



Rejection of Criminal Sanctions on Perpetrators of Domestic Rape (Gender Activist Perspective)

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Abstract

This study aims to analyze the views of gender activists on the MUI Fatwa Number 02/MUNAS-IX/MUI/2015 on the rejection of criminal sanctions for perpetrators of domestic rape and to find out the legal arguments of the informants related to this fatwa. Domestic sexual violence is an important issue and is often ignored in society. This study uses a field research method with an interactive qualitative approach using primary data sources obtained by interview techniques with informants, namely activists of the UIN KH Abdurrahman Wahid Pekalongan gender, and secondary data in the form of literature from research books obtained by documentation techniques. The data was analyzed using interactive model qualitative data analysis techniques. The results of the study concluded that gender activists' views vary regarding the fatwa. Several activists have different views on this fatwa. However, all of them reject the fatwa on sexual coercion in the household as not sexual violence because it is considered not to support protection for victims and strengthens patriarchal norms. Arguments from gender activists refer to the Domestic Violence Law which categorizes domestic rape as sexual violence. This study 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.

Keywords : Argumentation; Domestic Rape; Gender Activist

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 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.

Kata Kunci : Argumentasi; Pemerkosaan dalam Rumah Tangga; Aktivis Gender

Introduction

Violence sexual Already mushrooming in Indonesia, the perpetrators are also diverse start from elementary school graduates to academics or graduates college high . Harassment sexual often experienced by women although No close possibility man Men can too experience abuse sexual . In the annual report issued by the National Commission on Violence Against Women in 2021, there were 299,991 cases of violence against women. This number of cases decreased significantly compared to the annual report of the National Commission on Violence Against Women in 2020, which reached 431,471 cases. This was influenced by the existence of social education carried out by institutions and organizations in campaigning for gender justice. This is what prompted UIN KH Abdurrahman Wahid to strive for prevention and handling through ULT Setara under the auspices of PSGA (Center for Children's Gender Studies) trying to realize a moderate Islamic campus, anti-violence.

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 Prevention and Handling of Sexual Violence on Campus targeting UIN KH Abdurrahman Wahid students and having a place of protection for victims of sexual violence on campus through a counseling room.

The gender activists referred to here are gender activists at UIN KH Abdurrahman Wahid consisting of lecturers who are members of the PSGA (Center for Gender and Child Studies), and lecturers who consent to 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 husband and wife relations, this fatwa has gone

through several Islamic law *istinbath* processes. The PKS Bill also departs from phenomena that occur in society. In Islam, a wife may not refuse her husband's invitation, and vice versa, a husband may not force her, meaning that a husband and wife must be in a state of mutual sincerity and willingness to have sexual relations. Some conditions allow a wife to refuse to have sex with her husband, such as menstruation, illness or fasting, a husband may not force his wife and the wife has a *consent* or agreement that can be used as an element of piety to avoid damage. The fatwa also emphasizes that a husband who knows Islamic law will definitely 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 relationship between husband and wife must be carried out properly in order to fulfill the principle of *muasyarah bil ma'ruf*, one way is with the willingness of both parties without any coercion from any party, because both husband and wife have the same rights in husband and wife relations, we cannot base this only on religious texts but must also be understood according to the situation and conditions.

In Indonesia, the Indonesian Ulema Council is an independent and aspirational institution. Fatwas issued by the MUI are based on the consideration of evidence and the welfare of the people. In issuing fatwas, the MUI takes the opinion of *the majority* of scholars. In society, MUI fatwas have a very strong role, but are not included in positive Indonesian law. It's just that the MUI plays a role as a provider of input for the government representing the Indonesian Muslim community.

In the MUI fatwa 02/MUNAS/-IX/MUI/2015, it is stated that what can be punished is 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 a criminal act. While the law on sexual intercourse between husband and wife is valid, such an act is not included in the category of a criminal act.

In Indonesia, there are no specific rules governing the punishment for perpetrators of marital rape, but marital rape 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 a person who lives within the scope of the household; b. forced sexual intercourse against one person within 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, the issue of sexuality between husband and wife is regulated in QS Al Baqarah 187

"It is permissible for you to fast together at night with your wife. They are clothes for you, and you are clothes for them. Allah knows that you cannot restrain yourselves, but He accepts your repentance and forgives you. So now intervene 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 are making Iqat 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 the husband is ordered to have intercourse with his wife in a good way, this means that there is a prohibition on doing things that hurt his wife. Although basically the wife is required to serve her husband, but in certain conditions she is allowed to bargain, postpone, and not serve her husband. If her husband still insists, he is violating the principle of *mu'asyarah bil ma'ruf*.

Method

Study This is type study field research which aims to For get live data with researching object in the form of view gender activist at UIN KH Abdurrahman Wahid Pekalongan . Object study This related with MUI Fatwa Number 02/MUNAS-IX/MUI/2015 which rejects sanctions criminal for perpetrator rape in House stairs , and analysis argumentation laws used by gender activists in responding to the fatwa . The approach research used is approach qualitative . Researchers focus on determining framework law as well as evaluation effectiveness applicable law . Through approach this , researcher to study view gender activist and evaluate argumentation the law that they use For responding to the fatwa . Research This also applies theory argumentation law , which functions as framework theoretical For analyze and understand argumentation law from activists . This theory help in dissect strengths and weaknesses argument the law stated , as well understand How argument the connected with principles law and justice .

