Proceedings
INTERNATIONAL CONFRENCE
ICOLASS
International Confrence On Law, Sharia and Society

Development of Law, Sharia and Society in Digital Era

Kudus, 30 Nov 2021

Fakultas Syariah
IAIN Kudus

Development of Law, Sharia and Societ in Digital Era
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ISBN: 978-623-5454-39-9

Cetakan pertama, Juni 2022
14 x 20 cm, vi + 160 hlm

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Kata Pengantar

Bersyukur kehadirat Allah SWT, atas karunia-Nya Ketabahan, Kesabaran dan kesehatan untuk dapat menyelesaikan amanah kegiatan Seminar Internasional dan prosiding ini. Tidak lupa kami para editor dan panitia mengucapkan terimakasih atas dukungan pimpinan fakultas Syariah IAIN Kudus, baik dukungan sarana dan prasarana maupun dukungan moral. Semua itu besar sekali artinya bagi kami untuk mengerjakan tugas-tugas yang lainnya, tidak hanya saat ini, namun juga di masa yang akan datang. Khusus kami ucapakan kepada Keynote Speaker Gub Jawa Tengah H. Ganjar Pranowo, SH., MIP, kepada para Pembicara Prof. Hikamahanto Juwana, SH., L.M., Ph. D (President Asian Society of International Law), Prof. Dr. Drs. Sulistiyowati Irianto, MA (Profesor of Legal Anthropology Fak Of Law University of Indonesia), Prof. Adriaan W. Bedner (Head of Departemen of The Van Vollenhoven Institute Law Governance and Society, Leiden University), Dr. Fatin Said Al Zadjali (Head, Islamic Finance, Cars Oman) yang telah mencurahkan pikiran dan tenaga dalam mengarahkan diskusi tematik yang digelar. Tidak kalah penting, kami juga berterimakasih kepada seluruh peserta yang telah memaparkan makalahnya pada kesempatan international confrence ini.

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Childfree Islamic Law Perspective

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Abstract *Having children is one of the goals of marriage. But over time, having children is no longer the goal in marriage. This is influenced by internal and external factors. In fact, having offspring is seen as a virtue. This article aims to explain the position of childfree (reluctance to have offspring) within the framework of Islamic law (maqashid al-syari'ah). Childfree by choice is basically allowed as the law of basic of marriage is also allowed. Childfree in conditions of maslahah dharuriyyat is recommended. Childfree is not allowed for reasons that are contrary to maqashid al-shari'ah.*

Keywords: *Childfree, offspring, Maqashid al-Syari'ah, Maslahah*

A. Introduction

One of the main purposes of marriage is to have children (reproduction). Reproduction is not limited to having offspring. Readiness before having children and after having children must be prepared as well as possible. Because, the Qur'an has given direction not to have weak offspring (Q.S. An-Nisa' [4]:9). Reproduction today is considered an option that requires various considerations. Reproduction and motherhood are discussions that cannot be separated from

politicization, especially in patriarchal, heterocentric, pronatalist capitalist societies.

The development of the times and the ever-changing dynamics of life certainly have an impact on all aspects of life. Including the discussion and implementation of reproduction. Now, reproduction is not the main goal of a marriage. In fact, in developed and developing countries, having children is a good thing, especially in old age. The Qur'an has also explained various positions of children, including: Children as Peace of Heart (QS al-Furqan [25]: 74), Children as Jewels of the World (QS al-Kahf [18]: 46), and Children as Trials or Fitnah (Surat at-Taghabun [64]:15. Thus, the presence of offspring from a marriage can be considered as a complement to a family.

The reluctance to have offspring is then called childfree. The term childfree began to be widely known by the public and practiced. In Indonesia, this term is starting to spread widely through social media networks. Moreover, since Gita Savitri Devi, a famous Indonesian YouTuber, declared himself childfree. From there, various discussions emerged that questioned child-free law, especially in the study of Islamic law. Because, there is no fatwa that regulates childfree. This study uses a qualitative descriptive method, which describes an understanding of childfree which is then analyzed with the theory of *maqashid al-syari'ah*.

This research is the development of various previous studies, including: Childfree by Choice (Rebecca, 2019), Voluntary childlessness and being Childfree (Basten, 2009) Childfree by Choice: a Review (Agrillo dan Nelini 2008), The Lived Experience of Involuntary Childless in Indonesia: Phenomenological Analysis (Patnani, et. al 2020). How Important is *Maqashid al-Shari'ah* in the Contemporary Era?. (Fithri 2021). Specifically, this article will discuss childfree in the perspective of Islamic law.

Childfree

Childfree is a term that came into existence around 1972. The meaning of childfree indicates someone who is reluctant to have children. The reluctance to have children is present even though the person concerned has biological and economic abilities (Agrillo, Nelini 2008, 347). Childfree is related to the understanding of gender in certain ethnicities (Vinson, et. al 2010, 431). The choice not to have children or childfree is an autonomous, rational and responsible attitude of each individual as an existing identity (Morison dkk. 2016, 184). In addition to the term childfree, there is also the term childless. At first glance, these two terms may have something in common, but basically they have very visible differences (Paul P 2001).

There is a traditional view that not having children or childfree is a negative thing. Whereas in developed and developing countries, the presence of children is a good thing, especially in old age (Basten 2009, 23) . This negative view comes from the people around, namely colleagues and family (Somers 1993, 648). While in Indonesia, this view will also be given by the general public (Patnani, et. al 2020)

Rudolf Santana said that a woman refused pregnancy for several reasons, including: the high cost of living, not wanting to be a single mother, worried that her sex life would be reduced, the birthing process was considered

painful, she was worried that her body was no longer good, did not want and was unable to take care of children, focus pursue a career. Psychological and economic factors are common reasons to become childfree (Maria Bicharova, Irena Lebedeva 2013)

Another factor that makes a person voluntarily become childfree is the belief about the freedom he has to determine his own life choices (Gillespie, 2003, 136). In addition to the matter of maintaining freedom, the nature of high independence and not being friendly to the surrounding life is also a factor that encourages child-freedom to occur (Powell, 2020, 1). Fear of not being able to care for and care for children is also a factor that triggers the birth of the choice to become childfree in addition to the issue of environmental damage which is starting to get attention (Humas UNS 2021).

Discussions about childfree have started to be felt recently in Indonesia. This is due to the disclosure of information that is so easily accessible. This has been increasingly felt since the viral YouTuber Gita Savitri Devi who declared herself childfree. From the video, other youtube accounts emerged that discussed childfree in Indonesia. This is certainly proof of the existence of childfree in Indonesia.

Islamic Law

1. ***Maqashid al-Syari'ah***

Wahbah al-Zuhaili defines *maqashid al-syari'ah* with the meanings and goals that are preserved by the shara' in all of its laws or most of its laws, or the ultimate goal of shari'ah and the secrets laid down by shari'ah in every the law (Wahbah az-Zuhaili, 1986, 1057). *Maqashid al-Syari'ah* is based on benefit which is the determinant in Islamic law (Ali Mutakim, 2017, 547). *Maqashid al-syari'ah* aims to maintain the benefit of religion (*ḥifz al-dīn*), the benefit of the soul (*ḥifz al-nafs*), the benefit of reason (*ḥifz al-aql*), the benefit of offspring (*ḥifz al-nasl*) and the benefit of property (*ḥifz al-māl*) (Musolli, 2018, 64).

Maqashid al-Shari'ah will, with the five provisions above, be used as a theory in identifying child-free. If viewed at a glance, childfree will be more in contact with maqashid al-syari'ah in the part of maintaining offspring (ḥifz al-nasl). This is because maintaining offspring is specifically mentioned as the goal of establishing Islamic law. The implementation of maqashid al-syari'ah in assessing childfree will then be strengthened by reviewing its benefits.

2. **Maslahah**

Maslahah means looking for good (Abdul Wahab Khalaf 1972, 77). In this case the maslahah in question is goodness which is the goal of Islamic law, not benefit based on human desires (Pasaribu 2014, 352). Accommodation in the context of maslahah is related to humanity and ethics (Iffatin Nur, 2020, 74). In the end, this maslahah will lead to maqashid al-syari'ah as the goal of Islamic law (Amin Farih, 2015, 43).

The interests of the benefit are divided into *maslahah dharuriyyah*, *maslahah hajiyyah*, *maslahah*

tahsiniyyah Maslahah dharuriyyah (needs primary) is a basic need that involves realizing and protecting the existence of the five the main points are: maintaining religion, preserving the soul, preserving reason, maintaining offspring, and keep property. *Maslahah hajiyyah* is the benefit needed in perfecting the previous basic or basic benefit in the form of waivers for maintain and care for basic human needs. *Maslahah tahsiniyyah* is a complementary benefit in the form of flexibility that can complement the previous benefit (Abdul Azis Dahlan, et al, 1984, 1109).

B. Discussion

Marriage aims to form a happy, prosperous and harmonious family. For this reason, every family member, especially husband and wife as core members, should think about and plan their family life well, including the presence of children (Musdah Mulia, 2020, 115). Every family must have a plan in their life. One form of planning is related to the existence of descendants in a family. Having offspring is one of the most basic forms of maslahah for humans in order to maintain human survival. Allah has given provisions to maintain and continue this human offspring through marriage which in turn gives birth to rights and obligations for each family member (Pasaribu, 2014, 354).

In social life, especially in Indonesia, the discussion about the family will be an endless discussion. Someone who is an adult, has entered the age of marriage will be asked when he will marry. After marriage he will usually be asked

when to have children. After that, you will be asked when you have another child. So, other questions keep flowing endlessly in the discussion about family life, which is really a private matter.

Islam, as a complete religion, in the sense of not only conveying the teachings of the faith, but Islam also has rules that must be observed by its people (*syari'ah*). Islamic law is extracted from various existing provisions, such as the purpose of law (*maqashid al-syari'ah*), the rules of *usul fiqh*, and various other considerations. Thus, Islamic law can grow and develop so that it can be a solution to various existing problems.

One of these problems is related to the position of child-free in Islamic law. In the early days of Islam, this term was not found so that at that time there were no provisions of Islamic law. The ignorant people of the Arabian Peninsula in the past carried out the practice of burying baby girls because it was considered a disgrace and troubled parents. Then Islam came and forbade the practice. Thus, the child-free position has indeed become a new thing in the study of Islamic law that requires answers.

Maqashid al-syari'ah is the foundation and goal of Islamic law, with the provision of protecting religion, life, intellect, lineage, and property. Maqashid al-syari'ah is considered capable of determining the position of child-free in the context of Islamic law. *Maqashid al-syari'ah* guarantees *hifz al-nasl* (guarding offspring). Descendants if interpreted narrowly are children of the fruit of a marriage. Meanwhile, in broad terms, descendants are the descendants of human children since the Prophet Adam.

Before taking care of offspring, someone who is pregnant should take care of his soul first (*hifz al-nafs*), both during pregnancy and after childbirth.

To put the childfree position in Islamic law, it is necessary to first determine the legal illat. Different positions of illat will produce different child-free laws. If the legal illat has met the category of dharuriyat, then child free can be considered as a permissibility. For example, if a mother is pregnant and can threaten her life, then she is allowed to be child free. Or, there is chaos in a country with a shortage of sources of clothing, food, shelter, and security, then child-free is also allowed because it contains an emergency benefit.

On the other hand, if someone is worried that his body condition will change after being pregnant and having children, then he decides to become childfree, then this reason cannot be justified. Or, he wants to pursue a career that makes him not want to have children, because children can interfere with his activities. The presence of children is only considered as a troublesome thing. Whereas the Qur'an has explained various positions of children, among others: Children as Peace of Heart (Surat al-Furqan [25]: 74), Children as Jewels of the World (Surat al-Kahf [18]: 46), Children as Trials or Fitnah (Surat at-Taghabun [64]:15.

Someone who is worried about not having enough economics to meet the needs of children or is worried about being poor because of having children is someone who is weak in knowledge. Allah swt has stated in Q.S. Al-Isra '(17):31 that every child has his own sustenance which has been guaranteed. Thus, the voluntary choice to be childfree

is very much against the verse. The desire to have offspring must be accompanied by intention and ability. The Qur'an states that every parent must pay attention to the provision of their child's life in the future (Q.S. An-Nisa [4]:9). So, it's not just having children, but preparing and helping the child to become a good person with noble character

The attitude of choosing to be childfree should not be judged as a bad thing. Maybe there is a good that is owned by others and not owned by others. Someone said today he is childfree, maybe next time he will change his mind. Or even vice versa, someone who wants to have children along the way chooses to be childfree.

C. Conclusion

Childfree bye choice is allowed as the law of origin of marriage is allowed (*mubah*). The law of allowing childfree (*mubah*) may change according to different conditions. Childfree in conditions of *maslahah dharuriyyat* is recommended. Childfree is not allowed for reasons that are contrary to *maqashid al-shari'ah.* Childfree will have implications for household harmony, social relations with family and society which consists of living environment, work environment and friendship environment.

References

Abdul Azis Dahlan, et al. 1984. *Ensiklopedia Hukum Islam (Jakarta : Ikhtiar Baru Van Hoeve,1984), h. 1109*. Jakarta: Ikhtiar Baru Van Hoev.

Abdul Wahab Khalaf. 1972. *Masadir Al-Tasyri', Al-Islami Finala Nasa Fih, (Kuwait: Dar Al-Qalam, 1972), h. 77*. Kuwait: Dar Al-Qalam,.

Agrillo, Christian, dan Cristian Nelini. 2008. "Childfree by Choice: A Review." *Journal of Cultural Geography* 25 (3): 347–63. https://doi.org/10.1080/08873630802476292.

Ali Mutakim,. 2017. "Teori Maqâshid Al Syarî'ah Dan Hubungannya Dengan Metode Istinbath Hukum" 19 (3): 547.

Amin Farih. 2015. "Reinterpretasi Maṣlaḥah Sebagai Metode Istinbāṭ Hukum Islam: Studi Pemikiran Hukum Islam Abū Isḥāq Ibrāhīm Al-Shāṭibī. Al-Ahkam, Vol. 25, No. 1, 2015, h. 43" 25 (1): 43.

Basten, Stuart. 2009. "Voluntary Childlessness and Being Childfree," 23.

Fithri, Naylal. 2021. "Seberapa Penting Maqashid al-syari'ah di Era Kontemporer?" 1 (1): 14.

Humas UNS. 2021. "Childfree dari Kacamata Psikolog UNS, https://uns.ac.id/id/uns-update/childfree-dari-kacamata-psikolog-uns.html." 2021. https://uns.ac.id/id/uns-update/childfree-dari-kacamata-psikolog-uns.html.

Iffatin Nur,. 2020. "Muhammad Ngizzul Muttaqin, Reformulating The Concept Of Maslahah: From A Textual Confinement Towards A Logic Determination" 17 (1): 74.

Maria Bicharova, Irena Lebedeva. 2013. "Childfree Communities and Traditional Families." 2013. https://dialnet.unirioja.es/servlet/articulo?codigo=6367585.

Morison, Tracy, Catriona Macleod, Ingrid Lynch, Magda Mijas, dan Seemanthini Tumkur Shivakumar. 2016. "Stigma Resistance in Online Childfree Communities: The Limitations of Choice Rhetoric." *Psychology of Women Quarterly* 40 (2): 184–98. https://doi.org/10.1177/0361684315603657.

Musdah Mulia,. 2020. *Ensiklopedia Muslimah Reformis (Tangerang Selatan: PT. Bentara Aksara Cahaya, 2020), h. 115*. Tangerang Selatan: PT. Bentara Aksara Cahaya,.

Musolli. 2018. "MAQASID SYARIAH: KAJIAN TEORITIS DAN APLIKATIF PADA ISU-ISU KONTEMPORER" 5 (1): 64.

Pasaribu, Muksana. 2014. "MASLAHAT DAN PERKEMBANGANNYA SEBAGAI DASAR PENETAPAN HUKUM ISLAM" 1 (04): 11.

Patnani, Miwa, Bagus Takwin, dan Winarini Wilman Mansoer. 2020. "The Lived Experience of Involuntary Childless in Indonesia: Phenomenological Analysis." *Journal of Educational, Health and Community*

Psychology 9 (2). https://doi.org/10.12928/jehcp.v9i2.15797.

Paul P. 2001. *Childless by Choice, American Demographics.*

Powell, Virginia Elizabeth. 2020. *Implicit Bias and Voluntarily Childfree Adults. (Abilene Christian University*. Abilene Christian University.

Somers, Marsha D. 1993. "A Comparison of Voluntarily Childfree Adults and Parents." *Journal of Marriage and the Family* 55 (3): 643. https://doi.org/10.2307/353345.

Vinson, Candice, Debra Mollen, dan Nathan Grant Smith. 2010. "Perceptions of Childfree Women: The Role of Perceivers' and Targets' Ethnicity." *Journal of Community & Applied Social Psychology* 20 (5): 426–32. https://doi.org/10.1002/casp.1049.

Wahbah az-Zuhaili,. 1986. *Ushul al-Fiqh al-Islami (Beirut: Dar al-Fikr, 1986), h. 1057*. Beirut: Dar al-Fikr.

Prevention Of Nusyuz Practices In Maintaining Family Resilience: Obedience In The Family Perspective Of Islamic Law

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Abstract*: The family as a miniature group in society requires in-depth study. This is because the more families are physically and psychologically healthy, the fewer problems there will be in the community. This paper aims to determine the extent of the relationship between the concept of obedience in the family as an effort to overcome the practice of nusyus in maintaining family resilience. In addition, this paper also aims to find out how Islamic law measures obedience in maintaining family resilience. The method used in this research is descriptive analytic. The results showed that a person's good obedience to his good partner can avoid family conflicts. This means that resilience in the family can be guaranteed. Meanwhile, Islamic law provides an explanation that Islam teaches to always obey your partner as long as it does not conflict with Islamic teachings*

Keyword: *Nusyuz, Family Resilience, Islamic Law*

Introduction

Marriage is a bond between a man and a woman as husband and wife based on applicable law, whether religion, state or custom. Marriage itself according to the marriage law is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family. The goal to be achieved by both people in a marriage partner must have harmony, namely the happy target.

Islam itself views marriage as a sacred bond that is strongly bound to achieve sainah, mawaddah and waramah. This can be achieved if both partners comply with the applicable regulations in family development and resilience. However, not all couples in marriage understand how important purpose in marriage is. If this happens, it is possible that the marriage can be damaged and end in divorce. In addition to this, there are other factors that cause a husband and wife relationship to fail in creating a happy family. One of them is nusyus which means disobedient behavior.

Disobedient behavior can come from the husband or from the wife. Islam as the last religion mentions a number of rules in responding to this behavior and provides solutions in overcoming it. This study will describe obedience in the Islamic family as social control along with the sub-topics that seek to answer the problem of Islamic law which in fact contains components of Islamic families in their obedience to the application of Islamic family law.

Discussion

1. The concept of obedience in Family law.

Complaint/adherence is always pointing to God, the Prophet, the government, etc. Obedience can also be interpreted not to cheat. The word "obedience" in Greek also implies hearing, keeping, contemplating and ready to carry out. Obedience does not mean passive surrender which only suffices to accept a set of dogmas or worship obligations, but active submission to Allah's commands, and active jihad in carrying out His will as specified in the Qur'an in space and time.

Law is all rules that contain moral considerations, are shown to human behavior in society, and which become guidelines for state authorities in carrying out their duties. When related to Islam, Islamic law can be interpreted as all religious regulations that have been determined by Allah SWT for Muslims, both those sourced from the Qur'an and the sunnah of the Prophet Muhammad in the form of words, deeds or taqrir.

Islamic Family Law is the law that regulates family life starting from the beginning of the formation of the family (proposal) until the end of the family, namely divorce or one of the deceased, which includes inheritance and waqf issues. The goal is to regulate the relationship between family members, both husband, wife and children.

The conclusion of obedience in the Islamic family law system is all forms of regulations that come from Allah and the Messenger of Allah which consist of

several elements or components that are interrelated with each other aimed at Muslims who will and are building family relationships in a household in order to create a healthy life. patterned and regular for the realization of the purpose of the marriage bond itself. These regulations are then processed and regulated by the government in order to create complete and unified regulations for all regions in Indonesia. The government itself has adjusted the rules that are in accordance with the culture of the Indonesian people so that they are fully adhered to and obeyed by the Islamic community which is formed from Islamic families.

Obedience to Islamic law is inseparable from an effort to obtain the ultimate truth or better known as philosophy. Sovereign obedience is closely related to the power or sovereignty of the ruler. The philosophy of law divides the rule of law into four theories of sovereignty. The four theories include:

a. God's Sovereignty

Religious ethics asserts that the relationship between humans and their God is the relationship between creation and creation. Humans basically do not have the slightest authority and authority over God. Humans as strong as possible to oppose God's power is just in vain, even a big loss, because in the end humans will still be submissive and obedient to God's laws that will turn them on and off. Humans cannot reject, oppose and let go of those laws, individually humans cannot refuse their birth, choose their gender, exit from the womb, place and

time of birth. Likewise with his death, humans will never be able to choose or know the right time and place to plan his death

Humans have a weak position, poor, can not reject or negate God. Allah sent revelation through His Prophets solely for the benefit of humans themselves, and is a form of Allah's love for humans, so that humans gain salvation and happiness. Human submission to always be obliged to obey and obey Allah's commands is reflected in the Qur'an which says:

ا خلقت الجن والانس الا ليعبدون

Humans who have the obligation to submit and obey God as the creator is the natural way for all of His creation, whether we like it or not, all creatures are obliged to submit and obey God's laws. This is an embodiment as described in the Qur'an:

والله يسجد من في السموات والارض طوعا وكرها وظلالهم بالغدو والاصال

The theory of God's sovereignty teaches that the State and government have the highest power from God. According to this theory, everything in the universe comes from God. The state and the government have power from God because the figures of the state have naturally been appointed as leaders of the state.

b. State Sovereignty

Humans live in various groups called family, family, neighbors, village and country. These diverse groups occur because of human nature itself. The Qur'an states that humans are made leaders in their own countries. Talking about the state means talking about the organization of power, so that the law is closely related to sovereignty. The state has a higher position than the law. The position of the theory of state sovereignty lies in the state itself. The state is seen as the source of all power. This means that the policies or actions of the State are not limited by law because the applicable law originates from the State and serves the power and interests of the State.

Adherents of this theory use a totalitarian principle or a dictatorial system in reality. State power is delegated to the head of state who is a dictator. The Head of State acts on behalf of the State which is absolute. The theory of state sovereignty is generally embraced by communist countries. With this theory, the ruler or government has absolute and unlimited power. The government is the executor of state power, the birth of laws and constitutions is what the state wants and needs. So the policies or actions of the State that apply come from the State, by the State and for the State. The state is a large community that contains various kinds of people. The people obey the state regulations not because of coercion from the state

power, but because they have legal awareness because the people are the source of state power. The state is not the holder of the highest sovereignty because the state must also be subject to the law. The rule of law theory animates the principles of the state and law.

c. Rule of Law

Legal theory means that the highest power in a country lies in the law. Law is domiciled above any power in the State. The government and other institutions in the state carry out legal provisions and carry out their functions according to law. The rule of law is the embodiment of the influence of legal power that must be respected by citizens and state institutions.

The theory of sovereignty is one of the interesting topics in legal science and legal theory. The rule of law is a theory or conceptual thought about the State and what it has to do with law. The government derives its sovereignty based on sovereign law. In understanding the rule of law there are two views, namely: natural law and political law.

Natural law is the basic moral law which is God's policy. For example, sovereignty comes from religious law or can be specified again regarding the minimum age limit for marriage in Indonesia which is based on a compilation of Islamic law which is the rule of Islamic law that has been adapted to

Indonesian culture. Positive law is a set of legal rules formulated by the State. In Indonesia, the task of formulating positive law is the DPR, MPR and the President. There are also special regulations. For example, government regulations, local governments, ministerial decisions, and so on.

d. Social Contract

Social contract theory assumes that the relationship between the king and the government is based on a contract whose terms are binding on both parties. The social contract stipulates that the government is given the power by the people to carry out order and create an atmosphere in which the people can enjoy their natural rights safely. On the other hand, the people will obey the government if the natural rights are guaranteed.

Social contract theory is an attempt to break down absolute government and establish the political rights of the people. The basic ideas of social contract theory are; First, the sovereignty of the state is not something that is taken for granted and comes from God. Sovereignty is a process of social agreement between individuals in society and certain rulers. So basically the social contract theory is a completely secular political theory. Second, the world is ruled by laws that contain universal principles of justice, meaning that they apply to all human beings. Third, the sovereignty of the state comes from the people, so the rights of individuals in society must be guaranteed. fourth, the need for control of power so that the state authorities do not abuse the authorities.

