

ARTÍCULOS

UTOPIA Y PRAXIS LATINOAMERICANA. AÑO: 25, n° EXTRA 6, 2020, pp. 240-248
REVISTA INTERNACIONAL DE FILOSOFÍA Y TEORÍA SOCIAL
CESA-FCES-UNIVERSIDAD DEL ZULIA. MARACAIBO-VENEZUELA
ISSN 1316-5216 / ISSN-e: 2477-9555

Incest Rape: Factor, Impact and Solution in the Perspective of Islamic Law

Violación por incesto: Factor, impacto y solución en la perspectiva de la ley islámica

K. ABROR

<https://orcid.org/0000-0002-4578-6583>

khoirulabor@radenintan.ac.id

Universidad católica de Lovaina, Bélgica

A. JALALUDDIN

<https://orcid.org/0000-0002-9726-2255>

ahmadjalaluddin@radenintan.ac.id

Islam Negeri Raden Intan University, Lampung, Indonesia

I. SYUKUR

<https://orcid.org/0000-0002-2344-892X>

iskandarsyukur@radenintan.ac.id

Islam Negeri Raden Intan University, Lampung, Indonesia

Este trabajo está depositado en Zenodo:
DOI: <http://doi.org/10.5281/zenodo.3987614>

RESUMEN

Esta investigación tiene como objetivo analizar factores y soluciones a la violación por incesto utilizando el enfoque de estudio de la ley islámica. Utiliza el estudio literario como enfoque metodológico. La violación por incesto es provocada por varios factores Incluyen: (a) La ausencia de socios regulares. (b) El secreto de una relación de incesto con sus alrededores. (c) la implementación de valores morales en la familia. (d) Un sentimiento de comodidad entre parientes cercanos. (e) Auto-reclusión de la familia (f) Una protección de la nobleza de una familia. (g) conflictos culturales y pobreza. El incesto, o convivencia de consanguinidad, también tiene impactos negativos, ya sean psicológicos, físicos o sociales.

Palabras clave: Impactos del crimen, Incesto, ley islámica, Violación de consanguinidad.

ABSTRACT

This research aims at analyzing factors, impacts, and solutions to incest rape, according to the perspective of Islamic law. Uses a literature study as its methodologically approached. Incest rape is triggered by various factors. They include: (a) The absence of regular partners. (b) The secrecy of an incest relationship to its environs. (c) The implementation of moral values in the family. (d) A comforting feeling between close relatives. (e) Self-seclusion of the family (f) A protection of a family's nobility. (g) cultural conflicts and poverty. Incest, or consanguinity cohabitation, also has negative impacts, either psychological, physical, or social.

Keywords: Consanguinity rape, Impacts of crime, Incest, Islamic law.

Recibido: 12-07-2020 • Aceptado: 10-08-2019



INTRODUCTION

Crime is one of the social symptoms that has emerged for ages and continues to develop in our society (Denov et al.: 2017; Muhasim: 2017, pp. 174-195). Yet, statistics on criminal behaviors are not capable of reporting all kinds of crimes that happened in societies (Perempuan: 2018). Among the crimes that most commonly occurred in our society are power-abuse crime, on-conventional crime, and conventional crime (Perempuan: 2018). The conventional crime that often occurs in daily life consists of offenses against property, bodies or persons, and morals (Puspitasari & Devintawati: 2018, pp.237-254). Currently, rape is considered as one of the most conventional crimes to happen (Basile et al.: 2018, pp. 770-776; Nitschke et al.: 2018; Richer et al.: 2017, pp. 1524-1542; Walfield: 2018; Villalobos & Ramirez: 2018, pp. 1012-1587).

According to the annual report of domestic violence against women in 2019, the most sexual violence to happen in domestic/personal-relation areas is incest, that is, violence or sexual intercourse between closely-related persons of the same family, where marriage between them is unlawful (Perempuan: 2018). Similar to the last year's report, the highest record for sexual violence in domestic areas is held by incest (with 1.071 cases), which respectively followed by rape (818 cases) and sexual assault (321 cases) (Perempuan: 2018).

