact of the decision on crime prevention, as well as the elements and penalties for the crime of child rape under the perspective of Islamic Criminal Law. Using a case approach, normative legal methodology, and qualitative data, the data was collected through library research and analyzed using content analysis. This study draws on modern legal theory, the theory of Maqashid Syariah, and the theory of jarimah ta'zir. The findings reveal a significant imbalance between the severity of the criminal act and the leniency of the imposed sanctions, which undermines the objectives of modern legal theory and the theory of Maqashid Syariah. In this case, the defendant was sentenced to six years in prison, despite the applicable law (Article 81(3)) allowing for a maximum sentence of fifteen years. Furthermore, Islamic law does not explicitly stipulate punishment for rape in the Quran, scholars analogize it to the law of adultery as outlined in the Quran, Surah An-Nur, Verse 2. As for the Hadith narrated by Muhammad bin Yahya Al-Naisaburi, it supports similar penalties for rape and adultery, with the main difference being that only the perpetrator is punished.

**Keywords:** Sanctions, Crime of Rape, Islamic Criminal Law



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### INTRODUCTION

The crime of rape is a form of serious criminal crime that leads to sexual matters, where the perpetrator forces the victim to have intercourse, and performs actions that are contrary to social rules (Setiawan, 2018). This act not only violates the law, but also reflects a deep contempt for human values. These crimes also create deep wounds that are difficult to heal, and often place victims in a vulnerable position, both psychologically and socially. Court verdicts that provide lenient sanctions have the potential to fail to stop sexual crimes, especially against minors. Strong law enforcement plays a crucial role, not only to provide a deterrent to perpetrators, but also to prevent the emergence of new perpetrators. Although prosecutors' charges are often severe, it is not uncommon for judges to impose lighter sanctions. This creates an imbalance between crime and punishment that threatens justice.

Children who are still growing, learning, and need guidance and protection from adults, are in a very vulnerable position to become victims of criminal acts. It should be noted that the Indonesian legal system does not have a single standard for the age of a child (Hanafi, 2022). Law No. 35/2014 on Child Protection defines a child as someone under 18 years old, even from

the womb. Law No. 3 of 1997 on Juvenile Courts defines a child as someone aged 8 to 18 years who is not married. On the other hand, customary law does not only adhere to biological age, but emphasizes one's independence in working, fulfilling social demands, and managing property. In Islamic law, full legal responsibility only attaches to individuals once they reach *baligh*. The age of *baligh* differs according to the madhhabs. The Hanafi, As-Shafi'i, and Hambali madhhabs agree that *baligh* is reached at the age of 15. Meanwhile, the Maliki Madzhab sees physical signs as indicators of *baligh* such as the emission of semen for men or menstruation/pregnancy for women.

In positive law or national law, the implementation of sanctions contained in the Criminal Code (KUHP) for the crime of rape of minors, especially articles 285, 287, 288, 289, 290, 291, 293 is considered to still not provide an optimal deterrent effect (Apriansya, 2019). Law Number 23 of 2002 concerning Child Protection was later updated in Law Number 35 of 2014 and then updated Law Number 17 of 2016 concerning Child Protection. The law regulates rape of minors in Article 81 with a minimum imprisonment of 5 years and a maximum of 15 years and a maximum fine of IDR 5,000,000,000.

Meanwhile, in Islamic law, the Quran does not explicitly regulate the punishment for rape cases. Scholars then apply an analogy with the law of adultery listed in the Quran Surah An-Nur Verse 2, considering that rape is a more heinous act because it involves violence. Hadith At-Tirmidzi Juz 3 number Hadith 1454 narrated by Muhammad bin Yahya al-Naisaburi (At-Tirmidzi, 1996) states that the perpetrator of rape is punished as an adulterer, while the victim is not punished. Punishment varies based on the marital status of the perpetrator, stoning for married perpetrators, then one hundred lashes and exile for a year for unmarried perpetrators. The perpetrator may also be subject to *qisas* if the victim is injured or dies. This hadith exempts women who confess to rape from the punishment of *qazaf*, even without four witnesses. The type of *jarimah* imposed is *ta'zir*, because there is no nash that regulates explicitly (Wahyuni, 2017).

In the context of inequality of sanctions, the decision of the Pangkalan Balai District Court number 156/Pid.Sus/2020/PN.Pkb. is a relevant case study. In 2020, there was a case of rape of a minor by a teaching staff member who was not responsible with the initials FK aged 26 years against his student victim with the initials DML aged 16 years at the time of the crime. The crime of rape occurred five times in three times. Based on decision number 156/Pid.Sus/2020/PN.Pkb. the defendant was sentenced to 6 years imprisonment plus a fine of Rp10,000,000 which, if not paid, will be substituted with 3 months imprisonment.

