Protection of Women from Sexual Violence: Reconciling Gender Justice from an Islamic Perspective

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Article Info

Abstract

Empirical facts show that the number of sexual violence in various forms is increasing, while victims still experience difficulties in obtaining protection which is the responsibility of the State. Sexual violence experienced by women is a manifestation of historical inequality in power relations between men and women and is a structural obstacle to achieving social justice, peace and sustainable self-development. The aim of this research is to analyze the protection of women from acts of sexual violence that fulfills the benefits and is gender equitable for women. Through a normative juridical method with a statutory approach and legal principles, research was conducted sourced from secondary data, reinforced by interviews coded via NVivo R1. The results of the research show that the strong patriarchal viewpoint in Indonesian society gives rise to gender inequality and is a contributing factor to sexual violence against women. Sadly, this action is still considered an immoral act by some people. Victims still experience revictimization due to society's mindset that does not side with women as victims and instead blames them for triggering sexual violence. For this reason, it is hoped that all elements of society will no longer be permissive regarding the issue of sexual violence, so that efforts are needed to make socio-cultural changes in Indonesia, one of which is through gender reconciliation by applying the principle of mubindah in life. So that sexual violence can be eliminated and victims can be protected.

I. Introduction

Sexual violence is a traumatic event that befalls women who are used as objects of emasculation of their rights and requires serious attention. These crimes can occur in all walks of life, and affect anyone, both women and children. (Faisal, Mardania Ghazali, dkk, 2023). Cases of violence against women never occur in a vacuum or are separated from the social and political dynamics that occur around them. Cases of violence against women are the culmination of various injustices between men and women, between upper and lower socio-economic classes, between one region and another region, between the center and regions, between the state and society, and other forms of power inequality. . Every era of violence against women gives rise to its own characteristics following the prevailing social, political, economic and cultural conditions.

Sexual violence is one of the most typical forms of violence experienced by women because it is closely related to society's perspective which places women as sexual objects. The culture of gender inequality in society means that women often receive negative labels in society, namely women who appear dressed up and dressed up in clothes that are rather tight and sexy are always considered to be inviting the opposite sex to commit sexual harassment. This is always used and associated with labeling victims of sexual harassment, which tends to blame victims of sexual violence as the trigger for their own victimization. In fact, there is absolutely no connection between women's clothing styles and sexual victimization of any kind.

This article explains how gender reconciliation from an Islamic perspective is an effort to protect women victims of sexual violence who experience prolonged suffering and have an impact on the physical, psychological, economic, social and health of the victims..

2. Research Method

The research method used is normative legal research with a normative juridical approach. Normative juridical, namely finding the truth of coherence to examine whether there are legal rules in accordance with legal norms and whether there are norms in the form of orders or prohibitions in accordance with legal principles, as well as whether a person's actions are in accordance with legal norms (not just according to legal rules) or legal principles. (Peter Mahmud Marzuki: 2011). The data collection tool used in this research is through document study with library research. Literature study is the sole method used in normative legal research. (Philips Dillah Suratman: 2015). The data source that the author uses in this research is secondary data. Secondary data includes abstracts, indexes, bibliographies, government publications and other reference materials. (Soerjono dan Sri Mahmudji Soekanto: 2003). In addition, interviews were used with institutions that were concerned in handling women's cases coded with NVivo R1, to complete secondary data.

3. Results and Discussion

Forms of Sexual Violence

Sexual violence refers to derivative sexual behavior or deviant relationships, which harms the victim and destroys peace in society. Sexual violence that occurs causes suffering for the victim and has serious consequences that require attention. (Abdul Wahid Dan Muhammad Irfan, 2001). Sexual violence is a criminal act that is very contrary to the protection of human dignity.

Several regulations relating to sexual violence are regulated on a partial basis, including; UU no. 1 of 2023 concerning the Criminal Code (KUHP), the Law on the Elimination of Domestic Violence (UU PKDRT), the Law on the Eradication of Human Trafficking (UU TPPO), the Child Protection Law, the Witness and Victim Protection Law, Law no. 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) and specifically in higher education, the government through the Minister of Education, Culture, Research and Technology has issued Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning Prevention and Handling of Violence Sexuality in the College Environment.

