



Exhibitionism and Law Enforcement: Criminal Law and Islamic Criminal Law Perspectives

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ABSTRACT

Law enforcement against exhibitionists is crucial in maintaining public order and morality. This study examines law enforcement against exhibitionists based on criminal law and Islamic criminal law. The research method used is normative legal research with a statute and conceptual approach. The statute approach is employed to review existing laws and regulations. In contrast, the conceptual approach explores the principles of Islamic criminal law related to law enforcement against exhibitionism. The results of this study show that in the context of general criminal law, the Indonesian Penal Code (KUHP) regulates articles that can be applied to exhibitionists. Criminal sanctions stipulated in Articles 281 and 282 of the Penal Code include imprisonment and fines for those who distribute, create, or store obscene images, including those involving exhibitionism. Article 335 of the Penal Code also regulates indecent acts in public, which can include exhibitionism. According to Islamic criminal law, the form of punishment for exhibitionist behavior is jarimah ta'zir. Among the Syafi'iyah and Hanabillah scholars, it is argued that the maximum punishment is ten lashes. Meanwhile, according to the Malikiyyah scholars, the punishment of lashes may exceed this limit as long as it serves a beneficial purpose. This study concludes that law enforcement against exhibitionism requires integrating general and Islamic criminal law to create a balanced legal framework that aligns with societal values. Additionally, the importance of public awareness of the social impact of exhibitionism and participation in law enforcement is emphasized.

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1. Introduction

In recent years, there has been a significant increase in cases of exhibitionism, especially along with the penetration of social media and technological developments.^{1,2,3} Exhibitionism, which refers to the act of exposing genitals in public places without consent,^{4,5} creates severe impacts not only for direct victims but also for public order and public morality.⁶ This phenomenon shows the necessity of responding to effective laws to address and prevent the increase in cases of exhibitionism.⁷

Exhibitionism not only harms the victim directly but also has severe psychological and social impacts.^{8,9} Victims of exhibitionism may experience trauma and a loss of sense of security,¹⁰ while society as a whole may experience disruption to social order.¹¹

¹ Helen Intania and Wahyu Satria WPW, "Analisis Penanganan Kekerasan Seksual Berbasis Online Dalam Konstruksi Hukum Di Indonesia," *Literatus* 4, no. 2 (2022): 410–17, <https://doi.org/10.37010/lit.v4i2.729>.

² Julia Von Weiler, "Living in the Era of Digital Exhibitionism," *Child and Youth Services* 36, no. 4 (2015): 329–44, <https://doi.org/10.1080/0145935X.2015.1096596>.

³ Jennifer Martin and Andrea Slane, "Child Sexual Abuse Images Online: Confronting the Problem," *Child and Youth Services* 36, no. 4 (2015): 261–66, <https://doi.org/10.1080/0145935X.2015.1092828>.

⁴ Intania and Satria WPW, "Analisis Penanganan Kekerasan Seksual Berbasis Online Dalam Konstruksi Hukum Di Indonesia."

⁵ Philip Firestone et al., "Long-Term Follow-up of Exhibitionists: Psychological, Phallometric, and Offense Characteristics," *Journal of the American Academy of Psychiatry and the Law* 34, no. 3 (2006): 349–59.

⁶ Fraga Dominguez, S., Jeglic, EL, Calkins, C., & Kaylor, L. (2024). Frotteurisme dan eksibisionisme: pemeriksaan terkini mengenai prevalensinya, dampaknya terhadap korban, dan frekuensi pelaporan. *Jurnal Agresi Seksual*, 1–18. <https://doi.org/10.1080/13552600.2024.2352403>

⁷ Andika Santoso and Eko Nurisman, "Analisis Hukum Dalam Pencegahan Tindak Pidana Kesusilaan Eksibisionis," *Jurnal* 13, no. 1 (2022): 88–104.

⁸ Michael Woodworth et al., "High-Risk Sexual Offenders: An Examination of Sexual Fantasy, Sexual Paraphilia, Psychopathy, and Offence Characteristics," *International Journal of Law and Psychiatry* 36, no. 2 (2013): 144–56, <https://doi.org/10.1016/j.ijlp.2013.01.007>.

⁹ J. Boudabous et al., "Sexual Violence in Schools: A Study of 30 Psychiatric Expert Reports," *Neuropsychiatrie de l'Enfance et de l'Adolescence* 72, no. 3 (2024): 120–26, <https://doi.org/10.1016/j.neurenf.2023.10.002>.

¹⁰ Wolfgang Berner, Peter Berger, and Andreas Hill, "Sexual Sadism," *International Journal of Offender Therapy and Comparative Criminology* 47, no. 4 (2003): 383–95, <https://doi.org/10.1177/0306624X03256131>.

¹¹ Intania and Satria WPW, "Analisis Penanganan Kekerasan Seksual Berbasis Online Dalam Konstruksi Hukum Di Indonesia."

