

## **An Overview of Rape Phenomenon in Malaysia by Muslims Scholars**

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### **Abstract**

*Nowadays a lot of crimes happen undesirably. We humans are unable to determine what will happen later. Mankind today do not know the difference between right and wrong, they are clouded by emotions that insist them to satisfy the desires. The proliferation of national development in general is now Malaysia, rape has been expanding at an alarming state. Studies show that majority victims of sexual violence are women and girls. World Health Organization (WHO) estimates that 36 to 62 per cent of victims of sexual violence comprises of those aged under 15 years old. Rape occurs worldwide regardless of race, ethnicity, economic status, religion and culture. The proliferation of national development in general in Malaysia, rape has been expanding and reaching to an alarming level. Studies have shown that the majority of victims of sexual violence are women and girls. World Health Organization (WHO) estimates that 36 to 62 per cent of victims of sexual violence are comprised of those aged less than 15 years. Rape occurs worldwide regardless of race, ethnicity, economic status, religion and culture. Most of the sexual and physical violence, psychological and emotional abuse are committed in secretly; hidden from the public. This resulted violence or abuse cases quite hard to be proven in the court.*

**Keywords:**Rape, Muslim, Crime, Malaysia

### **1. Introduction**

In Malaysia, our society is always being shocked by the news of rapes which its rate is accelerating day by day (Zinabu al-ikrah)(Zaizul Ab. Rahman et. al, 2014). In United State, in 1992-1993, 5.4 millions of women became the victims of crime including 500,000 crime rape or sexual harassment. Kill Patrick in 1992 reported that 13% of the US's women who 1871 women are being raped every day. To make things worse, there is a report that stated crime rape is the most that have not been lodged to the police. In 2001, 248,250 of rape and sexual cases were lodged to the police. Imagine if only 248,250 cases is 16% of the rape and sexual crime that are being reported, what would be the real figure or rate of crime that are happening in West society. Maybe it has reached millions of cases every year. Based on the detailed report of crime rape in West on a web, every 2 minutes, a woman is being raped in the US. Besides, 60% of the women that actively involved in free sex are because they have been raped before. They feel that there are no longer virgin, so they gave up themselves. Thus, it shows how critical the rate of crime rape is. US lead among other countries in the world (Alfred Blumstein and Joel Wallman, eds., 2008). But, based on the Self Development Index (SDI) that is concluded by United Nations, it is stated that the culture and civilization of the West assuming themselves as the most developing nation in the world and others are being lagged behind. Actually, they are the one who have set the record of the highest crimes rate in the world. Moreover, in one general statistic, 1871 women are being raped every day (Elain Cassel and Douglas Bernstein, 2009). Much worst, the report stated that crime rape is the most that have not lodged to the police.

In 2001, 248,250 rape and sexual crime are reported to the police. Imagine if only 248,250 cases is 16% of the rape and sexual crime that have been reported, what would be the real figure or rate of crime that is happening in West society. Maybe it has reached millions of cases every year. Based on a detailed report of crime rape in West on a web, every 2 minutes, a woman is being raped in the US. 72% from 100,000 women are raped every years, 45% of the rapist are drunk rapist, 47% of the victims facing a heavy injuries after being raped, 80% of the victims are at the age of 30 and below. In the higher education institution, 25% of the girls are the victims of rape. 8.5% of the girls have been forced to do sex (but not regard as rape cases), 47% of the rape cases is the result of

