

Comparative study of sexual concentration in the elimination of sexual violence from feminist and Islamic legal theory

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Abstract. Feminist legal theory (FLT) is a critical legal movement in Indonesia. FLT takes issue with laws that prioritize masculine values, which limit social values because the law is dominant towards men and oppresses women. The paradigm of sexual consent was incorporated into Indonesian law as a result of this FLT movement. The focus of this research is how sexual consent affects the elimination of sexual violence from the point of view of feminist legal theory and Islamic law. Is sexual consent in accordance with the norms of Indonesian society and a solution to end sexual violence? This study used normative legal research methods. This research uses the research method of the library institute. Statutory approach (statute view) and comparative approach According to this study, sexual consent in the FLT perspective is sexual activity carried out with consent outside the consent of one party, including rape. Freestyle according to Islamic law may only be performed within the bonds of marriage, but outside of the bonds of marriage, such acts constitute adultery, even if done with consent or voluntarily. Not only is it not in accordance with the customs of Indonesian society, but it also contradicts the principles of Pancasila. Because sexual consent focuses only on "effect resolution" rather than "cause prevention," it does not seem to serve as a solution to stop sexual violence.

Keywords. Sexual consent, Sexual violence, Feminist Legal Theory, Islamic Law

INTRODUCTION

The 1945 Constitution states that everyone has the right to legal protection, respect, fulfillment of human rights, and freedom from discriminatory treatment. States should provide these guarantees to their citizens, including the elimination of violence against women as a protection of human rights. The CEDAW Convention, or Convention on the Elimination of All Forms of Discrimination against Women, is an international human rights treaty that specifically regulates women's rights from all forms of discrimination. Law Number 7 of 1984 concerning the Elimination of Women's Discrimination The convention was signed by 185 countries, including Indonesia.

The National Committee on Women, or the Committee, put forward the CATAHU, or Annual Record, of the National Commission on Violence Against Women. Throughout 2021, there were 338,496 cases of gender-based violence (KGB) against women, with 3,838 cases reported to Komnas Perempuan, 7,029 cases to service institutions, and 327,629 cases to BADILAG. The number of cases in 2021 increased significantly from 226,062 cases in 2020.

One way the state can protect women from sexual violence is by establishing various regulations for violence in several positive laws in force in Indonesia. The Criminal Law (KUHP), Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 21 of 2007 concerning Trafficking in Persons, and Law Number 35 of 2014 concerning Child Protection Unfortunately, the law is not only incompatible with violence against women but also does not provide a procedural and positive legal system that provides a sense of justice to victims. On April 12, 2022, the Indonesian House of Representatives, led by Puan Maharani, passed the Sexual Violence Crime Law (TPKS), which is intended to resolve sexual violence cases in Indonesia and provide a new breakthrough in the legal field for society, especially for victims of sexual violence.

In addition, in the field of education, Permendikbud ristek number 30 of 2021, which is responsible for the prevention and handling of sexual violence, was issued by the Ministry of Education and Culture (Kemendikbud).

Although it has been passed, these regulations and legislation are still the subject of public debate. The "Sexual Consent" paradigm caused mixed societal reactions. There are some people who refuse because they fear that sexual consent can be interpreted as sexual freedom or legalize adultery. This has the potential to legalize LGBT and its articles are too Western feminist. In addition, it is considered to be able to legalize abortion because feminism is the most leading organization in fighting for abortion rights. Abortion performed with non-coercive consent is considered a measure of morality for feminists. Of course, this is contrary to the 1945 Constitution and applicable regulations in Indonesia. There is another opinion that states that sexual consent does not mean legalizing sexual acts, but rather maintaining the privacy and rights of victims. Safeguarding the privacy and individual rights of the victim while speaking without the victim's consent in legal language is part of the qualification of the delict.

The Sexual Violence Law (KUHP), Regulation of the Minister of Cultural Education and Research (Permendikbud Ristek) No. 30 of 2021, and the Sexual Violence Law (TPKS Law) are examples of legal approaches from a women's perspective to fight for freedom, equality, and justice for feminist groups in Indonesia.

The goal of these efforts is to promote gender equality, also known as gender equality. They also criticized laws that they considered unable to provide a sense of justice to victims of female violence. Terminologically, FLT is the idea of maintaining the phenomenon of female sexuality from being dominated by patriarchy. This concept derives from women's experience in legal positivism, which aims to criticize patriarchal domination and injustice. The Greek philosophers Plato and Aristotle gave feminists the concept of positive law. They believe that these ideas should be constructed using a hermeneutic approach that is more in line with the current situation of Indonesian society. Finally, feminists use hermeneutics to interpret and translate legal texts to reconstruct women's perspectives on new laws. They believe that the current law is dominant by men's experience because patriarchy causes injustice to women.

The Qur'an, the first source of Islamic law, does not distinguish between men and women; It doesn't even look down on a woman or behave arbitrarily that leads to discrimination. Some verses in the Qur'an actually place women in a very honorable and noble position.

Women's rights are highly protected in Islam. There was a woman named Aisha (r) who narrated 2,210 hadiths, which is one of the most narrators of hadith in the life history of the Prophet Muhammad (PBUH), when European women were still persecuted and traded far away in Arabia.

