

## TPKS LAW AS AN EFFORT TO PREVENT RELATIONS OF POWER IN SEXUAL VIOLENCE IN RELIGIOUS EDUCATION INSTITUTIONS

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### Abstract

Cases of sexual violence in Islamic boarding schools are currently a public concern. The existence of vulnerability to women as victims of criminal acts of sexual violence is caused by several factors, such as the occurrence of power relations in the pesantren environment. Therefore, this paper aims to explore the construction of sexuality, social, knowledge, and power relations that have an important influence on the persistence of patriarchal discourse in society, especially in religious education institutions or Islamic boarding schools. In analyzing the problems in this study, the author uses Michel Foucault's theory of power relations with the literature study data search method. The results show that asymmetric power relations are formed and abused to carry out various acts of sexual violence that are controlled under various pretexts of the principle of obedience that must be carried out by a santri against his kiai, gus, or ustaz. In addition, various forms of religious norms, stereotypes, and stigmatization that exist also perpetuate the power of knowledge that is used as a tool for sexual harassment in Islamic boarding schools. For this reason, various efforts are needed to prevent acts of sexual violence, such as the existence of sexual education in the pesantren curriculum, the post for complaints of sexual violence, and the role of national and regional governments to oversee the case. In this case, the ratification of the TPKS Law can also provide fresh air to ensnare perpetrators of sexual violence in Islamic boarding schools.

**Keywords:** Islamic Boarding Schools, Power Relations, Sexual Violence, TPKS Law.

### Abstrak

*Kasus kekerasan seksual di pesantren dewasa ini menjadi perhatian publik. Adanya kerentanan terhadap perempuan sebagai korban tindak pidana kekerasan seksual disebabkan oleh beberapa faktor, seperti terjadinya relasi kuasa di lingkungan pesantren. Makadari itu, tulisan ini bertujuan untuk mengeksplorasi konstruksi seksualitas, sosial, pengetahuan, dan relasi kekuasaan yang memberikan pengaruh penting terhadap langgengnya wacana patriarki di masyarakat, khususnya dalam lembaga pendidikan keagamaan atau pesantren. Dalam menganalisis permasalahan dalam penelitian ini, penulis menggunakan teori relasi kuasa Michel Foucault dengan metode pencarian data studi kepustakaan. Hasil penelitian menunjukkan bahwa relasi kuasa yang sifatnya asimetris dibentuk dan disalahgunakan untuk melakukan berbagai tindakan kekerasan seksual yang dikendalikan dengan berbagai macam dalih prinsip kepatuhan yang harus dilakukan oleh seorang santri terhadap kiai, pengasuh, ataupun ustaznya. Selain itu, berbagai bentuk norma agama, stereotip, dan stigmatisasi yang ada turut melanggengkan kekuasaan pengetahuan yang dijadikan sebagai alat pelecehan seksual di lembaga pesantren. Untuk itu, berbagai upaya diperlukan dalam*

*mencegah tindak kekerasan seksual, seperti adanya pendidikan seksual dalam kurikulum pesantren, pos pengaduan tindak kekerasan seksual, dan peran pemerintah nasional dan daerah untuk mengawal kasus tersebut. Dalam hal ini, pengesahan UU TPKS pun dapat mampu memberikan udara segar untuk menjerat pelaku tindak kekerasan seksual di pesantren.*

**Kata Kunci:** Kekerasan Seksual, Relasi Kuasa, Pesantren, UU TPKS.

## Introduction

Islamic boarding school is a religious educational institution which is a place for students to learn a lot of knowledge, both general and religious knowledge. Islamic boarding school as a place of education that emphasizes the importance of religious morality as a way of life, was born and developed rapidly in Indonesia. In the last few decades, the development of Islamic boarding schools has been quite significant, both in rural, urban and sub-urban environments.

However, recent cases of sexual violence in Islamic boarding schools have received public attention. A number of cases of sexual violence at Islamic boarding schools have occurred in various regions, such as the case of sexual abuse by the leadership of an Islamic boarding school foundation in the city of Bandung against dozens of their students since 2016. In addition, there have also been cases of sexual abuse that involved a teacher who is also a caretaker of one Islamic boarding school in Tasikmalaya. Besides, the case of alleged rape of a minor by a religious teacher in Patimuan, Cilacap, Central Java.<sup>1</sup>

According to the Annual Records launched by the Women National Commission on Violence Against (*Komnas Perempuan*) that it was recorded as the year

with the lowest number of Gender Based Violence (KBG) in 2021, with an increase of around 50% compared to 2020, resulting in 338,496 cases.<sup>2</sup> From the data on cases of violence in the educational environment that were received by *Komnas Perempuan* in the 2015 - 2020 where Islamic boarding schools rank second after the violence cases in the university.<sup>3</sup>

Accordingly, the violence that occurred in religious-based educational institutions and boarding schools was considered to be high compared to educational institutions in general based on *Komnas Perempuan's* monitoring. This is certainly related to the vulnerability of women as victims of sexual violence in Islamic boarding schools which is caused by several factors, such as the occurrence of layered power relations between principals in these educational institutions toward students so they take advantage to dominate and control their students; the fear from the victim and the victim's family regarding the obstacles received during the educational process at the Islamic boarding school due to cases of sexual violence experienced by the victim; the victim's fear of the threat given by the perpetrator; as well as, the public places the

<sup>1</sup>C. N. N. Indonesia, 'Daftar Kasus Kekerasan Seksual di Pesantren Indonesia', *nasional*, 2021 <<https://www.cnnindonesia.com/nasional/20211209082552-12-731811/daftar-kasus-kekerasan-seksual-di-pesantren-indonesia>> [accessed 11 November 2022].