Restriction of incest practices in Indonesia is stipulated in the 1974 marriage law, number 1, articles 8-11 (Safira, 2012). Incest perpetrators are punished differently in different countries. In Indonesia, they are sentenced between 3 to 12 years in jail (RUU KUHP) (Eddyono: 2016). In countries like India, Saudi Arabia, Iran, Afghanistan, and China, the death sentence is sanctioned as a punishment of their crime (Sutarnio & Nansi: 2017; Tursilarini: 2018, pp. 77-92). Below is a list of the types of sexual violence against women in domestic areas in Indonesia (Picture 1):

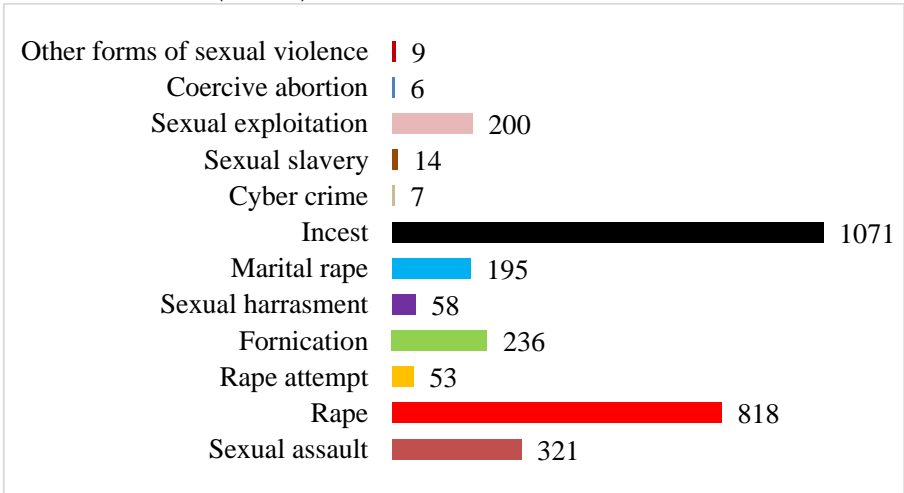


Figure 1. Types of Sexual Violence against Women in Domestic Areas

Source: Annual record of violence against women in Indonesia 2019

Besides the state, religion is also concerned with a restriction against sexual violence (Rofiah & Nahe: 2016). Islam is the case in point. Islamic law forbids sexual cohabitation and marriage between close persons related by consanguinity, marriage, fosterage, and stepparent, regulation of which is arranged by the 1991 marriage law, No. 1, and articles 39-44. Islam only allows the sexual relationship between different-sex partners who are tied in a legal marriage. In Islam, sexual intercourse is highly restricted to partners who are not husband and wife (Barnett et al.: 2018, pp. 1219-1235). As such has become one of the main triggering factors to the occurrence of sexual violence (Nugraha: 2015, pp. 89-104).

The number of cases of sexual violence in many different areas has aroused anxiety among members of society, such as parents, family members, and neighbors. Yet, some of them become perpetrators of sexual violence (CNN Indonesia: 2019). Sexual violence in the family usually happened in a house where members of the family live together, and it mostly went unnoticed by its environs: as such it is somewhat difficult to detect incest practice (Tursilarini: 2018, pp. 77-92). In addition to that, an incest victim is reluctant to report the violence she had experienced because of her kinship relationship with the perpetrator.

Act of incest needs to be further analyzed, especially about its main factors, impacts, and solutions (Azhari et al.: 2019, pp. 351-362). We need to examine the main factors of incest practices to avoid them to happen again in the future. An analysis of the impacts of an incest practice on its victim is also essential for the early identification of incest perpetrators in our environment. It is also necessary to study the solutions to an incest case to provide the incest victims with aid for claiming their justice. By doing all of these, it is expected that statistics of incest violence will diminish in the years to come.

Several types of research have been done to study the factors of incest (Perempuan: 2018; Tursilarini: 2018, pp. 77-92), the impacts of an incest act on its victims (Eddyono: 2016; Sutarnio & Nansi: 2017; Yudaningsih: 2014, pp. 90-105) and the legal solutions to incest perpetrators in various countries (Basile et al.: 2018, pp. 770-776). Yet, little has been done on studying solutions of an incest practice according to the perspective of Islamic law. This research, other than focusing on studying factors and impacts of incest, is also aimed at exploring possible solutions to an incest practice within the perspective of Islamic law.

