Comparison of Rape in Indonesian Positive Law, Islamic Law and South Korean Law

Mhd. Nasir Sitompul[1*], Iskandar Muda Sipayung[2],Aisyah[3] Rilawadi Sahputra[4],Dody Safnul[5]

mhd.nasir@umsu.ac.id[1], sipayungjatanrans@gmail.com[2], Aisyahshmh@gmail.com[3] rilawadisahputra@dharmawangsa.ac.id[4] dodysafnul@dharmawangsa.ac.id[5]

[1]Fakulty of Law, Universitas Muhammadiyah Sumatera Utara, Medan, Indonesia
[2]Fakulty of Economy, Universitas Al-Wasliyah, Rantau Prapat, Indonesia
[3]Fakulty of Law, Universitas Prima Indonesia, Medan, Indonesia
[4,5] Magister of Law, Universitas Dharmawangsa, Medan, Indonesia

Article Info

Received: 2024-07-05
Revised: 2024-09-28
Accepted: 2024-11-11

Keywords:
Positive Law Of Indonesia, Islamic Law, South Korean Law

Abstract

This paper initiated the study of Comparative Law in criminal rape. The crime of rape is a crime as a violation of human rights. Rape is a form of crime that causes loss and anxiety in the community, rape often occurs but is always difficult to prosecute because one of them is the reluctance of victims to report it, this is because there is still a culture of shame attached to the community. Each country has its own atauran in handling and tackling rape cases that occur in the country. In making a legal comparison, of course, what is interesting to compare is the comparison with other countries that adhere to the civil law legal system and other countries that adhere to the common law system. This study uses normative research methods with legislation and conceptual approach. There are similarities and differences in the criminal regulation of rape in positive law in Indonesia , Islamic law and statutory rape in South Korea. The similarities lie in: first, the arrangements regarding rape by force or threat of violence; Second, The Rape of minors. While the differences that can be compared are: 1) rape of disability; 2) the element of consent; 3) length of punishment; 4) the object of Rape; 5) Blood rape; and 6) rape in marriage (marital rape).

I. Introduction

Rape by construction juridical legislation in Indonesian criminal code (KUHP) is the act of forcing a woman who is not his wife to have sex with him with violence or threat of violence. The words "force" and" by force or the threat of violence " has already shown how horrible the rape was. Forced sex a woman who doesn't want will cause great pain to the woman. Especially if later accompanied by physical violence. Not yet another kind of psychological pain. [1]

What rape means Gallant, strong, forceful, violent. Rape is defined as subjugating and partly by force, harassing, forcing by force. Rape is the act of rape, gagging, forcible, violent offense. Rape is not only look at it from a single point of view, such as the problem of coercion form of sexual relations, but must also viewed from other aspects related with the losses suffered by the victim.[2] Forced sexual intercourse is a form of violence that results in harm to the victim. This violence reflects that power male physique is a natural factor more powerful than women.

Rape is a crime as violation of human rights. Crime Of rape is one form of crime that resulted in losses and anxiety in society, rape is often but always difficult to be prosecuted for one of them the reluctance of victims to report, this is because still attached to the culture of shame in in society. Rape is an act that very contrary to the laws and norms in a life, because rape itself forces a person to have a relationship sexual with the perpetrator of rape either in marriage or outside marriage.[3] The victim may be forced to have sexual intercourse even if they don't want that.[4]

In the teachings of Islam has been determined ways of channeling sexual instincts through institution of marriage. Therefore, the distribution of sexual instincts outside of legal marriage is contrary to the way Islam is prescribed, because Islam as a source of teaching divine revelation forbids this. In Islam, the age at which girls and boys become duty bound is contingent upon the signs of bulugh (coming of age), which is seminal discharge in boys and menstruation in severely punished.

Rape is a form of violence and oppression of women. All oppression, whatever its form it is a violation of human rights human. Islam as a religion that upholds universal human values, and uphold human rights man, always critical of blasphemy dignity and human dignity. As religion created by God for the good of mankind, all orders and prohibitions

[1] Kori Hermawanti Saptaning Ruju Paminto, 'Hukum Positif Indonesia Dan Hukum Internasional Berdasarkan Beijing Declaration', 5.1 (2023), p.12.
[2] Faisal, Nursariani Simatupang. "Kriminologi, Medan: CV." *Pustaka Prima* (2017).
[3] Andaryuni dan Syakur Akbar, 'Marital Rape Dalam Perspektif Hukum Positif Indonesia Dan Hukum Islam', *Mitsaq*, 2.1 (2023), p.46.
[4] Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Kekerasan Seksual: Advokasi Atas Hak Asasi Perempuan* (Jakarta: Refika Aditama, 2001).

are an attempt to free man from all kinds of tyranny, oppression and also slavery.

