



Legal Arguments of Gender Activists Against the Rejection of Criminal Sanctions for Perpetrators of Domestic Rape in the 2015 MUI Fatwa

Argumen Hukum Aktivis Gender Menentang Penolakan Sanksi Pidana bagi Pelaku Pemerkosaan dalam Rumah Tangga dalam Fatwa MUI Tahun 2015

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Abstract

This research aims to analyze the views of gender activists regarding MUI Fatwa Number 02/MUNAS-IX/MUI/2015 concerning the rejection of criminal sanctions for perpetrators of domestic rape and to find out the legal arguments from the sources regarding this fatwa. Domestic sexual violence is an important and often overlooked issue in society. This research uses field research methods with an interactive qualitative approach using primary data sources obtained by interview techniques with informants, namely UIN gender activist K.H Abdurrahman Wahid Pekalongan, and secondary data in the form of research book literature obtained using documentation techniques. The data was analyzed using interactive model qualitative data analysis techniques. The research results concluded that gender activists' views varied regarding the fatwa. Some activists have different views about this fatwa. However, all of them rejected this fatwa on sexual coercion in the household, not sexual violence, because it was deemed not to support the protection of victims and strengthen patriarchal norms. Arguments from gender activists refer to the PKDRT Law which categorizes domestic rape as sexual violence. This research suggests that the fatwa be reviewed and accompanied by case studies to increase public understanding and acceptance and provide appropriate legal solutions for perpetrators of domestic rape.

Abstrak

Penelitian ini bertujuan untuk menganalisis pandangan aktivis gender terhadap Fatwa MUI Nomor 02/MUNAS-IX/MUI/2015 tentang penolakan sanksi pidana bagi pelaku pemerkosaan dalam rumah tangga serta mengetahui argumentasi hukum dari para narasumber terkait dengan fatwa ini. Kekerasan seksual dalam rumah tangga adalah isu yang penting dan sering diabaikan dalam masyarakat. Penelitian ini menggunakan metode penelitian lapangan dengan pendekatan kualitatif interaktif menggunakan sumber data primer yang diperoleh dengan teknik wawancara kepada informan yaitu aktivis gender UIN K.H Abdurrahman Wahid Pekalongan, dan data sekunder berupa literatur buku hasil penelitian yang diperoleh dengan teknik dokumentasi. Data di analisis dengan teknik analisis data kualitatif model interaktif. Hasil penelitian menyimpulkan bahwa pandangan aktivis gender beragam terkait fatwa tersebut. Beberapa aktivis memiliki pandangan berbeda tentang fatwa ini. Namun semuanya menolak fatwa pemaksaan seksual di rumah tangga bukan kekerasan seksual ini karena dianggap tidak mendukung



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perlindungan terhadap korban dan memperkuat norma patriarki. Argumentasi dari para aktivis gender mengacu pada UU PKDRT yang mengkategorikan pemerkosaan dalam rumah tangga sebagai kekerasan seksual. Penelitian ini menyarankan agar fatwa tersebut ditinjau ulang dan disertai studi kasus untuk meningkatkan pemahaman dan penerimaan masyarakat serta memberikan solusi hukum yang tepat bagi pelaku pemerkosaan dalam rumah tangga.

INTRODUCTION

Sexual violence is rampant in Indonesia, with perpetrators ranging from elementary school graduates to academics and university graduates. Sexual harassment often affects women, although men can also experience it. The National Commission on Violence Against Women (Komnas Perempuan)'s annual report for 2021 recorded 299,991 cases of violence against women. This number represents a significant decrease from the 431,471 cases reported in 2020. This decline is due to social education initiatives conducted by institutions and organizations promoting gender justice. This has prompted UIN KH Abdurrahman Wahid to pursue prevention and response efforts through ULT Setara, under the auspices of the PSGA (Center for Child Gender Studies), which strives to create a moderate, non-violent Islamic campus.

