

Analysis of The Maqasid Syari'ah Concept of Sexual Violence Law in The Indonesian Criminal Code

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Abstrac

Sexual violence is included in the form of gender-based violence any type of sexually explicit behavior carried out against another person without that person's consent and which results in negative emotions such as trauma, anger, and humiliation. Whereas, Articles related to sexual violence in the Criminal Code are considered to be incompatible with the moral values of Indonesian society, which is religious and the majority adhere to Islam. The articles regarding adultery in the Criminal Code are very ineffective in dealing with the problem of adultery. Apart from that, Maqasid Syari'ah plays a role in determining decisions to bring benefit and eliminate difficulties or harm. So it is said that the existence of maqasid syari'ah is to understand the ultimate goal of enacting a law. This is of course to achieve benefit or goodness for humans both in this world and in the afterlife. Maqasid Syari'ah is the main goal in the formation of Islamic law, by carrying out ijtiHAD by the method of establishing law, mujtahids can contribute to legal thought through the resulting legal products and can support the existence of Maqasid Syari'ah. This research is a further discussion to analyze the concept of maqasid syari'ah regarding sexual violence law in the Criminal Code using a qualitative approach and literature methods. The results found that sexual violence is considered a crime against human values, and the act of adultery is prohibited in both Islamic law and Indonesian law. Because adultery and free sex lead to the loosening of social bonds and the formation of immoral individuals. So the Criminal Code should be created to build a civilized and moral social life, upholding ethics, religious values, and Pancasila.

Keywords: *Sexual violence, Criminal Code, Maqasid sharia.*

Abstrak

Kekerasan seksual termasuk dalam suatu bentuk kekerasan berbasis gender yang mencakup segala jenis perilaku seksual eksplisit yang dilakukan terhadap orang lain tanpa persetujuan orang tersebut dan yang mengakibatkan emosi negatif seperti trauma, kemarahan, dan penghinaan. Sedangkan, Pasal terkait kekerasan seksual dalam KUHP dianggap tidak sesuai dengan nilai-nilai kesusilaan masyarakat Indonesia yang religius dan mayoritas memeluk agama islam, pasal-pasal tentang perzinahan dalam KUHP sangat tidak efektif dalam menganggulangi permasalahan zina. Di samping itu, Maqasid Syari'ah pada dasarnya berperan untuk menentukan ketetapan-ketetapan dalam mendatangkan kemashlahatan dan menghilangkan kesulitan atau *kemudharatan*. Maka dikatakan bahwa eksistensi *maqasid syari'ah* adalah untuk memahami tujuan akhir dari ditetapkannya hukum. Hal tersebut tentu untuk mencapai *kemashlahatan* atau kebaikan pada manusia baik di dunia ataupun di akhirat. *Maqasid Syari'ah* menjadi tujuan utama dalam pembentukan hukum islam, dengan melaksanakan ijtiHAD yang sesuai dengan metode penetapan hukum maka mujtahid mampu memberikan sumbangsih pemikiran hukum melalui produk hukum yang dihasilkan serta mampu mendukung keberadaan *Maqasid Syari'ah*. Penelitian ini merupakan pembahasan lebih lanjut untuk menganalisis konsep maqasid syari'ah terhadap hukum kekerasan seksual dalam KUHP dengan menggunakan pendekatan kualitatif dan metode literatur. Dari hasil yang ditemukan, bahwa kekerasan seksual dianggap sebagai kriminalitas terhadap nilai-nilai kemanusiaan, dan perbuatan zina jelas dilarang baik dalam norma hukum islam maupun norma hukum Indonesia, Karena perzinahan dan seks bebas menyebabkan lepasnya ikatan masyarakat dan terbentuknya individu yang amoral. Maka KUHP hendaknya dibuat untuk membangun kehidupan sosial yang beradab dan bermoral, menjunjung tinggi etika, nilai agama dan pancasila.

Kata Kunci: *Kekerasan seksual, KUHP, Maqasid syari'ah.*

Introduction

Sexual violence is an action carried out by the perpetrator against certain parties that the victim does not want. This action causes negative reactions such as shame, anger, hatred, offense, and so on in someone who is the victim. This crime of morality is so complex, disturbing, and worrying to the public. So it cannot be viewed from just one side, because human behavior does not appear by itself but develops through a process due to the influence of the environment, nature, sociological, political, economic, and cultural aspects. Sexual violence is a term that refers to

derivative behavior or deviant sexual relations, detrimental to the victim and destroying peace in society¹.

Sexual violence is included in the form of gender-based violence. Includes all types of sexually explicit behavior carried out against another person without that person's consent and which results in negative emotions such as trauma, anger, and humiliation. Which is defined as actions that cause physical, sexual, or psychological harm or suffering, including threats of certain actions, coercion, and various deprivations of liberty. Sexual violence is not only included in direct/physical violence but can also be categorized as indirect violence which is culturally and structurally caused by certain stereotypes against women. Sexual violence is even considered one of the most systematic and widespread human rights violations².