<sup>2</sup> Perempuan KOMNAS, "Peluncuran Catahu Komnas Perempuan 2022: Peningkatan Jumlah Kasus KBG Di Tahun 2021 Menjadi Alarm Untuk RUU TPKS Segera Disahkan," *Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap Perempuan*, 2022.

<sup>3</sup> Kompas Cyber Media, "Data Komnas Perempuan, Pesantren Urutan Kedua Lingkungan Pendidikan dengan Kasus Kekerasan Seksual," *KOMPAS.com*, December 2021.

Islamic boarding school leaders and teachers in a respected position.

In addition, related to the occurrence of power relations within Islamic boarding schools which result in practices of sexual violence, constructed related to women's roles which are often stereotyped in terms of sexual attractiveness and domestic performance, are considered to have ignored, eliminated and sidelined women's interests.<sup>4</sup> Such condition causes the construction of belief that the position of women is always below men, so that women are not able to explore and express freedom as well as their ability to solve problems existing in society. In addition, women who are considered to have multiple roles are given responsibility for managing work, household, and are given responsibility for fulfilling the economy and managing it.<sup>5</sup>

The phenomenon of sexual violence does not only occur in the domestic sector but has also penetrated the public sector, starting from the surrounding environment, work, and the educational environment. The emergence of sexual violence against women is certainly closely related to cultural ideology or values attached to society as well as patterns of relations between men and women. The context of the discourse of women's subordination in the public contributes to the repetition of sexual

<sup>4</sup>Sumintak and Abdullah Idi, 'Analisis Relasi Kuasa Michel Foucault: Studi Kasus Fenomena Kekerasan Seksual Di Perguruan Tinggi', *Jurnal Intelektualita: Keislaman, Sosial, Dan Sains*, 11.1 (2022), 55–61 (p. 56) <<https://doi.org/10.19109/intelektualita.v11i1.11117>>.

<sup>5</sup>Yudha Guruh Trianggono and Pambudi Handoyo, 'Konstruksi Perempuan Terhadap Implementasi Rancangan Undang-Undang Penghapusan Kekerasan Seksual', *Journal of Sociological Studies: Paradigma*, 10.1 (2021), p. 2 <<https://ejournal.unesa.ac.id/index.php/paradigma/article/view/41461>>.

violence practices. Another important aspect is the relation of power and contestation which also makes a significant contribution to the formation, perpetuation and hegemony of patriarchy.<sup>6</sup> Therefore, this article focuses on the study of various efforts to prevent power relations in acts of sexual violence in Islamic boarding schools which are regulated in the Law on Crimes of Sexual Violence (TPKS) Number 12 of 2022.

To support this research, the authors found several studies that were considered relevant to several aspects to be discussed in this study. First, an article written by Nilasari Wulan Syafitri and Oksiana Jatningsih entitled Relation of Power of Knowledge in Sexual Harassment in the Port of Surabaya. Within the article, it is explained that the existence of power relations occurred in Surabaya Port area is due to the existence of a construct that the role of women in society or the family is much lower than men. Women who were in a stereotypical patriarchal cultural position require that they have to behave according to the label given to them. Thus, the form of social power monopoly in gender influences the actions and behavior of men who can easily sexually harass women in public spaces.<sup>7</sup>

The existence of a construct towards the position and role of women which forms the domination and monopoly of social power which ultimately influences the behavior of men who can easily harass women which occur not only in the public

<sup>6</sup>Inayah Rohmaniyah, 'Konstruksi Seksualitas Dan Relasi Kuasa Dalam Praktik Diskursif Pernikahan Dini', *Musawa*, 16.1 (2017), p. 34; Inayah Rohmaniyah, 'Gender, Andosentrisme Dan Seksisme Dalam Tafsir Agama', *Welfare: Jurnal Ilmu Kesejahteraan Sosial*, 2.1 (2013), 55–74.

<sup>7</sup>Nilasari Wulan Syafitri and Oksiana Jatningsih, 'Relasi Kuasa Pengetahuan Dalam Pelecehan Seksual Di Wilayah Pelabuhan Surabaya', *Paradigma: Journal of Sociological Studies* 10, no. 1 (2021): 2–4.

space but also in religious-based educational institutions. In this case, the power relations that exist in the Islamic boarding school between the leadership and the students lead to the practice of sexual violence which can have a serious impact on the students. This is also explained in an article entitled *Sexual Violence in Religious Education Institutions: The Relationship of Kyai's Power to Female Santri in Islamic Boarding Schools* written by Bz. Fitri Pebriaisyah, Wiladati, and Siti Komariah. The practice of sexual violence perpetrated by *kyai* in Islamic boarding schools is generally caused by the existence of power relations between the two resulting inequality.<sup>8</sup> Therefore, it is explained that the existence of sexual violence has a significant impact on victims, namely the the occurrence of psychological impacts while in Islamic boarding schools and outside Islamic boarding schools.