Based on the TPKS Law, the following forms of sexual violence are recognized: a) non-physical sexual harassment, b) physical sexual harassment, c) sexual exploitation, d) forced contraception, e) forced marriage, f) forced abortion, g) sexual slavery and h) sexual torture, i) electronic-based sexual violence. Apart from the nine forms of sexual violence above, there are ten other forms of sexual violence which are categorized as criminal acts as regulated in the TPKS Law, namely; rape, obscene acts, sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children, acts that violate decency that are against the will of the victim, pornography involving children or pornography that explicitly contains violence and sexual exploitation, forced prostitution, criminal acts trafficking in persons aimed at sexual exploitation, domestic violence, money laundering criminal acts whose origin is criminal acts of sexual violence, other criminal acts as expressly stated are criminal acts of sexual violence in the provisions of statutory regulations.

Factors Causing Sexual Violence

Various factors cause sexual violence against women, such as; religious beliefs and racism. Sexual violence occurs more often against women due to several factors, including:

1. Physically, men are considered stronger than women and have high aggressiveness
2. Culturally, there is male dominance over women
3. The reality of women's economic dependence on men (Mutmainah, Mutmainah, 2016)

The factors causing sexual violence as mentioned above are in line with what was conveyed by the sources (Director of LBH APIK Medan, Founder of Aksi Baik Binjai, UPT PPA DP3APMP2KB Medan City and Deli Serdang), which was coded via NVivo R1 as follows:

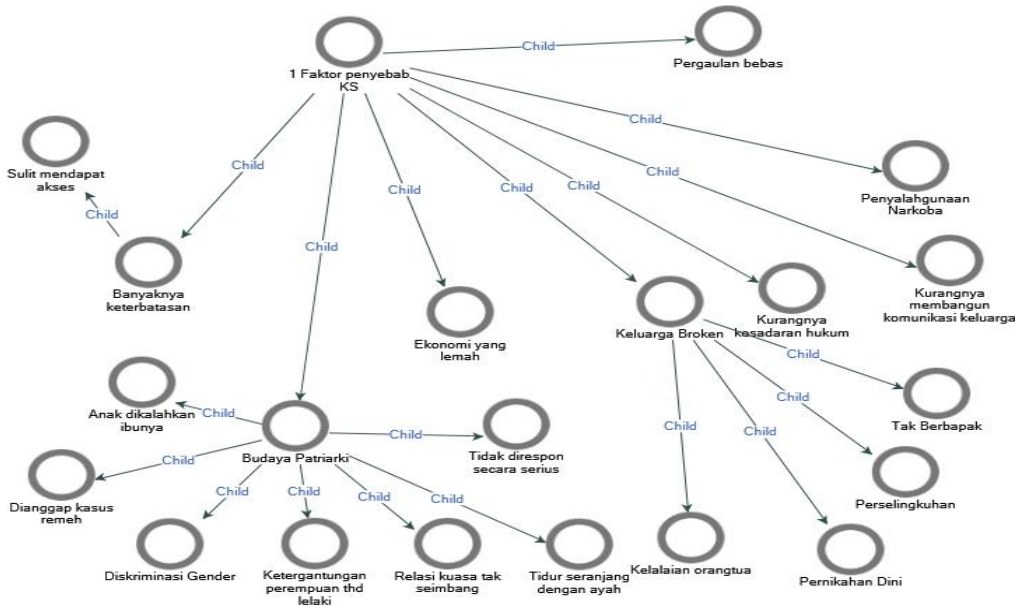


Figure 1. NVivo R1 Factors Causing Sexual Violence

Based on the handling of cases carried out by the informants in this research, it was revealed that the factors that cause sexual violence against women include; because of limited access, patriarchal culture, weak economy, broken home families resulting in parental negligence, underage marriages, infidelity and not having a father, drug abuse, and because of lack of communication within the family.

