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Sexual Consent in The Elimination of Sexual Violence Perspectives of Feminist Legal Theory and Islamic Law: A Comparative Study

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Abstract

The critical legal movement in Indonesia is called feminist legal theory (FLT). FLT criticizes laws that have masculine values, they limit social values because the dominant law against men oppresses women. This FLT movement produces the paradigm of sexual consent which is accepted in the laws and regulations in Indonesia. The study describes how sexual consent in the elimination of sexual violence perspective Feminist Legal Theory and Islamic law. The methodology of this study is normative legal research and literature with the approach of legislation (statute approach) and comparison (comparative approach). From this study it can be concluded that sexual consent in the elimination of sexual violence Flt perspective is a sexual activity that is carried out based on consent outside of the consent of one of the parties, including rape. While sexual consent in Islamic law is a relationship that can only be done in a marriage bond outside the marriage bond, the Act includes adultery even though it is done with consent or voluntarily. Sexual consent is not in accordance with the norms of Indonesian life and contrary to Pancasila. Sexual consent as a solution to eliminate sexual violence does not seem to be the answer to the elimination of sexual violence because sexual consent only focuses on "solving the consequences" not "preventing causes".

Keywords: Sexual Consent, Sexual Violence, Feminist Legal Theory, Islamic Law

Abstrak

Gerakan hukum kritis di Indonesia disebut *feminist legal theory* (FLT). FLT mengkritisi hukum yang bernilai maskulin, hukum tersebut membatasi nilai sosial karena hukum dominan terhadap laki-laki yang menindas perempuan. Gerakan FLT ini menghasilkan paradigma *sexual consent* yang diterima dalam peraturan dan perundang-undangan di Indonesia. Penelitian menjabarkan tentang cara *sexual consent* dalam penghapusan kekerasan seksual perspektif *Feminist Legal Theory* dan Hukum Islam. Metodologi penelitian ini adalah penelitian hukum normatif dan kepustakaan dengan pendekatan perundang-undangan (*statute approach*) dan perbandingan (*comparative approach*). Dari penelitian ini dapat disimpulkan bahwa *Sexual consent* dalam penghapusan kekerasan seksual perspektif FLT merupakan aktivitas seksual yang dilakukan berdasarkan dengan persetujuan diluar dari persetujuan salah satu pihak termasuk dalam pemerkosaan. Sementara *sexual consent* dalam Hukum Islam merupakan hubungan yang hanya dapat dilakukan dalam ikatan pernikahan diluar ikatan pernikahan perbuatan tersebut termasuk zina walaupun dilakukan dengan

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persetujuan atau sukarela. *Sexual consent* tidak sesuai dengan norma hidup bangsa Indonesia dan bertentangan dengan Pancasila. *Sexual consent* sebagai solusi untuk menghapus kekerasan seksual rupanya tidak menjadi jawaban dari penghapusan kekerasan seksual karena sexual consent hanya berfokus kepada “penyelesaian akibat” bukan “pencegahan sebab”.

Kata Kunci: *Sexua Consent*, Kekerasan seksual, *Feminist Legal Theory*, Hukum Islam

A. INTRODUCTION

The Constitution of 1945 states that everyone has the right to legal protection, respect, fulfillment of human rights, free from discriminatory treatment, this is a guarantee that the state must provide to citizens, including in the elimination of violence against women, which is a form of human rights protection. CEDAW (Convention on the Elimination of all forms of Discrimination Against Women) is an international human rights agreement specifically regulating the rights of women from all forms of discrimination. Law No. 7 of 1984 on the elimination of all forms of discrimination against women. There are 185 countries that signed the convention, including Indonesia.

The record of violence against women was presented by the National Committee (KOMNAS) Perempuan CATAHU (annual record) of the National Commission Against Violence Against Women. Throughout 2021, there were 338,496 cases of gender-based violence (KBG) against women with details of complaints to Woman National Committee 3,838 cases, service institutions 7,029 cases, and BADILAG 327,629 cases. The number of cases that occurred in 2021 experienced a significant increase from the previous 226,062 cases in 2020.

