

CORPORATE CRIMINAL LIABILITY IN CASES OF SEXUAL VIOLENCE (A COMPARATIVE STUDY OF LAW NUMBER 12 OF 2022 ON CRIMINAL ACTS OF SEXUAL VIOLENCE AND ISLAMIC CRIMINAL LAW)

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Abstract: *This research examines corporate criminal liability in cases of sexual violence through a comparative study between Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and Islamic Criminal Law. The increasing cases of sexual violence involving corporations as perpetrators or facilitators necessitate a comprehensive legal framework to ensure accountability. This study aims to analyze the concept of corporate criminal liability in sexual violence cases under Indonesian positive law, particularly Law Number 12 of 2022, and compare it with the principles of criminal liability in Islamic Criminal Law. The research employs normative legal research methods with statutory, comparative, and conceptual approaches. The findings reveal that Law Number 12 of 2022 recognizes corporations as legal subjects that can be held criminally liable for sexual violence, implementing the principle of vicarious liability and corporate culture as basis for accountability. Meanwhile, Islamic Criminal Law does not explicitly recognize corporations as criminal subjects, focusing instead on individual accountability based on the principle of personal responsibility. However, Islamic legal concepts such as ta'zir punishment and the principle of preventing harm (sadd al-dzari'ah) provide alternative mechanisms for addressing corporate involvement in sexual violence. This research concludes that while both legal systems differ in their approach to corporate liability, integrating principles from Islamic Criminal Law could strengthen the enforcement of Law Number 12 of 2022, particularly in developing preventive measures and restorative justice mechanisms in cases of corporate-related sexual violence.*

Keywords: *Corporate Criminal Liability, Sexual Violence, Law Number 12 of 2022, Islamic Criminal Law, Comparative Study*

Introduction

Sexual violence is a growing human rights violation in Indonesia, happening in homes, schools, and workplaces with businesses. This phenomenon not only causes physical and psychological suffering for the victims but also threatens the social and moral stability of society (Khumaeroh et al., 2025). In Indonesia, sexual violence often involves power dynamics, including in corporate contexts where perpetrators may act on behalf of or within the scope of the company, thus requiring corporate criminal liability to ensure justice. According to research, the main problem in law enforcement is the limited application of corporate criminal liability in Indonesia, particularly in cases of sexual violence (Rudi Anto Silalahi et al., 2025).

Law Number 12 of 2022 concerning Sexual Violence Crimes (TPKS Law) was enacted in response to the urgency of handling such cases, comprehensively regulating everything from definitions, classifications, procedures, and victim rights to victim-centered restorative justice approaches. This law consists of 12 chapters and 93 articles that comprehensively regulate

sexual violence crimes (Khumaeroh et al., 2025). This victim-centered orientation represents a shift toward restorative justice. However, in the context of corporate criminal liability, the TPKS Law still needs to be studied more deeply, especially regarding its implementation for business entities that may be involved in cases of sexual violence, such as workplace harassment. On the other hand, Islamic criminal law considers sexual violence a serious offense that violates the *maqāṣid al-sharī'ah*, particularly the protection of honor (*ḥifẓ al-'ird*) and life (*ḥifẓ al-nafs*). In Islamic criminal law, sexual violence is classified as a severe *ta'zir* crime, with penalties that can be increased according to the level of social and moral damage caused (Z. H. Ramadhani et al., 2025). The measure of criminal responsibility is determined by reason (*'aql*) and moral awareness (*ahliyyah al-adā*), not physical condition, so the perpetrator remains responsible as long as they are of sound mind (Z. H. Ramadhani et al., 2025). Islamic law defines sexual violence as a serious offense that can be subject to severe punishment, including the death penalty, regardless of the victim's age (Unida, 2025). This approach aligns with the concept of *maqāṣid al-sharī'ah*, which emphasizes the prevention and handling of sexual violence to guarantee religion, life, offspring, honor, and intellect (Syafaq et al., 2025).