Research data sources using two types primary and secondary data sources . Primary data sources are obtained through observation and interview direct with resource person who is lecturer at UIN KH Abdurrahman Wahid who is active in gender field and have skill in handle issues related to gender. While that , secondary data sources in the form of literature Supporter like books , journals , scriptures, or source written other relevant with Topic research . Data collection techniques involve two methods main , namely interviews and documentation . Interviews done with four informants who are gender activist at UIN KH Abdurrahman Wahid, aims For dig view they in a way deep related to the fatwa being studied . Documentation techniques used For gather information from source written related with MUI Fatwa Number 02/MUNAS-IX/2015 and other relevant materials . Documentation This functioning as evidence and tools help analysis that supports the research process and data recording .

Discussion

A. Gender Activist Profile

Gender activists are individuals or groups who actively work to promote gender equality and address gender-based discrimination. They strive to ensure that all people, regardless of sex or gender identity, have equal rights and opportunities in all aspects of life, including social, economic, political, and cultural.

A gender activist is a person who:

- a. **Advocating for Gender Equality:** Striving to eliminate gender-based discrimination and promote equality in rights, opportunities and treatment.
- b. **Promoting Human Rights:** Seeing gender equality as part of human rights that must be protected and promoted.
- c. **Combating Gender Inequality:** Opposing practices that are oppressive or discriminatory based on gender, such as gender-based violence, wage gaps, and unequal access to education and health.
- d. **Providing Support and Empowerment:** Providing support, information and resources to those affected by gender discrimination and inequality to empower them and help them achieve independence.
- e. **Advocating for Policy Change:** Working to change or introduce laws and policies that support gender equality and protect individual rights.

From this definition, four informants were taken from among the lecturers at UIN KH Abdurrahman Wahid who were activists in the field of gender and consent for handling gender issues, selected purposively as follows:

1. Miqdam Yusria Ahmad, SHI., M.Ag

- a. Profession : Advocate and Lecturer at UIN Pekalongan
- b. Place of Birth : Pemalang , March 8, 1998
- c. Islam
- d. Education : Bachelor of Sharia from Pekalongan State Islamic Institute , Master of Islamic Religious Education from Walisongo State Islamic University
- e. Address : Jl . Bogoran , Kauman Subdistrict , District Batang , Regency Trunk .
- f. Mobile Number : 085641322768
- g. Email : microwife@gmail.com

Miqdam Yusria Ahmad or regular known as Miqdam, he is one of the alumni of STAIN Pekalongan who is still consistent in fight for justice for oppressed people . As one of the alumni of STAIN Pekalongan , serving For college height is A form implementation of the Tri Dharma of Higher Education .

It is proven that he became one of the lecturers at STAIN Pekalongan which is now called UIN Gus Dur Pekalongan. In addition to serving as a lecturer at UIN Gusdur, he is also included in the ranks of LBH Campus in the Faculty of Sharia.

The son of one of the NU Batang administrators, was also placed in an institution that focuses on preventing sexual violence. He is part of the PSGA and SETARA UIN Gusdur Pekalongan management. With these various positions or titles, Miqdam Yusria Ahmad always provides support to anyone who feels they need help.

In addition to being a lecturer and LBH on his campus, he also opened his own law office in Batang. In addition to serving the campus, Miqdam also always serves the surrounding community who need his help.

2. Dr. Hj. Siti Qomariyah MA

- a. Address : Karangjampo, Tirto sub-district, Pekalongan Regency.
- b. Education : MI Wonoyoso (1970), MTs Maarif NU Buaran (1973), MA Denanyar Jombang (1986), S1 Sharia IAIN Walisongo Pekalongan (1990), S2 Law Department Megil University Canada (1994), PDIH Law Science UNDIP (2011).

- c. Career : English Teacher at MTs Wonoyoso, MA Teacher Asy Syafi'i Buaran, Lecturer at the Sharia Faculty of IAIN Walisongo Pekalongan, Deputy Regent of Pekalongan, Regent of Pekalongan.
- d. Organization : PCM Expert Council of Pekalongan Regency, IPPNU Advisory Council of Pekalongan Regency .

Mrs. Siti Qomariyah was born on July 8, 1967. She is one of the great women in Pekalongan. She is the first female Regent of Pekalongan Regency. She always proves that women have the same rights to obtain education as men.

No different from Miqdam, Mrs. Siti Qomariyah is also a graduate of STAIN Pekalongan. Not only as a graduate of a university in the country, Mrs. Siti Qomariah is also a graduate of one of the universities in Canada, namely Megil University, majoring in law.

Her experience is not only in the academic world, she has also explored the world of politics by running as Regent of Pekalongan. Although the community at that time reaped pros and cons regarding female leadership, she remained confident and was elected as Regent of Pekalongan Regency in 2006 - 2011.