One form of state protection instruments against sexual violence is the existence of various arrangements against violence that have been formulated in several positive legal regulations in force in Indonesia. Criminal Code (KUHP), Law No. 23 of 2004 on the elimination of Domestic Violence, Law No. 21 of 2007 on trafficking in Persons, and Law No. 35 of 2014 on Child Protection. Unfortunately, the law has not been comprehensive to accommodate violence against women nor does it provide a system of procedural law and positive law that provides a sense of justice for victims. In addition, in the education area, the Ministry of Education and culture (Kemendikbud), as the ministry that handles education issues in universities, issued a regulation in the form of Permendikbud Ristek number 30 of 2021 on the prevention and handling of sexual violence.

The emergence of these rules and regulations has generated public debate even though they have been passed. The diverse public reaction was caused by the paradigm of “Sexual Consent”. Among the rejection attitudes triggered by concerns about sexual consent which can be interpreted as freedom of sex or legalizing adultery, potentially legalizing LGBT and the content of the article in it is too oriented to Western feminists. In addition, it is also considered to be able to legalize abortion because feminism is at the forefront of fighting for abortion rights if abortion is done with consent without coercion, sexual consent is a measure of morality for feminism, of course it is not in line with the 1945 Constitution and the norms that apply in Indonesia.

This effort aims to ground gender equality, as well as criticism of positive laws that they value cannot yet provide a sense of justice to victims of female violence. Terminologically, FLT is a concept to claim the phenomenon of sexuality in women so that it does not become patriarchal domination. This concept is based on the experience of women who have the goal of criticizing injustice and patriarchal domination in the view of legal positivism. The concept of positive law for feminists was inherited by the laws of the Greek philosophers Plato and Aristotle. For them, this concept needs to be deconstructed using hermeneutics method which is more in line with the reality of Indonesian society. Hermeneutics eventually became a feminist methodology in interpreting and retranslating legal texts to reconstruct new laws from the perspective of women because feminists believed that existing laws were dominant in the male experience because patriarchy was the cause of injustice for women.

While Islamic law, namely the Qur'an as the first source of law, does not distinguish between men and women, the Qur'an does not even look down on a woman let alone behave arbitrarily which leads to discrimination. There are several verses in the Qur'an actually give appreciation in the form of love and affection of women positioned very honorable and Noble.

B. METHOD

This study uses normative legal research methods. It is a research with a doctrinal approach that is normative. This type of research is qualitative research with the method of library research or library study is a method of collecting data by understanding and studying the theories of various literature related to research including the type of research based on the place of research conducted in the library. The approach used in this study uses two approaches, are statutory approach and comparative approach.

C. RESULTS AND DISCUSSION

1. Sexual Consent in the Elimination of Sexual Violence Feminist Legal Theory (FLT) Perspective

Sexual violence cases that occur in Indonesia are like an iceberg that every year is getting higher and the victims are dominated by women. The Women's National Committee reported that throughout 2021 there were 338,496 cases of gender-based violence (KBG) against women with details of complaints to Women's National Committee 3,838 cases, service institutions 7,029 cases, and BADILAG 327,629 cases. The number of cases that occurred in 2021 experienced a significant increase from the previous 226,062 cases in 2020 (Komnas Perempuan, 2022).

The form of state protection against sexual violence cases is characterized by the existence of regulations governing sexual violence, namely: Criminal Code (KUHP) , Law Number 39 of 1999 on Human Rights, Law Number 23 of 2004 on the elimination of domestic violence (PKDRT), Law Number 35 of 2014 on amendments to Law Number 23 of 2002 on Child Protection, Law Number 17 of 2016 on the Second Amendment to

law number 23 of 2002, Law Number 12 of 2022 concerning the crime of sexual violence, Permendikbud No.82 of 2015 on the Prevention and handling of violence in education units, and Permendikbud Ristek number 30 of 2021 on the Prevention and handling of sexual violence in the college environment.

The paradigm of sexual consent in criminal law in Indonesia is a public debate. Many refuse to be made material in legislation. The rejection is apparently not against (consent) or consent but the paradigm of sexual consent in an effort to eliminate sexual violence.