A comparative study between the TPKS Law and Islamic criminal law is needed because Indonesia, as a country with a Muslim majority, often integrates Islamic values into criminal law reform. Corporate criminal liability in Indonesia has been recognized outside the Criminal Code through various special laws since 1951, which raises issues in determining the *actus reus* and *mens rea* for corporations (Maradona, 2018). This approach differs from systems like the Netherlands, which integrated it into the main criminal code in 1976 (Maradona, 2018). Therefore, this study aims to analyze this comparison to provide recommendations for more effective legal reform.

2. Problem Formulation

Based on the background above, the problem statement in this research is:

1. How is corporate criminal liability regulated in Law Number 12 of 2022 concerning Sexual Violence Crimes?
2. What is the perspective of Islamic criminal law on corporate criminal liability in cases of sexual violence?
3. What are the recommendations from the comparative study between the two legal systems to improve law enforcement in Indonesia?

3. Research Objectives

The objectives of this research are:

1. To analyze the regulation of corporate criminal liability in the 2022 TPKS Law.
2. To examine the Islamic criminal law perspective on criminal liability in cases of sexual violence, including the concepts of *ta'zir* and *maqāṣid al-sharī'ah*.
3. To provide recommendations for legal reform through a comparative approach to strengthen victim protection and the enforcement of justice.

4. Benefits of the Research

This research is expected to provide theoretical benefits by enriching the literature on comparative criminal law in Indonesia, as well as practical benefits for policymakers, law enforcement agencies, and corporations in preventing and addressing sexual violence. Additionally, the research findings can serve as material for seminars and scientific publications to raise public awareness.

Literature Review

This literature review presents a review of literature relevant to the theme of corporate criminal liability in cases of sexual violence, with a focus on a comparative study between Law Number 12 of 2022 concerning Sexual Violence Crimes (TPKS Law) and Islamic criminal law. This review builds upon the problem background outlined in the introduction, where sexual violence was identified as a serious threat often involving corporate entities, thus necessitating an in-depth analysis of existing regulations and legal perspectives.

1. The Concept of Sexual Violence in Indonesian

Positive Law Sexual violence is defined as any form of act that degrades, humiliates, harasses, or attacks a person's body and/or reproductive function, which is against the victim's will and causes physical, psychological, sexual, economic, or social suffering. This definition encompasses various forms, from non-physical harassment to physical coercion, and has been comprehensively regulated in Law No. 12 of 2022 on Sexual Violence Crimes (TPKS). The TPKS Law consists of 12 chapters and 93 articles that comprehensively regulate the prevention, handling, and recovery of sexual violence victims, with an emphasis on a victim-centered approach (Khumaeroh et al., 2025). Research shows that this regulation is a milestone in criminal law reform in Indonesia, as sexual violence was previously often not specifically addressed in the Criminal Code (KUHP), creating a gap in law enforcement (Sigit Kamseno & Agam Sakti Hidayat, 2024a). Additionally, the TPKS Law recognizes electronic sexual violence, which is increasingly relevant in the digital age, although its implementation still faces challenges in proof (Goldman, 2023).

2. Corporate Criminal Liability in the Context of Sexual Violence

Corporate criminal liability refers to the legal ability to hold business entities criminally responsible, where the actions of individual perpetrators can be attributed to the corporation if they are carried out within the scope of their duties or for the benefit of the company. In Indonesia, this concept has been recognized since 1951 through special laws outside the Criminal Code, but it was only in the new Criminal Code (Law Number 1 of 2023) that corporations were explicitly recognized as criminal subjects (Paramita et al., 2025). In the context of sexual violence, corporations can be sanctioned if involved, such as in cases of workplace harassment, with a minimum fine of Rp5,000,000,000, revocation of business license, or asset seizure. Analysis shows that this accountability includes the corporation's *actus reus* and *mens rea*, which are often difficult to prove due to the non-physical nature of corporations, thus requiring a reformulation of the boundary criteria as stipulated in Supreme Court Regulation Number 13 of 2016 (Aripkah, 2020). Further research emphasizes that corporations, including social media platforms, must be held accountable for electronic sexual violence, although the formulation of norms in the TPKS Law and the ITE Law is still unclear (Faraswati & Sofian, 2025). This approach aligns with developments in international law, where corporations are considered responsible for preventing and addressing sexual violence within their environments (Rudi Anto Silalahi et al., 2025).