Therefore, law enforcement against perpetrators of exhibitionism is directed at protecting individual rights and maintaining social order.¹²

This research aims to review law enforcement against perpetrators of exhibitionism based on criminal and Islamic criminal law. In the context of Indonesian criminal law, especially those related to sexual harassment, there are articles in the Criminal Code (KUHP) that can be used to trap perpetrators of exhibitionism. However, evaluation of the effectiveness of these articles needs to be carried out periodically to ensure their relevance to social and technological developments.¹³ In addition, Islamic criminal law, which emphasizes morality and ethics, provides essential guidance in assessing exhibitionism. In Islamic criminal law, exhibitionism is classified as *jarimah ta'zir*, where the judge or ruler determines the punishment based on their discretion. Therefore, integrating the values of general criminal law and Islamic criminal law is essential to achieve effective law enforcement by community values.¹⁴

Research related to law enforcement against perpetrators of exhibitionism has attracted the interest of researchers, with the main focus on aspects of general criminal law. Wahyuni (2023) studied applying restorative justice principles as an alternative to resolving exhibitionism cases, finding that this approach provides a fairer solution, but its implementation is still limited. However, this research does not integrate the perspective of Islamic criminal law and does not include empirical analysis.¹⁵ Shihsalamadhina (2021) analyzed court decisions regarding exhibitionism cases and found light sentences. However, this research focuses more on analyzing specific cases without providing general recommendations for broader law enforcement.¹⁶

¹² Heng Choon Chan, "Sexual Sadism and Psychopathy in Sexual Homicide," *The Wiley International Handbook on Psychopathic Disorders and the Law, 2nd Edition: Diagnosis and Treatment: Volume I and II* 1, no. c (2020): 693–712, <https://doi.org/10.1002/9781119159322.ch30>.

¹³ Sophie Nandita, "Pertanggungjawaban Pidana Pelaku Eksibisionisme Dalam Hukum Pidana Indonesia," *Jurnal MAHUPAS: Mahasiswa Hukum Unpas, Vol. 1 No. 2, Juni 2022* 1, no. 2 (2020): 49–65.

¹⁴ Safaruddin Harefa, "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam," *University Of Bengkulu Law Journal* 4, no. 1 (2019): 35–58, <https://doi.org/10.33369/ubelaj.v4i1.7303>.

¹⁵ Beti Eka Wahyuni, "Analisis Penerapan Prinsip Restorative Justice Sebagai Alternative Penyelesaian Perkara Aksi Eksibisionisme," 2023, <http://repositorio.unan.edu.ni/2986/1/5624.pdf>.

¹⁶ Pudji Astuti Fahma Shihsalamadhina, "Analisis Putusan Nomor 40/Pid.Sus/2021/Pn. Skw Berkaitan Dengan Penjatuhan Sanksi Pidana Terhadap Pelaku Eksibisionisme," *Novum: Jurnal Hukum*, no. 40 (2023): 52–65.

Sophie Nandita (2022) focuses on the criminal responsibility of exhibitionist perpetrators from the perspective of Indonesian criminal law.¹⁷ This research found that law enforcement against exhibitionist perpetrators faces problems related to the lack of clarity in Article 44 of the Criminal Code regarding mental disorders as an excuse. While this research provides essential insights, several gaps need to be filled. This research does not integrate an Islamic criminal law perspective, does not use empirical data, and does not discuss the social and psychological impact on victims of exhibitionism.

Although these studies make meaningful contributions, significant gaps remain. This research aims to fill this gap by integrating the perspectives of general criminal law and Islamic criminal law in law enforcement against perpetrators of exhibitionism.

2. Legal Materials and Research Methods

This research uses normative legal research methods with a statutory approach and conceptual approaches. A statutory approach is used to review existing laws and applicable regulations,¹⁸ In contrast, a conceptual approach is used to explore the principles of Islamic criminal law that are relevant to law enforcement against exhibitionist behavior. The primary legal materials used consist of the Criminal Code, Law Number 44 of 2008 concerning Pornography, Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, Law No. 12 of 2022 concerning Sexual Violence and the Book of Fiqh. The data analysis technique involves identifying relevant criminal law rules and Islamic criminal law norms in the Koran, Hadith and other Islamic legal literature. After that, an analysis of the content and substance of these norms is carried out, including prohibited elements and possible sanctions against perpetrators of exhibitionism. This research also compares criminal law norms with Islamic criminal law norms to identify similarities, differences and conflicts between the two in law enforcement against perpetrators of exhibitionism. Finally, the researcher interpreted the

¹⁷ Sophie Nandita, "Pertanggungjawaban Pidana Pelaku Eksibisionisme Dalam Hukum Pidana Indonesia," *Jurnal MAHUPAS: Mahasiswa Hukum Unpas* 1, no. 2 (2022): 49–65, <https://repository.unsri.ac.id/34619/>.

¹⁸ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

legal norms found, considering traditional and contemporary interpretations in the context of exhibitionism cases.