the dates between the rapist and the victim itself. In such other reports, it is stated that every 6 seconds, a woman is raped in US. Moreover, one of four girls in higher education institution, have been raped or almost been raped. In 2003, 198,850 are reported as rape victims (NCVS). In that rate, 81,000 were completed rape, 60,610 were almost completed rape, and 80,910 were only involved in sexual harassment. 4065 were pregnant. Plus, 60% of the girls that are actively involved in free sex are because they have been raped before. They feel that there are no longer virgin, so they gave up themselves (United Nation Development Programme, 1998). Thus, it shows how critical the rate of crime rape is. US lead among other countries in the world (Alfred Blumstein and Joel Wallman, eds., 2008). But, based on the Self Development Index (SDI) that is concluded by United Nations, it is stated that the culture and civilization of the West assuming themselves as the most developing nation in the world and others are being lagged behind. This method is actually a con to establish the neo-colonialism plan. The Wests are the leaders in some fields and awarded as model of the true development in the world. Therefore, other countries should be following the philosophy, measurement, methods of the development if they really wanted to be assumed as the Developing Countries. But, to their astonishment, the SDI only take into account 3 things to regard them as the Developing countries; long lives, education achievement (literacy rate and formal education), and rate of lives based on the real GDP per capita. Therefore in 1998, 25 countries that achieved the highest SDI were Europe and North America, except Japan (8), Israel (22), Barbados (24) and Hong Kong (25). Malaysia is at the 60<sup>th</sup> place below Singapore, Chile, Brunei, Hungary, Mexico, Venezuela, Thailand, and others. But they have missed the most important yardstick to measure the development of one country which is homicide rate, rape, prostitution, suicidal, drug addict, abuse, divorce rate and others. Divorce rate between 1992-1995 among 10 most developing countries in the world based on SDI is very high which was 49% in Canada, 43% in France, 53% in Norway and UK, 50% in US, 67% in Sweden and Belgium. The numbers of child out of wedlock is also very high in these countries. Most of the citizens in Nordic's countries like Sweden, Norway especially in Scandinavia are having children out of wedlock. It is followed by Iceland with 57.3%, 30% in Britain, 7.2% in Italy, and 2.7% in Greece. In 1993 to 1998, the figure of wedlock children in US is 32%. Almost 70% of this numbers are black and in 1996, almost 1.4 million abortions were done in that country. The criminal rates in these countries are also high. In 1990, 45 out of 100,000 of Canadians are criminals, France (86), Finland (62), Belgium (51), Sweden (66), Spain (115), and United Kingdom (92). At the end of 1999, every 476 of 100,000 of Americans were criminals, which were one of 110 of men, and one of 1695 of women. California administers of prisons cost more than the universities by using the leftover money. Since 1984, California has built 21 prisons and one university only. Suicidal and drugs rate were very high in these countries (Elizabeth Kandel Englander, 2007). So, it is very clear that west are likely to colonize other countries with the machines they have created. They have been successful in confronting the Islam Countries with various types of entertainment and sex which some of the Malaysians have been overwhelmed. This is because lack of self-esteem awareness which will lead into crimes including rape.

**Table 1.0: Rank of Countries That Has High Crime Level in 2004**

Country	Rate
Amerika Syarikat	89,110
Afrika Selatan	53,008
Kanada	24,049
Australia	15,630
India	15,468
Mexico	13,061
Britain	8,593
Perancis	8,458
Jerman	7,499
Rusia	6,978
Korea Selatan	6,139
Sepanyol	5,664
Thailand	4,020
Venezuela	2,931
Poland	2,399
Itali	2,336

Jepun	2,260
Colombia	1,861
Belanda	1,648
Indonesia	1,452
26. Malaysia	1,429
40. Ukraine	1,321
41. New Zealand	1,212
42. Sri Lanka	1,110
43. Bulgaria	912
44. Norway	940
45. Ireland	832
46. Greece	763
47. Hong Kong	698
48. Zambia	486
49. Tunisia	431
50. Costa Rica	239
51. Krygystan	150
52. Arab Saudi	80

Source: International Anti-Crime Center, United Nation (2004)

According to a report released by the United Nations (UN) refers to the year 1998 to 2000, Malaysia is the second highest number of rape cases in Asean. However, based on the source from the International Crime Prevention Centre, the Organization of the United Nations showed that Malaysia was ranked 26 in 2004 amongst other countries which have high cases of rape in the world (Bureau of Justice 2005 Statistics, 2005). Although the figure in Malaysia is quite fair, but the phenomenon of rape and murder cases are becoming more frequent and terrify the whole society.

Lately, rape cases in the country were reported more frequent, statistics of rape cases rose from 368 cases in 1980 to 4519 cases of rape cases 2010. Crime statistic in our country shows an alarming state and according to the Malaysia Crime Prevention Foundation, the total numbers of rape cases have showed a significant increment from year to year. According to statistics in 2009 an average commission of the crime of rape is about 15 cases per day. Based on research conducted by Tan Lay Ean executive director of the Public (All Women's Action Society) each reported rape cases there would be 10 rape cases were not reported (Criminal Investigation Department, 2009).

This unfortunate event had frightened and intimidated Malaysians. This is because the rape crime today not only involve sexual assault only but also murder and cremation; eliminating evidence. Police reports had shown that there were no rape crime and murder cases were reported before 1984. The figures show the number of rape cases and murder increased and is expected to increasing in future. A police report shows that crime rape and murder began after 1984. During the period from 1984 until 2010 there were about 120 cases of rape and murder recorded. Based on the study with aids in the interpretation of Women Organization (WAO), all rape cases that have been reported to the police; there are 10 cases were not reported. This means that the number of rape cases is higher if compared to cases that really happened.