The core of the idea of social contract theory is that a person's sovereignty is determined by a mechanism in the form of a political agreement that is made consciously by both parties (political elites and the people). for example, elections are a form of political contract. In this theory, the people have full sovereignty, but have the right to channel their aspirations to other parties, either through general elections or people's representatives.

2. Indicators of Obedience to Islamic Law

The indicators of obedience in Islamic law are concrete indications of the level of awareness in Islamic law. With this indicator, someone who pays attention to legal awareness will be able to find out what is the real cause of someone's obedience to certain laws. The following are indicators that a person has the awareness to obey Islamic law:

a. Legal Knowledge

Someone who knows the law regarding certain behaviors that are regulated by both written and unwritten laws. Such knowledge relates to prohibited behavior or behavior permitted by law. As can be seen in society that generally someone knows that mut'ah marriage is prohibited by family law.

b. Legal Understanding

Legal understanding means someone who has knowledge and understanding of certain rules, especially in terms of their contents. Legal knowledge and legal understanding are two interrelated indicators. This is if someone can do something but he doesn't realize whether the behavior is in accordance with the rules or not, then this person has no legal understanding. On the other hand, there may be people who are aware that legal rules govern certain behavior, but they do not know the contents of the law or have little knowledge of its contents. Legal understanding can be obtained if the regulation can be accepted or has been understood by members of the community.

c. legal attitude

Legal attitude is the tendency to accept the law because of the appreciation of the law as something that is beneficial or beneficial if the law is obeyed. Community obedience more or less depends on the interests of the community in certain fields that can be accommodated by the provisions of the law.

Obedience is very much dependent on persuasive efforts to institutionalize certain legal provisions in society. Efforts to increase the degree of obedience are usually carried out by allowing community members to understand the legal provisions they face. This will provide an opportunity to be able to apply the substance of the

law and bad behavior is a violation of the provisions of the law. The following are some of the types of road violations that occur to a person:

- Discovery by chance, meaning that the violation occurred without any planning.
- Trial and error method. This method is based more on the attitude of chance.
- By using critical thinking or based on experience.
- Through scientific research. Scientific research is carried out by humans to channel it to reach a scientific level accompanied by a belief that every symptom can be studied and the causes are sought.

d. legal behavior

Legal behavior means that a person behaves in accordance with the law. This indicator is an indication of a high level of awareness. The high and low level of legal awareness can be seen from the degree of legal compliance that is manifested in real patterns of human behavior. If a law is obeyed, then it is an important indication that the law is effective in achieving its objectives. The basics of legal compliance in legal behavior are:

- Indoctrination is the giving of teachings in depth without criticism or galvanizing a certain teaching or doctrine with a truth from a certain direction. indoctrination is the first reason why

people as perpetrators of Islamic law obey the established rules.

- Habituation is the habit of obeying the applicable rules. If something is used to be done every day, over time it becomes a habit that has the nerves to obey it, especially if the human has started to repeat his actions in the same form and way.
- Utility, basically humans have a tendency to live properly and regularly. However, what is appropriate and orderly for one person is not necessarily appropriate and orderly for another. So we need a benchmark about the appropriateness and regularity. The benchmark is a guideline or measure of behavior and is called a rule.
- Group Identification; One of the reasons why someone obeys the rules is because obedience is a means of identifying with the group. Someone who obeys the rules that apply in his group does not mean that his group is more dominant than other groups, but because he wants to identify with his own group. Sometimes someone even obeys the rules of another group because he wants to make identification with the other group.

From the four indicators above, it shows the level of legal awareness in its realization. If someone only knows the law, it can be said that the level of legal awareness is still low. But if someone has behaved in accordance with the law then his legal awareness is high.

3. The Practice of Nusyuz in the Family

According to the nusyuz language, it is masdar or the infinitive of the word, , which means land that is lifted high up. Artisomething that stands out in, or from somewhere. And if the context is related to the husband-wife relationship then he interprets it as the attitude of the wife who is disobedient, against and hates her husband.

Terminologically, nusyuz has several meanings as stated by Saleh bin Ganim al-Saldani (2004: 25-26), of which according to the Hanafiyah fuqaha define it with the displeasure that occurs between husband and wife. Malikiyah scholars are of the opinion that nusyuz is to persecute husband and wife. Meanwhile, according to the Syafi'iyah scholars, nusyuz is a dispute between husband and wife. Meanwhile, Hanabilah scholars define it as displeasure on the part of the wife or husband accompanied by disharmony.

From the above understanding, it turns out that the mazhab scholars have views that are not much different from one another. Nusyuz is defined as an act or condition that occurs when there is a conflict between husband and wife in domestic life. While the difference is in the assessment of an act that has or has not included nusyuz.

According to Ibn Manzur (tt, III: 637), in terminology nusyuz is a husband's hatred of his wife or vice versa. Meanwhile, according to Wahbah Az-Zuhaili (1997: 1354), professor of fiqh and ushul fiqh at the University of Damascus, defines nusyuz as disobedience or hatred of a husband to his wife against what should be obeyed, and vice versa.

A wife who performs nusyuz in the Compilation of Islamic Law is defined as an attitude when the wife does not want to carry out her obligations, namely the main obligation to be physically and mentally devoted to her husband. Another obligation is to organize and manage daily household needs as well as possible (Compilation of Islamic Law, 2000: 26).

From the several definitions of nusyuz that have been stated above, it can be concluded that nusyuz is a contradiction, displeasure, resistance, disobedience, disobedience and hatred committed by the wife against her husband or vice versa in domestic life. Below are some descriptions that indicate a wife is nusyuz:

1) The husband has provided a residence that is in accordance with the husband's condition, suddenly the wife does not want to move to the house, or the wife leaves the house without the husband's permission. If both husbands live in the wife's house with the wife's permission, then a period of time the wife expels or forbids the husband from entering the house. If the traveler's wife is not with her husband or with her muhram (a person who is forbidden to marry him) even though it is an

obligatory trip such as going to perform the pilgrimage, because the woman who travels without being accompanied by her husband or muhrim is considered to have done one wrong thing (immorality). If the wife has a sour face or she looks away, speaks harshly and so on, while the husband is gentle, has a sweet face and so on.

Conclusion

Nusyuz is an action that can be done by both husband and wife. These actions affect family life and resilience. This requires attitudes and other actions as an effort to overcome the practice of nusyuz in the family. As for these attitudes and actions regarding the obedience shown by their partners. Of course in this case what is needed is obedience to a partner who has good character. obedience needs to be built from within. The building of obedience to the spouse is a symbol of obedience to Islamic law. Islamic law itself teaches to instill the values of obedience to always maintain the values and norms in the family so that strong family resilience is achieved against all problems.

Refrensi

Aa Nurdiaman, *Pendidikan Kewarganegaraan kecakapan Berbangsa dan Bernegara* (Bandung: Pribumi Mekar, 2007).

Abdul Qadir Djailani, Keluarga Sakinah, (Surabaya: Bina Ilmu, 1995).

Ahmad Suhelmi, *Pemikiran teori Barat*; *Kajian Sejarah Perkembangan Pemikiran Negara, Masyarakat dan Kekuasaan* (Jakarta: Gramedia Pustaka Utama, 2001).

Dimas, *Teori Negara Menurut Qur'an*, http://dhymas.wordpress.com/teori-negara-menurut-quran/ diakses pada tanggal 9 Juni 2014.

Djuaini, Konflik Nusyuz dalam Relasi Suami-istri dan Resolusinya Perspektif Hukum Islam, Jurnal Istinbat: Jurnal Hukum Islam, Vol 15, Nomor 2 Tahun 2016.

Emran Nusyuz Isteri dan Suami dalam Al-Qur'an (Sebuah Pendekaan Tematis), Jurnal Marwah: Perempuan, Agama dan Jender, Vol.9 Nomor 1 Tahun 2010.

Fakhrisya Zalili Sailan, *Hubungan Hukum, Negara, dan Kekuasaan,* http://zalilifakhrisya.blogspot.com/2013/11/hubungan-hukum-kekuasaan-dan-negara.html diakses pada tanggal 9 Juni 2014.

GBI, *Arti Penting Ketaatan dalam sebuah hubungan pria dan wanita*. http://www.gbitanjungduren.com/renungan/detail.php?id=105 diakses pada tanggal 9 Juni 2014.

Kelzen, *Teori Kedaulatan Hukum*, diposting pada tanggal 26 Oktober 2013 http://kelzen.wordpress.com/2013/10/26/teori-kedaulatan-hukum/ diakses pada tanggal 9 Juni 2014.

Mariyah, "*Kesadaran Hukum Masyarakat Terhadap Hukum Waris Islam (Studi di Kelurahan Kapuk Cengkareng Jakarta Barat),"* Skripsi tidak diterbitkan, Kons. Peradilan Agama Progam Studi Al-AhwalAsy-Syakhsiyyah Fak. Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah, hlm. 20

Mikratul Aswad, Tindakan Suami Ketika Isteri (Durhaka) Nusyuz. *bengkulu.kemenag.go.id/file/file/Dokumen/dskn1361383804.pdf*

Miriam Budiardjo, *Dasar-dasar IIlmu Politik,* cet. Ke-2, (Jakarta: Gramedia Pustaka Utama, 2008).

Musa Asy'ari, *Filsafat Islam; Sunnah Nabi dalam Berpikir* (Yogyakarta: LESFI, 2002).

Olaf Herbet Schumann, *Agama Dalam Dialog; Pencerahan, Perdamaian dan Masa Depan,* cet. Ke-3, (Jakarta: Gunung Mulia, 2003).

Otje Salman, *Kesadaran Hukum Masyarakat Terhadap Hukum Waris*, Cet. Ke-3, (Bandung: Alumni, 1993).

Simanjuntak, *Pendidikan Kewarganegaraan* (Jakarta: Grasindo, 2007).

Rofiq, *Pengantar Hukum Islam,* diposkan pada tanggal 22 Maret 2010 http://abdian-suka.blogspot.com/2010/03/pengantar-hukum-keluarga-islam.html diakses pada tanggal 9 Juni 2014.

Simanjuntak, *Pendidikan Kewarganegaraan* (Jakarta: Grasindo, 2007).

Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo Persada, 1994).

Zainuddin Ali, *Sosiologi Hukum* (Jakarta: Sinar Grafika, 2006).

Peran Komnas PA Terhadap Hak Atas Rasa Aman Dalam Lingkup Keluarga

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ABSTRAK: *Penelitian ini dilator belakangi oleh kasus kekerasan pada anak di Indonesia yang mengalami peningkatan secara signifikan selama lima tahun terakhir. Sejatinya, perlindungan hakatas rasa aman terhadap anak telah di atur dalam undang-undang no 35 tahun 2014 tentang perlindungan anak, kendala,serta upaya mengatasinya. Maksud dari penelitian ini bertujuan untuk mengetahui peran Komnas PA dalam mewujudkan pemenuhan hak atas rasa aman terhadap anak. Metode penelitian yang digunakan yaitu jenis penelitian hukum yuridis normative dengan menggunakan pendekatan peraturan perundang-undangan dan pendekatan kasus. Bahan hukum yang digunakan dalam penelitian ini adalah bahan hukum primer yaitu bahan hukum mengikat, yang terdiri dari peraturan perundang-undangan serta bahan hukum sekunder yang memberikan penjelasan mengenai bahan hukum primer, seperti hasil-hasil penelitian dan hasil karya tulis dari kalangan hukum. Peran Komnas PA berdasarkanUndang-Undang no 35 tahun 2014 pasal 76 diantaranya yaitu melakukan pengawasan terhadap pelaksanaan perlindungan dan pemenuhan Hak Anak; serta*

menerima dan melakukan penelaahan atas pengaduan Masyarakat mengenai pelanggaran Hak Anak. Pemenuhan hakatas rasa aman yang diperlukan oleh anak adalah perlindungan secara fisik dan psikologis yang sering di abaikan dalam lingkup keluarga. Pencegahan dapat dilakukan dengan memberikan sosialisasi kepada orang tuasehingga di harapkan mampu mendidik anak tanpa adanya tindakan kekerasan. Berdasarkan hasil penelitian maka direkomendasikan agar membuat asosiasi perlindungan anak dibawah naungan Komnas PA sehingga dapat menjadi cerminan bagi masyarakat.

Kata kunci: Komnas PA, hakatas rasa aman, keluarga.

Pendahuluan

Tindak kekerasan terhadap anak bukan lagi hal yang baru di Indonesia. Kenyataan pahit akan terus di lalui oleh banyak anak-anak terlantar yang tidak memiliki orang tua, tidak memiliki tujuan hidup bahkan tempat berteduh juga tidak punya. Di luar sana sangat banyak bahkan sampai tak terhitung anak-anak yang membutuhkan kasih sayang dari orang-orang yang bisa di anggap seperti orang tau mereka sendiri. Sebagai anak kecil yang masih lugu mereka sangat mengiginkan hidup enak, mengisi hari-harinya dengan bermain, belajar, dan makan. Mereka juga membutuhkan kasih saying dari orang-orang yang dapat menyalurkan bantuan untuk mereka agar hidupnya dapat terpenuhi secara baik. Sampai saat ini kekerasan anak di Indonesia tak ada hentinya, jumlah kasus kekerasan pada anak mengalami peningkatan secara signifikan selama 5 tahun terakhir .

Menurut KPAI (komisi perlindungan anak Indonesia) yang rata-rata setiap harinya terjadi 15 kasus kekerasan. Pelaku kekerasan ini sebagian besar di lakukan oleh orang terdekat korban atau lingkungannya. Kurang lebih 70% pelaku kekerasan terhadap anak adalah orang tua mereka sendiri, saudara, guru,ataupun teman sekolah. Dengan data fakta ini KPAI berupaya melakukan program-program edukasi kepada para orang tua agar dapat mencegah tindak kekerasan terhadap anak dengan melakukan hearing dan konsultasi kepada anak dan orang tua.

Dengan semakin melonjaknya kasus tersebut komnas PA memiliki cara untuk melindungi anak yaitu sebaiknya orang tua tidak melakukan kekerasan dalam mendidik seorang anak, tapi di sisi lain Ketika orang tua menuntut si anak untuk menjadi sukses perlu memperhatikan bakat dan minat anak, sehingga anak tidak mendapat tekanan mental.

Metode penelitian

Metode penelitian yang digunakan yaitu penelitian yuridis normative dengan menggunakan pendekatan peraturan perundang-undangan dan pendekatan kasus. Penilitian yuridis normative yaitu penelitian yang difokuskan untuk mengkaji penerapan kaidah-kaidah atau norma-norma hukum positif. Penelitian yuridis normative merupakan Metode penelitian yang dilakukan dengan cara meneliti bahan pustaka atau bahan skunder. Yuridis normative merupakan pendekatan yang menggunakan konsep legis positivis. Konsep yang memandang hukum identik dengan norma-norma tertulis yang dibuat dan di

undang-undangkan oleh lembaga atau pejabat yang berwenang, konsep ini memandang hukum yang bersifat mandiri, tertutup dan terlepas dari pada kehidupan nyata.

Metode analisis data dilakukan dengan menghimpun data melalui penelaan bahan hukum primer dan bahan hukum skunder. Bahan hukum primer adalah bahan hukum yang mempunyai otoritas (autoritatif). Selain peraturan perundang-undangan yang mempunyai otoritas, putusan hakim merupakan konkretisasi dari peraturan perundang-undangan, bahkan putusan hakim inilah yang biasa disebut law in action. Bahan hukum skunder adalah semua publikasi tentang hukum yang merupakan dokumen tidak resmi. Publish tersebut merupakan petunjuk atau penjelasan mengenai bahan hukum primer atau bahan hukum skunder yang berasal dari kampus, ensikopledia, jurnal, surat kabar dan sebagainya.

Bahan hukum primer terdapat pada pasal 28G Ayat (1) Undang-undang Dasar Negara RI pada tahun 1945 menyatakan bahwa; “setiap orang berhak atas perlindungan diri pribadi, keluarga, kehormatan, martabat, dan harta benda yang dibawah kekuasaannya, serta berhak atas rasa aman dan perlindungan dari ancaman kekuatan untuk berbuat atau tidak berbuat sesuatu yang merupakan hak asasi”. Undang-undang No 35 tahun 2014 pasal 74 ayat (1) bahwa “Dalam rangka meningkatkan efektivitas pengawasan penyelenggaraan pemenuhan Hak Anak, dengan ini dibentuk komisi perlindungan anak Indonesia yang bersifat Independen”, ayat (2) bahawa ;”Dalam hal diperlukan, Pemerintah Daerah dapat membentuk Komisi Perlindungan Anak Daerah atau lembaga lainnya yang

sejenis untuk mendukung pengawasan penyelenggaraan perlindungan Anak di Daerah. Undang-undang No 35 tahun 2014 pasal 76 mengenai tugas dan kewajiban Komnas PA.

Dari Riset, kasus kekerasan anak mengalami peningkatan per bulan juni tahun 2021 terdapat 5.463 kasus, usia 0-5 tahun; 665 kasus, usia 6-12 tahun ; 1.676 kasus, usia dan 13-17 tahun ; 3.122 kasus. Dan sampai Bulan September tahun 2021 totalnya berjumlah 9.428 kasus. Peningkatan kasus kekerasan pada anak dari tahun 2020 ke tahun 2021, merupakan bahan hukum skunder.

Adapun batas penelitian ini adalah Perlindungan dan permenuhan Hak Atas Rasa Aman kepada anak dalam lingkup keluarga yang sering di abaikan. Tanpa sadar ketika mendidik anak orang tua kerap terbawa emosi sehinnga menimbulkan pemukulan, kekerasan, dan penekanan yang mengkaibatkan terjadinya tekanan batin berujung gangguan pada psikis anak.

Pembahasan

Komisi Nasional Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak Atas Rasa Aman Dalam Lingkup Keluarga.

Dijabarkan Dalam Pasal 1 ayat 1 Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak yang berbunyi : “Anak adalah seseorang yang belum berusia 18 (delapan belas) tahun, termasuk anak yang masih dalam kandungan.”[1] dan perlindungan anak dalam pasal 2 yaitu

[1] Pasal 1 ayat (1) Undang-Undang Nomor 35 Tahun 2014

berbunyi " Perlindungan Anak adalah segala kegiatan untuk menjamin dan melindungi Anak dan hak-haknya agar dapat hidup, tumbuh, berkembang, dan berpartisipasi secara optimal sesuai dengan harkat dan martabat kemanusiaan, serta mendapat perlindungan dari kekerasan dan diskriminasi.

Pengertian Hak rasa aman yang didasarkan dalam Undang-Undang Nomor 39 tahun 1999 tentang hak asasi disebutkan dalam 10 jenis hak, diantaranya: Hak mencari suaka politik untuk tujuan memperoleh perlindungan politik dari Negara lain, Hak atas perlindungan diri sendiri/pribadi, keluarga, kehormatan, martabat dan hak miliknya, Hak atas pengakuan di depan muka hukum sebagai seorang individu pribadi dimana saja seorang itu berada.

Sejatinya implementasi pemehuhan hak atas rasa aman ini penting untuk dijamin perlindungan,penegakkan, dan pemenuhannya karena sejatinya hak atas rasa aman nanti pastinya sangat diperlukan oleh semua warga negara dan setiap orang berhak atas rasa aman ini. Orangtua tentunya telah memiliki kewajiban untuk melindungi anaknya sejak dalam kandungan. Dalam hal ini tentunya nanti perlu ditekankan bahwa sejatinya tidak diperkenankan melakukan kekerasan pada anak bahkan dalam lingkungan keluarga sekalipun.Lembaga Komisi Nasional Perlindungan Anak atau biasa disingkat Komnas PA adalah organisasi atau lembaga di Indonesia yang memiliki tugas inti mencegah berbagai kemungkinan pelanggaran pemenuhan hak Anak yang dilakukan oleh Negara,Pemerintah, Perorangan, atau Badan usaha.Komnas PA itu sendiri didirikan pada tanggal 26 Oktober 1998 di Jakarta.

Konsep Keluarga Menurut Hildred Geertz (1985) menjabarkan bahwa secara universal keluarga merupakan penghubung antara individu dan budayanya, nilai-nilai kemasyarakatan umum tertentu yang tersebar menafsirkan pembenaran dan makna bagi lembaga kekeluargaan dan berlaku juga sebagai petunjuk normative untuk tenggang menenggang di antara para anggota keluarga setiap hari juga di lingkungan sosial sekitarnya. Jadi secara umumnya atau universal menurut Geertz bahwa keluarga merupakan miniatur suatu masyarakat, karena semua normanorma, maupun aturan dalam bertingkah laku serta nilai-nilai dalam keluarga tersebut dapatditerapkan dalam masyarakat secarau umum**.**

Lingkungan Keluarga bagi anak seharusnya menjadi tempat paling nyaman untuk memproleh kesejahteraan dan keamana dari kekerasan. Namun nyatanya keluarga juga bisa menjadi sumber bahaya untuk anak karena mendapatkan perilaku yang tak seharusnya didapat.Rasa aman sejatinya merupakan kebutuhan dasar semua manusia dan hanya didapatkan melalui sebuah hubungan yang penuh akan kehangatan dan dilandasi rasa kepercayaan yang tinggi. Jika hal ini didapatkan maka akan membuat seseorang/individu merasakan bahwa dirinya dicintai, disayangi,dikasihi, dan dihargai.Kekerasan baik fisik maupun verbal memang efektif untuk membuat anak menjadi patuh untuk bertingkah laku sesuai dengan apa yang diharapkan oleh kedua orangtua. Namun apakah itu baik?. Pada hakikatnya anak tidak dapat melindungi diri sendiri dari berbagai macam tindakan yang menimbulkan kerugian mental, fisik, social dalam berbagai bidang kehidupan dan penghidupan. Anak harus dibantu oleh orang

lain dalam melindungi dirinya, mengingat situasi dan kondisinya.Anak perlu mendapat perlindungan agar tidak mengalami kerugian, baikmental, fisik maupun sosial.[2]

Dalam diri anak mungkin bisa saja menjadi taat, namun ketaatan yang muncul bukan karena anak tersebut ingin taat tetapi ia didasari atas rasa takut, bukan karena ia memahami akan hal yang ia harus taati tersebut. Kepatuhan ini pun hanya bersifat fana atau mungkin hanya akan taat didepan orang yang ditakuti .Orang tua cenderung merasa bahwa cara kekerasan adalah efektif tanpa difikir dan disadari bahwa hal tersebut membuat dampak negatif jangka panjang baik bagi anak maupun hubungannya dengan orangtua.

Jangan biarkan karena kurangnya keamanan dan kepercayaan di dalam keluarga mendorong anak ke tempat yang salah. Oleh karena itu, ciptakan hubungan yang penuh dengan kehangatan.Cintai anak dengan sering memberinya pelukan, suara manis,dan perhatian pada kebutuhannya.

Upaya yang harus dilakukan Komnas PA dalam memberikan perlindungan padaak harus dilakukan sejak dini dan para orang tua dan masyarakat harus ikut andil dalam melindungi hak atas rasa aman pada anak. Bertitik tolak padakonsep perlindungan anak yang utuh, menyeluruh, dan konferehensif, maka Undang-undang tersebut meletakkan kewajiban memberikan perlindungan kepada anak berdasarkan asas asas Non dikriminasi, asas

[2] Maidin Gultom, *Perlindungan Hukum terhadap Anak dan Perempuan,* (Bandung: Rafika Aditama, 2012), 68-69

kepentingan yang terbaik untuk anak, asas hak untuk hidup, kelangsungan hidup, dan perkembangan, serta asas penghargaan terhadap pandangan/pendapat anak. Perlindungan anak dapat dibedakan dalam 2 (dua) bagian yaitu:

- Perlindungan anak yang bersifat yuridis, yang meliputi: perlindungan dalambidang hukum publik dan dalam bidang hukum keperdataan.
- Perlindungan anak yang bersifat non yuridis, meliputi: perlindungan dalam bidang sosial, bidang kesehatan, bidang pendidikan

Pendapat Ahmad Kamil Perlindungan Anak merupakan pertanggung jawaban orang tua, keluarga, masyarakat, pemerintah dan negara yang merupakan rangkaian kegiatan yang dilaksanakan secara terus menerus demi terlindunginya hak-hak anak.[3] Pengawasan ekstra terhadap anak baik secara pribadi maupun sebagai bagian darimasyarakat, perlu dilakukan. Hal tersebut ditujukan untuk melindungi hak hak anak serta mencegah masuknya pengaruh eksternal yang negatif yang dapat mengganggu tumbuh kembang anak.[4]Perlindungan anak dalam pengertian Pasal 1 angka 2 UU Perlindungan Anak dapat dilaksanakan apabila mendapat dukungan dari berbagai pihak dan bertanggung jawab. Dukungan yang

[3]Ahmad Kamil dan Fauzan.*Hukum Perlindungan dan Pengangkatan Anak di Indonesia*. PTRajaGrafindo Persada. Jakarta 2008. Hal. 5

[4] Hardjon, *Perlindungan Hukum Terhadap Anak*, Eresco, Jakarta, 2007, hal.5

diperlukanuntuk mewujudkan perlindungan hak anak di Indonesia diatur dalam pasal 20 UUPA,yangmenyatakan bahwa negara, pemerintah, pemerintah daerah, masyarakat, keluarga dan orang tua atau wali berkewajiban menyelenggarakan membuat asosiasi perlindungan anak yang mampu bertanggung jawab.