PSGA is an integral institution that refers to the Tri Dharma of Higher Education. Many efforts have been made by gender activists of UIN KH Abdurrahman Wahid through ULT Setara to campaign for the prevention of sexual violence and gender equality, among the activities are through workshops targeting the academic community of UIN KH Abdurrahman Wahid, campaigns through the Thematic KKN team for the Prevention and Handling of Sexual Violence on Campus targeting UIN KH Abdurrahman Wahid students and having a protection center for victims of sexual violence on campus through a counseling room. The gender activists referred to here are gender activists of UIN KH Abdurrahman Wahid consisting of lecturers who are members of the PSGA (Center for Gender and Child Studies), and lecturers who consent in handling gender issues. According to the views of several sources, the MUI fatwa NUMBER 02/MUNAS-IX/MUI/2015 is a response to the PKS Bill, which contains a prohibition on rape in marital relations, this fatwa has gone through several Islamic legal *istinbath* processes.

The PKS Bill also stems from phenomena that occur in society. In Islam, a wife is not allowed to refuse her husband's invitation, and vice versa, a husband is not allowed to force her, meaning that husband and wife must be in a state of mutual sincerity and willingness to have sexual relations. Some conditions are permissible for a wife to refuse sexual relations with her husband, such as menstruation, illness, or fasting. A husband is not allowed to force his wife, and the wife must have consent or agreement that can be used as an element of piety to avoid harm. The fatwa also emphasized that a husband who understands Islamic law will certainly have intercourse with his wife in a good way without any coercion. Responding to the opinion of the gender activist, according to the author, the husband and wife relationship must be carried out properly to fulfill the principle of *muasyarah bil ma'ruf*, one way is with the willingness of both parties without coercion from any party, because both husband and wife have the same rights in husband and wife relations, we cannot rely on religious texts alone but must also be understood according to the situation and conditions.

In Indonesia, the Indonesian Ulema Council (MUI) is an independent and aspirational institution. MUI fatwas are issued through a process of considering evidence and the public interest. In issuing fatwas, the MUI relies on the opinion of the majority of ulama. In society, MUI fatwas play a significant role, but they are not considered positive Indonesian law. Instead, the MUI serves as a provider of input to the government on behalf of the Indonesian Muslim community.

In the MUI fatwa 02/MUNAS/-IX/MUI/2015 it is stated that what can be punished is the act of criminalization, while rape is forced sexual intercourse by a man against a woman who is not his wife, so this act is included in the category of criminal acts. While the law on sexual intercourse between husband and wife is legal, then such actions are not included in the category of criminal acts. In Indonesia, there are no specific rules governing the punishment for perpetrators of rape in marriage, but rape in marriage can be categorized as sexual violence in the Law on the Elimination of Domestic Violence (UU PKDRT), as Article 8 states Sexual violence as referred to in Article 5 letter c includes: a. forced sexual intercourse committed against people who live in the scope of the household; b. forced sexual intercourse against one person in the scope of the household with another person for commercial purposes and/or certain purposes.

According to Law Number 23 of 2004 concerning the Elimination of Sexual Violence in the Household, perpetrators of sexual violence can be sentenced to a maximum of 12 months in prison or a maximum fine of IDR 36,000,000. In Islamic law, issues of sexuality between husband and wife are regulated in QS Al-Baqarah 187.

may Allah bless him and give him peace and blessings نَسَائِكُمْ هُنَّ لِهِنَّ ۖ عَلِمَ اللَّهُ أَنَّكُمْ كُنْتُمْ تَخْتَانُونَ أَنْفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَفَا عَنْكُمْ ۚ فَالْآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ ۚ وَكُلُوا وَاشْرَبُوا شَاءَ مَا رَزَقْنَاكُمْ بِإِذْنِ اللَّهِ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَالنَّاسِ لَعَلَّهُمْ يَتَّقُونَ - ١٨٧

"It is permissible for you at night to fast to mix with your wives. They are clothes for you, and you are clothes for them. Allah knows that you cannot restrain yourself, but He accepts your repentance and forgives you. So now mix with them and seek what Allah has ordained for you. Eat and drink until it becomes clear to you (the difference) between the white thread and the black thread, namely dawn. Then complete the fast until (comes) evening. But do not interfere with them, when you perform Iqataf in the mosque. That is Allah's decree, so do not approach it. Thus Allah explains His verses to people, so that they become pious."