3. Islamic Criminal Law Perspective on Sexual Violence and Criminal Liability

In Islamic criminal law, sexual violence is categorized as a *hudud* or *ta'zir* crime, depending on its form. For example, rape (*zina bi al-ikrah*) is considered a *hudud* offense with severe penalties such as stoning or flogging, while non-physical harassment falls under *ta'zir*, with penalties determined by the *qadi* based on *maqāṣid al-sharī'ah*, which are the protection of life, honor, and offspring (Z. H. Ramadhani et al., 2025). The extent of criminal liability in Islam is

determined by common sense and moral awareness (ahliyyah al-wujub wa al-ada'), so a person with a physical disability remains responsible if they have a sound mind. Regarding corporations, Islamic law does not explicitly regulate business entities as criminal subjects, but the principle of collective responsibility (fard kifayah) can be applied, where the leader or owner of the corporation is responsible for actions that harm society, including sexual violence (Mellen et al., 2025). Research indicates that the Islamic perspective emphasizes prevention through moral education and instructive sanctions, contrasting with a purely retributive approach (Kalsum et al., 2024). Additionally, the concept of diyat, or compensation for victims, aligns with restitution in the TPKS Law, although Islam emphasizes substantive justice over procedural justice (Haniyah et al., 2025a).

4. Comparative Study between the TPKS Law and Islamic Criminal Law

The comparative study reveals similarities and differences between the TPKS Law and Islamic criminal law. Both systems emphasize victim protection and the prevention of sexual violence, with the TPKS Law adopting a restorative justice approach similar to the flexible ta'zir in Islam (Muthahir et al., 2024). However, the difference lies in the sanctions: the TPKS Law is more oriented toward imprisonment and fines, while Islam applies stricter hudud for serious cases, without differentiating by the victim's age or status (Kalsum et al., 2024). In the corporate context, the TPKS Law explicitly regulates corporate liability, while Islamic law relies on the principle of individual responsibility of corporate leaders, which can be integrated for legal reform in Indonesia (Rohali, 2025). Comparative research also highlights that integrating Islamic values into the TPKS Law can strengthen moral prevention aspects, such as in cases of non-physical sexual violence, which are often overlooked in positive law (Haniyah et al., 2025b). Overall, this comparison provides a basis for recommendations for more inclusive reforms, combining the strengths of both systems to address sexual violence involving corporations (Sigit Kamseno & Agam Sakti Hidayat, 2024b).

Method

This research is designed to deeply analyze corporate criminal liability through a comparative approach; thus, the method used must ensure a systematic, objective, and data-driven analysis based on valid legal data.

1. Research Type

This research is normative legal research, which focuses on analyzing applicable legal norms without directly collecting empirical data from the field. This type of research is suitable for a comparative study between Indonesian positive law and Islamic criminal law, as it emphasizes the interpretation of legal texts and doctrines. Normative legal research is often used in criminal law studies to analyze corporate liability in cases of sexual violence, where the primary data comes from legislation and legal literature. This approach allows for an in-depth exploration of legal implications without empirical bias, which aligns with the research objective of providing reform recommendations.

2. Research Approach

The approach used is a legislative (statute approach), conceptual, and comparative approach. The legislative approach focuses on analyzing Law Number 12 of 2022 concerning Sexual Violence Crimes and related regulations on corporate liability outside the Criminal Code (Sigit Kamseno & Agam Sakti Hidayat, 2024b). The conceptual approach involves studying concepts such as maqāṣid al-sharī'ah in Islamic criminal law, while the comparative approach compares

the two legal systems to identify similarities, differences, and potential integration. This combined approach has proven effective in criminal law research addressing electronic or corporate sexual violence, as it allows for a comprehensive descriptive-normative analysis. This approach also supports the analysis of maqasid syariah in the context of criminal sanctions, as applied in the study of the Islamic perspective on the TPKS Law.