3. Results and Discussion

3.1. Enforcement of Criminal Law Against Perpetrators of Exhibitionism

Exhibitionism is defined in the psychological literature as a paraphilic disorder. This disorder is characterized by repeated desires or actions to expose the genitals to unsuspecting people, often to gain sexual gratification from the victim's reaction. In the legal dictionary *Black's Law Dictionary*, exhibitionism is defined as *The Indecent Display of one's Body* or showing off any part of his body immodestly.¹⁹ Exhibitionism is often categorized as deviant behavior because it not only involves violating social norms but can also cause psychological trauma for the victim. However, this condition creates challenges in criminal accountability because experts must examine the perpetrator's mental condition before being decided by a judge. In law enforcement, it is essential to ensure that perpetrators receive a proper psychiatric evaluation to determine whether they can be held responsible for their actions. In addition to justifying reasons, there are also forgiving reasons that can erase the perpetrator's guilt of a criminal act while his actions are still against the law. Regarding the reasons for forgiveness, it is regulated in Article 44 of the Criminal Code that "no punishment will be given to perpetrators who are mentally disabled (insane or crazy).

From a legal perspective, exhibitionism is included in the criminal act of immorality and is categorized as a crime against modesty as regulated in CHAPTER XIV of the Criminal Code. This behavior violates the decency and moral norms that apply in society. Apart from the Criminal Code, other laws regulating exhibitionism can be found in Law No. 44 of 2008 concerning Pornography. In various countries, including Indonesia, after the issuance of Law No. 12 of 2022, acts of exhibitionism are seen as a form of sexual violence that can be subject to legal sanctions.²⁰ This action not only disturbs public order

¹⁹ Muhamad Rafly, Raudiatu Zzahra, and Eka Juarsa, "Akibat Hukum Perilaku Eksibisionisme Ditinjau Dari Undang-Undang No. 44 Tahun 2008 Tentang Pornografi," *Prosiding Ilmu Hukum* 7, no. 1 (2021): 537–40, <http://dx.doi.org/10.29313/v7i1.27034>.

²⁰ Law Number 12 of 2022 Concerning Crimes of Sexual Violence

but also creates fear and a sense of insecurity among the public, especially in public spaces.^{21,22}

In the context of Indonesian criminal law, exhibitionism can be charged under articles in the Criminal Code (KUHP) relating to obscene acts. However, it needs to be underlined that from a criminal perspective, obscenity and exhibitionism are different criminal acts because they are regulated in other articles.²³ Criminal Code Article 281 specifically regulates obscene acts in public.²⁴ This article stipulates that anyone who commits a lewd act in public can be subject to a criminal penalty in the form of imprisonment or a fine. Obscene acts here include the act of exposing one's genitals to another person without their consent, which explicitly contains exhibitionist behavior.

To convict an exhibitionist, certain elements must be met by the provisions of Article 281 of the Indonesian Criminal Code (KUHP), namely: **First: Whosoever.** This element indicates that any individual can become the perpetrator or subject of a criminal act. In other words, the perpetrator can be anyone.²⁵ **Second: Intentionally.** Intent in criminal law encompasses three primary forms: (i) **Intent as Purpose (*opzet als oogmerk*):** The perpetrator commits the act with a specific purpose, namely to achieve the desired outcome, in this context, obtaining sexual gratification through the victim's reaction. (ii) **Intent Due to Certainty (*opzet als zekerheidsbewustzijn*):** The perpetrator is aware that their actions will undoubtedly result in inevitable consequences, even though those

²¹ Michael C. Seto and Michael Kuban, "Criterion-Related Validity of a Phallometric Test for Paraphilic Rape and Sadism," *Behaviour Research and Therapy* 34, no. 2 (1996): 175–83, [https://doi.org/10.1016/0005-7967\(95\)00056-9](https://doi.org/10.1016/0005-7967(95)00056-9).

²² Nurjaini Nurjaini and Mar'ie Mahfudz Harahap, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Pelecehan Seksual," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 8, no. 2 (2023): 162–73, <https://doi.org/10.30863/ajmpi.v8i2.5101>.

²³ Obscenity meets the elements contained in the provisions of Articles 289, 290, 292, 293, 294, 295 and 296 of the Criminal Code

²⁴ In the New Criminal Code, which will come into effect in 2026, it is stipulated that Any person who (a) shall be sentenced to imprisonment for a maximum of 1 year or a fine of up to category II, namely IDR 10 million. Violet bag damn it in public, or (b) Violates decency in the presence of those present. More Furthermore, in the explanation of Article 406 letter a, it is explained that what is meant by "violating decency" is committing an act of displaying nudity, genitals and sexual activity which is contrary to the values that exist in society at the place and time the act is committed..