Human rehabilitation process is a process of human development in terms of moral, ethics and values .The term moral decay based from research is rupturing the rules, limitations and decent set of human life. Recovery and reconstruction process involves various methods and approaches. This study will focus on the closest sources who have been involved for a long time; prison staffs, the prisoners and also peripheral parties in such rehabilitation programs.

## ***2. Crime Rape According to Islam***

Rape is sexual intercourse performed without the consent of other party. This gives the sense it is more severe and cause more adverse effects of adultery. God's Words.w.t.in Surah al-Furqan verse 68: *And those who do not invoke with Allah another deity or kill the soul which Allah has forbidden [to be killed], except by right, and do not commit unlawful sexual intercourse. And whoever should do that will meet a penalty. (Sūrah al-Furqān (25): 68).*

Rape is a crime committed by force and without consent. Increase in rape cases and various reactions have caused discomfort among the people now. Their concern deepened when there are many reports of violence particularly rape cases involving under age victims.

Increasing rape cases of a particular country indicate the worsening of social ill. Crime rape is already not a new phenomenon that occurs in this country. The only question is why it still cannot be overcome until now. Crime rape is listed as one of the most serious sexual crimes. According to the Criminal Procedure Code, those who commit such crime will be arrested without any warrant. Rape is an offense that prohibits bail and compound. It is considered as serious crimes because it is involving the social; victims shameful experience (Mohd Al Adib Samuri et.al, 2013). Rape according to the Arabic term referred to *ighṭisab* that comes from the word meaning *ghaṣb*; confiscate or take something without his consent. *Ighṭisab* word means something that is not specific as that used for rape. *Ighṭisab* could be meaning as taking something by force, robbery, violation, coercion and rape itself. According to Islam, most of the scholars do not use the term rape when debating the issue, thus they use the term *bi al-ikrāh* fornication or adultery by force (Fawzī, Sharīf Fawzī Muhammad (1985 / 1405H).

The scholars of Islam are not using a specific meaning to the term rape (N Sarnon et.al, 2013). Therefore, a specific purpose should be to give a true picture of this rape. Thus, the term rape has many features in common with the term *zina bi al-ikrāh* will be used to take the important features in common with the rape term.

Based on the purpose of rape as understood in modern law, it is an offense of adultery in Islam. Clearly rape is not paid within Islam *Sareh* (light), but the jurists classified as a forced adultery (*zina bi al-ikrāh*). Therefore, the explanation of the *bi al-ikrāh* adultery in Islam should be understood in detail for clarification purposes as of strengthening of *bi al-ikrāh* adultery with the term rape. According to Islam adultery *bi al-ikrāh* has various terms. Each sect has given their own terms of giving meaning that is mānicejāmice.

Shafie's sect defines adultery as:

Meaning: *Entering the male genitalia into the female genital is known to be illegal and done without any fosterage with fervour.*

According to al-Ṣābūnī opinion in its interpretation of adultery as sexual intercourse is illegal in terms of terminology:

Meaning: *A man who is having sexual intercourse with a woman improperly married without any legal or fosterage in wedlock.*

Malīki's sect defines adultery as:

Meaning: *A purposely sexual intercourse of mukallaf in the vagina by him (man) does not have one without khīlaf (Ittiḥāq).*

Al-Kasānī is one of the scholars of Hanāfi defines adultery flow as:

Meaning: *Unlawful sexual intercourse in the female genital (qubul) that enrapture in the conscious state to make choices (not forced to do so) in Muslim countries that imply Islamic Law without the existence or ownership of the actual marriage or fosterage or other syubhah related to both ownership or marriage.*

Scholars from Hambali sect defined adultery as

Meaning: *Doing vile act towards the backside or anus*

If the percolation about the meanings that are given based on the above statement is made, the definition that is referred from the *al-Kasānī* (1144-1189M) is more complete and is the best definition among other definitions given by other Islamic scholars. Even though there are several definitions given but they vary with each other, but the main point that wanted to be stressed is that adultery is an illicit act that is done intentionally. To conclude the fact, the *fuqahā'* agreed that adultery have three basic elements that are agreed upon by most scholars:

- 1) The forbidden act of *wāṭi'*
- 2) Deliberately behaviour
- 3) The act that is being done by a mukallaf (a person that knows about the rules of Islam)

*Al-ikrāh* can be defined as to compel a person them to do something beyond their willingness by using threat (intimidate). The person that is being forced is called "*mukrah*" and the person who forces is called "*mukrih*". The act of forcing is then called "*mukrah<sup>c</sup>alayh*" and the threat towards the things that is intimidating is called "*mukrahbihi*".