Several studies related to sexual consent have been conducted by Melanie A. Sorted out in several literatures such as psychology, sociology, and women-related studies. Sexual consent as a distinction between good sex and bad, pleasant or unpleasant sex or moral sex and immoral sex. Of the 8,145 studies that discussed rape, only 42 discussed sexual consent and none were clear about the concept. Consent has no clear definition of whether consent is given through speech or action, is indicated or required there is no standard of conduct that indicates consent. Some explain that consent is still expressed even with a small amount of consent. While there are also those who state that consent is only recognized if there is not the slightest coercion (Thisisgender, 2020). Sexual consent has not yet found a final definition, the confusion is based on a multi-interpreted and ambiguous definition. If the definition alone is not final. Actually, this paradigm that is still being debated be used as a legal paradigm for Victim Protection (Imaniar, 2021).

Sexual consent can be described in two characteristics, namely First, the principle of consensuality, which is an act that is consensually approved of its truth. Second, the principle of non-consensuality is when an action is said to be incorrect if one is not agreed by consensus. It can be concluded that right and wrong are measured by consent.

a. Paradigm of Sexual Consent in the Criminal Code

The decency chapter in the Criminal Code (KUHP) is still limited to perceptions that it has not comprehensively regulated immoral acts such as adultery between adults, voluntary prostitution, LGBT sexual deviations. The immoral chapter is only limited to acts of sexual violence such as rape and molestation. The Recht Vacuum (legal vacuum) makes law enforcement difficult with immoral cases that are carried out on the basis of "consent", for example between adult men and women whose age is still a child but is carried out on a consensual basis (consent).

Basically, according to the researchers, we need laws and regulations that not only provide protection to victims of sexual crimes, but we need laws and regulations that can discipline the Indonesian people from various deviant behaviors that are included in decency crimes. Indonesia has lofty values that agree zina (free sex), commercialization of voluntary sex and sexual deviation LGBT acts that violate decency in society. However, the Indonesian Criminal Code states that adultery is not a crime (Husaini: 2014).

In the old criminal code, on decency was enshrined in Chapter XIV, entitled "On

crimes against decency”, consisting of 25 articles. While the new criminal code is enshrined in Chapter XV with the title “criminal acts of decency”, consisting of 22 articles. Chapter criminal acts of decency clarifies 9 acts, namely: decency in Public (1 Article), pornography (1 article), showing contraception and abortion (3 articles), adultery (3 articles), obscene acts (9 articles) consisting of fornication also facilitate fornication and intercourse, drinks and intoxicating substances (1 article), the use of children for begging (1 Article), vagrancy (1 article) and gambling (2 articles).

The articles of decency that according to the researcher should be reviewed are in Article 410 on public decency and Article 411 on pornography paragraph (1), namely:

“Any person who produces, creates, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, sells, rents, or provides pornography, shall be punished with a minimum imprisonment of 6 (six) months and a maximum imprisonment of 10 (ten) years or a minimum fine of Category IV and a maximum fine of Category VI.”

“The act as meant in Paragraph (1) shall not be punished if it is a work of Art, Culture, Sports, Health, and/or science.”

Article 411 paragraph (2) is actually contrary to Article 2 of the criminal code on living law and the spirit of the elimination of pornographic practices as stipulated in the pornography law, because in Paragraph (2) it provides exceptions on the grounds of works of Art, Culture, Sports, Health and/or science. Logically, Indonesian people refer to biology or medicine books when they want to discuss body anatomy or various body diseases. But what about pornography being legal is not a crime if it is a work of art. While sociologically and factually, pornographic magazines, pornographic photography, pornographic films, pornographic impressions, pornographic sports costumes are contrary to the values and norms adopted by the Indonesian nation.

Researchers consider that the making of pornographic films, pornographic magazines and other pornographic shows must be done on the basis of awareness, consent (sexual consent), voluntary. Whereas actions such as making drawings, sketches, illustrations, photographs, writings, animations, cartoons that we value as works of art. But what if making sketches, illustrations, photographs, writing, animation, cartoons but in the form of pornography is not punished for reasoned artwork.

The formulation of adultery contained in this article of the Criminal Code would be a general offense, not a complaint offense. If there are 4 witnesses who witnessed an act of adultery, for example, in a hut, in the bushes and wherever, then, the four witnesses can report the act of adultery. Article 415 this can only be reported by the husband or wife, parents or children this article explains cannot be executed or implemented.

b. Paradigm of Sexual Consent in the Act of Sexual Violence

The principle of law formation is required to meet various needs, namely, capable of being implemented, enforceable, in accordance with the principles of legal guarantees and the rights of citizens and able to absorb the aspirations of the community. Unfortunately, the formation of laws does not always lead to ideal conditions. There is

a clash of norms horizontally and vertically even though it is directed to the prevention, protection and rehabilitation of victims of sexual violence. However, the problems in the articles and even the definitions that are at the heart of the law are actually problematic from the normative, sociological, and philosophical-ideological sides (Hilipito, 2019).