If sexual consent affirms sexual intercourse must be on the basis of consent, then sexual consent in Islam is by marriage because Islam recognizes sexual relations only through legal marriage. Sexual relations outside the bonds of marriage are forbidden, even including adultery. The four schools of jurisprudence (Maliki, Hanafi, Shafi'i, and Hambali) define marriage as "a contract that brings permissibility to a man and a woman by beginning in the contract of lafadz nikah or nikah, or something similar in that meaning".

If performed in accordance with the provisions of Islamic Shari'a, sexual relations performed within the bonds of marriage are considered a form of worship. Islam does not condone any form of violence or discrimination, including sexual violence committed by married couples. It also governs sexual intercourse from the beginning of the relationship to its aftermath. In surah An Nisa verse 19, Allah says

Be their friend in a good way. If you hate them, then you will benefit a lot from it.

Get them along well. If you don't like them, be patient because you may not like something, even though there is a lot of good in it. Surah an-Nisa verse 19 states

RESEARCH METHODOLOGY

This study used normative legal research. According to Benuf and Azhar, normative legal research is legal research that uses a doctrinal normative approach. This research is a type of qualitative research that uses literature study methods or literature studies, namely data collection methods. This research studies relevant theories from various relevant literature. It is also a type of place-based research, that is, research conducted in libraries. There are two approaches used in this study: the statutory approach (statute approach) and the comparative approach.

RESULTATE AND DISCUSSION

:1. Feminist Legal Theory's Perspective on Sex Consent in the Elimination of Sexual Violence

The current legal efforts to defend women mark a critical legal paradigm in Indonesia. This is evidenced by the fact that higher education institutions in Indonesia have a Sexual Violence Criminal Act (TPKS) and a Regulation of the Minister of Education, Culture, Research, and Technology (Permendikbud Ristek) concerning the Prevention and Handling of Sexual Violence Cases (PPKS). The public debated these two rules for fear that they could harm the morale of the next generation in Indonesia.

All human beings have freedoms guaranteed by critical laws. This paradigm comes from the perspective of postmodernism. This approach frees humans from regulatory entanglements, including freeing women from the entanglement of traditional values, morals, and laws. There is a difference between these critical legal freedom limits and the limitations of freedom in the Indonesian legal system.

Any sexual activity that is not consensual and accompanied by discrimination is considered sexual violence. The absence of affirmative consent leads to the violation of sexual violence. The paradigm of sexual consent is considered a barrier between legal and illegal sexual relations, or between violence and nonviolence. Thus, the paradigm of sexual consent is used when making laws to reduce sexual violence, especially against women.

Melanie A. has done some research on sexual consent. Sorted out in the literature of psychology, sociology, and women's studies. Sexual consent is defined as the difference between good and bad sex, pleasurable or unpleasant, or moral with immoral. Of the 8145 studies discussing rape, only 42 discussed sexual consent in their research, and their talk about

this idea is vague. Whether consent is indicated by speech or action, or whether there is no standard of behavior indicating consent, consent does not have a clear definition. There are some who explain that even if there is little consent, consent is still shown. There are some people who argue that consent is only accepted if there is no coercion.

Paradigm of Sexual Consent in the Criminal Code

Speaking of decency in the old Criminal Code, Chapter XIV, called "on Crimes against Decency", consists of 25 Articles. However, the recent Chapter XV of the Criminal Code, entitled "Criminal Acts of Decency", consists of 22 Articles. Public Decency (1 Article), Pornography (1 Article), Adultery (3 Articles), Displaying Pregnancy Prevention and Abortion Equipment (3 Articles), Obscene Acts (9 Articles), including Fornication that Facilitates Fornication and Sexual Intercourse, Drink, and Intoxicating Substances (1 Article), Use of Children for Begging (1 Article), Vagrancy (1 Article), and Gambling (2 Articles) are all articles clarified in the Criminal Acts Chapter

Article 410 on Public Decency and Article 411 on pornography, paragraph (1), according to researchers, should be reviewed.

"Any person who produces, manufactures, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography shall be punished with a maximum imprisonment of 6 (six) months and a maximum imprisonment of 10 (ten) years or a fine of at least category IV and a maximum fine of category VI."

"Acts of art, culture, sports, health, and/or science shall not be punished in accordance with paragraph (1)."

Article 411 paragraph 2 actually contradicts Article 2 of the Criminal Code, which talks about the law on life and the desire to abolish the practice of pornography as stipulated in the Pornography Law, because this paragraph provides exceptions for cultural, sports, health, and/or scientific reasons. Logically, when Indonesians talk about anatomy or body diseases, they use biology or medicine books. Pornography, however, is not a criminal offense if it is considered a work of art. However, factually and sociologically, pornographic magazines, pornographic photographs, pornographic films, impressions, and pornographic sports costumes are contrary to Indonesian principles and customs.

Researchers found that making pornographic films, pornographic magazines, and other pornographic shows should be done with awareness, sexual consent (consent), and voluntary. However, the work that we have always thought of as works of art includes making drawings, sketches, illustrations, photographs, writing, animations, and cartoons. However, if a sketch, illustration, photograph, writing, animation, or cartoon is made with pornographic content, then it cannot be punished for reasons of artwork. This article ostensibly aims to recognize that pornography done by prior consent is a work of art. In the latest Penal Code, Article 415 on Adultery says:

"Any person who has intercourse with a person who is not a husband or wife shall be convicted of adultery with a maximum imprisonment of 1 (one) year or a maximum of category II".