The existence of hegemony in Islamic boarding schools, families, or society can be regarded as a form of injustice that deserves criticism. This unfair practice has an impact on the role of women. Women are only prepared to be passive and tend to serve only in the Islamic boarding school environment, *Santriwati* (Islamic boarding school's female students) are also not given the same opportunities as *santriwan* (male students) to prepare themselves to enter the public world.<sup>9</sup> This is stated in an article entitled *Feminism of Islamic Boarding School Women: Hegemony and Power Relations* written by Ahmad Faizi.

<sup>8</sup> Bz. Fitri Pebriaisyah, Wiladati, and Siti Komariah, 'Kekerasan Seksual Di Lembaga Pendidikan Keagamaan: Relasi Kuasa Kyai Terhadap Santri Perempuan Di Pesantren', *Sosietas Jurnal Pendidikan Sosiologi*, 12.1 (2022).

<sup>9</sup> Ahmad Faizi, "Feminisme Perempuan Pesantren: Hegemoni Dan Relasi Kuasa," *Sastronesia: Jurnal Pendidikan Bahasa Dan Sastra Indonesia* 8, no. 1 (2020): 19.

Therefore, this study aims at analyzing how patriarchal cultural practices and power relations occurrence in Islamic boarding schools lead to acts of sexual violence. The difference between this research and several previous studies are this article further discuss how discourses on sexuality, construction of knowledge, and systems of power can influence acts of sexual harassment. In addition, this research also provides a new perspective regarding to the urgency of implementing of TPKS Law in catching those perpetrators of sexual violence in Islamic boarding schools and providing solutions for several efforts that need to be made in preventing acts of sexual violence in Islamic boarding schools.

For this reason, this research is considered important because there have been many cases of sexual violence happen in religious educational institutions which require the observers of gender equality to contribute their knowledge in terms of providing intellectual benefits.

## Methods

In analyzing the issues described above, the authors try to analyze them using Michel Foucault's power relations theory.<sup>10</sup> This research is a qualitative research with the the systematic literature review (SLR) approach.<sup>11</sup> Systematic literature review (SLR) is a research design carried out to systematically synthesize existing research evidence in terms of searching research

<sup>10</sup> Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings 1972-1977*, Edited by Colin Gordon (New York: The Harvester Press, 1980); Michel Foucault, *Truth and Power*, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. and trans. C. Gordon, 109-33 (New York: Pantheon Books, 1980).

<sup>11</sup> B Abbott and K Bordens, *Research Design and Methods: A Process Approach*, 8 Ed (New York: McGraw-Hill Companies, Inc, 2011), 40.

articles, critical review (critical appraisal), and synthesis of research results to answer specific research questions.

For the further data collection technique, the authors seek to read, obtain, and re-evaluate various literature related to this research design by looking up to various sources such as books, documents, journal articles, websites that are considered credible.

## Discussions

### *Discourse on Sexuality, Knowledge Construction, and Power Systems as a Tool for Sexual Violence*

Sexuality is interpreted as a social construction that is closely related to the norms, knowledge, and behavior of society. In addition, sexuality is also related to the power system of knowledge so that it can include various values, norms and rules that can provide a status and roles as well as it can also limit all forms of behavior or actions related to sex.<sup>12</sup> The sexuality discourses seen from Michel Foucault's point of view show that there is a dynamic relationship between power and knowledge itself. This is due to there is no power practice that does not give rise to knowledge and vice versa. Besides, there is no knowledge that does not contain power relations in it.

In the light of previous line, socio-cultural factors also have an important role in the sexuality discourses. Therefore, it creates gender relations between women and men in society. Sexuality is also related to the culture of society whose their meaning mechanism will be deemed appropriate if it is related to a norm. As an effect, the norms of femininity and masculinity have influenced one's attitude towards the discourse of sexuality itself. In addition, these norms have a

<sup>12</sup> Inayah Rohmaniyah, "Konstruksi Seksualitas Dan Relasi Kuasa Dalam Praktik Diskursif Pernikahan Dini," *Musawa* 16, no. 1 (January 2017): 38.

significant influence in terms of hegemony in public knowledge regarding the rules for regulating one's sexuality.<sup>13</sup>

Sexuality is an issue that looks at how individual's experience is institutionalized in society. Therefore, such individual understands himself as a subject of sexuality opened to various scientific fields and related to a system of rules called as a system of power by Foucault. This phenomenon is then built in society till now so that every action will be influenced by the power of knowledge through norms, religion, gender, social class, race, or entities. Thus, social practices in society that provide such mechanisms enable a power relationship to exist.

Moreover, the existence of these power relations causes various forms of arbitrary actions are judged as the norms that have been perpetuated by society. As a matter of fact, this condition raises various forms of sexual harassment, and it cannot be separated to the relationship that is established through power between various related parties.<sup>14</sup> The tendency and domination of power make an asymmetrical relationship so that the various reasons of acceptance appear committing acts of sexual violence. According to Foucault's view in Haryatmoko, power is a name given to a situation that is considered strategic within a society, rather than an institution, structure, or power.<sup>15</sup>

However, there is a process known as power institutionalisation, which has been structured in law and politics, as well as various social rules, to perpetuate dominance,

<sup>13</sup> Mansour Fakhri, *Analisis Gender Dan Transformasi Sosial*, 15th edn (Yogyakarta: Pustaka Pelajar, 2013).

