



## THE CRIME OF RAPE: AN ANALYSIS FROM THE FEMINIST LEGAL THEORY PERSPECTIVE

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### Abstract

Rape is a crime that seriously impacts victims and society, especially women. Sexual violence against women can occur both in the private and public spheres. Women have rights that must be protected from gender discrimination. Women belong to a vulnerable group and need protection because the crime risk is higher than men. In this research, feminist legal theory is used as a basis for analyzing the regulation of the crime of rape. Feminist legal theory emphasizes placing women as the main actors in decision-making and upholding women's rights in any form. Feminist legal theory emphasizes establishing women as the main actors in decision-making and defending women's rights in any form. This theory sees violence against women as a form of gender discrimination, where the parties who are most often victims are women. In feminist legal theory, violence against women occurs because of gender inequality and the power held by men in the legal system. The author analyzes the criminal act of rape regulated in positive law in Indonesia in protecting women. This research aims to find out how the crime of rape is regulated and how criminal acts are regulated from the perspective of Feminist Legal Theory. This writing uses a normative juridical method with a statutory and conceptual approach. This research shows that referring to feminist legal theory, the sexual violence crime law is a positive step in eliminating gender-based violence and providing justice for rape victims. Feminist legal theory supports and fights for women's rights in protection from sexual violence. This theory considers the gender factor in legal analysis.

**Keywords:** Crime, Feminism, Rape

### Abstrak

Pemeriksaan merupakan salah satu kejahatan yang memiliki dampak serius terhadap korban dan masyarakat secara luas khususnya kaum perempuan. Kekerasan seksual terhadap perempuan dapat terjadi baik dalam lingkup privat maupun publik. Perempuan memiliki hak yang harus dilindungi dari adanya diskriminasi gender. Perempuan termasuk dalam kelompok rentan dan memerlukan perlindungan karena resiko kejahatan lebih tinggi dari pada laki-laki. Dalam penelitian ini digunakan teori hukum feminisme Feminist Legal Theory sebagai dasar untuk menganalisis pengaturan tindak pidana pemeriksaan. FLT menekankan pentingnya menempatkan perempuan sebagai pemeran utama dalam pengambilan keputusan serta menegakkan hak-hak perempuan dalam bentuk apapun. FLT menekankan pentingnya menempatkan perempuan sebagai pemeran utama dalam pengambilan keputusan serta menegakkan hak-hak perempuan dalam bentuk apapun. Teori ini melihat kekerasan pada perempuan sebagai suatu bentuk diskriminasi gender, di mana pihak yang paling sering menjadi korban adalah perempuan. Dalam FLT, kekerasan pada perempuan terjadi karena adanya



*ketidaksetaraan gender dan kekuasaan yang dimiliki oleh pria di dalam sistem hukum. penulis mencoba menganalisis tindak pidana pemerkosaan yang diatur didalam hukum positif di Indonesia dalam melindungi pihak perempuan. Penelitian ini bertujuan untuk mengetahui bagaimana pengaturan tindak pidana pemerkosaan dan bagaimana pengaturan tindak pidana dalam perspektif Feminisme Legal Theory. Pada penulisan ini menggunakan metode yuridis normatif yang menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Hasil penelitian ini menunjukkan bahwa mengacu pada teori hukum feminisme, undang-undang tindak pidana kekerasan seksual ini merupakan langkah positif dalam menghapuskan kekerasan berbasis gender dan memberikan keadilan bagi korban pemerkosaan. Teori hukum feminisme mendukung serta memperjuangkan hak-hak Perempuan dalam perlindungan dari kekerasan seksual. Teori ini mempertimbangkan faktor gender dalam analisis hukum.*