The verdict given, although above the minimum limit, is still far from the maximum limit of the provisions stipulated in Article 81 Paragraph 3 of the Law on Child Protection (15 years imprisonment and a fine of Rp5,000,000,000). These relatively light sentences can lead to the non-achievement of justice for victims who experience deep physical and psychological trauma and a destroyed future. This phenomenon shows that there is a misalignment between the severity of the crime and the sanctions imposed, which has the potential to reduce the deterrent effect and encourage repetition of crimes, so that it can hinder the achievement of the main objectives of punishment.

In analyzing the inequality of these sanctions, this research uses modern legal theory. According to Ahmad Ali, modern theories are standard priority theory and casuistic priority.

Standard priority theory includes justice, expediency, and legal certainty. Also, the theory of casuistic priority, includes the same things (justice, expediency, and legal certainty) but with an emphasis on a flexible order of priority. As a result of giving less than maximum punishment, there is the potential to repeat similar crimes, which causes an increase in cases per year and makes it difficult to achieve the legal objectives of this modern theory (Afifah & Warjiyati, 2024). By analyzing using this theory, the judge's decision will be evaluated whether it has fulfilled these principles, especially in the context of serious crimes such as rape of a minor.

Second, from the perspective of Islamic law, this research uses the *Maqashid Syariah* theory, which is a concept that realizes the benefit of the people and prevents harm. In other words, Islamic *Sharia* is present to provide goodness and reject all forms of badness. The conceptual framework of *hifz an-nasl* in *Maqashid Syariah* pays great attention to the protection of individual honor and offspring (Ulya, 2021). This conceptual framework is relevant to assessing court decisions against perpetrators of child rape. These two theories will be the basis of analysis to examine whether the judge's decision in this case has achieved the expected legal objectives.

Based on the background of the problem above, the problem formulations in this study are:

- a. What is the chronology of the case in the decision of the Pangkalan Balai District Court number 156/Pid.Sus/2020/PN.Pkb.?
- b. How is the Judge's legal consideration in granting leniency in the rape case in decision number 156/Pid.Sus/2020/PN. Pkb.?
- c. What is the impact of the application of criminal penalties in verdict number 156/Pid.Sus/2020/PN.Pkb on the effectiveness of preventing criminal acts of rape?
- d. How are the elements and sanctions of the crime of rape of a minor from the perspective of Islamic criminal law?

The objectives of this research include:

- a. Knowing the chronology of the case in the decision of the Pangkalan Balai District Court number 156/Pid.Sus/2020/PN.Pkb.
- b. Knowing the legal considerations of the Judge in granting leniency in the rape case in decision number 156/Pid.Sus/2020/PN. Pkb.
- c. Knowing the impact of the application of criminal penalties in decision number 156/Pid.Sus/2020/PN. Pkb on the effectiveness of preventing the crime of rape.
- d. Knowing the elements and sanctions of the crime of rape of a minor from the perspective of Islamic criminal law.

## RESEARCH METHODOLOGY

This research uses a case approach with a research method in the form of normative juridical or also called doctrinal law (Benuf & Azhar, 2020). The normative juridical approach with a case approach aims to understand how legal norms or rules are applied in practice through the analysis of court decisions with permanent legal force that are relevant to the research topic. The normative juridical method in this research is designed to understand how legal norms or rules (law in book) contained in laws and regulations are applied in practice (law in action), especially an in-depth analysis of the decision of the Pangkalan Balai District Court

number 156/Pid.Sus/2020/PN.Pkb. The case approach allows researchers to examine how the application of the law by the Panel of Judges in the decision.

The type of data contained in this research is qualitative data. Qualitative research data is a type of data in a descriptive study, and is not in the form of numbers (A. F. Nasution, 2023). This type of data cannot be measured in size and is usually obtained through activities such as interviews, observations, discussions, content analysis and so on. In the context of this research, qualitative data is relevant because it focuses on in-depth observation and understanding of how and why a legal decision is made, including the judge's consideration, the impact on the victim, and the interpretation of the relevant legal articles in the case of the crime of rape of a minor.

The data collection technique used in this research is library research, namely examining various sources for both primary and secondary legal materials in-depth on various literature sources which include laws, books, court decisions, and the results of previous research relevant to the crime of rape (Iswantoro, 2018).

The data analysis technique used is content analysis, which is an in-depth analysis and research of the information content contained in court decision documents. Content analysis is a method for explaining the symbols or meanings behind the text used in communication, by applying the criteria of the interactive analysis model (Harahap, 2020). In this case the researcher analyzes the main problem under study according to the contents of the decision of the Pangkalan Balai District Court with number 156/Pid.Sus/2020/PN.Pkb.