In Islamic law, rape is an attempt to vent sexual appetite committed by a man against a woman in a way that is considered to violate according to moral and legal. Forms of rape it is usually done by coercion. Rape is not always rape, but all forms of rape assault or coercion involving the genitals. The act is carried out by coercion or it also shows the power of time the victim cannot give consent either physically or mentally.[5]

The crime of rape in South Korea set in daehanmingug hyeongbeob (Penal Code of the Republic of Korea) and furthermore, the author will use the term Criminal Code of South Korea where emerkosaan can be punished with imprisonment of three years or more, and forcible sexual assault is punishable by imprisonment not more than 10 years or a fine of no more than 15 million won. Therefore, legislation to strengthen sentencing is being pursued, and the Supreme Court continuously improved.

Current rape cases indicates that legal sanctions for such cases it is not yet provide a deterrent effect for the perpetrator. For example, the rape of a female student in India involving eighteen perpetrators to the death of the victim. Not to mention some cases involving a father who raped his own child alone until pregnancy. All cases it describes that rape is always bad for the victim.[6]

The rate of sexual crime is mainly rape in Indonesia pretty high. The rise of the circulation of films porn is also the availability of content who shows pornography in the world maya, being one of the contributors the biggest cause of cases rape. This sexual assault is not it is only done by people who not having adequate education, it is also done by people highly educated. The main cause of rape is the female factor, namely women who's wearing a fancy dress who invites lust for lust whoever saw it. However if reviewed further factors the cause of rape is not just limited that's all. The Existence of Articles 285 Criminal Code on rape it is important to be able to minimize rape cases are so rife lately.[7]

See the law in the nuances of comparison each country has its own rules in dealing with and rape cases in his country. In making a comparison of the law would be interesting to compare is the comparison with other countries fellow believers the civil law system and other countries that adhere to the common law system. Therefore, in this study will compare the crime of rape in positive law in indonesia, Islamic law and Korea.

2. Research Method

The type of legal research method used in this study is a normative research method. In normative research secondary data as a source of information can be primary legal

[5] Asliani, Asliani. "Penelantaran Orang Sebagai Bentuk Kekerasan Dalam Rumah Tangga Ditinjau Dari Undang-Undang No 23 Tahun 2004." *Proceeding International Seminar of Islamic Studies*. 2023.
[6] Achmad Ali., 'Perkosaan Musuh Seluruh Umat Manusia.', *Majalah Warkat Warta Suar*, 2003, p. 20.
[7] Romli Atmasasmita, *Kapita Selekta Hukum Pidana Dan Kriminologi* (Bandung: Mandar Maju, 1995).

material, secondary legal materials, and tertiary legal materials. The specification of this research is specifically to analyze the implementation of legal principles, namely researchon written positive law or research on legal methods that live in society. The method willbe applied that approach to legislation (Statute Approach) and Case Approach. Case research in normative legal research aims to study legal norms or rules carried out in legal practice.[8] The technique of collecting data using literature studies (normative legal research) which focuses on secondary data, the authors researched the laws and government regulations relating to this research. Then conducted interviews with informants, especially the public relations department of the Financial Transaction Reports and Analysis Center and the profession to obtain information to add to the lack of complete secondary data. Data collection tools in normative juridical research are derived from secondary data to obtain concepts, theories, and information and conceptual thinking from previous researchers in the form of legislation, scientific work, journals, and others.[9] Making procedures and data collection in this study conducted in two ways: by studying the literature and interviews with key informants such as lawyers, and prosecutors and service providers finance. Data analysis technique begins with an examination of the data done the collected data then conducts direct and directed interviews and then analyzes the data qualitatively, the data obtained is systematically compiled and then analyzed qualitatively in the form of rules. The process of legal analysis is linked to the theo retical framework to be able to answer the formulation of the problem under study.