In other verses, it is also mentioned that a husband is commanded to have intercourse with his wife in a good manner, this means that there is a prohibition against doing anything that hurts his wife. Although basically a wife is obliged to serve her husband, but under certain conditions she is allowed to bargain, postpone, and not serve him. If the husband still insists, he is violating the principle of mu'asyarah bil ma'ruf. Through the description of this problem, the author will conduct a study with the title "Gender Activists' Views on the MUI Fatwa Number 02/MUNAS-IX/ 2015 Concerning the Rejection of Criminal Sanctions for Perpetrators of Domestic Rape"

METHODS

This research is a field research . The author will examine the object directly to obtain data. The object to be studied is the views of gender activists from UIN KH Abdurrahman Wahid Pekalongan regarding the MUI fatwa NUMBER 02/MUNAS-IX/MUI/2015 concerning the rejection of criminal sanctions for perpetrators of domestic rape and the legal arguments of these activists. This research uses a qualitative approach, in which the author will determine the legal framework and evaluate its effectiveness. This research uses primary and secondary data sources.

ANALYSIS AND DISCUSSION

Gender Activists' Views on the MUI Fatwa on the Rejection of Criminal Sanctions for Perpetrators of Domestic Rape

1. Miqdam Yusria Ahmad

In the MUI fatwa, he expressed his agreement with points one through four. In the explanation of points one through four, the legal explanation is clear and correct so that it can be understood and accepted by the public. "I agree with the statement of the first point in the fatwa, because basically the relationship between husband and wife is an act of worship that is motivated by love and affection/mawaddah warahmah. Then in points 2, 3, and 4 it states that if in the relationship between husband and wife there must be certain conditions that are prohibited, here it is explained during menstruation for example. And also must have intercourse with the wife in mu'asyarah bil ma'ruf, I agree with that." As stated by Allah in the Qur'an Surah Ar-rum verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا فِيهَا وَلِيَتَذَكَّرُوا فِيهَا وَكَانَ بَيْنَهُمْ رُفُقًا ۚ وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا فِيهَا وَلِيَتَذَكَّرُوا فِيهَا وَكَانَ بَيْنَهُمْ رُفُقًا ۚ

And among His signs (of His greatness) is that He created mates for you from your own kind, so that you would be inclined and feel at ease with them, and He created between you feelings of love and affection. Indeed, in that there are truly signs (of Allah's greatness) for a people who think.¹

Then he continued: "But I don't agree with point 5 because the language used here is still open to multiple interpretations and the language is also a bit ambiguous because it suddenly says that criminalizing marital relations is against Islamic teachings."²

Therefore, he disagrees with point five, which states that criminalizing marital relations is contrary to Islamic law. This sentence is incomplete and ambiguous. He believes the MUI fatwa is still categorized as biased. The Criminal Code (KUHP) actually defines rape as the act of forcing another person to have sexual intercourse with someone who is not their mate. The KUHP, however, states that if this occurs in a household, it is considered domestic violence.

According to him, the MUI fatwa must be comprehensive and accompanied by case studies. A comprehensive fatwa with case studies will make it more understandable and acceptable to the public. The MUI fatwa has no legal implications, as it is only intended to provide discussion material regarding domestic violence. This fatwa then becomes a recommendation to the House of Representatives (DPR). This fatwa directs the view that rape does not exist within a household. The MUI emphasizes that rape only occurs outside of marriage.

2. Ningsih Fadhilah M..Pd

Essentially, a husband-wife relationship is *permissible according to the Islamic teachings of Islam*. According to him, rape can also occur in legally married relationships. Rape is defined as an act of coercion perpetrated by one person against another. Domestic rape is also known as domestic violence (KDRT). Domestic violence is certainly classified as a criminal act that can be punished. According to him, rape is divided into two types: public rape and private rape. Public rape is rape committed by someone who is not yet legally permitted. Meanwhile, private rape is rape committed by someone who is legally permitted.