Scholars classified *al-ikrāh* into two categories that are:

- 1) *Ikrāh Mulji'*, threat that involves the life or abdominal parts.

2) *IkrāhGhayraMulji*’, impudence which does not includes life, abdominal parts or even belongings. (°Abdul al-KarîmZaidān, 2000).

Based on what could be understood, rape can also means the act of adultery that is done forcefully or without willingness. What can be sure of is that the element of willingness is not the determinant in the foul act of adultery but, instead it is determined by the bond of marriage or rightful ownership.

A compulsion can be done either by men or women. If the threat is done towards women, there are some thoughts that says it is not compulsory for the women to be sentence with *ḥādeither* by *ikrāhmulji*’ or *ikrāhghayramulji*’.

(IbnQudāmah, Abū Muhammad °Abdullah, al-Mughnī, t.t.).Allah Almighty said that  
Meaning:*And do not compel your slave girls to prostitution, if they desire chastity, to seek [thereby] the temporary interests of worldly life (al-Nūr (24): 33).*

And Allah Almighty also said that:

Meaning:*And if someone should compel them, then indeed, Allah is [to them], after their compulsion, Forgiving and Merciful. (al-Nūr (24): 33).*

The verses said that the sin from the person who is being forced to commit adultery will be forgiven. Thus, if the person’s sin is being dropped, the sentence of *ḥād*will not be counted towards them either. When a women is being forced to perform adultery (being raped), the sentence of *ḥād*will not be taken into account to her based on the Quranic verse stated above.

The freedom is given by Islamic *ḥudūd* laws towards women who has been raped or to commit adultery by force. It is as long as the act of adultery is without their willingness and they are in a state of having no power to defend themselves. That is why Islam has alleviated the sentence and forgives the act that is beyond her permission.

This judgment is strengthened with the presence of *ḥādīth*from Prophet Muhammad p.b.u.h:Meaning:*Verily Allah has alleviated the sins committed by my fellow followers by any means whether not purposely, forgetfulness and compellation upon them.*

*Ikrāh*can also be related as *syubhah*, with that, the conviction on *ḥadḥudūdis* rejected by itself with the presence of *syubhahas* what is being done in the time of Prophet Muhammad p.b.u.h towards a lady that is being forced to commit adultery thus, Prophet Muhammad p.b.u.h exempted her from *ḥadḥudūd*. This situation is being explained in the *ḥādīth*by *Wā’il bin Ḥajar*;Meaning:*From Wā’il bin Ḥajar, he creed that there was once a lady who was on her way to perform prayer and unfortunately she bumped to a man who then raped her. She screamed and the man ran away. As she met a group of muhajirin ladies, she told them what the man had done to her and she was taken to Prophet Muhammad p.b.u.h. He told the lady to go back as she has been forgiven by Allah.*

As for men, the act of forcing to commit adultery or rape has a clash debate among the *fuqahā’* as it can be classified into two views about this matter:

According to the first opinion that is a weaker opinion (*marjūh*) held by *ImāmAbūḤanāfah*in the beginning, *Imām al-Syāfi’i*, *Imām Ahmad* as well as *Syī’ahZaydiyyah*said that a man that is forced to commit adultery (to rape) is bound to be sentenced with *ḥād*. They argued by saying that a man is not counted as a person who is being forced as long as his erection can culminate (tense) because the erection factor acts as a prove of willingness element and desire. If the erection is not tense but there is the action of insertion together with force, then the sentence of *ḥād* is exempted(ZaizulAbRahman et. al.,2012, 2018).