Penerapan Peraturan Perundang –Undangan dalam Mewujudkan Hak Atas Rasa Aman

Undang Perlindungan Anak menetapkan bahwa tujuan perlindungan anak adalah untuk menjamin penghormatan terhadap hak-hak anak agar dapat hidup, tumbuh, berkembang dan berpartisipasi secara optimal dengan tetap menghormati harkat dan martabat manusia serta mendapat perlindungan dari kekerasan dan diskriminasi demi terciptanya pendidikan yang berkualitas, berakhlak mulia. dan anak-anak Indonesia yang sejahtera. Hukum hak asasi manusia diatur oleh ketentuan pasal 52 sampai dengan pasal 66. Undang-undang hak asasi manusia tidak memuat ketentuan rinci tentang kewajiban anak. Ketentuan yang berkaitan dengan kewajiban yang terkandung dalam Undang-undang merupakan kewajiban dasar manusia secara keseluruhan. UU Perlindungan Anak mengatur tentang hak dan kewajiban anak. Hak-hak anak diatur dalam ketentuan Pasal 4 sampai dengan 18. Hak-hak anak yang tercantum dalam Undang-Undang Perlindungan Anak antara lain meliputi hak-hak anak.

- untuk dapat hidup, tumbuh, berkembang dan berpartisipasi secara wajar sesuaidengan harkat dan martabat kemanusiaan serta mendapat perlindungan darikekerasan dan diskriminasi

- atas suatu nama sebagai identitas dan status kewarganegaraan
- untuk beribadah menurut agamanya, berpikir dan berkreasi sesuai dengan tingkatkecerdasan dan usianya dalam bimbingan orang tua
- untuk mengetahui orang tuanya, dibesarkan dan diasuh oleh orang tuanya sendiri;
- memperoleh pelayanan kesehatan dan jaminan sosial sesuai dengan kebutuhanfisik, mental, spiritual dan social
- memperoleh pendidikan dan pengajaran dalam rangka pengembangan pribadinyadan tingkat kecerdasannya sesuai dengan minat dan bakatnya
- memperoleh pendidikan luar biasa, rehabilitasi, bantuan sosial dan pemeliharaantaraf kesejahteraan sosial bagi anak yang menyandang cacat
- memperoleh pendidikan khusus bagi anak yang memiliki keunggulan
- menyatakan dan didengar pendapatnya, menerima, mencari dan memberikaninformasi sesuai dengan tingkat kecerdasan dan usianya demi pengembangan dirinya sesuai dengan nilai-nilai kesusilaan dan kepatutan.
- untuk beristirahat dan memanfaatkan waktu luang, bergaul dengan anak yangsebaya, bermain, berekreasi dan berkreasi sesuai dengan minat, bakat dan tingkatkecerdasannya demi pengembangan diri

- mendapat perlindungan dari perlakuan diskriminasi, eksploitasi (baik ekonomimaupun seksual), penelantaran, kekejaman, kekerasan, penganiayaan, ketidakadilan serta perlakuan salah lainnya
- untuk diasuh oleh orang tuanya sendiri kecuali jika ada alasan dan/atau aturanhukum yang sah menunjukkan bahwa pemisahan itu adalah demi kepentinganterbaik bagi anak dan merupakan pertimbangan terakhir.
- memperoleh perlindungan dari sasaran penganiayaan, penyiksaan ataupenjatuhan hukuman yang tidak manusiawi
- memperoleh kebebasan sesuai dengan hukum
- mendapatkan perlakuan secara manusiawi dan penempatan yang dipisahkan dariorang dewasa, memperoleh bantuan hukum atau bantuan lainnya secara efektifdalam setiap tahapan upaya hukum yang berlaku, serta membela diri danmemperoleh keadilan di depan Pengadilan Anak yang objektif dan tidakmemihak dalam sidang tertutup untuk umum, bagi setiap anak yang dirampaskebebasannya
- untuk dirahasiakan, bagi setiap anak yang menjadi korban atau pelaku kekerasanseksual atau yang berhadapan dengan hukum; dan
- mendapatkan bantuan hukum dan bantuan lainnya, bagi setiap anak yang menjadikorban atau pelaku tindak pidana.
- Pasal-pasal yang memuat ketentuan mengenai hak anak dalam Undang-Undangtentang Perlindungan Anak mempunyai banyak kesamaan dengan ketentuan hakanak dalam Undang-Undang tentang Hak Asasi Manusia.
- Undang-Undang tentang Perlindungan Anak juga mengatur mengenai kewajibanyang harus dilakukan oleh setiap anak

Melihat masih banyak kasus Indonesia yang menjadikan anak sebagai korban,ini maknanya pemenuhan hak dalam peraturan perundang-undangan tidak sepenuhnya terlaksana. Artinya Keberadaan UU Perlindungan Anak tidak dibarengi dengan pelaksanaan perlindungan anak. Perlindungan hukum yang diatur dalam bentuk peraturan perundang-undangan dan penerapannya harus menjamin penghormatan terhadaphak-hak anak agar dapat hidup, tumbuh, berkembang, dan berpartisipasi secara optimal dengan tetap menghormati harkat dan martabat manusia.[5]

Berikut Data Kasus pada Anak berdasarkan sumber dari KPAI :

Tahun	Jumlah kasus (Terlapor)	Korban
2017	2.727 kasus	+- 2.730
2018	4.885 kasus	4.891 korban
2019	11.057 kasus	12.285 korban

[5] Rahmad, Riadi Asra, and Nadia Maharani. "Kebijakan Reformulasi Penjatuhan Sanksi Kebiri." (2020).

2020	11.278 kasus	12.425 korban
2021 (Januari-September)	9.428 kasus	-+ 9.584 korban

Dari data diatas dapat disimpulkan bahwa Kasus kekerasan yang terjadi pada anak itu meningkat signifikan selama 5 tahun terakhir. Namun pada 2021 kasus kekerasan pada anak sudah sedikit berkurang.ini artinya Implementasi penerapan peraturan perundang undangan pemenuhan hak anak harus direalisasikan seluruh masyarakat Indonesia sepenuhnya khususnya dari kalangan orang tua harus mampu mendidik secara baik.

Kewajiban dan tanggung jawab Negara dan Pemerintah dalam usaha perlindungan anak diatur dalam Undang-Undang Perlindungan Anak yaitu:

a) Menghormati dan menjamin hak asasi setiap anak tanpa membedakan suku, agama, ras, golongan, jenis kelamin, etnik, budaya, dan bahasa, status hukum anak, urutan kelahiran anak dan kondisi secara fisik atau mental (Pasal 21)

b) Memberikan dukungan sarana dan prasarana dalam penyelenggaraan perlindungan anak (Pasal 22)

c) Menjamin perlindungan, pemeliharaan, dan kesejahteraan anak dengan memperhatikan hak dan kewajiban orang tua, wali, atau orang lain yang secara umum bertanggung jawab terhadap anak dan mengawasi penyelenggaraan perlindungan anak (Pasal 23)

d) menjamin anak untuk mempergunakan haknya dalam menyampaikan pendapat sesuai dengan usia dan tingkat kecerdasan anak (Pasal 24)

e) Kewajiban dan tanggung jawab masyarakat terhadap perlindungan anak dilaksanakan melalui kegiatan peran serta masyarakat dalam penyelenggaraan perlindungan anak tertuang dalam Pasal 25 Undang-Undang Perlingan Anak.

Mengenai produk hukum, pelaksanaan perlindungan hukum atau jaminan hak anak di Indonesia sudah cukup memadai, hal ini ditunjukkan dengan adanya beberapa peraturan perundang-undangan yang mengatur tentang anak dan mereka juga telah meratifikasi Konvensi Hak Anak.Regulasi perlindungan harus berkesinambungan dan ditujukanuntuk menjamin pertumbuhan dan perkembangan anak secara fisik, mental, spiritual dan sosial

Keluarga sebagai penggerak dalam menurunkan angka kasus kekerasan pada anak

Pada konteks kekinian, terjadinya kekerasan terhadap anak dalam keluargasebagai pangkal penyebabnya adalah rapuhnya tatanan keluarga. Karakteristik tatanan keluarga yang rapuh di antaranya adalah ketidakmampuan orangtua dalam mendidik anak dengan sebaik-baiknya, yaitu tidak adanya perhatian, kelembutan dan kasih sayang dari orang tua terhadap anak. Ruang keluarga yang dihiasi oleh susunan pertengkaran, perselisihan dan permusuhan adalah sumber terjadinya kekerasan fisik dan yang paling terkena sasaran kekerasannya adalah anak.

Ambisi orang tua yang menginginkan anak nya menjadi yang tebaik dari segala bidang atau pun bidang tertentu memberikan tekanan kuat pada anak yang dapat mengakibatkan depresi. Tekanan yang berjalan dari harai ke hari hingga bertahun-tahun menyimpulkan trauma prikis dan dendam dalam hati. Puncaknya tekanan mental yang kadang di anggap sepele bagi sebagian kalangan atau orang tua mengakibatkan anak dapat membrontak.

Sejatinya kita menyadari bahwa keluarga atau rumah tangga adalah fondasi primer bagi perkembangan, kepribadian dan tingkah laku anak. Sikap keluarga (orangtua) dalam membentuk watak anak sangat tergantung pada subjek-subjek dalam keluarga tersebut. Orang tua, sebagai subjek terpenting dalam keluarga semestinya dapat mendidik anak dengan penuh kasih sayang dan kelembutan. Pola pendidikan yang yang diselimuti kasih sayang dan kelembutan ini akan menjadi kunci tercapainya derajat kualitas anak dikemudian hari.

Keluarga yang merupakan orang terdekat perlu membentuk hubungan kepercayaan sehingga bisa menjadi tempat bersandar untuk menceritakan kejadian yang dialami seorang anak. Ancaman dan rasa takut yang di alami anak membuat ia tidak berani untuk mengungkapkan apa yang telah terjadi, sehingga kebanyakan anak akan menyimpan rahasia dari orang tua. Sikap bijaksana perlu di tumbuhkan orang tua kepada anak sejak kecil, sehingga ia dapat menghadapi masalah-masalah dengan bijaksana dan dapat meminta bantuan orang lain jika tidak mampu menangani sendiri.

Dalam hal ini, Syekh Jamaluddin Mahfuzh dalam (Abu :2018,) Mengungkapkan manfaat yang bisa didapat dengan cara mendidik anak seperti itu :

a) Dapat menghilangkan hambatan-hambatan dan mendekatkan jarak, pemisah antara ayah dengan anak. Dengan demikian, anak merasa tidak menentukan kesulitan apa pun untuk bermusyawarah dengan ayah tentang masalah dan kehidupan yang ia hadapi.

b) Dapat melahirkan kesiapan mental anak untuk menerima nasihat dan pengarahan

c) Dapat mengungkap kemampuan anak yang sebenarnya dan tingkat kematangan serta mentalnya. Dengan demikian, ia bisa membatasi pengarahan atau beban secara proporsional, tanpa menambahi atau menguranginya.

Penutup

Kesimpulan

Peran orangtua sangatlah penting bagi perkembangan anak. Seringkali kasus yang terjadi sudah diketahui, namun dianggap biasa dan cenderung ada pembiaran. akan tetapi KOMNAS PA menjadi mediator dalam menyelsaikan kasus hilangnya hak-hak yang ada melekat pada seorang anak. Yang ditangani oleh KOMNAS PA itu sendiri ketika hak-hak anak ini tidak terpenuhi secara utuh.

Upaya yang harus dilakukan Komnas PA dalam memberikan perlindungan padaak harus dilakukan sejak dini dan para orang tua dan masyarakat harus ikut andil

dalam melindungi hak atas rasa aman pada anak. Bertitik tolak padakonsep perlindungan anak yang utuh, menyeluruh, dan komferehensif, maka Undangundang tersebut meletakkan kewajiban memberikan perlindungan kepada anak berdasarkan asas asas Non dikriminasi, asas kepentingan yang terbaik untuk anak, asas hak untuk hidup, kelangsungan hidup, dan perkembangan, serta asas penghargaan terhadap pandangan/pendapat anak. Perlindungan

Saran

Kepada masyarakat diharapkan meningkatkan kesadaran akan pentingnya perlindungan anak, memahami peraturan perundang-undangan berkaitan dengan Perlindungan Anak, dan peduli terhadap pelanggaran dan upaya pemenuhan hak anak jika terjadi pelanggaran terhadap Perlindungan Anak dapat segera melaporkan kepada lembaga peduli Perlindungan Anak atau aparat pemerintah.

Membentuk asosiasi Untuk mendidik orang tua bagaimana cara mendidik anak dengan baik tanpa melakukan kekerasan secara mental maupun fisik

Daftar Pustaka

Hardjon.2007.*Perlindungan Hukum Terhadap Anak.*Jakarta:Eresco.

Ahmad Kamil dan Fauzan.2008.*Hukum Perlindungan dan Pengangkatan Anak di Indonesia.* Jakarta :PT Raja Grafindo Persada.

Wadang,Maulana Hasan.2000. *Advokasi dan Hukum Perlindungan Anak,* Jakarta *:* Gramedia Widiasarana.

P.R. Gharini, Putrika. 2014. Kekerasan Pada Anak: Efek Psikis, Fisik, dan Tinjauan Agama.Jakarta : EGC.

Darwan Prinst. 1997. Hukum Anak Indonesia. Bandung: Citra Aditya Bakti.

Kusuma,Mulyana.2004.*Hukum dan Hak-Hak Anak.* Bandung*:* CV Rajawali.

Sri, S. H. Dkk. 2003. *Anak Perempuan Korban Kekerasan Seksual.*. Surabaya:Lutfansah Mediatama. Edisi ke-2

Sumber Lain

Undang-Undang Dasar Negara Republik Indonesia 1945.

Undang-undang Nomor 39 Tahun 1999

Undang-undang Nomor 35 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

Utami,Penny Naluria..2018.*Pencegahan Kekerasan Terhadap Anak Dalam Perspektif Hak Atas Rasa Aman di Nusa Tenggara Barat*.Jurnal HAM Volume 9, Nomor 1, Juli 2018.

Fitriani,Rini. Peranan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak. *Jurnal Hukum Samudra Keadilan*, 2016, 11.2: 250-358.

A Review of Islamic Law Sociology of Health Protocol Offenders during the Pandemic: Analysis of Presidential Instruction 6 of 2020

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Abstract: *Enforcement of public health protocols is the job of both central and local governments. September 2020 shows that there are 9.24 million sanctions issued to violators of health protocols and Rp. 3.27 billion from fines. This is a concern related to community compliance with the implementation of health protocols. This paper aims to examine why Indonesians ignore health protocols and how people comply with health protocol regulations. This type of research is qualitative research, using a sociological juridical approach to identify phenomena in society.*

The results showed that the reason the community did not comply with the health protocol policy was that the application of existing sanctions had not been able to prevent an increase in offenders, there were no incidents of transmission that occurred around them, the assumption that the health protocol was something that interfered with daily activities. In addition, the way people adhere to health protocol rules is based on the social background of each individual. This suggests that there should be a new policy that summarizes the reasons for non-compliance with health protocols.

Keywords: *Sociology, Law, Offenders, Protocol, Health*

A. Introduction

A pandemic is a contagious epidemic originating from a type of evil virus that spreads throughout the world widely. This means that this is a problem for all inhabitants of the world at the same time. Corona Virus Disease 2019 (Covid-19) is a type of pandemic. This type of virus has become a virus that has quite an effect in various parts of the world, including Indonesia. Kontan.co.id-Sydney noted that Indonesia was ranked 85 (eightyfive) in handling the Corona Virus Disease 2019 (Covid-19) pandemic. [1]In January 2021, Indonesia is still under Vietnam and Sri Lanka in handling the control of Corona Virus Disease 2019 (Covid-19). The country has fewer cases of Corona Virus Disease 2019 (Covid-19) and the number of deaths. In March 2021, Indonesia was ranked 18 (eighteen) in the ranking of the highest cases of Corona Virus Disease 2019 (Covid-19) in the world. [2]This should be a more serious joint concern to continue to intensify efforts to handle and prevent an increase in cases of Corona Virus Disease 2019 (Covid-19).

Efforts to handle and prevent an increase in COVID-19 cases have actually received serious attention from the central and regional governments. Attention given in dealing with cases of COVID-19 is the issuance of various policies such as the establishment of the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (Covid-19), Large-Scale Social Restrictions, Enforcement of Restrictions on Community Activities (PKKM), Vaccination for Corona Virus Disease 2019 (Covid-19). 19) to promoting the implementation of health protocols to prevent the spread of the virus. The government has also opened a special laboratory to test for Corona Virus Disease 2019 (Covid-19). Identification is carried out in public places to coincide with tracing or finding the closest contact with patients who have been infected with Corona Virus Disease 2019 (Covid-19). In line with this, the government issued Presidential Instruction (Inpres) Number 6 of 2020 concerning the improvement of Discipline and Law Enforcement of Health Protocols in the Prevention and Handling and Control of the Corona Virus Disease 2019 (Covid-19).

The regulation that later became something that should not be ignored was the issuance of Presidential Instruction No. 6 of 2006. Presidential Instruction No. 6 of 2006 issued on August 4, 2020 contains the prevention and control of Corona Virus Disease 2019 in all provinces and districts/cities in Indonesia. Indonesia. Presidential Instruction No. 6 of 2006 also contains the obligation to comply with health protocols such as wearing masks, washing hands, maintaining distance and increasing body resistance. This obligation as contained in Presidential Instruction No. 6 of 2006 has consequences for violators in the form of verbal or written warnings, social work, administrative fines and temporary closure of business operators.

The fact is that the above method has not had a good effect in reducing cases significantly. This does not maximize community participation in its implementation. The result is

an increase in cases of patients with Corona Virus Disease 2019 (Covid-19) and its spread is increasingly out of control. The increase in cases is currently found to be 1.85 (one point eighty five) million cases of Corona Virus Disease 2019 (Covid-19) in Indonesia[2]The increase in cases of Corona Virus Disease 2019 (Covid-19) in Indonesia can be seen as follows.

This reality shows a social phenomenon that is happening in society. This underlies the statement that there are still many Indonesians who are at risk of being exposed to the Corona Virus Disease 2019 (Covid-19). Various studies have stated that the reason why many people are still vulnerable to the spread of the Corona Virus Disease 2019 (Covid-19) is the low public awareness to comply with health protocols as stated in Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement. Corona Virus Disease 2019 (Covid-19) health protocol.

The high number of people's non-compliance with health protocols has an impact on various things, such as increased mortality rates and the high risk of spreading the Corona Virus Disease 2019 (Covid-19). The increase in mortality goes hand in hand with the increase in confirmed positive cases. Meanwhile, the risk of spreading the Corona Virus Disease 2019 (Covid-19) virus has a fairly large impact on society. This impact can be seen from the decline in the Indonesian economy due to the decline in people's purchasing power for goods. This causes many trading business people to suffer losses so that the practice of layoffs occurs everywhere. The education sector has also experienced a fairly serious impact. The pandemic period forced students to study remotely because of their concern about the spread of the Corona Virus Disease 2019 (Covid-19) virus if forced to study face-to-face. Distance learning is considered by many to be a way of learning with many weaknesses. Furthermore, the tourism sector has also been badly affected by the Corona Virus Disease 2019 (Covid-19). The number of recreational areas that were previously crowded by the public has now become deserted. This causes a decline in income for the management and maintenance of recreational areas.

The impacts mentioned above can actually be anticipated by breaking the chain of the spread of the Corona Virus Disease 2019 (Covid-19). Anticipating or controlling the spread of the Corona Virus Disease 2019 (Covid-19) requires the role of many parties such as the community, law enforcement and regulations. These three things must synergize with each other massively to jointly fight the spread of the Corona Virus Disease 2019 (Covid-19) in

Indonesia. As stated by Firedman that law is a system consisting of three things, namely: (1) legal substance, is the rules and norms used by an institution; (2) legal structure, is law enforcement in this case in the form of institutions or apparatus; (3) legal culture, is a legal culture or habits, ways of thinking or ways of acting in society[3] Departing from this, it can be interpreted that the operation of a law is part of the study of the sociology of law[4]This is in line with Roscoe Pound's opinion which states that legal reality is basically public will[5]Pound also said that social control is needed to optimize human position. Law is also considered a social engineering. This means that the law is considered a tool of renewal in the community with the hope of changing social values in society. [6]

In line with the statement above, it seems that Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of the Corona Virus Disease 2019 (Covid-19) health protocol as part of the legislation in Indonesia is something that can change the order. and cultural values of society. Presidential Instruction Number 6 of 2020 (regarding increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols) according to researchers has fulfilled the purpose of the existence of the law, namely expediency, certainty and justice. The benefit obtained from Presidential Instruction Number 6 of 2020 (regarding increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols) is the minimal risk that will be experienced by the Indonesian people. In addition, the benefits obtained are

people's lifestyles that are increasingly secure with habits that are actually simple but have great benefits. The justice of Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols is the empowerment of several elements of the government as their duties and responsibilities by involving support from the community as the object of the issuance of Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols. Furthermore, the certainty obtained from Presidential Instruction Number 6 of 2020 (regarding increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols) is that the contents of the clauses contained in the regulation are clearly and definitely intended for the good of the wider community to continue to suppress the spread of the virus. corona disease 2019 (covid-19).

Based on the various phenomena and events mentioned above, the researcher is interested in conducting further research on how the sociology of law reviews the health protocol violators. The analytical knife used is Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols. This regulation is considered the most appropriate for discussing matters relating to public compliance with health protocols. This paper aims to find out how people's behavior regarding the application of health protocols in their daily lives. In addition, this paper provides an important overview of how

to enforce Presidential Instruction No. 6 of 2020 in the community. Furthermore, this study is expected to determine the extent of public compliance with these regulations as described in the sociology of law. If this is known, then sociology of law is used to find out why Indonesian people still have a tendency to ignore health protocols.

B. Research Methods

1. choice of study object

   This study is based on the relationship between public attitudes and the application of health protocols. The selection of the object of study was adjusted to the issue of the COVID-19 pandemic as well as Presidential Instruction No. 6 of 2006 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols.

2. Research approach and data selection

   This research approach is a qualitative approach using primary data and secondary data. The primary data in this study are the laws and regulations contained in Presidential Instruction No. 6 of 2006 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols. The secondary data used include books, journals of previous research results and so on

3. Research approach and data selection

   This research was carried out using empirical legal research methods using the perspective of legal sociology. Sociology of law is a study that will explain why a rule is applied, the reason for this application and what factors influence it.