3. Results and Discussion

A. Rape In Indonesian Positive Law

Rape in the criminal law regime (straafrecht), actually including the crime of decency (misdrijven tegen de zeden), as enshrined in BukuII Book Of Law Criminal law (KUHP), in particular the provisions of Article 285. Article 285 of the criminal code regulates the crime of rape (verkrachting) whose formulation is as follows : Anyone who by force or by threat will use coercive force a woman having sex outside of marriage himself, because guilty of rape shall be punished with imprisonment forever twelve years.[10]

Provisions on the burden of proof in Islam so far have been developing. The first development states that the burden of proof is the duty of the accused. Further developments taught that the burden of proof rests on both sides equally.[11]

Rape comes from the root word “rape” which means forced, stout, strong, mighty. To rape is to subjugate by force, to force, to violate by force. While rape is defined as the process of how to rape with violence. Thus in the Indonesian dictionary rape has elements of men forcing by force, having sex with a woman. According To Soetandyo Wignjosoebroto, “Rape

[8] Jhonny, I. Teori dan Metode Penelitian Hukum Normative. Malang Boymedia Publishing. 2006.
[9] SOEKANTO DAN SRI, S., MAMUDJI. Penelitian Hukum dan Normatif Suatu Tinjauan Singkat. Jakarta: Raja Grafindo Persada, 1995.
[10] Bambang Heri Supriyanto, ‘Perlindungan Hukum Terhadap Anak Pelaku Perkosaan Berdasarkan Hukum Positif Indonesia’, *ADIL: Jurnal Hukum*, 6.2 (2015), p. 152–54.
[11] Evi Yanti, ‘Kajian Yuridis Legalisasi Aborsi Bagi Korban Tindak Pidana Pemerkosaan Dalam Perspektif Hukum Positif’, *Jurnal Lex Renaissance*, 5.4 (2020), 834 <https://doi.org/10.20885/jlr.vol5.iss4.art6>.

is an attempt to vent sexual appetite by a man against a woman in a way according to the moral and legal rules in force violate".[12]. According to R. Sughandhi assumption says about rape is a man who forced on a woman instead of his wife to copulate with the threat of violence, which is man has entered into the pubic hole of a woman who then removing semen.[13]

In the Criminal Code (Penal Code), rape contained in Article 285 which reads "Anyone with violence or threats of violence forcing a woman who is not his wife threatened with rape, threatened with maximum imprisonment of twelve years". If you look at the sound article, there are elements, among others, as follows: [14]

1. "Whoever" is a term people who do
2. "By force or threat of force" which means performing the powers of the body in Article 89 of the Criminal Code equated using violence to make people fainting or helplessness.
3. "Forcing a woman who is not his wife to have sex with him" which means a woman who is not his wife having sex outside of marriage from a man.

In this article, several conclusions can be drawn as stated by Romli Atmasasmita, among others:

1. Rape victim must be a woman, regardless of age classification.
2. The victim was subjected to coercion in the form of violent intercourse. This means there is no agreement on the part of the victim regarding the intention and the behavior of the perpetrator significant.

In Article 285 of the Criminal Code, the crime of rape is also provided for in Article 286 rape in a state of stupor and helplessness, Article 287 intercourse with a child who is not yet 15 years old, and 288 of the Penal Code have intercourse with women who have not been able to married.

In this article, several conclusions can be drawn as stated by Romli Atmasasmita, among others:

1. Rape victim must be a woman, regardless of age classification.
2. The victim was subjected to coercion in the form of violent intercourse. This means there is no agreement on the part of the victim regarding the intention and the behavior of the perpetrator significant.

In Article 285 of the Criminal Code, the crime of rape is also provided for in Article 286 rape in a state of stupor and helplessness, Article 287 intercourse with a child who is not yet 15 years old, and 288 of the Penal Code have intercourse with women who have not been able to married.[15]

[12] Fitria Noviatur Rizki and others, 'Pemerkosaan Dalam Rumah Tangga (Marital Rape) Perspektif Hukum Di Indonesia , Timur Tengah , Dan Fikih', *Bidayah : Studi Ilmu-Ilmu Keislaman : Studi Ilmu-Ilmu Keislaman*, 14.2 (2023), p. 246.
[13] Alhakim Abdurrakhman, 'Kekerasan Terhadap Perempuan: Suatu Kajian Perlindungan Berdasarkan Hukum Positif Di Indonesia', *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9.1 (2021), p.120 <https://ejournal.undiksha.ac.id/index.php/JJPP>.
[14] Rizki and others.
[15] Atmi Resmi Viarti, 'Restitusi Sebagai Hukuman Tambahan Bagi Pelaku Tindak Pidana Perkosaan', 2013.

