

Settlement of Non-Litigation Rape Crime Cases in the Perspective of Islamic Law

Atika, Andriyani, Adelia Salsabila Putri

Fakultas Syariah dan Hukum Universitas Islam Negeri Raden Fatah
Palembang, Sumatera Selatan, Indonesia

E-mail: atika_uin@radenfatah.ac.id

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Abstract: *This study aims to study Islamic law resolving non-litigation rape cases in Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency, South Sumatra Province. This research is based on the existence of rape cases resolved peacefully, even though the case should have been more appropriate if it had been resolved according to the law in force in Indonesia. This research is a field research or empirical research type. The approach method used is a qualitative approach. Data sources are primary and secondary, collected using interviews and documentation techniques. The analysis was carried out in a qualitative descriptive. This study concluded that resolving rape cases through non-litigation in Beringin Makmur Dua Village, Rawas Ilir District, was not following Islamic law. Even though Islamic law strongly recommends solving problems peacefully, not all cases, such as the hudud jarimah, can be resolved peacefully. One of the hudud jarimah is adultery or rape. According to Islamic law, the perpetrator of the rape must be subject to adultery sanctions, namely stoning or flogging. It is intended to provide a deterrent effect on perpetrators and society in general.*

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Introduction

Cases of sexual harassment and rape often occur in Indonesia. The victims of these cases were dominated by women, teenagers, children and even housewives. The perpetrators in cases of sexual harassment and rape also varied, some came from the lower middle and upper middle class, educated and non-educated people, the victim's own family or other people, some had adult or not and so on (Hashina, 2022; Sidik, 2022; Syam, 2022).

Cases of sexual violence became the most prominent cases, with as many as 962 cases. Of the 962 cases of sexual violence, 55% were rape cases. This data is obtained from the identity card data of Partners of Public or

Community Service Institutions contained in the 2021 Annual Notes (Hashina, 2022).

Internal and external factors can cause cases of rape that often occur. Internal factors include religion, education, association, environment and economy. In comparison, external factors include the victim factor, the economy, and the use of narcotics and alcohol (Nurdiana & Arifin, 2019).

Against rape victims, then he must receive protection. Protecting rape victims can be done either in a preventive or repressive manner. This protection is carried out both in the investigation process and in the medical examination process. Protecting rape victims can also be carried out by providing legal assistance and granting restitution and compensation (Amrullah, 2020). The protection of rape victims is significant because they are the injured party. The impact that can be caused to rape victims is the mental and psychological suffering that can occur over a prolonged period, especially for children (Heryanto, Et al, 2020).

The settlement of rape cases committed by the community also varies, some are resolved through litigation, and some are resolved through non-litigation. Non-litigation settlements are usually resolved amicably or according to customary law. For example, in the settlement of rape cases in Kelam Tengah District, Kaur Regency prioritized amicable settlement according to the advice of Pasemah traditional leaders (Khairil, 2018).

Non-litigation settlement is the settlement of disputes carried out using methods outside the court or are commonly referred to as alternative dispute resolution institutions. There are various forms of dispute resolution in non-litigation channels. One of them is arbitration. Arbitration, according to Law No. 30 of 1999, is a way of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute. Apart from arbitration, various forms of non-litigation dispute resolution include consultation, negotiation, mediation, conciliation, or expert judgment. The two alternative forms of settlement in criminal cases used by the parties are negotiation and mediation (Justika.com, 2022).

In the concept of Islamic law, holding mediation or peace is something that is ordered in Islam. Torch law is a term in Islamic law to resolve a conflict or dispute. In Arabic, the word sulh means breaking off a conflict. In the conception of fiqh law (al-Hudud), rape is classified as a crime of honour (hak al-'ardh), which is in the form of adultery under the threat of 100 lashes or stoning to death. However, rape differs from adultery because apart from committing a crime of honour, there is also an element of coercion and violence. Adultery or adultery in language means fahisyah, which is a heinous act. In terms of that, adultery is an act of sexual intercourse between a man and a woman who is not bound to a marital relationship (Ali, 2007). In the Qur'an surah An-Nur, verse 2:

الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

" The [unmarried] woman or [unmarried] man found guilty of sexual

intercourse – lash each one of them with a hundred lashes, ”. (QS. An-Nur 24 : 2)