This research was conducted from February to April 2025. The main location of the research was at the Library of UIN (State Islamic University) Sunan Gunung Djati Bandung. The selection of this location is based on the availability of access to various primary and secondary legal sources relevant to this research which include various legal references to support the literature study.

## **RESULTS AND DISCUSSION**

### **Chronology of the case in the decision of the Pangkalan Balai District Court number 156/Pid.Sus/2020/PN.Pkb.**

The chronology of this case is described based on the facts revealed in the decision of the Pangkalan Balai District Court number 156/Pid.Sus/2020/PN.Pkb. This chronology is the basis for examining the application of the law and the facts considered in the judicial process.

This case began on February 3, 2020, when the parents of the victim DML reported the defendant FK, a teacher at SMA Negeri 1 Muara Padang, to the Banyuasin Police for allegedly raping their daughter. These incidents took place in the student council room of SMA Negeri 1 Muara Padang, which is located on Line 20 Bridge III, Sumber Makmur Village, Muara Padang Sub-District, Banyuasin Regency.

The crime of rape first occurred on Friday, January 10, 2020, at approximately 2pm. At that time, the victim was in the student council room of State Senior High School 1 Muara Padang to remove the structural board, when suddenly the defendant FK arrived. The defendant then grabbed the victim, threw her on the mat, and had sexual intercourse. After the first act, the defendant again forced the victim, and even intimidated the victim with his position as a teacher and his family background so that she would not report the incident to her mother, threatening to embarrass the victim. After that, the defendant left the victim alone.

This rape incident did not stop there. On Friday, January 17, 2020, at approximately 14.00 WIB, the defendant FK again contacted the victim DML and forced her to come to the student council room of State Senior High School 1 Muara Padang, threatening that he would continue to harass her if his request was not met. Because she was afraid, the victim came. In the student council room, the defendant was waiting and persuaded the victim to sit on the mattress, then again forced her to have intercourse. Although the victim tried to avoid it, the defendant managed to overpower her and again had intercourse. The defendant ejaculated on the mat, then cleaned up with his pants before leaving the victim alone in the student council room.

The victim also revealed that the defendant FK had raped her twice on Friday, 31 January 2020, at approximately 1.30pm, in the student council room of SMA Negeri 1 Muara Padang, where the perpetrator forced the victim to have intercourse. Peace efforts proposed by the defendant's family were firmly rejected by the victim's family. This rejection was justified because the peace efforts were only made after the case was reported to the police, while prior to the reporting, there were no peace initiatives at all from the defendant's family. The actions of the defendant are regulated and punishable under Article 81 Paragraph 3 of Law No. 17 of 2016 on Child Protection Jo. Article 76D of Law Number 35 of 2014.

Thus, the details of the chronology of this case are important to evaluate the suitability of the sanctions given with the purpose of legal punishment and being able to achieve the effectiveness of rape crime prevention and optimal protection for victims.

#### **Judges' legal considerations in providing leniency in rape cases in decision number 156/Pid.Sus/2020/PN.Pkb.**

Court decisions can be seen in several concepts. The first is the judge's decision and the second is called a court decision. According to Moh. Taufik Makarao and Bambang Sugeng, the definition of a judge's decision is a statement issued by a judge in front of a trial to resolve a dispute between parties. In essence, the judge's decision is the final product of the legal process that has the power to resolve disputes or conflicts between parties involved in a case (Sururie, 2023). In criminal decisions, judges are prohibited from imposing sentences without a minimum of two valid pieces of evidence and having the confidence that the criminal offense really happened and the defendant is guilty, as stipulated in Article 183 of the Criminal Procedure Code. Valid evidence includes witness testimony, experts, letters, and testimony of the defendant in accordance with Article 184 of the Criminal Procedure Code. In this context, understanding and examining the legal requirements of this decision is important to be able to analyze the facts, evidence and legal considerations of the Judge contained in decision number 156/Pid.Sus/2020/PN.Pkb.

The demands of the Public Prosecutor (JPU) are basically that the Judge who hears the case number 156/Pid.Sus/2020/PN.Pkb. decides:

- a. Declare the defendant with the initials FK guilty of committing violence or threat of violence, the defendant forced the child to have sexual intercourse with him or with another person as regulated and punishable by Article 81 paragraph 3 of Law Number 17 of 2016 concerning Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law Jo. Article 76D of Law No. 35 of 2014 which is in the First Indictment.