According to Komnas Perempuan's press release regarding the 2022 annual records (CATAHU), 338.96 cases of sexual violence were reported in 2021. According to Komnas Perempuan's 2021 CATAHU data, in the last 10 years (2010-2020), the number of sexual violence against women was high. Has increased, starting from 105,103 cases in 2010 to reaching 299,911 cases in 2020, or an average increase of 19.6% per year. Only in 2015 and 2019, this figure experienced a slight decrease, namely 10.7% and 22.5% of cases respectively.³ Thus, sexual violence in its various forms can no longer be seen solely as a problem of sexual aggressiveness but is seen as an expression of a relationship of violence or domination.

Several factors that influence the occurrence of sexual violence include the existence of power relations between the perpetrator and the victim in a society with a patriarchal culture, the existence of opportunities, and the absence of adequate rules, mechanisms, reactions, or responses (weak social control).⁴ However, it is acknowledged that in sexual violence there is an unequal relationship, namely the dominant position of the perpetrator and vice versa, the vulnerable position of the victim in a society with a patriarchal culture is a significant determining factor.⁵

In Article 1 paragraph (3) of the Constitution of the Republic of Indonesia, it is stated that "Indonesia is a country of law, so the consequences of a country of law are that all forms of action decisions, state equipment, behavior and actions carried out by citizens must have legal Foundation". Articles related to sexual violence in the Criminal Code are considered inconsistent with the moral values of Indonesian society, which is religious and the majority adhere to the Islamic religion. Apart from that, the articles regarding adultery in the Criminal Code are very ineffective in dealing with the problem of adultery, this can be seen from the existence of places of prostitution which are still used as business areas for certain people. Apart from that, the Western cultural view which considers that the offense of adultery is individualistic is liberalistic, and makes adultery only seen as private.⁶

As time progresses, many new legal problems have not been discovered through the legal arguments stated in the Koran and Sunnah. Actualizing Islamic teachings requires legal thinkers to always try to be able to answer and respond to every new problem. Because not all existing problems have been covered and resolved. This is circulating due to social and cultural change factors both internally and externally. The role of legal thinkers in exploring the activities of reason or making *ijtihad* to the best of their ability to answer contemporary challenges and problems is an

¹ Agustini Ika, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual: Kajian Kebijakan Hukum Pidana Indonesia Dan Hukum Pidana Islam," *RSJ Reshtenstudent* Vol. 2, No. 2 (2021): 344.

² Rohani Budi Prihatin, *Penghapusan Kekerasan Seksual Dalam Berbagai Perspektif* (Jakarta: Pusat Penelitian Badan Keahlian DPR RI, 2017), 114.

³ LM Psikologi. "Kekerasan seksual di kampus". <https://lm.psikologi.ugm.ac.id/2022/05/kekerasan-seksual-di-kampus/>. Diakses pada 20 Maret 2023.

⁴ Achmad Fikri Oslami, "Analisis Permendikbudristek Nomor 30 Tahun 2021 dalam upaya pencegahan kekerasan seksual," *Al-Abkam: Jurnal Syari'ah Dan Peradilan Islam* Vol 1 No. 2 (2021): hlm. 111.

⁵ *Ibid.*

⁶ Moh Fadhli Khoirina, "Tinjauan Hukum Pidana Islam Terhadap Hubungan Seksual Di Luar Pernikahan Dalam Kitab Undang-Undang Hukum Pidana," *Skripsi universitas islam negeri walisongo Semarang* 2019 (n.d.): 45.

essential need for the realization of Islamic teachings that are valid at all times and places. As science develops *Sharia*, then related legal products can also develop, even to things that are not yet known. Mujtahids can also explore and produce legal products⁷.

Maqasid Syari'ah plays a role in determining decisions to bring benefit and eliminate difficulties or harm. So it is said that the existence of maqasid syari'ah is to understand the ultimate goal of enacting the law. This is of course to achieve benefit or goodness for humans both in this world and in the afterlife.⁸ The benchmark for determining the good and bad (benefits and mafsadah) of something that is done is what is a basic need for human life. These include the demands of human life at various levels, namely primary, secondary, and tertiary needs.⁹ Maqasid Syari'ah is the main goal in the formation of Islamic law, by carrying out ijtihad by the method of establishing law, mujtahids can contribute to legal thought through the resulting legal products and can support the existence of Maqasid Syari'ah.