**Kata kunci:** *Feminisme, Pemerkosaan, Tindak Pidana*

## A. Introduction

Human beings possess inherent rights safeguarded by legal frameworks, which must not be disregarded but upheld and defended by all nations and governing bodies. Every female individual is entitled to be treated equally to their male counterparts, devoid of discriminatory practices. Following principles of gender equality, women are entitled to equitable access to health and medical services, comparable to those provided to males. Moreover, women must be afforded the fundamental entitlement to exist without enduring any form of mistreatment, physical harm, or sexual assault. The issue of violence against women is a significant and multifaceted concern that is prevalent

globally, especially within the context of Indonesia. Violence perpetrated against women encompasses a wide range of harmful behaviors, from physical acts of aggression to psychological and sexual forms of violence. The issue of violence has a significant impact on a considerable number of women and girls, encompassing both domestic and non-domestic settings. Sexual crime refers to the perpetration of sexual assault by an individual, hence falling under the category of gender-based violence. The concept of gender balance is evident in the creation of both women and men, contributing to establishing a vibrant



society.<sup>1</sup> In instances where women's groups are subjected to violence, such violence often originates from men, who possess greater strength and power than women's groups. However, it is important to note that violence against women is not solely limited to male-dominated groups, as it can also be perpetrated by nations and communities that transcend gender categorizations.

Presently, there is a significant societal focus on the criminal act of violence against women.<sup>2</sup> There has been a substantial and notable increase in the frequency and severity of sexual offenses.<sup>3</sup> The allure of societal progress is evident in every facet of existence. With the rapid advancement of science and technology,

society experiences positive and negative consequences. While the positive impacts are palpable, such as improved quality of life, negative repercussions, such as increased criminal activity and associated deviations, are also present.<sup>4</sup> One of the cases pertains to the sexual assault of women. Rape is a grave criminal offense that poses a significant threat to fundamental human rights, such as the right to personal freedom and the physical and psychological well-being of the victim. This issue has garnered global attention, particularly within the framework of domestic and international legal systems. Women are classified as part of the vulnerable population, alongside minority groups, refugee groups, and others.<sup>5</sup>

<sup>1</sup> Wiwik Afifah, Hukum dan Konstitusi: Perlindungan Hukum Atas Diskriminasi Pada Hak Asasi Perempuan di dalam Konstitusi, *DiH Jurnal Ilmu Hukum*, 13.2 (2017), 201–216.

<sup>2</sup> Wiwik Afifah, Perlindungan Hukum Bagi Perempuan Korban Perkosaan Yang Melakukan Aborsi, *DiH: Jurnal Ilmu Hukum*, 9.18 (2013), 93-109

<sup>3</sup> Wiwik Afifah, *Op.cit*

<sup>4</sup> Andika Setyo Nugroho and Amsori, Analisa Feminisme Dalam Perspektif Hukum Studi Kasus:

Perlindungan Hukum Terhadap Perempuan Sebagai Korban Tindak Pidana Pemerkosaan Di Lingkup Hukum Polda Metro Jaya, *The Juris*, 6.2 (2022), 363–371.

<sup>5</sup> Fenita Dhea Ningrumsari, Nur Azisa, and Wiwie Heryani, Paradigma Teori Hukum Feminis Terhadap Peraturan Perlindungan Hukum Bagi Perempuan Korban Kekerasan Seksual di Indonesia, *Jurnal Ilmiah Living Law*, (2022), 103-116



Women are considered vulnerable because of their perceived physical and social disadvantages, which may render them more susceptible to violence from other groups. Consequently, it is argued that protective measures are necessary to ensure their safety. The vulnerability experienced by women contributes to an increased likelihood of crime compared to males, with the aftermath of violent crimes being more psychologically distressing for women than for men.

Sexual assault perpetrated against women can manifest in both private and public domains. Currently, instances of sexual violence are no longer limited to nocturnal hours or certain locations. Examples of sexual violence have been reported in various settings, including educational institutions, places of worship, and even involving individuals who are typically seen as reliable, such as educators and law enforcement personnel. Violence perpetrated against women constitutes a

breach of their fundamental human rights, necessitating governmental and societal intervention to establish regulatory measures and ensure protection. Sexual violence is a highly deleterious and disconcerting offense, particularly for its predominantly female victims. Rape, as a criminal act, constitutes a type of sexual assault that has severe negative consequences for women. To safeguard women's rights and ensure equitable treatment for victims of rape, the Republic of Indonesia has enacted Law No. 12 of 2022 About the Offense of Sexual Violence (hereinafter referred to as Law No. 12/2022).