METHODS

This research uses a literature study as its methodological approach. Data of this research is gathered from the premier, secondary, and tertiary sources. The premier data of this research comes from texts of the Qur'an; the secondary data from texts of the Sunnah, and the tertiary data from a scholarly journal, book, and the Internet. These data are then analyzed in a descriptive-qualitative approach, are examined with various references obtained. Below is the design of this research:

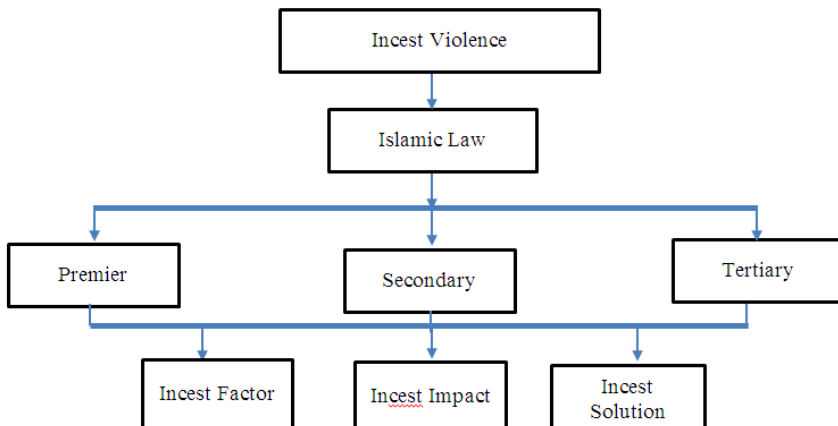


Figure 2. Research Design

RESULTS

Incest Rape

Sexual intercourse between closed members in a family of the same consanguinity is called incest (Tursilarini: 2018, pp. 77-92). There is no common definition of incest in society since what counts as incestuous practices vary according to society, religion, culture, and even local tradition (Endrawati & Jacky: 2014, pp. 1-11; Sutarnio & Nansi: 2017). Rape is defined as coercive violence upon man/woman for having sexual intercourse (Campbell et al.: 2016, pp. 1-23; Lichty & Gowen, 2018; Stuart, Mckimmie, & Masser, 2016; Xue et al., 2016)(Campbell et al.: 2016, pp. 1-23; Lichty & Gowen: 2018, pp. 1-28). Incest rape is considered as violence because it includes coercion upon a man/woman who is not in a marriage relationship and is still a closed member of the same consanguinity, to have sexual intercourse with him or her(Tursilarini: 2018, pp. 77-92). Incest is a common occurrence in various countries, including Indonesia (Endrawati & Jacky: 2014, pp. 1-11). The 2019 annual report of Perempuan (Perempuan: 2018) in Indonesia has detailedly reported perpetrators of sexual violence in personal or private areas in Indonesia (Perempuan: 2018)(See Figure 3).