²⁵ Remember that in the current Criminal Code system, only humans can be the subject of criminal acts (*Naturally person*). Legal entities (Legal Entities) and corporations (legal entities/not legal entities) have not been recognized as subjects of criminal offences in the Criminal Code. Meanwhile, if you refer to Article 45 paragraph 1 of Law No. 1 of 2023, Corporations are the subject of criminal acts

consequences are not the main objective. For instance, the perpetrator knows that others will see their actions, even if their goal is different. (iii) **Conditional Intent** (*voorwaardelijk opzet*): The perpetrator is aware of the possibility of consequences arising from their actions and continues the act despite not desiring those consequences. The perpetrator disregards the risk that their actions may cause discomfort or trauma to the victim. This element asserts that the perpetrator's actions must be carried out with awareness and intention. If the perpetrator can prove that they did not act intentionally (for example, due to significant mental illness), then criminal liability may be questioned.

Third: In Public (*Openbaar*). The act must be carried out in a place accessible or visible to the public, such as a park, highway, or other public places. This means that exhibitionism must occur in locations where there is a high likelihood that others may witness it. In his book "Tindak Pidana di KUHP," S.R. Sianturi explains that the term "public" or "openly" (*openbaar* or almost similar to *openlijk*) refers to a place accessible to the public or a place that can be seen, heard, or witnessed by the public present there or elsewhere. The legal implication of this element is that the location where the perpetrator commits the act becomes crucial in determining whether the act qualifies as a violation. This element is not fulfilled if done in a hidden or private place without the possibility of being seen by others. **Fourth: Violating Decency**. An act that violates decency is considered inappropriate by societal norms, especially concerning sexual behaviour. This includes actions carried out to satisfy lust in public and can cause discomfort or embarrassment to those who witness it. R. Soesilo, in his book "Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal" (p. 204), provides examples of indecent acts, such as intercourse, touching a woman's breasts, touching a woman's genitals, exposing male or female genitalia, kissing, and so forth.²⁶

Law No. 44 of 2008 concerning Pornography is also relevant in the legal context regarding exhibitionism. This law not only regulates the production and distribution of pornographic material but also covers acts containing obscene elements in public spaces. Article 10 clearly states that "*Everyone is prohibited from exposing themselves or other people in performances or in public that depict nudity, sexual exploitation, sexual*

²⁶ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politeia, 1995, hal. 204-309

intercourse, or other pornographic content." Therefore, exhibitionism, which involves the act of exposing the genitals in public with sexual intent, falls under the category of nudity or obscene acts regulated by this law. The punishment for perpetrators of exhibitionism under this law can be more severe because it considers the psychological and social impacts caused.²⁷

Furthermore, another legal basis for penalizing perpetrators of exhibitionism is the Law on Criminal Sexual Violence (TPKS), which was passed in 2022. This law exists to provide more comprehensive legal protection for victims of sexual violence and ensure that perpetrators receive appropriate punishment. The scope and scope of the Sexual Violence Crime Law covers various forms of sexual violence, including rape, sexual harassment, sexual slavery, sexual exploitation, forced marriage, forced contraception, and forced abortion, as well as other acts related to sexual violence, including is an obscene act vide Article 4 number 2 letter b and an act that violates morality which is contrary to the will of the victim vide Article 4 number 2 letter d. This law also pays special attention to the prevention, treatment and recovery of victims.

Exhibitionism, which involves the act of exposing genitals in public with sexual intent, is recognized as a form of sexual violence in the TPKS Law. The articles in this law stipulate that any action that causes fear, insecurity or psychological trauma for the victim can be categorized as sexual violence. Articles in the TPKS Law stipulate that perpetrators of exhibitionism can be charged with prison sentences, fines, or other sanctions deemed appropriate by the judge based on the psychological and social impact caused to the victim. This law strengthens the legal basis for prosecuting perpetrators of exhibitionism and provides better protection for victims. Apart from that, this law also encourages increasing public awareness about sexual violence and the importance of reporting this crime.

Overall, the legal framework in Indonesia is quite comprehensive in dealing with exhibitionism cases. The combination of the Criminal Code, the Pornography Law and the

²⁷ Article 36 Every person who displays himself or another person in a performance or in public which depicts nudity, sexual exploitation, sexual intercourse, or other pornographic content as intended in Article 10 shall be punished with imprisonment for a maximum of 10 years and/or criminal a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

TPKS Law provides a solid legal basis for law enforcers to take action against perpetrators of exhibitionism. However, the effectiveness of law enforcement also depends on public awareness of reporting incidents of exhibitionism and cooperation between various relevant agencies in handling these cases. Thus, it is hoped that firm and consistent law enforcement efforts can reduce the prevalence of exhibitionism and increase the sense of security in society.

3.2. Enforcement of Islamic Law Against Perpetrators of Exhibitionism

As a perfect religion, Islam provides comprehensive guidance for human life, including maintaining views and behavior. One of the strict commandments in Islam is to keep one's eyes away from things that are forbidden, such as looking at pornographic and nude images. This confirmation is contained in Q.S An-Nur: 30

قُلْ لِلْمُؤْمِنِينَ يَعْضُوا مِنْ أَبْصُرِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكَ أَرْكَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ ۝ ٣٠

It means: "Say to the believing men: "Let them restrain their gaze, and guard their private parts; that is purer for them, verily Allah is All-Knowing of what they do." (QS. An-Nur (24): 30).