C. Result and discussion

1. Public behavior about health protocol

   The Covid-19 pandemic first entered Indonesia in early 2020 and continues to this day. Even approaching the end of 2020, the number of Covid-19 transmissions is not sloping but is increasing. The government has taken various measures to prevent the spread of the Covid-19 virus. Several efforts have been made by the government, namely, the policy of Large-Scale Social Restrictions (PSBB) and the Adaptation of New Habits (IMR) in the New Normal Era. The policy encourages the public to adjust their behavior in accordance with the health protocols that have been set by the government. [7]

   The Corona Virus Disease 2019 (Covid-19) pandemic has changed the order of people's lives, where aspects of people's lives are changing rapidly. Data was obtained from the Central Statistics Agency (BPS) which has played a role in presenting data in the form of information on handling the Corona Virus Disease 2019 (Covid-19) pandemic. Survey activities on community behavior during the Covid-19 pandemic were carried

out online. This survey provides information on several things, namely compliance and how effective health protocols are, perceptions and assessments of the Corona Virus Disease 2019 (Covid-19) pandemic, the role of the media in providing various information on Corona Virus Disease 2019 (Covid-19), and other aspects others about the order of people's lives during the Corona Virus Disease 2019 (Covid-19) pandemic[8]

There are things that need to be known regarding people's behavior during the Corona Virus Disease 2019 (Covid-19) pandemic in adapting to new habits, namely a new lifestyle, where everyone tries to stay at home or stay at home. Most of the community activities online/virtually. People are now focusing on meeting basic needs and reducing non-essential spending. Not only that, the social life of many people during the Corona Virus Disease 2019 (Covid-19) pandemic has become higher.[9]

The application of healthy behavior in the prevention of Corona Virus Disease 2019 (Covid-19), is a powerful step to ward off disease, but in practice, this application, which seems simple, is not always easy to do, especially for respondents who are unfamiliar with, lack of knowledge and lack of awareness of healthy living behavior . Efforts that can be made to deal with the Corona Virus Disease 2019 (Covid-19) pandemic are maintaining physical distance, diligently washing hands with soap, using masks when leaving the house, using disinfectants or hand sanitizers, avoiding handshakes, and avoiding crowds.

The prevention efforts referred to in avoiding exposure to the Corona Virus Disease 2019 (Covid-19) virus are based on PHBS (Clean and Healthy Living Behavior). Real actions from the government and the public regarding PHBS will always be able to reduce the number of cases of Corona Virus Disease 2019 (Covid-19), so that the Corona Virus Disease 2019 (Covid-19) pandemic can end quickly. [10]In addition, good behavior can be applied by applying the concepts of Faith, Safe, and Immune. The concept of faith, defined as worship in accordance with their respective religions and beliefs; Safe, namely complying with the Covid-19 prevention health protocol, which is often known as 3M, namely wearing masks, maintaining distance and avoiding crowds, and washing hands with soap; and Immunity, namely getting enough rest, exercising regularly, not panicking, having fun, and eating a balanced nutritious diet. This strategy is pursued by the Task Force for Handling the Corona Virus Disease 2019 (Covid-19). [12] (STPC19) Field of Behavior Change for Covid-19 prevention which is focused on increasing 3M compliance (wearing masks, keeping distance/avoiding crowds and washing hands with soap). That everyone must be willing and able to make changes to 3M compliance behavior (wearing masks, keeping distance/avoiding crowds and washing hands with soap) so as to prevent transmission of Corona Virus Disease 2019 (Covid-19). Currently, more and more people are confirmed positive for Corona Virus Disease 2019 (Covid-19) without symptoms, so 3M's healthy behavior (wearing masks, keeping a distance / avoiding

crowds and washing hands with soap) is an important prevention effort. [11] Good behavior can be an effort to prevent the spread of Corona Virus Disease 2019 (Covid-19). Health behavior is influenced by several factors, including knowledge, perception, emotion, motivation, and environment. Exploration of public health behavior can be seen from various components, namely perceptions of disease susceptibility, perceptions of obstacles in prevention efforts, perceptions of benefits, encouragement, and also related to individual perceptions of their abilities to carry out prevention efforts. [12] Abu Hurairah narrated that the Messenger of Allah (SAW) said*: "A strong believer is better and more dear to Allah than the weak, and both are good." (Al-Bukhari).* as prophet's hadith.

"Thuhuru syathru al iimaani." "Purification (taharah) is half of faith." (HR. Ahmad, Muslim, dan Tirmidzi)

Based on the concept of behavioral science, it can be explained that the community's non-compliance with health protocols mostly occurs due to their lack of understanding of the dangers of disease and the benefits of treatment as well as the large obstacles in access to health. [13]Until now, there are still many people who lack an understanding of the Corona Virus Disease 2019 (Covid-19) health protocol, such as the high risk factors for contracting, how severe the disease is, what are the benefits of doing prevention, and lack of instructions for action. If the public has good knowledge about Corona Virus Disease 2019 (Covid-19), it will lead to a good perception of self-susceptibility, the dangers of disease, and the benefits of prevention efforts. Good public understanding of Corona Virus Disease 2019 (Covid-19) coupled with giving instructions for action and minimizing obstacles in carrying out Corona Virus Disease 2019 (Covid-19) health protocol actions will build self-efficacy in a person. Self-efficacy is a belief in one's ability or ability which is one of the factors that play a role in influencing someone to take a preventive action in this case preventing the transmission of Covid-19). [14]

2. Enforcement of Presidential Instruction 6 of 2020 in the Community

Society is a forum for law enforcement that occurs in a social system. Law is not a teaching that is patent. The law will experience a shift as time shifts. The legal adaptation process becomes a strong basis according to the times and the social demands of the community. [15]This is important to note considering that the element in law enforcement is the act of putting something such as a law into effect: the execution of law: the carrying out of a mandate of command[16]Law enforcement is another illustration of the value contained in the regulation. Law enforcement must be reflected in a system that will have a certain impact.

Law enforcement contains an important point commonly referred to as legal culture. Legal culture itself is a behavior or way of thinking of the community about the legal system. Legal culture itself is interpreted as a social condition of how the law is accepted to be

implemented or rejected to be realized[17]As the enforcement of Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols issued by President Joko Widodo as a form of response from the government to the increasing number of cases that continue to increase. This instruction applies to all provinces, districts or cities and the entire territory of Indonesia as a form of the first part of presidential instruction number 6 of 2020.

Presidential Instruction number 6 of 2020 contains an explanation of tasks addressed to the coordinating minister for political law and security of the Republic of Indonesia, Ministry of Home Affairs, Head of the National Disaster Management Agency, Commander of the Indonesian National Armed Forces, Chief of Police of the Republic of Indonesia, Governors, Regents and Mayors and the entire community throughout the territory of the Unitary State of the Republic of Indonesia. Instructions addressed to the coordinating minister for Political, Legal and Security Affairs of the Republic of Indonesia. The task of the Coordinating Minister for Political, Legal and Security Affairs in presidential instruction number 6 of 2020 is to carry out control, coordination and synchronization of the implementation of increasing discipline and law enforcement against violations of health protocols in the prevention and control of corona virus disease 2019 (covid-19). In addition, another task is to report the implementation of the presidential instructions to the

president at least once a month or at any time if necessary.

The second part of the Ministry of Home Affairs was also given presidential instructions to disseminate information and disseminate information on a regular basis. It contains the application of health protocols in the context of controlling and preventing the spread of the Corona Virus (Corona Virus Disease) to the public. The Ministry of Home Affairs is also tasked with providing technical guidance to district or city-wide local governments and provincial-level governments in formulating governor or regent/mayor regulations. The Ministry of Home Affairs in the next task is required to provide assistance in the preparation of regional regulations for governors or districts. At the end of the task in presidential instruction number 6 of 2020 for the ministry of home affairs is to coordinate with the tasks that have been carried out to the Coordinating Minister for Political, Legal and Security Affairs of the Republic of Indonesia at least once a month or when needed.

The National Disaster Management Agency (BNBP) in presidential instruction number 6 of 2020 also received a mandate from the president. The head of the National Disaster Management Agency (BNBP) is assigned as the head of the Covid-19 task force. The head of the COVID-19 task force is tasked with evaluating and monitoring the implementation of sanctions for violations of health protocols in the context of controlling and preventing corona virus disease 2019 (covid-19) in districts and provinces. The head of the

National Disaster Management Agency is required to report the implementation of evaluation and monitoring to the chairman of the policy committee in the 2019 (covid-19) corona virus disease management committee.

The Commander of the National Armed Forces in cooperation with the National Police of the Republic of Indonesia has the duty to provide donations to regional heads such as governors, mayors or regents by assigning the Indonesian National Army. The deployment of the Indonesian republican army and police soldiers aims to carry out supervision in the implementation of health protocols in the community. The Commander of the Indonesian National Armed Forces together with the head of the Indonesian National Police and other institutions together with the local government to continue to discipline patrols to enforce health protocols in the community. The next task is to carry out guidance to the community to participate in efforts to control and prevent the corona virus disease 2019 (covid-19).

The end of the second part is in the form of instructions addressed to the heads of local governments (governors, regents and mayors). The head of the regional government in charge is tasked with continuing to carry out periodic socialization about the application of health protocols to the community in the context of controlling and preventing the corona virus disease 2019 (covid-19) by including the role of the community itself, community leaders, religious leaders

or traditional leaders. The second task is to form and ratify the governor's regulation or the regent's regulation or the mayor's regulation. The third task is in the preparation of regional regulations to continue to pay attention to and make adjustments to the local wisdom of each region.

The preparation of regional head regulations must contain elements, among others, the protection of individual and community health. Health protection for individuals includes the use of personal protective equipment in the form of covering the nose to the chin, cleaning hands regularly, maintaining distance, limiting interactions and increasing endurance. Health protection for the community includes education and socialization to inform understanding about the prevention and control of corona virus disease 2019 (covid-19), providing hand washing places using soap that are not difficult to reach and according to the criteria for hand sanitizers, health monitoring for all people who are active, monitoring to maintain distance, implementing massive spraying of disinfectants in the environment, enforcing discipline on the wider community who are at risk of transmission of corona virus disease 2019 (covid-19), carrying out detection as early as possible in order to anticipate the spread of presidential instruction number 6 of 2020 The obligation of the health protocol applies to every person, manager, person in charge and manager of public places and facilities (such as: offices or workplaces, schools or educational institutions, places of worship, stations, terminals, ports, airports, public transportation, public

private shops, shops or markets, pharmacies or drug stores, food stalls or restaurants, street vendors or trade stalls, lodging or the like, recreation areas, places for treatment or a kind of hospital) as well as business people.

In addition to the above, the regulations made must also contain sanctions for violators of health protocols in their application in the context of preventing and controlling the spread of corona virus disease 2019 (covid-19). The sanctions are in the form of verbal warnings or written warnings, social work or a kind of witness in the form of cleaning public places, administrative fines such as confiscation of securities or fines with a certain nominal and temporary closure for business procurement. In October 2020, 55% of health protocol violations were found due to violators' ignorance of the existence of sanctions, 39% of health protocol violators were due to the absence of positive Covid-19 events around them, 33% of health protocol violators were disturbed by the implementation of health protocols [1]

3. Sociology of law relations with community compliance with health protocols

Sociology of law is a study that is used to examine the law from the side of reality. This shows matters relating to how the legislation is implemented. Sociology of law explains why the application occurs, the reason for the application is carried out and what factors influence it. The question that often arises in the study of the sociology of law is how the regulations are in

reality, whether they are as stated in the regulations. Sociology of law also examines the law that occurs in society as a whole system. The complete system consists of three things as stated by L.M. Friedman namely; legal structure (law enforcement), legal substance (statutory regulations) and legal culture (legal culture in society).[18]These three are important systems to build on each other to create good order.

This is in line with the theory of symbolic interactionism which was born continuously because of the need for a question. This theory explains the micro-study and the reality of individuals and society in a group. If the theory of interactionalism is used in the field of law, it will raise several questions, among others; (1) the question of how someone can break the law; (2) how much influence the offender has on an individual; (3) what might happen if it is intolerance for violators who ignore the rules. The basis of the statement lies in the individual and the community, both of which have an influence in bringing up a violation of the rules[19]

Law in the study of sociology is also seen as a "product of the social system". The jurisprudence of the sociology of law further explains that law is a "product of law making institutions" whose enforcement contains functional, grounded and contemporary legal objectives. This is in line with the opinion of Satipto Raharjo who stated that "the law is not only about statutory issues but also related to human behavior". [20]Human behavior when associated with the order of life will always intersect with the law. this can be interpreted that

human behavior will affect how the law will move, meaning that this statement can be equated with "legal behavior". Legal behavior by Donald Black in his work entitled "The Behavior of Law" reads as follows[21]

> *“Law is governmental social control, in other words, the normative life of a state and citicens, such as legislation, litigation, and adjudication. By contrast, it does not include social control in the everyday life of a government service, such as a post office or fire departmen, since this is the social control of employees, not of citizwns as such.”*

Donald's statement can be interpreted that the law is a tool of government social control. The means of government control in question are laws which are part of the normative life of a country and its citizens, laws and regulations, court processes and court decisions not including government institutions. The government institution here is the fire department or the post office. this is due to the scope contained in it in the form of office workers, not the scope as citizens. Furthermore, Hunt provides additional information which reads that law is a symptom of society with the causes of its legal development (from where it appears, the possibility of changes and the possibility of disappearing as developments exist in the community).[22]

Law enforcement is always related to human behavior. This indicates that the law may not be able to enforce itself without the role of other things[23]Law enforcement actually starts when a regulation is made. Law enforcement itself is a stage to realize the law to

become a reality. The fact that happened later will be rooted in how the law is implemented[24]If later the implementation of the regulation is difficult to implement, then actually the drafters of the regulation have failed in implementing the rule through law enforcers. The failure of law enforcement depends also on the level of effectiveness of the law.

Legal effectiveness is a way of formulating problems by comparing legal ideals with legal effectiveness. [24]The study of legal effectiveness relates to law in action or actions with law in books or theories[19]Furthermore, Lawrence stated that legal behavior is influenced by motives and ideas.[[19]Motive is the reason people do or not to a rule. While ideas are related to individual knowledge as actors. Legal behavior itself has four characters including: 1) self-interest (eg compliance with traffic signs), 2) level of sensitivity to sanctions (eg a person's reluctance to spread drugs due to concerns about sanctions that will be imposed), 3) social influence (groups of people). customary law communities), 4) compliance (for example, someone is disciplined to pay taxes because he is lazy to deal with officers).

The above is actually very much in line with the application of health protocols by looking at the four characters of a person against the provisions of health protocols as stated in Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols. Self-interest in compliance

with health protocols contained in Presidential Instruction Number 6 of 2020 (regarding increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols) will think about health regarding the spread of the corona virus disease (Covid-19) which can just happen to anyone. The level of sensitivity to sanctions can be explained by the social sanctions that will be obtained when violating health protocols will reduce their dignity as good Indonesian citizens. Social influence can be explained through the work environment or family environment, an environment that supports the importance of implementing health protocols will bring habits to individuals who are in it. Compliance with health protocols encourages a way of thinking that it will be very detrimental to yourself or your family if you are infected with the corona virus disease (covid-19), especially if one of your family members is immunocompromised. If these four things are found in most people in general, it will be easier to identify that the application of health protocols is something that has become entrenched for Indonesian people in general.

Legal culture is basically not limited to the arrangement of black and white rules, but symptoms that can be observed in people's lives. This actually shows that the law is also influenced by values, views and attitudes[25]The formation of legal culture as Friedman's popular theory of the legal system consists of components that cannot be separated from one another. Legal culture in Friedman's theory is considered capable of wrapping laws that contain moral

content[26]Friedman's concept of legal culture includes various things, namely:

a. References to legal culture are found in culture in general, such as habits, ways of thinking, acting or speaking
b. The determinants of time, reasons and the way people act are in the role of legal culture
c. Legal culture is then considered a source of law
d. Ideas, ideas, behaviors, opinions and expectations about the law that are defended by the community are a part that should not be ignored by the study of legal culture

The existence of a legal culture in the study of the application of health protocols contained in Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols will look more realistic and real. The fact that happened is how the health protocol according to the way of thinking and how to act about it. The next thing that happens is that it is increasingly visible whether the rules are used or not by the community. If it is not used by the community, it will raise new questions whether the rules containing health protocols contain errors or abuse in their application. This can be interpreted that legal culture acts as something that will grow the overall regulatory mechanism[27]

If the description above is something that needs to be referred to, so also the regularity regarding the

application of health protocols in the community is something that should not be ignored both from the laws and regulations, enforcers and the community. This is a real problem in our community that the increase in Covid-19 cases that continues to occur is due to the community's lack of compliance with Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols. Even though it already contains sanctions for violators, it is not something that must be obeyed by our community. This is due to public opinion about the importance of implementing protocols. In addition, the sanctions contained in Presidential Instruction No. 6 of 2006 are not categorized as criminal sanctions but are more administrative sanctions such as motor vehicle fines. [28]

The next thing behind whether or not the community complies with a regulation is the level of knowledge, attitudes and beliefs[29]The knowledge referred to here is the meaning of the health protocol as stated in Presidential Instruction No. 6 of 2006. Meanwhile, attitude is defined as a response to certain situations or circumstances. The attitude itself can be formed through belief[30]The public will show an obedient attitude to health protocols if there is a belief that Presidential Instruction No. 6 of 2006 concerning health protocols is effective in reducing the spread of COVID-19. Belief in the dangers of COVID-19 is also something that actually must be considered by the community. This is in line with Webster's opinion that a

person's confidence in something is one of the reasons for increasing compliance. Community compliance is something that needs to be improved to reduce the spread of COVID-19 given the huge effects it has. The command to obey the government is actually contained in the Qur'an which reads an-Nisa: 59:

> *Yā ayyuhallażīna āmanū aṭī'ullāha wa aṭī'ur-rasụla wa ulil-amri mingkum,*
>
> *O you who believe, obey Allah and obey the Messenger (His), and the ulil amri among you*

Compliance with Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols is part of the means of discussing legal phenomena. Legal phenomena that occur in society will lead this discussion to Curzon's opinion on the sociology of law and sociological jurisprudence as follows.

> *Sociology orf law. Pound refers to this study as "Sociology Proper", based on a concept of law as one of the means of social control. Loid writes of it as essentially a descriptive science employing empirical techniques. It is concerned with an examination of why the law sets about its tasks in the way it does. It views law as the product of a social system and as a means of controlling and changing that system. Sociological jurisprudence. Pound refers to this as a study of the peculiar characteristics of the legal order, i.e. sciences, having the law more effectiber in action, and based on subjective values. Some other writter use the term to refer to thr sociological scholl of*

jurisprudence, that is, those jurists who see in a study of society a menas whereby the science of law might be made more precise.

D. Conclusion

The study of the sociology of law is a method used to view the law from the perspective of social behavior. Sociology of law views law as not just a normative discussion of the law, but also from a behavioral perspective. In this regard, as has happened throughout the world regarding the phenomenon of the spread of the corona virus disease 2019 (covid-19) pandemic, many policies have been issued by the government to reduce the death rate and the spread of the corona virus disease 2019 (covid-19). If this is done quickly by the government, in addition to reducing the effects of death and spread, it also reduces the various bad impacts caused by the spread of the corona virus disease 2019 (covid-19). Among the reasons for this are the decline in the country's economy, distance learning, the decline in people's purchasing power, termination of employment (PHK), to the increase in state debt to deal with the various major impacts caused. In this regard, the president issued Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols.

Presidential Instruction Number 6 of 2020 concerning increasing discipline and law enforcement of health protocols and law enforcement of Covid-19 health protocols contains various rules related to health protocols such as the use of masks, maintaining distance, avoiding crowds and

increasing immunity. It is mandatory for all levels of Indonesian society. However, this obligation tends to be ignored and even not obeyed by some people even though in Presidential Instruction Number 6 of 2020 it has also been mentioned that various sanctions will be given if the community ignores health protocols as stated in Presidential Instruction Number 6 of 2020. The sanction is a fine. administration, social work, to verbal warnings or written warnings. The impact is that the increase in the number of cases and deaths caused by the corona virus disease 2019 (covid-19) continues to occur in various regions. In addition, in the last two years, the Indonesian government has focused on the issue of the ongoing pandemic.

Ketidakpatuhan masyarakat terhadap protokol kesehatan disebabkan oleh berbagai hal. *Pertama,* tidak adanya kasus yang terjadi secara langsung pada dirinya, keluarganya atau lingkungan terdekatnya; *kedua,* cara fikir masyarakat bahwa penerapan protokol kesehatan mengganggu aktivitas sehari-hari mereka; *ketiga,* masyarakat yang enggan menggunakan masker berpendapat bahwa hal tersebut mengganggu pernafasannya; dan *keempat,* tidak adanya contoh dari publik figur ditempat mereka berada. Hal tersebut semakin memberikan indikasi bahwa penerapan protokol kesehatan dimasyakart yang termuat di dalam Instruksi presiden Nomor 6 Tahun 2020 (tentang peningkatan disiplin dan penegakkan hukum protokol kesehatan dan penegakkan hukum protokol kesehatan Covid-19) masih belum optimal dalam penerapannya. Optimalisasi penerapan protokol kesehatan dapat dimulai dari kesadaran setiap individu dengan mulai membiasakan diri dan berfikir pentingnya

penerapan protokol kesehatan untuk menekan angka peningkatan kasus kematian dan penyebaran serta menekan berbagai dampak buruk yang diakibatkan dari penyebaran corona virus disease (covid-19)

E. Reference

[1] https://www.viva.co.id/berita/nasional/1309446-data-mengejutkan-terkait-pelanggaran-protokol-kesehatan-covid-19.

[2] https://www.kompas.com/sains/read/2021/06/06/170200323/studi-kasus-covid-19-di-indonesia-jumlahnya-jauh-lebih-banyak-dari-data?page=all.

[3] Masinambow, *Hukum Dan Kemajemukan Budaya*. Jakarta: Yayasan Obor Indonesia, 2003.

[4] S. Raharjo, *Hukum dan Masyarakat*. Bandung: Angkasa, 1980.

[5] M. Fuadi, *Teori-Teori Besar (Grand Teori) dalam hukum*. Jakarta: kencana prenmadeia group, 2013.

[6] N. Lathif, "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat," *Palar | Pakuan Law Rev.*, vol. 3, no. 1, pp. 73–94, 2017, doi: 10.33751/palar.v3i1.402.

[7] covid.go.id, 2020.

[8] Bps.go.id.

[9] U. Giyono, "Studi Kasus Kebijakan Peningkatan Kedisiplinan Dan Pengetatan Protokol Kesehatan Pada Pemberlakuan Pembatasan Kegiatan Masyarakat (PPKM) Tahap II di Jawa Tengah Dalam Kajian Hukum Bisnis," *J. jendela Huk*, vol. 8, no. 3, 2021.

[10] N. P. Dkk, "Gambaran Pengetahuan Masyarakat Tentang Covid-19 Dan Perilaku Masyarakat Di Masa Pandemi Covid-19," *J. keperawatan jiwa*, vol. 8, no. 3, 2020.

[11] STPC19, *Pedoman Perubahan Perilaku Penanganan Covid-19*. 2020.

[12] Mujiburrahman, "Hubungan Pengetahuan dengan Perilaku Pencegahan COVID-19 di Masyarakat," *Integr. Nurs. J*, vol. 2, no. 2, 2020.

[13] N. S, *Promosi Kesehatan dan Perilaku Kesehatan*, Rineka Cip. Jakarta, 2012.

[14] C. Meher, "Description Of Community Behavior Of Medan City Related To Implementation Of The Covid 19 Health Protocol," *J. STMurnal Stm*, vol. 4, no. 1, 2021.

[15] S. Raharjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing, 2009.

[16] H. Campbell, *Black's Law Dictionary*. St. Paul Minetosa: West Publishing, 1990.

[17] L. Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *J. Yuridis*, vol. 4, no. 2, p. 148, 2018, doi: 10.35586/.v4i2.244.

[18] L. M. Friedman, "Law and Society: An Introduction," *Englewood Cliffs, N.J*, vol. 73, no. 2, 1977.

[19] L. M. Friedman, *legal system*. 1977.

[20] S. Raharjo, *Sisi Lain Hukum di Indonesia*. Jakarta: Buku Kompas, 2006.

[21] B. Donalds, *the behavior of law*. New York: Academic Press, 1976.

[22] Hunt, *The sosiological Movement in law*. London: Billing sons, 1978.

[23] S. Raharjo, *Penegakan Hukum suatu tinjauan sosiologis*. Yogyakarta: Genta Publishing, 2009.

[24] Mulyana W. Kusumah dan Paul S. Baut, *Hukum, Politik, dan Perubahan Sosial*. Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1988.

[25] daniel s Lev, *Lembaga peradilan dan budaya hukum di Indonesia, dalam PetersKoesriani Siswosoebroto, hukum dan perkembangan sosial*. Jakarta, 1988.

[26] D. P. Rahayu, *Budaya Hukum Pancasila*. Yogyakarta: thafa media, 2014.

[27] E. Warrasih, *Pranata Hukum Sebuah Telaah Sosiologis, Pranata Hukum Suatu Telaah Sosiologis*. Semarang: Suryandaru Utama, 2005.