He is currently a lecturer at UIN Gusdur Pekalongan. As an alumni, he does not hesitate to serve his campus. He became a lecturer at the Faculty of Sharia, his intelligence is not only supported by academic knowledge of the campus, but he is also supported by strong religious knowledge.

3. Prof. Dr. Ningsih Fadhilah M.Pd

- a. Education : Bachelor of Islamic Education from Pekalongan Islamic Institute (2008), Bachelor of Guidance and Counseling from Veterinary Teachers Training College (2011), Master of Guidance and Counseling from UNNES (2012).
- b. Career : Head of PSGA UIN Pekalongan
- c. Experience organization : PSGA PTKIN Consortium , Advocacy National Commission on Violence Against Women, International Gender Conference .

Mrs. Ningsih is another great woman who is struggling in the world of campus. She is one of the people who is very concerned about the condition of campuses that are prone to sexual violence.

With his concern, it is proven that he serves as the chairman of PSGA UIN Gusdur Pekalongan. As chairman, he hopes that sexual violence that occurs on campus can be minimized.

He is also an alumni of STAIN Pekalongan. Unlike Miqdam, he is also involved in handling sexual violence on campus. As a woman, she knows very well what it feels like to feel comfortable and safe on campus, which is one of the elements for achieving optimal learning.

Many of Mrs. Ningsih Fadhilah's works have been applied in writings in the form of journals such as "Increasing the Role of the Community in Preventing Domestic Violence Through Counseling on Gender-Based Anti-Violence", "Problematic Preventive Efforts of Sexual Harassment Through Islamic Gender Justice Values-Based Education" and There are still many other journals that he wrote.

4. Herning Hambarrukmi SHI

Herning Hambarrukmi is an academic at one of Pekalongan's campuses. He teaches at the Islamic Family Law Department, Faculty of Sharia, UIN KH Abdurrahman Wahid. He was born in Tegal on December 9, 1983 and now lives in Gama Permai, Jl Brawijaya No. 18 Bendan Kergon Pekalongan. Herning Hambarrukmi graduated with a Masters degree in Islamic Family Law. In addition to teaching, Mrs. Herning (her nickname) is also a non-judicial mediator at the Pekalongan PA Class 1A.

His works in writing are quite numerous. Mrs. Herning writes journals related to family law. In her career in gender affairs, she often handles cases related to violence. Mrs. Herning also teaches Islam and Gender courses in the IPR Department. There is no need to doubt that he is someone who understands gender and has also applied his gender knowledge in everyday life . In his social life, he has a Pekalongan Rice Alms Association community which is engaged in distributing donations to underprivileged communities and Bu Herning is the founder.

B. MUI Fatwa Number 02/MUNAS-IX/MUI/2015

Fatwa is one type of product of Islamic legal thought. Fatwa means an answer to a question, or "result of ijtihad" or legal provisions. Namely legal provisions regarding a problem or an event declared by a mujtahid, to be the result his ijtihad. Etymologically, fatwa comes from the Arabic word *aftâ* , which means advice, counsel, and answers to

legal questions. According to *al-Fâyûmî* and *al-Jurjânî*, the term fatwa comes from the Arabic words *alfatâ* and *al-futyâ*. *Al-fatâ* means a strong young man. That means, a The mufti as the fatwa giver must be strong in facing questions submitted by a person or group with a new answer with strong arguments. *Al-futyâ*, means the answer to Something that problematic (impossible) in the field of law.

The format of a fatwa is not always in the form of questions and answers as which is commonly found. In many cases, especially in Indonesia, The format of a fatwa often follows the form of a decree. In a decree Such fatwas are given a number and sometimes also a title, then followed by considerations and ending with a fatwa itself. The considerations contain considerations as to why the fatwa was issued, the arguments for the fatwa's ruling and the legal basis of the fatwa in question. This format of a fatwa is usually issued by an institution that involves a number of muftis collectively and therefore the fatwa appears more official.

There are many institutions that issue fatwas in Indonesia, such as the Tarjih Council of Muhammadiyah, Bahsul Masa'il which is often used in solving problems in Islamic Boarding Schools, and the MUI. The Indonesian Ulema Council (MUI) is a forum for deliberation of Muslim scholars, zu'ama, and intellectuals and is a protector for all Indonesian Muslims. The official history of the MUI records that this organization was born on July 26, 1975, coinciding with the 7th of Rajab 1395 H (Indonesian Ulema Council, 2011), as a result of a meeting and deliberation of scholars (Mohammad Atho Mudzhar, 1993) who came from various parts of Indonesia.

There are three terms used in responding to problems in the MUI, namely giving warnings, advice and fatwas. However, in practice, every decision, whether in the form of an answer to a question, warning, advice or fatwa, is determined by the term fatwa. In 2015, the MUI issued a fatwa on domestic rape. The following is the text of the fatwa:

First : General Provisions

Based on this fatwa , what is meant is with :

1. Criminalization is a criminal process to an act that is not including category criminal .
2. Connection husband wife is connection sexual intercourse committed by the husband wife in a way valid .
3. Rape is action connection sex between men and women who are not his wife did in condition coercion and/ or under threat .