This opinion is being rejected by a stronger opinion from other sect that are *al-Syāfi’i*, *Mālikī*and *Hanbalī*and *Syī’ahImāmiyyah*that gave their view which is the man will not be sentenced to *ḥadḥudūd*if he is being forced even by *ikrāh* in the form of *mulji’eorghairmulji’edue* to the presence of force that is *syubhat*and *ḥadḥudūd*will be abolished upon him based on *ḥādīth*by Prophet Muhammad p.b.u.h:

Meaning:*Exempt ḥudūd on Muslims as long as it could be done.*

And by using the method of *fihiyyah* (Islamic jurisprudence) taken from the *ḥādīth*above that is:Meaning:*Hudūd sentence is exempted when there is syubhat.*

The release from this punishment is also based upon the *ḥādīth*by Prophet Muhammad p.b.u.h that is:Meaning:*Verily Allah has alleviated the sins committed which were not purposely done, forgetfulness and by any compellation upon my follower.*

Their notion on how there is no difference between the act of force either towards men or women and the tension of the men’s erection. Sometimes, the tension on men’s erection is natural when sleeping; despite doing it unintentionally or effort because it is the evidence of manliness or *al-fuhūliyyah*is more major than the evidence

of obedience or *ṭawaʿiyyah*. This arguments emphasize that fear can deny the tension of erection is not true (ZaizulAbRahman et. al. ,2012, 2018), the fact is a person commit the act due to being forced with threat but not by committing the act which he does not fear of.

Thus, we can conclude that in modern term, ‘rape’ or *zinā bi al-ikrāh* based of the Islamic term is the act of adultery by force that is really has a huge concern on the sentence in *ḥadḥudū* based on Islamic teaching. The most important element that differentiates the understanding on the term adultery is either the act has the element of force in it or not. If the force element is present, then the term is *zinā bi al-ikrāh* and the victim will be released from being sentenced from *ḥadzinā*. But if the act occurred without any element of force it is considered as *zinā* and both sides will receive the punishment of *ḥadzinā* if the requirements are fulfilled. (Mutawallḥādīth, Muḥammad<sup>c</sup> Abd al-Ḥamid al-Sayyid, t.t.).

### 3.Evidencing in Rape According to Islam

#### a) Testimony

An accepted by all Fiqh’ scholar as there is a clear commandment from Allah s.w.t:

Meaning: *Those who commit unlawful sexual intercourse of your women- bring against them four (witnesses) from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them (another) way (Al-Nisa’ (4):15).*

In accordance with the testimony in the evidencing of rape too, the Prophet (pbuh) said:

Meaning: *The Prophet (pbuh) said to Sa’ad bin Ubadah when asked a question, “O Allah’s Apostle! Indeed I found a woman and a man commit adultery, can I kill them or do I have to bring four witnesses?” The Prophet said, “You cannot kill them until you bring four witnesses.”*

However, not all man can be accepted as witness, as the witness must be among the Muslims, just and witness the adultery by himself.

#### b) Confession

It is difficult to get a confession from those who are suspected of rape. Those people will deny the crime gravely. Confession in rape is when the rapist confesses that he did the crime. The confession must come from a mukallaf (one who is competent enough to be responsible for religious duties). Thus, confession from children and mad people cannot be accepted. This is the notion of Shafie and scholars of Hanafi’s sect.

#### c) *Qarenah* (Evidence)

The word *qarenah* in terms of language comes from the verb in Arabic “qarama” that means connect (connection), relation (relationship), combine (combination), correlation or companionship. In legislation term, *qarenah* can be defined as assumption or hypothesis. In term of concept, *qarenah* includes any signs produced through speech or any signs based on the environment (IbnQayyem, Shamsuddin, 1995)

*Mustafa al Zarqa* (1940M) defined *qarenah* as apparent signs closely related with a hidden fact that is based on an argument.

Meanwhile the recent definition given by *Abdul KarimZaidan* (1958) is any signs whether from speech or environment that shows the existence or non-existence of one thing.

Most scholars still agree with the application of *qarenah* in cases involving *ta’zir* sentence. *Qarenah* is also used in rape crimes, suppose that the rape is accounted as an offense in *ta’zir* crimes. This can be proved by a story during The Prophet’s (pbuh) time where there was a case; a man assaulted a woman with the intention of raping. The woman screamed and fainted immediately. The man quickly escaped. Another man heard the scream and came to help, tried to lift the woman. Soon, a group of people came as they also heard the scream. They thought the second man assaulted the woman; hence the man was brought upon The Prophet (pbuh). The moment the woman awoke, she also gave the testimony that the man was the one who assaulted her.

Based on the woman’s testimony and explanation from those who captured the second man, where they found the man was embracing (cuddling) the woman, The Prophet (pbuh) pronounced the man as guilty and sentenced the man to stoning. However, the first man came to confess guilty, so The Prophet (pbuh) let go of the second man (Nasimah Hussin et al., 2007).