[28] I. B. Brahmana and A. A. N. O. Yudistira Darmadi, "Penindakan Terhadap Masyarakat Yang Tidak Menggunakan Masker Sebagai Pelaksanaan Protokol Kesehatan Baru Di Provinsi Bali," *Kertha Desa*, vol. 8, no. 46, pp. 2–8, 2020.

[29] Wiranti, A. Sriatmi, and W. Kusumastuti, "Determinan Kepatuhan Masyarakat Kota Depok Terhadap Kebijakan Pembatasan Sosial Berskala Besar dalam Pencegahan Covid-19," *J. Kebijak. Kesehat. Indones.*, vol. 09, no. 03, pp. 117–124, 2020, [Online]. Available: https://journal.ugm.ac.id/jkki/article/view/58484.

[30] Muhtadi, "Pengembangan Sikap Dan Perilaku Siswa Yang Bermoral Dalam Kegiatan Pembelajaran Di Sekolah.," *Manajamen ilmu*, vol. 7, no. 1, 2011.

[31] Holy Qur'an

[32] Prophet's Hadith

The Concept of *Taqlid* From The Mu'tazilah's Perspective in The Book of Raudhat an-Nadzir wa Junnat al-Manadzir

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Abstract *The research aims to describe the critical analysis of Mu'tazilah thought about taqlid in the book Raudhat an-Nadzir wa Junnat al-Manadzir by Ibnu Qudamah Al-Maqdisi. This book summarizes Al Mustashfa with diction that is not easy to understand because the Al-Mutakallimin method adopted by Al-Ghozali in Al-Mustashfa is a breakthrough in the study of Usul Fiqh, combining Usul Fiqh with logic and theology. Objectivity is seen in Ibnu Qudamah's investigative approach. Even though it belongs to the Ibnu Hanbal school, subjectivity does not appear in assessing the concept of taqlid Mu'tazilah. The approach adopted reflects thoroughness in presenting problems, analyzing related statements and evidence, and rationally comparing and weighing views and arguments. This study uses an inductive analytical-qualitative methodology because there is a correlation between theological thinking and usul fiqh. The study results indicate disagreement among Mu'tazilah figures regarding the content of the proposition and the five theological foundations of their schools which influence their usul fiqh thinking, especially in the concept of taqlid, which affects contemporary usul fiqh methods. Among them is complete freedom for humans to perform ijtihad based on human authority to create their destiny.*

Keywords: *mu'tazilah, taqlid, ibnu qudamah, usul, ijtihad*

A. Introduction

The tajdid movement or notion of renewal arose in response to the development of times further removed from the golden age of Muslims, namely the decline of today's people and the rise of boredom with religion (Tamari, 2009; Zarkasyi, 2013). This line of thought in tajdid understanding then inspired new enthusiasm and breakthroughs in the twentieth century, which were directly or indirectly related to the suggestion to abandon taqlid, which was replaced by the spirit of the suggestion to do ijtihad on the one hand and the invitation to abandon taqlid on the other (Sherman, 2019).

The recommended course of action for ijtihad is re-ijtihad on religious texts and arguments to adapt them to the current context and realities (Koujah, 2021). The goal is unquestionably noble if only to avoid the Qur'an and Sunnah becoming rigid and frozen books that people abandon when they become out of date. There are numerous manifestations of changing times dating back to the golden age of fiqh and continuing into the twentieth century and beyond in the

present. All of this necessitates calibration in the form of re-ijtihad on the legal istinbath's conclusions.

Meanwhile, the invitation to abandon the taqlid attitude in question is accepting only the outcome of obsolete ijtihad, which makes no sense if it is still used today(Sherman, 2019; Soufi, 2021). In many Islamic countries, the spirit of tajdid and the abandonment of taqlid are widely accepted, particularly among the younger generation, who are more receptive and have more accessible modes of thought.

From a simple invitation to leave taqlid, this spirit gradually expanded its boundaries to the point where it eventually formed a new 'dogma' that diverged from its original direction. Regrettably, this dogma regarding the prohibition of taqlid has already been swallowed whole by the younger generation of Islam. Additionally, taqlid is regarded as a despicable act that is prohibited and contradictory to the Al-Quran and Sunnah(Taufiki & Badriyah, 2021).

Worse, anti-taqlid's spirit was so strongly echoed that taqlid was widely regarded as the primary cause of Muslims' decline over the last few centuries. His case is compared to Europe's abandonment of Christianity in the fifteenth century, which resulted in the division of Christianity into two branches, Catholicism and Protestantism (Damato, 2021). Then Muslims want to be divided into conservative and moderate groups as well (Abi-Mershed, 2009). On the one hand, the conservative has a negative image associated with old-fashioned, orthodox, and outmoded thinking. Meanwhile, the moderates have a favorable image as reformers and are perceived to be more moderate, modern,

advanced, open, and tolerant(Zhussipbek et al., 2020). Naturally, the illegitimate dogma of taqlid, which has been misguided, needs to be straightened out to avoid deviating too far from the real issue (Sheikh, 2021).

In this issue, Ibn Qudamah discusses in detail the taqlid of issues that have been agreed upon or have become ijma' among Usul Fiqh scholars and the issues they dispute in his book Raudhah An Nadzir wa Junnah Al Munazir's chapter taqlid especially the thoughts of the Mu'tazila which are often raised in this book.Imam Ibn Qudamah Al-Maqdisi mentioned the companions' consensus that a ordinary person may taqlid (follow) a mujtahid or madhhab in branched syar'i matters, not just permissive taqlid, but mandatory taqlid.

A non-specialist does not need to know the arguments; it is enough for a non-specialist to know the law of a matter and carry out worship according to the laws that he knows even though he does not know the arguments. Furthermore, the fatwa of the scholars he follows or the teachers he learns from is sufficient for him.

Ibn Qudamah refuted view Qadariyah as that a ordinary person is also obligated to know the arguments derived from the laws governing the problem or worship he performs (Ibnu Qudamah, 2002). He stated that the assumption was incorrect because it contradicted the companions' consensus. Additionally, the ijma' of friends is a source of agreed arguments, in which scholars agree that deviating from ijma' is sinful (A. A. Ahmad, 2019; Ali, 2010).

According to this Hanbali cleric, the companions were not experts in law or science in the past. Shahaba come in various degrees; some are mujtahids, while others are laymen incapable of performing ijtihad. Furthermore, the shahaba at the time worshiped based on the outcomes of ijtihad conducted by other friends who were indeed mujtahids, such as Abu Bakr, Umar, Ibn Abbas, and Ibn Mas'ud (Ben Ahmed, 2019).

If an ordinary person had to know the evidence and could not afford it, indeed, the Companions would not have answered all of their questions. They must have told other friends to do ijtihad because it is forbidden to practice taqlid.

Moreover, everyone cannot be able to know the evidence of every worship that is done. Not everyone has access to learn the 'tools' for ijtihad, such as Arabic language knowledge, knowledge of the Koran related to problems, knowledge of hadiths on related laws, and knowledge of Thuruq Fahm Al-Hadith. Moreover, of course, the most important is the science of ushul fiqh. Without all of that, one cannot perform ijtihad.

B. Discussion

1. Ordinary person's Taqlid To Mujtahids In The Sharia Branch

The majority of scholars agree that colloquial imitation of the common person is not permissible, except for Malik in the sighting of the crescent (Al-Baaji, 2011). If the mukallaf attains the rank of ijtihad and is presented with an issue that requires ijtihad, he must perform ijtihad; it is not permissible to imitate others. Regarding the mukallaf who did not attain the rank of ijtihad, scholars differed on the meanings of the sayings.

Taqlid, according to the first opinion, is obligatory for them. It is forbidden to perform ijtihad after the mujtahids. This position completely excludes ijtihad (Abu Hamid, 2013). The second saying referred to this Qadarism doctrine, which includes the Baghdadi Mu'tazila. They are not permitted to imitate, but each responsible person must strive for himself in the religious matters that come before him. It is permissible if the ruling's path and the evidence supporting it are revealed to him (B. Ahmad, 2002). According to the majority of scholars, the third saying stated: The blind must emulate one of the mujtahids' imams. In some branches of Sharia, a mujtahid must imitate him in areas where he cannot ascertain his ruling through ijtihad. It is not permissible for him to imitate him in areas where he can ascertain his ruling through ijtihad. This saying was supported by Ibn Qudamah in Raudha (Ibnu Qudamah, 2002).

Fundamentalists appropriated this issue from theological investigations. Return this issue to the taxpayer's primary responsibility, which, according to the Mu'tazila, is to consider and infer. What is meant by looking at this location is to consider facts to extract judgment through consideration, allowing him to reach knowledge through information. According to the majority, based on news reports, the first responsibility

is to familiarize oneself with God Almighty (Al-Qadir, 2009).

Mu'tazila based this obligation on the premise that the required knowledge can only be acquired through observation (Adamson, 2003). Furthermore, because the obligation applies only to complex matters and the beholder may have to endure hardships to obtain knowledge, the necessary knowledge is not rewarded for al-mukallaf because it is painless.

As no one can guarantee that the one who imitates it was not advised in ijtihad, from the right of action is to follow it with knowledge, because action without knowledge is ugly, and imitation is the path without knowledge, imitation in rulings is not permissible because it is not based on knowledge.. Suppose his way is the way of the scholar in being able to know them. In that case, it is not permissible for him to imitate them, just as it is not permissible for him to imitate them in the fundamentals of religion as he was able to know them (Abu Husayn, 1983).

The basis of this saying is the Mu'tazila belief that knowledge is definitive certainty. The problem is that knowledge does not benefit from principles issues because it is speculative, and jurisprudence does not benefit from issues of principles because it is derived from presumptive evidence, so naming jurisprudence with knowledge is a consideration for them. This is referred to as practical rationality in the West (Eraslan, 2020).

The opinion of the Mu'tazila is refuted by the rebuttal of the text and reason. The naqli argument used is the word of Allah in Al-Anbiya verse 7: "..*so ask the people of the message (former scriptures) if you do not know*." If it is denied that the ordinary person is required to make ijtihad, it is established that what is required in his case is to inquire of those with knowledge about what happened to him as a result of the incident. So they inquired, ordinary person, and what is meant by the people of remembrance is the nation's scholars or mujtahid. This verse discusses the commoner's right to ask the mujtahid a question about something he does not know—the rank of the diligent for the commoner as the rank of evidence for the diligent.

The Companions, may God be pleased with them, are unanimously agreed that it is permissible for them to imitate a mujtahid in the branches of Sharia. If it is known in religion by necessity, such as the existence of the Creator, who is God, and the pillars of Islam, and other things that are well-known and transmitted by systematic methods such as the prohibition of adultery, then it is not permissible to follow it. Suppose imitation in the branches of Sharia was not permissible. In that case, scholars of the Companions, may God be pleased with them, would not have answered the ordinary people to their questions and inquiries. This is known to them by frequency (Shalih. Duwayhi, 2006).

Likewise, scholars are unanimously agreed that the assignment requires ordinary people of legal rulings.

Before the mukallaf may apply the rulings, they must be aware of them, which can be accomplished directly or through mediation. Suppose we obligate them, for example, to direct. In that case, to research all scientific perspectives until they reach - at the very least - the majority of conjecture. Suppose we obligate them to focus exclusively on seeking knowledge. In that case, one will result in their interruption from plowing and offspring and the disruption of crafts and crafts, while the other will result in the world's destruction. In a more effective form, it leads to the destruction of the land, which clashes with the legitimate intent to build the land. This means that the mujtahid is compelled to inform the commoner of the judgments.

Regarding their difference in the limit of knowledge, the public considers the preponderance of suspicion to be the limit of knowledge. Thus, if the mujtahid's knowledge is at the level of preponderance of supposition, he, unlike the Mu'tazilah, has reached the limit of knowledge. This division originates from an epistemological schism between the Jama'ah and the Mu'tazila. As for their statement, "Action without knowledge is abhorrent," if we are required to do so.

The Mu'tazilites' position on this problem is founded on their creed's foundations, including the responsibility of wisdom and protection of the servants' interests. Moreover, because the commoner's imitation of the mujtahid in the branches of Sharia does not ensure the mujtahids advise or prevent him from sliding into corruption, imitation is not authorized as long as

this is the case, which implies that the ordinary person imitates the mujtahid in Sharia decisions. From this point of departure, he established their evidence to deter the commoner from copying the mujtahid.

In summary, there are two critical doctrines regarding the permissibility or prohibition of imitation for the ordinary person in the branches of Sharia. Perhaps there is a third way: taqlid may be obligatory, permissible, or forbidden. However, it returns to the factors that influence it, and among these factors is the follower, such as the actor and the type of imitation.

2. Taking The Easiest Opinion Of The Two Mujtahids

According to al-Qadhi Abdul-Jabbar, it is not permissible for the commoner, the follower, to choose the lightest verse from the fatwa issued by equal mujtahids. If the two mujtahids are equal in their assessment of the issues, but one makes a more severe statement than the other, it is not permissible for the commoner to choose between these two statements.

As a result, Abu al-Husayn al-Basri quotes al-Qadhi Abdul Jabbar in al-Mu'tamad if it is discovered that the opinions of the two mujtahids are the same, ordinary people are prohibited from taking the most accessible opinion or asking for it to be reduced (Abu Husayn, 1983).

This is because the person responsible is similar to an unsure person, closer to accuracy and correctness. So just look at the heavier of the two as a safeguard against the desires that have adorned and beautified him in the

hearts of man. As for most scholars, who disagree with the opinion of al-Qadhi Abdul-Jabbar on this issue.

The majority of scholars inferred that the commoner and the follower might initially imitate whichever one he wants before the mujtahid issues the fatwa, so he may choose to say whichever he wants after the fatwa. Accepting the statement of one of the mujtahids in the fatwa is not more appropriate than accepting the statement of the other, and he has the choice to act with whichever he wants (Ibnu Qudamah, 2002).

The truth is heavier than falsehood, as falsehood is led by lust and the conquest of Satan. However, there is no evidence to indicate that the copyist is forbidden to take the lightest saying and the necessity of taking the strongest saying from the two equal mujtahids.

Al-Qadhi Abdul-Jabbar's opinion in this matter is based on the care of the interest. It is not in the interest of the follower to take the lighter saying because lightness is one of the characteristics of falsehood, and heaviness is one of the characteristics of truth, as the hadith guides him.

If he chooses the follower, he brings himself closer to untruth than to truth. This is, of course, a corruption against which the follower, in particular, and the wider public, must be vigilant.

As a result, the follower must adhere to the most stringent standard because it ensures the safety of the soul, religion, and world. If the truth is lighter, there is

no reason for it to be untrue; therefore, he deserves a higher prize for performing the most difficult act, as the reward is a measure of significant pain.

The majority appears to be confirmed on this point, that the follower is free to adopt anything he wishes from the mujtahids' sayings on the subject at hand because obligating the more vital saying is weaker evidence than the contrary.

C. Conclusion

We showed that within the Mu'tazila, there were differences between them. The reasons for the disagreement are the opposition between the texts of Sharia with the established foundations they have, which are their five fundamentals. It also appeared in the issue that he took the lightest saying from the equal mujtahids.

It connects to God's commitment to protecting the fittest over people, and in the matter of correction and error, it links to the origin of the promise and threat, requiring God to fulfill his promise and his promise to those who erred.

Concerning the issue of imitation of the common in branches of Sharia, it relates to the mukallaf first duty, which is to consider; perhaps they introduced this argument from the field of theology into the framework of fundamentalism investigations.

That is why we see the commoner's imitation of the mujtahid in the branches of Shari'a most similar and an agreement between the majority and the Mu'tazila.

References

Abi-Mershed, O. (Ed.). (2009). *Trajectories of Education in the Arab World*. Routledge. https://doi.org/10.4324/9780203873755

Abu Hamid, A.-G. (2013). *Al-Iqtishad Fi Al-I'tiqad*. Al Manhal.

Abu Husayn, A.-B. (1983). *Al-Mu'tamad*. Scientific Books House.

Adamson, P. (2003). Al-Kindī and the Muʿtazila: Divine Attributes, Creation and Freedom. *Arabic Sciences and Philosophy*, *13*(1), 45–77. https://doi.org/10.1017/S0957423903003035

Ahmad, A. A. (2019). Ijmāʿ, consensus. In *Routledge Handbook of Islamic Law* (pp. 171–182). Routledge. https://doi.org/10.4324/9781315753881-11

Ahmad, B. (2002). *Kaysf Satir Syarh Ghawamidh Raudhat an-Nadzir* (Issue v. 1). Al-Risala Publishers Foundation.

Al-Baaji, A.-Q. (2011). *Al-Isyarah Fi Ushul Al-Fiqh*. Dar Al Kotob Al Ilmiyah.

Al-Qadir, M. (2009). *Al-Masail Al-Musytarakah*. Al-Rushd Library Publishers.

Ali, A. B. H. (2010). Scholarly Consensus: Ijmaʻ: Between Use and Misuse. *Journal of Islamic Law and Culture*, *12*(2).

Ben Ahmed, F. (2019). Ibn Rushd in the Ḥanbalī Tradition. Ibn Taymiyya and Ibn Qayyim al-Jawziyya and the Continuity of Philosophy in Muslim Contexts. *The Muslim World*, *109*(4), 561–581. https://doi.org/10.1111/muwo.12310

Damato. (2021). Urban Renewal in the "Human Renaissance." *Pennsylvania History: A Journal of Mid-Atlantic Studies*, *88*(1), 85. https://doi.org/10.5325/pennhistory.88.1.0085

Eraslan, A. (2020). The Narrative Philosophy of Rational Approach in Islam Abstract (The Case of Qādī AbdAl-Jābbār). *Cumhuriyet İlahiyat Dergisi*. https://doi.org/10.18505/cuid.701358

Ibnu Qudamah, A.-M. (2002). *Raudhat An-Nadzir Wa Junnat Al-Manadzir*. Arab Heritage Revival House.

Koujah, R. (2021). Islamic Legal Reform or Re-formation? The Transmutations of Critique in Rumee Ahmed's Sharia Compliant: A User's Guide to Hacking Islamic Law. *Islamic Law and Society*, *28*(3), 283–315. https://doi.org/10.1163/15685195-28030001

Shalih. Duwayhi. (2006). *Fath al-Waliy an-Nashir* (Issue v. 2). Ibn al-Jawzi's House.

Sheikh, N. S. (2021). Making sense of salafism: Theological foundations, ideological iterations, and political manifestations. In *The Routledge Handbook of Religion, Politics and Ideology* (pp. 177–196).

Sherman, A. J. (2019). *Ijtihād and taqlīd between the Islamic legal tradition and autonomous western reason* (1st Editio, p. 18). Routledge.

Soufi, Y. L. (2021). "Why Study Uṣūl al-Fiqh?": The Problem of Taqlīd and Tough Cases in 4th-5th /10th-11th

Century Iraq. *Islamic Law and Society*, *28*(1–2), 1–31. https://doi.org/10.1163/15685195-BJA10006

Tamari, S. (2009). Between the "golden age" and the renaissance: Islamic higher education in eighteenth-century Damascus. In *Trajectories of Education in the Arab World: Legacies and Challenges* (pp. 36–58). https://doi.org/10.4324/9780203873755

Taufiki, M., & Badriyah. (2021). Al-insijām bayna al-'urf wa al-sharī'ah al-islāmiyyah fī taqlīd ngarunghal bi majalengka, indūnisiyā. *Ahkam: Jurnal Ilmu Syariah*, *21*(1), 189–212.

Zarkasyi, A. F. (2013). Tajdid dan Modernisasi Pemikiran Islam. *Tsaqafah*, *9*(2), 395. https://doi.org/10.21111/tsaqafah.v9i2.59

Zhussipbek, G., Achilov, D., & Nagayeva, Z. (2020). Some Common Patterns of Islamic Revival in Post-Soviet Central Asia and Challenges to Develop Human Rights and Inclusive Society. *Religions*, *11*(11), 548. https://doi.org/10.3390/rel11110548

Isu Gender dan Hak-Hak Reproduksi Perempuan dalam Islam

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Abstract: *The purpose of this research is to know the issue of gender and women's reproductive rights in Islam. The existence of gender issues, namely the birth of discrimination against women and the fulfillment of women's rights, especially reproductive rights. Not only that, the dominance of patriarchal culture, which in fact is still happening until now, has given rise to views that are not accommodating to women's human values. The focus of the discussion in this study will discuss the hermeneutics of feminism in Islam, namely by understanding and deepening the interpretation of discourses about women in Islam, and Islamic views on women's reproductive rights which have been underestimated and have not been fulfilled, given that where it has been done obligations, there must be rights that are fulfilled. This study uses a library research method with descriptive analysis and the use of feminist hermeneutics as an interpretation method and approach in the interpretation of the Qur'an. The results of this study indicate that the factors that influence gender bias against women include: cultural factors, religious understanding, and state hegemony. As for the parallel partnership, which is still only normative, it can be supported in a real and actual way, and opens the minds of both men and*

women to pay full attention to this issue of gender bias, so that justice, proportionality, balance of rights and obligations between the two can be realized.

Keywords: *Gender, Islam, Feminist Hermeneutics, Women's Reproductive Rights*

Abstrak

Tujuan dari penelitian ini adalah mengetahui isu gender dan hak-hak reproduksi perempuan dalam Islam. Adanya isu gender yaitu mengenai lahirnya diskriminasi terhadap perempuan dan belum terpenuhinya hak-hak perempuan, terutama hak-hak reproduksi. Bukan hanya itu, dominasi budaya patriarki yang pada kenyataannya sampai sekarang juga masih terjadi, melahirkan pandangan yang tidak akomodatif terhadap nilai-nilai kemanusiaan perempuan. Fokus pembahasan pada penelitian ini akan membahas mengenai hermeneutika feminisme dalam Islam yaitu dengan memahami serta memperdalam penafsiran mengenai wacana-wacana tentang perempuan dalam Islam, dan pandangan Islam mengenai hak-hak reproduksi perempuan yang selama ini masih disepelekan serta belum dipenuhi, mengingat bahwa dimana telah dilakukanya kewajiban maka harus ada hak yang dipenuhi. Penelitian ini menggunakan metode studi pustaka (*lebrary research*) dengan deskriptif analisis serta penggunaan hermeneutika feminisme sebagai metode interpretasi dan pendekatan dalam penafsiran Al Qur'an. Hasil dari penelitian ini menunjukkan bahwa faktor yang mempengaruhi bias gender terhadap perempuan antara lain: faktor budaya, pemahaman keagamaan, dan hegemoni negara. Adapun dalam kemitra-sejajaran yang masih berupa sesuatu normatif saja, dapat didukung secara nyata dan aktual, serta membuka jalan pikiran baik laki-laki maupun perempuan untuk menaruh perhatian penuh terhadap isu bias gender ini, sehingga keadilan, proposionalitas, keseimbangan hak dan kewajiban antara keduanya dapat terwujud.

Kata kunci: Gender, Islam, Hermeneutika Feminisme, Hak-Hak Reproduksi Perempuan

Pendahuluan

Mahasuci Allah yang telah menciptakan makhluk di muka bumi ini secara berpasang-pasangan. Manusia diciptakan dengan sebaik-baik bentuk, mereka mendapat amanat untuk menjadi pengelola bumi selaku khalifah. Dewasa ini terdapat banyak sekali persoalan relasi interaksi dan hubungan antara laki-laki, perempuan sebagai realitas makhluk sosial. Dalam proses hubungan antar manusia, sesungguhnya semua manusia dihadapan Tuhan adalah sama. Tidak ada yang berbeda dan tidak ada yang dibeda-bedakan. Hanya satu hal yang membedakan yaitu kualitas ketakwaannya sesuai dengan Al-Qur'an Q.S Al-Hujurat ayat 13.

Mengingat bahwa isi substansi ajaran agama Islam menekankan kesetaraan dan keadilan, maka pemahaman secara luas menjadi penting karena untuk mewujudkan kemitrasejajaran yang masih merupakan sesuatu yang normative dan belum didukung secara nyata dan actual oleh sikap laki-laki dan perempuan itu sendiri.

Sampai saat ini, gejala ketidakadilan, diskriminasi, penindasan, dan kekerasan terhadap perempuan terjadi di dua ranah sekaligus yaitu dalam ruang pribadi maupun sosial, dan dalam ruang privat maupun publik. Jika ketidakadilan diskriminasi, penindasan, dan kekerasan terhadap perempuan meliputi basis kesadaran dan nilai yang sangat luas dan kompleks. Maka, dimensi agamaadalah bagian yang sangat penting.

