



The concept of sexual violence in the household in law no. 12 of 2022, about criminal acts of sexual violence from islamic family law

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ABSTRACT

This scholarly study conducted an in-depth assessment of the notion of Domestic Sexual Violence, as defined in Law No. 12 of 2022, covering Crimes of Sexual Violence, with a particular emphasis on its interpretation within the framework of Islamic Family Law. This complicated subject was divided into several fundamental questions: 1) What is the meaning of domestic sexual violence, as defined in Law No. 12 of 2022 on Sexual Violence Crimes? 2) How is domestic sexual violence perceived and defined in Islamic Family Law? 3) How is domestic sexual violence defined in Law No. 12 of 2022, viewed in the context of Islamic Family Law? The research methodology was primarily literature based, drawing on a wide range of sources such as legal texts, academic journals, books, and relevant case studies to illuminate the understanding and interpretation of domestic sexual violence in both Law No. 12 of 2022 and Islamic Family Law. This topic was further contextualized by analyzing broader dimensions of religion, sexual assault prevention techniques, and family dynamics within homes. This study attempts to shed light on how domestic sexual assault was interpreted in legal and religious contexts, as well as how they interacted with one another.

Keywords: Sexual Violence, Household, Islamic Family Law

1. INTRODUCTION

Islam teaches about an egalitarian spirit between men and women. In this process, men and women can be regarded as partners who must strengthen one another in various dimensions of human life. Humans are created in equality and should not provide space that leads to patriarchal culture. Responding to this, Azisah (2016) argued

that equality between men and women was still experiencing several obstacles. It was heavily influenced by patriarchal culture, which places more priority on men than on women. Several indicators of inequality between men and women could be illustrated by the existence of a stereotype that saw women as a weak community.

Equality between men and women is something that needs to be emphasized in its application to various dimensions of human life. Such equality in a very private context can certainly be found when men and women are bound by a marriage bond. This underlies Islam with its sharia, which is full of the spirit of rahmatan lil 'alamin, which prescribes marriage. Within its normative theological framework, marriage has a lofty ideal, namely, the realization of a happy family, as stated in this Qur'an verse:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۗ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

The Meaning:

"Among the signs of His power is that he has created for your wives of your own kind, so that you are inclined to and feel at ease with him, and he made them between you with love and affection. Indeed, there are signs of people thinking. (The Qur'an, 2005, 30:21)"

The normative theological basis for the noble ideals of marriage within the household frame is a theocentric dimension that is then translated into an anthropocentric dimension in the form of a normative juridical basis, as stated in Law Number 1 of 1974, which in its definition describes the substance of the noble ideals of marriage itself, namely:

Marriage is an inner and outer bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God (Law Number 1, 1974)

2. METHODS

This research was a literature research focused on disclosing the concept of domestic sexual violence in Law No. 12 of 2022 concerning the Crimes of Sexual Violence in terms of Islamic family law. In the scientific tradition, literature research can be said to be scientific research oriented towards efforts to conduct critical, comprehensive, and holistic studies that refer to various relevant literature. In this process, various studies are used as sources of ideas or inspiration that can generate other ideas or thoughts. Therefore, it can be said that literature research is carried out

by collecting information and data with the help of various kinds of literature, such as reference books, similar previous research results, articles, notes, and various journals related to problem solving. Activities are carried out systematically to collect, process, and complete data using certain methods/techniques to find answers to the problems faced (Sari and Asmendri, 2020; Harahap, 2014).

As an axiomatic framework for seeing how this research was carried out with all its systemic sequences, the approach used in this research was as follows:

- a. The theoretical normative approach, namely uncovering and analyzing related data with the concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence in terms of Islamic family law, especially those relating to The Qur'an, hadith, and ijtihad.
- b. The juridical normative approach, namely uncovering and analyzing related data with the concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence in terms of Islamic family law, especially those related to the principles of the establishment of Law no. 12 of 2022 concerning Crimes of Sexual Violence, which was used as a perspective, in this case was the principle of clarity of purpose, institutional principle, the principle of conformity between types, hierarchies and content material, the principle of implementation, the principle of efficiency and effectiveness, the principle of clarity of formulation, and principle of openness.
- c. The socio-psychological approach, particularly uncovering and analyzing related data with the concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence in terms of Islamic family law, especially those related to social relations that were built between husband and wife in realizing a *sakinah, mawaddah, warahmah* family as theological ideals, as well as moral ideals of a marriage in which there was a socio-psychological dimension.
- d. The philosophical approach, namely uncovering and analyzing related data with the concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence in terms of Islamic family law, especially those relating to the ontology, epistemology, and axiology of the emergence of sexual violence in the household, to be further linked to Law no. 12 of 2022 concerning Crimes of Sexual Violence and Islamic family law in the locus of thesis, antithesis, or synthesis.