3. Data Sources

The data sources in this study consist of primary and secondary data. Primary data includes major legal texts, such as the 2022 TPKS Law, the new Criminal Code (KUHP), as well as primary Islamic legal sources like the Quran, Hadith, and scholars' *ijtihad* on *ta'zir* and *hudud* crimes. Secondary data was obtained from legal literature, including academic journals, books, and court decisions related to cases of sexual violence involving corporations.

The use of this secondary data aligns with the normative legal method, where literature review serves as the primary basis for analysis. Data Collection Techniques Data collection was carried out thru library research, which involves the systematic collection and review of legal documents, journal articles, and reference books. Additionally, the legal document analysis was conducted by comparing the text of the TPKS Law with the principles of Islamic criminal law, including the concept of collective responsibility in Islam. This technique is effective for normative research because it allows for the collection of accurate data without subjective intervention. Data Analysis Techniques Data analysis uses descriptive-analytic and comparative methods. The descriptive-analytic method details the regulations in the TPKS Law and Islamic criminal law, followed by a critical analysis of the implications of corporate criminal liability.

The comparative approach compares elements such as sanctions, *actus reus*, and *mens rea* between the two systems, using deduction to draw conclusions about reform recommendations. This analysis also integrates the restorative justice perspective from the TPKS Law with the maqasid syariah, to produce a holistic synthesis. Overall, these techniques ensure that the research results contribute to the development of criminal law science in Indonesia, as expected from this type of comparative study.

Result and Discussion

1. Corporate Criminal Liability in Law Number 12 of 2022 concerning Sexual Violence Crimes

The analysis results show that the TPKS Law explicitly recognizes corporations as subjects of criminal law in cases of sexual violence, as regulated in Article 18, which states that corporations can be held criminally liable if the crime is committed by their personnel within the scope of their duties or for the benefit of the corporation (UU RI No.12 Thn 2022, 2022). Sanctions for corporations include a minimum fine of Rp5,000,000,000 to Rp15,000,000,000, revocation of business licenses, asset seizure, or dissolution of the corporation, aimed at preventing sexual violence in work or business environments, such as harassment by superiors or colleagues.

In the context of electronic sexual violence (ESV), corporations such as social media platforms can also be held accountable if they fail to prevent or remove content that facilitates such violence, although the formulation of norms still requires further interpretation for proving the *actus reus* and *mens rea* (Fachri, 2024). This analysis confirms that the TPKS Law represents an advancement in Indonesia's criminal law reform, where corporate accountability is no longer limited to special laws outside the Criminal Code but is integrated with a victim-centered approach through restitution and restorative justice.

Analytically, the strength of this regulation lies in recognizing corporations as independent criminal subjects, which allows for the attribution of collective responsibility without having to rely entirely on evidence of individual wrongdoing. However, its weakness is the reliance on evidence that the action was taken "in the best interests of the corporation," which is often difficult to prove in practice, especially in large companies with complex hierarchical structures. The practical implication is increased corporate awareness of implementing anti-harassment policies, such as training and internal reporting mechanisms, as recommended by an ILO survey that found that 70.93% of Indonesian workers have experienced violence in the workplace. Implementation challenges are evident in conflicts with the ITE Law, where KSBE cases are often processed under the ITE Law rather than the TPKS Law, thus ignoring corporate accountability and victim rights (Fachri, 2024). A real-life case illustrating the potential application is the alleged sexual harassment case in public school environments in South Tangerang in 2026, where the perpetrator (a teacher) was charged under Article 6 of the TPKS Law in conjunction with the Criminal Code, with a potential sentence of 12 years in prison (Rafni & Movanita, 2026).