There shall be no prosecution of criminal acts as referred to in paragraph (1) except on complaints: a. Husband or wife of a married person: or b. Parents or children for unmarried individuals.

Researchers say that adultery can only be punished if committed by a spouse, wife, parents, or children. Complaints of adultery, which can only be made by three circles, are very difficult to enforce in practice. What if the family of three groups can't bear to report adultery

to the police? What if three groups work together and agree to engage in sexual activity for profit?

Supposedly, the formulation of zina mentioned in this article of the Criminal Code is considered a general offense rather than a complaint offense. If there are four witnesses who witnessed adultery, such as in the bushes, huts, or elsewhere, then all four witnesses can say that it happened. Only the husband or wife, parent or child may report this Section 415. This article cannot be executed or enforced.

Sexual Consent Paradigm in TPK Law

According to the Sexual Violence Law, sexual violence can be defined as:

Any act that degrades, insults, attacks, and/or other acts against one's body, sexual desire, and/or reproductive function forcibly against one's will, which renders a person unable to give consent in a free state due to inequality of power relations and/or gender relations, which can cause suffering or misery physically, psychologically, sexually, economically, socially, or psychological.

Hendri Shalahuddin criticized several definitions, such as: First, despite using Indonesian, the phrasing is too foreign to Indonesians. Briefly, this sentence, which consists of 62 words, is very difficult to understand. Furthermore, "Any act of forcibly degrading and insulting one's sexual desires, against one's will?" Will people who prohibit deviant sexual activities such as adultery, homosexuality, or lesbi be punished for disrespecting someone's sexual desires? Third, how is the definition of "any act degrading, and insulting the reproductive function, forcibly, against one's will" used? What happens if a parent who forbids their child to have an abortion or sex change surgery is considered degrading and disruptive to the reproductive organs?

Based on this definition, sexual violence is one type of gender-based violence. Unlike sex, which refers to a person's biological organs, gender is a social sex that is a social construct. In this explanation, the ideological problem lies in the concept of power relations or gender, which is considered the only reason for sexual violence. With respect to the definition of gender relations in relationships between men and women, women tend to experience losses. However, crimes can be committed by anyone without being stigmatized against a particular gender. Gender-based violence, or gender-based violence, includes sexual orientation, gender identity, and gender expression. The term "sexual violence" referred to by feminists refers to this type of sexual violence. Redefining gender norms and culture is the first step in combating sexual violence.

When you consider the definition and type of sexual violence they campaign, you will see the power of radical feminists in this TPKS Law. In article 4, the criminal act of sexual violence consists of: non-physical sexual harassment, physical sexual abuse, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Rape, or sexual harassment as sexual violence, is no longer considered rape as society once understood it. In the West, feminist movements have succeeded in expanding the meaning of rape and changing the way its laws are defined. According to the TPKS Law, "consent," or permission, expands the definition of rape.

This revitalization of the definition of rape poses a "threat" to those who engage in legal sexual activity in marital relationships, but also a "protection" for sexual perversions such as adultery, prostitution, LGBT, and others. The main goal of this feminist agenda is to reject that women's clothing, where they go, and with whom they go, as well as the agreed sexual decision to do so in certain situations.

Dinar Dewi Kania stated that from a feminist point of view, the key to sexual violence is coercion or lack of consent. Not whether sexual behavior is good or bad, but how the behavior is viewed from the point of view of health, social values, religion, and culture prevailing in a particular society. Because the basis of such acts is consent, sexual violence is not considered a form of risky diseases such as HIV/AIDS, adultery, and LGBT. Because LGBT is carried out with public consciousness, those who oppose it are considered sexual violence because they cannot accept the choice of different sexual orientations and gender identities. Therefore, LGBT cannot be categorized as sexual violence. Because there is no element of coercion, prostitution, abortion, and nudity carried out voluntarily cannot be categorized as sexual violence.

Furthermore, in article 4 paragraph 2, namely rape, sexual abuse, sexual intercourse or sexual abuse of children, moral violations, pornography involving children, forced prostitution, trafficking or sexual exploitation, domestic sexual violence, money laundering, and other crimes previously declared as criminal acts of sexual violence.

Article 3 of the TPKE Law aims to prevent all forms of sexual violence, handle, protect, and rehabilitate perpetrators, create an environment without sexual violence, and ensure non-recurrence of sexual violence. This is because this law is considered to provide a legal umbrella for acts of sexual violence.

Sexual violence can occur both inside and outside the marriage relationship. Sexual violence that occurs in marital relationships is now known as "Marital Rape", although this type of violence has previously been regulated in the Domestic Violence Law Number 23 of 2004, which prohibits domestic violence. According to the Academic Paper of RUU PKK, marital rape is:

Cases of domestic rape also occur. One of the parties most vulnerable to marital rape is the wife. Some individuals and community groups continue to reject marital wife rape. However, some wives claim that their partners or husbands often force them to have sexual intercourse. Their partners or husbands often do so in ways that are physically injurious and harmful to their reproductive health.