B. Regulation Of The Crime Of Rape According To Islamic Law.

Crime of rape in Indonesia and in any part of the world it is a crime, and the perpetrators of rape should be punished. This is because the crime of rape is an act of violence that damages the victim, family and community.[16]

The presence of Islamic law in applying a setting against the act rape can be a alternative solutions to solve problems faced by society, including answering problems crime is happening and increasingly concerning.[17]

According to Schacht: Islamic law is the skeleton of the soul Islam is a sign of a typical Islamic life, and become the core of Islam itself. for most of the Muslims for now and for the time being in the future, Islamic law will always have practical value greater than any other legal value.[18] There's no way we can understand the development of the legal system in Islamic countries of the Middle East right now, if you don't have accurate assessment of the history of the theory Law, positive law theory and the history of the legal process it self.

This shows that Islamic law can used as a practical guide that regulates and to solve the problems what happens in the middle of society. Provisions materially contained in Islamic law is quite relevant to answer and arrange everything crime and various problems is and will be growing in the middle society.

Rape is a form of sexual intercourse that is prohibited by law Islam. Rape (forced adultery) is in the case of the Pharisee. The size of the head is and then there was a little bit of a dip in the pool. It is also considered to be a sin the barrier between the penis (male genitalia) and farji (female genitalia) as long as the barrier is thin that does not blocking feelings and enjoyment have sex.

In Islam, forced adultery (rape) including major sins. It is can be seen from the order of mention after death and resurrection. Islam forbids rape is wrong because it is evil and sinful. This is stated in the Qur'an Surah al- Isra'verse 32 : "Do not come near acts of adultery. Indeed, adultery this is a shameful and a bad way".[19]

Islam found that many women who are victims of specific forms of abuse such as rape. Sexual crimes that the victim must have been a woman. When a woman becomes rape victims are always affected it leaves a lasting trauma for the victim. Feelings of disgust and fear always converge in his mind, even the level of trauma causes a sense of inferiority in the relationship the social.[20]

The concept of the crime of adultery according to Islamic law unlike the Western legal system, because every forbidden sexual intercourse that is adultery is included in it rape.

---

[16] Cindrawati S. Umar, 'Tinjauan Hukum Pidana Dalam Penerapan Hukuman Tambahan Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Berdasarkan Pasal 81 Uu No.17 Tahun 2016', 71.1 (2021), p.c217–20.

[17] Bani Syarif Maula and Vivi Ariyanti, 'Kriminalisasi Perkosaan Dalam Perkawinan Menurut Hukum Pidana Nasional Dan Hukum Islam', *Jurnal Equalita*, 3.2 (2021), p.205–10.

[18] Rahmi, A. (2018). Urgensi Perlindungan Bagi Korbankekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu Berkeadilan Gender. *Jurnal Mercatoria*, *11*(1), p37–60.

[19] Ika Agustini, Rofiqur Rachman, and Ruly Haryandra, 'Perlindungan Hukum Terhadap Korban Kekerasan Seksual: Kajian Kebijakan Hukum Pidana Indonesia Dan Hukum Pidana Islam', *Rechtenstudent Journal Fakultas Syariah UIN KHAS Jember*, 2.3 (2021), 351–52 <https://rechtenstudent.iain-jember.ac.id/index.php/rch/article/view/89>.

[20] Muhammad Khoirul Anwar, Aghnia Nuha Zahidah, and Khildaniyah Ridho, 'Perspektif Islam Terhadap Pemerkosaan Dalam Pernikahan', *Al Burhan: Jurnal Kajian Ilmu Dan Pengembangan Budaya Al-Qur'an*, 21.02 (2022), p.258 <https://doi.org/10.53828/alburhan.v21i02.385>.