Guarding one's gaze is an essential aspect of Islam. Allah SWT commands Muslims to guard their views from things that are haram because views are the entrance for various slander and sins. Keeping your eyes off of haram things, such as pornography and indecent content, is the first step in maintaining personal purity and preventing immoral behavior. Protecting your private parts is also a clear command in Islam. Male genitalia is the part of the body that must be covered from the navel to the knees. In the modern context, exhibitionist behavior is a sexual disorder that is included in the category of paraphilia. In Islam, this behavior is considered haram and violates moral norms.

To understand how exhibitionist behavior is treated in Islamic criminal law, it is essential first to understand the elements of criminal acts in Islamic criminal law. The elements of criminal acts in Islamic criminal law are divided into three parts, including:²⁸

a) *Al-Rukn Al-Syar'i* (formal element), This element stipulates that a person can be categorized as a perpetrator of a criminal act (*jarimah*) only if there are legal provisions

²⁸ M. Nurul Irfan, *Fiqh Jinayah* (Jakarta: Amzah, 2013), dikutip dari Muhammad Abu Zahrah, *Al-Jarimah wa Al-Uqubah fi Fiqh Al-Islami*, Kairo: Dar Al-Farabi, 1998, Hlm. 132 dan Abdul Qadir Audah, *Al-Tasyri' Al-Jina'i Al-Islami Muqaranan bi Al-Qanun Al-Wad'i*, Beirut: Mu'assasah Al-Risalah Jilid II Cet. Ke-11, 1992, Hlm. 111..

that prohibit the act and determine sanctions for violators. b) *Al-Rukn Al-Madi* (material element): This element indicates that a person can be subject to punishment if it is legally and convincingly proven to have committed a criminal act, either through active action (doing something) or passive action (not doing something). c) *Al-Rukn Al-Adabi* (moral element) states that a person can be held responsible if he is not a person with a mental disorder, is not a minor, or is not under pressure or threats when committing the crime.

Referring to al-rukun al-adabi, researchers suggest that exhibitionism is a disorder or part of paraphilia. This means that an individual is not considered "crazy" unless there is medical evidence proving they suffer from mental disorders. If an individual is not deemed to have a mental disorder or is not classified as "crazy," then exhibitionist behaviour can be blamed on the person, and they must be held accountable for their actions. Considering that exhibitionist perpetrators are primarily adults who have reached puberty, and not minors, they are included in al-rukun al-adabi. Exhibitionist perpetrators typically carry out their behaviour not under threat but based on their own will to satisfy their sexual desires.

3.2.1 Exhibitionism Includes Forms of Action *Qarbu al-Zina*

Exhibitionism, defined as the act of displaying one's private parts or engaging in other sexual acts in public, is an increasingly worrying phenomenon in modern society. From an Islamic perspective, this behaviour is not only considered immoral but is also categorized as a form of action that approaches adultery (*qarb al-zina*). Allah SWT forbids His servants from approaching adultery, as stated in QS. Al-Isra Verse 32: "And do not approach adultery; (fornication) is indeed a heinous act and an evil way." The act of approaching adultery is deemed a "vile act" and a wrong way. The prohibition on approaching adultery includes all actions that can trigger or stimulate someone to commit adultery. In this context, exhibitionism is considered an act that is close to adultery because this behaviour can arouse sexual desire in both the perpetrator and those who see it. Thus, the prohibition on approaching adultery encompasses not only avoiding adultery itself but also avoiding all actions that could lead to adultery. In other words, approaching adultery is a prohibited act, especially if it leads to the act of adultery. Therefore, the prohibition on adultery is strict and must be strictly avoided.²⁹

²⁹ Neng Djubaedah, *Perzinaan : Dalam Peraturan Perundang-Undangan Di Indonesia Ditinjau Dari Hukum Islam* (Kencana Prenada Media Group, 2010).

The hadith narrated by Abu Hurairah RA strengthens the prohibition on approaching adultery. Rasulullah SAW said: "Both eyes can commit adultery, both hands can commit adultery, both feet can commit adultery. And all of this will be confirmed or denied by the genitals" (an authentic hadith narrated by Imam Bukhari and Ibn Muslim from Ibn Abbas and Abu Hurairah).³⁰ This hadith emphasizes that zina is not only limited to physical sexual relations but also includes actions carried out with the eyes, hands, feet, mouth, and heart that can lead a person to adultery. It is the genitals that justify or thwart it.³¹ Through this hadith, we understand that exhibitionist behaviour, which involves staring and often physical interaction, can be categorized as a form of sensual adultery.