Second : Legal Provisions

1. Basically , the relationship husband wife must built as manifestation from love (mawaddah) and affection love (rahmah), and implementation connection husband wife is worship.
2. Partner husband wife is forbidden to carry out connection sexual in prohibited conditions in a way sharia that is :
 - Wife in condition menstruation and postpartum
 - Husband or wife currently fasting during Ramadan
 - Husband or wife currently Ihram
 - With method anal sex
 - In condition pain that is not allow For do connection husband wife .
3. Husband is obliged to weave interaction with wife in a way good (mu'asyarah) bill makruf) and therefore husband No may force connection sexual to wife , and wife must obedient to husband throughout No For action sin , therefore wife No may reject invitation husband For do connection sexual except in prohibited conditions in a way sharia .
4. Connection sexual between husband wife in situation forced is khilaful hall (no in accordance with the main one), but No can categorized as rape .
5. Criminalization connection husband wife contradictory with Islamic law .

Third : Recommendations

1. The government and the House of Representatives (DPR) must review percentage legislation For customized with this fatwa .
2. Apparatus enforcer law must understand in a way intact that criminal rape No what applied in connection sexual intercourse husband wife .
3. Society needs understand ethics connection husband wife For ensure realization connection a family that is sakinah , mawaddah and rahmah .

In the view of the MUI, domestic sexual violence is not a criminal law. Because what can be criminalized is the act of criminalization. One form of criminalization in sexuality is rape, while the definition of rape itself is forced sexual intercourse by a man against a woman who is not a mahram. While the law of sexual intercourse between husband and wife is valid, such actions are not included in criminal acts. This is stated in the MUI Fatwa

Number 02/MUNAS-IX/MUI/2015 concerning the criminalization of husband and wife relations.

In Indonesia, there are no specific regulations governing criminal penalties for perpetrators of marital rape, however, marital rape 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 a person residing within the scope of the household; b. forced sexual intercourse against one person within 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.

Referring to the sentence rape, rape comes from the word "rape" which means brave, strong, forced, mighty. With these basic words, we can know that rape is to subdue by force, through violence, to violate, violate or attack with full force. While rape means the process or way of committing rape. So we can know that what is meant by rape is an act of coercion or subjugation through violence carried out by men against women. The author can define rape with various definitions as follows:

- a. Intimate relations should not be carried out with a woman without her *consent*.
- b. Intimate relations between men and women that are not approved, carried out through violence or coercion that is not in line with the wishes of the woman as the victim.
- c. Intimate relations between a man and a woman who is not his wife through threats or violence without the woman's consent.

From some of the descriptions of the definition, the author underlines that the main focus in the act of rape is the act of violence that is closely related to sexual violence, this is certainly against the law. However, things related to sexual violence do not only lead to acts of rape.

If viewed using criminology theory, rape is a violation of moral norms. There is a negative reaction from society to this act of rape.

However, although the term rape is generally only used by unmarried people, the problem of rape in the household is quite common in Indonesia. Rape in marriage is known as *marital rape* . In essence, sexual intercourse that occurs between husband and wife is legally permissible, but good sexual intercourse must be based on the willingness of both parties so that it can be enjoyed together, but in reality many husbands force their sexual desires on their wives, so the term rape in the household (*marital rape*) emerged .

Marital rape cases here can also be categorized as sexual violence. Women or wives are made into objects, and this is not considered a problem by society with the assumption that men as husbands have the right to have sex with their wives. However, the forcing of sexual intercourse by a husband on his wife means that the husband does it with violence, considering his wife as an object that must fulfill his lust, so this is prohibited because it can have a bad impact on his wife.

Marital rape has a bad impact on the marriage relationship itself and the one who feels the worst impact is the wife, both the impact felt physically and psychologically, including the physical impact is there are wounds or abrasions on the vagina due to forced sexual intercourse due to her husband's treatment and when the duration of sexual activity lasts a long time due to the influence of drinks or drugs, and other physical violence. Forced sexual activity when the wife is pregnant when she is tired or when she is asleep so that she has difficulty going through labor and is feared that there will be a miscarriage, premature, and other unpleasant incidents.. has an impact on the wife's mentality, because the wife becomes embarrassed to go to the doctor, if she does get treatment, she does not explain her illness clearly because she feels embarrassed and feels that it is a private matter for each of them that does not need to be known by others.

The psychological impact on victims of *marital rape* is the emergence of feelings of disappointment, fear in relationships and can become prolonged trauma. Victims of *marital rape* often feel angry, insulted, ashamed and sad a few days after the incident. The emergence of unhealthy mentality from victims of *marital rape* is characterized by the emergence of symptoms such as insomnia and lack of appetite.

The trauma she endures will also cause a negative attitude towards her husband and sex. If this *marital rape* continues for a long time, it will cause various things including:

- 1) the emergence of a lack of self-confidence in the wife
- 2) wife often blames herself
- 3) wife experiences reproductive disorders due to stress

Most wives who are victims of domestic rape choose to stay in the marriage for the sake of their children so that they can have a decent life. The problem of *marital rape* leads to domestic rape which is very likely to cause violence and has a bad impact on the wife both physically and psychologically.