Among the highest factors conveyed by the interviewees was patriarchal culture, where there are unequal power relations. Sexual violence arises from a history of inequality between women and men. Inequality starts from the personal realm to the public realm. The strong dominance of patriarchy in Indonesian society means that the issue of sexual violence that occurs against women is not considered an emergency and urgent problem that needs to be stopped. The sexual hierarchy is clearly visible in understanding cases of sexual violence. Both at the daily level in society and at the level of state policy makers, there is an assumption that men have sexual dominance over women. The implantation of patriarchal culture starting from the family, religion, and even educational institutions makes women accustomed to submissive situations. As a result, the subordination of women becomes lasting and women will feel inferior to men. (Risna Desimory Tambunsaribu, Ikhaputri Widiantini, 2021)

The patriarchal system positions women as lower than men. In a patriarchal society, men are positioned as someone who has more dominant power than women, while women are in a position of weakness and helplessness. The patriarchal system that influences society's culture results in gender inequality and inequality extending to all lines and human activities (Alfian Rokhmansyah, 2016).

Generally, the perpetrators are people closest to the victim and are even related by blood. This close relationship is a factor that influences the occurrence of sexual violence. This closeness was then used by the perpetrator to carry out sexual violence. When the relationship between the perpetrator and the victim is so close, the victim loses control or supervision to protect themselves. On the other hand, perpetrators are motivated to commit sexual violence because they have the opportunity to do so. Inequality in power

relations (power imbalance) between men and women is one of the inevitable causal factors, including gender differences that are traditionally applied in people's lives (Ninik Rahayu, 2022).

Sexual violence is reported in the mass media with a perspective that blames the victim. Reporting on violence against women that blames the victim leads to sexual sadism. The dissemination of information about rape becomes vulgar with the dramatization of the situation which actually corners and embarrasses the victim. Many reports in the mass media lead the public to place greater blame on rape victims and to empathize with perpetrators who claim they are unable to control their sexual desire. The choice of news diction also often represents the victim's position as a person who is weak and has no power over himself (Fatihah Dhuha Najib, Sunarto, 2020).

The factors that cause sexual violence as mentioned above generally occur due to dominant expressions in unequal relationships within or outside the household. Violence is not an accidental or spontaneous act of the perpetrator. Violence against women begins with the paradigm and assumption that women deserve violent treatment as a result of their own mistakes. Women's disobedience to their partners, or people who have power over the victim, or norms that are treated as truth, is considered a mistake, resulting in violence (Buku Dokumen Kongres Ulama Perempuan Indonesia, *Dokumen Resmi Proses dan Hasil Kongres Ulama Perempuan Indonesia, 2017)*.

According to Ninik Rahayu, the unequal power relations that cause sexual violence will get worse when the perpetrator has more power and control than the victim, economically, social status, position, and so on. So, the root of sexual violence is actually gender-based power relations (Ninik Rahayu, 2022). This statement is also in line with what was conveyed by Ryan Cauley from the University of Iowa, who explained that the factors that trigger sexual crimes are power and violence, not sexual desire. Therefore, what must be reduced is the motivation for violence, not the motivation for sexual desire (Retno Daru Dewi G.S. Putri, 2021).

The Impact of Sexual Violence on Female Victims

Women who are victims of sexual violence experience quite severe and long-lasting impacts, including physical and psychological injuries and damage to their reproductive organs. Among the victims there were those who were forced or forced to quit their jobs because of cases of violence they experienced, divorced from husbands who were actually violent or their children became victims of abuse. However, sexual violence is not yet considered a serious crime. Sexual violence has left serious impacts and lasting trauma. This impact resulted in deterioration of the victim, both physically and mentally in various aspects, namely:

1. Health, the victim experiences; physical violence, pregnancy, miscarriage, infanticide, murder or suicide, out of frustration; psychological violence in the form of stress, trauma, depression; sexual violence that results in damage to the genitals, contracting sexually transmitted diseases, unwanted pregnancies, and in other cases, the victim actually enters the world of prostitution;
2. Education, victims often lose the opportunity to continue their studies because they are pregnant or bullied by friends and the community
3. Economic, victims lose their jobs and livelihoods;

4. Socially, the victim is excluded from society, experiences negative stigma, and is even asked to leave the area where he lives. Some of the relatives even blamed and ignored the victim;
5. Criminalization, namely the perpetrator of sexual violence actually makes the victim of sexual violence the perpetrator of a criminal act, so that the victim is punished. (Fatwa of the Indonesian Women's Ulema Congress (KUPI, 2018).