<sup>14</sup> Gitadi Tegas Supramudyo, "Feminisme Dan Pelecehan Seksual Dalam Birokrasi Kekuasaan Pemerintah," *Journal Unair: Social Humanism, Masyarakat, Kebudayaan dan Politik*, 20, no. 4 (2007): 2.

<sup>15</sup> Haryatmoko, "Kekuasaan Melahirkan Anti Kekuasaan," *Majalah Basis*, February 2002.

repression, ideological manipulation, and the violence that occurs in these power relations.

Power plays a role and operates consciously within the community. According to Foucault, in the modern era, human's body is controlled or under the control of institutional power. Therefore, gestures are also determined by institutions that have a relationship with them. Finally, power is normalized through the body of a person connected toward an institution.<sup>16</sup>

Foucault actualizes this power in the form of knowledge. Hence, power produces knowledge, but knowledge is under of power relations. Based on such belief, knowledge and power are considered as one unit that goes hand in hand with full awareness. This is because knowledge is used as a form of power that can master, dominate, occupy, and control the body.<sup>17</sup> For Foucault, there is a dynamic relationship related between power and knowledge because there is no practice of exercising power which does not rise the knowledge. Besides, there is no knowledge which does not contain a relation of power.<sup>18</sup>

Furthermore, the concept believed forms the construction of role of men in being more dominant than women in society. The rootedness of a patriarchal culture in society which perpetuates stereotypes that men are the strong than women as well as the belief that men have to act as leaders and women are the ones who are led, are considered as the cause leading to acts of

abuse by men which lead to attempts to dominate women.<sup>19</sup>

### ***Social Construction and Gender Bias in Understanding Religion***

The understanding of the role of women taken from Islamic teachings is a complex construction that occurs in several areas and levels of knowledge as well as different religious beliefs.<sup>20</sup> At glance, this construction that later gives birth to various bipolarities related to the roles, characteristics, and positions of men and women that arise many social injustices that are theologically legitimized from religious understandings considered gender bias.

In line to previous line, several criticisms from feminists on gender-biased understandings of religion are closely related to the role of religion in strengthening patriarchal cultures in society. This is based on three things, namely problems related to androcentrism, patriarchy, and sexism,<sup>21</sup> In this gender-biased understanding of religion, the contribution of women in history and religious discourse does not get a strategic place. Further, women do not have space to speak out of the process of formulating gender-biased religious doctrines. Such reality raises the existence of gender differences,

<sup>19</sup> Triantoro, *Dadi Wong Lanang: Idealisasi Dan Perolehan Nilai Remaja Laki-Laki Di Jawa* (Yogyakarta: Rifka Annisa Women's Crisis Center, 2014); Muhammad Rifa'at Adiakarti Farid, 'Kekerasan Terhadap Perempuan Dalam Ketimpangan Relasi Kuasa: Studi Kasus Di Rifka Annisa Women's Crisis Center', *SAWWA: Jurnal Studi Gender*, 14.2 (2019), 175–90 (p. 180) <<https://doi.org/DOI:10.21580/sa.v14i2.4062>>.

<sup>20</sup> Siti Ruhaini Dzuhayatin et al., "Islam Dan Konstruksi Relasi Gender," in *Menuju Hukum Keluarga Progresif, Responsif Gender, Dan Akomodatif Hak Anak* (Yogyakarta: Suka Press, 2013), 82.

<sup>21</sup> Inayah Rohmaniyah, "Gender Dan Konstruksi Perempuan Dalam Agama," *Jurnal Studi Ilmu-Ilmu Al-Qur'an Dan Hadis, Jurusan Tafsir Hadis UIN Sunan Kalijaga Yogyakarta* 10, no. 2 (2009).

<sup>16</sup> Yuris Fahman Zaidan, 'Relasi Tubuh Dan Kekuasaan: Kritik Sandra Lee Bartky Terhadap Pemikiran Michel Foucault', *JAQFI: Jurnal Aqidah Dan Filsafat Islam*, 5.2 (2020), p. 135.

<sup>17</sup> Syafitri and Jatiningih, p. 7.

<sup>18</sup> Michel Foucault, *Disiplin Tubuh* (Yogyakarta: LKiS, 1997); Rohmaniyah, 'Konstruksi Seksualitas Dan Relasi Kuasa Dalam Praktik Diskursif Pernikahan Dini', p. 39.

gender injustice, and gender segregation where many women were treated badly and discriminated against by society. For this reason, the term feminist theology emerged in England which attempted to continually re-read several passages of scripture which were understood from a woman's perspective in the 17<sup>th</sup> century. However, it has become a strong theological basis for women's position in religious understanding perspective.

Religious doctrine plays a role in perpetuating gender inequality both in terms of marginalization, subordination, and violence against women in life. From several aspects of the interpretation of Islamic law which seems to be gender bias, many are considered to be more in favor of men, giving rise to various discriminations against women. According to Muhammad Syahrur and Asghar Ali Enggineer in Asni, in classical fiqh and Al-Qur'an laws which have been adapted to various societal needs are more influenced by an inferior view of women and are dominated by men. In addition, over a long period of time, men have always had a higher position than women in the social aspect.<sup>22</sup> Therefore, various products of Islamic legal thought reflect more on various historical realities dominated by the patriarchal system. Based on this point of view, it is very clear that when men are considered to have superiority over women, the majority of them think that women are considered weak and have no power in the social structure in society.