The Western legal system refers to zina as the act of intercourse between a man and a woman a marriage in which one or both are married. Understanding is too narrow, so that two people opposite sex having sex while both are not married it's called zina.[21]
M. Quraish Shihab states that the definition of adultery is intercourse two genitals of different types who are not bound by marriage or property, nor is it caused by doubt (ambiguity). According to What is meant by zina this is a collection made by the Pharisees against the Pharisees (women) who do not belong to him intentionally agreed.
Deliberate factor is decisive against an act because referred to as crimes such as the word " insert the penis into the female genital" is a form of deliberate that there must be an element of deliberate, awareness and knowing what he did. In the case of this rape. Islam is directly concerned to then protect the victims of rape. This is not only limited to punishment of the offender, but also consequences that befall him, such as pregnancy experienced by the victim.[22]
Rape is categorized as forcing the occurrence of adultery resulting in harm to the victim. The victim either by force nor the threat of violence to serve the desires of his evil lust. Even not a few victims of rape (this is suffering) the wounds were heavy enough and killed to eliminate traces of possible uncovered by the investigation authorities.[23]
With the understanding that like that, then at least the process his legal settlement and sentencing punishment sanctions to perpetrators of rape can be based on the settlement process and legal sanctions same as in the case of adultery. In material substance, rape also contains elements of adultery, that is, one type of intercourse outside of a valid marriage with a record of the act is not based on consensual, except on the basis of coercion. Factor coercion and supportive violence success is what must be done used as a reference that the act is classified as adultery.
Rape is a form of unilateral needs or from the rapist, while for those who are raped, the violence made him suffer physically and psychologically. Essentially material, rape contains elements weighting the level of quality is more high compared to adultery, because in rape there is an attempt violence and coercion. This effort put the culprit in place very predominating in action criminal sexual crimes it. In some clerical fatwas on the provision of legal protection against rape victims. For example, the opinion of Imam Shafi ' and Imam Hambali, that whoever rapes a woman, then she must pay the dowry missile.[24]
Imam Malik also gave his opinion on compensation for rape victims, such as it was written by a disciple of John Imam Malik, that: "What is done in the community we're talking about someone who raped a woman, a virgin or not a virgin, if she is a woman free, then the rapist must pay the dowry with the value same with someone like him. If she is a child,

[21] Roikhatul Maghfiroh, 'Kekerasan Seksual (Pemerkosaan) Dalam Rumah Tangga Sebagai Alasan Pengajuan Perceraian Dalam Tinjauan Hukum Islam Dan Hukum Positif', *Al-Mazaahib: Jurnal Perbandingan Hukum*, 7.2 (2019), 241–43 <https://doi.org/10.14421/al-mazaahib.v7i2.2205>.
[22] Hisny Fajrussalam and others, 'PANDANGAN HUKUM ISLAM TERHADAP KEJAHATAN SEKSUAL', *EL-Hekam*, 1.1 (2022), 98 <https://ojs.iainbatusangkar.ac.id/ojs/index.php/elhekam/index>.
[23] Kharisatul Janah, 'Sanksi Tindak Pidana Pemerkosaan Oleh Anak Dalam Perspektif Hukum Pidana Islam', *Hukum Pidana Uin Raden Fatah*, 4.2 (2020),p. 87–91.
[24] Ridho Rokamah, 'Restorative Justice Bagi Anak Pelaku Tindak Pidana Perkosaan Anak Perspektif Hukum Islam Dan Hukum Positif', *Justicia Islamica*, 10.2 (2013), 285–90 <https://doi.org/10.21154/justicia.v10i2.150>.

then the rapist must pay the value eliminated.
Punishment in such cases shall be rapists, and there is no punishment applied to the raped. If the rapist is a slave, then he is the responsibility of his master unless he hands it over" aka actually Islam has provided a solution about rape cases, even since The prophet is still alive. Islam provides legal protection for victims rape that is definitely sexist women.[25]