Meanwhile, article 6 paragraph b of the TPKE Law states that marriage harassment is prohibited:

"Any person who commits physical sexual acts against a person's body, sexual desires, and/or reproductive organs with the intention of placing someone under his authority unlawfully, both inside and outside marriage, with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of IDR three hundred million.

Perpetrators of domestic sexual violence are sentenced to 12 years in prison according to the TPKE Law, the Criminal Code, and PKDRT, but the fines are different. In the Domestic Violence Law, a fine of Rp. 360,000,000.00 is fined, 300,000,000.00 fines

Sexual Consent Paradigm in Permendikbud Ristek Number 30 of 2021

In this Ministerial Regulation on Sexual Violence, Permendikbud Ristek Number 30 of 2021 describes sexual violence as follows:

"Any act that degrades, insults, harasses, and/or attacks a person's body, and/or reproductive function due to imbalances in power relations and/or gender, which results or may result in psychological and/or physical suffering, including those that interfere with reproductive health and loss of opportunities to carry out higher education safely and optimally."

Sexual violence can be defined as acts committed verbally, non-physically, or physically, as well as through information and communication technology. The article that raises the problem only limits the category of sexual violence committed without consent

(sexual consent), which is mentioned in paragraph 2 of Article 5. Sexual violence as mentioned in paragraph (1) includes:

Speak words that discriminate or harass the appearance, body condition, or gender identity of the Victim;

without the consent of the Victim, knowingly exposing his genitals;

providing sexual advances, jokes, and/or whistles to the Victim;

give the Victim a sexual and/or uncomfortable impression;

send sexual jokes, messages, images, photographs, recordings and/or videos to the Victim even if this is prohibited;

without the Victim's consent, taking, recording, and/or transmitting sexually suggestive images, sound recordings, and/or visual recordings;

without the Victim's consent, uploading sexually suggestive body images and personal information;

without the Victim's consent, disseminating sexually suggestive information related to the Victim's body and/or privacy;

view or intentionally witness the Victim performing activities in private and/or in a private space;

Persuade, promise, offer, or threaten the Victim to engage in sexual transactions or activities not approved by the Victim;

giving punishments or punishments of a sexual nature;

without the Victim's consent, touching, rubbing, touching, holding, hugging, kissing, or rubbing any part of his body against the Victim's body;

Seek the Victim's consent before undressing the Victim;

Forcing the Victim to engage in sexual activities or transactions;

practice a culture of sexual violence within a community of students, teachers, and employees;

made an attempted rape, but to no avail;

Rape includes penetration with objects or body parts other than the genitals;

forcing the victim to have an abortion;

forcing the Victim to become pregnant;

facilitate intentional sexual violence; and/or

take other acts of sexual violence.

Paragraph 3 of article 5 states that the consent of the victim as mentioned in paragraph 2 letter b, letter f, letter g, letter h, letter l, and letter m is invalid in the following cases:

immature in accordance with laws and regulations.

experience a situation where the perpetrator threatens, coerces, and/or abuses his position as a power of attorney.

Experiencing the effects of drugs, alcohol, and/or drugs

feeling sick, becoming unconscious, or falling asleep.

have a vulnerable physical or mental condition

experiencing temporary paralysis called tonic paralysis; and/or

In an unstable situation

Researchers try to interpret the meaning of article (3) above regarding the existence (consent) that limits whether students, educators, education staff, and campus leaders agree that they are victims of sexual violence; Otherwise, they will not be declared victims. As a result, they cannot accept the administrative sanctions stipulated in this ministerial regulation.

age under adulthood. That is, sexual intercourse is allowed only with the sexual consent of the victim if the perpetrator and victim are adults.

Situations and circumstances that threaten, coerce, or abuse his position That is, in a consensual situation, there is no threat, no obligation to agree, and no one abuses the position. In this situation, sexual intercourse is permissible because it is done on the basis of sexual consent.

Situations and conditions caused by the use of drugs, alcohol, and/or drugs. That is, if the situation is fine not affected by drugs, alcohol, or drugs, then sexual intercourse is allowed with sexual consent.

feeling sick, becoming unconscious, or falling asleep. That is, sexual consent is necessary to have sexual intercourse if it is not sick, conscious, and not asleep.

Situations that threaten physical and mental health. This means that if the physical and mental state is strong and healthy, sexual consent is required to have sexual intercourse.

Transient paralysis, also known as tonic immobility. That is, sexual intercourse carried out with consent (sexual consent) and without paralysis or good health conditions is allowed.

In unstable situations Early sexual intercourse on condition of sexual consent is allowed in an unshaken situation.

:2. Islamic Legal Perspectives on Sexual Consent to Sexual Violence

Feminists claim that LGBT behavior, sexual covenants or adultery, abortion, and other behaviors constitute respect for human rights. Because of society's demands that women remain chaste, casual sex makes it ambiguous. So, what is the Islamic perspective on human rights? In order not to interpret human rights as unlimited freedom, we must understand the definition of human rights.