Responding to the MUI Fatwa NUMBER 02/MUNAS-IX/MUI/2015 regarding the rejection of criminal sanctions for perpetrators of domestic rape, he still believes that married couples should receive criminal sanctions if they commit rape in the

¹QS. Ar-Rum (30): 21

²Miqdam Yusria Ahmad, Lecturer at UIN KH Abdurrahman Wahid, interviewed by Misbahul Fuadil Umam, March 6, 2023

household. "In this case, I consider this fatwa to be contrary to gender justice, because what is called violence must have criminal penalties even though the relationship is legal as husband and wife." ³Criminal sanctions for perpetrators of domestic rape so that both partners get the right to freedom and comfort in the household without any element of coercion that will result in one party losing their humanity.

3. Herning Hambarrukmi MHI

Responding to the MUI fatwa No. 02/MUNAS-IX/MUI/2015 regarding the rejection of criminal sanctions for perpetrators of domestic rape, it is not a basis but merely a recommendation. According to him, in a husband-wife relationship, there needs to be mutual understanding. This mutual understanding means mutual understanding between husband and wife to create a harmonious family. Mutual rejection of domination by one party. Mutual communication prioritizes communication between both parties, with the aim of ensuring that all decisions are the result of deliberation.

The stigma of rape remains taboo in society. Rape, according to the majority, is considered an act of coercion outside of marriage. Yet, rape can also occur within a husband-wife relationship. According to him, victims of domestic rape are unlikely to report it to the Indonesian Ulema Council (MUI). Therefore, the MUI is unaware of how rape can occur within a marital relationship. "My advice is that when getting married, both the bride and groom must be truly prepared for the challenges of marriage. They must be mentally, intellectually, and religiously prepared. Husband and wife must also understand the ethics of relationships, including what is permissible and what is not."

Then he continued: "Perhaps this fatwa is for public understanding about understanding the ethics of sexual intercourse, but the MUI should include the basis and what the consequences are." ⁴From the statement above, it can be seen that the MUI only recommends that married couples understand ethics. However, according to Mrs. Herning, if the fatwa only focuses on ethical understanding, there will be no law enforcement. Therefore, domestic rape must have legal consequences for the perpetrator.

The MUI fatwa does not provide alternatives or solutions for cases of domestic rape. This, in turn, leads to social stigma that normalizes the case. He expressed his opinion regarding sanctions for perpetrators of domestic rape, arguing that imprisonment is unacceptable because it would impact family unity. He agreed that the consequences imposed on perpetrators of domestic rape should not undermine the family structure. Fundamentally, he remains opposed to rape or forced marital relations within the family. However, a marital relationship should not involve any element of coercion from either party. However, most victims never report domestic rape because they consider it a disgrace.

4. Dr. Hj. Siti Qomariyah MA

Regarding the MUI fatwa, he explained that it was merely a view or concept the MUI wanted to propose to the House of Representatives (DPR). The MUI fatwa focused on the terms rape and coercion in domestic relationships. Furthermore, the

³Ningsih Fadhilah, Chair of PSGA UIN KH Abdurrahman Wahid, interviewed by Misbahul Fuadil Umam, November 27, 2022

⁴ Herning Hambarrukmi, Lecturer at UIN KH Abdurrahman Wahid, interviewed by Misbahul Fuadil Umam, March 20, 2023

fatwa emphasized the view that rape within a family relationship is not a crime and does not comply with Islamic law.

He appreciated the terminology used by the MUI in the fatwa, namely coercion, not rape. The MUI believes that when the general public hears the word "rape," they immediately think of someone forcing another person to engage in extramarital sex.

The MUI uses sociological terms that are generally understood by the public, namely domestic coercion, not rape. Using terms that are understandable to the public is crucial to avoid misinterpretation. However, according to him, determining a law doesn't depend on the terminology itself. It depends on its substance or content. Therefore, regardless of the terminology, if the substance is the same, it can be punished. "The determination of the law doesn't depend on the terminology, but on the substance or content. If in this fatwa the substance is the same as sexual violence, then domestic rape can also be punished." ⁵

In this case, the Indonesian Ulema Council (MUI) rejects criminal penalties for perpetrators of domestic rape. According to the MUI, there is no act of rape in the household, but rather coercion. Therefore, perpetrators of coercion in the household cannot be considered criminal because it is not rape. According to Ms. Siti Qomariyah, the MUI's opinion is still general. According to her, coercion in the household is divided into two categories: mild and severe coercion. Mild coercion, for example, occurs when a husband or wife requests intimate relations without causing harm. This mild coercion is not considered a crime. The second is severe coercion. This type of coercion usually involves injuring, hitting, or even killing one of the parties, and therefore is subject to criminal law.