The data and sources used in this study consisted of two categories:

- a. Primary data.

Primary data were obtained directly from various literature that is directly related to the concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence, the concept of domestic sexual violence in Islamic family law, and the

concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence in terms of Islamic family law as a synthesis that is interrelated in its discussion. With the synthesis of various research focuses, the constructive relations that build each research focus could be understood as primary data, which was the main reference in conducting this research.

b. Secondary data

Supporting data obtained from literature related to the problems studied was the secondary data of this research, such as books, journals, and others, regarding the concept of domestic sexual violence in Law No. 12 of 2022 concerning Crimes of Sexual Violence, the concept of domestic sexual violence in Islamic family law, and the concept of domestic sexual violence in Law No. 12 of 2022 concerning the Crimes of Sexual Violence in terms of Islamic family law. This was done with the consideration that, although the presentation of each research focus was carried out separately, this could be a source of secondary data that supports primary data.

In an effort to collect research data, various procedures from literature research are applied systematically, which in this case are as follows:

- a. In this case, researchers selected research topics by choosing the concept of domestic sexual violence in Law No. 12 of 2022 concerning the Crimes of Sexual Violence in terms of Islamic family law. The selection of this topic was based on the existence of problems in phenomena that existed in the conceptual or empirical area.
- b. The researcher explored information on the chosen topic to determine the research focus.
- c. Researchers had determined the focus of research based on the information that has been obtained and was based on problem priority.
- d. Researchers collected research data sources, which in this case were information or empirical data sourced from books, journals, results of research reports, and other literature that supported related data, including the concept of domestic sexual violence in Law No. 12 of 2022 concerning the Crimes of Sexual Violence in terms of Islamic family law.

Data collection instruments in this research were related to the concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence, the concept of domestic sexual violence in Islamic family law, and the concept of domestic sexual violence in Law no. 12 of 2022 concerning Crimes of Sexual Violence in terms of Islamic family law, which is a reference in the literature.

3. RESULTS AND DISCUSSION

Law No. 12 of 2022 concerning the Crimes of Sexual Violence in terms of Islamic Family Law.

Humans are created on earth in an egalitarian framework that requires them to have the same position as servants of the Allah SWT. Various actions that lead to behavior that constrain the egalitarian spirit brought by Islam are forms of resistance to sunnatullah. Islam comes as a liberating religion from all stereotypes that are unfair in understanding women. This can be seen, for example, in the tradition of pre-Islamic Arab society, which regarded women as a disgrace that legitimized the killing of female babies. The same historical facts can also be found in Europe, which had strong Christian theology in the past. In its early days, many Christian communities in Europe saw women as one of the traps that could lead humans to evil, so they had to always be under the supervision of men if life on earth was to be saved. This was recorded in European history with its Christian theology (Synnott, 2007). These various phenomena encourage the strengthening of patriarchy with extraordinary superiority of men over women. Consequently, violence against women is considered normal.

Sa'dawi (1992), in one of her literary works entitled "Women at Zero Point", described a social criticism that lead to domestic violence which of course conflicted with egalitarian values, one of her quotes is:

On one occasion, he hit me all over with his shoe, and my face and body became swollen and bruised. Then I left the house and went to the uncle's house, but the uncle told me that all husbands beat their wives, and his wife added that the uncle is a respectable Sheikh, educated in religious teachings, and, therefore, could not have the habit of beating his wife. He replied that it was men who understood that they like to beat their wives. Religious rules allow for punishment.

Departing from the views of Zastrow and Browker (1984) who stated that there were three main theories that could used as a reference in identifying husband-to-wife violence in general, which were biological theory, frustration-aggression theory, and control theory.

1. The biological theory posited that violences perpetrated by husbands against wives were caused by biological factors presented in the husband in the form of hormones, which were generally more aggressive in nature than the hormones presented in the wife.

2. Frustration-aggression theory argued that violences perpetrated by husbands against wives were caused by frustration, which was then vented in various forms of aggressive actions, including psychological violence by husbands against wives.
3. Control theory posited violences perpetrated by husbands against wives were caused by an excessive desire to control other people, which was difficult to control, so that the choice of violence with its various variants was an alternative means of control.