- b. To impose a sentence against the defendant FK in the form of imprisonment for 7 (seven) years, to be reduced while the defendant remains in detention with the order that the defendant remains in detention, as well as a fine of Rp10,000,000 (ten million rupiah) in lieu of 3 (three) months imprisonment.
- c. Determine the Evidence in the form of:
  - 1 (one) piece of blue underwear with flower motif;
  - 1 (one) piece of black shorts with green stripes;
  - 1 (one) piece of black hoodie with Saudi brand;
  - 1 (one) piece of blue junior high school long androk;
  - 1 (one) long hand crem color school muslimah;
 Confiscated for destruction.
- d. Determine that the defendant pay court costs of Rp5,000 (five thousand rupiah).

Before imposing an appropriate sentence on the offender or defendant, the Judge must ascertain whether the defendant is actually guilty. This process involves an in-depth examination of the facts and evidence revealed during the trial.

The following are the Judge's considerations in deciding the severity of the criminal penalty for the defendant FK, a defendant in a case of rape of a minor, based on the factors that influenced him. Some of the considerations that aggravated the defendant were "the defendant's actions damaged the future of the child victim DML". These considerations were considered by the judge in determining the severity of the criminal penalty by 1 (one) point. In the decision of the Pangkalan Balai District Court number 156/Pid.Sus/2020/PN.Pkb., it can be seen that after the rape the victim DML was traumatized and felt inferior to leave the house.

There were also factors that the Panel of Judges considered could provide leniency to the defendant, which was then included in the Court's decision, as for the mitigating circumstances among others:

- a. The defendant behaved politely during the trial so as not to hamper the proceedings.
- b. The defendant regretted his actions and promised not to reoffend.

It was noted that the defendant presented a witness in mitigation (*a de charge*) with the initials T. The witness admitted that on 25 April 2020 the witness and the defendant's family went to the victim's house to reconcile but were rejected. The victim rejected the attempt to reconcile on the grounds that the defendant's family did not show any good faith to make peace or make a proposal before being reported to the police, and only after being reported did the defendant's family make these efforts. Finally, the witness testified that he had never heard that the defendant was going to marry another woman.

Based on the facts of the trial, the following is the verdict of the Panel of Judges in handing down the decision in decision number 156/Pid.Sus/2020/PN.Pkb. namely as follows:

1. Stating that the Defendant FK mentioned above has been proven legally and convincingly guilty of committing the crime of forcing a child to have sexual intercourse with him committed by an Educator or education personnel, as in the First Indictment.
2. To impose a penalty against the Defendant FK therefore with imprisonment for 6 (six) years, as well as a fine in the amount of Rp.10,000,000 (ten million rupiah), provided that if the fine is not paid, it shall be substituted with confinement for 3 (three) months.

3. Stipulate that the period of arrest and detention served by the defendant shall be deducted in full from the punishment imposed.
4. Stipulate that the defendant shall remain in detention
5. Determine the evidence in the form of:
  - 1 (one) piece of blue underwear with flower pattern
  - 1 (one) piece of black shorts with green stripes
  - 1 (one) piece of Saudi branded black color veil
  - 1 (one) piece of blue junior high school long skirt
  - 1 (one) piece of long sleeve cream color school muslimah dressReturned to the child victim DML.

6. Charged the Defendant with paying court costs in the amount of Rp.2,000 (two thousand rupiah).

The researcher examines that the criminal charges of the Public Prosecutor (JPU) in the form of imprisonment for 7 years and a fine of Rp10,000,000 and the verdict of the Pangkalan Balai District Court Judge in the form of imprisonment for 6 years and a fine of Rp10,000,000 are still very light when compared to the article charged to the defendant, namely Article 81 paragraph 3 of Law Number 17 of 2016 concerning Child Protection into Law Jo. Article 76D of Law Number 35 of 2014 concerning Child Protection with a minimum prison sentence of 5 years and a maximum of 15 years, in addition to the perpetrator paying a maximum fine of IDR 5,000,000,000.

Mitigating considerations such as the defendant's "polite demeanor" and "remorse" need to be more scrutinized. Courtroom demeanor or promises of remorse often do not reflect the depth of true remorse and are not proportional to the traumatic impact and future damage experienced by the victim. The judge also did not consider the fact that the defendant was found to have lied during the trial about the incident on January 31, 2020 as an aggravating factor. This lie should have been an aggravating factor that showed dishonesty, lack of good faith, lack of sense of responsibility on the part of the defendant, instead of being ignored. Ignoring the fact of this lie as an aggravating factor is a fatal mistake that can not only weaken the verdict, but also potentially reduce public confidence in the integrity of the judicial process.

Thus, the researcher has the opinion that a sentence that is too light for the perpetrator of the crime of rape of a minor does not have a deterrent effect, this is related to modern legal theory, namely the theory of standard priorities and casuistic priorities, which this theory explains the objectives of law which include justice, benefit, legal certainty (Afifah & Warjiyati, 2024). The imbalance between the severity of the crime and the leniency of the punishment can erode the value of justice, making the victim feel unprotected and the perpetrator not deterred. As a result, the goal of expediency, namely crime prevention, is not achieved, and has the potential to trigger repetition. In addition, lenient sentences undermine legal certainty, reduce public confidence in the justice system and hinder the achievement of overall legal objectives.