Exhibitionist behaviour is aimed at stimulating sexual desire. Exhibitionists deliberately display their private parts to elicit reactions from others, which is directly contrary to Islamic teachings that emphasize protecting the eyes and private parts. This action creates significant opportunities for adultery to occur, whether in the form of thoughts, views, or physical actions. Regarding punishment for the criminal act of exhibitionism, this falls into the category of Jarimah Ta'zir. Ta'zir is a type of punishment that is not explicitly prescribed in the Al-Qur'an and Sunnah, so the form and severity of the punishment are left to the authorities or government. This provides flexibility in law enforcement, allowing the government to adjust penalties based on the context and severity of the offence.

3.2.2. Exhibitionism Is a Form *Jarima Ta'zir*

In the context of Islamic criminal law (fiqh jinayah), acts of exhibitionism can be subject to sanctions based on Jarimah Ta'zir, which is punishment determined by the authorities based on wisdom and the benefit of the people. In jinayah jurisprudence, the term criminal act is equated with "Jarimah," which means sharia prohibitions that Allah threatens with the law of had or ta'zir. Prohibitions can involve either committing a forbidden act or neglecting a required act. The elements of an act that can be said to constitute "Jarimah" include: (i) A text prohibits the act, accompanied by threats of punishment (al-rukun al-syar'i); (ii) There are elements of an act that constitute a crime,

³⁰ Muhammad Shiddiq Hasan, *Ensiklopedia Hadis Shahih (Kumpulan Hadis Tentang Wanita)* (Bandung: Mizan, 2000), h. 284.

³¹ Mohammad Iwan Fahmi, "Tinjauan Hukum Pidana Islam Dan Hukum Pidana Positif Terhadap Kejahatan Eksibisionisme (Studi Kasus Di Wilayah Hukum Polresta Sidoarjo)" (Universitas Islam Negeri Sunan Ampel, 2021), h. 284.

either in the form of committing a prohibited act or omitting a required act (al-rukn al-madi); (iii) The perpetrator (al-rukn al-adabi). Jarimah Ta'zir is a type of punishment not explicitly specified in the text, so the form and level of punishment are left to the authorities or judges. This punishment aims to maintain public benefit and protect the public from harm, and its enforcement is by Sharia principles.

Judging from whether the characteristics change or not *Jarimah* and types of punishment, the Fuqaha divide them into two forms, namely *First Jarimah ta'zir*, the types of which are determined by sharia', such as muamalah using usury, triggering scales, betraying a mandate, corruption, bribery, manipulation, nepotism and cheating. This act is prohibited, but sanctions are left entirely to the authorities. *Second, Jarimah ta'zir*, Which the authorities or government sets. In this case, exhibitionism can be categorized as *Jarimah ta'zir* whose punishment is handed over or determined by the authorities or government because There Is No Specific Punishment In Nash. Although exhibitionist behaviour violates decency and moral norms, no specific punishment is stipulated in the Quran or Hadith for this act. *Second, Approaching Zina: Exhibitionism* is an act that approaches adultery because it aims to stimulate sexual desire, which can open up opportunities for adultery. Third, the Judge Determines the Sentence. In exhibitionism cases, judges can determine the type and severity of punishment based on the situation and the social impact caused. That is, the punishment *finger ta'zir* does not have certain restrictions.

Types of sanctions *ta'zir*³², include Penalty *ta'zir* which concerns the body. a) Death Penalty: basically, in the syara', it is stated that punishment *ta'zir* is to teach and not to destroy. Until in punishment *ta'zir*, there can be no amputation of limbs or loss of life. The Hanafi school allows sanctions *ta'zir* with the death penalty when the act is repeated and can bring benefits to the community. For example, the repeated theft and constantly insulting the Prophet SAW done by dhimmi infidels who have just converted to Islam and among the Malikis and some of the Cannabis also allowed the death penalty as *ta'zir* highest. This sanction can be applied to spies and people who cause earth damage. Moreover, some Shafi'ites allow the death penalty, such as in the case of homosexuals.

³² Abdurrahman Al-Maliki, *Sistem Sanksi Dalam Islam* (Bogor: Pustaka Thariqul Izzah, 2022).h. 197

Apart from that, the death penalty is also imposed in cases of spreading heretical sects that deviate from the Koran and Sunnah. b) Punishment of whipping or whipping; this punishment is the main punishment in Islamic Sharia. In *finger* hudud, the amount has been determined. For example, 100 times for zina and 80 times for qadzaf. Whereas for *finger-finger ta'zir* no specific amount. According to the Ulama, there are examples of immoral acts that are subject to sanctions *ta'zir* are Forgery of Baitul Mal stamps at the time of Umar bin Khattab, attempted adultery, thieves who did not reach one nisab, corruption of morals, people who assisted robbery, and *finger-finger* which is threatened with punishment as a limit, but there is suspicion in the act.