Domestic violence is a bad act that often occurs in society, among the things included in domestic violence is sexual violence committed in the household. Satisfaction of sexual desire is often used as the main thing in marriage, even though the meaning of marriage is not just sex. Marriage includes many things including psychological, physical, and emotional between husband and wife.

When sexual violence occurs in a household, it is called marital rape. Marital rape is a sexual activity forced by a husband on his wife without regard to the wife's condition.

There is a category that is categorized as marital rape, which is a sexual activity as coercion, threat, and only selfish based on personal desires, even the use of illegal drugs with the intention of increasing male sexual arousal without the consent of the woman.

Seeing the cases of *marital rape* that are rampant in society, the Law on the Elimination of Domestic Violence (UU PKDRT) was formed. According to the Law on PKDRT, domestic violence is any act against a person, especially women, which results in physical, psychological, sexual misery or suffering and neglect of the household. Although there is no article that specifically regulates this act, according to positive law in Indonesia, acts of marital rape can be prosecuted under Articles 351, 354, 356 of the Criminal Code and subject to criminal sanctions as contained in Article 46 of the Law on PKDRT.

In Islamic law, the issue of sexuality between husband and wife is regulated in QS Al-Baqarah 187

God bless أَجَلَ لَكُمْ لَيْلَةَ الصَّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ عَلِيمٌ

God bless لَيْكُم وَعَمَّا عَنْكُمْ ؕ قَالَتِنَّ بِأَشْرُهُنَّ وَابْتِغُوا مَا كَتَبَ اللَّهُ لَكُمْ ؕ وَكُلُوا وَاشْرَبُوا ح

١٨٧ - God bless you فِي وَأَنْتُمْ عَاكِفُونَ فِي you God willing

It is permissible for you to fast together at night with your wife. They are clothes for you, and you are clothes for them. Allah knows that you cannot restrain yourselves, but He accepts your repentance and forgives you. So now intervene 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 are making Iqat in the mosque. That is Allah's decree, so do not approach it. Thus Allah explains His verses to people, so that they may attain piety.

In other verses, it is also mentioned that the husband is ordered to have intercourse with his wife in a good way, this means that there is a prohibition on doing things that hurt his wife. Although basically the wife is required to serve her husband, but in certain conditions she is allowed to bargain, postpone, and not serve her husband. If her husband still insists, he is violating the principle of *mu'asyarah bil ma'ruf*.

In Islamic law, *marital rape* is a criminal act because it harms someone, causes harm and is contrary to *the maqashid of sharia in the hifz nafs* category .

In response to the case of *marital rape*, scholars have different opinions, Imam Abu Hanafi is of the opinion that perpetrators of domestic rape are punished with *ta'zir punishment*, because this act is not included in adultery. Meanwhile, according to Imam Malik and Imam Syafi'i, perpetrators of *marital rape* are sentenced to *hadd* and *qiyas*, which is *likened* to adultery. Adultery is usually committed by men and women on the basis of mutual consent outside of marriage, the punishment is 100 lashes or stoning to death.

Imam Al Qurthubi is of the opinion that a wife has similar rights and obligations to her husband, based on the word of Allah in QS. Al Baqarah 228

,God willing, God willing, God willing وَلِلرِّئَالِ الْمَعْرُوفِ وَاللَّيْلِ وَالنَّهَارِ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّئَالِ الْمَعْرُوفِ وَاللَّيْلِ وَالنَّهَارِ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

٢٢٨ - God willing

And they (women) have rights balanced with their obligations in an appropriate manner. But husbands have advantages over them. Allah is Mighty, Most Wise.

Husband and wife have the same rights in having sexual relations, so in this case the husband is prohibited from forcing sexual relations even with his own wife .

According to the MUI, criminalization refers to the process of imposing sanctions on actions that are not categorized as criminal acts. Husband and wife relations refer to sexual relations carried out by a legally valid couple. Rape is defined as sexual relations between a man and a woman who is not his wife, which is carried out under coercion and/or threats.

Basically, the relationship between husband and wife must be built as a manifestation of love (mawaddah) and affection (rahmah), and the practice of husband and wife relations is considered as worship. It is forbidden for a husband and wife to have sexual intercourse under certain conditions according to Sharia law, which include: The wife is menstruating or experiencing postpartum bleeding. One of the partners is fasting during Ramadan. One of the partners is in a state of ihram. Having anal intercourse. When health conditions do not allow for intercourse. The husband must interact with his wife in a good way (mu'asyarah bil ma'ruf), therefore, the husband must not force his wife to have sexual intercourse. On the contrary, the wife must obey her husband as long as it does not lead to sinful acts, therefore, the wife must not refuse her husband's request to have sexual intercourse except in conditions prohibited by Sharia. Sexual intercourse between husband and wife under duress is considered khilaful aula (not in accordance with the optimal) but cannot be categorized as rape. Criminalizing husband and wife relations is contrary to Islamic law.

In the fatwa, the MUI recommends that the Government and the House of Representatives (DPR) review the law to align with this fatwa. Law enforcement officers must fully understand that the crime of rape cannot be applied to sexual relations between husband and wife. The public needs to understand the ethics of husband and wife relations to ensure the formation of a harmonious family life marked by sakinah, mawaddah, and rahmah. From the fatwa, it is explained in the second part, point 4, that sexual relations between husband and wife under duress cannot be categorized as rape, and in point 5, the criminalization of husband and wife relations is contrary to Islamic law.