### **The impact of the application of criminal sanctions in decision number 156/Pid.Sus/2020/PN.Pkb. on the effectiveness of preventing the crime of rape.**

The effectiveness of the application of sanctions or law enforcement can be seen by a series of appropriate indicators. However, it should be noted that the success of a regulation

does not stand alone, but is also influenced by various factors. The following factors affect the effectiveness or not of law enforcement, including (Solikin, 2019):

- a. The legal factor itself  
Factors that adhere to principles such as non-retroactivity, hierarchy of legislation, and the function of law as a means of public welfare.
- b. Cultural factors  
Factors in which the law is part of a societal system that includes abstract basic values (good and bad) that underlie legal norms.
- c. Societal factors  
Factors that greatly influence the making and application of law, considering that law enforcement comes from society and the law aims to create peace in it.
- d. Law enforcement factors  
Law enforcement factors that are expected to have self-awareness, act logically (distinguishing right from wrong), ethically (adhering to principles and not being reckless), and aesthetically (striving for harmony), in order to achieve justice.
- e. Adequate facilities for law enforcement  
These factors include skilled resources, good organizational structure, complete equipment, and sufficient financial support. Without these facilities, law enforcement will be hampered and difficult to achieve its goals.

There are impacts on the victim as well as the perpetrator. The crime of rape leaves severe physical and psychological impacts on victims, especially children. Physically, victims can experience bleeding, bruising, infectious diseases, and early pregnancy, especially if the perpetrator is someone close to them. The psychological impact is much deeper, causing deep trauma, prolonged depression, loss of self-esteem, shame, and even suicidal thoughts. (Ulfah et al., 2024) . Meanwhile, for perpetrators, the consequences include imprisonment and fines. Beyond that, offenders also face significant social impacts, such as negative stigma, ostracization from family and society, and difficulty in finding employment after serving their sentence. This social stigma and rejection is expected to have a deterrent effect on offenders (Efendi & Bari, 2023).

Decision number 156/Pid.Sus/2020/PN.Pkb. states that the Panel of Judges sentenced the perpetrator to 6 years imprisonment, as well as a fine of Rp.10,000,000 with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 months. The defendant was charged with Article 81 paragraph 3 of Law Number 17 of 2016 concerning Child Protection Jo. Article 76D of Law Number 35 of 2014 concerning Child Protection. The article explains that the minimum imprisonment is 5 years and a maximum of 15 years and a maximum fine of IDR 5,000,000,000. Based on the sentence received by the defendant or perpetrator, the sentence given is light compared to the maximum threat. The impact of the application of less stringent penalties on perpetrators of the crime of rape of a minor is very significant on the effectiveness of crime prevention. The impacts of this are as follows (Irawati & Putra, 2024):

- a. Crimes of rape or sexual violence continue to recur

Cases of sexual violence continue to occur, yet judges' verdicts are often lighter than prosecutors' demands. In addition to the slow pace of the legal process, sentences that are not



proportional to the victim's suffering lead to frustration and distrust of the legal system by victims and their families.

b. Lack of deterrent effect on perpetrators

The main purpose of criminal sanctions is to provide a deterrent effect. However, lenient sentences for child sexual abusers send the message that the consequences of their actions are not significant, thus directly undermining the potential deterrent effect and not preventing repeat crimes.

c. Barriers to law enforcement

The lack of adequate facilities to assist child victims of sexual violence is a serious obstacle. Without a safe and comfortable environment and expert support, law enforcement officers struggle to obtain accurate statements and strong evidence, which ultimately hampers efforts to realize justice for victims.

E.H. Sutherland and Cressy argue that crime prevention involves two main methods that aim to reduce the frequency of criminal acts. These methods are intended to address the root causes of crime and minimize the chances of a violation of the law, so that society can live in a harmonious and protected atmosphere. The efforts in question are preventive efforts and repressive efforts (Jaya & Saraswati, 2022). The preventive approach focuses on preventing crime before it occurs by eliminating triggering factors, based on the philosophy that prevention is better than repair. In contrast, the repressive approach is carried out after a crime has occurred to take action against the perpetrator and provide a deterrent effect. In addition, the repressive approach also aims to rehabilitate perpetrators so that they do not repeat their actions, while sending a message to society about the consequences of crime. These two approaches complement each other in an effort to create a safe and crime-free society.