The definition of sexual violence affirms that is a form of gender-based violence. Gender is a social construct, as opposed to sex, which refers to a person's biological organs. Ideological problems in the definition through the idea of power relations or gender relations are believed to be the only cause of sexual violence. When referring to the definition of gender relations in the relationship between men and women who tend to be disadvantaged are women. In fact, in criminal acts, crimes can be committed by anyone without being stigmatized against a certain gender. Sexual violence is a form of gender-based violence, which includes sexual orientation, gender identity, and gender expression. Efforts in the elimination of sexual violence must begin by redefining gender norms and culture.

The strong influence of radical feminists in this TPKS law when reading the definitions and forms of sexual violence that they campaign. In Article 4, the crime of sexual violence consists of: non-physical sexual abuse, physical sexual abuse, coercion of contraception, coercion of sterilization, coercion of marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Sexual harassment or rape as sexual violence is no longer understood as rape as society has always understood it. The feminist movement in the West has succeeded in expanding the meaning of rape and changing its legal definition. In the TPKS law, the definition of rape is expanded using "consent" (Kania, 2019).

According to Kania (2019) the key to sexual violence from a feminist perspective is the presence of coercion or lack of consent (consent), not from the good or bad of sexual behavior in terms of Health, religious, social, and cultural values that exist in a particular society. Risky diseases such as deadly Calamine disease HIV / AIDS, adultery, and LGBT are not considered forms of sexual violence because the basis of these acts is consent. LGBT cannot be categorized as sexual violence because it is done on the basis of awareness and people who reject LGBT are considered to have committed sexual violence because they cannot accept different choices of sexual orientation and gender identity. Acts of prostitution, abortion, and nudity performed on a voluntary basis cannot be categorized as sexual violence because there is no element of coercion.

c. Paradigm of Sexual Consent in Permendikbud Ristek number 30 of 2021

Sexual violence that occurs in universities shows a very dominant data such as a survey conducted by the Directorate General of Higher Education Research and Technology. One example of a case that occurred at the University of Riau province female students who were victims of sexual harassment by lecturers. Protection of victims is still not good because there is no clear legal framework in the world of Education. Seeing the urgency of the Ministry of Education and culture of the Republic of Indonesia, as a ministerial institution in charge of overseeing the field of education in Indonesia, then issued a ministerial regulation. The goal is to create comfortable and safe

learning conditions from sexual violence.

The definition of sexual violence contained in Permendikbud Ristek number 30 of 2021 in this Ministerial Regulation what is meant by sexual violence is any act of degrading, insulting, harassing, and/or attacking the body, and/or reproductive function of a person, due to the inequality of power relations and/or gender, which results or may result in psychological and/or physical suffering, including those that interfere with a person's reproductive health and lost the opportunity to carry out higher education safely and optimally.

Researchers try to interpret the meaning of Article (3) above related to the existence of (consent) which limits whether students, educators, education personnel and campus leaders agree on the nuances of sexual violence they receive, then they will not be declared victims, which results in them not being given administrative sanctions as stipulated in this ministerial regulation.

- a) Immature age (underage). This means that if the victim and perpetrator are adults, then sexual relations are allowed if with the consent of the victim (sexual consent).
- b) Circumstances and conditions that threaten, force, and or abuse his position. This means that if in a consensual state there is no threat, no one is forced to agree, No One abuses their position, then sexual relations are allowed because they are carried out on the basis of consent (sexual consent).
- c) Circumstances situations and conditions under the influence of drugs, alcohol, and/or drugs. This means that if in good condition there is no influence of drugs, alcohol, and drugs, then sexual intercourse is allowed with consent (sexual consent).
- d) Experiencing pain, unconsciousness, or falling asleep. This means that if the state is not sick, conscious and not asleep, then sexual intercourse can be done as long as there is consent (sexual consent).
- e) Vulnerable physical and/or psychological conditions. Means if the physical and psychological conditions are strong and healthy, then sexual intercourse can be done as long as with consent (sexual consent).
- f) Temporary paralysis (tonic immobility). This means that if sexual intercourse is carried out without paralysis or healthy as long as there is consent (sexual consent), then it is allowed.
- g) Experiencing a state of shock. If in a condition that is not shaken, then the original sexual relationship with the terms of consent is allowed (sexual consent).