The author endeavors to evaluate the criminal offense of rape, governed by the legal framework in Indonesia, to safeguard women's rights. The author uses Feminist Legal Theory as a framework to examine the legislation surrounding the crime of rape. Feminist Legal Theory prioritizes including women as primary agents in



decision-making processes and protecting women's rights in all manifestations. According to Bridgeman and Monk<sup>6</sup>, this theoretical perspective conceptualizes violence against women as a manifestation of gender-based discrimination, with women being the primary targets of such violence. Feminist Legal Theory posits that violence against women stems from gender inequality and the prevailing power dynamics favoring men within the judicial system. In addition, it underscores the significance of enacting equitable legislation of women in instances of abuse. The idea under examination also encompasses the feminist perspective on sexual violence, specifically rape, which critiques the legal approach that perpetuates harm against women. Feminist Legal Theory posits that law is inherently shaped by masculine perspectives, resulting in a

legal system established based on male reasoning.

## **B. Problem Statement**

Based on the background description above, the discussion in this research will answer the formulation of the problem statement, namely:

1. Regulation of the crime of rape
2. The crime of rape from the perspective of Feminist Legal Theory

## **C. Research Purposes**

1. To find out about the regulation of criminal acts of sexual violence against women in positive law in Indonesia and how to find out how to apply punitive sanctions to victims of rape sexual violence.
2. To know the legal protection for the crime of rape and how

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<sup>6</sup> Jo Bridgeman and Daniel Monk, *Feminist Perspectives On Child Law*, 2000.



to deal with issues of violence against women and fight for women's rights in a fair legal system with Feminist Legal Theory.

#### D. Research Methods

This research uses a normative juridical method with a conceptual approach, statutory approach, or written legal sources to analyze criminal sanctions. The author uses secondary data not collected directly from the field but through literature studies from books, journals, and articles relevant to writing studies.<sup>7</sup> The data collected apart from statutory regulations, the author refers to several books, journals, and articles related to writing research.

#### E. Results and Discussion

##### 1. The Regulation Crime of Rape

Rape, encompassing acts of sexual violence, constitutes an assault that targets

women through non-consensual sexual engagement involving the insertion of the male genitalia (penis) into the female genitalia (vagina), anus, or mouth, as well as the use of other bodily parts or objects.<sup>8</sup>

Acts of rape are often accompanied by violence and coercion, resulting in the victim experiencing dread and trauma due to the perpetrator's actions. Rape is considered deviant because of its offensive demeanor and detrimental effects on the victim, resulting in various physical and psychological challenges. The regulations about the criminal offense of rape under Indonesian positive law are stipulated in Article 285 of the old Criminal Code (Law Number 1 of 1946), hereinafter referred to as the old Criminal Code:

“Any individual who employs physical coercion or intimidates a woman into engaging in non-marital sexual intercourse is subject to the

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 2016.

<sup>8</sup> Weini Wahyuni, *Jarimah Pemerkosaan dalam Qanun Jinayat Aceh Perspektif Feminist Legal Theory*, *Jurnal Hukum UNISSULA*, (2022), 43-60



charge of rape, which has a potential imprisonment term of up to twelve years”.

According to Article 285 of the Criminal Code, criminal conduct can be classified as rape if it satisfies three distinct characteristics. *First*, the component entails acts of violence or the expression of violent intentions, which may be construed as the offender unlawfully employing significant physical force through actions such as striking, kicking, or even employing weaponry to render the victim defenseless. *The second*, component pertains to the use of coercion against women, encompassing acts of violence and the imposition of threats to compel them into engaging in sexual activities against their will. *Third*, component pertains to engaging in sexual intercourse outside the institution of marriage, involving the insertion of a man's reproductive organs into the reproductive organs of a woman who is not his legally wedded spouse.