#### **4. DISCUSSION**

In Malaysia, in the 375 Penal Code Act, which is the willingness of a woman aged 16 years and below cannot be accepted as defense even though she herself is willing or stimulates to have sexual intercourse with her. This means, children who commit adultery will still be assumed as a crime of rape even though the act was done with willingness without coercion.

For the crime of rape in Malaysia, in accordance with the claims of women's organizations and supported by Royal Malaysia Police, the amendment on section 376 Penal Code to allot minimum jail sentence of 5 years and not more than 20 years together with whipping punishment. Amendment on section 354 Penal Code was also done, which is to add the sentence to rapist who assaults or uses violence with the intention to rape or molest a woman with addition of 10 years jail sentence or fine and subjected to whipping. (Ahmad KamaruddinHj. Hamzah, 1989)

The punishment for rape crime in Islam is as in the sentence of *hudud*. The crime of rape is equated with adultery. The testimony and the sentence are also the same. In *Hududtoo*, accusing someone who is known as a good person commits adultery without providing competent witnesses is a *qazaf* offense that can lead to 100 times of whipping. In Malaysia, the law regarding rape crime need to be referred to the whole law of syariah completely (*hudud, qisas, ta'zir, the law of evidence and the syariah political*) and cannot be judged from *hudud* perspective in a limited and separated way. Someone who reports being raped, just like common cases, has to make a police report and make a medical check up. These are the usual procedures need to be done to prove that the victim was raped.

Police or investigation officers will investigate based on the report and information given. If there is a solid evidence that the rape is actually happened, the investigation officer will deliver the report to the prosecution party. If the testimony for the prosecution done in *hudud* is not enough (there are no 4 witnesses eyewitness the incident), the prosecutors can still charge the rapist under the law of *ta'zir*.

Through the law of *ta'zir*, the burden of proof is a little bit loose and the sentence is also lighter than *hudud*. Examination by a doctor, particulars and evidences collected by police such as DNA test, health report, psychological assessment and such are named as *qarenah*. *Qarenah* can be used as proofs that can convict the offense of *ta'zir* to the rapist (Ahmad Ibrahim, 1992, N Sarnon et.al, 2012,ZaizulAbRahman et. al. ,2012, 2018).

*Qarenah* can also prevent the victims of rape from the charge of *qazaf*, as *qazaf* is a *hudud* offense and any doubt that can be aroused (through *qarenah*) in *hudud* case can cause the case to be dropped. A *hudud* sentence can only be pronounced when there is not a thing beyond any shadow of doubt (Muhammad 'Iwad (t.t.).

#### **5. Conclusion**

Meanwhile, for any offense that is clearly proved by *qarenah*, but does not reach the testimony level that is needed in *hudud*, the criminal can be charged under *ta'zir* law. Connecting *qazaf* and rape in an absolute way is a wild and unfair assumption. The law of *qazaf* functions to protect a kind person's dignity from any wild allegations that can degrade his dignity and his family (Nik Rahim Wajis, 1998).

If someone alleged herself raped by someone, but the proof and evidence (*qarenah*) shows the opposite, only then it can be charged under *qazaf*. For example, Zaiton accused Zaki for raping her until she is pregnant, but the DNA test shows that the child she carries is not Zaki's, thus Zaiton will face the risk of *qazaf* charge unless there are 4 competent witnesses who eyewitness the rape, or it is proven by *qarenah* that she was raped by more than one and Ali was one of them. However, if the DNA test confirms that the child is from Zaki's semen, then Zaki can be charged under the law of *ta'zir*, while Zaiton will not be charged under *qazaf*.

In this case, Zaki is not charged under *hudud* because the testimony does not meet the requirement of *hudud*, otherwise he will be sentenced under the law of *ta'zir*. In other words, if this matter is referred to the whole law of *hudud, qisas, ta'zir*, the law of evidence, and added with the understanding towards the concept of political in syari'ah, then all doubt and wild assumptions towards *hudud* or any law in syari'ah crimes will not occur.

## 5. Acknowledgement

This study received the support and funding from the Prime Minister's Department through the research code SK-2016-018 and UKM Premier Challenge Grants DCP-2017-006/4. Appreciation is also conveyed to the Centre for the Empowerment of Adolescents (PERKASA), Centre of Aqidah and Global Peace, Faculty of Islamic Studies, UKM and the Faculty of Social Science and Humanities, UKM as well as all those who have made this research a success.