He did not focus on the terminology used, namely rape or coercion. He argued that criminal acts can occur both outside and within marriage. A husband and wife who commit acts of violence that injure one of the parties should be subject to criminal penalties. In his conclusion, he stated that the law is free to choose its terms. However, good law chooses terms that align with the general public's understanding. Reviewing the MUI fatwa's position, gender activists rejected the MUI fatwa, which stated that domestic sexual violence should still be criminalized. The four gender activists agreed that coercion is a form of rape that leads to domestic violence. There were only minor differences in their responses to the fatwa. First, Miqdam Yusria Ahmad agreed with the points issued by the MUI but rejected the MUI's rejection of the criminalization of domestic rape.

"I agree with the statement of the first point in the fatwa, because in essence the relationship between husband and wife is an act of worship that is motivated by love and affection/*mawaddah warahmah*. Then in points 2, 3, and 4 it states that if in a husband and wife relationship there must be certain conditions that are prohibited, here it is explained during menstruation for example. And also that intercourse with the wife must be *mu'asyarah bil ma'ruf*, I agree with that. "But I disagree with point 5 because the language used here is still multi-interpretable and the language is also a bit ambiguous because it suddenly says that criminalizing husband and wife relations is contrary to Islamic teachings.

Meanwhile, Ningsih Fadilah added that rape can occur in both private and public spaces, however, coercion within the household is a form of violence and causes discomfort. Herning Hambarrukmi explained that the MUI fatwa only

⁵ Siti Qomariyah, Lecturer at UIN KH Abdurrahman Wahid, interviewed by Misbahul Fuadil Umam, April 5, 2023

requires husbands and wives to understand ethics. The MUI's disregard for sanctions would only normalize sexual violence against wives. Siti Qomariyah added that regardless of whether coercion is called rape, it positions women as objects of harm and is the same act of sexual violence.

Researchers believe there are methodological and paradigm differences between gender activists at UIN KH. Abdurrahman Wahid and the MUI fatwa. This difference results in different legal outcomes and ethical implications. Gender activists tend to view this issue by punishing men who commit sexual violence as a form of justice and a deterrent. This is because violence can occur anywhere, not necessarily outside of marriage.

Legal Arguments from Gender Activists Against the MUI Fatwa on the Rejection of Criminal Sanctions for Perpetrators of Domestic Rape

1. Miqdam Yusria Ahmad SHI, M.Ag

In Mr. Miqdam's comment on this fatwa, he disagrees with point 5 of the legal provisions article which reads: Criminalization of marital relations is contrary to Islamic law. According to Mr. Miqdam, the sentence is incomplete and contains an ambiguous meaning. Because a legal sentence must definitely not be open to multiple interpretations. Ambiguity/uncertainty that causes multiple interpretations according to Kempson (in Djajasudarma 2009:52) is three, namely (a) phonetic ambiguity, (b) grammatical ambiguity, and (c) lexical ambiguity. Phonetic ambiguity occurs due to the addition of phonemes and unclear pauses when a word is spoken. Grammatical ambiguity occurs at the morphological and syntactic levels.⁶

Mr. Miqdam categorized this fatwa as biased. The Criminal Code (KUHP) actually explains that rape is an act of forcing another person to have sexual intercourse with someone who is not their mate. It also states that if this occurs in a household, it is also considered domestic violence. This is in accordance with Law No. 23 of 2004 concerning Domestic Violence, which states: Sexual violence as referred to in Article 5 letter c includes:

- a. forced sexual intercourse committed against a person residing within the household;
- b. forced sexual relations with one person within the household with another person for commercial purposes and/or certain purposes.