Based on those three main theory above, the causes of sexual violence by husbands against wives from the perspective of Islamic law could then be identified. From the perspective of feminism, violence was part of social injustice in placing women in their position as partners for men. Violence that commonly befalls women revolved in a structured and unbroken cycle, which in this case consisted of penetration, segmentation, marginalization, and fragmentation. Within this framework, penetration instilled a certain view of women as a community whose social rights were reduced to being influenced by stereotypes that they were indeed a weak community. The next stage is segmentation, in which women were directed to a partial perspective to understand the conditions they face. After passing through the segmentation stage, women were faced with marginalization to continue to strengthen the legitimacy of the violence directed at them. Fragmentation was the stage in which the parties who legalize violence against women continue to keep women at a distance from each other so that their critical social awareness was stuck in gender hegemony (Eriyanti and Galtung, 2017)

The existence of Islamic Law, which was immanent within Islamic family law, means that the law has several deep purposes. Al-Syatibi's views in Nashrullah et al (2014) consisted of several objectives, which in this case are:

1. Keep religion

Religion is a normative theological framework connecting humans to God. Through the Law (Shari'a), which is an integral part of the law, humans can draw closer to the Allah SWT. This can be understood from the name "shariah, " in which one of the etymological meanings is the source of water. The same is true in relation to the position of law as a source of human foundation in their daily lives. With the existence of Shari'a as an integral part of law, religion still exists because its practical manifestation in everyday life is clearly visible. With the existence of a law that guarantees that people have religion, their religion is protected from all forms of intimidation in the name of religion, which may only be based on a partial understanding of religion.

2. Guard the soul

The human soul is an integral part of the axiological framework of the application of Islamic law in al-Syatibi's legal philosophy of thought. With the existence of the law, a person does not necessarily take actions that endanger the human soul because this will also have practical implications for him; for example, there is a punishment for those who kill other people.

3. Keep sense

Humans are intelligent creatures, as mentioned in the Science of Mantik al-insan huwa al-hayawan al-natiq. Human reason is an issue that must be considered in al-Syatibi's legal philosophy. Humans who have an awakened mind are able to manifest their primordial function as representatives of Allah SWT on earth. The existence of a clear framework for applying the law will, in turn, provide a common-sense consideration for those related to the law that what is being done is laden with legal consequences.

4. Guard treasure

Islam respects the ownership of a person or community of a certain property that is rightfully theirs. In this effort, the existence of a law will provide security related to assets; for example, the punishment of cutting off the hands of those who steal, fair, and proportional distribution of assets in inheritance laws.

5. Protecting offspring

Islam presents a legal framework in accordance with this effort to protect offspring. For example, this can be found in the law of marriage. With marriage, humans and their offspring are maintained because they have a clear lineage.

Al-Syatibi provides a normative theological foundation in placing Islamic family law as a perspective in parsing the problem of domestic violence, which essentially harms the noble goal of marriage, which were creating *sakinah*, *mawaddah*, and *warahmah* families. In accordance with this view, Djamil (1997) provided several principles that must be followed in the application of Islamic law as a macro framework of Islamic family law which in this case are, 1) eliminating pettiness and not burdensome, 2) reducing the burden, 3) graduating determination, 4) paying attention to human welfare, 5) and realizing equitable justice.

The issuance of Law No. 12 of 2022 concerning Crimes of Sexual Violence is a form of the presence of the state with its normative juridical authority in providing protection to all parties from sexual violence, even though, in empirical facts, it is not an exaggeration to say that women are generally in many positions as victims of sexual

violence. The presence of the state in providing various normative juridical frameworks in the protection of all citizens cannot be separated from the function of the state itself, which Al-Husairy and Al-Hukmi (1988) described in several functions as follows:

1. Maintaining religion and protecting religious life from various factors that could harm it
2. Obliging to give freedom to all citizens, including Muslims in spreading words in various rational and peaceful ways
3. Upholding laws that are built on the values of justice, equality, egalitarianism, and others for all citizens
4. Maintaining the stability and security of the country so that all citizens feel peace in their social life
5. Forming a harmonious, peaceful society that helps each other in goodness within the framework of amar ma'ruf nahi munkar.

4. CONCLUSION

The presence of the state in providing normative juridical protection to its citizens from various forms of sexual violence with the issuance of Law No. 12 of 2022 concerning Crimes of Sexual Violence is a normative framework at the juridical level, which must then be linked to the existing normativity at the theological level, which, in this case, was immanent in Islamic family law. The relationship between the two, Law No. 12 of 2022 concerning Crimes of Sexual Violence and Islamic family law, also had a historical dimension as proof that no normative framework in human life was ahistorical. In an attempt to identify how the ontological, epistemological, or axiological dimensions of Law no. 12 openness while Islamic family law refers to Islamic family law was focused on marriage law with a focus on sexual violence in terms of Islamic family law sources, which in this case consisted of the Qur'an, hadith, and ijtihad.

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