Wacana perempuan dan agama salah satunya di Indonesia saat ini, bukanlah merupakan hal yang baru sama sekali. Ceramah seputar agama dan perempuan telah banyak digelar di tanah air. Namun, jika dicermati tampilannya belum utuh dan mendalam. Dari segi kuantitas pun masih cukup terbatas dan masih banyak menampilkan pendapat para pemikir feminis dari luar daripada produk pemikiran dalam negeri.

Begitu pula, seperti yang kita ketahui pembahasan soal kewajiban perempuan sangatlah sering dapat kita dengar dalam acara-acara ceramah atau pengajian agama. Namun, yang lebih banyak disampaikan dalam berbagai kegiatan pengajian tersebut justru sebaliknya. Pembahasan mengenai hak-hak perempuan termasuk hak-hak reproduksi perempuan dalam islam kurang diulas. Hak-hak reproduksi perempuan dalam Islam ini ada baiknya dapat lebih dikembangkan, seperti dalam berbagai kegiatan pengajian.

Merujuk dari permasalahan yang masih kerap dijumpai dalam kehidupan bermasyarakat yaitu bagaimana isu gender dan hak reproduksi manusia dapat terimplementasi dengan baik, atau tidak. Serta, hubungan antara gender dengan hak-hak reproduksi perempuan. Hal tersebut, jika menimbulkan ketimpangan dalam kehidupan sosial-keluarga antara laki-laki dan perempuan. Maka, terjadilah isu gender yang menimbulkan keresahan dalam dunia Islam. Analisis gender ini akan memberikan kontribusi yang sangat besar dalam meretas akar-akar misogisis yang merugikan perempuan.

Islam sangat memperhatikan konsep keseimbangan, keserasian, dan keselarasan. tidak satupun ciptaan-Nya yang jomplang (tidak seimbang/serasi). Konsep hubungan gender di agama Islam lebih dari sekedar pengatur keadilan gender dalam masyarakat, tetapi secara teologis mengatur pola hubungan manusia, alam dan Tuhan. Dengan demikian manusia mampu menjalankan tugas manusia sebagai khalifah fil ardl dan khalifah yang sukses lah yang dapat mencapai derajat abid (hamba) yang sesungguhnya.

Metode Penelitian

Penelitian ini menggunakan metode studi pustaka (*lebrary research*) dengan deskriptif analisis serta penggunaan hermeneutika feminisme sebagai metode interpretasi dan pendekatan dalam penafsiran Al-Qur'an. Penelitian ini dilakukan dengan pendekatan konseptual menggunakan doktrin atau argumentasi hukum Islam dalam perspektif kasus konkrit yang terjadi di lapangan. Jenis bahan penelitian yang digunakan dalam penelitian ini yaitu bahan hukum sekunder, yang meliputi buku-buku teks agama dan jurnal-jurnal penelitian agama, serta bahan non-hukum. Setelah data terkumpul, hasil penelitian dituangkan

dan dianalisa dalam bentuk deskriptif dengan menggunakan metode induktif yaitu dari umum ke khusus untuk selanjutya dapat diketemukan hasil dan ditarik kesimpulan.

Pembahasan

Memaknai Gender

Hillary M. Lips dalam bukunya yang terkenal Seks and Gender: *An Introduction,* mengartikan bahwa gender sebagai harapan-harapan budaya terhadap laki-laki dan perempuan, (*cultural expectations for woman and men*). Jadi, gender merupakan suatu konsep yang digunakan untuk mengidentifikasi perbedaan antara laki-laki dan perempuan dilihat dari segi sosial budaya.

Adapun istilah yang digunakan untuk laki-laki dan perempuan dalam Al-Qur'an dapat dipaparkan, sebagai berikut:

1) Kata Ar-Rijal dan An-Nisaa'

Adapun dalam kisah surat An-Nisaa' ayat pertama ditemukan kata An-Nisaa' berpasangan dengan kata ar-Rijal, hal ini dapat dipahami sebagai berikut:

a. Jenis kelamin laki-laki dan perempuan diungkapkan sebagai satu diri. Ini menunjukkan tidak ada perbedaan esensial antara laki-laki dan perempuan.

b. Kata ar-rajul/ar-Rijal dan kata Annisa mengandung konotasi karya yang mereka lakukan. Seperti dalam firman Allah QS. An-Nisa' [4]: 32:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا اكْتَسَبُوا ۖ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ

"Bagi orang laki-laki ada bahagian dari pada apa yang mereka usahakan, dan bagi para wanita (pun) ada bahagian dari apa yang mereka usahakan".

Kedua konsep jenis kelamin tersebut terkait dengan soal kerja dan reproduksi. Seorang laki-laki seharusnya mengerahkan segala kemampuannya untuk berusaha dan mencari rezeki. Seperti halnya tugas reproduksi bagi perempuan (Subhan, 2018 p. 19).

2) Kata Adz-Dzakar dan Al-Untsa

Kata Dzakar artinya laki-laki yang merupakan lawan dari kata Al-Untsa (perempuan) yang dikaitkan dengan jenis kelamin (Anis, 1980 p. 213). Kata Dzakar yang berpasangan dengan kata Untsa dalam Al-Qur'an dapat dipahami bahwa:

a. Gender perempuan merupakan kodrat manusia seperti halnya laki-laki. Hal itu dipahami dari kata khalaqa bahwa Allah SWT memberi kodrat gender kepada manusia hanya dua jenis, laki-laki dan perempuan. Dengan begitu, pengadaan jenis kelamin ketiga merupakan bentuk penyimpangan yang melanggar aturan kodrati.

b. Kejadian manusia dalam dua jenis kelamin itu sama, yakni berasal dari Zygote, yaitu persatuan ovum dan sperma dalam hubungan seksual.

c. Kata Dzakar dan Untsa secara harfiah bermakna kuat dan lembut. Hal ini memberi kesan akan

konotasi fisik dan psikis laki-laki dan perempuan (Subhan, 2018 p. 21).

3) Kata al-Mar'u/ Al-Imru'u dan Al-Mar'atu/ al-Imra'atu

Kata al-mar'ah berpasangan dengan kata al-Mar'u dapat dipahami, bahwa kata al-mar'ah secara khusus terpakai dalam makna istri kecuali dalam dua ayat pada QS. An-Nisa' [4]: 12 dan QS. An-Naml [27]: 23. Dari sini terlihat bahwa makna ini berkonotasi fungsional. Dalam hal ini, setiap orang baik laki-laki maupun perempuan harus saling memberikan kebahagiaan dan kegembiraan satu sama lain.

Konsep Gender dalam Dunia Islam

Konsep gender sebenarnya datang dari Barat pada pertengahan abad ke-19. Konsep ini berkembang di Barat, Eropa, dan Amerika, konsep ini mengalir sedemikian cepat dan terus berkembang. Pengaruh konsep gender ini bisa memberi gesekan relasi laki-laki dan perempuan dalam segenap rumah.

Dalam dunia Islam, telah memperkenalkan konsep relasi gender, mengacu pada ayat-ayat Al-Qur'an substantif yang sekaligus menjadi tujuan Syariah (maqashid asy syariah) antara lain mewujudkan nilai keadilan dan kebajikan (QS. An-Nahl [16]:90), keamanan dan ketentraman (QS. An-Nisaa' [4]: 58). Hal ini menunjukkan bahwa agama tidak hanya menekankan aspek ritual dan ibadah semata, tetapi juga membawa misi kemaslahatan bagi manusia (almaslahah al-'ammah) (Subhan, 2018 p. 28). Karena inti agama adalah keadilan (Muhammad, 2004 p. 129). Islam menegaskan bahwa diskriminasi peran dan relaksi gender merupakan suatu pelanggaran hak asasi manusia yang harus dieliminasi (QS. An-Nisaa' [4]:75).

Isu Gender

Gender menjadi topik yang kontroversial, karena banyak yang mengacaukan pemahaman antara perbedaan peran gender dan perbedaan jenis kelamin. Kesalahan ini berimplikasi terhadap hubungan gender yang timpang antara laki-laki dan perempuan, dan pengembangan kualitas hidup yang timpang antara kedua jenis kelamin itu (Subhan, 2018 p. 2).

Sifat isu gender ini bersifat umum, apabila menyangkut hak-hak dan pemberdayaan perempuan. Seperti di Korea, Cina, Vietnam dimana Aliran Confucius membuat hanya laki-lakilah yang secara struktur anggota yang relevan dari suatu masyarakat dan menjadikan perempuan bergantung pada sosial. Kepercayaan bahwa faktor biologis dan kultural mempengaruhi perbedaan tersebut (Sovitria, 2020 p. 16). Dan bersifat khusus, berkaitan dengan pemikiran Islam, dimana dari beberapa kritikan terhadap perspektif gender dalam Al-Qur'an, umumnya dialamatkan kepada penafsiran tentang teks-teks tersebut oleh beberapa mufasir yang dinilai bersikap diskriminatif terhadap perempuan. Adapun mengenai Hadits, kritikan tidak hanya ditujukan kepada pemahaman teks tetapi juga kepada autentisitas dan validitas teks itu sendiri.

Adapun Upaya Reinterpretasi Ayat-Ayat Gender Antara Lain:

1. Pelanggengan Tradisi Dan Budaya Patriarki

Pelanggengan budaya dan tradisi patriarki yang menguntungkan laki-laki merupakan politik antropologi. Segalanya ternilai untuk mempertahankan status quo pada pola relasi gender yang telah berakar di masyarakat. Karena yang demikian ini berlangsung lama sampai mengendap di bawah alam sadar, seolah-olah relasi gender sudah merupakan kodrat. Semakin kuat pola relasi kuasa (*power relations*), maka makin besar pula ketimpangan peran gender di masyarakat (seseorang diukur berdasar nilai produktivitasnya).

Sejatinya Islam diyakini sebagai agama yang identik dengan isu dan wacana pembebasan perempuan. Namun "kini" ada kecenderungan "seakan-akan" Islam dipahami identik dengan pembatasan terhadap perempuan. Beberapa negara Islam melakukan revolusi dan reformasi atas nama Islam. Namun yang terjadi, justru ialah pengekangan, merumahkan perempuan; misalnya negara Arab, Iran, dan Afghanistan, menjadi contoh fenomena tersebut (Subhan, 2018 p. 32).

2. Bias Gender dalam Pemahaman Teks

Teks Al-Qur'an sendiri sebenarnya bila ditelusuri memiliki beberapa "potensi" yang seringkali menjadi faktor lahirnya penafsiran kitab suci Al-Qur'an yang memang multitafsir, karena kosakata (bahasa Arab bahasa yang digunakan Al-Qur'an) seringkali bermakna tidak tunggal, sehingga terkadang bisa dinilai bias gender.

Sehingga untuk memahami ayat-ayat gender dalam kitab suci Al-Qur'an diperlukan metode-metode yang komprehensif, bukan saja metode yang selama ini dikenal dalam lintasan sejarah 'ulum Al-Qur'an, tetapi juga mengenalkan metode metode kajian teks lainnya. Atau menurut istilah John Meuleman perlu metode penafsiran secara holistik yaitu pernafasan secara menyeluruh, yang bedakan unsur normatif dan kontekstual. Yang pada akhirnya dibutuhkan reinterpretasi atau rekonstruksi dalam memahami ayat-ayat gender (Subhan, 2018 p. 34).

3. Faktor yang mempengaruhi bias gender terhadap perempuan

a) Faktor Budaya

Dalam budaya patriarki, ada perbedaan yang jelas mengenai tugas dan peranan perempuan dan laki-laki dalam kehidupan bermasyarakat, khususnya dalam keluarga. Laki-laki sebagai pemimpin atau kepala keluarga memiliki otoritas yang meliputi kontrol terhadap sumber daya ekonomi, dan suatu pembagian kerja secara seksual dalam keluarga. Hal ini menyebabkan perempuan memiliki akses yang lebih sedikit di sektor publik dibandingkan laki-laki.

b) Pemahaman Keagamaan

Memberikan pemahaman perihal gender berikut implikasinya ke tengah-tengah masyarakat

benar-benar mengalami kesulitan luar biasa, salah satunya pikiran-pikiran keagamaan, yang telah menjadi keyakinan keagamaan diyakini sebagai agama itu sendiri (Muhammad, 2019 p. 52).

Kesadaran masyarakat yang sangat dipengaruhi oleh doktrin keagamaan masih belum beranjak dari sikap diskriminatif terhadap perempuan. Banyak doktrin keagamaan yang timpang-gender karena teks-teks keagamaan dipahami secara tekstual.

c) Hegemoni Negara

Kekuasaan yang berbasis gender merupakan produk dari perbedaan jenis kelamin yang paralel dengan perbedaan kelas. Seperti pemerintahan yang lebih mendukung budaya patriarki dalam berkehidupan, sampai menjadikan hak-hak perempuan mengalami penyempitan.

Hermeneutika Feminisme Ayat-Ayat Gender dalam Al Qur'an

Secara etimologi kata hermeneutika mengandung tiga makna dasar yaitu *to say* atau mengungkapkan *to explain* atau menjelaskan dan *to translate* atau menerjemahkan (Irsyadunnas, 2017 p. 1). Hermeneutika ini diambil dari tokoh atau nama dewa Yunani, yaitu Hermes. Hermes adalah dewa yang bertugas menyampaikan pesan dan menafsirkan pesan dewa kepada manusia. Di dalam Islam hermes lebih dikenal dengan sebutan nabi Idris yaitu orang pertama yang mengabdikan dirinya pada filsafat, sebab beliau adalah

orang pertama yang mengetahui cara membaca, menulis, serta memiliki kemampuan teknologi, kedokteran, astrologi, dan lain-lain. Pengertian hermeneutika secara terminoligi adalah berupa mengungkap apa yang ada dipikiran untuk disampaikan, kemudian menjelaskanya secara rasional, serta menerjermahkan hal-hal kurang jelas/samar/asing kebahasa yang mudah dipahami oleh seseorang yang dituju (Faiz, 2015 p. 5).

Faktor lahirnya hermeneutika yaitu kesadaran pentingnya ilmu-ilmu kemanusiaan dan satu keinginan untuk mempertahankan ilmu-ilmu tersebut sebagai bagian yang berbeda dari ilmu kealaaman, serta perhatian yang serius terhadap problema pemahaman teks yang berasal dari masa lalu. Objek kajian hermeneutika sangatlah luas diantaranya yaitu berupa teks, lontar, ayat/wahyu, naskah-naskah kuno, konstitusi, deklarasi, dokumen resmi negara, peristiwa atau-pun sebuah hasil pemikiran (Hamidi, 2011 p. 78). Ada tiga hal penting yang menjadi asumsi dasar hermeneutika dalam tafsirannya, yaitu *pertama* para penafsir itu adalah manusia yang memiliki kekurangan, kelebihan, dan manusia membawa ruang lingkupnya masing-masing dalam memahami dan menghasilkan produk penafsiran. Sehingga, tidak heran jika terjadi perbedaan dan keragaman dalam penafsiran Al-Qur'an. *Kedua* penafsiran itu tidak dapat lepas dari bahasa, sejarah dan tradisi. Penafsiran merupakan satu partisipasi dalam sebuah proses historis-linguistik dan tradisi yang dialami pada ruang dan waktu tertentu. *Ketiga* tidak ada teks yang menjadi wilayah bagi diirinya sendiri. Sebagai teks yang disampaikan dalam ruang dan waktu tertentu, Al-Qur'an tidak dapat dilepaskan dari nuansa sosio historis dan linguistiknya, baik itu dalam

isi, bentuk, tujuan, dan bahasa yang digunakannya (Faiz, 2015 p. 19).

Penggunaan hermeneutika dalam penafsiran Al Qur’an ini memunculkan kelompok yang pro dan kelompok yang kontra. Kelompok yang kontra terhadap hermeneutika dalam menafsirkan ayat-ayat Al Qur’an berpendapat bahwa hermeneutika dalam kajian-kajian Al Qur’an dianggap dapat menganurkan makna substansi dari Al Qur’an itu sendiri. Hal ini lebih disebabkan oleh masuknya pemikiran-pemikiran subjektif dan kondisional dari para pemikir. Kelompok ini juga masih mempertanyakan dan meragukan antara hermeneutika dianggap sebagai suatu cara menafsirkan bible ataukah hermeneutika sebagai filsafat pemahaman. Kelompok yang pro terhadap hermeneutika Al Qur’an berpendapat bahwa keberadaan hermeneutika Al Qur’an sebagai sebuah alat bantu di dalam memahami ayat-ayat Al Qur’an, sepanjang itu bermanfaat dan dapat digunakan untuk mengungkap rahasia yang terkandung dalam Al Qur’an dan sepanjang metode itu memang betul-betul menawarkan sesuatu yang positif demi kemajuan dan pembinaan umat, maka hal itu dapat dipertimbangkan, terlebih lagi metode ini telah digunakan para tokoh muslim sebagai sebuah kesadaran akan adanya berbagai determinasi yang ikut menentukan sebuah proses pemahaman, baik yang berkaitan dengan wilayah sosial, budaya, politik, dan lainya. Dengan demikian kelompok ini sangat toleran dan berbesar hati untuk lebih mudah memperkenalkan Al Qur’an kepada masyarakat modern dengan metode hermeneutika ini (Irsyadunnas, 2017 p. 3).

Munculnya heremeneutika sebagai metode tafsir Al Qur’an tidak bisa ditolak mentah-mentah, dan dianggap ide yang keliru serta negatif. Pasti di antaranya ada yang baik dan yang baru yang dapat dimanfaatkan untuk memperluas wawasan, bahkan memperkaya penafsiran, termasuk penafsiran Al Qur’an, sebab tujuan penggunaan hermeneutika adalah untuk menafsirkan dan memahami makna kosa kata, konteks yang terdalam dan tersembunyi dari kitab suci, maka kita juga akan berkata bahwa kita memerlukan bahasan ilmu heremeneutika untuk keperluan pemahaman kitab suci Al Qur’an (Shihab, 2013 p. 363). Al Qur’an disamping wahyu Tuhan, dapat dipandang sebagai teks karena ia hadir dalam kepada manusia dalam bentuk teks. Persoalan umat manusia semakin dinamis sehingga Al Qur’an sebagai teks berhadapan dengan realitas umat Islam kontemporer yang kompleks baik persoalan dari agama sendiri hingga sosial-kemanusiaan. Al Qur’an mengandung ungkapan-ungkapan simbolik, metaforis, dan berbagai kiasan, sehingga memerlukan penafsiran dan penafsiran memerlukan metode, dan setiap metode memiliki kriteria dan aturannya sendiri-sendiri. Apabila suatu metode dianggap kurang memuaskan dan kurang memadai memadai lagi dalam menangkap pesan-pesan moral dari Al Qur’an, maka dapat dipilih metode lain yang dapat menjawab persoalan (Mardinsyah, 2018 p. 71).

Hadirnya hermeneutika dalam menafsirkan ayat-ayat Al Qur’an menjadikan para intelektual feminis Islam menggunakannya untuk melakukan penelitian permasalahan gender dalam tafsir dan melakukan reinterpretasi ayat-ayat yang berkaitan dengan gender dalam Al Qur’an. Mereka mengaplikasikan prinsip-prinsip

hermeneutika feminisme untuk menafsirkan ayat-ayat gender dalam Al Qur'an (Mardinsyah, 2018 p. 75). Tokoh-tokoh intelektual feminis antara lain yaitu Jerusha Tanner Lamptey, Amina Wadud, Asma Barlas, Kecia Ali, Engineer, dan tokoh lainnya.

Faktor yang melatar belakangi hermeneutika feminisme yaitu, *pertama* pembacaan dan pemahaman Al Qur'an dengan berdasar pada teks-teks tertentu yang mengunggulkan laki-laki dan mengenyampingkan teks-teks lain yang memperlihatkan kesetaraan dan kepedulian terhadap perempuan. *Kedua*, dominannya sistem patriarki dalam penafsiran Al Qur'an dan tidak masuknya isu gender sebagai kategori analisis dalam proses penafsiran. Fokus perhatian para intelektual feminis melakukan studi tasfir mengenai ayat-ayat gender dalam adalah untuk mengevaluasi peran dan kedudukan perempuan dalam Al Qur'an, dengan fokus perhatian pada kesetaraan gender dan keadialan sosial. Tujuan hermeneutika feminisme bagi penafsiran Al Qur'an adalah untuk menunjukkan bahwa epistimologi Al Qur'an secara inheren adalah anti patriarki, serta pembawa pesan khusus tentang pembebasan kaum perempuan dari lembah ketertindasan sekaligus mengangkat harkat dan martabat mereka sebagai manusia, dan mengabsahkan tindakan merumuskan suatu teori tentang kesetaraan antara laki-laki dan perempuan. Maka dengan kata lain hermeneutika feminisme memilki tujuan untuk membongkar isu bias gender dalam Al Qur'an yang selama ini ayat-ayat gendernya dijadikan pembenaran untuk mendungkung budaya patriarki, sehingga dibutuhkan reinterpretsi terhadap ayat-ayat tersebut.

Hermeneutika feminisme mengambil tiga aspek yang perlu dipertimbangkan dalam menafsirkan ayat-ayat gender yaitu, aspek hostoris yaitu kontekstulitas sosial/ asbabul nuzul turunya ayat, aspek gramatikal bahasa arab, dan aspek weltanschauung yaitu nilai-nilai universal yang terkandung dalam ayat Al Qur'an (Mardinsyah, 2018 p. 94). Kemudian formulasi metode hermenutika feminisme terhadap Al Qur'an menuju tafsir yang berkeadilan gender terdapat lima langkah yaitu, *pertama*, padangan atau pengalaman perempuan. Jika dahulu kebanyakan tafsir klasik ditafsirkan dari pandangan, pengalaman, dan ruang lingkup kelelakian maka dari sini dapat dimulai penafsiran berdasar pada pandagan dan pengalaman perempuan. *Kedua*, kerangka pemikiran feminis. Kerangka pemikiran feminis ini adalah membuktikan bahwa Al Qur'an tidak membedakan perlakuan terhdap laki-laki dan perempuan, memiliki hak dan kewajiban yang sama, serta meluruskan isu bias gender sebab kurangnya pendalaman dalam tafsiran ayat-ayat gender dalam Al Qur'an. *Ketiga*, metode kontekstualitas historis yaitu menafsirkan Al Qur'an dengan menggunakan pendekatan sejarah, asal ususl, latar belakang, ataupun dengan sebab turunya Al Qur'an. Dalam pendekatan kontekstual historsi, ayat-ayat A Qur'an dipahami menurut konteksnya, dibedakan mana ayat yang bersifat partikular dan mana yang bersifat universal. *Keempat*, metode intratekstual yaitu pemikiran sistematsi untuk mengolerasikan beberapa ayat yang membicarakan tema yang sama agar tampak pertalian yang sesuai dengan Al Qur'an. Atau dengan pengertian lain yaitu pembacaan ayat-ayat Al Qur'an secara menyeluruh sebagai satu kesatuan yang saling terkit kemudian ayat-ayat dalam tema yang

sama dihimpun dan dipandang sebagai kesatuan dan makna ditarik dari keseluruhan teks. *Kelima*, paradigma tauhid yaitu hermeneutika feminisme sebagai metode tafsir Al Qur'an harus kembali kepada inti ajaran Al Qur'an yaitu ketauhidan. Esensi ketauhidan dapat digunakan untuk mengadvokasi hak asasi manusia dan kesetaraan anatara laki-laki dan perempuan, sebab ketauhidan berarti memaknai keesaan Allah membebaskan manusia dari sistem yang tidak adil, sehingga menciptakan seluruh umat manusia yang selaras dan bersaudara (Mardinsyah, 2018 p. 106).

Adapun pengaplikasiaan hermeneutika feminisme dalam menafsirkan ayat-ayat gender dalam Al Qur'an dapat meletakkan kesetaraan dan keadilan gender sebagai sandaran utama moralitas umat Islam, serta membongkar isu bias gender dalam Al Qur'an sehingga tidak lagi membangun sikap bias gender. Di bawah ini contoh pengaplikasian hermeneutika feminisme dalam Al Qur'an.