Research method

The method used in this research is a qualitative method, namely a research procedure produce descriptive data in the form of written or spoken words from people and observed behavior.¹⁰ While this research approach is a normative qualitative approach¹¹, an analysis of sexual violence legislation is carried out using the concept of maqhasid sharia. this research will be discussed further using library method (Library Research) and through a statutory approach. To analyze the law on sexual violence in the Criminal Code from an Islamic legal perspective, it will be studied using the Maqasid Syari'ah concept.

Results and discussion

A. Sexual violence in the Criminal Code

The Criminal Code does not recognize the term sexual violence, but what is stated in it is the term crime of morality (crime). *Misdrijven tegen de zeden*) Which includes, among other things, the crime of rape and the crime of obscenity.¹² Several acts fall into the category of "sexual violence", including:

1. Adultery

Threatened with a maximum imprisonment of nine months.

2. Rape

Any person who, by force or threat of violence, forces a woman to have sexual intercourse with him outside of marriage, is threatened with rape with a maximum imprisonment of twelve years.

3. Obscenity

Any person who, by force or threat of violence, forces a person to commit or allows an obscene act to be committed, is threatened for committing an act that attacks the honor of morality, with a maximum imprisonment of nine years.

And at article 290, threatened with a maximum imprisonment of seven years:

- a. Any person who commits an obscene act with a person, even though he knows that the person is unconscious or helpless.

⁷ Muhammad Sabir, "Maqasid Syari'ah Dan Metode Penetapan Hukum Dalam Konteks Kekinian (Memahami Korelasi Antara Keduanya)". *Tahkim*, Vol: XVII, No. 1. 2021. Hal. 59.

⁸ Abdul Helim, *MAQASID AL-SHARI'AH VERSUS USUL AL-FIQH; Konsep Dan Posisinya Dalam Metodologi Hukum Islam* (Yogyakarta: Pustaka Pelajar, 2019).

⁹ Ghofar Shidiq, "Teori Maqasid Al-Syari'ah Dalam Hukum Islam," *Sultan Agung XLIV*, no. 118 (2009): 117–30.

¹⁰ Muhammad Irkham Firdaus, "CRITICISM ANALYSIS OF THE EFFECTIVENESS OF INDONESIA'S ECONOMIC CRIMINAL POLICY IN THE PERSPECTIVE OF ISLAMIC LAW," *JCH (Jurnal Cendekia Hukum)* 8, no. September (2022): 85–102, <https://doi.org/10.3376/jch.v8i1.570>.

¹¹ Muhammad Irkham Firdaus and Fajar Satriyawan Wahyudi, "Tindak Pidana Rahasia Dagang Ditinjau Dari Uu No. 30 Tahun 2000 Tentang Rahasia Dagang," *Jurnal Dialektika Hukum* 4, no. 2 (2022): 124–34, <https://doi.org/10.36859/jdh.v4i2.1101>.

¹² Eliza Anggoman, "PENEGAKAN HUKUM PIDANA BAGI PELAKU KEKERASAN/PELECEHAN SEKSUAL TERHADAP PEREMPUAN," *Lex Crimen* VIII, no. 3 (2019): 55–65.

- b. Any person who commits an obscene act with someone even though he knows or should reasonably suspect that, generally, he is not yet fifteen years old or, if it is generally not clear, the person concerned is not yet ready to marry.
- c. Any person who persuades someone whom he knows or should reasonably suspect is not yet fifteen years of age if it is generally not clear whether the person concerned is not yet ready to marry, to commit or allow obscene acts to be committed, or to have sexual intercourse outside of marriage with another person.

Article 292, An adult who commits an obscene act with someone of the same sex, whom he knows or should reasonably suspect is not an adult, is threatened with a maximum prison sentence of five years.

Article 293 (1), Any person who, by giving or promising money or goods, abuses the bearer arising from a relationship of circumstances, or by deliberate misdirection induces a minor and of good behavior to commit or allow obscene acts to be committed with him, even though his minor is known or should reasonably be suspected. , is threatened with imprisonment for a maximum of five years.

Article 294;

- a. Any person who commits an obscene act with his child, step-child, adopted child, a child under his supervision who is not yet an adult, or with a minor whose care, education, or care for him or her is not yet an adult, is threatened with imprisonment for a maximum of seven years.
- b. Threatened with the same punishment:
 - a) An official who commits obscene acts with a person whose position is subordinate to him, or with a person whose care is entrusted or handed over to him.
 - b) Administrators, doctors, teachers, employees, supervisors, or orderlies in prisons, state workplaces, educational places, orphanages, hospitals, mental hospitals, or social institutions, who commit obscene acts with people who are put there.