C. Gender Activists' Views on the MUI Fatwa on Rejecting Criminal Sanctions for Domestic Rape Perpetrators

1. Miqdam Yusria Ahmad

In the MUI fatwa, he conveyed his agreement on points one to four. In the explanation of points one to four, it is clear and correct in terms of legal information 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 2,3,4 it says that if in a relationship between husband and wife there must be certain conditions that are prohibited, here it is explained when menstruating for example. And also must have intercourse with the wife in a mu'asyarah bil ma'ruf manner, I agree with that."

As Allah says in the Qu'an Surah Ar-rum verse 21:

And I will Yaytat Anya O Allah, the Most Gracious Allah is the Most Gracious My name is And the Most High Azzawija لَسْكَنُؤَا O Allah, And He is the Most Gracious And I will not forgive you My name is Muhammad And the Most Merciful إِنَّ FYI Allah is the Most Gracious Loving Allah is the Most Gracious يَتَفَكَّرُونَ

And in between His signs (greatness) are that He creates couples for you from your kind yourself , so that you tend and feel peaceful to him , and He made love and compassion among you . Really , that's it That truly there is signs (the greatness of Allah) for thinking people .

Then he continued

"But I do not 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 husband and wife relations is against Islamic teachings."

From this, he disagrees with point five which states that criminalization of husband and wife relations is contrary to Islamic law. The sentence is incomplete and contains an ambiguous meaning.

According to him, the MUI fatwa is still categorized as a biased fatwa. In the Criminal Code, it is actually explained that rape is an act of someone by forcing another person to have sexual intercourse with someone who is not their mahram. While in the Criminal Code, it is stated that if this happens in a household, it is called violence.

According to him, the MUI fatwa must be comprehensive and accompanied by case studies. The completeness of the fatwa accompanied by case studies will be more understandable and acceptable to the public.

This MUI fatwa has no legal implications. Because this fatwa is only a discussion material related to domestic violence. This fatwa then becomes a recommendation to the DPR. This fatwa directs the view that in a household there is no such thing as rape. MUI emphasized that rape only happen when outside wedding .

2. Prof. Dr. Ningsih Fadhilah M..Pd

Basically, husband and wife relationships are *halalan Thoyiban Makrifan*. According to him, rape can also occur in a legitimate husband and wife relationship. Rape is defined as an act of coercion carried out by one person against another.

Domestic rape is also known as KDRT (domestic violence). Domestic violence is certainly classified as a criminal act that can be punished.

According to him, rape is divided into two types, namely rape in the public sphere and rape in the private sphere. Rape in the public sphere is rape committed by someone who is not yet halal. While rape in the private sphere is rape committed by someone who is already halal.

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 household.

"In this case, I consider this fatwa to be contrary to gender justice, because violence must be subject to criminal penalties even if the relationship is legitimate as husband and wife."

Criminal sanctions for perpetrators of domestic rape so that both partners have the right to freedom and comfort in their household without any element of coercion that will result in one party losing their humanity.

3. Herning Hambarrukmi MHI

Responding to the MUI fatwa NUMBER 02/MUNAS-IX/MUI/2015 regarding the rejection of criminal sanctions for perpetrators of domestic rape is not a basis but merely an appeal.

According to him, in a husband and wife relationship there needs to be mutuality. The mutuality referred to is the existence of mutual understanding between husband and wife to create a harmonious family. Mutuality rejects the dominance of one party. Mutuality prioritizes communication between both parties with the aim that all decisions result from deliberation.

The stigma of rape in society is still taboo. Rape according to the majority of society is considered an act of coercion outside of marriage. In fact, rape itself can occur in a husband-wife relationship.

According to him, victims of domestic rape are unlikely to report to the Indonesian Ulema Council (MUI). So the MUI does not know how rape cases can occur in husband and wife relationships.

"My advice when getting married is that both the bride and groom must be truly ready to face the household, must be mentally, intellectually, and religiously ready. Husband and wife must also understand the ethics of relationships, what is allowed and what is not."

Then he continued

"Maybe this fatwa is for public understanding about understanding the ethics of sexual intercourse, but the MUI should include the basis and consequences."

From 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 leads to an understanding of ethics, then there is no law enforcement. Therefore, domestic rape must have legal consequences for the perpetrator.

In the MUI fatwa there is no alternative or solution when a case of rape occurs in the household. So in this case it will result in a stigma in society that normalizes the case.

He has an opinion on the sanctions given to perpetrators of domestic rape, if the perpetrator is imprisoned he does not agree because it will affect the integrity of

the family. He agrees if the consequences given to perpetrators of domestic rape do not destroy the family order.

Basically, he still rejects rape or forced husband-wife relations in the family. After all, there should be no element of coercion from either party in a husband-wife relationship. However, on average, victims never say if rape occurs in the household because they consider it a disgrace.

4. Dr. Hj. Siti Qomariyah MA

Regarding the MUI fatwa, he said that the fatwa was only a view or concept that the MUI wanted to propose to the DPR. The MUI fatwa focused on the terms rape and coercion in domestic relationships. Then the fatwa focused on the view that rape in family relationships is not a crime and is not in accordance with Islamic law.

