

**Call for Submissions to the UN SRVaW Thematic Report
on Rape as A Grave and Systematic Human Rights Violation and
Gender-Based Violence against Women**

No	Question
1	<p data-bbox="268 286 1396 320">Definition and scope of criminal law provisions</p> <p data-bbox="268 320 1396 454">Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.</p> <p data-bbox="268 499 1396 667">Changes to the regulations on rape are still part of a long struggle of women’s movement in Indonesia, especially after the recommendation of the United Nations Special Rapporteur on Violence against Women released based on her findings during her mission to Indonesia and East Timor (1998). The hope of law improving through amendment of the Criminal Code (RKUHP) and the Bill on the Elimination of Sexual Violence (RUU PKS) is yet to be realized.</p> <p data-bbox="268 678 1396 768">Rape is regulated into several laws, mostly is referred to the Law on Criminal Code, which is archaic, legacy from the Dutch Colonial Government. In the Art. 285 of Criminal Code, rape is regulated as follows:</p> <p data-bbox="363 779 1348 880"><i>“Any person who by using force or threat of force coerces a woman to have sexual intercourse with him out of marriage, shall be punished for rape with a maximum imprisonment of twelve years.”</i></p> <p data-bbox="268 891 1396 992">This definition of rape in Article 285 has 4 main elements, namely: a) against women; b) outside of marriage; c) by force or threat of force; d) intercourse. Under these elements can be interpreted that:</p> <ol data-bbox="316 1003 1396 1305" style="list-style-type: none"> a) Coercion of intercourse against a man is not considered rape; b) Coercion of intercourse against a woman inside marriage is not considered rape; which was later corrected in Law no. 23/2004 on the Elimination of Domestic Violence (Anti DV Law), c) Evidence of rape needs to show presence of force or threats of force. This is evidenced for example by the presence of injuries, or by asking the victim about threats or actions of the perpetrator and how the victim responded, whether there was shouting, asking for help, or fighting against perpetrator. The victim's response would be considered as indication of consent or coercion. <p data-bbox="268 1317 1396 1552">In practice, sexual intercourse is interpreted as an event of forced penetration of the penis into the vagina until it releases semen. Forced sexual intercourse that does not meet these elements (penetration of the penis into the vagina and the secretion of semen), for example forced masturbation, oral sex, anal sex, and the use of other tools besides the penis into the vagina or anus, or penetration of the penis into the vagina but not releasing semen, will be included in what is called obscene acts as regulated in article 289 of the Criminal Code as follows:</p> <p data-bbox="363 1563 1396 1664"><i>“Any person who by using force or threat of force coerces someone to commit or tolerate obscene acts, shall, being guilty of factual assault of the chastity, be punished by a maximum imprisonment of nine years.”</i></p> <p data-bbox="268 1709 1396 1776">Limited definitions of rape in Criminal Code are applied by other regulations concerning rape, namely:</p> <ul data-bbox="316 1787 1396 1921" style="list-style-type: none"> • rape based on racial and ethnic discrimination as stipulated in Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination, • rape as part of a crime against humanity which is a gross violation of human rights, as regulated in Law No. 26/2000 on Human Rights Courts. <p data-bbox="268 1966 1396 2022">Implicitly, regulations on rape are also contained in the prohibition of sexual violence as stipulated in:</p>

	<ul style="list-style-type: none"> • Rape in domestic context, including marital rape, regulated in regulated in Law No. 23/2004 on the Elimination of Domestic Violence. In this law, the word “rape” is not explicitly stated, instead it applies “sexual violence”, which is defined as any act in the form of forced sexual relations, forcing sexual relations in an inappropriate and/or unwelcome manner, forcing sexual relations with other people for commercial purposes and/or other specific purposes, • Law No. 23/2002 which was later amended through Law No. 35/2014 and on Law No. 17 Year 2016 on Child Protection (later mentioned as Child Protection Law), • Law No. 21/2007 on the Eradication of Trafficking in Persons, • Law No. 8/2016 on Persons with Disabilities.
2	<p>Based on the wording of those provisions, is the provided definition of rape:</p> <p>a. Gender specific, covering women only YES/NO</p> <p>b. Gender neutral, covering all persons YES/NO</p> <p>c. Based on the lack of consent of victim YES/ NO</p> <p>d. Based on the use of force or threat YES/ NO</p> <p>e. Some combination of the above. YES / NO</p> <p>f. Does it cover only vaginal rape? YES /NO</p> <p>g. Does it cover all forms of penetration? YES/NO. If yes, please specify.</p> <p>h. Is marital rape in this provision explicitly included? YES / NO</p> <p>Rape definition in the Indonesian Criminal Code exclude marital rape. However, under the Elimination of Domestic Violence Law, marital rape is prohibited.</p> <p>i. Is the law silent on marital rape? YES/NO</p> <p>Marital rape is regulated according to Art.5 Law No. 23/2004 on the Elimination of Domestic Violence.</p> <p>Art.5 of Anti Domestic Violence Law regulates as follows:</p> <p style="padding-left: 40px;">Anyone shall be prohibited to carry out violence in household against an individual within the scope of the household, be means of:</p> <p style="padding-left: 40px;">a. physical violence;</p> <p style="padding-left: 40px;">b. psychic violence;</p> <p style="padding-left: 40px;">c. sexual violence; or</p> <p style="padding-left: 40px;">d. negligence of household.</p> <p>j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO</p> <p>Marital rape is prohibited explicitly in Law No. 23/2004 on the Elimination of Domestic Violence.</p> <p>k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO</p> <p>Marital rape is a crime according to Law No. 23/2004 on the Elimination of Domestic Violence.</p>
3	<p>Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.</p> <p>Essentially, the Criminal Code regulations on rape emphasize the act of coercion of sexual relations against a woman who is not in a marriage relationship with the perpetrator.</p> <p>Moreover, according to Criminal Code Article 288:</p> <p style="padding-left: 40px;"><i>“(1) Any person who in marriage has sexual intercourse outside wedlock with a woman of whom he knows or reasonable should presume that she is not yet marriageable,</i></p>

shall, if the act results in bodily harm, be punished by a maximum imprisonment of four years. (2) If the act results in serious physical injury a maximum imprisonment of eight years shall be imposed. (3) If the act results in death, a maximum imprisonment of twelve years shall be imposed."