Article 295 (1)

- a. Threatened:
 - a) With a maximum prison sentence of five years, anyone who intentionally causes or facilitates the commission of obscene acts by his child, stepchild, adopted child, or child under his supervision who is not yet an adult, or by a minor whose care, education, or care is entrusted to him. , or by his servants or subordinates who are not old enough, with other people.
 - b) With a maximum prison sentence of four years, anyone who intentionally connects or facilitates obscene acts, except those mentioned in point 1 above, which are committed by a person whom he knows is not yet an adult or who he should reasonably suspect is so, with another person.
- b. If the guilty person committed the crime as a search or habit, then the penalty can be increased by one-third.

Sexual violence or sexual relations outside of marriage are acts that are regulated in the Criminal Code, contained in Articles 284 and 285 relating to adultery, and Articles 289 to 295 relating to sexual immorality. To be able to state that the defendant violated Article 284 of the Criminal Code and was proven to have an element of intent in committing the crime of adultery, both the public prosecutor and the judge at the trial must be able to prove the trial, including:¹³

1. There is a married man who commits adultery.
2. There is a married woman who commits adultery.
3. A man who participates in committing this act, even though he knows that the person who is also guilty is married.

¹³ Moh Fadhli Khoirina, "Tinjauan Hukum Pidana Islam Terhadap Hubungan Seksual Di Luar Pernikahan Dalam Kitab Undang-Undang Hukum Pidana" (Universitas Islam Negeri Walisongo Semarang, 2019).

4. A married woman who participates in committing the act, even though she knows that the person who is also guilty is married.
5. No prosecution is carried out based on the complaint of the tainted husband/wife.
6. The complaint can be withdrawn as long as the examination in the court session has not begun.
7. Complaints are not heeded as long as the marriage has not been terminated due to divorce or before the decision stating that the separation of the table and bed is permanent.

B. Sexual violence in Law Number 1 of 2023 concerning the Criminal Code

The development of the times is supported by developments in people's lives, which have given rise to various demands for making various changes in a better direction, especially regarding the establishment of criminal law in Indonesia. So on December 6 2022 the Criminal Code Bill was officially passed, but will only be implemented in 2025. Articles related to sexual violence in Law Number 1 of 2023 include:

1. Adultery

Article 411

- a. Every person who has sexual intercourse with someone who is not their husband or wife shall be punished for adultery with a maximum imprisonment of 1 (one) year or a maximum fine of category II.
- b. There is no prosecution for criminal acts as referred to in paragraph (1) except on complaints:
 - a) Husband or wife for people who are married.
 - b) Parents or children for people who are not married.
- c. To complaints as intended in paragraph (2) the provisions as intended in Article 25, Article 26 and Article 30 do not apply.
- d. The complaint can be withdrawn as long as the examination at the court hearing has not begun.

Article 412

- a. Every person who lives together as husband and wife outside of marriage is punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II.
- b. There is no prosecution for criminal acts as referred to in paragraph (1) except on complaints:
 - a) Husband or wife for people who are married, or
 - b) Parents or children for people who are not married.
- c. The provisions of Article 25, Article 26, and Article 30 do not apply to complaints as intended in paragraph (2).
- d. The complaint can be withdrawn as long as the examination at the court hearing has not begun.

Article 413

Every person who has sexual intercourse with someone who he knows is a member of his inner family, shall be punished with a maximum imprisonment of 10 (ten) years.

b. Obscenity

Article 414

- a) Any person who commits an obscene act against another person of the same or different gender:
 - (a) In public, be punished with a maximum imprisonment of 1 (one) year and 6 (six) months or a maximum fine of category III,
 - (b) Forced by force or threat of violence, shall be punished with imprisonment for a maximum of 9 (nine) years, or
 - (c) What is published as pornographic content is punishable by a maximum imprisonment of 9 (nine) years.
- b) Every person who, by force or threat of violence, forces another person to commit an obscene act against him, shall be punished with a maximum imprisonment of 9 (nine) years.

Article 415

Sentenced to a maximum imprisonment of 9 (nine) years. Everyone who:

- a) Committing obscene acts with someone who is known to be unconscious or incapacitated, or
- b) Committing obscene acts with someone known or suspected to be a child.

Article 416

- a) If one of the criminal acts as referred to in Article 414 and Article 415 results in serious injury, he will be punished with a maximum imprisonment of 12 (twelve) years.
- b) If one of the criminal acts as intended in Article 414 and Article 415 results in the death of a person, he will be punished with a maximum imprisonment of 15 (fifteen) years.

Article 417

Any person who gives or promises to give a gift, abuses authority arising from the circumstances or by misdirection induces a person who is known or reasonably suspected to be a child, to commit an obscene act or allows an obscene act to be committed against him or herself, shall be punished by imprisonment for a maximum of 9 (nine) year.