In Arabic, huquq is the same as al-haq, which means "truth". So it is impossible for useless things to be called rights or rights promoted, such as adultery or LGBT, even if they are done with permission or consensually and do not interfere with the rights of others. Justice and human honor are recognized concepts in Islam. This concept places human rights, obligations, and glory before Allah Almighty both individually and collectively at an appropriate level. In the thirteenth verse of Surah Al Hujurat, Allah says,

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ

Peace be upon you! We really made you from a man and a woman, then made you into nations and tribes to make you know each other. Indeed, the most pious among you is the noblest in the sight of Allah. Allah is truly All-Knowing and All-Researcher.

Taken from Tafsir Al Wasith Prof. Dr. Wahbah Az Zuhaili stated:

"Behold, we have created you from one soul, from Adam and Eve. So, your position is the same because you come from one lineage, one mother and one father. So, don't boast about each other, because everyone is the same. We have also made you nations (a great people) and then tribes so that you may know and remember each other, not to boast of each other's lineage. Indeed, one's piety or righteous deeds are the purest and foremost in the sight of Allah.

From this surah, researchers can conclude that the Qur'an does not distinguish men from women, does not look down on women, and does not teach arbitrary behavior, including violence that can hurt women. Because piety is what distinguishes people before Allah SWt. Similarly, Allah says in the Qur'an surah An Nur verse 33 about sexual violence:

religion clearly forbids conjugal relationships involving violence or damage. Actually, Islam forbids sexual intercourse with husband and wife by force or coercion, but the term "rape marriage" is unknown in the religion. That marriage abuse is not an Islamic concept must be unequivocally acknowledged in four important respects.

First, marriage, sexual freedom, and rape. Rape is sexual activity against the victim's will that is not accompanied by the consent or willingness of the victim and the voluntariness of the victim. However, marital rape means rape that occurs in the marital relationship, i.e. the husband his wife outside of the consent or will of the wife, which is punishable for doing so. Rape is a crime against sexual freedom conceptually. Sexual autonomy means that everyone has the right to choose to have sex with anyone and under any circumstances. That is, a person cannot be bullied by anyone other than himself and has full rights over himself. However, marriage relationship can be interpreted as "The right to choose under any circumstances". Married couples essentially have no sexual rights over their spouse unless their partner wants to, which can be the basis of criminal law for marital abuse.

Second, sexual freedom, lawful haram sex, and marriage. Basically, sexual relations are haram in Islamic law except marriage, which makes it halal. Zina is sexual intercourse forbidden by the religion of Islam. In the Qur'an, surah Al Mu'minun, verses 5–7, Allah Almighty says:

Those who respect their wives are not only in their spouses, but also in those who do not have faith. Those who pursue and do it are the right people.

And they are lucky because they keep their honor. They are blameless except to their spouses or sahaya servants. If someone is looking behind it, they are overreaching.

The husband has the right to his wife's body; The wife should not refuse it except for Sharia reasons such as menstruation, illness, or fatigue. In Saheeh Bukhari and Muslim, Abu Hurairah narrated the words of Prophet Muhammad (PBUH):

According to the narration of Abu Hurairah رضي الله عنه, the Prophet صلى الله عليه وسلم said, "If a man asks his wife to go to her bed, but she remains restless, then the angels will pursue her until morning." (Muslim Hadith)

From Abu Hurairah, the Prophet (peace be upon him) said, "When a husband invites his wife to his bed and she is reluctant so that the husband gets angry at night, the angel curses her until dawn." (HR) Muslims).

In surah Al Baqarah verse 228, Allah Almighty also says:
"وَلَهُنَّ كَمَا عَلِيَهُنَّ بِالْمَعْرُوفِ".

And women have equal rights and obligations in a ma'ruf way.

A marriage contract is an agreement made by both parties that gives a husband and wife the right to have sex. This right is the same as the obligation. So, the majority of scholars are of the opinion that the husband should have sex with his wife. Thus, husbands and wives have sexual rights over each other, not just individual autonomic sexual rights. Because it frees adultery committed on the basis of consensual consent (sexual consent), the concept of sexual autonomy in Islam is considered incorrect. In addition, this concept also denies the existence of sexual rights between married couples.

Third, rape and Ightishaab. Ightishaab is similar to the rape of the fuqaha who call Al Ikrah "a la zina". Acts that violate hudud law include adultery. However, perpetrators who force their victims are not subject to punishment because they are forced. Conversely, some scholars argue that perpetrators should pay compensation worth dowry, depending on the circumstances in which coercive acts can also be punishable by death. However, conjugal relations committed

by force (without consent) cannot be categorized as adultery. More clearly, the religion of Islam does not recognize domestic rape or rape, which is an absurd idea if it occurs in the context of a conjugal relationship.

Fourth, having the right to have sex doesn't mean you can do it in an inappropriate way. In Islam, everything should be done in a ma'ruf manner. According to Shaddad Ibn Awn, Prophet Muhammad (peace be upon him) said:

Verily God has created justice in all things; therefore, if you commit murder, then you must commit murder in a good way, and if you commit murder, then you must commit murder in a good way as well.

Indeed, doing good to all things is encouraged by God. If you want to kill, do it in a good way. If you want to slaughter, do it the right way. Feel free to sharpen your knife and enjoy the animals that are about to be slaughtered. (Sahih according to Islam)

The hadith also outlines that animals and evildoers should be killed in a ma'ruf manner, especially in the relationship of couples who love and cherish each other. In the Qur'an, surah An Nisa, verse 19, Allah Almighty says

Be their friend in a good way. If you hate them, then you will benefit a lot from it.