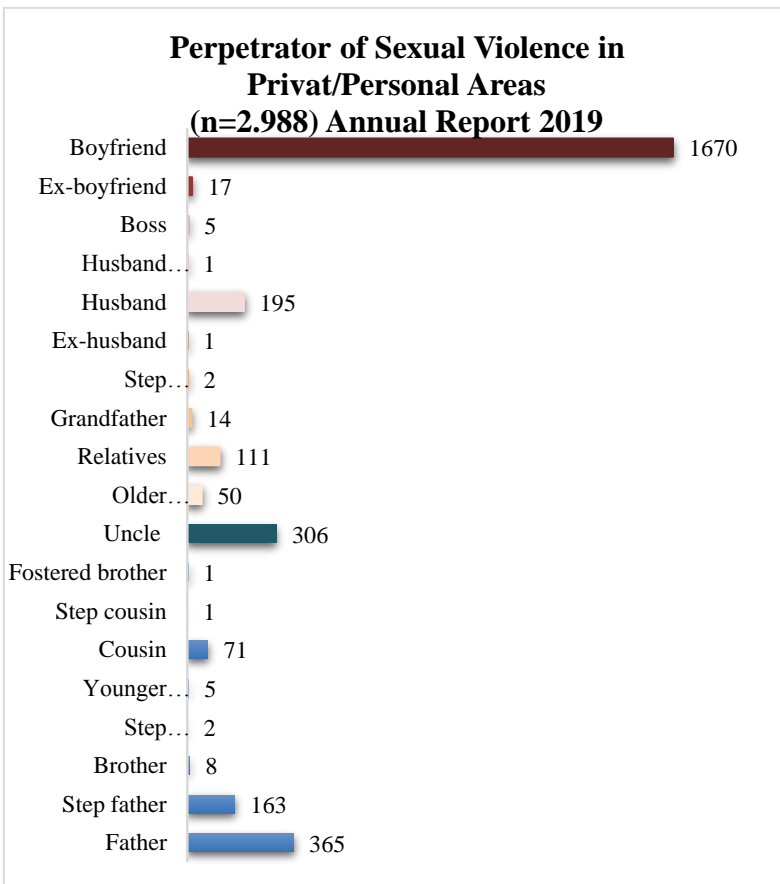


Figure 3. Perpetrators of Sexual Violence in Private Areas

Ssource: Annual Report on Violence against Women in Indonesia 2019

Statistics of the perpetrators of sexual violence in Indonesia according to the 2019 annual report (see figure 3). Boyfriend becomes the most common perpetrator of sexual violence, while domestic violence is done by biological father, uncle, husband, cousin, and relatives are the second-highest case (Ganga-Contreras: 2019, pp. 64-74). The number of sexual violence done upon closed persons of the same consanguinity, or incest, is quite high. This indicates that both father and uncle are not by nature a guard of their family (Nitschke et al.: 2018). Incest is one of the types of sexual violence that is difficult to report by the victim. This is because it relates to a family's internal relation. If the victim is the daughter and the perpetrator is the father, the mother usually will not report the case. According to the report above, father and uncle are among the highest-ranking of the incest perpetrator, making it difficult to report their cases by other members of the family, for the sake of their family's honor (Endrawati & Jacky: 2014, pp. 1-11; Tursilarini: 2018, pp. 77-92). This problem needs an immediate response, that is, among others, analyzing the incest factors, its impacts, and the best solutions we could offer to solve this problem according to the perspective of Islamic law.

DISCUSSION

Incest Factor

Factors of an incest act are various. They include the following:

1. Forensic Psychologist Reza Indragiri Amriel divides the incest factors based on their relational types: (a) the lack of opportunity and the absence of regular partner for proper sexual intercourse; (b) the secrecy of incest relationship to its environs (c) the implementation of moral values in the family (CNN Indonesia: 2019).
2. A psychologist of Gadjah Mada University, Koentjoro, states that an incest case started from a comfort feeling between close relatives which grows too deeply in a family. The growth of such feeling is usually made possible by particularly habitual practices in the family: ones that encourage a deep relationship between younger and older siblings, without giving them education on the permissible limits of conducts in a sibling relationship (CNN Indonesia: 2019).
3. Self-seclusion from the external world. Among the Polahi ethnic in Gorontalo, few families secluded themselves from the external world, enforcing them to marry a partner of their family members (Anugrah et al.: 2017).
4. Protection of a family's nobility and property. This factor is usually observable among noble families. An incest marriage is usually conducted by the noblemen to protect the nobility of their descendants and their wealth property (Suryani: 2018, pp. 1-12).
5. Cultural conflict: with the passing of times, society also changes. This has resulted in a change of norms, some of which no longer applicable in society. The rise and proliferation of media technologies have come with negative impacts, such as providing easy access to incest sexuality, pornography, and sexual crimes, which in turn stimulates sexual desires (Immanuel: 2016, pp. 312-320).
6. Poverty: incest could happen in any family of various backgrounds. Yet, in a poor family where the house only has one room, the parents had to share their sleeping space with the children, and their sexual activities were arranged in between the presence of other family members. In a situation like this, the horny father is prone to have sexual temptation overseeing his sleeping daughter.

That being said, it can be concluded that factors of incest are as follows: (a) the lack of opportunities and the absence of regular partners for proper sexual intercourse; (b) the secrecy of incest relationship to other people outside the family households (c) the implementation of moral values in the family; (d) a comfort feeling between close relatives which grows too deeply in a family; (f) self-seclusion of a family from the external world; (g) protection of a family's nobility; and (h) cultural conflicts and poverty.