Figure 2. Coding interviews about the impact of sexual violence against women

According to Sierly Anita Gafar, "the incident that happened to the victim traumatized the victim so that it had a big impact on his psychology, he felt threatened if the perpetrator knew where the victim lived, so the victim usually ran away to places he felt were safe". (Wawancara dengan Sierly Anita Gafar, direktur LBH APIK Medan, tanggal 12 April 2022). Meanwhile, according to Sri Rahayu, "women who are victims of sexual violence psychologically experience trauma within themselves, this is made worse by the society/environment in which they live because women who are victims of sexual violence are considered as women who have been damaged for life, they do not deserve happiness". (Wawancara dengan Sri Rahayu, P2TP2A Deli Serdang)

Sexual violence causes the victim to be afraid, creates a negative stigma in society, threatens the safety and comfort of the victim so that the victim feels like they are in a non-conducive atmosphere and tries to escape. Apart from that, the victims were also of course depressed by the conditions they experienced and experienced prolonged trauma, some of the victims even became pregnant as a result of the sexual violence they experienced.

Protection of Women Victims of Sexual Violence

Cases of violence against women continue to occur and are experienced by women. The existing concept of protecting women does not work well, so that violence is always a frightening threat for women wherever they are. Irresponsible individuals are still everywhere, there is no fear for them, because the laws have not been fully implemented by the authorities so they are not implemented effectively and efficiently. Cases that occur are sometimes considered trivial and not responded to seriously, and the victim is even blamed again, so that what happens is discrimination and revictimization of the victim.

Sexual violence is still associated as a problem of social morality. Women who are

victims of sexual violence are considered a disgrace because of society's strong basic assumptions regarding women as a symbol of purity and honor. Women who are victims of sexual violence are often blamed for sexual violence. This condition resulted in the victim's choice to remain silent about the suffering he experienced. The patriarchal system, which places men's position and power as more dominant than women, is still entrenched in social life in Indonesia. Women are still seen as inferior creatures (Mansour Fakih, 2013).

Culturally, there is still a strong opinion that society tends to blame the victim. The victim is considered to be the trigger for sexual violence because of her tight clothing, not wearing a headscarf, walking alone, or because she goes out at night. In fact, sexual violence is a violation of women's human rights and is included in the category of extraordinary crimes, because these actions degrade human dignity (Yulianti Muthmainnah, 2022)

Misunderstanding of the differences in gender roles and sex has implications for unequal relationships between men and women, as well as the development of an unequal quality of life between the two. The stigma of women has given birth to gender injustice in the form of; subordination, marginalization, stereotypes or stigmatization, and violence and excessive double burdens. The experiences and realities of women's lives are sometimes not considered authoritative as knowledge for reformulating religious views and even changing legislation and policies. The women's experience in question is how someone who just because they are female experiences inhumane distinctions, discriminatory stigma, subordinate treatment and marginalization which makes them experience various forms of violence and injustice (Faqihuddin Abdul Kadir, 2022).

In principle, sexual violence is not limited to acts such as rape, sexual assault, sexual harassment or other physical attacks that target a person's sexuality, but places these acts in a more complex relational context, namely gender and structural inequality. The hierarchy of sexuality causes women to become a group vulnerable to various types of violence, including sexual violence. This is because sexual violence is related to power relations, therefore women, children and people with disabilities and various forms of subordination in society are vulnerable to becoming victims (Atnike Nova Sigiro, 2021).

In principle, the State has the aim and responsibility to realize equal distribution of justice for general welfare, therefore, the right of victims of sexual violence to be protected is an integral part of human rights in the field of social security. Increasing attention to women's human rights has had an impact on increasing attention to women's issues at the national, regional and international levels (Helen Intania Surayda, 2017).

UU no. 12 of 2022 concerning the Crime of Sexual Violence has provided changes to the protection of victims, as well as Law no. 31 of 2014 concerning Witness and Victim Protection. There are several legal principles in the concept of legal protection for victims of sexual violence. In the context of criminal law, legal principles must color both material criminal law, formal criminal law, and criminal implementation law. Protection of women victims of sexual violence based on national criminal law includes; physical protection, fulfillment of procedural rights, legal, medical, psychological protection, psychosocial rehabilitation, compensation, compensation and/or restitution.