C. Regulation Of The Criminal Act Of Rape Under South Korean Law.

In the South Korean penal code, rape is regulated in Article 301. The crime of rape is punishable by a fixed prison sentence of three years or more, and the crime of murder with rape threatened with a sentence of five years or life imprisonment.[26] The punishment committee of the Supreme Court of South Korea revised and making the final decision on the standards of punishment for offenses sexual. The special law on sexual crimes in korea South, the accused can be sentenced to up to 15 years in prison for sexual assault through kinship and assault sexual through violation of the home.[27] In addition, cases that cause secondary harm to the victim, such as disclosure personal information of victims and losses due to reporting violations sexual, including in general aggravating factors and general extenuating circumstances for the probationary period.[28]
Recent legislation that has been revised by the sentencing Committee The Supreme Court of South Korea is Law Number 18465 of 2021 concerning Specific Rules For The Punishment Of Sexual Assault. The law provides for the elaboration or revision of penalties against the crime of rape contained in the Criminal Code of South Korea. Part 2 Chapter 32: on the crime of rape and assault Article 300 (attempted crime), Article 301 (consequential injury Rape), article 301-2 (murder or death as a result of Rape), Article 302 (rape of minors, etc.), Article 303 (rape with power at work); article 305 (Adultery and indecent acts against minors).[29]
Regulation on criminal law sexual violence on special laws in South Korea relative more complete with provisions regarding changes in penalties Rape in various forms in the South Korean penal code such as Injury caused by rape, murder or death consequences of rape, rape of a minor, Rape with powerin the workplace and no action indecent towards minors.[30]

---

[25] Sheila Fakhria dan Rifqi Awati Zahara, 'Membaca Marital Rape Dalam Hukum Keluarga Islam Dan Rancangan Undang-Undang Penghapusan Kekerasan Seksual (P-KS)', *Jurnal Ijtihad*, 37.2 (2021), p. 20–22.
[26] Zainuri Yoga Pratama Widiyanto, 'Studi Komparatif Aborsi Di Indonesia Dan Korea Selatan Dalam Perspektif Feminist Legal Theory', *Jendela Hukum*, 9.1 (2022) (2022), 222–30 <https://ejournalwiraraja.com/index.php/FH/article/view/1956>.
[27] Olivia Ho, 'Perbandingan Hukum Pemerkosaan Di Korea Utara Dan Selatan', *Lawandnorthkorea*, 2020, p. 1 <https://www-lawandnorthkorea-com.translate.goog/blog/a-comparison-of-north-and-south-korean-rape-law?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=tc>.
[28] Min-Goo Kang, 'Trauma Dalam Pemerkosaan', *Jurnal Hukum (출처 : 시사저널)*, 2022, p. 5 <http://www.sisajournal.com/>.
[29] Yonhap, 'Majelis Nasional Korsel Revisi UU Terkait Kejahatan Seksual, Hukuman Diperkuat', *KBS WORLD INDONESIA*, 2020, p. 1 <https://world.kbs.co.kr/service/news_view.htm?lang=i&Seq_Code=58677>.
[30] Yudika Robert Martheus Turnip, 'Analisis Yuridis Tindak Pidana Perkosaan Dalam Perkawinan (Marital Rape) Sebagai Kekerasan Seksual Dalam Pembaharuan Hukum Pidana (Studi Kasus Perkara Nomor 1456k/Pid.Sus/2012 Pn. Bgl)', 2020.

Specifically on the subject of criminal justice the crime of rape is regulated in Law Number 18465 Year 2021 on special regulation on punishment of violent crimes Sexual. the following formulation of Article 4 :[31]

1. A person who commits a criminal offense under Article 297 (Rape) criminal code while carrying weapons or objects dangerous other or jointly by two or more persons sentenced to life imprisonment. or at least seven years.
2. Anyone who commits a crime of sexual harassment Force article 298 of the Criminal Code as referred to in Paragraph (1) sentenced to imprisonment that remains the longest five year.
3. Whoever commits a criminal offense Article 299 of the Criminal Code (pseudo-rape, pseudo-molestation) according to Paragraph (1) (1) or (2) shall be deemed to be liable.

In Law Number 18465 Year 2021 on special regulation on punishment of violent crimes Sexual also regulates categories such as in Article 5 on punishment for non-criminal rape of relatives, Article 6 rape against persons with disabilities, Article 7 rape of children in under the age of 13, and Article 9 rape resulting in injury 8 and rape resulting in death.

4. Conclusion

Comparison of the crime of rape in the positive law of indonesia, Islamic law and South Korea can be divided into 3 (three) parts. Namely on the categories of legal systems and their regulation, similarities and differences. In the legal system that is adhered to, the positive law of Indonesia and South Korea adheres to the civil law legal system while Islamic law manganut jarimah system. Regulations regarding the crime of rape in indonesia and South Korea can generally be found in their respective penal codes. While the rules outside the Indonesian Criminal Code can be found in law No. 35 of 2014 ten-tang protection of children, in South Korea in 법률 제18465 호, 2021 성폭력범죄의 처벌 등에 관한 특례법 (Law number 18465 of 2021 on special regulations for the punishment of crimes of sexual violence) and in the United States in the United States Uniform Code of military justice and the United States Code (18 U.S.C. §§ 2241–2248).