Article 418

- a) Any person who commits sexual immorality with his biological child, stepchild, adopted child, or child under his supervision who is entrusted to his care or education, shall be punished with imprisonment for a maximum of 12 (twelve) years.
- b) Sentenced to a maximum imprisonment of 12 (twelve) years:
 - (a) Officials who commit fornication with their subordinates or with people entrusted or handed over to their care, or
 - (b) Doctors, teachers, employees, administrators, or officers in correctional institutions, state institutions, work training places, educational homes, homes for orphans and/or orphans, mental hospitals, or social institutions who commit obscene acts with people who are admitted to the institution, home, or the orphanage.

Regarding sexual violence in Law Number 1 concerning the Criminal Code, it is explained in Articles 411 to 413 concerning adultery, and Articles 414 to 418 concerning obscenity. Meanwhile, to be able to state that the defendant violated Article 411 of the Criminal Code and has only proven to have an element of intent in committing the crime of adultery, both the public prosecutor and the judge at the trial must be able to prove the trial, including¹⁴:

1. A man who is in a marriage bond has sexual intercourse with a woman who is not his wife.
2. A woman who is in a marriage bond has sexual intercourse with a man who is not her husband.
3. A man who is not in a marital relationship commits sexual intercourse with a woman, even though it is known that the woman is in a marital relationship.
4. A woman who is not in a marital relationship commits sexual intercourse with a man, even though it is known that the man is in a marital relationship, or
5. Men and women who are not bound by marriage each have sexual intercourse.
6. No prosecution will be carried out except on complaints from the husband or wife for people who are married, or parents or children for people who are not married.
7. The complaint can be withdrawn as long as the examination in the court session has not begun.

C. Maqasid shari'ah analysis of the law on sexual violence in the Criminal Code

Articles related to adultery in the Criminal Code are considered inconsistent with the moral values of Indonesian society, which is religious and the majority adhere to Islam. Adultery from the perspective of Islamic law is sexual relations outside marriage carried out by married or unmarried people.¹⁵ However, adultery as described in the Criminal Code Article 284 is sexual relations outside of marriage where the perpetrator or one of the perpetrators is a person who is bound by marriage. If a man and a woman who are both single have sexual relations outside of

¹⁴ Undang-Undang Nomor 1 Tahun 2023.

¹⁵ Khoirina, "Tinjauan Hukum Pidana Islam Terhadap Hubungan Seksual Di Luar Pernikahan Dalam Kitab Undang-Undang Hukum Pidana."

marriage, then that sexual relationship is not a crime of adultery. Apart from that, adultery in Indonesia cannot be criminally prosecuted if there is no complaint from the aggrieved husband or wife because adultery in the Criminal Code is an absolute complaint offense.

The description of the differences between the crime of adultery according to Article 284 of the Criminal Code and Islamic criminal law relating to adultery is as follows:

Table No. 1: Differences in punishment for adultery according to the Criminal Code and Islamic law

Criminal Code	Islamic Criminal Law
<ol style="list-style-type: none"> 1. Those who can be considered as perpetrators of adultery are people who are married. 2. It is an absolute complaint offense which requires a complaint that adultery has occurred. 3. Only a husband/wife who feels aggrieved can complain that adultery has occurred. 4. The maximum penalty is 9 months in prison. 	<ol style="list-style-type: none"> 1. Unmarried or married men or women can be considered perpetrators of adultery. 2. It is an ordinary offense because adultery is a violation of Allah's rights. 3. There is no need to wait for a party to complain, but they can immediately undergo criminal proceedings. 4. The punishment for adulterers of Ghairu Muhsan is to be whipped 100 times and exiled for 1 year, while the punishment for adulterers of Muhsan is to be whipped 100 times and stoned.

Adultery is an abnormal act, evil, and has very bad consequences for the perpetrator and society, it is also one of the major sins in all religions. The prohibition on committing adultery is expressed by prohibiting approaching adultery to give a clear impression that even approaching the act of adultery is prohibited, let alone committing it. Through this expression, it can be understood that the prohibition on committing adultery is a strict prohibition so it really must be avoided. In the word of Allah it is stated:

وَلَا تَقْرَبُوا الزَّانِيَ إِنَّهُ كَانَ فَحِشَةً وَسَاءَ سَبِيلٌ ۝ ٣٢

“And go not nigh to fornication; surely it is an indecency and an evil way.”

The prohibition of adultery differentiates humans who live by legal norms, customs, and religion which do not recognize what is good and what is bad. Avoiding adultery leads to a high level of human status because it obeys God's rules and fosters love and affection in a legal marriage. Islamic Sharia also prohibits all actions that can diminish self-esteem. Therefore, Islam strictly prohibits the practice of adultery and accusing other people of committing adultery by providing quite harsh sanctions, namely harsh punishment for perpetrators of adultery.

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ ۚ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ ۝ ٢

“(As for) the fornicatress and the fornicator, flog each of them, (giving) a hundred stripes, and let not pity for them detain you in the matter of obedience to Allah, if you believe in Allah and the last day, and let a party of believers witness their chastisement.”