In the development of law, the prohibition on coercion of sexual relations within marriage is regulated in the Anti Domestic Violence Law, Art.8. However, the art does not use terminology of 'rape in marriage/marital rape' or it is not stated explicitly but implicitly contained in the explanation of the prohibition against "sexual violence".

Art. 8 of Anti Domestic Violence Law regulates as follow:

The sexual violence referred to in Article 5 letter c shall include:

- a. forcing sexual intercourse carried out against an individual living within the scope of the household;
- b. forcing sexual intercourse against one of the individuals within the scope of the household for commercial purpose and/or a certain purpose.

This article mentions that all victim of sexual violence refers to all people who live in the household, both for those having a blood relationship or not, such as a domestic worker.

The Criminal Code also does not exclude the criminalization of rape by perpetrators and victims who live together and have sexual relations or have had sexual relations.

However, in practice, for rape victims who are teenagers, over 15 years old and still under the age of 18 years old (the age limit of children), it will be exceedingly difficult to go to court when the case is perpetrated by someone who has had sexual relations with the victim, both in conditions of living together or not. Except, if there is evidence of physical violence since definition of rape includes threats of violence and elements of violence. In cases with these kinds of personal relationships, it is often assumed that consent has been automatically given, and the event that is alleged to be rape is therefore considered a "consensual/mutual" relationship. In addition, adolescents and above are considered to already have the ability to refuse, the ability to seek help and the ability to fight against the violence or threat of violence they face, so the violence or threat of violence they experience must be physically proven.

Based on data from Komnas Perempuan's Annual Notes (CATAHU), in the last 3 (three) years it has consistently been recorded that the most reported perpetrators of sexual violence in the personal sphere are partners. And based on 2019 CATAHU data, the most reported types of sexual violence in the personal sphere are rape, (unwanted) sexual intercourse, and obscenity.

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What is the legal age for sexual consent?

Legal regulations in Indonesia open multiple interpretations of formal regulations for the minimum age for sexual consent.

- The Criminal Code prohibits obscene act with a person under the age of 15 years or at least considered not old enough to be married will be subject to criminal punishment for 7 (seven) years.

Article 290

"By a maximum imprisonment of seven years shall be punished:

(2) any person who commits obscene acts with someone who he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from her age, not yet marriageable;

	<p><i>(3) any person who seduces someone whom he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from the age, is not yet marriageable, to commit or tolerate obscene acts or to have sexual intercourse out of marriage with a third party.”</i></p> <ul style="list-style-type: none"> • The Child Protection Law states that the age limit of children is 18 years. Thus, this reference is higher than the age limit set by the Criminal Code. This law criminalizes all sexual acts committed by adults against children, regardless the consent of the child. <ul style="list-style-type: none"> ○ Since the Child Protection Law was enacted, there are still law enforcement officers who use the Criminal Code on cases involving adolescents over 15 years old but under 18 years old. The reason used is often because they are viewed to already have the ability to refuse, fight and ask for help when they face violence or threats of violence, so they are no longer considered as children. ○ In practice, marital status will affect the age status of children. If they are already married, regardless of age, they will be considered as adults. • Law No. 16/2019 on Amendments to Law No. 1/1974 on Marriage states in article 7 that marriage is permitted if men and women have reached the age of 19 years. This means that an agreement to be able to have legal sexual relations through marriage is at the age of 19 years. Regarding this regulation, there is still a gap through marriage dispensation, which is given to brides who are not yet 19 years old who want to get married due to various conditions.
5	<p>Are there provisions that differentiate for sexual activity between peers? If so, please provide them.</p> <p>No, but in practice it is often treated differently, especially in cases involving children as victims as well as perpetrators of rape.</p> <p>In Indonesia, according to the Child Protection Law and the Child Criminal Justice System Law, whenever the perpetrator is a minor, diversion is required on condition that the criminal act is punishable by imprisonment of under 7 years and/or not a repetition of the crime. Child Protection Law states:</p> <p><i>Art. 76D Everyone is prohibited from committing violence or threats of violence to force children to have intercourse with him or with other people.</i></p> <p><i>Art. 81 point (1):</i></p> <p><i>Anyone who violates the provisions as referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah).</i></p> <p>Hence, diversion is carried out in cases of rape committed by a child against another child, on the grounds of protecting the child's (the perpetrator's) future. This process often disadvantages girl-child victims of rape, especially when the family of the child facing the law is unwilling or unable to agree to the victim/family of the victim's request in the diversion process.</p>
6	<p>Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.</p>

	<p>As explained above, stipulations regarding the criminal act of rape are spread in several regulations, as a result there are also different criminal sanctions.</p> <ul style="list-style-type: none"> ○ Rape in general as regulated in the Criminal Code has a maximum penalty of 12 years for rape and a maximum of 9 years for obscene acts. ○ Rape as regulated in the Elimination of Domestic Violence Law stipulates a maximum penalty of 12 years or a maximum fine of 36 million rupiah for the crime of forced sexual relations. ○ Based on the Child Protection Law, criminal acts of sexual violence against children will be convicted with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah). <p>According to the data of cases handled by the women’s legal aid in Jakarta (LBH APIK Jakarta), for cases of rape against adult women the sentence at average is 5 years and for obscene acts is under 5 years. In cases of rape against children, the heaviest sentence is 11 years but is rare.</p>
7	<p>What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?</p> <p>As regulated in Law No. 31/2014 on the Amendment on the Law No. 13/2006 on the Protection of Witnesses and Victims and the Government Regulation No. 7/2018 on the Provision of Compensation, Restitution and Support to Witnesses and Victims, victims of sexual violence which includes rape, are entitled to restitution and assistance.</p> <ul style="list-style-type: none"> ○ Restitution is given in the form of: a. compensation for loss of asset or income; b. compensation caused by suffering that directly relates with the cause of criminal act; and/or c. reimbursement for medical and/or psychological treatment. ○ Request for restitution can be addressed before the court’s decision through submission of indictment by the public prosecutor. Request for restitution can also be addressed after the court’s decision on the case, i.e., requested by Victims & Witness Protection (VWP) Body to the court to have the restitution legally binding. ○ To this date most perpetrators prefer to carry out subsidiary criminal penalties rather than pay restitution because the penalties are not heavy. The court’s decision on restitution is also rare in relation to court’s considerations regarding the ability of perpetrators to pay restitution. The lack of thorough technical guideline for the court and prosecutor office in executing court’s order on restitution is also considered as hindrance to victim’s access to restitution. ○ During discussion with multi stakeholders in preparing this report, suggestion has been raised for the court to apply decision to seize perpetrator’s assets in the case of rape, similar to those stipulated in the Anti Trafficking Law, so that the payment of restitution to the victim could be maximized. <p>Victims of sexual violence are also entitled to medical support and psychosocial and psychological rehabilitation support.</p> <ul style="list-style-type: none"> ○ “Medical Support” is provided to recover the victims’ physical health, and in the case that the victim passed away, it includes handling the deceased and funeral. ○ “Psychosocial rehabilitation” is all kinds of forms of psychological and social assistance provided to ease, protect, and recover the psychological, social, and spiritual condition of the victims so that they would be able to reasonably perform their social function. This service provision of food, clothes, and place to live, assistance in getting a job, or assistance for continuing education. ○ “Psychological rehabilitation” is support provided by a psychologist for victims who suffer from trauma or other mental illness to recover the Victims’ mental condition.