## 6. References

Al-Quran

Abd Qadir Audāh (1985), *Al-Tasyrē al-Jina'ī al-Islāmē Muqararanan bi al-Qānun al-Wadā'i*, j. 2. Beirut: Dār al-Kutūb al-Ilmiyyah.

Abī Daūd Sulāiman (t.t.), *Sunān Abē Daūd. Tahqēq Moḥamad Muḥyidēn Abd Ḥamid*, ḥadēth no. 4418, juz iv. t.t.p.: Dār al-Fikr.

Al-Zuhāylē, Wahabah (1997), *Fiqh dan Perundangan Islam*. Ter. Dr. Ahmad Shahbari Salamon. Cetakan 1, j. 6. Kuala Lumpur: Dewan Bahasa Pustaka.

Abdul Aziz Husin (1990), *Panduan Umum Undang-undang Jenayah di Malaysia*. Cetakan ke-2, Kuala Lumpur: Dewan Bahasa dan Pustaka.

Abdul al-Karēm Zaidān (2000), *Nizām al-Qadhā fi Syarē'ah al-Islāmiyyah*. Beirut: Mu'assasah al-Risālāh.

Ahmad Kamaruddin Hj. Hamzah (1989), *Pengantar Undang-undang Jenayah Islam*. Petaling Jaya: Al-Rahmaniyyah.

Ahmad Ibrahim (1992), *Hukum Islam di Malaysia*. Kuala Lumpur: Bahagian Hal Ehwal Islam Jabatan Perdana Menteri.

Amree Ahmad (2004): "Jenayah Rogol". Majalah al-Islam, April 2004.

Al-Zarqā, Mustāfa (1959), *Al-Madkhāl al-Fiqhē al-Amm*, j. 2. Damsyik: Matba'ah al-Jami'ah.

Alfred Blumstein and Joel Wallman, eds., (2008), *The Crime Up in America*. New York: Cambridge University Press

Badri, Malik (2000), *The Aids Crisis. A Natural Product of Modernity's Sexual Revolution*. Kuala Lumpur: Medeena Books.

Bureau of Justice 2005 Statistics (2005), *Crime Characteristic*. Retrieved August 2005, from [http://www.ojp.usdoj.gov/bjs/cvict\\_c.htm](http://www.ojp.usdoj.gov/bjs/cvict_c.htm) (20 Jun 2010).

Elizabeth Kandel Englander (2007), *Understanding Violence Third Edition*. Jersey London: Lawrence Erlbaum Associates Publishers, Mahwah.

Elain Cassel and Douglas Bernstein (2009), *Criminal Behaviour*. Boston: Allyn & Bacon.

Fawzē, Sharēf Fawzē Muḥammad (1985 / 1405H), *Mabādī' al-Tashrī' al-Jinā'ē al-Islāmē*, Silsilah al-Kitāb al-Jāmi', j. 2. Jeddah: Maktābah al-Khidmat al-Ḥadēthah.

Ḥamid (t.t.), *Raf al-Harj fē al-Sharē'ah al-Islāmiyyah*. t.t.p: t.p.

Ibn Qayyēm, Shamsuddin (1995), *Turūq al-Hükmiyyah fi al-Siyāsah al-Shar'iyāh*. Beirut: Dār al-Kutūb al-Ilmiyyāh.

Ibn Qudāmah, Abū Muhammad Abdullah, al-Mughnē (t.t.), *Matba'ah al-Asēmah*. J.9, Kaherah: t.p.

Kamus Dewan (1998), Ed. Ke-3. Kuala Lumpur: Dewan Bahasa dan Pustaka.

Kill Patrick e.t., (1992), *Treating Sexual Offender and Victim*. Newbury Park: Sage.

Mahfodz Mohammad (1993), *Jināyah dalam Islam*. Kuala Lumpur: Nurin Enterprise.

Malaysia (1953), *Akta Keadilan Jenayah*.

Malaysia (2006), *Kanun Kesiksaan* (N.M.B. Bab 6). Pindaan hingga Mei 2004.

Mat Saat Ab. Rahman (1993), *Undang-undang Jenayah Islam (Jenayah Hudud)*. Shah Alam :Hizbi.

Mohd Al Adib Samuri, Zuliza Mohd Kusrin, Noor Aziah Mohd Awal, Amir Husin Bin Mohd Nor, Salasiah Binti Hanin Hamjah, Zaizul Bin Ab Rahman (2013). *The Rehabilitation Theory in Adjudicating Child Offenders and Its Application in Malaysia*. Journal of Asian Social Sciences, Vol. 9, Issue 15, 156-170.