In addition, the practice of subordination to women gains legitimacy from various interpretations of the Qur'an that are currently developing. The existence of unequal roles between men and women is

<sup>22</sup> "Membongkar Akar Bias Gender Dalam Hukum Islam (Telaah Fiqh Perempuan Perspektif Sejarah Sosial Hukum Islam)," *Jurnal Al-Maiyyah* 9, no. 1 (June 2016): 10–11.

caused by the position of men who are considered superior and women are placed in positions as secondary as well as weak workers. Such interpretation of the Qur'an is considered to be gender bias where it then supports the existence of patriarchal cultural practices in society.<sup>23</sup>

The superiority of men is clearly depicted in a discourse of interpretation relating to the role and position of women in Islam. It is understood that the first human on earth (Adam), is understood as the male and the father of all mankind within the majority of interpretations.<sup>24</sup> Meanwhile, Eve was created as a woman from Adam's most crooked rib. Although in contemporary interpretation it is said that *Adam* is understood as a type of human and not the male sex of a human. This view is considered not quite popular compared to the first opinion that has been explained. Based on this view, women as human beings who occupy the second position are considered to have a lower intellectual level than men.<sup>25</sup>

Amina Wadud, a gender equality enforcer and feminist, views that there are no differences considered essential between men and women so there is also no indication that women have fewer or lower limit than men. There was a creation of the first human and afterwards through the process of a mother's womb. Therefore, the process of creating *Adam* and *Hawa* as the first humans on earth has implications for the process of creating humans afterwards. This also affects the actions, positions, and rights between women

<sup>23</sup> Anna Zakiah Derajat and Toni Kurniawan, 'Eksplorasi Dan Kekerasan Terhadap Perempuan Dalam Konflik Suriah Pendekatan Hermeneutika Feminis Amina Wadud', *Musāwa*, 20.1 (2021), p. 51.

<sup>24</sup> Rohmaniyah, 'Gender Dan Konstruksi Perempuan Dalam Agama', p. 223.

<sup>25</sup> Rohmaniyah, 'Gender Dan Konstruksi Perempuan Dalam Agama', p. 224.

and men who are considered to be in harmony.<sup>26</sup>

### ***Patriarchal System and Cases of Sexual Violence in Religious Education Institutions***

In social life, there is a patriarchal culture that is still perpetuated by society. In this situation, a woman is considered a vulnerable, second-class, and weak group. This patriarchal concept still dominates various fields of social life and can be identified with the various forms of oppression and violence that occur to women.<sup>27</sup> The concept of patriarchy has increased the domination of power based on differences in race, gender, social class, and religion. Finally, the concept of patriarchy is used as a representation of a man's power over women in social life.

In this case, many religious educational institutions (Islamic boarding school), known as *pesantren*, are identified as places that still perpetuate patriarchal culture. Citing from Simone de Beauvoir's view, he said the construction of patriarchal culture is closely related to the definition of women who are identified with men. Men are constructed as subjects and women as side actors. Thus, it increases the acts of inferiority towards women.<sup>28</sup> The gender injustice occurred in Islamic boarding schools can be seen from the existence of stereotypes and subordination experienced by women, such as the regeneration of the *pesantren* leadership will be continued by the sons of the *kiai*, a Javanese Islamic cleric or expert on Islam (*gus*) then, the majority of the daughters of

the *pesantren* leaders will be betrothed to another *gus*.

Recently there have been several cases of harassment happened to female students acted by a *gus*, the principal of the Islamic boarding school, as well as the *ustadz*. One case on sexual violence done by several Islamic boarding school practitioners occurred at the Shiddiqiyah Islamic Boarding School, Ploso, Jombang Regency, East Java, were carried out by Moch. Subchi Azal Tsani, also known as Mas Bechi, was reported for alleged sexual abuse toward five of his female students.<sup>29</sup> Then, a sexual harassment case was committed by four religious teachers at an Islamic boarding school in Depok, West Java to a number of female students which was reported to Polda Metro Jaya on June 21, 2022.<sup>30</sup> Apart from that, there was also a case of harassment of female students at the Banyuwangi Islamic boarding school done by Fauzan. Fauzan used the pretext of a virginity test and lured the victim with a dowry. Another case occurred at an Islamic boarding school in the Cibiru, Bandung, West Java. The caretaker of the Islamic boarding school, Herry Wirawan, committed the rape of dozens of his female students.<sup>31</sup>

The rise of sexual violence cases occurred in religious education institutions (Islamic boarding schools) recently shows that gender issues that occur in Indonesia are receiving serious attention, especially in

<sup>26</sup>Amina Wadud, *Qur'an and Woman: Reading the Sacred Text from a Woman's Perspective* (New York: Oxford University Press, 1999), pp. 36–37; Derajat and Kurniawan, p. 52.

<sup>27</sup>Pebriaisyah, Wiladati, and Komariah, p. 1119.

<sup>28</sup>Simone de Beauvoir, *Second Sex: Fakta Dan Mitos* (Yogyakarta: Narasi, 2020); Pebriaisyah, Wiladati, and Komariah, p. 1119.

<sup>29</sup>Tasmalinda, "Kronologi Kasus Cabul Anak Kiai Ponpes Shiddiqiyah Jombang, Korban Lima Orang yang Melapor," *suara.com*, July 2022; Ayu Ismatul Maula, "Mengapa Kekerasan Seksual Sering Terjadi di Pesantren? Berikut Penjelasannya - Berita Mataraman - Halaman 2," July 2022.