	<ul style="list-style-type: none"> ○ Psychosocial and psychological rehabilitation is also provided through VWP Body, that cooperates with relevant authorized institutions to improve the victims' livelihood quality. ○ Medical support and psychological rehabilitation can and have been provided when the legal process is still ongoing in several cases, especially those handled by VWP Body or assisted by service agencies. <p>Coordination has been the main challenge in provision of services for victim's recovery. Another challenge is related to the quantity and quality of human resources in handling victims of violence. Also, the different depth of knowledge, skill and commitment of law enforcement officers and other related parties in implementing existing laws and regulations related to violence, such as the Anti DV Law, Anti Trafficking Law, and Disability Law.</p> <p>If sexual violence occurs in the context of gross human rights violations (either as part of Crimes against Humanity or Genocide), then the victim is entitled to compensation. The compensation referred to is in the form of an amount of money or other forms such as educational program, scholarships, job opportunities, etc.</p> <p>Komnas Perempuan documented several gross violations of human rights in which there were women victims of sexual violence, such as in 1965 tragedy, East Timor, May 1998, Aceh, and Poso. So far, those who have succeeded in accessing support from VWP Body are victims of 1965 but even that number is extremely limited. In many areas, women survivors of the 1965 Tragedy- mostly are elderly persons and require intensive medical care- face difficulty in accessing health services. The service scheme provided by the state has not yet fulfilled the basic rights of the elderly, especially on housing and economic support.</p> <p>The main obstacle to obtaining compensation for victims of gross human rights violations, especially past violations, is the lack of State's political will to thoroughly investigate the events. Hence, the status of victims is often questioned.</p> <p>Another regulation that provides reparations for victims of sexual violence is the provision of restitution for child victims. This is regulated in the Government Regulation No. 43/2017 on the Implementation of Restitution for Children who are Victims of Criminal Acts. Restitution for Children who are victims of criminal acts are in the form of: a.) compensation for loss of wealth; b.) compensation for suffering because of a crime; and/or c.) reimbursement of medical and/or psychological care costs.</p> <p>It is also important to note that as effort to support victims, the Indonesian criminal law excludes the punishment of women victims of rape who had an abortion. According to the Law on Health there are 2 reasons for women to have legal abortions, namely the existence of a medical emergency and for victims of rape. For rape victims, the period for having an abortion is 40 days after the last menstruation. However, in practice this is difficult to implement because many women victims of rape are not aware of their pregnancy during the time allowed for requesting abortion. On the other hand, abortion is still considered taboo and thus, many health institutions or practitioners are reluctant to perform the service.</p>
	<p>Aggravating and mitigating circumstances</p>
8	<p>Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?</p> <p>Aggravating circumstances for rape cases are recognized in Indonesian criminal law, namely:</p>

- **Based on the impact of the criminal act**
 - In the Criminal Code, heavier punishment is given i.e., if the rape causes **severe injury**, the sentence will be 12 years (Article 291 Paragraph 1) and if it causes **death** the sentence will be 15 years (Article 291 Paragraph 2).
 - In the Law on Anti Domestic Violence, Article 48, heavier punishment is given: *“If the act of forced sexual relations causes the victim to sustain injury providing no hope for healing at all, suffering from mental or psychological disorder for at least 4 (four) weeks continuously or 1 (one) month not continuously, miscarriage or death of fetus, or causes dysfunction of reproductive organ shall be punished with imprisonment of minimum 5 (five) years and of maximum 20 (twenty) years or fine of minimum Rp25,000,000.00 (twenty-five million rupiah) and of maximum Rp500,000,000.00 (five hundred million rupiah).”*

- **Rape conducted against children**

According to Law No. 17/2016 on the Adoption of Government Regulation in Lieu of Law No. 1/2016 on the Second Amendment to Law No. 23/2002 on Child Protection into Law:

 - *Article 1 Paragraph 1, Sexual violence against children is punishable by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah).*
 - *Article 1 Paragraph 3 Carried out by parents, guardians, persons who have family relationships, child caregivers, educators, educational staff, officers who handle child protection, or carried out by more than one person together, the criminal punishment will be added with 1/3 (a third) of the penalty.*
 - *Article 1 Paragraph 4, Perpetrators who have been convicted of a criminal offense, the punishment will be added with 1/3 (a third) of the penalty.*
 - *Article 1 Paragraph 5, Causing more than 1 (one) victim, resulting in serious injury, mental illness, infectious disease, disruption, or loss of reproductive function, and/or death, the perpetrators will be sentenced to death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.*
 - *Article 1 Paragraphs 6 and 7, in addition to the increase of length of punishment, the perpetrators as mentioned in Article 1 Paragraphs 1, 3, 4 and 5 above will also be given additional penalties in the form of disclosure of identity and additional actions in the form of chemical castration and the installation of electronic detection devices. However, the policy of chemical castration raised a polemic, especially related to Indonesia's commitment to eliminate cruel/inhuman punishment and about the effectiveness of the punishment.*

- **Rape conducted based on race and ethnic discrimination**

Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination regulates that criminal acts of rape that are based on racial and ethnic discrimination will be given heavier penalty which is plus 1/3 (one third) of the maximum criminal punishment (article 17).