He appreciated the term used by the MUI in the fatwa, namely the term coercion, not rape. The MUI believes that when the general public hears the word rape, what comes to mind is the act of someone forcing another person to have sex outside of marriage.

MUI uses sociological terms that are considered understandable to the general public, namely the word domestic coercion, not rape. The use of terms that can be understood by the general public is very important to avoid misinterpretation.

However, according to him, in determining a law does not lie in its term. In determining a law lies in its substance or content. So whatever the term, if the substance is the same then it can be punished.

"The determination of the law does not lie in the term, but lies in the substance or content. If in this fatwa the substance is the same as sexual violence, then domestic rape can also be punished."

In this case, the MUI rejects criminal penalties for perpetrators of domestic rape. Because according to the MUI there is no act of domestic rape, but coercion. So that perpetrators of coercion in the household cannot be said to be criminal because it is not rape.

According to Mrs. Siti Qomariyah, the MUI's opinion is still general. According to her, coercion in a household is divided into two qualifications, namely light and heavy coercion. Light coercion, for example, is when a husband or wife asks for

intimate relations but does not cause injury. This light coercion is not classified as a crime.

The second is severe coercion. This type of coercion usually leads to behavior that injures, hits or even kills one of the parties, so in this case it can be subject to criminal law.

He did not focus on the terms used between rape or coercion. He argued that criminal acts can occur both outside or inside marriage. A husband and wife who commit acts of violence and injure one party must be subject to criminal penalties.

At the end of his conclusion he said, the law is free to choose terms. But good law is choosing terms that are in accordance with the conditions of public understanding.

Reviewing the position of the MUI fatwa, gender activists reject the MUI Fatwa that domestic sexual violence must still be criminalized. The 4 gender activists agree that coercion is a form of rape that leads to domestic violence.

There are only minor differences in responding to the fatwa. First, Miqdam Yusria Ahmad agrees with the points issued by the MUI but rejects the MUI's rejection of the criminalization of domestic rape.

"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 2,3,4 it says that if in a husband and wife relationship there must be certain conditions that are prohibited, here it is explained when menstruating for example. And also must have intercourse with the wife in a mu'asyarah bil ma'ruf manner, I agree with that. "But I do not agree with point 5 because the language used here is still multi-interpretible and the language is also a bit ambiguous because it suddenly says that criminalizing husband and wife relationships is contrary to Islamic teachings.

Meanwhile, Ningsih Fadilah only added that rape can occur in both private and public spaces, however, coercion in the household is a form of violence and causes discomfort. Herning Hambarrukmi explained that the MUI Fatwa only explains that husbands and wives must understand ethics. The MUI ignores sanctions, it will only normalize the treatment of sexual violence against wives. Siti Qomariyah added that

regardless of the name of coercion or rape, it is the same as positioning women as objects that are injured and is the same as an act of sexual violence.

According to researchers, there are methodological and paradigm differences used by gender activists at UIN KH. Abdurrahman Wahid with the MUI fatwa. This difference results in different legal results and ethical implications. Gender activists tend to see this problem by punishing men who commit sexual violence as a form of justice and legal consequences that apply to deterrence. Because violence can happen anywhere, not necessarily outside of marriage.

D. Legal Arguments From Gender Activists Against MUI Fatwa Regarding Rejection of Criminal Sanctions for Perpetrators of Domestic Rape

1. Miqdam Yusria Ahmad SHI, M.Ag

In Mr. Miqdam's comments on this fatwa, he disagrees with point 5 in the article on legal provisions which reads: Criminalization of husband and wife relations is contrary to Islamic law. According to Mr. Miqdam, the sentence is incomplete and contains an ambiguous meaning. Because the name of the 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.

Mr. Miqdam categorized this fatwa as a biased fatwa. In the Criminal Code, it is actually explained that rape is an act of someone by forcing another person to have sexual intercourse with someone who is not their mahram. It is also stated that if this happens in a household, it is also called 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 and/or specific purposes.
2. Prof. Dr. 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). KDRT 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 the threat of violence to force a woman to have sexual intercourse with him outside of marriage is threatened with rape and is subject to a maximum prison sentence of twelve years.

In response to MUI Fatwa Number 02/MUNAS-IX/MUI/2015, Mrs. Ningsih Fadhilah still believes that married couples should receive criminal sanctions if they commit rape in the household.

Fatwa MUI 02 Munas-IX/MUI/2015 on Criminalization of Husband's Relationship explains that the act of coercion by a husband to his wife is not a criminal act so it does not need to be criminalized. Riwayat Al-Bukhari states:

إِذَا دَعَا الرَّجُلُ امْرَأَتَهُ إِلَى فِرَاشِهِ فَأَبَتْ أَنْ تَجِيءَ لَعَنَتْهَا الْمَلَائِكَةُ حَتَّى يَتُصَبِّحَ. (متفق عليه، واللفظ للبخاري ومسلم)
Meaning : From Abu Hurairah radhiyallahu ' anhu , that the Prophet - sallallaahu ' alaihi wa sallam wow sallam - said : "If someone husband invite his wife to place Sleep Then He reject For come , then the angels curse him until morning ." (Muttafaqun ' alaihi , and its pronunciation from Bukhari and Muslim).