2. Islamic Perspective on Sexual Consent in the Elimination of Sexual Violence Perspective Feminist Legal Theory

Feminists argue LGBT behavior, sexual consent or adultery, abortion, is a respect for Human Rights (HAM). Free sex is ambiguous because it imposes on women due to

the demands of society that women maintain their chastity. A word often has a *lughawi* meaning that is different from the meaning of the term. When it fails and mistakenly interprets something that does not fit the context, misunderstandings such as Human Rights (HAM) occur. Language means the basic rights of human beings. If defined only as such it is difficult to deny that almost all nations and languages believe in the existence of fundamental human rights. Understanding the basic concepts is very important so that it is not easy to say that Islam recognizes the "Woment Right" because "Islam gives rights to women" or recognizes the "Right to life" because "Islam prohibits indiscriminate killing". Because Islam recognizes the right to one's own body, but there are limitations given by Sharia to our bodies that do not necessarily interfere with the rights of others, in this case there is certainly no human rights (Muhammadin, 2019).

Wahbah AZ Zuhaili in Tafsir Al Munir (2016) explains the rapprochement of verse 33 of surah An Nur after prohibiting things that have the potential to open the entrance of heinous acts such as adultery that causes the mixing of the lineage, Allah SWT explains the halal path, namely the marriage path that will ensure the maintenance of the lineage, maintain offspring, household integrity, harmony and compassion. It is forbidden to force a slave girl into prostitution. This is what makes prostitution and adultery absolutely illegal. Coercion to commit adultery is absolutely forbidden, both women who are forced are women who do not want to maintain chastity and who want to maintain chastity.

Researchers argue that the contents of the Tafsir al Munir surah An Nur verse 31 describes sexual relations conducted on the basis of their own will, namely with the consent (sexual consent) and by force, which does not accompany the consent (nonconsent), the sexual activity is included in the act of adultery because it is done outside the bonds of marriage and adultery is absolutely legal haram.

The husband should treat his wife well not hurt her as in the Qur'an An-Nisa verse 19:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ ۖ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

And interact with them appropriately. But if you dislike them, then perhaps you dislike a thing, whereas Allah has placed therein much good. (Q.S An-Nisa (4): 19).

Therefore, it can be understood that if without heating it is less favored by Islam, moreover, sexual violence in the form of forcing anal sex, oral sex, forcing sexual intercourse during menstruation, or accompanied by threats, is certainly prohibited and forbidden in Islam. Similarly, it is haram for a husband to sell his wife to another person or force her to become a prostitute for commercial purposes. Commercial a husband to his wife is tantamount to forcing the wife to commit adultery or sexual slavery. From this explanation, Islamic jurisprudence seems to be anti-psychological and sexual violence committed by husbands to their wives.

3. Analysis of Islamic Law on Sexual Consent Perspective Feminist Legal Theory

a. Differences in Physical, Psychological and Sexual Characteristics Between Men and Women in Islam

The beginning of the human being is due to the meeting of two components between sperm and cells TEUR this fusion that determines the sex of the child that is XX or XY chromosomes. After the sex is determined at the age of seven weeks, the child's developing body will adjust to the sex whether male or female which will be a distinctive distinction between men and women in terms of physical and psychological characteristics including distinguishing characteristics when sexual (Wulandari, 2018).

Different things with the reproductive system in women if the sperm is produced continuously while the release of eggs is intermittent. The female hormone network undergoes cyclical changes such as the monthly menstrual cycle. The female reproductive tract is prepared for fertilization and implantation of the egg. After giving birth the reproductive function is further transformed into breast milk to become the baby's feeding. Female reproductive function is mainly controlled by estrogen and progesterone hormones (Wulandari, 2018).