The criminal act of rape constitutes a violation of Human Rights, which safeguards the entitlements inherent to each human. Human rights serve as protective measures that humans establish to ensure the safety and equilibrium of individuals by protecting them from other humans. The safeguarding of individual rights, particularly in instances of sexual assault, is addressed in Law Number 39 of 1999 on Human Rights (hence referred to as Law No. 39/1999). Protecting women's reproductive rights is essential to uphold human rights, as enshrined in legal frameworks. According to Law No. 39/1999, Article 49, paragraphs (2) and (3), provisions are made to ensure that women are granted certain safeguards in situations that may pose risks to their reproductive health and overall well-being. The reproductive capacity inherent to women is a distinct entitlement, safeguarded by legal provisions, and necessitates government protection. The affirmation mentioned in



Article 72 of Law Number 36 of 2009 regarding Health (hereinafter referred to as Law No. 36/2009) emphasizes the fundamental right of individuals to make autonomous decisions regarding their reproductive lives. This right encompasses the freedom to avoid discriminatory practices, acts of violence, or coercion that may result in non-compliance or violation of esteemed values aligned with religious norms.

Rape is a criminal act perpetuating male violence against females, exploiting the physical strength disparity between genders to satisfy the perpetrators' desires. The presence of women in society is intertwined with gender norms, rendering them susceptible to many forms of discrimination, including acts of violence such as rape, which can transpire in any setting. The legal framework that specifically addresses the protection of

women's human rights is outlined in Law Number 7 of 1984, which pertains to the Convention on the Elimination of All Forms of Discrimination Against Women, commonly referred to as Law No. 7/1984 or CEDAW. According to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), there is a disproportionate occurrence of violence targeting women. This violence often takes the form of sexually unpleasant acts threatening in character, resulting in physical and emotional suffering. Furthermore, it has been observed that such violence tends to undermine women's freedom.<sup>9</sup> This phenomenon refers to imbalanced dynamics between females and males, manifesting gender disparities and the emergence of societal norms and values. The commonalities observed between acts of violence and the crime of rape are as

<sup>9</sup> Siti Hediati Rahminita and others, Implementasi Konvensi Penghapusan Segala Bentuk Diskriminasi

Terhadap Perempuan (CEDAW) dan Korelasinya Terhadap Ketidaksetaraan Gender Di Cina, Jurnal Ilmu Sosial, 2017, 41-46.



follows: firstly, the targeted victim is consistently identified as a woman; secondly, both instances involve the utilization of threats and subsequent coercion against the victim; and lastly, these actions are often accompanied by various forms of physical, psychological, and sexual assault.

According to John Dirk Pasalbessy<sup>10</sup>, instances of rape are not limited to occurrences outside of marriage, but can also occur within the confines of a marital relationship. Marital rape is associated with the husband's role as the primary provider and the woman's perception as economically reliant on the husband. Marital rape refers to the act of non-consensual sexual intercourse perpetrated by a husband against his wife, disregarding the circumstances and well-being of the wife. The legislation about sexual violence within the context of domestic abuse is

governed by Law No. 23 of 2004, also known as the Elimination of Domestic Violence Act. According to Article 1, number 1 of Law no. 23/2004, acts of domestic violence are specifically targeted towards women to inflict bodily and psychological distress and suffering. These acts can be categorized as neglect inside the household and are typically executed through illegal seizure and coercion. Domestic violence can be understood as analogous to rape, with the distinction that it transpires within the confines of the household. Article 8 of Law No. 23/2004 delineates the occurrence of sexual violence, specifically rape, encompassing forced sexual intercourse inside a domestic setting and forced sexual intercourse against an individual within the family for specific objectives. The current language of the article about the individual affected by the incident remains somewhat general,

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<sup>10</sup> John Dirk Pasalbessy, Dampak Tindak Kekerasan Terhadap Perempuan dan Anak Serta Solusinya, *Jurnal Sasi*, 2010, 8-13.



specifically referring to "a person in the household," which allows for multiple interpretations. However, this particular action is governed by Article 8 of Law No. 23/2004. Marital rape is a legally banned kind of criminal sexual violence. The regulations about the criminal offense of marital rape are stipulated in Article 46 of Law No. 23/2004. This provision establishes that any individual, without exception, who engages in the act of rape as a form of sexual violence may be subject to a maximum imprisonment term of 12 years and a maximum fine of Rp 36,000,000.