And be polite to them. Then, if you don't like them, be patient, because you may not like something, even though God has given him a lot of good.

Dress in an appropriate way, which includes fulfilling your rights and obligations as a couple and conversation. In Islam, all forms of discrimination and other bad acts committed by a husband against his wife are considered haram.

Reproductive Rights in the Islamic View

According to feminists, women's bodies and the right of repression have the power to become political tools to fight for women's rights. In the book "The Dialectic of Sex" written by Hendri Salahudin, "The Beauty of Harmony in Islam", Dora Russel argues that the female reproductive organs are easily controlled by men, which means that the degree of women is lower than men. So, the slogan "My Body My Right" is a slogan promoted by feminists.

Women's bodily rights should not be influenced by religion, state, or men. Therefore, women have absolute freedom to control, supervise, and express their bodies freely and independently. This includes the right to choose to have or refuse sexual relations with her husband or desired person as well as the right to have an abortion.

Under this foundation, feminists challenge the idea of nusyuz as an excuse to maintain the husband's power relationship in the household. They believe that marriage demonstrates male power and controls women, making it enduring as patriarchy. In his book entitled *Liberalization of Islam in Indonesia*, Adian Husaini cites the work of M. In his book entitled "God Allow Me to Become a Prostitute", Dahlan put forward the following ideas about marriage:

This so-called sex bureaucracy is actually an organization made up of garbage cans that hold sperm and has anarchically divided people with very painful beliefs. The regime also coined the terms "prostitute" and "illegitimate child". Women who engage in sexual relations outside these institutions in a particularly cruel manner are considered despicable, tuna, prostitute, and unworthy of self-respect. What distinguishes a prostitute from a wife? The positions are identical. Even if it is done with one or many people, sex is still referred to as sex. No, marriage is a strange and terrible idea.

In his book "God Let Me Be a Prostitute", Dahlan considers marriage a bad idea because marriage is not just a tool to fulfill one's sexual desires. It seems that this perspective is wrong because they do not have a true Islamic perspective (Islamic Worldview). In the correct

view of Islam, one would not see a wedding as a trash can to hold something like this. Instead, they will see that by getting married, sexual activity can be done on an accrued basis. This is in contrast to animals that can engage in sexual activity with anyone and at any time. Therefore, unlike what feminists understand, the purpose of marriage is to continue offspring. Due to unhealthy sexual activity that resulted in pregnancy, which resulted in confusion for the father of the child they were carrying, they even chose to abort it.

As a perfect religion, Islam pays attention to reproductive health (*al sihhah al injabiyah*) to build healthy, responsible, and high-quality families. Safeguarding religion, life, posterity, property, and common sense are the five *maqashid* of sharia that show the concern of Islam. Islam offers marriage solutions that lead to good sexual relations, multiply offspring, ban LGBT, and other unpleasant things.

Having sexual intercourse with his wife while she is menstruating is considered a form of persecution against his wife according to Islam; Religion also forbids a husband from his wife through her rectum. Reproductive Health in Islam forbids molesting women, as stated in the following hadith:

In the narration of Prophet Muhammad, Allah Almighty said, "No one should enter into marriage with his spouse after marriage, but should go with him at the end of the day." (*صحيح البخاري*).

"Let no one of you whip his wife like a slave and kiss her at the end of the day."

According to feminists, *ijhad*, or aborting a fetus, is a woman's right to regulate their own bodies. They forced the government to overturn laws guaranteeing safe abortions, just as they did to insert the coercive abortion bill into the TPKS bill. Abortion was originally considered haram in Islam because killing one's life was not justified by Shari'a. Hendri Saladin quotes Yusuf Qardawi, a modern cleric, who argues that aborting a fetus is haram. Pregnancy becomes more haram with gestational age.

If the abortion is performed before forty days, the degree of illegitimacy is lower, and abortion is allowed because of the justified *alsana*.

Unless there is a strong reason recognized by the scholars of *fiqh*, the prohibition of abortion after forty days is getting stronger.

Abortion is not permitted after 120 days, when the soul is inserted into the fetus, except in obvious emergency situations.

The right to use contraception is established by the majority of scholars as a rule that does not remain justified. However, the majority of scholars argue that the principle of contraception, which includes sterilizing both males and females, is not justified except when the mother's health is in danger.

The Concept of *Nusyuz* as an Argument for the Power of Men over Women

Feminists see *nusyuz* as legitimizing the husband's power in the household. Because the husband takes care of the family, the wife is considered the husband's servant by the family institution. Therefore, feminists view *nusyuz* as a stereotype of women as victims of violence and creatures of sexual lust. The concept of *nusyuz* has justified domestic rape, or wife rape.

Nusyuz is a woman who disobeys her spouse. According to Wahbah Az Zuhaili, *nusyuz* is the disobedience of a married couple to what must be obeyed. Etymologically, "*nusyuz*" means to rise or protrude at ground level. In Islam, *nusyuz* behavior is when a wife leaves home without her husband's permission, is not justified by sharia, does not fulfill obligations towards her husband, such as having sexual relations without a valid reason, is stubborn, and does not want to fulfill the husband's rights.