The judge determines the number of lashes or the number of lashes *Jarimah ta'zir* must be adapted to the perpetrator's condition, situation and place of crime. Several features of caning compared to other punishments are: 1) It is more deterrent and has more repressive power because it is felt directly physically. 2) Be flexible. Every *Jarimah* has varying numbers of lashes. 3) Low cost. It does not require significant funds and its practical application 4) More pure principles. Sanctions are personal and do not relate to the convicted person's family. Scholars differ regarding the maximum number of caning sentences *Jarimah ta'zir*. a) According to the Hanafi school of thought, it is not permissible to exceed the limit of the maximum penalty by the hadith: "*Anyone who exceeds the punishment in matters other than hudud, then it includes exceeding the limit.*" (HR. Al-Baihaqi dari Nu'man bin Basyir and Al-Dhahak). b) According to Abu Hanifah, it cannot be more than 39 times because of the limit for drinkers; booze whipped 40 times. c) According to Abu Yusuf, it cannot be more than 79 times because the limit for qadzaf perpetrators is to be caned 80 times. d) According to Malikiyah Ulama, sanctions *ta'zir* can exceed the limit during pregnancy. They were guided by the decision of Umar bin Al-Khattab, who whipped Ma'an bin Zaidah 100 times for forging the BaitulMal stamp. Regarding the execution of whipping, scholars mention that the size of the whip is *mu'tadil*, neither small nor large.

Second, sanctions related to a person's freedom, consisting of a) limited incarceration." punishments applied for insulting, selling khamr, eating usury, breaking the fast at noon during Ramadan without a break and giving false testimony. Scholars differ in their opinions regarding the length of prison. Some scholars believe that the prison sentence is two or three months, and others believe that the length is left to the judge.

According to the Syafi'iyah Ulama, the longest prison sentence is one year, which is included in the punishment of exile. Moreover, according to Ibnu Qudamah, the lowest limit is left to Ulil Amri. Some other scholars have determined that the lowest limit is one day.³³ b) An unlimited prison sentence has no time limit and lasts until the convict dies or repents. This punishment can also be called life imprisonment. c) Sentence of exile: this sentence of exile is imposed on perpetrators of jihad who are feared to have a bad influence on society. The opinions of the fuqaha regarding the place of exile include: According to Imam Malik bin Anas, exile means dropping (throwing) the perpetrator from an Islamic country to a non-Islamic country. According to Umar bin Abdul Aziz and Said bin Jubayyir, exile means being exiled from one city to another. According to Imam Syafi'i, the distance between the city of origin and the city of exile is the same as the distance for the qasr prayer. Imam Abu Hanifah shares Imam Malik's opinion that exile means imprisonment.

Third, in punishment *ta'zir* relating to a property, Imam Ibn Taymiyah divided the punishment *ta'zir* in the form of assets, it is divided into three parts by paying attention to the *atsar* (influence) on the assets, namely by destroying it (*al-Itlaf*), changing it (*al-Ghadir*), Possess it (*al-Tamlik*) with a fine. *Fourth*, penalty *ta'zir* others, such as solid warnings and being presented in front of trial, advice, censure, excommunication, dismissal, and public announcement of mistakes, as reported in print or electronic media.

4. Conclusion

This research emphasizes the importance of law enforcement against exhibitionist behaviour, which is increasing with the development of technology and social media, as well as its negative impact on victims and public morality. Indonesian criminal law, through the Criminal Code, the Sexual Violence Crime Law, and the Pornography Law, provides a solid legal basis for prosecuting perpetrators of exhibitionism. In contrast, Islamic criminal law categorizes exhibitionism as a *ta'zir*, with punishment determined by the judge based on discretion and the specific situation. This research also emphasizes that integration between general criminal law and Islamic criminal law can create a legal framework that is more balanced and adaptive to social change. Public awareness

regarding the social impacts of exhibitionism needs to be increased through more intensive outreach and education, and legal updates governing exhibitionism are specifically needed to face the challenges posed by technological developments. To strengthen law enforcement, it is recommended that there be a public awareness campaign, regular training for law enforcement officers, updates to laws and regulations, and further research involving empirical data and case studies.