Md. Akhir Hj. Yaacub (1990), ter., *al-Ahkām al-Adliyah. Undang-undang Sivil Islam*. Kuala Lumpur: Dewan Bahasa dan Pustaka.



- Mustāshār Sayyêd al-Bughāl (1983), *Al-Jara'ém al-Mukhilāh bi al-Adāb Fiqhā'an wa Qadā*. T.t.p.: Dārul al-Fikr al-<sup>°</sup>Arāb.
- Mustafa Mājêd Harjah (1992), *al-Ta'liq °alā Qānūn al-°Uqūbah fi Dānê al-Fiqh wal – Qūdā° al-Ardāni*, Cetakan ke-2. t.t.p: Dārul al-Fikr al-<sup>°</sup>Arāb.
- Muhammad, °Iwad (t.t.), *Dirāsah fê al-Fiqh al-Jinā'ê al-Islamê*. Iskandariah: Dār al- Matbū° at al-Jami° ah.
- Mutawallê, Muḥammad °Abd al-Ḥamid al-Sayyid (t.t.), *Min Kitāb al-Ḥudūd – Ḥad al-Zinā wa al-Qadhwa al-Shur°b*, Kaherah: Jamia°h al-Azhar.
- N Sarnon, MS Mohamad, I Fauziah, K Alavi, S Nen, Ab Rahman Zaizul. (2012). *Hamil Luar Nikah: Memahami Remaja sebagai Intervensi Keluarga*. Journal of Social Sciences and Humanities, Vol.7 Issue 1, 121-130.
- Nasimah Hussin et al. (2007), *Undang-Undang Islam : Jenayah, Keterangan dan Prosedur*, j. 13. Kuala Lumpur : Dewan Bahasa dan Pustaka.
- Nik Rahim Wajis, (1998). *Jurnal Syariah*, j. 6 Bil. 2, Januari 1998. Shah Alam: Khairon Ilmu Enterprise.
- Rohana Ariffin e.d. (1997), *Shame, Secrecy and Silence: Study of Rape In Penang*, Penang: Sinaran Bros.
- ZaizulAbRahman, AbdullRahmanMahmood Ahmad Sunawary Long, MohdHaidharKamarzaman, FaudzinaimBadaruddin, Indriaty Ismail, JaffaryAwang, SitiNorul Huda Sheikh Abdullah, Wan Hamidon Wan Badaruzzaman. (2018). *Family Environment And Confidence Consumption At The Center Of Recovery* , International Journal Of Business And Social Science, United State Of America (USA), Vol. 9, No 2, February 2018, p. 210-214.
- ZaizulAbRahman, MohdHaidharKamarzaman, Mazlan Ibrahim, JaffaryAwang, KamaruddinSalleh, SitiNorul Huda Sheikh Abdullah, Wan Hamidon Wan Badaruzzaman. (2018). *Internal Factors That Lead To Crime Rape According To Islamic Scholars In Malaysia*, International Journal Of Business And Social Science, United State Of America (USA), Vol. 9, No 2, February 2018, p. 204-209.
- ZaizulAbRahman, AbdullRahmanMahmood, Ahmad Sunawary Long, MohdHaidharKamarzamanMazlan Ibrahim, JaffaryAwangSitiNorul Huda, Sheikh Abdullah Wan Hamidon Wan Badaruzzaman. (2018). *Stress, Mental Health, Life Practice And Action Activities: One Study On The Family Confidence*, International Journal Of Business And Social Science, United State Of America (USA), Vol. 9, No 2, February 2018, p. 147-152.
- ZaizulAbRahman. (2012). *The Role Of Fitrah As An Element In The Personality Of A Da'i In Achieving The Identity Of A True Da'i*. International Journal of Business and Sosial Sciences. Vol. 3, No. 4, Special Issue, February 2012, p. 165- 175.
- ZaizulAbRahman, Ahmad Sunawary Long, FaudziNaimBadaruddin, JaffaryAwang, Mazlan Ibrahim, Indriaty Ismail, Norul Huda Sarnon @ Kusenin, SuzanaMohdHoesni, Ab. Aziz MohdZain, FakhrulAdabi Abdul Kadir. (2012). *The Attributions Of Academic And Co-Curricular Success Of Malay And Chinese Students In UniversitiKebangsaan Malaysia*. International Journal of Business and Sosial Sciences. Vol. 3, No. 4, Special Issue, February 2012, p. 165- 175.