Incest Impact

Incest rape is considered unlawful by all religions. However, practices of incest are commonly found in many countries, including Indonesia. Incest rape may cause negative impacts. Some of them are as follows:

1. Health impact. Incest is risky to the born baby and health. Since the genetic code of an incest couple's DNA is lacking in variation, their born baby is prone to an immunity defect. As such may cause to some innate physical and intellectual abnormalities, such as (a) albinism; (b) fumarase deficiency; (c) Habsburg jaw; (d) hemophilia; and (e) Philadelphia. More importantly, the number of baby out of incest rape is very high (Campbell et al.: 2016, pp. 1-23).
2. Legal impact. All schools of jurisprudence in Islam strongly restrict the practice of incest. According to the schools of Maliki, Syafi'i, Hanbali, Zahiri, and Syi'ah Zaidi, the judicial sentence for perpetrators of incest rape is a hudud penalty (cut off the hand) just like the punishment for fornication (Zina).
3. Psychological impact. Overwhelmed with fear, most of the woman victims of an incest rape were too weak to refuse when they were forced to have sex by their fathers, uncles, grandfathers, and sons. It is also difficult for the incest victims to pull their selves out of this violence because they do not like that their shame reaches public attention. Because of this, many of the incest victims suffered from a mental breakdown and endured severe trauma for their entire life.
4. Social impact. Incest rape is a crime to humanity. Even if it is done upon mutual consent between the incest partners, and neither of them is treated as a victim, it is a disgrace to public morality. An incest relationship is a shame to the family's honor, and because of it, the family will suffer an exclusion by and in the society (Tursilarini: 2018, pp. 77-92).

All in all, an act of incest has brought forward several negative influences on the health, religion, psychology, and society of the incest perpetrators.

Its solutions in the perspective of Islamic law

In Islam, the Qur'an does not specifically mention the case of rape, but it strongly emphasizes the transgression of fornication. The Qur'an does not specify whether the act of fornication is arranged upon mutual consent between both parties, or it involves coercion by one party over the other. This means, if a woman is found out pregnant because of the rape, she is freed from the penalty (hadd) of fornication, and the legal sentence is only applicable to the raper. Zina is sexual intercourse between man and woman who are not related in a marriage contract. There is no difference whether both parties or one of them are married or single (Ekandari et al.: 2001, pp. 1-11).

According to Abdul Qadir Audah, the limit of illegitimacy (haram) of sexual intercourse is the penetration of part of the penis into the vagina (iltiqa khitanain), regardless the fact that such penetration is followed or not followed by ejaculation. While according to Muslim scholars of the schools of Maliki, Syafi'i, Hambali, Imam Abu Yusuf, and Muhammad bin Hasan Asy-Syaibani, fornication does not only refer to one in which a penis has penetrated a vagina but also include a penis penetration into an anus, whether that of a woman or a man. In their view, the legal status of sexual intercourse which includes penis penetration into vagina or anus the same, because all of them are categorized as Zina. Zina is sexual intercourse between man and woman who are not related by a marriage contract. Incest is included in the category of Zina because Islam prohibits marriage between close persons of direct blood ties or mahrom.

In the Qur'an, it is stated the following: Prohibited to you (for marriage) are your mothers; your daughters; your sisters, your parental aunts; your maternal aunts; your brother's daughters; your sister's daughters; your (milk) mothers who nursed you; your sisters through nursing; your wives' mothers; your step-daughters under your guardianship (born) of your wives onto whom you have gone in; but if you have not gone unto them, there is no sin upon you. And (also prohibited to you) are the wives of your sons who are from your (own)

loins, and marrying (marriage) two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever forgiving and Merciful.

The solution that can be offered by this research is the following. (1) If incest is not yet occurred, it is necessary to avoid the triggering factors of incest practices, by considering the weight of legal punishment of the incest crime, either according to the state law or the religious law. (2) If the incest case is still happening, it is suggested to immediately stop the case and report it to the concerned institution; both parties involved in the case are guided to ask forgiveness to Allah and to draw themselves closer to Him. (3) If the incest case has occurred, supports from the family in the form of physiological, material, social, and religious matters is required. More importantly, the government has to build a professional institution that offers counseling services to the incest victims, including hearing their grievances, advocating their voices, and offering a solution to their problems. This way, the incest victims will feel supported to get their justice and solve their case.