Zina causes a lot of damage. These include the release of human control in fulfilling their biological needs, instincts, and desires, causing danger to individual health, and destroying the existence of the family as the foundation of society, apart from that, adultery and free sex cause a person to run away from marriage. This will then lead to the loosening of social bonds and the formation of immoral individuals.

Likewise, regarding the offense of absolute complaint as stated in Article 284 of the Criminal Code, according to Barda Nawawi Arif, the offense of absolute complaint as contained in Article 284 of the Criminal Code is motivated by a western view which adheres to individualistic-liberalistic

elements, so that adultery is only seen as personal. Likewise, according to Harkristuti Markrusnowo, the Criminal Code's formulation of the offense of adultery reflects the values held by European society more than the values held by Indonesian society. The reason why the Criminal Code is considered irrelevant is a reason seen from the perspective of everyday practice. Apart from that, not many people realize that the text of the Criminal Code that applies in Indonesia is in Dutch¹⁶.

Legal adjustments can be seen, among other things, through the alignment of maqasid sharia values into national criminal law. The Criminal Code considers that if a person commits adultery, whether married or unmarried, if he does not report the act, he cannot be charged with adultery, even though not all victims of sexual violence feel capable of reporting what happened to them. In addition, a victim who does not resist cannot be considered to have given consent to the act of adultery. The absence of resistance may occur due to many factors, ranging from the victim's physical condition to threats and imbalances in power relations that benefit the perpetrator. Related to the incompatibility of sexual violence laws in the Criminal Code are as follows:

Table 2: Conformity of the Criminal Code with the concept of maqasid syari'ah

Criminal Code	Suitability of the Maqasid Sharia Concept
Article 284 (2) "Prosecution will not be carried out except based on complaints from the husband/wife who are contaminated, and if article 27 BW applies to them, within a three month grace period this will be followed by a request for divorce or separate tables and beds for that reason too."	Not by maqasid dharuriyah, maqasid hifdzu aql and hifdzu nasl. <ol style="list-style-type: none"> 1. Due to the provision that "No prosecution will be carried out except on complaints of a tainted husband/wife". In cases that often occur, the victim chooses not to report the act due to several reasons that could harm him in the future, so many victims choose to remain silent. Not infrequently, it has an impact on psychological and mental health. 2. The impact of adultery results in an unwanted pregnancy, resulting in the birth of children who are illegitimate according to their lineage.
Article 285 "Anyone who, by force or threat of violence, forces a woman to have sexual intercourse with him outside of marriage, shall be punished for committing rape with a maximum imprisonment of twelve years."	Not by maqasid dharuriyah, maqasid hifdzu aql, hifdzu nasl, and hifdzu nafs. <ol style="list-style-type: none"> 1. Due to the provision that "by force or threat of force a person". In cases that often occur, victims are cornered into agreeing with confirmation of the absence of violence or threats, due to several reasons that could harm them in the future, so many victims choose to remain silent. Not infrequently, it has an impact on psychological and mental health. 2. The impact of sexual intercourse leads to pregnancy, resulting in giving birth to offspring that are illegitimate according to their lineage. 3. Imposing punishments that are far from legal certainty by using the word "longest", which then influences tolerance and provides a deterrent effect on perpetrators.
Article 289 "Anyone who, by force or threat of violence, forces a person to commit or allows an obscene act to be	Not by maqasid dharuriyah, maqasid hifdzu aql, and hifdzu nafs.

¹⁶ Khoirina, "Tinjauan Hukum Pidana Islam Terhadap Hubungan Seksual Di Luar Pernikahan Dalam Kitab Undang-Undang Hukum Pidana," 59.

committed, is threatened for committing an act which attacks the honor of morality, with a maximum imprisonment of nine years."	<ol style="list-style-type: none"> 1. Due to the provision that "by force or threat of force a person". In cases that often occur, victims are cornered into agreeing with confirmation of the absence of violence or threats, due to several reasons that could harm them in the future, so many victims choose to remain silent. Not infrequently, it has an impact on psychological and mental health. 2. Imposing punishments that are far from legal certainty with the use of the word "longest" which then influences tolerance and provides a deterrent effect on perpetrators.
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Table 3:Conformity of Law Number 1 of 2023 concerning the Criminal Code with the concept of maqasid sharia