- **Rape as part of gross human rights violations**

According to Law No. 26/2000 on Human Rights Courts:

 - Article 40 states the punishment of a minimum of 10 years and a maximum of 20 years imprisonment for perpetrators of rape in the context of crimes against humanity.

	<ul style="list-style-type: none"> ○ The same punishment, as stated in article 41, are applied for attempting, plotting, or assisting rape in the context of crimes against humanity. ● Rape committed against women with disabilities Law No. 8/2016 on Persons with Disabilities, Article 26, guaranteed protection from sexual violence. Yet the form of “protection” provided under this law is not elaborated. It also does not specifically regulate aggravating circumstances or heavier penalties for perpetrators of violence against women with disabilities However, Article 145 states that any person that hinders/prohibits the enjoyment of that right shall be punished with imprisonment of a maximum of 2 years and a fine of Rp200,000,000 (two hundred million rupiah). In Komnas Perempuan’s notes, in practice this article has rarely been implemented, although violations of the rights of persons with disabilities, including acts of violence or rape, are increasing.
	<p>a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO</p> <p>Heavier penalties for rape perpetrated by more than 1 person were only found in the regulations against child rape. Law No. 17/2016 on Child Protection, Article 81 paragraph 3 states that if sexual violence is carried out by parents, guardians, persons who have family relations, child caregivers, educators, educational staff, officers handle child protection, or are carried out by more than one person together, the criminal punishment will be added with 1/3 (a third) of the penalty.</p>
	<p>b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO</p> <p>The Criminal Code does not explicitly regulate rape acts committed in conditions of power relations imbalance such as doctor/patient; teacher/student; age difference. Furthermore, the emphasis of the definition of rape on the element of “violence or threat of violence” causes failure to recognize the presence or absence of “consent” including when caused by unequal relations. This situation even causes the risk of a lower sentence (from a maximum of 12 years to 9 years), as stated in Article 286 of the Criminal Code:</p> <p><i>“Any person who has sexual intercourse with women outside of wedlock, even though [he] knows that she is unconscious or helpless, shall be punished by a maximum imprisonment of nine years.”</i></p> <p>This kind of construction, where the sentence imposed is lower in the condition of the victim unconscious or helpless, also applies to the regulations of obscene acts, namely from a maximum of 9 years to a maximum of 7 years of prison. This is even when the Criminal Code explicitly recognizes power relations imbalance, namely between a perpetrator and a child under his supervision, an official and his subordinate, including obscene acts committed in the locations of educational institutions, prisons, and social institutions. The Criminal Code states:</p> <p><i>Article 290</i> <i>“By a maximum imprisonment of seven years shall be punished:</i> <i>(1) any person who commits obscene acts with someone who he knows that he is unconscious or helpless;”</i></p> <p><i>Article 294</i></p>

	<p><i>“(1) Any person who commits any obscene act with his underage child, stepchild or foster-child, his pupil, a minor entrusted to his care, education or vigilance or his underage servant or subordinate, shall be punished by a maximum imprisonment of seven years.</i></p> <p><i>(2) By the same punishment shall be punished:</i></p> <ol style="list-style-type: none"> <i>1. the official who commits any obscene act with a person who is officially subordinate to him or has been entrusted or recommended to his vigilance;</i> <i>2. the executive, physician, teacher, official, overseer or attendant at a prison, labor institution of the country, educational institution, orphanage, hospital, lunatic asylum or charity institution, who commits any obscene act with a person admitted thereto.”</i> <p>However, in general there are regulations in the Criminal Code that can be used in emphasizing the aggravating circumstances of the perpetrators of rape when the perpetrators are public officials, namely:</p> <p><i>Article 52</i></p> <p><i>“If an official by committing a punishable act violates a special official duty or by committing a punishable act employs the power, opportunity or means conferred on him by his office, the punishment may be enhanced with additional one third.”</i></p> <p>In addition, even though Indonesia is a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), there is no regulation on aggravating circumstances/heavier penalties for rape against detainees/prisoners. Komnas Perempuan is currently developing an NPM (National Preventive Mechanism) to monitor various forms of torture and other cruel, inhuman, or degrading treatment or punishment in various places, including in detention, correctional institutions, and detention-alike situation such as social care homes for people with mental health disabilities.</p>
	<p>c. Is rape by spouse or intimate partner an aggravating circumstance?</p> <p>As explained above, the regulations on rape by a partner in marriage is regulated in Anti Domestic Violence Law. The aggravating circumstance is not based on the relationship between the perpetrator and victim, but rather based on the impact of the act, as detailed in the answer to question No. 8.</p> <p>Moreover, in practice, it is challenging to bring the marital rape case into the court since the Indonesian Criminal Code does not regulate the marital rape or does not consider marital rape as a crime according to Art.285. Consequently, most of the cases were brought as persecution cases rather than as rape.</p>
9	<p>Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.</p> <p>Yes. According to Article 197 of the Code of Criminal Procedure (KUHAP), when the judge decides for criminal sanction, the conviction must include <i>“considerations of the aggravating circumstances and which relieve the defendant”</i>. The consequences of not mentioning these considerations will render the judgement void as it breaches due process of law.</p> <p>The Code of Criminal Procedure does not further elaborate what is meant by the aggravating or relieving circumstances. Neither does Article 8 Paragraph (2) of Law No. 48/2009 on Judicial Power which states that <i>“in considering the severity of a crime, the judge must pay attention to the good and bad characteristics of the defendant”</i>.</p>