Jarimah hudud is a jarimah which is subject to punishment. Had punishment is a punishment that has been determined by syara' and becomes the right of Allah (the right of society). The intended hadd punishment does not have a lower or higher limit and is not abolished by an individual (the victim or his guardian) or a representative community (ulil amri). As for the jarimahs included in the hudūd jarimah, they are the jarimah for adultery, the jarimah for accusing adultery, the jarimah for robbery, the jarimah for murder, the jarimah for rebellion, theft, and the jarimah for liquor (Munajat, 2004)

Settlement of rape cases through non-litigation or peace also often occurs in Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency, South Sumatra Province. One of them was experienced by the victim with the initials E who was still a teenager. From the results of the reconciliation carried out by the parties, the rape victims did not get their rights which should be held accountable by the perpetrators. The perpetrator only gave compensation in the form of money agreed upon between the victim's family and the perpetrator's family without involving the victim. The victim also does not get the right to be married by the perpetrator. At the same time, the law has been explained in detail regarding the rights that rape victims should obtain.

Before the case to E, a similar case occurred in Beringin Makmur Dua Village, Rawas Ilir District Babupaten Musi Rawas was also experienced by the victim with the initials R. The victim, R, is a widow who lives alone in the village due to migrating from another city, while the perpetrator is a man -a 58-year-old man who is an employee at a PT in the village. In resolving this case, the victim and perpetrator agreed to settle it amicably on the condition that they provide compensation in the amount of money agreed upon by the victim and perpetrator. The victim chose to resolve this case in a family manner because the victim did not want the perpetrator to be pitted against the other.

In setting the rights of victims can be found in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. Meanwhile, crimes against decency are regulated in Article 285 of the Criminal Code. The rights of victims in the Criminal Procedure Code are contained in article 98, paragraph 1 (Bhafana Publishing, 2014). In Law Number 13 of 2006, the rights of victims include the right to security of self and family, the right to legal aid, the right to information on the settlement of cases, the right to assistance with living costs, medical and psychosocial, the right to give testimony outside the court and the right not to be sued for testimony or reports. Victims' rights can be given at all stages of criminal justice within the criminal justice environment.

Even so, the people of Beringin Makmur Dua Village, Rawas Ilir District, Kabupaten Musi Rawas, prefer to resolve rape cases through non-

litigation. From this problem, the author is interested in researching the settlement of non-litigation rape cases studied from the perspective of Islamic law. The main question in this study is what is the perspective of Islamic law on the settlement of non-litigation rape crimes in Beringin Makmur Dua Village, Rawas Ilir, Musi Rawas districts, South Sumatra Province, Indonesia. This study examines the settlement of non-litigation rape criminal cases according to Islamic law.

Research Methods

This research used empirical research, a legal research method that functions to see the reality and the workings of law in society (Ibrahim, 2006). This research is qualitative. Sources of data in this study are primary data and secondary data. Primary data sources are the primary data in research. Data is obtained directly from the source by conducting interviews, observations or reports in the form of unofficial documents, which researchers then process. Secondary data is taken from official documents, books related to research objects, and research results in reports, theses, dissertations, and laws and regulations. Secondary data can be divided into 3 (three): Primary Legal Materials, Secondary Legal Materials and Tertiary Legal Materials.

Efforts to collect the data needed by the author in this study used two methods: interview techniques and literature. Interviews were conducted with village heads, traditional leaders and parents of the victims. The research location is Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency, South Sumatra Province.

According to Saifudin Azwar, the data analysis method is an effort or way to process data into information so that the characteristics of the data can be understood and helpful in solving problems, especially problems related to research (Azwar, 1998). Then the researcher compiled the data, described the data and systematized the data collected to be studied using a descriptive method. This descriptive method describes the state or status of phenomena in words or sentences and then separates them according to categories to obtain conclusions.

Results and Discussion

Process of Settlement of Rape Crime Cases in Non-Litigation Method in Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency

When an event occurs, there must be something behind it, likewise with the non-litigation settlement process in Beringin Makmur Dua Village, which is rarely done to resolve a criminal case, especially rape.

Currently, there are many victims of violence against women, as is often the case in Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency. One of them is the case that happened to victim E. According to S, as the victim's parent, the incident began when a sister with the initials E

was carrying out her usual activities, namely working as a palm harvester at a PT in Beringin Makamur Dua Village. At the time of the incident, Sister E was resting, which was not the time for recess. At the same time, the perpetrator came as Sister E's foreman. After that, the perpetrator threatened to fire the victim if the victim did not want to have sexual intercourse with him.