CONCLUSION

Incest rape is triggered by various factors. They include the following. (a) The lack of opportunities and the absence of regular partners for proper sexual intercourse. (b) The secrecy of an incest relationship to its environs (c) the implementation of moral values in the family. (d) A comforting feeling between close relatives who grows too deeply in the family. (e) Self-seclusion of the family/society from the external world. (f) A protection of a family's nobility, and (g) cultural conflicts and poverty. In addition to that, incest has several negative impacts, either psychological, physical, or social. Within the perspective of Islamic law, incest is part of Zina (fornication), which is unlawful in Islam, as suggested by several texts of the Qur'an. Because of that, it is necessary to avoid the triggering factors of incest and to analyze the impacts of incest practices. Moreover, the government is strongly advised to build a professional institution offering counseling services to the incest victims, including hearing their grievances, advocating their voices, and offering a solution to their problems, so that the incest victims will recognize that they have full supports from their environs to get their justice and solve their problems.

BIBLIOGRAPHY

ANUGRAH, A, BUDIONO, R, HIDAYAT, F (2017). "Perkawinan Sedarah yang Dilakukan Oleh Suku Polahi dalam Perspektif Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan". *Jurnal Hukum*, 6(8).

AZHARI, R, ASAD, M, KARIM, A, JERMSITTIPARSERT, K, UMAM, R (2019). "Benchmarks of Authority in Suruhanjaya Perkhidmatan Awam and the Commission of State Civil Services (KASN)". *International Journal of Innovation, Creativity, and Change*, 8(8), pp. 351–362.

BASILE, K, SMITH, G, LIU, Y, KRESNOW, M, FASULA, A, GILBERT, L, CHEN, J. (2018). "Rape-related pregnancy and association with reproductive coercion in the US". *American journal of preventive medicine*, 55(6), pp. 770-776.

BARNETT, M, SLIGAR, K, WANG, C (2018). "Religious Affiliation, Religiosity, Gender, and Rape Myth Acceptance : Feminist Theory and Rape Culture". *Journal of Interpersonal Violence*, 33(8), pp. 1219-1235.

- CAMPBELL, R, FEENEY, H, PIERCE, S, SHARMA, D, FEHLER, G (2016). "Tested at Last : How DNA Evidence in Untested Rape Kits Can Identify Offenders and Serial Sexual Assaults". *Journal of Interpersonal Violence*, pp. 1–23.
- CNN INDONESIA (2019). "Fenomena Inses, Antara Kesempatan dan Ketidakberdayaan". Indonesia.
- DENOV, M, WOOLNER, L, BAHATI, P, NSUKI, P, SHYAKA, O (2017). "The intergenerational legacy of genocidal rape: The realities and perspectives of children born of the Rwandan genocide". *Journal of interpersonal violence*, 0886260517708407.
- EDDYONO, S (2016). "Tindak Pidana Inses dalam RKUHP (Anggara, ed.)". Pejaten Barat: Institute for Criminal Justice Reform.
- EKANDARI, F MUSTAQFIRIN, S FATUROCHMAN, L (2001). "Perkosaan, Dampak, dan Alternatif Penyembuhannya". *Jurnal Psikologi*, 28(1), 1–18.
- ENDRAWATI, L, JACKY, M (2014). "Analisis Diskursus Media pada Kasus Hubungan Seks Incest". *Paradigma*, 2(2), pp. 1–11.
- GANGA, F. (2019). "Juicios en dilemas éticos por estudiantes de negocios de una universidad estatal chilena". *Utopía Y Praxis Latinoamericana*, 24(4), pp. 64–74.
- IMMANUEL, R (2016). "Dampak Psikososial pada Individu yang Mengalami Pelecehan Seksual di Masa Kanak-kanak". *Psikoborneo*, 4(2), pp. 312–320.
- JERMSITTIPARSERT, K., KASEMSUKPHAISIT, P. (2016). "Bangkok Men's Attitudes Towards Marital Rape". *Review of European Studies*, 8(1), pp. 185-198.
- LICHTY, L, GOWEN, L, (2018). "Youth Response to Rape : Rape Myths and Social Support". *Journal of Interpersonal Violence*, pp. 1-28.
- MUHASIM, M (2017). "Budaya Kejujuran dalam Menghadapi Perubahan Zaman (Studi Fenomenologi Masyarakat Islam Modern)". *PALAPA*, 5(1), pp. 174-195.
- NITSCHKE, F, MASSER, M, MCKIMMIE, M, RIACHI, M (2018). "Intoxicated but not incapacitated: are there effective methods to assist juries in interpreting evidence of voluntary complainant intoxication in cases of rape?" *Journal of interpersonal violence*, 0886260518790601.
- NUGRAHA, A (2015). "Represi Terhadap Incest (Kajian Mengenai Kasus Incest di Kabupaten Aran Pandang)". *Jurnal Ilmiah Sosiologi Agama*, 9(2), pp. 89–104.
- PEREMPUAN, K (2018). "Profil anak indonesia 2012". Jakarta (ID): KPPA.
- PUSPITASARI, I, DEVINTAWATI, E (2018). "Urgensi Pengaturan Kejahatan Korporasi dalam Pertanggungjawaban Tindak Pidana Korporasi Menurut RKUHP". *Kanun: Jurnal Ilmu Hukum*, 20(2), pp. 237-254.
- RICHER, L, FIELDS, L, BELL, S, HEPPNER, J, DODGE, J, BOCCCELLARI, A, SHUMWAY, M (2017). "Characterizing drug-facilitated sexual assault subtypes and treatment engagement of victims at a hospital-based rape treatment center". *Journal of interpersonal violence*, 32(10), pp. 1524-1542.
- ROFIAH, N, NAHE, I (2016). "Kajian tentang Hukum dan Penghukuman dalam Islam: Konsep Ideal Hukum dan Praktiknya". Jakarta: Komnas Perempuan.