<sup>30</sup>CNN Indonesia, "4 Ustaz Ponpes di Depok Diduga Cabuli Belasan Santriwati," *nasional*, June 2022.

<sup>31</sup>Tim TvOne, "Tak Hanya Kasus Pencabulan Mas Bechi Jombang, Ini 3 Kasus Pelecehan Seksual yang Pernah Terjadi di Lingkungan Pesantren | Halaman 3," July 2022.



Islamic boarding schools which are considered as places that tend to continue to socialize religious values and teachings which still have a gender bias. The gap occurring between men and women in the *pesantren* environment is the main thing that attracts attention. Clearly, there are several points that can be reason as one among many causes of sexual violence occurred in Islamic boarding schools, namely:

First, there is the principle of obedience within the *pesantren* environment. These principles are still firmly adhered to, such as obedience to teachers which is important in implementing *adab*, Islamic etiquette, in Islamic boarding schools. However, if this is misused by the *ustadz* (a religious teacher), caretaker, or *gus*, it will be an opening for an immorality such as sexual violence occurred in Islamic boarding schools.

Second, the occurrence of unequal power relations or abuse of authority. Michel Foucault said that power was centered on knowledge. In this case, there is a close relationship between knowledge and power. Power can rise knowledge and determine the direction of knowledge. On the contrary, knowledge can be formed by a power where no knowledge is born without power.<sup>32</sup> If it is seen within the scope of *pesantren*, certainly, there is a clear hierarchy between *kiai*, *gus*, *ustadz*, and *santri*. Thus, there is an unequal power relationship, in which the *kiai*, *gus* and *ustadz* have a higher social status than management and *santri*.

The *santri* who become victims and do not have power in the *pesantren* do not have the power to against the perpetrator of rape because they are in a lower hierarchy. The

subordinated position of female students is concrete evidence that Foucault's discourse on power is actualized in acts of sexual violence in Islamic boarding schools. Power relations in sexual violence tend to occur by demonstrating their power through invasion of one's body.

Viewing from the structure of religious education institutions, a *kiai* or *gus* has a role that is considered central, strong domination, and has full power and authority over the *santri* who live in the *pesantren* environment. This pattern of unequal relationship indicates that the relationship that exists between the *kiai* or *gus* and the *santri* is patron-client in nature, so that the two are considered to be unequal. A *kiai* or *gus* is considered as a figure who is authoritative, pious, and influential in social life. Meanwhile, *santri* occupy a lower status, so that *santri* are required to respect the *kiai* or *gus*.

Third, the use of religious dogma as a domination tool. The domination with the use of religious dogma in sexual violence act often occurs. In this case, religion seems to become a part of the authoritative domain of men as subjects and women as objects that do not have any power. It is this patriarchal religious understanding which then raises both gender differences and injustice.<sup>33</sup> The understanding of religion which is considered to be gender bias is one of the causes of the interpretation of religious texts which is too patriarchal in nature. Various interpretations that reinforce the superiority of men with the legitimacy of the arguments and *hadiths*, make a construction of the status of women that is considered lower so that it

<sup>32</sup> Bz. Fitri Pebriaisyah, Wiladati, and Siti Komariah, "Kekerasan Seksual Di Lembaga Pendidikan Keagamaan: Relasi Kuasa Kyai Terhadap Santri Perempuan Di Pesantren," *Sosietas Jurnal Pendidikan Sosiologi* 12, no. 1 (2022): 1120.

<sup>33</sup> Mansour Fakih, *Analisis Gender Dan Transformasi Sosial*, 15th ed. (Yogyakarta: Pustaka Pelajar, 2013), 135.

implicates the division of roles that are considered hierarchical.<sup>34</sup>

Fourth, the narrative of gender equality has not been fully accepted and implemented in religious education institutions (*pesantren*). The existence of the principle of obedience in *pesantren* which is cult towards individuals can be boomerang on female students and has become one of the proofs that the implementation of gender equality has not been significantly implemented in *pesantren*.

The strong position of the *kiai* as an element of the *pesantren* is considered the most essential. They hold an absolute power and authority in the Islamic boarding school. It also causes the practice of subordination which excludes female actors in the world of Islamic boarding schools, both from the roles and positions obtained by a *nyai* who is distinctive. This is caused by two things; on the one hand, the position and status of a *nyai* is considered lower than that of the *kiai*, and on the other hand, the status and position of a *nyai* is determined by the position of the *kiai*. This then creates a limited space for the *nyai* to interact as interpreters, teachers, and *pesantren* leaders.

In this case, the dominant gender discourse in *pesantren* starts from the teachings listed in the yellow book. According to Mas'udi, the yellow book views women as the one having a lower degree than men. This is caused by the use of language in the yellow book which is monopolized by male representatives; there is an Islamic law version of the yellow book that seeks to calculate women's rights half of the calculations of men's rights; in household ties, women are presented as objects of male

sexuality and power; and women are limited in the social sphere.<sup>35</sup>

Therefore, it can be said that there is an imbalance of power relations in Islamic boarding schools between *kiai*, *gus*, *ustadz*, and *santri* as a gap to gain the trust of victims and to legitimize acts of sexual violence. The existence of power, the principle of obedience, and a patriarchal culture can lead to and facilitate several possibilities for sexual harassment by those in power. Differences in power can not only explain how the gaps and opportunities for sexual violence in Islamic boarding schools are increasing but also, it can be an obstacle for victims in terms of reporting acts of sexual violence they experience.