Seeing the impact suffered by victims, punishment for perpetrators of sexual crimes

certainly still leaves other problems, including the civil rights of victims who have experienced material and immaterial, spiritual and physical losses including spiritual, mental, spiritual, psychological, physical, social, economic losses. , and an invaluable future. The rape victims consisted of; personal rape victims, children resulting from rape; the victim's family if the victim dies due to rape; and society.

Protection of victims to obtain civil rights in the form of restitution and compensation is therefore very urgent. Thus, protection for crime victims can be carried out in various ways, depending on the suffering and losses suffered by the victim. For example, for psychological losses, the form of compensation in the form of material/money is not sufficient if it is not accompanied by efforts to psychologically restore the victim. On the other hand, if the victim suffers material losses, of course they do not need psychological help (Agustini, Ika, Rofiqur Rachman, and Ruly Haryandra, 2021).

Handling of cases of sexual violence must ensure that justice is achieved for the victim and avoids the risk of the perpetrator repeating his actions. Strict law enforcement should be carried out by law enforcers to convince the public that the law is working to protect them. The law should function as a strong tool to protect the rights of its citizens, provide justice to victims and security for the entire community. Attention and protection to the interests of victims of sexual violence, both through the judicial process and through certain social care facilities, is an absolute part that needs to be considered in criminal law policies and social policies, both state power institutions and existing social institutions.

Gender Justice Reconciliation from an Islamic Perspective as an Effort to Protect Women Victims of Sexual Violence

Based on Islamic legal literature, violence against women is called Jarimah. Jarimah according to Imam al-Mawardi is all sharia prohibitions (doing things that are prohibited or leaving things that are obligatory) which are threatened with had or ta'zir (Dzazuli 1997). Based on this understanding, it is known that Islam loves women very much, as evidenced by the punishments given to perpetrators of crimes against women. In Islam, material criminal law is certainly related to an act based on sharia which has been determined to be a criminal act.

Allah SWT has outlined various acts that fall into the category of criminal acts, such as theft, assault, murder, rape and so on. In the Islamic view, violence against women is a form of crime. Jinayah fiqh (Islamic criminal law) in particular, in principle, also regulates prevention carried out by humans and will provide punishment according to the level of the crime, therefore the purpose of this provision made by Allah SWT is to create benefit. In terms of problems experienced by women, Islam is of course on the side of women where Islam has guaranteed the rights of all women (Bustanul Arifin, dan Lukman Santoso, 2016). Thus, protection for women victims of sexual violence is a necessity, because the loss of dignity and honor of the victim is a result of the perpetrator's heinous actions.

The presence of the Islamic religion is based on the goal of the common good which is clearly explained by Allah SWT in Q.S al-Anbiya: 27 "And I have not sent you except for Mercy for the entire World". This verse is the theological basis for Muslims to spread

goodness on earth through religious teachings. In ushul fiqh terminology, legal protection is in line with the objectives of the law, namely towards five aspects (ad-daruruiyah al-khams). (M. Hasby As Shiddiqy, 1976)

Based on Islamic law, legal protection is in line with the legal objectives of realizing the benefit of the ummah, providing benefits and avoiding damage on the face of the earth, as elaborated in five aspects (al-kulliyat al-khams or ad-daruriyah al-khams). The five aspects of protection include religion (hifz ad-din), soul (hifz an-nafs), reason (hifz al-aql), lineage (hifz an-nasl), property (hifz al-mal). This means that Islamic law provides protection as a blessing for all nature, as stated in Surah Yunus verse: 57 and Surah al-Anbiya' verse 107 (Bustanul Arifin, 2016). These five protection concepts were developed by al-Syathibi in his book al-Muwafaqat fi Ushul al-Ahkam. In connection with the protection of women victims of sexual violence, the application of the kulliyat al-khams protection theory is very important. This means that legal protection for victims must be based on these five aspects.