According to the Maliki school, a wife is obliged to serve her husband sexually unless there is an obstacle. 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 (PBUH). In addition, 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 imperative that sexual relations

between husband and wife are carried out with the explicit consent of both parties, without coercion or manipulation from either party.

3. Herning Hambarrukmi MHI

Responding to the MUI Fatwa Number 02/MUNAS-IX/MUI/2015, Mrs. Herning Hambarrukmi reminded that this fatwa is not a basis but merely an appeal. The stigma of rape in society is still taboo. Rape according to the majority of society is considered an act of coercion outside of marriage. Whereas rape itself occurs in a husband and wife relationship.

The legal basis is that when a regulation has not been enacted, the regulation is not criminally binding, but it could be that the regulation is morally and customary binding in community life.

The MUI also did not clarify their ethical position on this matter. The purpose of the fatwa is also to harmonize household relationships by understanding household ethics and discussing them properly between wife and husband. However, on the other hand, the MUI emphasized that wives are required to obey their husbands to have sex when there are no obstacles.

4. Dr. Hj. Siti Qomariyah MA

Ms. Siti Qomariyah appreciates the term used by the MUI in the fatwa, namely the term coercion, not rape. The MUI believes that when the general public hears the word rape, what comes to mind is the act of someone forcing another person to have sex outside of marriage. In determining a law does not lie in its terms.

Mrs. Qomariyah still believes that domestic rape should still have a criminal penalty. Because, in determining a law lies in its substance or content. So whatever the term, if the substance is the same then it can be punished .

Of the four sources above, they based their arguments on the knowledge they had, because according to legal terminology, an argument is defined as an attempt to convince others by putting forward reasons. They use the logic of legal reasoning in putting forward arguments. Like Mr. Miqdam who categorized this fatwa as still biased because in fatwa point 5 the direction is unclear. Then Mrs. Ningsih and Mrs. Qomariyah considered the term used by the MUI in issuing the fatwa to be still the same in substance as sexual violence in the PKDRT Law. Mrs. Herning considered this fatwa to still be an appeal that needed to be reviewed in legal recommendations.

The response was approved by the legal research team of the Faculty of Law, Mulawarman University, explaining that Islamic Law regulates punishment for sexual violence behavior in the household, subject to sanctions or ta'zir. However, there are provisions on the consequences of the punishment, so that the ta'zir given will be submitted to the ruler as the owner of the authority.

Similar research by Muh. Irham, Hartini Tahir, Istiqomah, also shows the same thing that the Islamic Law review of domestic sexual violence or *martial rape* is prohibited by Islam and has consequences of punishment/ta'zir, this is also supported by the existence of positive law in Indonesia that regulates this.

Proof of martial rape in the household can legally be proven by the existence of an act of coercion to have sexual intercourse, the same as the proof of forced sexual intercourse in a general context. That means that legally, the proof of rape in the household is the same as the law to prove forced sexual violence outside the household is the same.

Meanwhile, the MUI rejects this case. The MUI offers a solution of understanding good family ethics between the roles of men and women. According to the MUI, understanding good family ethics and good communication will prevent acts of sexual violence. Husband and wife understand their respective positions and the wife should not be harmed because this is outside the principles of Islam. Therefore, to prevent an unwanted act. In addition to understanding good household ethics, it must be supported by good communication so that the household is maintained.

In response to these differences, fatwa in the classical definition is only optional and not legally binding. Fatwa is morally binding for mustafi *who* ask for fatwa, while other than *mustafi* it is merely information or discourse. A mufti issues a fatwa with the aim of appealing or advising someone.

The MUI fatwa cannot force the will in the social life of Indonesian society. The MUI fatwa is only limited to binding personal morals. The MUI fatwa cannot replace positive law in Indonesia. The MUI fatwa leads to Islamic scientific discourse which can then become a reference or recommendation in determining positive law in Indonesia. Seeing that Indonesian society is Muslim .

CONCLUSION

Gender activists at UIN KH Abdurrahman Wahid view MUI Fatwa Number 02 /MUNAS-IX/MUI/2015 as biased, because reject sanctions criminal for perpetrator rape in House stairs . They evaluate that violence sexual in House ladder still must criminalized , even though there is difference methodological and paradigm among they in convey opinion . Difference This precisely enrich argumentation and emphasis that punishment for perpetrator violence sexual is step justice as well as consequence effective law For give effect deterrent , remembering violence can occurs in various place . Argumentation the law proposed based on the Domestic Violence Law , which categorizes rape in House ladder as violence sexual . Gender activists emphasize that good law should use easy terms understood society . They also highlighted that the MUI Fatwa, although important , just nature recommendations and not tie in a way law . MUI needs to involving gender expert and activist in formulate a fatwa for ensure conformity with gender equity and use clear language so as not to cause bias. MUI is also expected give explanation special about conformity of the fatwa with applicable laws , as well ensure terms used No ambiguous so that the substance clear and can understood .

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