Despite the existence of rules about violence against women, the issue persists. Instances of violence against women persist, encompassing both domestic and non-domestic settings.<sup>11</sup> Consequently, the government is endeavoring to institute novel legislation to enhance the

safeguarding measures for women. Law No. 12/2022 represents the most recent endeavor undertaken by the Indonesian government to extend women's legal safeguards. The legislation has novel features, encompassing an enhanced elucidation of sexual violence, safeguards for victims, and an optimized legal procedure. Law no. 12/2022 includes a range of newly established sexual assault offenses, encompassing acts of obscenity, coerced matrimony, internet sexual harassment, and notably, the violation of women through rape. Rape is a criminal offense involving sexual violence, characterized by deliberately targeting a woman's sexuality through the use of the sexual organ (penis) against the sexual organs (vagina), anus, or mouth, as well as the utilization of non-sexual bodily parts or items. Rape is considered deviant because of the manifestation of disrespectful

<sup>11</sup> Salim F.T.B Syeban, Kekerasan Presekusi Menurut Undang-Undang Nomor 39 Tahun 1999

tentang Hak Asasi Manusia, *Lex Et Societatis*, (2017), 49-57.



attitudes and infliction of detrimental consequences onto the victim, resulting in various physical and psychological challenges. Law No. 12/2022 places significant emphasis on the protection and entitlement of victims of sexual violence, namely rape, to receive comprehensive support for their physical, psychological, and economic well-being.<sup>12</sup> The legal penalties prescribed are also more severe than those outlined in the earlier legislation about Forced Marriage. Individuals who commit criminal sexual assault may face significant penalties and are obligated to give the victim restitution to restore the victim's well-being. The ratification of Law No. 12/2022 in Indonesia, which adopts a legal framework from a feminist perspective, serves as a means to establish a comprehensive legal framework for safeguarding victims of sexual abuse.<sup>13</sup>

According to Law Number 1 of 2023, which pertains to the Criminal Code (hence referred to as the New Criminal Code), it is explicitly stipulated that sexual violence encompasses acts committed against individuals other than oneself and those perpetrated against one's partner. This might be seen as a definitive enlargement of the previous iteration of the Criminal Code. The New Criminal Code's implementation ensures comprehensive protection for victims, focusing on safeguarding vulnerable groups, such as women. To prevent individuals from engaging in arbitrary actions that undermine the dignity and integrity of their partners. According to Article 473 (1) of the New Criminal Code, individuals who engage in acts of violence or employ threats of violence resulting in the victim being coerced into engaging in sexual

<sup>12</sup>Muamar Wafiuddin, Undang-UndangTindak Pidana Kekerasan Seksual Tentang Pemaksaan Perkawinan Perspektif Feminist Legal Theroy, Institut Agana Islam Negeri Ponorogo, (2022)

<sup>13</sup> Martha Albertson Fineman, and Nancy Sweet Thomadsen, *At The Boundaries of Law*, (2013)



intercourse with them may be subject to a maximum incarceration period of 12 (twelve) years. In cases where sexual assault is perpetrated against a lawful partner, legal action will be pursued upon receipt of a formal complaint from the victim.<sup>14</sup>

The health of individuals who experience sexual violence is significantly affected. According to Ni Putu Ratih Puspitasari *et.al*<sup>15</sup>, instances of sexual violence infringe upon an individual's reproductive rights, hence compromising their ability to maintain optimal reproductive health. The protection of reproductive health rights is enshrined in Article 55 of Law Number 17 of 2023 on Health (hence referred to as Law No. 17/2023). This provision ensures that every individual is entitled to the complete

freedom from violence, discrimination, or coercion that may harm their reproductive health. Law no. 17/2023 assists victims of sexual violence by providing health services and support for their rehabilitation from the traumatic experience. The prevalence of rape in society is extensive, with women consistently being the victims of this crime.<sup>16</sup> The occurrence of rape accompanied by sexual violence has detrimental effects on women, particularly concerning unplanned pregnancies. The provision outlined in Article 463 of the New Criminal Code explicitly stipulates that a woman who undergoes an abortion shall be subject to a maximum prison sentence of four years upon conviction.