Based on the story from Mr S, on the day the incident occurred on the day when there were only a few harvesters working, and their positions were far apart so that no one saw the incident. From this incident, the victim did not immediately tell his parents but instead chose to remain silent and keep the problem happening to him to himself. Sister E's parents realized this a few days later because Sister E's parents felt something had changed in their child's attitude. Moreover, at that time, sister E's parents found out what had happened to her daughter, said Mr S, the victim's parent. After learning about what had happened to their daughter, the victim's parents immediately reported it to the village head.

Mr Imron confirmed it as the head of the local village. He received a report that victim E had been raped. The perpetrator was an employee at a pt in Beringin Makmur Dua village. However, the case was not reported to the authorities due to insufficient evidence and funds to report the incident. Finally, the victim's family chose the path of peace to resolve this case. As the head of the village, Mr Imron has asked the litigants to hold a meeting first and mediate. According to Mr Imron, even though the victim's family has decided to take the peaceful route, as a Village Official, he is obliged to hold a customary trial which is usually carried out by the community in resolving a case, because the settlement of the case cannot be done only with the consent of both parties. After asking the victim's family to hold several meetings and mediate with the perpetrators, it will be determined when the customary trial will be held. It was only from this hearing that it was known what decision would be taken objectively by the adat head as the panel of customary density judges.

Based on the description of the village head, it can be concluded that a traditional trial is held to find out what decision will be taken objectively by the traditional leader as a panel of judges based on a joint decision between the victim's family and the perpetrator whether they want to make peace or not. Before the customary trial, there was a meeting between the victims' families and perpetrators until the customary trial was held.

The customary density assembly will read out the results of the mediation of the litigants that members have approved of the session. After reading the mediation results, the adat density council will ask for the opinion and approval of the people who attended the typical session and whether they approve of the mediation results. If not, then the adat density council will ask for opinions from members of the session to provide advice to the litigants. If the litigants If you agree, then the adat density council will ask the community again whether the community agrees with the results of the adat session, which have been approved by the members of the session

and the parties to the case. The typical session is declared complete if the community agrees with the results.

The process of settling the rape crime case in a non-litigation way that occurred in Beringin Makmur Dua Village involved the customary head, who had previously explained the customary trial. Regarding the resolution of the rape case that E experienced, Mr Fauzan, the Traditional Chair of Beringin Makmur Dua Village, explained that as the customary leader, he understands the conditions of the village and local residents. Whenever there is a problem, the parties prefer the path of peace rather than the legal route because residents consider every resident here to be family or relative. Therefore, whenever a problem occurred, they never bothered and always made peace that was agreed upon by both parties. However, specifically in the case that happened to victim E, he disagreed with the decision of the victim's family to prefer the path of peace because this case was different from usual cases such as fights or robberies. Moreover, based on information from the victim's family, sister E now has a mental disorder.

According to the same statement, namely Mr Fauzan as the Traditional Leader, in the typical session held in Beringin Makmur Dua Village, no special sanctions were imposed for the perpetrator or the guilty party. However, this typical session was only held to determine what decisions would be taken objectively based on the decisions and statements of both parties to resolve a problem. The customary trial was held so there would be no more problems between the two parties. If the two have reconciled and found a middle ground, the problem is considered solved.

The viewpoint of Islamic Law on the Settlement of Non-Litigation Rape Crime Cases in Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency

Rape in Arabic is known as *Ightisab*, which comes from the word *ghashb*, which means to seize or take something without consent. However, *Ightisab* does not have a special meaning for rape. In Islamic law, scholars use the term *al-Zina bi al-ikrah* or adultery by coercion. Rape is a form of adultery. According to the takrifan of the majority of scholars, adultery is sexual intercourse between a man and a woman through the genitals without possessions or belonging.

The Maliki school of thought explains that *adultery* is defined as "intercourse between a man and a woman who is intelligent and mature who does not belong to him with the consent of both parties." According to Imam As-Shaf'i and Imam Ahmad Ibnu Hanbal, the same Imam Maliki only added a little definition of adultery as "Coitus either through the qubul or rectum." still alive and exciting in a condition of its own accord. According to al Zayla'i, adultery is "uncommitted intercourse with a woman who lives who does not belong to or who is not his wife without coercion in an Islamic country." Al Zayla'i's definition distinguishes adultery and rape (Zuhaili, 2011).