The methods that can be applied to prevent sexual violence or criminal acts of rape include raising awareness, especially in public spaces, arming yourself with protective equipment, daring to fight back, increasing awareness of various forms of sexual violence and tactics used by perpetrators and understanding the cases, avoiding interactions with suspicious strangers, targeting sensitive areas if forced to fight (Sari et al., 2022). In addition, ways that can be used to overcome and minimize sexual crimes against minors include providing efforts to protect child victims of rape, evaluating the enforcement of sanctions against perpetrators of child rape, providing legal counseling as an effort to increase knowledge and sensitivity in the community on a regular basis and increasing cooperation between law enforcement agencies (Yava Dwilestari et al., 2024).

### **Elements and sanctions of the crime of rape of a minor from the perspective of Islamic criminal law**

Islamic criminal law explains that rape is categorized as prohibited sexual intercourse and is included in the realm of *jarimah ta'zir* which has similarities with zina. Zina, which in language means an abominable act, while in terms means intimate relations like husband and wife between a man and a woman outside of legal marriage. The *fuqaha* define zina as the penetration of the male genitalia into the vagina of a woman who is not his wife, without any doubt (*syubhat*), and based on lust. Islamic criminal law does not clearly define rape in the Qur'an or Hadith, but considers it as part of the crime of zina. In the case of rape, all *fuqaha* agree that the victimized woman is not subject to zina punishment (*had az zina*), either in the

form of a hundred lashes or stoning (Wahyuni, 2017). This explanation is supported by Allah's words contained in the Qur'an Surah Al-An'am verse 145 which reads:

قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خَيْرٍ فَإِنَّهُ رَجَسٌ أَوْ فِسْقًا أَوْ لَحْمَ لَيْلٍ لِيُغَيَّرَ اللَّهُ بِهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَنْ رَكَّ غَفُورٌ رَحِيمٌ

"Say, "I do not find in what has been revealed to me anything that is forbidden to eat for those who wish to eat it, except (the meat of) dead animals (carrion), flowing blood, pork because it is unclean, or that which is slaughtered unlawfully, (i.e.) in the name of other than Allah. But whoever is compelled to do so by necessity and does not exceed the limits, then surely your Lord is Forgiving, Merciful."

Islamic criminal law explains the conditions or definitions that confirm an act can be categorized as a criminal act of rape. The condition or definition is explained in the Hadith of Muslim History Number 2564 which reads (F. N. Nasution, 2017):

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ مَالُهُ وَعَرْضُهُ وَدَمُهُ حَسْبُ امْرِئٍ مِنَ الشَّرِّ أَنْ يَحْتَرِ أَخَاهُ الْمُسْلِمَ

"Abu Hurairah reported that the Messenger of Allah (*blessings and peace of Allah be upon him*) said: "It is unlawful for one Muslim to harm another Muslim's property, dignity and blood. It is enough for a Muslim to be bad if he insults his fellow Muslim (Arifin, 1992) "

The hadith explains that Muslims are forbidden to violate the rights of other Muslims in three matters which include property, honor, and life. Thus, rape is clearly a forbidden act in Islam due to its harmful consequences, especially damaging the victim's honor and physique through force. Therefore, the perpetrators of this crime deserve the appropriate punishment. The following are the elements of the crime of rape in Islamic criminal law which include (F. N. Nasution, 2017):

- a. The perpetrator of the crime of rape is required to be an individual who has full legal capacity (*ahliyyah al-ada*). The main indicators of this capability are maturity (*baligh*) and also reason (*aql*). For women, maturity is marked by the first menstruation (*haid*), while for men it is a wet dream (*ihtilam*).
- b. The act of rape must be committed in a state of consciousness (*ilm*) and also with free will without coercion (*adam al-ikrah*). The majority of scholars are of the opinion that a person who commits a mistake or crime under duress or compulsion (*muljan* or *mukrah*) is not subject to criminal punishment.
- c. The crime of rape excludes animals as victims. The victim must be a human being (*adamiy*).
- d. The perpetrator of rape knows with conviction that the act is prohibited (*muharram*) in Islamic teachings.
- e. The act of rape must be free from any form of doubt (*intifa' as-syubhat*) that may remove or alleviate the punishment.
- f. The victim of rape is alive, the crime of rape involves a violation of the body and honor of a living individual.
- g. The perpetrator is a believer, this is a condition for the *hudud* punishment (punishment provisions in the Qur'an and Hadith) to be imposed.