## 2. The crime of rape from the perspective of Feminist Legal Theory

Law No. 12/2022 represents a significant governmental endeavor to

<sup>14</sup> Rinto Sibarani and others, *Kajian Hukum Terhadap Korban Pemerkosaan: Perspektif Hukum Di Indonesia*, *Journal.Uib.Ac.Id*, 1.1 (2021), 719–27.

<sup>15</sup> Ni Putu Ratih Puspitasari, I Made Sepud, and Ni Made Sukaryati Karma, *Tindak Pidana*

*Aborsi Akibat Perkosaan*, *Jurnal Preferensi Hukum*, (2021), 135–39.

<sup>16</sup> Freedom Bramky Johnatan Tarore, 'Pengguguran Kandungan Akibat Pemerkosaan Dalam Kuhp', *Lex Crimen*, (2013), 30–42.



safeguard women and girls against sexual violence. Law No. 12/2022 is anticipated to meet the expectations of feminist advocates by offering safeguards for women who have experienced criminal acts of sexual abuse. The legislation about women's rights is of utmost importance and demands unwavering recognition, respect, and safeguarding by all nations and governing bodies. One of the unequivocal entitlements afforded to women is the right to be treated on par with males, free from discriminatory practices. Following principles of gender equality, women must be afforded equal access to health and medical services equivalent to those provided to males. Similarly, the issue of women's rights to live without experiencing abuse, violence, and sexual assault is significant. The issue of violence against women is a significant and multifaceted phenomenon that is prevalent on a global scale, particularly within the context of Indonesia. Violence perpetrated

against women encompasses a broad spectrum of harmful actions, ranging from physical aggression to psychological and sexual forms of violence. This phenomenon significantly impacts many women and girls, encompassing their experiences within and beyond domestic settings. Sexual offenses are actions undertaken to infringe upon an individual's sexuality, driven by the perpetrator's desire to assert dominance over the victim, predicated upon factors such as age, gender, and social and economic standing. Gender-based violence encompasses sexual violence as one of its categories.

Despite the existence of rules about violence against women, the issue persists. Instances of violence against women persist, encompassing both domestic and non-domestic settings. Consequently, the government is endeavoring to implement novel regulatory measures to enhance the safeguarding of women. Law No. 12/2022 represents the most recent endeavor



undertaken by the Indonesian government to establish safeguards for women. The legislation has novel measures, encompassing an enhanced elucidation of sexual violence, safeguards for victims, and an improved legal framework. Law No. 12/2022 encompasses a range of newly established sexual violence offenses, which encompass acts of obscenity, coerced marriage, digital sexual harassment, and particularly the act of raping women. Law No. 12/2022 has been enacted to impose more severe penalties on individuals who commit acts of sexual violence. These penalties include a maximum imprisonment term of 20 years and a maximum monetary fine of 2 billion rupiah. Additionally, the law aims to safeguard the rights of sexual violence victims by offering measures such as identity protection and access to necessary

treatment and rehabilitation services. According to Teo Dentha et.al<sup>17</sup>, individuals who commit acts of criminal sexual violence may face significant penalties and are additionally obligated to give the victim restitution to facilitate the victim's recovery. The ratification of Law No. 12/2022 in Indonesia, which adopts a legal framework from a women's perspective, establishes a comprehensive legal framework for safeguarding victims of sexual abuse.

Feminist Legal Theory is a legal framework that adopts a gendered viewpoint within legal studies. It seeks to promote gender equality and offers a critical analysis of various manifestations of discrimination against women inside the legal system.<sup>18</sup> Curzon argues that under the framework of feminist jurisprudence, women are entitled to exercise autonomy

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<sup>17</sup> Teo Dentha and others, Tindak Pidana Pemerkosaan dalam Perspektif Perlindungan Hukum Perempuan, Jurnal Interpretasi Hukum, (2020), 191-196.