Estrogen Hormone is what makes women will experience some circumstances such as: inhibit osteoclastic activity in the bones that stimulate bone growth that causes why women first stopped compared to men, estrogen causes an increase in the amount of fat stores in the subcutaneous tissue so that fat in women there will be more than men.

In sexual and emotional terms men and women have differences. The amygdala is a small building in the temporal lobe of the brain that plays a role in emotional memory of emotional responses. This structure makes women more likely to remember negative feelings and more likely to remember bitter experiences that make women vulnerable to depression.

Some of the things above prove that the reproductive organs of men and women are different, including in terms of sexuality that men are more dominant, it is not a patriarchal factor understood by feminism. Man and woman are like a building and are joined by the structures found in the bodies of men and women.

In the interpretation of Al Azhar by Buya Hamka, human society is a combination of male activeness with female passivity, the combination of which gives rise to offspring from the love of the mother and the love of the father, the souls of children are formed who take turns with each other and they will experience establishing a household and continuing offspring.

b. The Right of Women to Enjoy or Refuse Sexual Intercourse (Sexual Consent) in Islam

The debate in the TPKS law related to marital rape which argued with Islamic law. But is it true that Islam recognizes marital rape because Islam clearly prohibits marital relations by including violence. Actually, Islam prohibits sex between husband and wife by force, but Islam does not recognize the concept of "marital rape". There are

four important points to know clearly that marital rape is not an Islamic concept.

Rape, sexual autonomy, and marriage. Rape is sexual activity outside the will of the victim that is not accompanied by the consent and voluntariness of the victim. While the meaning of marital rape is rape that occurs in the marriage bond, namely a husband who fucks his wife outside the consent or the will of the wife who can be exposed to criminal punishment from the act. Rape is a crime against sexual autonomy. Sexual autonomy: everyone has the right to choose to have sex with anyone and under any circumstances. This means that a person has full rights over himself and cannot be intervened by people outside of him. While the marriage bond can be interpreted as "the right to choose under any circumstances". If the concept of sexual autonomy is a married couple basically does not have sexual rights over their partner unless the partner wants it which is the basis of marital rape can be subject to criminal law.

Second, marriage, halal-haram sex, and sexual autonomy. In Islamic law the Basic Law of sexual relations is haram except when something has made it halal, in this case namely marriage. Unlawful intercourse in Islam is called adultery.

Third, *Ightishaab* and rape. The meaning of *ightishaab* is similar to the rape of the *fuqaha* mention *al ikrah 'ala zina* (coercion to commit adultery). Zina includes acts that are subject to hudud law. While the *ikrah* (coercion) of the victim is not subject to punishment for being forced, while the perpetrator is ordered to pay compensation in the amount of dowry (according to some scholars) which depends on the situation in which the act of *ikrah* can also be subject to the death penalty. While the relationship between husband and wife cannot be categorized as an act of adultery even if done with coercion (non-consent). More clearly Islam does not recognize marital rape the concept of rape or rape does not make sense if it occurs in the context of a husband and wife relationship.

Fourth, having the right to sexual intercourse does not mean that it is permissible to take it falsely. Islam commands all things to be done in the right way. The obligation to do good to all creatures in the Hadith is also ordered that animals and evildoers must be killed in a way that is Ma'ruf, let alone the relationship between husband and wife who love each other and love. Associate in an appropriate way, including words and deeds and fulfillment of rights and obligations as a husband and wife. All acts of discrimination and other bad deeds of the husband against the wife are unlawful in Islam (Muhammadin, 2019).

c. Reproductive Rights in Islam

For feminists, the female body and reproductive rights have bargaining power so that the female body becomes a political tool to demand women's rights. Dora Russel's opinion in the book *The Dialectic of sex* Written by Hendri Salahudin in the beautiful book *harmony in Islam* (Shalahudin, 2020) that reproductive organs make women easily controlled by men, and that makes women's degrees lower than men. So, Feminists campaign for the jargon "My Body is my Right".

The female body is the property of women who should not be intervened by religion, the state and men. So, women have the absolute authority to manage, regulate,

and express their own bodies freely and independently. This includes the right to have an abortion and the right to choose or refuse sexual relations with a husband or a person he wishes.