	<p>In practice of court decision, considerations of mitigating circumstances to a criminal offense include efforts of the offender to eliminate or reduce the level of severity of the crime, based on the judge’s assessment and beliefs regarding facts and elaborations during the trial, such as:</p> <ul style="list-style-type: none"> • Impacts of defendant’s action experienced by the victim • Presence of victim’s contribution to the crime; this consideration often put victim of rape at a disadvantage in relation to the stigma on women as temptress and blaming victim culture • Defendant’s apology is accepted by the victim's family, • compensation and payments for all victims' losses has been given, • has returned the loss, in accordance with the scope of mitigating conditions as mentioned above, • the defendant has never been convicted, • the defendant exhibited good behavior at the trial, • the defendant admitted the mistakes and promised not to repeat them.
10	<p>Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?</p>
	<p>a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?</p> <p>There are many cases where the perpetrator or the perpetrator's family offers a settlement ‘out of court’ to the victim/victim's family by providing compensation for some money or offering to marry the victim on condition that the report to the police be withdrawn.</p> <p>Komnas Perempuan also received reports that efforts to resolve rape case ‘outside the court’ in some cases were also conducted by members of the police.</p>
11	<p>Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.</p> <p>Article 44 paragraph (1) of the Criminal Code releases the perpetrator from legal responsibility if the perpetrator is considered lacks reason or has mental illness, as stated below: <i>“Not punishable shall be the person who commits an act that cannot be held accountable to him due to his imperfect mind or [mental] illness.”</i></p> <p>The Child Criminal Justice System Law Article 69 exempts the punishment of perpetrators under 14 years of age, who is subject to only “action”, which according to Article 82 of the Law consists of:</p> <ul style="list-style-type: none"> a. To be returned to parent / guardian; b. To be handover to someone else; c. treatment in a mental hospital; d. treatment at the social welfare institution (LPKS); e. the obligation to attend formal education and/or training held by the government or private bodies; f. revocation of driving license; and/or g. improvement of impacts of criminal act.
	<p>a. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO</p>

	<p>b. if the perpetrator marries the victim of rape? YES/NO</p> <p>There is no provision for prosecution not to be carried out if the perpetrator marries the victim or loses the dangerous nature of the perpetrator. However, in practice this may result in the closure of the case.</p>
	Prosecution
12	<p>Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO</p> <p>Prosecution was carried out in person, against the perpetrator.</p>
13	<p>Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO</p>
14	<p>Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO</p> <p>“Friendly settlement” is not allowed in rape cases, because rape is regarded as a regular offense (<i>gewone delicten</i>) or public prosecution. However, in practice, several rape cases are settled out of court before reaching prosecution. The police are often reported to not continuing the legal process of the cases when there are settlements viewed as ‘peace’ between the parties.</p> <p>In the Criminal Code, rape, sexual intercourse, and obscene acts are included in the category of crimes against decency, which means they are associated with morality. The understanding of rape as a matter of morality is also still common in the society and community so that victims' families often choose to accept settlement outside the court, for example marrying off perpetrators and victims, receiving some compensation, etc. Another result of this understanding is that it is not uncommon for victims to choose to remain silent for fear of being labelled as immoral women and ashamed because they are no longer virgins.</p>
15	<p>Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO</p>
16	<p>Please provide information on the statute of limitations for prosecuting rape.</p> <p>The time limitation period for prosecution for rape is 12 years after the rape has occurred.</p>
17	<p>Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO</p>
18	<p>Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.</p> <p>According to the Code of Criminal Procedure, Article 184, legal means of proof include:</p> <ol style="list-style-type: none"> the testimony of a witness; (including victim) the testimony of an expert; a document; an indication; the testimony of the accused. <p>Included in the “document” as mean of evidence as regulated in Article 187 of the Criminal Procedure Code is <i>visum et repertum</i> (VeR/forensic report), or documents that support the allegation of rape or communication correspondence between the perpetrator and the victim.</p>

	<p>The doctor who conducted the <i>visum et repertum</i> or medical examination can provide expert testimony in the medical field regarding the results of the examination or explain the <i>visum et repertum</i> before the court.</p> <p>According to Article 183 of the Code of Criminal Procedure the judge can impose a penalty based on the judge's conviction and at least 2 evidence. However, the use of the 5 options of legal evidence is seldom carried out optimally, but mostly uses witness testimony and documents.</p> <p>Moreover, because of the narrow definition of rape which emphasizes on proof of the presence of violence, <i>visum et repertum</i>/forensic report is often the main evidence in deciding whether to proceed with the legal process, even at the police level. Therefore, even if other evidence supports the testimony of the victim, but the <i>visum et repertum</i> does not support it and the perpetrator does not admit or on contrary states that what happened was consensual relationship, then law enforcement officers tend to not proceed the case. Many times, <i>visum et repertum</i> cannot show the presence of coercion or traces of sperm due to the long interval between reporting the incident and collecting <i>visum of repertum</i> and to use mode updated technology to produce evidence is high cost.</p> <p>At present, financing <i>visum et repertum</i> is still burdened on victims in most cases. There is no national-level policy that guarantees free forensic examination. Of 94 regional policies in regions that have regulations on victim protection, only 3 (three) regions have explicit provision of budget for free forensic examination. In response to this situation, the Ministry of Health and the Ministry of Women Empowerment and Child Protection are building coordination so that <i>visum et repertum</i> costs are borne by the special allocation fund of the Ministry in 2021 while endorsing self-financing at provincial level.</p>
19	<p>Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO</p> <p>Supreme Court Regulation No. 3/2017 on Guidelines for Handling Cases of Women Facing the Law states in article 5 that in examining Women Facing the Law, judges may not:</p> <ol style="list-style-type: none"> a. display attitudes or issue statements that demean, blame and/or intimidate women facing the law; b. justify discrimination against women by using culture, customary rules and other traditional practices as well as using expert interpretations that are gender biased; c. question and/or consider the experience or background of sexuality of the victim as a basis for acquitting the perpetrator or alleviating the punishment of the perpetrator; and d. issue statements or views containing gender stereotypes.
20	<p>Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.</p> <p>As mentioned in the answer to question 19 above, Supreme Court Regulation No. 3/2017 is intended to protect victims from re-victimization at trial.</p> <p>Apart from what has been stated in the answer to question No. 19, the Supreme Court Regulation also regulates that if Women Facing the Law experience physical and psychological barriers so that they need assistance, then:</p> <ol style="list-style-type: none"> a. Judges can advise Women Facing the Law to present a Companion; and

- b. The judge can grant the request of Women Facing the Law to present a Companion.

Furthermore, judges on their own initiative and/or requests from the parties, public prosecutors, legal advisors and/or victims can order Women Facing the Law to be heard through examination with remote audio-visual communication in a local court or elsewhere, if:

- a. the mental condition of a Woman Facing the Law is unhealthy caused by fear/psychological trauma based on the assessment of a doctor or psychologist;
- b. based on the judge's assessment, the safety of a Woman Facing the Law is not guaranteed if she is in a public and open place; or
- c. based on the decision of the Witness and Victim Protection Body, a Woman Facing the Law is declared to be in the witness and/or victim protection program and according to the VWP Body's assessment cannot be present at the hearing to provide statement either for security reasons or for physical and psychological obstacles.