There are similarities and differences in the regulation of the crime of rape according to positive law, Islamic law and South Korea. The similarities lie in: first, the arrangements regarding rape by force or threat of violence; Second, The Rape of minors. While the differences that can be compared are: 1) rape of disability; 2) the element of consent; 3) the length of the sentence; 4) the object of Rape; 5) Blood rape; and 6) rape in marriage (marital rape).

[31] Endri Susanto and others, 'Perbandingan Tindak Pidana Pemerkosaan Di Indonesia , Korea Selatan Dan United States Of Amerika Serikat', *Widya Kerta Jurnal*, 6.2 (2023), p. 76.

Refrences

Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Kekerasan Seksual: Advokasi Atas Hak Asasi Perempuan* (Jakarta: Refika Aditama, 2001)

Abdurrakhman, Alhakim, 'Kekerasan Terhadap Perempuan: Suatu Kajian Perlindungan Berdasarkan Hukum Positif Di Indonesia', *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9.1 (2021), 120 <https://ejournal.undiksha.ac.id/index.php/JJPP>

Achmad Ali., 'Perkosaan Musuh Seluruh Umat Manusia.', *Majalah Warkat Warta Suar*, 2003, p. 20

Agustini, Ika, Rofiqur Rachman, and Ruly Haryandra, 'Perlindungan Hukum Terhadap Korban Kekerasan Seksual: Kajian Kebijakan Hukum Pidana Indonesia Dan Hukum Pidana Islam', *Rechtenstudent Journal Fakultas Syariah UIN KHAS Jember*, 2.3 (2021), 351–52 <https://rechtenstudent.iain-jember.ac.id/index.php/rch/article/view/89>

Akbar, Andaryuni dan Syakur, 'Marital Rape Dalam Perspektif Hukum Positif Indonesia Dan Hukum Islam', *Mitsaq*, 2.1 (2023), 46

Asliani, Asliani. "Penelantaran Orang Sebagai Bentuk Kekerasan Dalam Rumah Tangga Ditinjau Dari Undang-Undang No 23 Tahun 2004." *Proceeding International Seminar of Islamic Studies*. 2023.

Atmi Resmi Viarti, 'Restitusi Sebagai Hukuman Tambahan Bagi Pelaku Tindak Pidana Perkosaan', 2013

Cindrawati S. Umar, 'Tinjauan Hukum Pidana Dalam Penerapan Hukuman Tambahan Kebiri Kimia Bagi Pelaku Kekerasan Seksual Terhadap Anak Berdasarkan Pasal 81 Uu No.17 Tahun 2016', 71.1 (2021), 217–20

Faisal, Nursariani Simatupang. "Kriminologi, Medan: CV." *Pustaka Prima* (2017).

Fajrussalam, Hisny, Firda Rahma Fajriana, Nurul Fitriyani Roisussalamah, Rania Roka, and Syifa Mutiara Puradireja, 'PANDANGAN HUKUM ISLAM TERHADAP KEJAHATAN SEKSUAL', *EL-Hekam*, 1.1 (2022), 98 <https://ojs.iainbatusangkar.ac.id/ojs/index.php/elhekam/index>

Janah, Kharisatul, 'Sanksi Tindak Pidana Pemerkosaan Oleh Anak Dalam Perspektif Hukum Pidana Islam', *Hukum Pidana Uin Raden Fatah*, 4.2 (2020), 87–91

Kang, Min-Goo, 'Trauma Dalam Pemerkosaan', *Jurnal Hukum (* 출처 : 시사저널 *)*, 2022, p. 5 <http://www.sisajournal.com/>

Khoirul Anwar, Muhammad, Aghnia Nuha Zahidah, and Khildaniyah Ridho, 'Perspektif Islam Terhadap Pemerkosaan Dalam Pernikahan', *Al Burhan: Jurnal Kajian Ilmu Dan Pengembangan Budaya Al-Qur'an*, 21.02 (2022), 258