1. Q.S. An Nisa' ayat 34 tentang kepemimpinan.

   اَلرِّجَالُ قَوَّامُوْنَ عَلَى النِّسَاۤءِ بِمَا فَضَّلَ اللّٰهُ بَعْضَهُمْ عَلٰى بَعْضٍ وَّبِمَآ اَنْفَقُوْا مِنْ اَمْوَالِهِمْ ۗ فَالصّٰلِحٰتُ قٰنِتٰتٌ حٰفِظٰتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللّٰهُ

   Artinya: "kaum laki-laki itu adalah pemimpin bagi kaum wanita, oleh karena Allah telah melebihkan sebahagian mereka (laki-laki) atas sebahagian yang lain (wanita), dan karena mereka (laki-laki) telah menafkahkan sebagian dari harta mereka. sebab itu Maka wanita yang saleh, ialah yang taat kepada Allah lagi memelihara diri ketika suaminya tidak ada, oleh karena Allah telah memelihara (mereka)."

Jika penafsirannya hanya sesuai dengan teks maka akan menimbulkan tafsiran yang menonjolkan nilai-nilai suprioritas laki-laki. Menurut al Razi dan Zamakhshari menafsirkan ayat di atas dengan mengatakan bahwa laki-laki memang sudah ditetapkan oleh Allah sebgai pemimpin dan mengambil keputusan bagi perempuan, dengan berlandasakan alasan bahwa tingkat intelektulitas dan keilmuan laki-laki lebih tinggi ditambah lagi mereka memperkuat pendapat mereka dengan menyebutkan beberapa profesi yang secara mayoritas hanya bisa dilakukan oleh laki-laki seperti Nabi, ulama, jihad, khutbah, dan lain-lain. Kemudian alasan selanjutnya adalah karena laki-laki mempunyai kewajiban mengeluarkan biaya mahar dalam perkawinan dan nafkah bagi istrinya. Dari kedua pendapat tafsiran tokoh di atas terkesan sangat kental pro dengan budaya patriarki, yang lebih menojolkan laki-laki dari segala bidang, dan meminggirkan perempuan (Irsyadunnas, 2017 p. 170). Maka dari digunakanlah metode tafsir hermenutika feminisme menjadi bahwa kata *qawwam* dapat diartikan musallith/ menguasa, akan tetapi mengapa dua sama yang di tempat yang lain diartikan *qaim(in)*, yang berarti penguat atau penopang sehingga ayat itu (An Nisa : 34) artinya menjadi 'kaum lelaki adalah penguat/ penopang bagi kaum perempuan dengan bukan karena kelebihan yang satu atas yang lain dan dengan bukan karena nafkan yang diberikan', yakni dalam surah An Nisa' : 134 dan surah Al Maidah : 8. Dengan pengertian seperti ini, maka secara normatif sikap laki-laki kepada perempuan (suami terhadap istri) bukanlah 'menguasai atau

mendominasi dan cenderung memaksa' melainkan mendukung dan mengayomi (F.Mas'udi, 2000 p. 68). Sependapat dengan penjelasan tersebut Amina Wadud, Mughniyah, dan Engineer menjelaskan bahwa kata *qawwam* adalah bentuk kemampuan seorang laki-laki untuk memberikan perlindungan fisik dan dukungan materi terhadap perempuan. Tidak hanya berhenti di kebahasaannya saja, namun dilihat dari kotekstualisasi historinyabahwa ayat di atas merupakan terbatas untuk relasi suami istri dalam rumah tangga, bukan dalam lingkup publik atau dibawa-bawa dalam lingkup publik. Pemahaman yang kurang mengenai konsep-konsep tafsiran dalam Al Qur'an akan memunculkan isu gender. Membatasi ruang gerak perempuan dalam kehidupan publik padahal kepemimpinan dapat dipegang oleh siapapun, tanpa melihat jenis kelamin, asalkan dia mampu.

2. Q.S. Al Baqarah ayat 282 tetang kesaksian wanita.

   "Hai orang-orang yang beriman, apabila kamu bermu'amalah tidak secara tunai untuk waktu yang ditentukan, hendaklah kamu menuliskannya. dan hendaklah seorang penulis di antara kamu menuliskannya dengan benar. dan janganlah penulis enggan menuliskannya sebagaimana Allah mengajarkannya, meka hendaklah ia menulis, dan hendaklah orang yang berhutang itu mengimlakkan (apa yang akan ditulis itu), dan hendaklah ia bertakwa kepada Allah Tuhannya, dan janganlah ia mengurangi sedikitpun daripada hutangnya. jika yang berhutang itu orang yang lemah akalnya atau lemah (keadaannya) atau Dia sendiri tidak mampu mengimlakkan, Maka hendaklah walinya mengimlakkan dengan jujur. dan persaksikanlah dengan dua orang saksi dari orang-orang lelaki (di antaramu). jika tak ada dua oang lelaki, Maka (boleh) seorang lelaki dan dua orang perempuan dari saksi-saksi yang kamu ridhai, supaya jika seorang lupa Maka yang seorang mengingatkannya. janganlah saksi-saksi itu enggan (memberi keterangan) apabila mereka dipanggil; dan janganlah kamu jemu menulis hutang itu, baik kecil maupun besar sampai batas waktu membayarnya. yang demikian itu, lebih adil di sisi Allah dan lebih menguatkan persaksian dan lebih dekat kepada tidak (menimbulkan) keraguanmu. (Tulislah mu'amalahmu itu), kecuali jika mu'amalah itu perdagangan tunai yang kamu jalankan di antara kamu, Maka tidak ada dosa bagi kamu, (jika) kamu tidak menulisnya. dan persaksikanlah apabila kamu berjual beli; dan janganlah penulis dan saksi saling sulit menyulitkan. jika kamu lakukan (yang demikian), Maka Sesungguhnya hal itu adalah suatu kefasikan pada dirimu. dan bertakwalah kepada Allah; Allah mengajarmu; dan Allah Maha mengetahui segala sesuatu."

   Dilihat dari kontekstual-historinya ayat ini turun pada saat kondisi perempuan zaman itu kurang mampu untuk menjadi saksi sebab kurangnya kepahaman masalah muamalah terutama perbisnisan. Menurut Syaikh Mahmud Syalthut mengatakan bahwa ayat di atas tidak ada sangkut pautnya dengan anggapan kaum lelaki lebih superior dibanding perempuan, juga kesaksiannya. Dengan begitu, bagi kaum perempuan yang sudah terbiasa dengan urusan muamalah, atau

urusan apapun maka kesaksian mereka adalah sama seperti kesaksian kaum lelaki (F.Mas'udi, 2000 p. 60). Pembicaraan saksi dalam ayat ini tidak dimaksudkan untuk berlaku umum. Ayat ini bersifat khusus da kodisional. Permintaan untuk menjadi saksi netral gender. Kebutuhan akan saksi sangat berkaitan dengan kemampuan, kepahapan akan duduk perkara, serta kejujuran (Mardinsyah, 2018 p. 138). Terlebih lagi sekarang di zaman modern perempuan maupun laki-laki setara dalam hal pengetahuan, sebab sama-sama menjalani pendidikan, jadi kesaksian perempuanpun tidak sembarangan untuk dikesampingkan.

Hak-Hak Reproduksi Perempuan dalam Islam

Ada dua perbedaan perempuan dan laki-laki, yaitu perbedaan yang bersifat mutlak dan relatif. Perbedaan yang bersifat relatif ini dihasilkan oleh interpretasi sosial dan simbolik atau sering disebut *social contruction*. Perbedaan reltif ini bersifat non-kodrati, tidak kekal, sangat mungkin berubah, berbeda-beda berdasarkan ruang dan waktu. Perbedaan relatif antara perempuan da laki-laki inilah yang sering berkaitan dengan isu bias gender, seperti yang sudah dibahas di atas. Perbedaan mutlak adalah perbedaan yang bersifat mutlak dan mengacu pada hal-hal yang biologis. Perbedaan mutlak ini merupakan ketentuan Tuhan yang bersifat alami tidak dapat berubah dan tidak dapat dipertukarkan. Dalam kodratnya perempuan diberikan oleh Tuhan sesuatu hal yang tidak dapat dijalankan oleh laki-laki. Spesifikasi wanita dalam hal biologis reproduksi yang membedakannya dengan laki-laki, yaitu haid, hamil,

melahirkan, dan menyusui. Inilah yang dikehendaki atau yang dimaksud dengan kodrat wanita. Jadi, istilah kodrat wanita ini meliputi fungsi reproduksi yang tidak dapat digantikan oleh kaum laki-laki (Subhan, 1999 p. 24).

Perempuan sebagai pengemban fungsi reproduksi memiliki hak-hak yang harus dipenuhi yaitu hak-hak reproduksi perempuan. Pemberian hak-hak ini dimaksudkan untuk lebih memperhatikan kesejahteraan serta kesehatan perempuan sebagai pengemban fungsi reproduksi umat manusia, agar tidak ada resikoyang muncul dalam mejalankan kodratnya sebagai perempuan. Allah SWT. berfirman dalam surah Al Baqarah ayat 228,

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۚ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Artinya: "dan bagi perempuan (istri) ada hak yang sepadan dengan kewajibannya atau beban yang dipikulnya, yang harus dipenuhi dengan cara yang makruf."

Ada tiga kategori hak-hak kaum perempuan sebagai pengemban fungsi reproduksi yaitu.

1. Hak jaminan keselamatan dan kesehatan yaitu dengan tetap memperhatikan kondisi fisik dan mental perempuan. Ketika sedang menstruasi apabila suami ingin berhubungan seksual maka sebaiknya tidak dilakukan terlebih dahulu sampai istri selesai haidnya. Hal tersebut juga dijelaskan dalam surah Al Baqarah ayat 222 bahwa *"karena itulah jauhilah istri pada waktu haid dan jangan kamu dekati mereka pada saat haid".* Begitupun dengan tanggapan medis bahwa berhubungan seksual pada saat haid beresiko terkena infeksi seksual. Tidak hanya pada saat menstruasi, pada

saat kondisi megandung, melahirkan, serta menyusui juga perlu diperhatikan agar kondisi si ibu dan bayi tetap sehat dan selamat sehingga tidak menaikkan resiko kemataian diantara keduanya.

2. Hak jaminan kesejahteraan. Hak ini bukan saja selama proses-proses vital reproduksi saja tetapi juga masa-masa setelah itu dalam statusnya sebagai istri dan ibu dari anak-anak. Hak jaminan kesejahteraan ini berupa nafkah materi yang dapat digunakan untuk kehidupan sehari-hari, sehingga istri dan anak dapat tercukupi keperluannya. Allah berfirman dalam surah Al Baqarah ayat 233,

   Artinya: *"Para ibu hendaklah menyusukan anak-anaknya selama dua tahun penuh, Yaitu bagi yang ingin menyempurnakan penyusuan. dan kewajiban ayah memberi Makan dan pakaian kepada Para ibu dengan cara ma'ruf. seseorang tidak dibebani melainkan menurut kadar kesanggupannya. janganlah seorang ibu menderita kesengsaraan karena anaknya dan seorang ayah karena anaknya, dan warispun berkewajiban demikian. apabila keduanya ingin menyapih (sebelum dua tahun) dengan kerelaan keduanya dan permusyawaratan, Maka tidak ada dosa atas keduanya. dan jika kamu ingin anakmu disusukan oleh orang lain, Maka tidak ada dosa bagimu apabila kamu memberikan pembayaran menurut yang patut. bertakwalah kamu kepada Allah dan ketahuilah bahwa Allah Maha melihat apa yang kamu kerjakan."*

3. Hak ikut mengambil keputusan yang menyangkut kepentingan perempuan khususnya yang berkaitan

tentang reproduksi. Hak mengambil keputusan ini diberikan sebab yang menanggung beban reproduksi seperti hamil, melahirkan, dan menyusui adalah kodrat wanita, maka apabila ingin mengambil keputusan yang berkaitan dengan reproduksi sebaiknya didiskusikan bersama istri. Seperti misalnya melakukan hubungan seksual, rencana memiliki anak, menentukan kehamilan, dan kegiatan lainnya yang menyangkut mengenai hal itu. Hal ini dikarenakan akibat dari hubungan reproduksi terdapat pada wanita dan apabila nanti terjadi sesuatu hal yang tidak diinginkan maka yang pertama terkena resikonya adalah wanita itu sendiri, maka dari itu diperlukan bagi wanita pemberian hak ikut mengambil keputusan yaang menyangkut kepentigan perempuan khususnya yang berkaitan dengan reproduksi.

Hubungan Isu Gender dengan Hak-Hak Reproduksi Perempuan dalam Islam

Hubungan isu gender dengan hak-hak reproduksi perempuan adalah ketika masih adanya isu gender terhadap perempuan seperti deskriminasi, budaya patriarki, ketidakpercayaan terhadap perempuan, mengesampingkan keberadaan perempuan, dan persoalan-persoalan bias gender lainnya. Maka, hal ini akan menyebabkan pemenuhan hak-hak perempuan termasuk hak-hak reproduksi perempuan belum bisa terpenuhi dengan baik. Penghapusan persoalan isu gender terhadap perempuan setidaknya akan meminimalisir pandangan-pandangan negatif tentang wacana-wacana mengenai kemampuan

perempuan dalam ruang publik. Maka dari itu sangat penting untuk memberikan pemahaman mengenai wacana-wacana tentang perempuan dalam Islam, penghapusan budaya patriarki, serta pemahaman menganai hak-hak perempuan termasuk hak-hak reproduksinya.

Kesimpulan

Esensi dari perspektif gender adalah ide tentang kesetaraan laki-laki dan perempuan. Adanya isu gender ini dimana diskriminasi peran dan relaksi gender merupakan suatu pelanggaran hak asasi manusia yang harus dieliminasi. Faktor yang mempengaruhi isu bias gender terhadap perempuan diantaranya faktor budaya, pemahaman keagamaan, dan hegemoni negara. Untuk meminimalisir isu gender tersebut banyak hal yang dapat dilakukan, salah satunya dengan membenahi pemahaman mengenai wacana-wacana perempuan dalam Islam. Metode hermeneutika dapat dijadikan metode alternatif dalam menafsirkan ayat-ayat Al Qur'an yang berbau gender. Hermeneutika feminisme metode alternative bercorak moral dengan meletakkan kesetaraan dan keadilan gender sebagai sandaran utama moralitas Islam. Hermeneutika ini menawarkan tafsiran Al Qur'an yang tidak hanya berhenti pada teks/ gramatikal bahasa, namun juga dengan pendekatan kontekstual sosiologi, histori, dan paradigma ketauhidan. Dengan meluruskan pemahaman tersebut dapat pula sekaligus menegakkan hak-hak perempuan, termasuk hak-hak reproduksi perempuan. Hak-hak ini perlu dipenuhi setelah perempuan melakukan kewajibannya dalam kodrat sebagai pengemban amanah reproduksi umat manusia.

Islam adalah agama yang substansi ajaranya menekankan pada kesetaraan dan keadilan. Bahkan dalam Al Qur'an dijelasakan bahwa laki-laki maupun perempuan sama di hadapan allah swt. Yang membedakan hanya ketaqwaan mereka. Al-Qur'an memosisikan perempuan pada posisi yang terhormat, melindungi hak-haknya, menjelaskan peran dan kewajibannya sekaligus memuliakan kedudukannya.

Daftar Pustaka

Anis, Ibrahim. 1980. *Al Muljam Al Wasith.* Kairo : Majma' Al Lughah Al Arabiyah, 1980. 213.

F.Mas'udi, Masdar. 2000. *Islam & Hak-Hak Reproduksi Perempuan.* Bandung : Mizan, 2000.

Faiz, Fahruddin. 2015. *Hermeneutika Al Qur'an: Tema-Tema Kontroversial.* Yogyakarta : Kalimedia, 2015.

Hamidi, Jazim. 2011. *Hermeneutika Hukum.* Malang : UB Press, 2011.

Irsyadunnas. 2017. *Hermeneutika Feminisme dalam Pemikiran Tokoh Islam Kontemporer.* Yogyakarta : Calpulis, 2017.

Mardinsyah, Mardety. 2018. *Heremeneutika Reformasi Gender dalam Islam.* Bandung : Bitread Publishing, 2018.

Muhammad, Husein. 2019. *Fiqh Perempuan.* Yogyakarta : IRCiSoD, 2019.

—. 2004. *Islam Agama Ramah Perempuan.* Yogyakarta : LKiS , 2004. 129.

Shihab, M. Quraish. 2013. *Kaidah Tafsir (Syarat, Ketentuan, dan Aturan yang Patut dalam Memahami Ayat-Ayat Al Qur'an).* Tangerang : Lentera Hati, 2013.

Sovitria, Rillah. 2020. *Kajian Gender dalam Tinjauan Psikologi.* Jakarta : Uwais Inspirasi Indonesia, 2020. 16.

Subhan, Zaitunah. 2018. *Al-Qur'an Dan perempuan: Menuju Kesetaraan Gender Dalam Penafsiran.* Jakarta : Prenada Media Group, 2018.

—. 1999. *Tafsir Kebencian: Studi Bias Gender dalam Studi Al Qur'an.* Yogyakarta : LKiS Yogyakarta, 1999.

Meninjau Pelaksanaan Hak dan Perlindungan Anak Sesuai Undang Undang Nomor 35 Tahun 2014 di Kabupaten Jepara

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Abstrak: *Hak untuk mendapat kehidupan yang layak sangat penting bagi anak sejak usia dini. Hak asasi anak menjadi sangat penting, terlebih hak atas pendidikan, karena untuk membentuk karakter, masa depan bahkan dengan pendidikan bisa menekan angka kejahatan. Perlindungan anak sangat urgen karena dapat mencegah terjadinya kekerasan terhadap anak baik fisik, psikis maupun sosial di masyarakat. Sering kita lihat bahwa perlindungan anak di Indonesia, khususnya di Kabupaten Jepara masih sangat minim. Banyak terjadi kasus seperti pernikahan dini, kekerasan fisik bahkan pemerkosaan oleh orang terdekat. Dalam penelitian ini menggunakan metode penelitian normatif – empiris. Pengumpulan data menggunakan data primer dan skunder yaitu data yang diperoleh dari masyarakat dan data dari kepustakaan serta kajian yuridis. Di Kabupaten Jepara belakangan ini banyak terjadi kasus pelanggaran hak anak karena faktor ekonomi dan kurangnya pengetahuan. Para korban kesulitan untuk melapor atas tindak kekerasan yang dialami dikarenakan ancaman. Dalam penelitian ini faktor penyebab pelanggaran hak anak dikarenakan faktor ekonomi, pendidikan, kelainan biologis,*

pergaulan teman, akses pornografi, pengaruh miras dan lingkungan. Penelitian ini bertujuan untuk mengetahui bagaimana peranan orang tua, keluarga dan masyarakat di Kabupaten Jepara dalam pelaksanaan perlindungan anak sesuai undang undang nomor 35 tahun 2014 atas perubahan undang undang nomor 23 tahun 2002 tentang Perlindungan Anak.

Kata Kunci*: Hak Anak, Pelanggaran, Faktor Penyebab, Perlindungan.*

A. Pendahuluan

Indonesia adalah negara hukum yang didasarkan pada pancasila yang merupakan sumber sumber dari segala hukum. Masa depan negara Indonesia tergantung dari apa yang anak peroleh pada masa sekarang. Banyak harapan besar dari orang tua, keluarga, masyarakat dan pemerintah untuk anak terutama generasi Z. Meskipun anak adalah harapan banyak orang tidak bisa dipungkiri bahwa seseorang yang harus melindungi justru melakukan perbuatan yang dimana berakhibat hukum. Masa depan terhadap anak sendiri bergantung pada orang dewasa sehingga kesadaran atas perlindungan anak harus dipahami oleh masyarakat, keluarga, orang tua dan pemerintah. Pelanggaran anak terkait penyalahgunaan seksual mencakup prostitusi anak, pornografi anak, penjualan anak, ucapan yang tidak pantas, pencabulan, pemerkosaan, ataupun bentuk lain yang melanggar hukum dan berakibat anak menjadi korban.

Perlindungan terhadap hak asasi anak pun mulai menjadi perhatian belakangan ini. Dimana banyak terjadi kasus kekerasan bahkan pelecehan seksual kepada anak (dibawah umur). Hal ini tidak terlepas dari kurangnya pengawasan dan perlindungan terhadap anak. Akar permasalahannya tentu bukan hanya pada lingkup keluarga semata, tetapi tentu juga harus menjadi tanggung jawab dari pemerintah itu sendiri dalam melindungi warganya, eksplisit pada anak.

Pada hakikatnya seorang anak perlu adanya pendidikan, pembentukan mental dan pembentukan kepribadian terutama oleh keluarga. Seperti yang kita ketahui di Indonesia sejak tahun 2015 mengalami peningkatan kekerasan pada anak. Bahkan SATGAS (satuan tugas) perlindungan anak menilai indonesia pada tahun 2021 mengalami kondisi darurat kekerasan terhadap anak. Di Indonesia telah mengesahkan undang undang nomor 35 tahun 2014 tentang perlindungan anak, namun perlindungan terhadap anak khususnya di Kabupaten Jepara belum terlaksana dengan baik, sehingga perlu adanya tinjauan yuridis dalam pelaksanaan undang-undang nomor 35 tahun 2014.

Dengan angka yang terus mengalami peningkatan, tentu undang-undang perlindungan anak dan peran Pemerintah menjadi tanda tanya di kalangan masyarakat, khusunya di Kabupaten Jepara. Oleh karenanya harus ada dukungan dan sinergitas dari pemerintah, masyarakat dan keluarga dalam menekan pelecehan seksual dan kekerasan pada anak serta dapat mewujudkan perlindungan terhadap anak yang konsisten kedepannya.

B. Metode Penelitian

Dalam Penelitian ini menggunakan penelitian hukum normatif empiris. Penelitian normatif adalah suatu prosedur penelitian ilmiah untuk menemupakan kebenaran berdasarkan logika keilmuan dari sisi normatifnya. Sisi normatif disini tidak sebatas pada peraturan perundang-undangan saja. Dan juga penelitian hukum empiris adalah suatu metode penelitian hukum yang menggunakan fakta-fakta empiris yang diambil dari perilaku manusia, baik perilaku verbal yang didapat dari wawancara maupun perilaku nyata yang dilakukan melalui pengamatan langsung. Dimana dalam pengumpulan datanya menggunakan data primer dan sekunder yang diperoleh masyarakat di Jepara serta bahan kepustakaan dengan tinjauan yuridis tentang undang-undang perlindungan kekerasan terhadap anak.

C. Pembahasan

1. Kajian Yuridis Terhadap Undang Undang No 35 Tahun 2014 Tentang Perlindungan Anak

Dalam membentuk suatu Peraturan Perundang-undangan di Indonesia menganut pada undang –undang nomor 12 tahun 2011 tentang Pembentukan Peraturan Peraturan Perundang- undangan, dimana Pancasila merupakan sumber segala sumber hukum negaradan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 merupakan hukum dasar dalam Peraturan Perundang-undangan. Dalam membentuk Peraturan Perundang-undangan harus dilakukan berdasarkan

pada asas pembentukan Peraturan Perundang-undangan yang baik. Pasal 7 ayat (2) UU No. 12 Tahun 2011 menentukan bahwa kekuatan hukum peraturan perundang-undangan sesuai dengan hierarki sebagaimana dalam Pasal 7 ayat (1). Ini berarti bahwa Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD NRI Tahun 1945) dijadikan sebagai norma dasar (basicnorm).(Aditya and Winata, 2018)

Di indonesia telah mengesahkan undang-undang nomor 35 tahun 2014 tentang perubahan atas undang-undang nomor 23 tahun 2002 pada tanggal 17 oktober 2014 yang ditanda tangani oleh presiden Dr. Susilo Bambang Yudhoyono dan langsung diundangkan oleh Menkumham amir syamsudin. Pasal 76C undang undang nomor 35 tahun 2014 yang berbunyi "Setiap Orang dilarang menempatkan, membiarkan, melakukan, menyuruh melakukan, atau turut serta melakukan Kekerasan terhadap Anak".(DPR & Presiden Republik Indonesia, 2014)

Dalam perubahan undang-undang nomer 23 tahun 2002. Pasal 1 ayat 12 "Hak anak adalah bagian dari hak asasi manusia yang wajib dijamin, dilindungi, dan dipenuhi oleh orang tua, keluarga, masyarakat, pemerintah, dan Negara".(Indonesia, 2002) Kemudian dirubah menjadi "Hak Anak adalah bagian dari hak asasi manusia yang wajib dijamin, dilindungi, dan dipenuhi oleh Orang Tua, Keluarga, masyarakat, negara, pemerintah, dan pemerintah daerah". Dalam perubahan terbaru terdapat penambahan kata "pemerintah daerah", tentu hal ini mengindikasikan bahwa tidak

hanya pemerintah dan Negara saja yang bertanggung jawab terhadap perlindungan anak, melainkan juga pemerintahan daerah.