Marriage, which is said to be the bureaucratization of sex, is nothing but an institution that contains sperm storage bins that have anarchically divided people with very painful claims. The terms prostitute and illegitimate child also emerged from this regime. Women who have sex outside of this institution are very cruelly positioned as women who are very despicable, tuna, prostitute and do not deserve self-esteem. (Husaini, 2020).

Islam as a perfect religion pays attention to reproductive health to build a healthy, responsible and qualified family institution. The attention of Islam can be seen from the five *Maqashids of Sharia*, namely maintaining religion, life, offspring, property and common sense. Islam offers marriage solutions that direct good sexual relations, multiply offspring, prohibit sexual crimes (LGBT), and other reprehensible acts.

The right to use contraception, *jumhur ulama* establish contraceptive rules that are not still justified. While the rules of permanent contraception such as sterilization of men and women according to the majority of scholars is not justified unless the state of health of the mother is in danger of threat.

d. The Concept of *Nusyuz* as a Justification for the Dominance of Men Over Women

The concept of *nusyuz* is understood by feminists as a justification for the power of the husband in the household. The institution of the family positions the wife as the husband's servant as a result of the husband's position as the head of the family. So that feminists view *nusyuz* as a form of stereotype against women who function as creatures of sexual lust, and victims of violence. The *nusyuz* concept has justified the act of rape against the wife (marital rape) (Shalahudin, 2021).

Allah commands that sexuality be carried out in a way that is Ma'ruf not by violence. Basically, the wife is obliged to serve her husband, but the wife has the right to offer it and if she is sick, it is permissible to disobey her husband. Based on surah An-Nisa verse 34 husband and wife who do *nusyuz* are as follows, giving advice, separating beds, strike.

In terms of *manthuq*, this verse means that the husband beats his wife when *nusyuz*. But, *mafhum* verse means husband whose wife did *nusyuz* should give a deterrent effect to his wife (shock therapy). The deterrent effect here can be done, for example, usually the husband gives more money while giving less so that the wife can introspect herself and return to peace.

It is clear that Allah does not distinguish between men and women as feminists say, but Allah gives rights and obligations to men and women according to their nature. *nusyuz* as a justification for the dominance of husbands over women is very wrong because the concept of *nusyuz* can apply also to husbands who do not fulfill their obligations to their wives.

In general, Feminist Legal Theory and Islamic law on sexual consent in the elimination of sexual violence are very different because the roots of the problem are in different perspectives. Islam recognizes the existence of Revelation (Al Qur'an and Hadith), while feminists dismiss revelation as a source of good and bad truth or halal haram returned to the situation and conditions prevailing in society as long as the act of consent (consent), then it is declared legal.

D. CONCLUSIONS

From the above description the author can conclude that sexual consent in the elimination of sexual violence feminist legal Theory perspective as stated above is a sexual activity that is carried out based on consent (sexual consent) outside of the consent of one of the parties including rape, violence and harassment. Sexual consent is believed by feminists to prevent sexual violence both outside of marriage and within the bonds of marriage. This legal paradigm is used to determine whether the sexual activity carried out is accompanied by violence or not by violence without considering the legality of a relationship. The legal paradigm of sexual consent can be found in the Criminal Code (KUHP), the law on Sexual Violence (TPKS law), Permendikbud Ristek No. 30 of 2021 on the Prevention and treatment of sexual violence in college and other settings.

The analysis of Islamic law on sexual consent shows that sexual consent is not an Islamic concept, it is contrary to the teachings of Islam which has regulated all forms of sexual crimes based on the revelation of Allah SWT, not the agreement of good and bad sexual behavior based on consent. Islamic law is the most perfect law regulating comprehensively the Ma'ruf sexual behavior that distinguishes human sexual behavior from animals.

Sexual consent as a legal paradigm created by feminists (Feminist Legal Theory) makes consent (consent) the only legal scales of legal and illegal sexual activity this is not in accordance with the norms of Indonesian life and contrary to Pancasila as a source of value. Policy rules and regulations should not be separated from the value of religion because the divine principle in the first precept of Pancasila became the prime causa against other precepts. Sexual consent as a solution to eliminate sexual violence apparently cannot be the answer to the elimination of sexual violence because it cannot reduce the number of sexual violence, on the contrary, violence increases because sexual consent only focuses on "solving the consequences" not "preventing the cause" which in the end sexual violence never ends because the problems and solutions do not meet each other.

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