<https://doi.org/10.53828/alburhan.v21i02.385>

Maghfiroh, Roikhatul, 'Kekerasan Seksual (Pemerkosaan) Dalam Rumah Tangga Sebagai Alasan Pengajuan Perceraian Dalam Tinjauan Hukum Islam Dan Hukum Positif', *Al-Mazaahib: Jurnal Perbandingan Hukum*, 7.2 (2019), 241–43 <https://doi.org/10.14421/al-mazaahib.v7i2.2205>

Martheus Turnip, Yudika Robert, 'Analisis Yuridis Tindak Pidana Perkosaan Dalam Perkawinan (Marital Rape) Sebagai Kekerasan Seksual Dalam Pembaharuan Hukum Pidana (Studi Kasus Perkara Nomor 1456k/Pid.Sus/2012 Pn. Bgl)', 2020

Maula, Bani Syarif, and Vivi Ariyanti, 'Kriminalisasi Perkosaan Dalam Perkawinan Menurut Hukum Pidana Nasional Dan Hukum Islam', *Jurnal Equalita*, 3.2 (2021), 205–10

Olivia Ho, 'Perbandingan Hukum Pemerkosaan Di Korea Utara Dan Selatan', *Lawandnorthkorea*, 2020, p. 1 <https://www-lawandnorthkorea-com.translate.goog/blog/a-comparison-of-north-and-south-korean-rape-law?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=tc>

Rahmi, A. (2018). Urgensi Perlindungan Bagi Korbankekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu Berkeadilan Gender. *Jurnal Mercatoria*, *11*(1), 37–60. https://doi.org/10.31289/mercatoria.v11i1.1499

Rizki, Fitria Noviatur, Zainal Arifin, Universitas Islam, Negeri Maulana, Malik Ibrahim, and Rumah Tangga, 'Pemerkosaan Dalam Rumah Tangga (Marital Rape) Perspektif Hukum Di Indonesia , Timur Tengah , Dan Fikih', *Bidayah : Studi Ilmu-Ilmu Keislaman : Studi Ilmu-Ilmu Keislaman*, 14.2 (2023), 246

Rokamah, Ridho, 'Restorative Justice Bagi Anak Pelaku Tindak Pidana Perkosaan Anak Perspektif Hukum Islam Dan Hukum Positif', *Justicia Islamica*, 10.2 (2013), 285–90 <https://doi.org/10.21154/justicia.v10i2.150>

Romli Atmasasmita, *Kapita Selekta Hukum Pidana Dan Kriminologi* (Bandung: Mandar Maju, 1995)

Saptaning Ruju Paminto, Kori Hermawanti, 'Hukum Positif Indonesia Dan Hukum Internasional Berdasarkan Beijing Declaration', 5.1 (2023), 12

Supriyanto, Bambang Heri, 'Perlindungan Hukum Terhadap Anak Pelaku Perkosaan Berdasarkan Hukum Positif Indonesia', *ADIL: Jurnal Hukum*, 6.2 (2015), 152–54

Susanto, Endri, Novita Listyaningrum, Dwi Ratna, and Kamala Sari, 'Perbandingan Tindak Pidana Pemerkosaan Di Indonesia , Korea Selatan Dan United States Of Amerika Serikat', *Widya Kerta Jurnal*, 6.2 (2023), 76

Yanti, Evi, 'Kajian Yuridis Legalisasi Aborsi Bagi Korban Tindak Pidana Pemerkosaan Dalam Perspektif Hukum Positif', *Jurnal Lex Renaissance*, 5.4 (2020), 834 <https://doi.org/10.20885/jlr.vol5.iss4.art6>

Yoga Pratama Widiyanto, Zainuri, 'Studi Komparatif Aborsi Di Indonesia Dan Korea Selatan Dalam Perspektif Feminist Legal Theory', *Jendela Hukum*, 9.1 (2022) (2022),

222–30 <https://ejournalwiraraja.com/index.php/FH/article/view/1956>

Yonhap, 'Majelis Nasional Korsel Revisi UU Terkait Kejahatan Seksual, Hukuman Diperkuat', *KBS WORLD INDONESIA*, 2020, p. 1 <https://world.kbs.co.kr/service/news_view.htm?lang=i&Seq_Code=58677>

Zahara, Sheila Fakhria dan Rifqi Awati, 'Membaca Marital Rape Dalam Hukum Keluarga Islam Dan Rancangan Undang-Undang Penghapusan Kekerasan Seksual (P-KS)', *Jurnal Ijtihad*, 37.2 (2021), 20–22