### ***The Urgency of Implementing the TPKS Law in Religious Education Institution***

Sexual violence happened to women in Indonesia, whether in the form of murder, exploitation, rape, abuse, or harassment of women's bodies, has recently increased. It is known that the existing legal system regarding sanctions for perpetrators of sexual violence has not been fully assessed as being comprehensive and providing safe guarantees for victims.<sup>36</sup> From the existing regulations, it sees sexual violence only as a violation of public order. This is what then creates a new perception that sexual violence will be considered as a form of crime and violence causes anxiety in the wider community.<sup>37</sup>

<sup>35</sup> Masdar F Mas'udi, 'Perempuan Di Antara Lembaran Kitab Kuning', in *Wanita Islam Indonesia Dalam Kajian Tekstual Dan Kontekstual*, Lies M. MarcoesNatsir dan Johan Hendrik Meuleman (Jakarta Pusat: INIS, 1993), p. 156.

<sup>36</sup> Supramudyo.

<sup>37</sup> Andi Sri Ratu Aryani, 'Analisis Polemik Pengesahan RUU Tindak Pidana Kekerasan Seksual (TPKS)', *Najwa: Jurnal Muslimah Dan Studi Gender*, 1.1 (2021), pp. 10–11.

<sup>34</sup> Inayah Rohmaniyah, "Gender dan Konstruksi Perempuan Dalam Agama," *Jurnal Studi Ilmu-Ilmu Al-Qur'an Dan Hadis* 10, no. 2 (July 2009).

Moreover, various rules and policies related to the prevention of sexual violence existing in religious education institutions (*pesantren*), including the Islamic Boarding Schools Law, are deemed unable to accommodate these various cases of violence. Therefore, it is necessary to have prevention regulations that are ratified and properly implemented by the government and members of the community which must be implemented in every Islamic boarding school educational institution. The new policy passed by the DPR RI (Indonesian Parliament), namely the Law on the Crime of Sexual Violence in 2022, is expected to be able to resolve problems of sexual violence in Indonesia, including in *pesantren*. This prevention policy is considered very important so that the community can be protected, both in terms of prevention and control of sexual crimes.

The existence of the TPKS Law does not only guarantee the constitutional rights of women's groups, but also the efforts of the enforcement process that must be carried out optimally. Law enforcement must prioritize various principles of protecting women who are often used not only as objects of violence as well as gender sensitivity in terms of rules that are considered non-discriminatory.<sup>38</sup>

In line with the objectives of the TPKS Law namely preventing all forms of criminal acts of sexual violence, taking action against perpetrators, protecting and recovering victims, and creating an environment free from sexual violence, thus, there are several key elements of the law which are the advantages to be implemented.

First, prevention. The forms of prevention regulated in the TPKS Law cover

various sectors, such as building safe public environments and facilities, as well as building an integrated security system in public spaces, disseminating various information and compiling anti-sexual violence policies, creating programs and budgets for preventing sexual crimes, adding the theories of elimination of sexual violence to the teaching materials in educational institutions, establishing policies against sexual violence in corporations, work unions and labor supply associations, and disseminating information on the elimination of sexual violence.

Second, there is a recovery process for victims of sexual violence. The TPKS Law provides for various handling, recovery and victim protection, both before and during the trial process. A lot of activities occur before the judicial process, namely the existence of health services for physical and psychological recovery, providing temporary housing that is appropriate and safe, providing information legal services on victims' rights including legal assistance, working victims obtain permission to leave their jobs with full pay and protection from termination of employment, transportation assistance services, living expenses and others, not stigmatized and discriminated against, access to victim education, guaranteed identity confidentiality, compensation, can convey information without pressure. Meanwhile, after the judicial process, victims can monitor, examine, and get physical and psychological health services; get social security services; get compensation, restitution, and assistance; and economic empowerment for victims and their families.

Third, victims receive assistance in the process of investigation, prosecution, and examination in court (a special criminal procedural law). Fourth, the TPKS Law broadens the scope of evidence, including a

<sup>38</sup> Dede Kania, "Hak Asasi Perempuan Dalam Peraturan Perundang-Undangan Di Indonesia The Rights of Women in Indonesian Laws and Regulations," *Jurnal Konstitusi* 12, no. 4 (2015): 717–34.

certificate from a clinical psychologist or from a psychiatrist; medical records or forensic examination results; and data, recordings, or information that can be seen, read, or heard, whether in the form of physical or electronic objects.

Therefore, the implementation of the TPKS Law in religious education institutions or Islamic boarding schools is necessary. In addition, it needs to have a government policy in terms of re-reading and revising the Islamic Boarding Schools Law so that it can provide a safe space for students or *santri* by creating regulations from the Minister of Religion regarding to the prevention of cases of sexual violence in religious education institutions-based or Islamic boarding schools.