In the case of child protection in Islamic criminal law, the Qur'an Surah An-Nisa verse 9 explains the command to pay attention to the next generation that we leave behind, especially in a state of vulnerability. This vulnerability covers various aspects, from physical and mental to economic, health, intellectual, and moral. The main message of this verse is the need for preventive measures long before the birth of children and grandchildren, to ensure that they do not grow up malnourished, unhealthy, unintelligent, or neglected. The presence of children is seen as the perfection of life for every parent, regardless of their wealth or social standing. Without the presence of a baby, life feels empty, desolate, bereft of meaning. The urge to have children even makes parents willing to spend financial resources to find solutions, be it through medical consultations or traditional methods. The Prophet SAW gave several examples of protection of children, which include (Zaki, 2014):

a. Preserving the good name of the child

The act of criticizing or speaking harshly to children is prohibited in Islamic teachings. Imam Ghazali emphasized that repeated degrading treatment will make the child immune to what the parents say. This habit can hinder the development of the child's personality, making him less intelligent and weaker. The awareness of the preciousness of children in Islam, as reflected in the example of the Prophet Muhammad, strengthens the reason why the crime of rape against minors is seen as a serious crime.

b. Protecting children from bad environment

The Prophet SAW gave advice regarding the social environment of children. He emphasized that parents should be more selective in choosing friends for their children. The Prophet SAW said in Hadith Reported by Abu Dawud Number 4833 which reads "A person follows the religion of his close friend. Therefore, let a person pay attention to who is his close friend". This hadith underscores the risk of befriending people who behave badly, as closeness to them can bring negative influences. It defines religion as a pattern of daily life and actions.

c. Protecting children from crime and violence

Society has an important role in protecting children. When witnessing cases of sexual harassment or crimes of rape against children, active preventive action based on the principle of *amar ma'ruf nahi munkar* is a must. Community apathy towards sexual violence cannot be tolerated (Gunawan & Rohmawati, 2022). A caring, proactive attitude, and the courage to act when seeing potential danger are forms of social and religious responsibility in protecting the nation's next generation. Protecting children from sexual violence is not only the duty of law enforcement, but also all elements of society.

This is because the Qur'an only mentions adultery and not rape. The scholars then applied the analogy of rape with the law of adultery listed in the Quran, with the consideration that rape is a more heinous act because it involves violence. The following is a further explanation of the punishment for the perpetrator of rape which is divided into two, the explanation is as follows.

First, rape without the threat of a weapon. Someone who is proven to have committed this rape will be subject to sanctions similar to the punishment for adultery, as stated in the Qur'an Surah An-Nur Verse 2. If the perpetrator of rape is married, the consequence is stoning. Meanwhile, if the perpetrator is not married, he will be flogged one hundred times and exiled for one year. Some scholars are of the opinion that the perpetrator of rape is obliged to give

dowry to the victimized woman. The opinions of the Ulama regarding the punishment for rapists include (Wahyuni, 2017):

a. Imam Malik, Imam Shafi'i and Imam Hambali expressed the same opinion that if a woman or women is a free person, then the perpetrator of rape is obliged to pay a dowry of the value equivalent to the dowry of a woman equal to her. However, if the woman raped is a slave, then the perpetrator must compensate the value of the loss suffered as a result of his actions. The *had* punishment is applied to the perpetrator of the rape, while the victimized woman is not subject to punishment. If the perpetrator of rape is a slave, then the responsibility for his actions lies with the owner, unless the owner surrenders the slave to the authorities.

b. Imam Hanafi is of the opinion that the perpetrators of rape are still subject to the *hadd* sanction, but they are not obliged to pay the mahr to the victim. In contrast, Imam Shafi'i and Imam Hambali believe that a man who rapes a woman is obliged to pay the mahr *mitsil* to her.

Second, rape by using weapons. A person who commits the crime of rape by using a weapon as a means of threat, will get a sanction equivalent to the sanction of a robber. From the verse, there are four options for punishment for robbers, including being killed, crucified, having their feet and hands cut off crosswise, and finally being banished or exiled. Ibn Abdil Bar said that there is agreement among the scholars about the sanctions for rape. A person who is proven to have committed the crime of rape is entitled to a *hadd* punishment. This *hadd* punishment applies if there is strong and irrefutable evidence that requires its enforcement, or if the perpetrator consciously admits his actions. However, in situations where clear evidence or confession of the perpetrator is not fulfilled, the perpetrator is entitled to other types of punishment outside the *had* category (Wahyuni, 2017).

In addition, there is Hadith At-Tirmidhi Number 1454 narrated by Muhammad bin Yahya al-Naisaburi as follows.