2. Ningsih Fadhilah M.Pd

According to Mrs. Ningsih Fadhilah, rape is defined as an act of coercion carried out by one person against another. Rape in the household is also called KDRT (Domestic Violence). Domestic violence is certainly classified as a criminal act that can be punished. In the Criminal Code, rape cases are regulated in Chapter XIV Crimes Against Morality, Article 285. *Anyone who uses violence or threats of violence to force a woman to have sexual intercourse with him outside of marriage is threatened with rape with a maximum prison sentence of twelve years.*⁷ Responding to the MUI Fatwa Number 02/MUNAS-IX/MUI/2015, Mrs. Ningsih Fadhilah still believes that married couples should receive criminal sanctions if they commit rape

⁶Hartini, Lilis, "Language and Legal Products." (Bandung: Refika Aditama, 2014), 58.

⁷Andi Hamzah, Criminal Code and Criminal Procedure Code, (Jakarta, Rineka Cipta, 1992) 115.

in the household. MUI Fatwa 02 Munas-IX/MUI/2015 concerning the Criminalization of Husbandry explains that the act of coercion by a husband against his wife is not a criminal act and therefore does not need to be criminalized. Riwayat Al-Bukhari states:

قال: -صلى الله عليه وسلم- God willing, God willing, God willing, God willing, God willing
 "إِذَا دَعَا الرَّجُلُ امْرَأَتَهُ إِلَى فِرَاشِهِ فَأَبَتْ أَنْ تَجِيءَ لَعَنَتْهَا الْمَلَائِكَةُ حَتَّى تَصْبِحَ". (متفق عليه، واللفظ للبخاري
 (ومسلم)

Meaning: From Abu Hurairah radhiyallahu 'anhu, that the Prophet -sallallahu 'alaihi wa sallam- said: "If a husband invites his wife to bed and she refuses to come, then the angels curse him until morning." (Muttafaqun 'alaihi, and its pronunciation from Bukhari and Muslim).

According to the Maliki school of thought, a wife is obligated to engage in sexual relations with her husband unless there is a barrier. This perspective is based on the concept of mu'asyara bil ma'ruf, which means living together in goodness. It emphasizes the importance of treating one's wife with care and respect, including avoiding actions that could harm her emotionally or physically. This philosophy is exemplified by the actions of the Prophet Muhammad (peace be upon him). Furthermore, it is important to interpret the term "libas" in verse 187 of Surah Al-Baqarah as a form of mutual protection in all aspects. This interpretation emphasizes the importance of seeking harmony and alignment in attitudes, including in sexual relations. Therefore, it is crucial that sexual relations between husband and wife occur with the explicit consent of both parties, without coercion or manipulation from either party.⁸

3. Herning Hambarrukmi MHI

In response to MUI Fatwa Number 02/MUNAS-IX/MUI/2015, Ms. Herning Hambarrukmi reminded that this fatwa is not a legal basis, but merely a recommendation. The stigma of rape in society remains taboo. Rape, according to the majority of society, is considered an act of coercion outside of marriage. Yet, rape itself occurs within a marital relationship. The legal basis is that when a regulation has not been enacted, it is not legally binding, but it may be legally and customary in society. The MUI also did not clarify its ethical position on this matter. The purpose of the fatwa is also to harmonize household relationships by understanding household ethics and discussing matters properly between wives and husbands. However, the MUI emphasized that wives are obliged to obey their husbands regarding sexual relations when there are no obstacles.

4. Dr. Hj. Siti Qomariyah MA

Siti Qomariyah respects the terminology used by the Indonesian Ulema Council (MUI) in the fatwa, which uses the term "coercion," not "rape." The MUI believes that when the general public hears the word "rape," they immediately think of someone forcing another person to engage in sexual intercourse outside of marriage. The legal definition doesn't depend on the terminology. Qomariyah maintains that domestic rape should still be subject to criminal penalties. This is

⁸Al-Hafizh Ibnu Hajar Al-Asqalani, "Translation of Bulughul Maram trans. from Bulughul Maram min Jami'i Adillatil Ahkam by Abu Ihsan Al-Atsari" (Solo: At-Tibyan, 2006), 458.

because the legal definition depends on its substance or content. Therefore, regardless of the term, if the substance is the same, it can be punished.

The four sources above based their arguments on their knowledge, as legal terminology defines an argument as an attempt to convince others by presenting reasons. They used legal reasoning to present their arguments. For example, Mr. Miqdam categorized this fatwa as biased because its direction in point 5 is unclear. Ms. Ningsih and Ms. Qomariyah considered the terminology used by the Indonesian Ulema Council (MUI) in issuing the fatwa to be essentially the same as sexual violence in the Domestic Violence Law. Ms. Herning considered this fatwa to be merely an advisory that needed to be reviewed in legal recommendations.