Surah An Nisa verse 34 describes a wife who nusyuz towards her husband, as follows:
Women who are afraid of being harassed, should be counseled, pampered and fondled in bed. If they allow you to do so, feel free to do so. Because God is very strong.

If the woman you are worried about nusyūznya, advise them, get out of their bed, and hit them. Then, if they obey you, don't trouble them. God is Most High and Great.

God requires sexuality to be done in an accrued way, not by the use of violence. Basically, wives should serve their husbands, but they have the right to offer help. In addition, if the wife is sick, they have the right to refuse to obey her husband. According to verse 34 of surah An Nisa, couples who perform nusyuz are as follows:

Feel free to give them advice.

In case the wife refuses sexual intercourse, the husband should communicate well with his wife if there is no Shari'a reason. The wife may not like something about her husband, such as body odor or want to be grandiose. However, gently counsel his wife if she is really angry and no longer wants to serve her husband.

Put them to bed.

This means that everyone sleeps alone to think, calm down, and hope for a return to peace as usual. The attempt at peace mentioned in Surah An Nisa verse 128 is advice and bed separation.

They must be hit.

The verse shows that the husband hit his wife during nushuz, according to manthūq. However, mafhum, the verse shows that a husband who performs nusyuz to his wife should make her deterrent (Shock Therapy). In this case, a deterrent effect may occur, for example, the husband usually gives the wife more money while berylla less to help her feel bad and make peace with herself.

Up to this point, it has been clear that God does not make distinctions between men and women as feminists believe; Instead, He gives men and women rights and duties according to their nature. Since the concept of nusyuz can also apply to husbands who do not fulfill their obligations to their wives, using it as an excuse to support the husband's domination of women is very wrong.

A difference

Similarities in Results of the Concept of Sexual Consent in the Elimination of Sexual Violence from the Perspective of Feminist Legal Theory and Islamic Law

Equations to Stop Sexual Violence

Feminist legal theory and Islamic law both reject sexual violence. However, the concepts of FLT and Islamic law differ conceptually. For example, in Islamic law, having sexual relations outside the bonds of marriage is considered adultery; however, nonviolent sexual intercourse (FLT) is not an act that should be punished, even if it is committed outside the bonds of marriage.

Equality Upholds Human Rights

Islamic law and feminist legal theory recognize human rights. However, the scope of human rights referred to in Islamic Law and FLT is different. While Islamic law limits human rights with Sharia, FLT defines free human rights without considering moral, cultural, or legal values applicable in Indonesia. Because religion and society often condemn bodily pleasures as "sinful" and "evil", which can damage human relationships, Kirkendall argues that sexual consent becomes the most important human right.

The Concepts of Sexual Consent and the Elimination of Sexual Violence from Feminist Legal Theory and Islamic Law Are Different

Paradigm of Sexual Consent as a Component of Elimination of Sexual Violence

Sexual violence can be defined as any activity that is not consensual and accompanied by discrimination. The boundary between legal and illegal sexual relations, or the relationship between violence and nonviolence, is known as sexual consent. So, sexual consent is considered to reduce sexual violence in Indonesia.

Unlike Islam, sexual relations have good and bad based on the health, religious, social, and cultural values of Indonesian society. The two-body relationship between a man and a woman is only recognized in Islam as marriage. Sexual relations that are not tied to marriage are called adultery, and are one of the worst immorality. To stop sexual violence, Islam teaches opposite-sex relationships so that they do not engage in heinous acts. As mentioned in verse 32 of surah Al Isra:

Do not drink marijuana, because it is an immoral act. This will happen in the future.

You must not approach adultery. Zina is a heinous act and the worst way.

Islam recognizes sexuality as a natural human positivism. Described in the word *al-Basyar*, the Qur'an already describes humans as beings of reproductive sexuality. Dr. In the book Aisha Abdurrahman bint al Shathi, *Maqal Fi Al Insan: Dirasah Qur'aniyyah*, the essence of man is divided into three words: *al Basyar*, *an Nas*, and *al Insan*. In the Qur'an surah *Ar Rum* verse 20, the name *Al Basyar* describes man as a creature with skin or outer parts, which indicates that man is a biological being. However, an understanding of humans cannot be achieved simply through biological understanding without looking directly into human nature. As explained by Syed Muhammad Naquib al-Attas, the essence of man is: Man has two natures, body and soul; He is both body and soul at once. Therefore, man is not only a biological being, but also a third entity, that is, identity. The spirit shapes human identity. In the context of human sexual consent, the essence of two natures is only seen from their biological needs, without considering the needs of the soul.

Sexual Violence is not a Sexual Crime

Indonesian regulations and laws on the elimination of sexual violence have definitions that vary, are vague, and difficult for the public to understand. This definition of violence made by feminists, "Every act of degrading and insulting one's sexual desires forcibly, against one's will", makes the concept of sexual violence unobjective and normative. While both men and women can commit violence objectively, victims of violence can also be men and women. Normatives ignore sexual violence and ignore promiscuous sexual behaviors such as same-sex relationships, deviant sex, and adultery, which are sexual crimes even if the perpetrator does not perform the tap. Islam perfectly explains anything that counts as evil.