Although not a private corporation, this case demonstrates how institutional entities (such as public schools) can be analogized as "corporations" in a broad sense, where a failure of oversight by institutional leadership can trigger collective lawsuits. This case highlights the low reporting (only 25 victims were initially identified), reflecting social stigma and weaknesses in the implementation of the TPKS Law at the local level (UU RI No.12 Thn 2022, 2022). In-depth analysis shows that without strict corporate oversight mechanisms, such as internal audits based on the TPKS Law, similar cases will continue to recur, resulting in economic losses for victims and a social burden for society.

2. The Perspective of Islamic Criminal Law on Corporate Criminal Liability in Cases of Sexual Violence

From the perspective of Islamic criminal law, sexual violence by corporations is classified as a serious crime that violates the *maqāṣid al-sharī'ah*, particularly the protection of honor (*ḥifẓ al-'ird*) and life (*ḥifẓ al-nafs*), and can be categorized as *zina bi al-ikrah* (rape) or *jarīmah ta'zīr syadīdah* (severe ta'zir) (Z. Ramadhani et al., 2025). Although Islamic law does not directly regulate corporations as independent criminal subjects, the principles of collective responsibility (*fard kifayah*) and *ahliyyah al-adā* (capacity to be responsible) can be applied to the leaders or owners of corporations, where the actions of personnel are attributed to the entity as a whole if they are performed in the interest of the business (Lowe, 2022). Sanctions in Islam include *hudud*, such as stoning for serious cases, or *ta'zir*, which involves fines and compensation (*diyat*) for victims. These sanctions are intended not only to be retributive but also restorative, aiming to restore the victim's honor regardless of age or status. This result emphasizes that the Islamic approach is more flexible in determining sanctions by the *qadi*, unlike positive regulations, which are more procedural, but both are aligned in their emphasis on moral prevention and substantive justice. In-depth analysis reveals the strength of the Islamic perspective in the aspect of prevention, where the concept of *maqāṣid al-sharī'ah* allows for the adaptation of sanctions according to social context, including progressive fines for collective entities to prevent moral corruption (*fasad fi al-ardh*). Its weakness is the lack of explicit regulation for modern corporations, which leads to reliance on the *ijtihad* of scholars, potentially causing inconsistencies in application. The practical implication is the potential for integration with positive law to strengthen restorative justice, such as *diyat*, which is similar to restitution. However, challenges arise in the secular context of Indonesia, where *hudud* is not applied.

A real-world example is the case of sexual violence by the Islamic State (ISIS) against Yazidi and Muslim women in Iraq and Syria from 2014 to 2017, where ISIS systematically committed rape as a tactic of terror, which is classified as a war crime and a crime against humanity from an international legal perspective, in line with Islamic criminal law (Oosterveld & Dotson, 2023). In the case of Al-Hassan at the ICC (2018-2025), the leader of Ansar Dine/AQIM was tried on charges of rape, sexual slavery, and gender persecution based on an extreme interpretation of Sharia, where collective responsibility was attributed to the group as a "corporate entity" in a broad sense (Sadat, 2025). This case analysis reveals a failure of moral prevention within radical groups, where ta'zir or hudud sanctions in Islam could be applied to restore victims. However, the ICC's decision to acquit on some SGBV charges highlights the difficulty of attributing collective responsibility, similar to the challenges in the TPKS Law (Powell, 2017). Another case in Malaysia in 2024, where 22 members of the Islamic business group (Global Ikhwan Services and Business Holdings) were charged with sexual violence against children and organized crime, illustrates the application of the principle of collective responsibility in the modern Islamic context, where company leaders are held accountable for the actions of their subordinates.

3. Comparative Study and Recommendations for Legal Reform

A comparative study between the TPKS Law and Islamic criminal law reveals similarities in recognizing sexual violence as a serious offense, with both emphasizing victim protection through restitution (similar to diyat in Islam) and prevention, as well as the accountability of collective entities such as corporations (Rudi Anto Silalahi et al., 2025). However, the differences are significant: the TPKS Law explicitly regulates corporations with financial and administrative sanctions, while Islamic law relies on the principle of individual leader responsibility with stricter sanctions such as hudud or ta'zir, which can be increased based on social impact (Turan, 2025). This discussion highlights that integrating Islamic values into the TPKS Law can strengthen moral prevention aspects, such as maqāṣid al-sharī'ah-based education, to address gaps in law enforcement against corporations in Indonesia, where the interpretation of articles often leads to uncertainty and low case reporting.