Law Number 1 of 2023	Suitability of the Maqasid Sharia Concept
Article 411 (1, 2): <ol style="list-style-type: none"> 1. Every person who has sexual intercourse with someone who is not their husband or wife shall be punished for adultery with a maximum imprisonment of 1 (one) year or a maximum fine of category II. 2. There is no prosecution for criminal acts as referred to in paragraph (1) except on complaints: <ol style="list-style-type: none"> a. Husband or wife for people who are married. b. Parents or children for people who are not married. 	<p>Not by maqasid dharuriyah, maqasid hifdzu aql, and hifdzu nasl.</p> <ol style="list-style-type: none"> 1. Due to the provision that "No prosecution will be carried out but based on complaints from the husband/wife and their parents/children." In cases that often occur, the victim chooses not to report the act due to several reasons that could harm him in the future, so many victims choose to remain silent. Not infrequently, it has an impact on psychological and mental health. 2. The impact of adultery results in an unwanted pregnancy, resulting in the birth of children who are illegitimate according to their lineage. 3. The imposition of a very light punishment seems to provide tolerance to the perpetrator and does not have a deterrent effect on his actions.
Article 412 (1, 2): <ol style="list-style-type: none"> 1. Every person who lives together as husband and wife outside of marriage is punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II. 2. There is no prosecution for criminal acts as referred to in paragraph (1) except on complaints: <ol style="list-style-type: none"> a. Husband or wife for people who are married, or b. Parents or children for people who are not married. 	<p>Not by maqasid dharuriyah, maqasid hifdzu aql, and hifdzu nasl.</p> <ol style="list-style-type: none"> 1. Due to the provision that "No prosecution will be carried out but based on complaints from the husband/wife and their parents/children." In cases that often occur, the victim chooses not to report the act due to several reasons that could harm him in the future, so many victims choose to remain silent. Not infrequently, it has an impact on psychological and mental health. 2. Husband and wife living together outside of marriage allows adultery to occur which results in pregnancy, thus giving birth to offspring that are illegitimate according to their lineage. 3. Imposing punishments that are far from legal certainty by using the word "longest", which then

	influences tolerance and provides a deterrent effect on perpetrators.
Article 413: Every person who has sexual intercourse with someone who he knows is a member of his inner family, shall be punished with a maximum imprisonment of 10 (10) years.	<p>Not by maqasid dharuriyah, maqasid hifdzu aql, and hifdzu nasl.</p> <ol style="list-style-type: none"> 1. There have been many cases of sexual intercourse with family members. In this case, the victim chose not to report the crime for several reasons which could harm him in the future, so many of the victims chose to remain silent. Not infrequently, it has an impact on psychological and mental health. 2. The impact of sexual intercourse leads to pregnancy, resulting in giving birth to offspring that are illegitimate according to their lineage. 3. Imposing punishments that are far from legal certainty by using the word "longest", which then influences tolerance and provides a deterrent effect on perpetrators.
Article 414 (2): Every person who, by force or threat of violence, forces another person to commit an obscene act against him, shall be punished with a maximum imprisonment of 9 (nine) years.	<p>Not by maqasid dharuriyah, maqasid hifdzu aql, and hifdzu nafs.</p> <ol style="list-style-type: none"> 1. Due to the provision that "by force or the threat of violence to force another person". In cases that often occur, victims are cornered into agreeing with confirmation of the absence of violence or threats, due to several reasons that could harm them in the future, so many victims choose to remain silent. Not infrequently, it has an impact on psychological and mental health. 2. Imposing punishments that are far from legal certainty by using the word "longest", which then influences tolerance and provides a deterrent effect on perpetrators.

Victims of sexual violence tend to close themselves off from the outside world even though sexual violence continues to occur. If this continues to happen, victims of sexual violence will experience mental disorders that often cause victims to do things beyond logic, such as using narcotics and even committing suicide. MS Magazine research shows that 30% of women identified as having experienced sexual violence intended to commit suicide, 31% of victims sought psychotherapy services, 22% decided to take self-defense courses, and 82% of them could not forget the incident of violence.¹⁷

Siti Mazuma, director of LBH APIK (Indonesian Women's Association legal aid organization for justice) said that the Indonesian legal system has not sided with victims¹⁸. Victims

¹⁷Lazuardi Adi and Muhammad Akbar Pribadi, "Konsep Retractable Consent Dalam Permendikbud Pencegahan Dan Penanganan Kekerasan Seksual Di Kampus," *JCH (jurnal cendekia hukum)* Vol. 7, No. 2 (2022): 222.

¹⁸ Permata Adinda, "Kenapa Korban Kekerasan Seksual Enggan Melaporkan Kasusnya?" 2021, <https://www.asumsi.co/post/58809/kenapa-korban-kekerasan-seksual-enggan-melaporkan-kasusnya/>. Diakses pada 20 Maret 2023.

of sexual violence are reluctant to report the incidents they experienced to other people, even those closest to them such as family, partly due to fear and even threats from the perpetrators of sexual violence. Apart from that, the criminal justice system in Indonesia still does not have a good gender perspective, such as distrust and discomfort when law enforcement officials issue statements that corner victims, law enforcers often do not empathize and understand the victim's psychology as well as in make news events that appear to put more pressure on the victim. And it is not uncommon for various cases of sexual violence to be resolved completely.