Besides the Supreme Court Regulation, the Attorney General Circular No. 007/A/JA/11/2011 on the Handling of Cases of Criminal Acts against Women states that the public prosecutor handling cases of violence against women should have the following criteria:

- a. Experienced as a Public Prosecutor dealing with criminal offenses committed by adults;
- b. Have interest, attention, dedication and understand the issue of violence against women;
- c. Preferably those who have participated in training on handling cases of violence against women (domestic violence, trafficking in persons, and child protection) or have attended seminars on handling human rights, gender, domestic violence, trafficking in persons, and child protection offenses;
- d. Whereas if there are 2 (two) cases, namely a woman as victim of violence and in another the concerned party as suspect/defendant, the same Public Prosecutor should be appointed in handling the two cases.

This regulation is hoped to contribute to preventing re-victimization in the investigation and prosecution process. Unfortunately, until now, the Circular has not been limitedly recognized by Public Prosecutors because it has not been socialized widely at the internal level. There is also a limited opportunity to training in handling cases of violence against women due to the lack of budget.

Efforts to overcome re-victimization were also found at the initial inspection level in the Police in accordance with National Police Regulation No. 8/2009 on the Implementation of Human Rights Principles and Standards in Carrying Out Duties of the Indonesian National Police.

National Police Regulation No. 8/2009, Article 29:

In carrying out acts of investigation of women, officers must consider: a. examination in a special room for women; b. protection of privacy rights from publicity; c. rights to be accompanied by social workers or experts other than legal counsel; and d. the application of special procedures for the protection of women.

To strengthen efforts to provide access to justice for women victims of violence, including rape, in 2011 an MoU was signed among the Police, the Attorney General's Office, the Supreme Court, the Ministry of Women's Empowerment and Child Protection, and Komnas Perempuan to coordinate and pursue legal process with the perspective of gender justice.

In an effort to protect women victims of rape and other sexual violence, VWP Body in carrying out its mandate to provide protection for witnesses and victims in accordance with Law No. 31/2014 article 12A is authorized to do a number of things including: changing the identity of

	<p>the person being protected in accordance with the provisions of laws and regulations; managing a safe house; move or relocate the person being protected to a safer place; perform protective actions and safeguards.</p> <p>At the regional level, safe houses are also one of the important services, but of the 96 service policies through 285 regional regulations that state explicitly these services and only 2 (two) regions have specified allocation of budget.</p> <p>In addition, there is also Presidential Regulation No. 75/2020 which regulates the rights of child victims and child witnesses. Children those who are under 18 years old. The rights include mental, physical, and social/economic safety guarantees for child victims and child witnesses, medical and social rehabilitation, and the right to information regarding case developments.</p> <p>The Attorney General’s Office informs that it is preparing guidelines for the access to justice of women and children in prosecution. This guideline is hoped to contain several legal breakthroughs such as the mechanism for taking testimony outside the court, the retributive justice approach in which penalties are in a particular form allowing the perpetrator to “recover”, and the existence of a pre-trial meeting mechanism that allows the public prosecutor to meet with witnesses or victims at pre-prosecution or investigation stage. This meeting will allow the public prosecutor to inquire about the condition of the witnesses and the readiness of witnesses and/or victims to be examined at the trial. Apart from that, it also regulates the protection of victims’ privacy in the elaboration of information before the court.</p>
	<p>War and/or conflict</p>
21	<p>Is rape criminalized as a war crime or crime against humanity? YES/NO</p> <p>Law No. 26/2000 on Human Rights Courts only recognizes 2 forms of gross human rights violations, namely the Crime of Genocide and Crimes against Humanity.</p> <p>The definition of crimes against humanity according to the law include any action perpetrated as a part of a broad or systematic direct attack against civilians, in the form of: a. killing; b. extermination; c. enslavement; d. enforced eviction or movement of civilians; e. arbitrary appropriation of the independence or other physical freedoms that breach international law; f. torture; g. rape, sexual enslavement, forced prostitution, enforced pregnancy, forced sterilization, or other similar forms of sexual assault; h. abuse of a particular group or association based on political views, race, nationality, ethnic origin, culture, religion, sex or any other basis that is regarded universally breaching international law; i. forced disappearance; or j. the crime of apartheid.”</p> <p>Whereas the definition of the crime of genocide does not explicitly mention the act of rape or sexual violence.</p> <p>Until now war crimes have not been recognized/not yet regulated in the Indonesian legal system. For criminal acts committed by the military, then the military court process applies to them as regulated in Law No. 31/1997 concerning Military Courts.</p>
22	<p>Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO</p> <p>For gross violations of human rights as referred to in Law No. 26/2000 on Human Rights Courts, provisions regarding time limitation periods do not apply. It is regulated in Article 46, which reads:</p>

	<p><i>“For gross violations of human rights as referred to in this law, the provisions concerning expiration are not applied.”</i></p>
23	<p>Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO</p> <p>In addition to the affirmation of the absence of a time limitation period for legal examination of gross violations of human rights, there are no limitation on acts of rape that can be filed in the context of gross human rights violations.</p> <p>However, the limitation occurs because the definition of rape in the Law on Human Rights Courts refers to the extremely limited definition in the Criminal Code regarding rape. The procedural law of the Human Rights Court in general also refers to the Criminal Procedure Code even though the proceedings regarding arrest, investigation, investigation, prosecution, and trial have been regulated separately. Therefore, proving a rape case is as difficult as a criminal act in a regular context as described previously.</p> <p>Another issue is that acts of rape in the context of gross human rights violations that occurred in the past violations committed before this law was enacted could only be tried when an ad hoc court is set up. It needs to be proposed by the House of Representatives (DPR) and formed by a Presidential Decree, as regulated in Article 43 of the HRs Court Law.</p> <p>Since heavily relies on political decision, cases of rape and other acts of sexual violence in various past human rights violations (before the law was passed) are still pending because ad hoc human rights courts yet to be set up. Meanwhile, in ad hoc court hearings for violations related to the referendum of East Timor (now Timor Leste), although acts of rape and sexual slavery were included in the prosecution, they were not part of the court decisions.</p>
24	<p>Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO</p> <p>Indonesia has not ratified the International Criminal Court (ICC) even though the provisions in the Rome Statute were partially adopted in the Human Rights Courts Law, namely Law No. 26/2000 on Human Rights Courts. In this law, 2 (two) types of gross human rights violations are identified, specifically the Crime of Genocide and Crimes against Humanity.</p> <p>For cases of gross human rights violations, the National Commission on Human Rights (Komnas HAM) acts as an investigator of which the report is submitted to be proceed further by prosecutor officer. So far Komnas HAM has completed reports for several cases of past gross human rights violations, but in several cases the results of the investigation were returned by the prosecutor because they were deemed of lack of evidence. As a result, to date human rights court for such cases has not yet been established.</p> <p>Even though Komnas Perempuan does not have the <i>pro justisia</i> authority as Komnas HAM does, it also carries out several documentations on various cases of past gross human rights violations, some of which have been published and submitted to stakeholders such as Presidents, Komnas HAM, the House of Representatives, the Prosecutors' Office, etc.</p> <p>Komnas Perempuan's monitoring of the May 1998 case, the conflicts in Papua, Aceh, Poso and the events of 1965, found that sexual violence, especially rape, sexual torture and sexual exploitation occurred in various situations of conflict in Indonesia. The protracted process of establishing human rights courts and the limited definition of rape and sexual violence in the</p>