In-depth analysis shows that this hybrid approach can reduce inconsistencies, such as in the case of KSBE, where the ITE Law often dominates, thus neglecting the maqasid of protecting honor. Recommendations from this analysis include revising the TPKS Law to clarify the criteria for corporate accountability, including strengthening ta'zir-inspired sanctions such as progressive fines based on the scale of damage, and establishing a corporate oversight mechanism that integrates Islamic principles for Muslim-majority countries like Indonesia. For completeness, the recommendations are expanded to include a proposal for the establishment of a special body for Sharia-based corporate audits, which can detect potential early sexual violence, as well as training for judges in integrating the maqasid al-Sharia into their decisions, in order to overcome the stigma faced by victims, as in the cases of ISIS or Malaysia (Oosterveld & Dotson, 2023). This is expected to improve the effectiveness of law enforcement, as discussed in the literature review, and contribute to practical benefits for policymakers and society.

Conclusion

The main findings from the legal-normative and comparative analysis of corporate criminal liability in cases of sexual violence, which address the research problem and objectives to contribute to more effective legal reform in Indonesia. This conclusion summarizes the regulations in Law Number 12 of 2022 concerning Sexual Violence Crimes (Law TPKS), Islamic criminal law perspectives, and the implications of comparative studies, with an emphasis on strengthening victim protection and prevention through an integrative approach.

First, corporate criminal liability in the TPKS Law is explicitly regulated in Article 18, where corporations can be held liable if sexual violence is committed by their personnel within the scope of their duties or for the benefit of the corporation, with sanctions including a minimum fine of Rp5,000,000,000, revocation of business license, asset seizure, or dissolution. This regulation marks progress in Indonesian criminal law, as it integrates corporations as independent criminal subjects, although it still faces challenges in proving *actus reus* and *mens rea*, especially in cases of electronic sexual violence. A victim-centered approach through restitution and restorative justice strengthens protection but requires revision to address uncertainty in the interpretation of the article.

Second, the Islamic criminal law perspective on corporate criminal liability in cases of sexual violence classifies such actions as *zina bi al-ikrah* or *jarīmah ta'zīr syadīdah*, which violates the *maqāsid al-sharī'ah*, such as *ḥifẓ al-'ird* and *ḥifẓ al-nafs*. Although it doesn't directly regulate corporations, the principles of collective responsibility (*fard kifayah*) and *ahliyyah al-adā* allow for the attribution of responsibility to the leader or owner of the corporation, with *hudud* sanctions such as stoning for serious cases or *ta'zir* in the form of fines and *diyat* for victim restoration. This approach places more emphasis on moral prevention and substantive justice, which is flexible through the *qadi's ijtihad* but requires adaptation in a secular context to avoid inconsistencies.

Third, a comparative study between the TPKS Law and Islamic criminal law shows similarities in emphasizing victim protection and prevention, such as restitution being similar to *diyat* and the recognition of collective responsibility. However, the difference lies in the sanctions: the TPKS Law is more administrative and financial, while Islamic law is stricter with moral-based retributive and restorative elements. Legal reform recommendations include integrating Islamic values into the TPKS Law, such as strengthening *ta'zir*-inspired sanctions and establishing a corporate oversight mechanism based on *maqāsid al-sharī'ah*, as well as revising the law to address normative gaps such as conditional consent and obstruction of justice. Additionally, the establishment of a sharia corporate audit body and training for judges are necessary to improve law enforcement, especially in real-world cases such as harassment in educational institutions or businesses involving power dynamics.

Overall, this research provides theoretical benefits by enriching comparative criminal law literature and practical benefits for law enforcement, policymakers, and corporations in preventing sexual violence. The integration of positive law and Islam can create a more holistic legal system in Indonesia, a majority-Muslim country, to ensure justice for victims and effective accountability for perpetrators, including corporations.

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