The psychological problems experienced by victims of sexual violence hurt the victim's mental well-being. The impact of sexual violence according to Finkelhor and Browne regarding stigmatization is that violence can make victims feel guilty and ashamed, have a bad self-image, and feel that they are different from other people.¹⁹ Some victims feel angry with their bodies due to the abuse they have experienced, other victims use drugs and alcohol to punish their bodies and try to avoid memories of the violent incidents that have happened to them. In some cases, sexual violence also causes symptoms of post-traumatic disorder (PTSD), especially if the violence leads to assault, rape, intimidation, or threats of rape, to sexual torture. 90% of sexual violence victims show symptoms of acute stress, high anxiety, and rigid emotions after a traumatic event.

Short-term psychological effects can be seen immediately after a victim experiences sexual violence, such as depression, moodiness, emotional disturbance, isolation, and anxiety. Meanwhile, long-term psychological effects can be seen in sexual dysfunction, sexual deviation, severe depression, uncontrolled anxiety, fear, excessive suspicion, aggressiveness, antisocial, committing sexual violence because of revenge, and suicidal thoughts.²⁰ The psychological impact of sexual violence can also trigger complications, especially regarding physical health. Sometimes sexual violence is experienced as trauma and it is difficult for a person to deal with it. Therefore, the victim begins to feel physically overwhelmed. The mental pressure experienced by the victim will trigger severe stress, causing various physical symptoms. Starting from muscle pain, headaches, and even chronic physical health problems, such as high blood pressure and problems with blood sugar²¹. In the long term, psychological stress can also cause heart problems. This happens because the part of the brain that processes emotions, including stress, is right next to the brain stem which is related to reflex or automatic functions such as heartbeat and breathing.

Various factors cause difficulties for victims of sexual violence to be able to identify and accept the treatment they have experienced, including confusion, not knowing how to describe to themselves what has happened, the emergence of shame, attitudes of blaming the victim by others and positioning the victim becomes guilty about the way they dress, their lifestyle and personal life are in the spotlight, tends to blame themselves, feels that they should have stopped the abuse, denial, not wanting to believe that something has happened, minimizing or defense mechanisms telling themselves that it wasn't a big problem, feelings of fear due to revictimization from the police and the difficulty of obtaining evidence make victims reluctant to face the existing legal process²².

National legal politics must be in harmony with the goals of the Indonesian state, namely protecting the entire Indonesian nation, making the nation's life intelligent, promoting general welfare, and participating in maintaining state order. So that it can provide direction for legal development that is by national culture and beliefs in people's lives. The standard for considering an act criminal depends on the collective values and views of society regarding what is considered

¹⁹ Utami Zahirah, Nunung Nurwati, and Hetty Krisnani, "Dampak Dan Penanganan Kekerasan Seksual Anak Di Keluarga," *Prosiding penelitian dan pengabdian kepada masyarakat* Vol. 6, No. 1 (2019): 17.

²⁰ Rini, "Dampak Psikologis Jangka Panjang Kekerasan Seksual Anak (Komparasi Faktor: Pelaku, Tipe, Cara, Keterbukaan, Dan Dukungan Sosial)," *Jurnal IKRA-ITTH Humaniora* Vol. 4, No. 3 (2020): 157.

²¹ Rizal Fadli, "Hati - Hati, Ini Dampak Kekerasan Seksual Pada Psikis Dan Fisik Korban," 2022, <https://www.halodoc.com/artikel/hati-hati-ini-dampak-kekerasan-seksual-pada-psikis-dan-fisik-korban>. diakses pada 20 Maret 2023.

²² Riyan Alpiyan, "Perlindungan Hukum Bagi Korban Kekerasan Seksual Di Perguruan Tinggi," *Lex Renaissance* Vol. 7, No. 1 (2022): 74.

good, right, and beneficial. So the collective views that exist in society regarding morality and religion are very influential in the formation of law, especially criminal law. Therefore, the Criminal Code is considered not to accommodate legal mechanisms that take into account the perspective of experience and protection for victims of sexual violence.

Conclusion

Sexual violence is considered a crime against human values. The Criminal Code should be created to build a civilized and moral social life, upholding ethics, religious values, and Pancasila. The act of adultery is prohibited both in Islamic law and Indonesian law. Because adultery and free sex lead to the loosening of social bonds and the formation of immoral individuals. The author's suggestion for the government to be able to overcome incidents of sexual violence is by making changes to the legal norms for sexual violence in Indonesia, which currently still have weaknesses and are not yet in line with the needs of Indonesian society. Apart from that, law enforcement officials need to be able to provide the fairest possible punishment for perpetrators of sexual violence, and it is very necessary to pay attention to the impacts experienced by victims of sexual violence.

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