### ***Efforts to Prevent the Normalization of Sexual Violence Against Women and Power Relations in Religious Education Institutions***

Cases of sexual harassment and violence in educational institutions are often associated with the morals or passions of the perpetrators. In fact, the existence of sexual violence was caused by an imbalance of power relations between the perpetrator and the victim. Perpetrators feel they have more rights to carry out various acts of sexual violence against victims who are considered as objects proper to be harassed. This relational imbalance also usually occurs between actors who have high positions, such as *pesantren* administrators, *gus*, or *ustadz* towards their students.

In overcoming and preventing the cases of sexual violence occurred in Islamic boarding schools, it is necessary to look at the motif of the perpetrators of sexual violence. Then, it can be clearly illustrated the sanctions that will be given in accordance with these actions. To be able to avoid this

crime, prevention efforts are needed to be carried out both by imposing criminal sanctions on the perpetrators according to their actions as well as by carrying out coaching efforts.

Prevention efforts by imposing criminal sanctions have been wisely regulated by several existing laws, as stated in the Criminal Code, the PKDRT Law, the Child Protection Law, and the TPKS Law passed in 2022.<sup>39</sup> Prevention of sexual violence acts in Islamic boarding schools also need to be carried out by also having comprehensive regulation that is in accordance with the applicable protection rules. Several efforts need to be made, namely first, the role of the national and regional governments and the surrounding community in preventing sexual violence. This can be done by monitoring Islamic boarding schools in Indonesia regarding their responsibilities in terms of preventing acts of sexual violence.

Second, it needs to create a post for complaints of sexual violence in Islamic boarding schools. This can be an attempt to accommodate all forms of complaints of sexual crimes that occur in Islamic boarding schools, whether it happens to students, caregivers, *ustadz*, or other educators. The complaint post must be directly integrated with the government and psychologists so that they can establish good communication and carry out various other prevention efforts.

Third, it is crucial to cultivate a critical attitude towards students. In this case, the narrative of seeking blessings in Islamic boarding schools for *kiai*, *gus*, and *ustadz* need to be accompanied by the critical attitude of the *santri*. So, there will be no more abuse of

<sup>39</sup> Ahmad Jamaludin and Yuyut Prayuti, "Model Pencegahan Kejahatan Seksual Di Lembaga Pendidikan Pesantren," *Res Nullius Law Journal* 4, no. 2 (2022), <https://doi.org/10.34010/rnlj.v%09vi%i.6861>.

power relations within the scope of Islamic boarding schools. The narrative of searching for blessings carried out by *santri* should be a channel for voluntary action with the aim of perfecting the religious knowledge being studied, it no longer misused to normalize sexual crimes committed by Islamic boarding school personnel.<sup>40</sup>

Fourth, sexual education is needed in the learning curriculum in Islamic boarding schools. The existence of teaching material about marriage, menstruation, and other puberty taught in Islamic boarding schools, needs to be followed up by making a sexual education curriculum. This is intended to be able to provide learning and understanding to students about protecting themselves from various acts of sexual violence, exploitation, as well as about protection psychologically, morally, and applicable law. It is also hoped that the students will be able to understand the protection of their own body's authority so that they will not be powerless when facing a precarious situation related to sexual crimes in Islamic boarding schools.

In addition, the efforts of the TPKS Law in handling and preventing sexual violence in Islamic boarding schools need to be followed by the violence prevention rules carried out by all parties such as from students, administrators, supervisors, and ulama in the environment. In this case, the caretaker of the Islamic boarding school should be able to implement the fulfillment of rights and special protection for their students or *santri*. To strengthen this policy, the

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<sup>40</sup> Admin PMB LIPI and Nuzul Solekhah, 'Kekerasan Seksual di Pondok Pesantren: Powerlessness Santri dan Urgensi Pendidikan Seksual Dalam Kurikulum Pesantren', *Pusat Penelitian Masyarakat dan Budaya - LIPI*, 2022 <<https://pmb.brin.go.id/kekerasan-seksual-di-pondok-pesantren-powerlessness-santri-dan-urgensi-pendidikan-seksual-dalam-kurikulum-pesantren/>> [accessed 15 July 2022].

government has made various efforts in terms of suppressing and preventing violence against children in Islamic boarding schools, one of which is by issuing Decrees (SK) and Ministerial Regulations (PERMEN) which regulate technical issues and socialization of child protection policies from acts of sexual violence in schools. However, to complete prevention efforts through formal law, certainly, a socio-cultural approach is still needed or the activity of instilling prevention of acts of violence from within.

In realizing such socio-cultural approach, it can be done by strengthening spiritual approaches and methods within Islamic boarding schools; the existence of a work team that can carry out regular assistance and investigations of Islamic boarding schools. This team work is not only tasked with supervising but is also a partner of the boarding school in providing guidance and psychological counseling to the students. By doing this, the students do not commit acts of violence or do not mind reporting if they see any such acts of violence. Finally, it can be accomplished by socialising a shift in perspective towards acts of violence and sexual abuse against children in pesantren.

## Conclusion

There is an imbalance of power relations in religious education institutions due to several things such as the existence of the principle of obedience in Islamic boarding schools, religious dogma being used as a tool for domination, abuse of power, and the lack of gender education in Islamic boarding schools. Several efforts to be created aiming at preventing sexual violence in Islamic boarding schools, namely the role of the national and regional governments and the surrounding community in preventing sexual violence, the need for complaint posts on sexual violence in Islamic boarding schools,

the need to instill a critical attitude towards students, and the need for sexual education materials in the curriculum of islamic boarding school.

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