<sup>18</sup> Susan James and Stephanie Palmer, *Visible Women: Essays on Feminist Legal Theory and Political Philosophy* Hart Pub, (2002).



over their bodies and resist external control, particularly within a male-dominated patriarchy.<sup>19</sup> Feminist Legal Theory originated as a response to the inequities women face within the legal system, leading to endeavors to support women in legal proceedings and advocate for legal reform. As per the Oxford Law Dictionary, feminist legal theory is “a broad movement that seeks to show how conventional legal theory, far from being gender-blind, ignores the position and perspective of women. Feminist writers examine the inequalities found in criminal law (especially in rape and domestic violence), family law, contract, tort, property, and other branches of substantive law, including aspects of public law.

In the Feminist Legal Theory perspective, the crime of rape is seen as part of a system involving gender inequality and

unequal power between men and women.

About law, feminist studies itself was born to fight for justice for oppressed women, and legal studies should not only apply the principle of certainty but also the principle of justice.<sup>20</sup> Feminist Legal Theory views that the crime of rape is not only an individual problem but also a structural problem related to gender discrimination and patriarchal culture that still exists in society. According to Feminist Legal Theory, the crime of rape is seen as a form of human rights violation and gender violence that must be eradicated and must be seen in a social and cultural context that strengthens gender discrimination and patriarchal culture, so that handling the crime of rape must involve efforts to change the existing social and cultural structure. Feminist Legal Theory encourages changes in the legal system that

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<sup>19</sup> Janice Richardson and Ralph Sandland, *Feminist Perspectives on Law & Theory*, Cavendish Publishing,(2000).

<sup>20</sup> Fenita Dhea Ningrumsari, 2021, ‘Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Seksual (Suatu Kajian Feminist Legal Theory)’, Universitas Hasanididn Makassar.



is more sensitive to women as victims of violence. In this case, the responsible party must ensure that women can access justice, obtain protection, and receive fair compensation. Several efforts can be made to deal with cases of violence against women raised by Feminist Legal Theory, such as increasing public and public officials' awareness of violence against women. Feminist Legal Theory is an important perspective in dealing with violence against women. It emphasizes the important role of decision-making that involves women as victims of sexual violence and fighting for their rights to obtain justice and protection in the legal system.<sup>21</sup>

The ratification of Law No. 12/2022 has been regarded as a significant step towards meeting the objectives of feminist advocates, as it encompasses a comprehensive range of measures to

prevent and address various forms of sexual violence. These measures include provisions for handling, protecting, and supporting victims, implementing law enforcement strategies, and rehabilitating perpetrators. Notably, the specific offense of rape is addressed in Article 4 of Law No. 12/2022. However, it is worth noting that the legislation does not explicitly outline the penalties for offenders, as these details are outlined in the forthcoming New Criminal Code. Comparatively, the regulation of rape in the New Criminal Code is considered an improvement over the provisions outlined in the previous Old Criminal Code. In the Old Criminal Code, rape was addressed in Article 285, whereas in the New Criminal Code, it is incorporated within the section about crimes against the body, specifically in Article 473. It is important to mention that the New Criminal Code will take effect in

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<sup>21</sup> Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*, Oneworld Publications, (2006).



2026. Until then, cases involving acts of sexual violence will continue to be governed by the provisions of the Old Criminal Code.

## F. Conclusion

Violence against women is a pervasive global issue, including within the context of Indonesia. The fundamental principles of gender equality, the right to health, and the right to live free from violence are enshrined in legal regulations. Indonesian legislation, Law No. 12/2022, safeguards women from sexual violence.

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This legal framework represents a significant stride in protecting women's rights, particularly in cases of rape. By drawing upon feminist legal theory, this law contributes positively to eradicating gender-based violence and the pursuit of justice for victims of rape. Feminist Legal Theory underscores the significance of gender equality, critiques discriminatory practices within the legal system, and recognizes rape as a consequence of gender inequity.

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