The following in the fiqh rules relating to the law of adultery (rape) is "subject to a hadd for men who have sexual intercourse with immature women who are capable of having intercourse", meaning that adult men can be subject to hadd if the intercourse can be equated with intercourse with adult women in terms of bringing pleasure because the fulfilment of male lust can be fulfilled as he has intercourse with adult women (Al-Hashari, 1993).

There are two kinds of punishments for adultery in Islam: One hundred times flogging and banishment for one year. It applies to virgins or virgins (people who have never been married) (Muhammad, n.d.). Stoned to death, this applies to muhsan adulterers, namely people who have been married, either still married or divorced (Kementarian Wakaf Dan Urusan Agama Islam, 1983).

An act can be categorized as a jarimah (criminal act) if the act fulfils the following elements:

- a. Some texts violate actions and threaten punishment for them, and this element can be called a formal element (rukun as-syar'i).
- b. There is behaviour that forms a jarimah, either in the form of actual actions or attitudes, and this element is called the material element (rukun al maddi).
- c. The maker is known as a mukallaf, a person who can be held accountable for the jarimah he has made, which is called the moral element (rukun al-adabi).

Thus, from the description above, it can be seen that the act of coercion has four elements, namely:

- a. Some people commit acts of coercion
- b. The person who is forced (victim) to do the actions desired by the coercion (perpetrator)
- c. There was a refusal that resulted in threats given by the perpetrator in the form of dangerous things, such as killing, beating or destroying property.
- d. Syara prohibits violent acts or utterances. Taking into account the four elements as a condition for the occurrence of a coercive event, the elements above must also meet the requirements.

As we know, coercion (perpetrator) is a person who has the power to impose his will. Second, the person being forced (the victim) is unwilling and not sincere in carrying out the act he is forced to do (rejection), but he is not able to go against the will of the coercion (perpetrator). Third, intimidation or threats result from the victim's refusal, which can endanger the safety of lives, such as killing, beating or destroying property. Fourth, the forced act or speech is prohibited by syara'.

Sanctions for perpetrators of rape can be grouped into two parts: sanctions for perpetrators who do not threaten with weapons and sanctions for perpetrators who threaten with weapons. The sanction for the perpetrator of rape without threatening with a weapon is equated with the sanction of adultery and paying a dowry to the victim. As for the sanctions for perpetrators of rape who threaten with weapons, that is, they are punished as

punishment for robbers, which has been mentioned in Surat al-Maidah verse 33 (Wahyuni, 2016).

Adultery is one of the hudud jarimah, Allah's absolute right. Therefore, the punishment cannot be cancelled, so humans do not have the right to determine the punishment for adultery other than Allah's ordained. Thus, the settlement of adultery cases by mediation is not allowed (Suhartini & Sabekti, 2019).

In Islamic law, the peaceful settlement of cases is highly prioritized and recommended, but not all cases can be resolved peacefully. Like hudud jarimah, whose punishment has been determined in syara' and is the right of Allah. The determination of the law for hudud jarimah should not be taken over by humans by making punishments that are different from what has been determined by Allah (Al-Tamimi, 2013).

Based on the information above, it can be seen that the peaceful settlement of the rape case in Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency is contrary to Islamic law. The victim's parents chose the non-litigation route because a lack of evidence and funds should not be an excuse for not convicting the perpetrator. Moreover, the condition of victim E, who has experienced mental disorders since the incident happened to him.

The resolution of rape cases through non-litigation does not have the slightest deterrent effect on perpetrators or other members of society. On the contrary, it will cause criminal acts to occur more frequently, disrupting public security. It has been proven because when this research was still collecting data, there was information from residents that there had been another case of rape. Settlement of the rape case was also carried out peacefully/non-litigation.

Conclusion

Resolving the criminal act of rape through non-litigation in Beringin Makmur Dua Village, Rawas Ilir District, Musi Rawas Regency, is not following Islamic law. It is because the case is one of the hudud jamimah, while the hudud jarimah is the absolute right of Allah. Humans cannot determine the punishment by making punishments different from those that God has determined. What is more, the settlement of non-litigation rape cases in the village did not create a deterrent effect on the perpetrators or the community.

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