"Narrated to us Muhammad bin Yahya An-Naisaburi: Narrated to us Muhammad bin Yusuf, from Israel: Narrated to us Simak bin Harb, from Alqamah bin Wail Al-Kindi, by his father: There was a woman at the time of the Prophet (sallallahu 'alayhi wa sallam) who went out to pray. Then she met a man, whom she raped. After he finished the despicable act, the woman screamed. The man ran away. Then someone passed by. The woman said to him, "There must be a man who did such and such to me." Then a group of people passed by among the Muhajirs and the woman said to them: "Surely there is a man who did such and such to me." They went and caught the man who had allegedly raped her, and brought him to her. The woman said, "Yes, it is he." They brought the man to the Prophet. When the Messenger of Allah (sallallahu 'alayhi wa sallam) ordered the man to be stoned, a man stood up and raped the woman instead. He said: "O Messenger of Allah, it was I (who raped the woman)." The Messenger of Allah (sallallahu 'alayhi wa sallam) said to the woman: "Go, Allah has forgiven you (for being accused of lying)." And he, Sallallahu 'alayhi wa sallam, addressed the first accused person with noble words. Then he, Sallallahu 'alayhi wa sallam, said to the man who raped her: "Stone him." Then he said, "He repented so fully that if the people of Madinah had repented to him, Allah would have accepted him (At-Tirmidzi, 1996)"

The hadith states that the perpetrator of rape is punished as an adulterer, while the victim is not punished. Punishment varies based on the marital status of the perpetrator, with stoning for married perpetrators, then one hundred lashes and exile for a year for unmarried

perpetrators. The perpetrator may also be subject to *qisas* if the victim is injured or dies. This hadith exempts women who confess to rape from *qazaf* punishment, even without four witnesses.

Based on this description, the researcher considers that due to the absence of specific discussion in the *nash* about punishment or sanctions for perpetrators of rape of minors, according to the researcher, the sanctions or penalties that can be imposed according to the description that has been explained are *ta'zir* punishment by taking the analogy of the Ulama who analogize it to the law of adultery listed in Al-Quran Surah An-Nur Verse 2 and one of the *hasan gharib* Hadith narrated by Muhammad bin Yahya al-Naisaburi, namely that only the perpetrator is sanctioned, while the victim is not sanctioned. If the perpetrator of rape does not use a weapon, then if the perpetrator is married (*muhsan*) then the sanction is stoning, and if the perpetrator is not married (*ghairu muhsan*) then he is punished by flogging a hundred times and exile for one year. However, if the perpetrator of rape threatens with a weapon, then the perpetrator is subject to punishment as a robber with four types of sanctions which include being killed, crucified, cut off his feet and hands in a cross, banished or exiled. With these provisions, the defendant or perpetrator contained in the decision of the Pangkalan Balai District Court number 156/Pid.Sus/2020/PN.Pkb. including the perpetrator of rape without weapons and the perpetrator who is not married (*ghairu muhsan*), then in Islamic criminal law it can be known that the perpetrator can be subject to punishment in the form of flogging one hundred times and exile for one year.

## CONCLUSION

This study examines the implementation of sanctions for the crime of rape of a minor in the Pangkalan Balai District Court verdict number 156/Pid.Sus/2020/PN.Pkb. The findings in this study found that although the Public Prosecutor demanded a prison sentence of 7 years and a fine of Rp10,000,000 based on Article 81 paragraph 3 of the Law on Child Protection, the Judge determined a sentence that included a sentence of 6 years in prison and a fine of Rp10,000,000, which the researcher considered was still very light compared to the maximum threat of the article (15 years in prison and 5 billion rupiah in fines). The judge's consideration in providing leniency was based on the defendant's polite attitude during the trial and his regret, although there was an attempt to make peace from the defendant's side, which was rejected by the victim because he was considered not to have good faith before reporting. This lenient sentence has the potential to reduce the deterrent effect, cause repetition of crimes, reduce public confidence in the integrity of the judicial process and hinder the achievement of modern legal objectives, namely standard priority theory and casuistic priority theory which include justice, benefit, and legal certainty. Plus there are indications of the defendant's lies in the trial which should be an aggravating factor and included in the aggravating circumstances. The view of Islamic Criminal Law categorizes rape as part of the *jarimah zina*, with penalties varying according to marital status and the use of weapons. In this case, under Islamic Criminal Law, the perpetrator is subject to *ta'zir* law, if without a weapon and the perpetrator is unmarried, a penalty of one hundred lashes and one year's exile can be applied. The evidence that can be used in this case is Hadith At-Tirmidzi Juz 3 number Hadith 1454 narrated by Muhammad bin Yahya al-Naisaburi and Qur'an Surah An-Nur Verse 2 with the difference that the perpetrator is punished the victim is not. To increase the effectiveness of law enforcement and provide an

optimal deterrent effect in rape cases, judges should consider in more depth the long-term impact on victims and the maximum threats in the applicable law, consider the social aspects affected by victims, and consider the facts of the trial comprehensively, including indications of the defendant's lies, as aggravating factors in handing down a verdict.

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