	<p>Indonesian legal system, as well as issues in procedural law, have caused victims of rape in the context of gross violations of HRs and conflict continuously hamper victims' access to get comprehensive recovery.</p>
	<p>DATA</p>
<p>25</p>	<p>Please provide data on the number of cases of rape that were reported, prosecuted, and sanctioned, for the past two to five years.</p> <p>To date, there is no integrated data on violence against women, including rape, available at the national level in Indonesia. Komnas Perempuan's annual record (CATAHU) is still the main reference especially because it collects data from various parties in all provinces and relevant institutions at national level.</p> <p>Based on data of CATAHU for the past 5 years, it can be observed that the number of cases of rape/sexual violence reported by service provider institutions is higher than those reported by the Police, namely the Police's Women and Children's Protection Unit (UPPA). The number of cases reported by the Police is higher than reported by the justice institutions, namely District Courts (PN). For example, in 2019, rape and intercourse data (not including obscene acts in the Criminal Code that overlaps with rape) recorded by Komnas Perempuan:</p> <ul style="list-style-type: none"> ○ rapes reported to government service institutions, Women's Crisis Centers (WCC) & NGOs, and hospitals: 2139 cases ○ data from the Police (UPPA): 604 cases ○ data from District Courts: 371 cases. <p>Data compiled from the 2016-2019 are as follows:</p> <ul style="list-style-type: none"> ○ data collected from government service institutions, WCC & NGOs, and hospitals: 8964 cases ○ data from UPPA: 2673 cases, ○ data from District Courts: 1974 cases. <p>This condition indicates that the number of rape cases reported to the Police is only around 29% of those received by first-level service institutions. About 70% of the cases reported by the Police were processed by the court, or about 22% of the cases received by the service institutions.</p> <p>Meanwhile, in the National Women's Life Experience Survey (SPHPN), conducted by the Central Statistics Agency (BPS) in collaboration with the Ministry of Women's Empowerment and Child Protection (KPPPA), regarding the first time women had sex, showed that 164 out of 8757 respondents experience forced sexual intercourse. The survey was conducted on women of 15-64 years old in 2016. Considering that there are around 86.1 million women of productive age in Indonesia, it can be assumed that 1 interview document represents the attitudes of 10,000 women.</p> <p>Lastly, improvements are ongoing in gathering national data related to cases of violence against women, including rape. This effort was initiated by Komnas Perempuan through CATAHU. Currently, Ministry of Women's Empowerment and Child Protection is enhancing their online Information System for the Protection of Women and Children (SIMFONI PPA).</p>
	<p>Other</p>

26

Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

- The stagnation of legal reform to broaden the definition of rape and to change the Criminal Procedure Law to be more oriented to the conditions/interests of the victims
- Criminal Law that does not cover all forms of sexual violence
- Limited integration of services for victims' recovery with the criminal justice system
- Systems of data and services that are not yet integrated
- Rape Culture that blames victims which are still internalized by law enforcement officials and the community at wide; Perspectives regarding power relations are still very minimal, so that rape cases are often regarded as consensual relationships.
- Weak Law enforcement, especially when the perpetrator is a public official/apparatus/ elite/public figure.
- Interconnection to femicide that is still not covered in the legal framework. Hence when homicide with rape is conducted mostly will be register as 1 case refereeing to the most severe impact to victims (murder)
- Legal pluralism, especially in relation to customary law and the implementation of regional autonomy may limit women victims of rape to access judiciary process.
- Health workers, including midwives, still find it difficult to carry out advocacy. Even though every year they receive at least an average of 3-4 cases of rapes against wives/female partner. Apart from not knowing how to report further, the cases often cannot be advocated because the wives do not want to elaborate on the case.

Although efforts to transform the law have been promoted for more than two decades, the expected changes have been stagnant and even tend to be backwards. This is demonstrated by the reluctance of the House of Representatives to ratify the Bill on the Elimination of Sexual Violence which contains a more comprehensive definition of rape and other forms of sexual crime based on the experience of Indonesian women, more progressive criminal procedural law and obligations for the recovery of victims in addition to convicting perpetrators.

This stagnation is also found in the discussion of the revision of the Criminal Code which is expected to contain a more comprehensive definition of rape. However, as in the discussion of the Bill on the Elimination of Sexual Violence, the discussion on rape in the context of revision of Criminal Code is distracted with the urge to criminalize acts deemed to be a violation of public morality, such as adultery to be criminalized although it is consensual intercourse committed by unmarried parties or to exempt the requirement of complaints from the spouse of the married party in the adultery case to file a legal process.

In handling cases, an unintegrated data system causes the victim to have to repeat the testimony several times. This cause revictimization and can be aggravated by the attitude of victim blaming that is still often found amongst law enforcement officials, even though there are policies that need to be referred to in handling cases of VAW and training that has been conducted for the police, prosecutors, and judges.

Komnas Perempuan observes that it is exceedingly difficult for rape cases to advance to legal proceedings, especially when the perpetrators are public officials/apparatus/elite/public figures. The intervention of the perpetrators in the legal process becomes a barrier for victims to achieve justice. Victims even face the possibility of criminalization on charges of defamation.