This response was approved by the legal research team from the Faculty of Law, Mulawarman University, explaining that Islamic law regulates punishment for sexual violence in the household, which is subject to sanctions or *ta'zir*. However, there are provisions regarding the consequences of the punishment, so that *ta'zir* will be left to the authorities as the authority.⁹ Similar research by Muh. Irham, Hartini Tahir, Istiqomah, also shows the same thing that the Islamic law review of sexual violence in the household or *martial rape* is prohibited by Islam and has consequences for punishment/*ta'zir*. This is also supported by the existence of positive law in Indonesia that regulates this.¹⁰

Legally, proving martial rape within a household can be proven by the existence of forced sexual intercourse, which is the same as forcing sexual intercourse in a general context.¹¹ This means that legally, proving rape within the household is the same as proving forced sexual violence outside the household. However, the Indonesian Ulema Council (MUI) rejects this argument. The MUI offers a solution: a proper understanding of family ethics, which relates to the roles of men and women. According to the MUI, a good understanding of family ethics and good communication will prevent acts of sexual violence. Husband and wife must understand their respective positions, and the wife should not be harmed, as this violates Islamic principles. Therefore, to prevent unwanted acts, a good understanding of domestic ethics must be supported by good communication to maintain a stable household.

In response to these differences, a fatwa, in the classical definition, is only optional and not legally binding. A fatwa is morally binding for those *who* request it, while for others, it is merely information or discourse. A mufti issues a fatwa to appeal to or advise someone. A fatwa from the Indonesian Ulema Council (MUI) cannot impose wills in Indonesian social life. It is only morally binding on individuals. It cannot replace existing positive law in Indonesia. MUI fatwas guide Islamic scholarly discourse, which can then serve as references or recommendations in determining positive law in Indonesia. Considering that Indonesian society is Muslim,

CONCLUSION

Gender activists believe that the Indonesian Ulema Council (MUI) Fatwa No. 02/MUNAS-IX/MUI/2015, which rejects criminal sanctions for perpetrators of domestic rape, is biased. Gender activists disagree with the MUI fatwa, arguing that domestic sexual

⁹Orin Gusti Andini, Lisa Aprilia Gusreyana, & Surya Eriansyah, "Martial Rape in the Perspective of Islamic Law and the Draft Criminal Code" (Samarinda: Mulawarman University, 2022) 36.

¹⁰Muh. Irham, Hartini Tahir, & Istiqomah, "A Review of Islamic Law on Martial Rape Related to the Draft Criminal Law" *Qadauna: Scientific Journal of Islamic Family Law Students*, Vol.3, No.1, (2021): 14

¹¹Angeline Arya Danica, & Novita Aristyana, Charine Elsin Natalia Tahapary, Ramadhanis Samadi, Criminalization of Marital Rape: Existence and Evidence, *Yustika Journal* Vol. 25 No. 01, (Jul 2022) 8.

violence should still be criminalized. While gender activists differ in their methodologies and paradigms, these differences create legal consequences and ethical implications by punishing men who commit sexual violence as a form of justice and a deterrent. Violence can occur anywhere.

The legal arguments put forward by the speakers were based on the Domestic Violence Law, which categorizes domestic rape as sexual violence. In their arguments, the activists stated that the law is free to choose its terms, but good law is one that chooses terms that are appropriate to the conditions of the general public. The MUI fatwa is merely a description, perspective, and discourse of legal studies that are not legally binding. The MUI fatwa is merely an offer or recommendation for existing positive law in Indonesia.

Conclusion contains a description that should answer the problem(s) raised and answer the objectives of research. Provide a clear and concise conclusion. Do not repeat the Abstract or simply describe the results of the research. Give a clear explanation regarding the possible application and/or suggestions related to the research findings.

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Umam, April 5, 2023

Law Number 23 of 2004 concerning the elimination of domestic violence, Article 8

Law Number 23 of 2004 concerning the elimination of domestic violence, Article 46

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