According to the type of sexual violence committed and its object, sexual violence in Islam is divided into two categories. Having sex outside marriage, whether consensually or coercively, is one example of a sexual crime. Second, unlawful sexual offenses, such as sodomy, although committed against the wife Third, sexual intercourse committed in a cruel manner and accompanied by the use of violence Fourth, having sexual intercourse while the wife is menstruating. Fifth, all actions and utterances of a degrading nature are degrading to the dignity and self-esteem of women or men.

Sexual violence by its object is as follows: First, sexual relations with animals. Second, having sexual relations with living beings. Third, having sex with people of the same sex or the same sex Fourth, having sex with minors, also known as pedophilia. Fifth, have sexual relations with relatives or parents who are mahram. This is known as incest.

Self Body

Women's bodily rights should not be influenced by religion, state, or men. Therefore, women have absolute freedom to control, supervise, and express their bodies freely and independently. This includes the right to choose to have or refuse sexual relations with her husband or the person she wants, as well as the right to have an abortion.

In Islam, the human body is a deposit from Allah SWT, and as a deposit that must be maintained as well as possible, we must take good care of it. The Qur'an and Hadith should be used as a foundation for bodily authority. It is impossible to say, "My Body is Trustful" than "My Body Belongs to Me". Because its essence is contrary to the sensory responses given by the body, the autonomy of the body as a principle of sexual liberation becomes impossible.

The Concept of Morality

Women's injustice and inequality stem from prevailing legal or moral norms. So, the law must remain as it is, without taking into account moral principles. Do not make morality the legal basis for achieving equality. To explain the reasons for morality, interpretation is necessary. However, interpretation is something subjective and depends on the person doing it. Therefore, Bentham said that morality should not be mixed with law. According to adherents of legal positivism, law is not objective and neutral because it is made from the point of view of women and only protects men and eliminates women's equality.

In Islam, morality, or morality, has noble value. In Islam, moral laws are similar to body and spirit, and in their application, they must rely on the Qur'an and Sunnah as primary sources. Since man's passions can affect him, the yardstick of good and bad cannot be left to man. Rather, this benchmark must depend on the will of the shara. Islam does not distinguish laws and regulations from morality. Otherwise, the law must be based on prevailing moral principles.

Women's Experience with the Constitution

According to FLT, only the male point of view shapes the law, which allows men to structure the law and include its interests. In man's understanding of the universe, the laws written by people have caused bias. Therefore, feminists argue that law should be based on women's experiences rather than men's norms, experiences, and power. In feminist legal theory, women's experiences, especially those of female oppression who are victims of men or the experience of female sexual disorientation, are in the limelight. Not everyone can accept sexual experience as the cornerstone of the truth of science, according to feminism.

Because the experience of oppressed women is relative, it is highly unfair if it is used as a source of knowledge and then used as a basis for laws and regulations. Revelation is the basis of Islamic theory of knowledge. In the process of interpreting reality and truth, revelation helps the human intellect and sensory experience. Therefore, a Muslim is concerned with more than just a woman's experience; they pay attention to the correct Islamic perspective, that is, the Islamic perspective, when making rules and laws.

Awareness as a condition for expressing consent or consent

The condition for giving consent—also known as consent—is to be fully aware. According to feminists, when a person feels sensations outside of himself, those sensations can be transformed into actions, and those actions have coherence.

Spirituality is the basis of Islamic consciousness, which is an essential basis for man to do anything. Therefore, the Islamic religion associates consciousness with science because consciousness requires revelation as a true reference. In determining whether or not a person agrees with a particular course of action, awareness of self-nature, error and truth, and moral limits should be the basis. In the book *Al Iman wa Al Hayat*, Shaykh Yusuf Al Qaradawi states

that a Muslim who loves the character of being in his consciousness will always see Allah Almighty in all the rules of nature and realize the signs of Allah's power.

CONCLUSION

As mentioned earlier, sexual consent, in feminist legal theory, is defined as sexual activity carried out based on consent, or sexual consent, outside of either party's consent, including rape, violence, and sexual harassment. Believed by feminists, sexual consent prevents sexual violence, both inside and outside marriage. This legal paradigm is used to determine whether sexual activity is accompanied by violence or not without considering the legality of the relationship. The Criminal Code (KUHP), the Sexual Violence Law (TPKS Law), and Permendikbud Ristek No. 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education Environment are some examples of the legal paradigm of sexual consent. Freestyle according to Islamic law may only be performed within the bonds of marriage, but outside of the bonds of marriage, such acts constitute adultery, even if done with consent or voluntarily. Because the marriage contract gives husbands and wives the right to have sex, Islam does not recognize the concept of marital rape. However, Islam forbids sexual intercourse with husband and wife by force or coercion. Therefore, husband and wife have sexual rights over each other that are greater than individual rights.

The feminist legal paradigm of sexual consent makes consent, or consent, the only legal scale to determine whether sexual activity is legal or illegal. This paradigm is contrary to the values of Pancasila and is not in accordance with the norms of life of the Indonesian nation. The principle of divinity in the first precept of Pancasila becomes a *prima causa* against other precepts, so that legal and regulatory policies should not be separated from religious values. Since sexual desire as a solution to eliminate sexual violence cannot reduce the amount of violence, sexual desire focuses only on "resolving consequences" rather than "preventing causes". In the end, the relationship between the problem and the solution does not meet each other, so sexual violence continues to increase.

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