5. References

- Al-Maliki, Abdurrahman. *Sistem Sanksi Dalam Islam*. Bogor: Pustaka Thariquul Izzah, 2022.
- Benuf, Kornelius, and Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, no. 1 (2020): 20–33. <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.
- Berner, Wolfgang, Peter Berger, and Andreas Hill. "Sexual Sadism." *International Journal of Offender Therapy and Comparative Criminology* 47, no. 4 (2003): 383–95. <https://doi.org/10.1177/0306624X03256131>.
- Boudabous, J., K. Khemakhem, D. Hamza, M. Kraiem, H. Ayadi, and Y. Moalla. "Sexual Violence in Schools: A Study of 30 Psychiatric Expert Reports." *Neuropsychiatrie de l'Enfance et de l'Adolescence* 72, no. 3 (2024): 120–26. <https://doi.org/10.1016/j.neurenf.2023.10.002>.
- Chan, Heng Choon. "Sexual Sadism and Psychopathy in Sexual Homicide." *The Wiley International Handbook on Psychopathic Disorders and the Law, 2nd Edition: Diagnosis and Treatment: Volume I and II* 1, no. c (2020): 693–712. <https://doi.org/10.1002/9781119159322.ch30>.
- Djubaedah, Neng. *Perzinaan : Dalam Peraturan Perundang-Undangan Di Indonesia Ditinjau Dari Hukum Islam*. Kencana Prenada Media Group, 2010.
- Fahma Shihsalamadhina, Pudji Astuti. "Analisis Putusan Nomor 40/Pid.Sus/2021/Pn. Skw Berkaitan Dengan Penjatuhan Sanksi Pidana Terhadap Pelaku Eksibisionisme." *Novum: Jurnal Hukum*, no. 40 (2023): 52–65.
- Fahmi, Mohammad Iwan. "Tinjauan Hukum Pidana Islam Dan Hukum Pidana Positif Terhadap Kejahatan Eksibisionisme (Studi Kasus Di Wilayah Hukum Polresta Sidoarjo)." Universitas Islam Negeri Sunan Ampel, 2021.
- Firestone, Philip, Drew A. Kingston, Audrey Wexler, and John M. Bradford. "Long-Term Follow-up of Exhibitionists: Psychological, Phallometric, and Offense Characteristics." *Journal of the American Academy of Psychiatry and the Law* 34, no. 3 (2006): 349–59.
- Harefa, Safaruddin. "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam." *University Of Bengkulu Law Journal* 4, no. 1 (2019): 35–58. <https://doi.org/10.33369/ubelaj.v4i1.7303>.
- Hasan, Muhammad Shiddiq. *Ensiklopedia Hadis Shahih (Kumpulan Hadis Tentang*

- Wanita*). Bandung: Mizan, 2000.
- Intania, Helen, and Wahyu Satria WPW. "Analisis Penanganan Kekerasan Seksual Berbasis Online Dalam Konstruksi Hukum Di Indonesia." *Literatus* 4, no. 2 (2022): 410–17. <https://doi.org/10.37010/lit.v4i2.729>.
- Irfan, M. Nurul. *Fiqh Jinayah*. Jakarta: Amzah, 2013.
- Martin, Jennifer, and Andrea Slane. "Child Sexual Abuse Images Online: Confronting the Problem." *Child and Youth Services* 36, no. 4 (2015): 261–66. <https://doi.org/10.1080/0145935X.2015.1092828>.
- Nandita, Sophie. "Pertanggungjawaban Pidana Pelaku Eksibisionisme Dalam Hukum Pidana Indonesia." *Jurnal MAHUPAS: Mahasiswa Hukum Unpas, Vol. 1 No. 2, Juni 2022* 1, no. 2 (2020): 49–65.
- . "Pertanggungjawaban Pidana Pelaku Eksibisionisme Dalam Hukum Pidana Indonesia." *Jurnal MAHUPAS: Mahasiswa Hukum Unpas* 1, no. 2 (2022): 49–65. <https://repository.unsri.ac.id/34619/>.
- Nurjaini, Nurjaini, and Mar'ie Mahfudz Harahap. "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Pelecehan Seksual." *Al-Adalah: Jurnal Hukum Dan Politik Islam* 8, no. 2 (2023): 162–73. <https://doi.org/10.30863/ajmpi.v8i2.5101>.
- Rafly, Muhamad, Raudiatu Zzahra, and Eka Juarsa. "Akibat Hukum Perilaku Eksibisionisme Ditinjau Dari Undang-Undang No. 44 Tahun 2008 Tentang Pornografi." *Prosiding Ilmu Hukum* 7, no. 1 (2021): 537–40. <http://dx.doi.org/10.29313/.v7i1.27034>.
- Santoso, Andika, and Eko Nurisman. "Analisis Hukum Dalam Pencegahan Tindak Pidana Kesusilaan Eksibisionis." *Jurnal* 13, no. 1 (2022): 88–104.
- Seto, Michael C., and Michael Kuban. "Criterion-Related Validity of a Phallometric Test for Paraphilic Rape and Sadism." *Behaviour Research and Therapy* 34, no. 2 (1996): 175–83. [https://doi.org/10.1016/0005-7967\(95\)00056-9](https://doi.org/10.1016/0005-7967(95)00056-9).
- Wahyuni, Beti Eka. "Analisis Penerapan Prinsip Restorative Justice Sebagai Alternative Penyelesaian Perkara Aksi Eksibisionisme," 2023. <http://repositorio.unan.edu.ni/2986/1/5624.pdf>.
- Weiler, Julia Von. "Living in the Era of Digital Exhibitionism." *Child and Youth Services* 36, no. 4 (2015): 329–44. <https://doi.org/10.1080/0145935X.2015.1096596>.
- Woodworth, Michael, Tabatha Freimuth, Erin L. Hutton, Tara Carpenter, Ava D. Agar, and Matt Logan. "High-Risk Sexual Offenders: An Examination of Sexual Fantasy, Sexual Paraphilia, Psychopathy, and Offence Characteristics." *International Journal of Law and Psychiatry* 36, no. 2 (2013): 144–56. <https://doi.org/10.1016/j.ijlp.2013.01.007>.