Komnas Perempuan also notes that there is obstacle in uncovering rape is when it comes to cases of femicide. Komnas Perempuan observes that based on online mass media news, there has been an increase in femicide cases where victims are raped, stripped naked and killed. The case records are focused on the act of murder. Cases of femicide are generally treated as a type of murder, with aggravating circumstances, in accordance with the articles of the Criminal Code as follows:

Article 339

“Murder followed, accompanied or preceded by a punishable act that is committed with intent to prepare or facilitate the execution of said crime, and or to exempt oneself or other party from the crime when was caught redhandedly, or to secure the possession of unlawfully acquired object, shall be punished by life imprisonment or a maximum imprisonment of twenty years.

Article 340

Any person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years.”

It is important to underline that there is no explicit regulation on aggravating circumstances when a murder is committed on the basis of gender and is accompanied by other acts of gender-based violence, especially rape. Therefore, in the revision of the Criminal Code, Komnas Perempuan proposes a special regulation on femicide. Also, adjustment to the sanction by increasing the punishment of rape that is planned and carried out with murder as part of a gender-based crime plan, not just because of the increase in the punishment of act of rape which results in death, which is punishable by a lighter sentence than in Articles 339 and 340, specifically according to Article 291 is a maximum of 15 years.

In addition, Indonesia adopted a legal pluralism approach, both over customary law and specifically in Aceh the authority to use religious (Islamic) law in deciding criminal acts.

When customary law has been carried out, the victim is prevented from following up on the case to the police. Even though, often the mechanism in customary law does not provide an opportunity for victims to submit their requests since the solution emphasizes more on “community purification” and “harmony”. The implementation of “customary mechanisms” was also reported by victim assistance agencies in Papua to reduce the possibility of widespread conflict due to acts of rape. The conflict in question can take the form of a violent clash between families, between clans, or even between tribes.

Meanwhile, in Aceh, *Qanun* (Regional Regulation on Islamic bylaw) No. 6/2014 on *Jinayat* (Criminal Code) regulates rape as follow:

- Rape is easily confused as acts against public decency since this *qanun* overall adopts framework based on the construction of morality which criminalizes the expression of sexuality and intimacy, such as demonstrated in the other crimes prohibited in these *Qanun*, namely of *khalwat* (dating/being together), *ikhtilat* (intimacy), *zina* (sexual relations outside marriage), and same sex relations.
- It adopts broader definition of rape to cover vaginal, oral, and anal nonconsensual intercourse, namely “sexual relations with the *faraj* (vagina) or anus of another person as a victim with the perpetrator's penis or other objects used by the perpetrator, or against the victim's *faraj* or the victim's testicles with the perpetrator's mouth or against the victim's mouth with the perpetrator's penis, with violence or coercion or threats to victims.”

- On sanction, it regulates:
 - *Article 48: Anyone who deliberately commits rape shall be punished with lashing at least 125 (one hundred and twenty-five) times, a maximum of 175 (one hundred seventy-five) times or a minimum fine of 1,250 (one thousand two hundred fifty) grams of pure gold, a maximum of 1,750 (one thousand seven hundred and fifty) grams of pure gold or an imprisonment for a minimum of 125 (one hundred twenty-five) months, a maximum of 175 (one hundred seventy five) months.*
 - *Article 49: Anyone who deliberately rapes a person with Mahram relationship with him, shall be punished with whipping at least 150 (one hundred and fifty) times, a maximum of 200 (two hundred) times or a minimum fine 1,500 (one thousand five hundred) grams of pure gold, a maximum of 2,000 (two thousand) grams of pure gold or an imprisonment for a minimum of 150 (one hundred and fifty) months, a maximum of 200 (two hundred) months.*
 - *Article 50: Anyone who deliberately commits rape as referred to in Article 48 against a child, shall be punished with whipping at least 150 (one hundred and fifty) times, a maximum of 200 (two hundred) times or a minimum fine. 1,500 (one thousand five hundred) grams of pure gold, a maximum of 2,000 (two thousand) grams of pure gold or an imprisonment for a minimum of 150 (one hundred and fifty) months, a maximum of 200 (two hundred) months.*
 - *Article 51 (1): In the event of a victim's request, anyone subjected to punishment as referred to in Article 48 and Article 49 may be subject to additional restitution for a maximum of 750 (seven hundred and fifty) grams of pure gold.*

- Regulations regarding rape also have greater potential in criminalizing women victims on charges of false reporting (*qadzaf*) when they are not willing to perform oath before a judge about what happened to them. There is no arrangement that ensures this refusal is not based on the victim's psychological condition and/or other threats that cause the victim to refuse or be unable to carry out the oath. A victim in this condition is subject to a criminal punishment of caning of 80 lashes (Article 54).
- Rape regulations also contain potential impunity for perpetrators. When evidence is perceived insufficient, the rape case shall be proceeded with performing oath from the perpetrators that they did not commit the act of rape and from the victims of rape cases. In this condition, the case is considered settled (Article 56).
- In addition to no regulations on the protection of victims, another issue of the Aceh *qanun* is the preferred punishment in the form of caning. The results of civil society monitoring in Aceh (2019) showed that the use of caning punishment caused victims to feel that they did not get justice and that their recovery was hampered. This is because: (a) caning can be carried out in phases if the offender/convict is deemed not in a healthy condition/able to carry out the sentence, b) the sentence can be carried out in 1 day and then the offender is free. In one case of rape in South Aceh, the perpetrator immediately met and thanked the lawyer for being able to undergo the caning sentence, then visited the victim/family to declare that he was free and would remain near the victim. In this case, the victim not only felt the unjust because of the rape but was also afraid of the perpetrator's visit and the fact that the perpetrator would remain nearby. Efforts to revise the *qanun* to exclude rape or stop the use of caning as the only punishment have not yet yielded results, except for cases of child victim in which according to Supreme Court Circular No. 10/2020 must refer to the national Law on Child Protection.
- In cases of sexual violence in the domestic scope, Aceh also uses the *Qanun* instead of the Elimination of Domestic Violence Law. Hence, the victims of domestic sexual

	violence, including marital rape, will not get the rights of victims in as stipulated in the Anti Domestic Violence Law.
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