

Policy Brief

Revisiting the Concept of 'Coercion' as an Element of Rape in Indonesian Criminal Justice

 **Diantika Rindam Floranti, S.H., LL.M**
Faculty of Law, Universitas Gadjah Mada

This policy brief is an outcome of the 2023 research grant program of SHAPE-SEA, developed as part of its commitment to advancing evidence-based policy and practice in the region.

Background

In both the old (1946) and the new (2023) Indonesian Criminal Code, **the crime of rape is defined by the existence of coercion by means of violence or threat to violence** and not the lack of consent.

Comparison of the Legal Construction of Rape in the Old and New Indonesian Criminal Code

Old Criminal Code Article 285	New Criminal Code Article 473
Rape is defined as coercing a woman into sexual intercourse outside marriage through violence or threats, punishable by up to twelve years' imprisonment.	Rape is defined as coercing someone into sexual intercourse through violence or threats, punishable by up to 12 years' imprisonment.

Limiting coercion to violence **excludes non-violent but coercive unwanted sex** from being recognized as rape, failing to reflect the full reality of such experiences.

Requiring **proof of violence creates an expectation of victim resistance**; when absent, it can be misread as consent, placing victims at a disadvantage (Munro, 2010; Anderson, 2016).

This policy brief examines **how consent is framed in Indonesia's legal definition of rape**, drawing on prior research on how judges interpret the absence of consent under the Criminal Code, with a focus on two key issues:

1. Whether **lack of consent** can be inferred from the elements of **'violence'** and **'threat of violence'**?
2. In lieu of 'violence' and the 'threat of violence', **can lack of consent be accepted to establish coercion** for the purpose of proving rape?



Ex: **stealthing**—removing a condom without consent after its use was a prerequisite for sex.

Methodology



The study used an empirical approach, with purposive sampling of first-instance judges in Indonesia who have experience handling rape cases.

A total of 14 judges (5 female and 9 males) from both Java and other regions were interviewed, with this number deemed sufficient due to data saturation.

Semi-structured interviews were conducted using guiding questions on how and to what extent lack of consent is reflected in Indonesia's legal definition of rape under the Criminal Code.

Questions focused on judges' interpretations of **violence, threat of violence, coercion, and consent**, using three non-violent, non-consensual scenarios to assess whether they would classify them as rape.

Research Results



Lack of consent in the elements of 'violence' and 'threat of violence'

Most respondents viewed coercion as dependent on violence or its threat, with "violence" understood strictly as physical acts (e.g., hitting or kicking), while "threat of violence" was interpreted more broadly but often still linked to physical harm; this narrow interpretation stems from three main reasons: **legal interpretation, evidence challenges, and belief about victim response.**

Determination of Coercion





While some judges interpret "**threat of violence**" broadly to include verbal and psychological coercion, **most still rely on evidence of resistance**, particularly physical indicators, to establish violence or its threat. **In practice, lack of consent is typically inferred only when such resistance is proven**, reinforcing a strong link between physical coercion and legal recognition of rape. This leaves unresolved the key issue of **whether lack of consent alone can establish coercion in the absence of violence or threat.**



Lack of consent to establish coercion in lieu of violence or threat of violence

To explore whether the lack of consent could establish coercion in lieu of violence or threat of violence, respondents were presented with **three hypothetical cases**:

		
Stealthing – act of removing a condom without the other partner's awareness	Coercion via asymmetrical power where an employer pressures an employee to engage in sex on pain of demotion.	Refusal to have sex despite having given consent to the first two sexual encounters.

These scenarios illustrate a **lack of genuine consent** without physical violence or threats. **Judges' responses varied**: those adopting broader definitions of violence, including verbal or psychological coercion, were more likely to classify such cases as rape, placing consent at the center of determining coercion.

The Need to Solidify 'Consent' into the Elements of Rape under the Indonesian Criminal Code



Judicial inconsistencies in defining consent **risk misapplying rape laws and denying justice**. A uniform, consent-based definition of rape is needed to **uphold victims' autonomy**, particularly for women.

Raising the understanding of the realities of rape victims

Victim Bias

- Sexual history used to question coercion
- Prior relations misread as consent
- Contradicts Supreme Court guidance (Supreme Court, 2017)



Narrow View of Coercion

- Focus on physical violence only
- Psychological/economic coercion undervalued
- Victims expected to resist or escape

Issuing legal instruments to clarify the incorporation of consent in the interpretation of rape

While education can raise awareness, some judges may resist incorporating consent into coercion due to concerns about legal certainty, as consent is not explicitly stated in rape provisions. **To address this, this brief proposes a Supreme Court Circular Letter to promote a uniform, consent-based interpretation of coercion.**



Supreme Court Circular Letters help ensure uniform legal interpretation and can be used to clarify rape provisions. This brief proposes a circular affirming that coercion is inherently linked to the absence of genuine consent, and outlining standards for consent—such as the CRISP framework (Considered, Reversible, Informed, Specific, and Participatory) (Planned Parenthood, 2025).

Furthermore, **this policy brief also argues that the concept 'genuine consent' is not unknown within the Indonesian legal framework.**

Civil Law

Contracts invalid if consent obtained through deception



New Indonesian Criminal Code

Rape includes situations where consent is not possible: **against children, against unconscious individual, against persons with mental disability, through abuse of power or deception**



Existing (yet scattered) **recognition of genuine consent in Indonesian law provides a strong basis for the Supreme Court to issue a Circular Letter** affirming its role in understanding coercion in rape.

Such a measure would also advance **gender mainstreaming in law and policy, align with existing judicial guidelines** (e.g. Supreme Court Regulation No. 3 of 2017), and **signal the Court's commitment to protecting bodily autonomy**, particularly for women, while addressing victims' fears of stigma and retaliation.

Anderson, S. A. 2016. Conceptualizing Rape as Coerced Sex. Ethics 123.
Judicial Commission. 2024. KY Pertama Kali Gelar Pelatihan Tematik PBH bagi Hakim (KY Holds Themed Training for Judges for the First Time). https://komisiyudisial.go.id/frontend/news_detail/15694/ky-pertama-kali-gelar-pelatihan-tematik-pbh-bagi-hakim
Munro, V. 2010. From Consent to Coercion: Evaluating International and Domestic Frameworks for the Criminalization of Rape. In C. McGlynn & V. Munro (Eds.), Rethinking Rape Law: International and Comparative Perspectives. Routledge. <https://doi.org/10.4324/9780203852194>
Planned Parenthood. 2025. Sexual Consent. Retrieved January 20, from <https://www.plannedparenthood.org/learn/relationships/sexual-consent>.
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