Sexual violence is contrary to monotheism because it shows the perpetrator's human submission to his sexual desires and the victim's submission to the perpetrator. Sexual violence shows the perpetrator's loss of reason which is the core of his humanity and has an impact on the loss of the victim's welfare in various aspects of life. This is contrary to human status as servants of Allah (`abdullah) and the inherent mandate of being caliph fil ardhi. In fact, humans, both men and women, were created by Allah as kholifah fil ardhi. This mandate should be carried out together, helping each other to do all the good for the prosperity of the universe. This mutuality emphasizes that one gender is not permitted to commit injustice by dominating and hegemonizing the other, because it is contrary to the mandate of the caliphate given by Allah (Faqihuddin Abdul Kadir, 2022).

Islam opposes all forms of violence, including sexual violence. Social reconstruction to build equal relations between women and men can be linked to the application of the concept of mubjadi in life (Susanti, L. D, 2020). Men and women each have an obligation to realize good and prevent evil. The mubindah perspective is carried out by ensuring that women are reached by the benefits of Islam and protected from evil that is not desired by Islam (Faqihuddin Abdul Kadir, 2022).

The mubjadi perspective necessitates equality and justice in social relations and encourages cooperation that is participatory, fair and provides benefits to all parties without discrimination. This perspective ensures the presence of the principles of ta'awun, namely helping each other among human beings, tahabbub, namely loving each other, not committing violence and destroying the dignity of one gender, tasyawur, namely giving each other opinions, taradhin, mutual willingness and ta'ashur bil Ma'ruf means treating each other well in social relations.

Mutuality, mutual help and cooperation must be built together in a community, both within the family and in society. The relationships built between women and men in public and domestic spaces are based on the concept of mubjadi based on cooperation and mutual work which is implemented in a form of mutuality in life. Mutuality is intended not only for married couples, but for other people. The urgency of this mutuality can be seen from the involvement of husband and wife, parents and children, children with other families and even leaders of the country and society which is a manifestation

of the affirmation of moderate gender justice as guided by Islam (Basid, A., & Jazila, S., 2023).

The existence of laws relating to sexual violence cannot fully accommodate the comprehensive protection of victims, so the presence of the PSK Law and the TPKS Law is a legal umbrella for the protection of victims of sexual violence which has annulled forms of sexual violence that previously did not exist. The protection in question includes; physical protection, fulfillment of procedural rights, legal, medical, psychological protection, psychosocial rehabilitation, compensation, compensation and/or restitution. The TPKS Law has also accommodated the prevention, protection and recovery of victims of sexual violence which according to religion is a prophetic mission to liberate especially women and other vulnerable groups from injustice, as a reflection of Surah An Nur verse 33 which has relevance to sexual violence.

Of course, this protection is urgent and a necessity because the actions of perpetrators of sexual violence are contrary to the constitution and human dignity, which has a tremendous impact on the victims. So according to Islamic law, this action in all its forms is haram, because it is contrary to the human values elaborated in the maqashid ash sharia; hifdzu ad din, hifdzu an nafs, hifdzu al aqli, hifdzu an nasl, hifdzu al mal, hifdzu al irdhi. To improve the implementation of protection so that the benefits of legal protection can be felt directly by women who are victims of criminal acts of sexual violence by prioritizing the victim's experience. The government should pay serious attention to the protection of victims of sexual violence, especially psychological rape, bodies injured due to tearing of the victim's hymen, including the cost of abortion of children when the victim becomes pregnant as a result of rape.

4. Conclusion

The phenomenon of cases of sexual violence against women is not only a social concern, but also an urgent matter to overcome and eradicate the root of the problem that causes it. One of the factors that causes cases of sexual violence is gender inequality which is still entrenched and of course makes women vulnerable to violence. Women are often targeted due to their unequal position with men. Thus, gender equality is not only a basic right, but can be the key to changing the dynamics of sexual violence. For this reason, important steps are needed to realize gender equality and justice as an effort to prevent sexual violence. The principle of mubjadi, which is an interrelationship between parties rooted in social monotheism which emphasizes equality, justice, compassion and respect for humanity, can be applied in life as a preventative effort to protect women from sexual violence.

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