SUTARNIO, A, NANSI, W (2017). "ANALISIS TINDAK PIDANA INSES DALAM PERSPEKTIF KRIMINOLOGI DAN VIKTIMOLOGI". *Jurnal Pemberdayaan Hukum*, 7(2).

SURYANI, M (2018). "Implementasi Perkawinan Sedarah pada Masyarakat Desa Serombou Indah Kecamatan Rambah Hilir Kabupaten Rokan Hulu". *JOM Fakultas Hukum*, 5(1), pp. 1–12.

TURSILARINI, T (2018). "Dampak Kekerasan Seksual Di Ranah Domestik Terhadap Keberlangsungan Hidup Anak". *Media Informasi Penelitian Kesejahteraan Sosial*, 41(1), pp. 77-92.

VILLALOBOS ANTÚNEZ, J & RAMÍREZ MOLINA, R (2018). "El derecho a la autobiografía: dimensión ius-filosófica desde la perspectiva de H. Arendt y P. Ricoeur". *Opción. Revista de Ciencias Humanas y Sociales*, 34(18), pp. 1012-1587.

WALFIELD, S (2018). "Men cannot be raped: Correlates of male rape myth acceptance". *Journal of interpersonal violence*, 0886260518817777.

YUDANINGSIH, L. (2014). "Pengaturan Tindak Pidana Inses Dalam Perspektif Kebijakan Hukum Pidana". *Inovatif*, 7(2), pp. 90–105.

BIODATA

K. ABROR: He is a Prof. and senior lecture at Universitas Islam Negeri Raden Intan, Lampung, Indonesia. His research is focused on Social Science especially in the Law of Religion education, Law, and Criminology. He is a lecturer in the Faculty of Education and Teacher Training, Universitas Islam Negeri Raden Intan, Lampung, Indonesia.

A. JALALUDDIN: He is an Assoc. Prof. and lecture at Universitas Islam Negeri Raden Intan, Lampung, Indonesia. His research is focused on Social Science especially in the Law of Religion education. He is a lecturer in the Faculty of Education and Teacher Training, Universitas Islam Negeri Raden Intan, Lampung, Indonesia

I. SYUKUR: He was born in 1979. He is a lecture at Universitas Islam Negeri Raden Intan, Lampung, Indonesia. His research is focused on Social Science, History, Law, Education, and Crime justice. He is a lecturer in the Faculty of Education and Teacher Training, Universitas Islam Negeri Raden Intan, Lampung, Indonesia.