Meskipun undang-undang tentang perlindungan anak telah disahkan, namun masih belum bisa mencegah terjadinya kasus kasus pelanggaran anak di kabupaten jepara. Hal ini merupakan perlu adanya kerjasama pemerintah dan masyarakat yang lebih ditekankan. Dengan cara pendekatan melalui organisasi masyarakat dan sosialisasi ke desa-desa yang pernah terjadi kasus pelanggaran pada anak, agar bisa memberi pengetahuan kepada mereka bahwa hal tersebut berakibat hukum dan berimbas negative, eksplisit pada korban.

2. Faktor Penyebab Kekerasan Pada Anak di Kabupaten Jepara

Dikabupaten jepara pelanggaran hak pada anak termasuk dalam kategori tinggi. Dikarenakan masyarakat kurang pengetahuan bahwa hal yang dilakukan dapat berakibat hukum. Indikator penyebab pelanggaran hak anak disebabkan oleh pendidikan orang tua kurang sesuai, suasana dalam rumah, ekonomi, kelainan biologis, pergaulan teman, akses pornografi, pengaruh miras dan lingkungan. Menurut aristoteles Pendidikan adalah fungsi Negara, dan diselenggarakan, paling tidak, untuk tujuan Negara. Negara – institusi sosial tertinggi yang menjamin tujuan tertinggi atau kebahagiaan manusia. Pendidikan adalah persiapan untuk beberapa kegiatan yang layak. Pendidikan harus dipandu oleh undang-undang agar

sesuai dengan hasil analisis psikologis, dan mengikuti perkembangan bertahap dari kemampuan tubuh dan mental”.

Seorang anak sangat bergantung pada orang dewasa terutama orang tua karena mereka belum mampu berfikir secara luas dan belum bisa menentukan ke arah yang benar. Maka, sebagai orang dewasa harus menyadarinya dengan memberi pemahaman ke anak agar mereka tau karena apa yang kita lakukan pada masa sekarang sangat berpengaruh terhadap anak untuk masa depan. Seorang anak pasti mempunyai keinginan kelak akan seperti apa sehingga sebagai orang tua seharusnya mendukung apabila itu baik dan memberi pemahaman apabila itu salah.

Menurut aristoteles “Pendidikan adalah fungsi Negara, dan diselenggarakan, paling tidak, untuk tujuan Negara. Negara–institusi sosial tertinggi yang menjamin tujuan tertinggi atau kebahagiaan manusia. Pendidikan adalah persiapan untuk beberapa kegiatan yang layak. Pendidikan harus dipandu oleh undang-undang agar sesuai dengan hasil analisis psikologis, dan mengikuti perkembangan bertahap dari kemampuan tubuh dan mental”.

Kasus pelanggaran hak pada anak di kabupaten jepara mengalami peningkatan dengan adanya permintaan dispensasi usia di pengadilan agama jepara. Mereka melakukan dispensasi usia dikarenan usia yang belum menginjak 19 tahun. Dengan usia dibawah 19 tahun seharusnya seorang anak masih melaksanakan pendidikan sesuai jenjang masing masing. Permintaan

dispensasi usia menurut riset yang kami dapat disebabkan oleh kehamilan di luar nikah. Seorang anak yang melakukan dispensasi usia belum mampu berfikir secara luas bahwa pernikahan dini dapat menyebabkan permasalahan ekonomi, kekerasan dalam rumah tangga dan berakhir perceraian.

Apabila dalam rumah tangga terjadi pertikaian, seorang anak akan merasa terganggu mental dan psikisnya bahkan mereka bisa meniru apabila seorang anak sudah menikah. Kasus pelanggaran selanjutnya yaitu pelecehan seksual oleh orang terdekat masih mendominasi. Pemerintah kabupaten jepara pada tahun 2021 telah menangani 76 kasus pelanggaran hak pada anak. Seseorang yang mengalami pelecehan seksual tidak berani mengatakan kepada orang tua maupun keluarga bahkan tidak berani melaporkannya pada pihak yang berwenang dalam perlindungan perempuan dan anak.

Dengan adanya media berita, merupakan salah satu penyebab seseorang yang mengalami pelecehan seksual tidak berani bicara dikarenakan malu yang akan berpengaruh pada dirinya bahkan keluarga. Seseorang yang mengalami pelecehan seksual seharusnya dilindungi dan dirangkul agar mereka merasa aman dan tidak memojokan bahwa mereka juga salah. Kasus pelecehan seksual dijepara dilakukan dengan cara memaksa, merayu, diancam untuk dibunuh dan diiming-iming sejuamlah uang. Faktor penyebab utama pelecehan seksual yaitu ekonomi, pola hidup, pendidikan dan pengaruh miras. Di indonesia

seharunya memberi fasilitas secara gratis untuk penanganan hukum , mental, dan fisik dengan sebaik mungkin.

3. **Peran Pemerintah Kabupaten Jepara dalam Upaya perlindungan Terhadap Kekerasan Pada Anak**

Pemerintah di kabupaten jepara sudah mendukung perlindungan anak dengan adanya tempat aduan Perlindungan Perempuan dan Anak (PPA) di bawah naungan P2TP2A. Ruang aduan perlindungan anak bertempat di lingkup DP3AP2KB Kabupaten Jepara, Jalan Shima No.1A, Kelurahan Pengkol, Kecamatan Jepara. Selain itu, rehabilitasi pada korban sangat diperlukan. Adanya bimbingan konseling dari Komnas Perlindungan Anak KPAI Jepara gratis bagi korban kekersan pada anak juga sangat membantu dalam upaya pengurangan dan pencegahan kasus kekerasan terhadap anak di Jepara. Bukan hanya bimbingan konseling pada korban kekerasan anak, edukasi ini juga berlaku pada calon pengantin yang persyaratan umurnya kurang sehingga harus mengajukan dispensasi nikah di Pengadilan Agama Jepara.

Pemerintah maupun lembaga yang berwenang seharusnya menanggung biaya secara gratis untuk penanganan sampai pemulihan. Khususnya untuk penyandang disabilitas tuna wicara , tuna netra, tuna rungu sebagai penerjemah bahasa isyarat.

Dengan adanya peran dari Pemerintah Kabupaten Jepara tentu diharapkan akan menekan angka kasus kekerasan pada anak yang terjadi di Jepara. Sehingga efektifitas dari undang-undang nomer 35 tahun 2014 tentang perlindungan anak di Kabupaten Jepara bisa berjalan dengan baik dan mampu menciptakan hukum yang adil serta mengayomi masyarakat.

D. Kesimpulan

Dalam penelitian ini menyimpulkan bahwa perlunya meninjau undang- undang sebagai tendensi dalam mengambil suatu putusan hukum,utamanya penguatan tentang perlindungan terhadap kekerasan pada anak. Untuk mengurangi kekerasan anak di Jepara harus dilakukan pelaksanaan dan pengetahuan akibat hukum antar keluarga, orang tua, masyarakat, dan pemerintah Kabupaten Jepara dengan cara sosialisasi dengan prioritas ke desa - desa yang minim pengetahuan mengenai perlindungan anak. Sosialisasi pencegahan kekerasan anak bisa dilakukan dengan andil para mahasiswa pengabdian di masyarakat melalui program kerja dan edukasi terhadap warga sekitar mendukung terlaksanakannya undang undang nomor 35 tahun 2014 dengan baik. Pemerintah di Kabupaten Jepara sudah mendukung pencegahan perlindungan anak yaitu dengan adanya tempat aduan Perlindungan Perempuan dan Anak (PPA) di bawah naungan P2TP2A. Hal- hal kecil bisa ditanamkan sejak dini dari pendidikan tempat anak anak belajar karena mereka adalah aset masa depan bangsa dengan dukungan semua pihak terlebih dari orang tua.

Referensi

Wicaksono, Bagus Yaugo. 2015. Bacaan Bacaan Awal Mengenal Hak Anak. Jakarta utara: yayasan gugah nurani indonesia.

Muhammad, Abdulkadir, 2004, Hukum dan Penelitian Hukum, Bandung : Citra Aditya Bakti

Aditya, Z. F. and Winata, M. R. (2018) 'Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction Of The Hierarchy Of Legislation In Indonesia)', *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 9(1), pp. 79–100. doi: 10.22212/jnh.v9i1.976.

DPR & Presiden Republik Indonesia (2014) 'Undang-Undang No 35 tahun 2014 Tentang Perlindungan anak', *Cell*, 3(4), pp. 1–15. Available at: http://dx.doi.org/10.1016/j.biochi.2015.03.025%0Ahttp://dx.doi.org/10.1038/nature10402%0Ahttp://dx.doi.org/10.1038/nature21059%0Ahttp://journal.stainkudus.ac.id/index.php/equilibrium/article/view/1268/1127%0Ahttp://dx.doi.org/10.1038/nrmicro2577%0Ahttp://.Indonesia, R. (2002) 'www.bphn.go.id'.

Islamic Rhetoric in The Balance of The Environment of Sustainable Development Prospects

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Abstract: *Sustainable development of the environment is a development effort that requiressocial, economic, cultural balance and local wisdom in its management. The purpose of this writing is to apply the absolute truth of the principle of balance contained in Law No. 32 of 2009 on Environmental Protection and Management. Using the Socio-Legal approach. Studies show that there is a mismatch of principles to environmental management between communities and governments in the application of the principle of balance in the prospects of sustainable development of the environment that threatens climate stability and the environment. In fact, the principle of balance in Islamic Law and views has a conformity to protect the environment not only for the present generation but for the future. So that the government needs to ensure access to affordable, reliable, sustainable and modern management of living environment for the community.*

Keywords: *balance, environment, climate, sustainable development,and local wisdom.*

A. Introduction

As Philippe Sands Jacqueline Peel with Adriana Fabra Ruth MacKenzie writes about the outcome of the 1992 UN Conference on Environment and Development (UNCED) agreement provides an opportunity for the international community to prioritize major environmental and patchwork issues as well as international legal commitments. in this regard is the protection of the atmosphere, in particular by combating climate change, ozone depletion and ground-level and cross-border air pollution; [6]

1. Protection of land resources;
2. Stop deforestation, conservation of biodiversity;
3. Protection of freshwater resources; protection of oceans and seas (including coastal areas) and marine living resources.

The challenge of a country that is often a concern of the world community is none other than environmental problems, Indonesia is a country that is very very affected about serious conditions in uncontrolled natural problems from climate change, rain that causes flash floods, ozone depletion, loss of biodiversity, toxic and dangerous products and waste, river pollution and depletion of freshwater resources all of which are We need cooperation between the community and the government.

[6] Philippe Sands et al., *Emerging Principles of International Environmental Law*, *International Law and Development*, vol. 7, 2012, https://doi.org/10.1163/ej.9781571051820.i-536.

The implications of Law No. 32 of 2009 on Environmental Protection and Management, often interpreted by law enforcement as objective, not subjective in terms of permit procedural, in obtaining permits for tenure and land use in the ease of foreign investment are not based on the existence of indigenous peoples, the impact managed by foreigners often does not pay attention to applicable regulations, There are 12 local and foreign companies that have been designated by the police as suspects related to forest and land fires. The number of corporations includes companies from Malaysia and China.[7]

As the Government Mandate in general environmental protection and management aims: including maintaining environmental functions and achieving harmony, harmony, and balance. That the results of environmental use mainly in management must pay attention to systems built within a unitary state that emphasize the utilization of the environment which includes legal, economic, social, cultural, and religious interests in the protection and preservation of comprehensive ecosystems.[8]

In Islam, the relationship between man and the environment is part of social existence, an existence based on the fact that everything on earth worships the same God. This worship is not just a ritual practice, because rituals are

[7] Muhamad Agil Aliansyah, "The Grip of Foreign Companies Behind Forest Fires in Indonesia," https://www.merdeka.com/, accessed May 1, 2022, https://www.merdeka.com/peristiwa/cengkraman-perusahaan-asing-di-balik-kebakaran-hutan-di-indonesia.html.

[8] Central Government, "LAW OF THE REPUBLIC OF INDONESIA NUMBER 32 OF 2009 ON PROTECTION AND MANAGEMENT OF THE ENVIRONMENT," LN. 2009/ No. 140, TLN NO. 5059, LL SETNEG: 71 HLM § (2009).

merely symbolic human manifestations of surrender to God. True devotion is an act, which can be practiced by all earth creatures sharing a planet with the human race. In addition, humans are responsible for the well-being and sustenance of other citizens of this global environment.[9]

Islamic teachings present solutions to environmental problems in the prospect of sustainable environmental development that are useful for protecting land and natural resources from abuse of power. The author is oriented to the mindset of the aspect of problems, in this study a holistic balance between society and government that should get special treatment from the state respected by every citizen. As Fazlun M. Khalid's intention in this Principle establishes the tripartite relationship between the Creator, man and creation. God created everything for mankind and appointed him as the representative existence of the Caliph on Earth. [10]

The question further refers to the above theory as quoted by the author, in this case the existence of government in the involvement of elements of local wisdom that should be treated specifically and consistent with its universal values for a part in the management and preservation of the environment based on holistic Islamic values in environmental governance.

This paper begins with a review of the principle of Environmental balance, the prospect of sustainable development in the view of Islam with the principle of

[9] Mawil Izzi Dien, "Islam and the Environment : Theory and Practice Islam and the Environment : Theory and Practice," no. May 2013 (2006): 37–41.

[10] Fazlun M Khalid, "Islam and the Environment," *Social and Economic Dimensions of Global Environmental Change* 5, the No. October (2015): 3.

Balance which is actually the nature in environmental management in the welfare of citizens.

B. Discusion

1. Rhetoric of Islam

As quoted from the opinion of O.M. Ashtankar The Islamic perspective[11] on the environment rests on the belief that Allah is the Creator and Support of the universe. The whole universe along with all its factors have been created with perfect wisdom. The number, quantity, and quality of these factors are precisely determined by the divine plan. Every factor plays its part andsomething created by God has a just purpose that mustbe fulfilled.

مَا خَلَقْنَا السَّمٰوٰتِ وَالْاَرْضَ وَمَا بَيْنَهُمَآ اِلَّا بِالْحَقِّ وَاَجَلٍ مُّسَمًّىۗ وَالَّذِيْنَ كَفَرُوْا عَمَّآ اُنْذِرُوْا مُعْرِضُوْنَ

The Qur'an, which explains this, says: "We did not create the heavens and the earth and what is in between but with the right (purpose) and in the appointed time. But those who disbelieve, turn away from the warnings given to them." (Qur'an: 46:3).

The essence that shows the existence of Man and the interconnected and unified living environment has a universal relationship because Allah Almighty created this universe with full balance and harmony. This balance and harmony must be met and maintained so as

[11] Anna M Gade, "*J H Islamic Law and the Environment in Indonesia *" 19 (n.d.): 161–83.

not to suffer massive damage. The survival of this life is interrelated with the other if one aspect is damaged tremendously it will affect the other components.

Humans are cited as dominating factors in the scale of changes in the environment of good and bad and everything that happens in the environment of the universe. In the Qur'an it is mentioned that environmental damage both on land and in the sea the culprit is human because the exploitation of humans is not limited to meeting the need to maintain life and does not consider the continuity of the environment and the balance of nature but rather based on economic factors, power and the fulfillment of unspied passions.[12]

The concept of ownership of wealth in Islam is distinctly different from that in other modern economic systems. It follows directly from a belief in God's ownership of the universe and the assigned role of humankind on Earth. Although Islam teaches the greatest possible individualism, the right to private property is not absolute. On the whole, Islam teaches that a man may and should amass the greatest fortune he can and that this wealth is his and his natural and/or adopted heirs to have, to keep and to enjoy.

there are some important limitations and qualifications for acquiring and disposing of private property under the Shariah system. First, God is the ultimate owner of the earth and all things on it, and He

[12] Rabiah Harahap, "Islamic Ethics in Managing the Environment," *EduTech: Journal of Educational And Social Sciences* 1, no. 01 (2015), https://doi.org/10.30596/edutech.v1i01.271.

has ordained sustenance for all his creatures. God's ownership of the universe and the economic trusteeship of mankind imply communal ownership of all environmental resources. Some people may suspect that carrying this concept through may lead to a call for nationalization and even internationalization of the earth's resources. Historically though, in an Islamic state, the delineation of the public and private sectors has been decided democratically. Many resources such as inland water, coastline resources, forests, soils, deserts, wildlife, mines, minerals, fossil fuels, air and outer space could ultimately be classified by some jurists as "free goods" of God assigned to the "trusteeship of all the children of Adam" The argument for such large-scale public ownership is based on the third source of Shariah, namely giyas (analogical reasoning). Muslim jurists argued that the Prophet Muhammad had nationalized pastures, forests and water, and abolished the pre-Islamic practice of making private reserves for the exclusive use of dividuals. Essentially, Muhammad dealt with monopoly or "imperfect competition" by ruling that indispensable resources, such as pasture, woodlands, wildlife, certain minerals, and especially water, cannot be privately owned in their natural state, nor, under Islamic law, can they be monopolized. He also reserved a whole valley near Medinah for horses of the community and reserved

the surroundings of Medinah as a protected zone for the preservation of vegetation and wildlife.[13]

Finally, Islamic values canprovide a reasonable understanding if it is taken as a system and used in such a way that it applies within the paradigm of tawhid that governs the whole.

2. Principles of Environmental Balance

The word balance comes from the word draw which means to be equal; equal (weight, degree, size, and so on). Then the word balance is interpreted as equal weight (strong and so on); weighed; comparable; Worth it. When it becomes Balance, according to the Great Dictionary of Indonesian (KBBI), the meaning of the word balance is a balanced state, or another meaning of balance is a state that occurs when all existing forces and tendencies are precisely balanced or neutralized by the same force and tendency, but opposite.

Balance is a neutral condition born from two equally proportional states. It is not one-sided, and the same has the same weight. In the environmental aspect, known as the principle of harmony and balance in its protection and management (Article 2 of Law No. 32 of 2009 concerning Environmental Protection and Management). The principle of harmony and balance is then spelled out as "that theutilization of the*environment must pay attention to various aspects such as economic, social, cultural, and protection and preservation of*ecosystems". The mention of the word balance in Law No. 32 of 2009 on Environmental Protection and Management is more clearly included in Article 3 letter e written that the purpose of protection and management of life environment is to achieve harmony, harmony, and balance of the environment. Repetition of the word balance seems to assert that environmental management pays attention to the principle of balance.

The mention of the principle of balance in the environment is new. Generally, the principles known in the environmental sector are more popular with the principle of environmental insight, or ecological principles. The mention of the principle of balance can bring new hope that the direction of environmental protection and management will pay attention to many aspects related to it in a balanced and proportionate manner. Both from the economic and ecological aspects, to development and preservation.

The environment is the unity of space with all objects, forces, circumstances, and living things, including humans and their behavior, that affect nature itself, the survival of life, and the welfare of humans and other living things (Article 1 paragraph(1) of Law No. 32 of 2009 concerning the Protection and Management of the Environment.). The idea of the environment as RM. Gatot P. Soemartono quotes the opinion of experts as follows: "In general the environment is defined as all things, conditions, circumstances and influences

[13] Safei El Deen Hamed, "Seeing the Environment through Islamic Eyes: Application of Shariah to Natural Resources Planning and Management," *Journal of Agricultural and Environmental Ethics* 6, no. 2 (1993): 145-64, https://doi.org/10.1007/BF01965481.

contained in the room we live in, and affect the living including human life. The boundaries of environmental space in this sense can be very broad, but practically limited environmental space with factors that can be reached by humans such as natural factors, political factors, economic factors, soasial factors and others" Thus, the living environment consists of two elements or components, namely elements or components of living things[14]*(biotic)*and elements or components of nonliving things*(abiotic).*

In order to realize good environmental management and protection, it is necessary to involve many related aspects and all these things need to be accommodated in their implementation. Achieving this absolutely requires the principle of balance. Without the principle of balance, environmental management will sacrifice only some aspects and benefit some other aspects. The approach to the principle of balance is a necessity for the sustainability of a viable environment in the future. Moreover, *sustainable development* cannot forget the environmental aspect that becomes one of the resources.

The practice of balance principles in environmental management is often not implemented. This results in environmental management being biased and indicated unfairly. In the practical realm, the environment is used as one of the resources used to take advantage without thinking about the impact or long-term. Often,

[14] RM Gatot Soemartono, *Getting to know Indonesia's Environmental Law* (Jakarta: Sinar Grafika, 1991).

development activities that are not balanced with ecological principles are the cause of the lack of balance. This is because the environment is still seen as a profitable development business commodity. If you pay attention to the principle of balance, development must also be done by thinking about the sustainability of the environment itself.

Data on the ground actually shows if land tenure by farmers or indigenous peoples's land (ulayat land) is often shifted into land for companies. This fact shows that the principle of balance in environmental management is maintained. From the Case of Kinipan the public can understand the direction of government partisanship in environmental management still leads to the realm of private companies. Land clearing permits that should be in the management of ulayat land become a bad face for the plantation sector that hurts the environment. It's a case that seems on the surface. It is not yet known exactly the number of cases that indicate a deviation in the principle of balance in environmental management. Moreover, when faced with indigenous peoples who are often defeated for business interests.

The principle of balance in the environment can also be a prospect for realizing justice between generations. Intergenerational justice can be realized if the management of the environment in the present must also consider the sustainability of future generations. One way that can be done is to do environmentally sound development. Development is an absolute necessity in the state. In order to realize the objectives

of the State and achieve the level of welfare, development becomes a prerequisite that must continue to be carried out by a State. But the development that is done also needs to consider the environmental impact. Although in Law No. 32 of 2009 on Environmental Protection and Management hasrequired an Analysis of Environmental Impact (AMDAL) in each development, but the effectiveness of Environmental Impact Analysis It still needs to be questioned because the implementation of environmental management and monitoring carried out by industry has not led to awareness of preserving the environment. Development and the environment are actually two components that fill each other and are interrelated. It is impossible to do development without involving environmental aspects. To bridge the interests between generations, the principle of balance is needed so that both current and future generations get the same benefits from the environment. Do not build in the present but sacrifice future generations.[15]

The interrelationship of the principle of balance in the environment can also be attributed to the Principle of Equality and Special Treatment in Agrarian Law. In fact, the principle applies the principle of equal treatment to everyone who wants to do control of the land. However, agrarian law also considers it necessary to give special treatment to Indonesian citizens to

[15] Syamsul Rizal, "Effectiveness of Implementation of Environmental Impact Analysis (AMDAL) and Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) in Environmental Management in Aceh Tamiang Regency," 2018.

control and own land. This is based on the argument that Indonesian citizens are landlords or landowners from the Republic of Indonesia. So that if the State gives previllage to its own citizens it is not a taboo. The treatment is in the form of a complete land right.

Thus, the principle of balance in the environment can be interpreted as a fundamental principle in the management and protection of the environment in Indonesia. The application of these principles may include the balance of the right of control by citizens and private companies. The right to enjoy a just environment between generations, as well as balance in terms of treatment between Indonesians and non-Indonesians.

Development is very important for human life. **Development**is the process of processing natural resources and utilizing human resources by utilizing technology. Development must pay attention to all aspects ranging from the potential of the local area, the customs of people's living habits around development activities, or the beliefs embraced. Development also needs to pay attention to existing environmental conditions. Environmental quality conditions will tend to continue to decline if not balanced with the concept of sustainable development planning in an effort to preserve existing environmental functions. For example, natural disasters that hit an area are the result

of uncontrolled development and do not take into account the principle of sustainable development.[16]

Fully realized that development activities especially those that are physical and related to the utilization of natural resources clearly contain the risk of ecosystem changes. Furthermore, these changes will result in impacts, both negative and positive. Therefore, development activities carried out should be in addition to social and economic insights must also be environmentally sound.

Environmentally sound development is a conscious and planned effort to use and manage resources wisely in a planned and sustainable development to improve the quality of human life. The implementation of environmentally sound development and controlled use of natural resources wisely is the main goal of environmental management. Sustainable development is closely related to the program, environmental management policy.

In the 2000s known the concept of sustainable development which is the development of the notion of development that not only emphasizes the fulfillment of short-term needs, but also considers the fulfillment of needs in the future. The most commonly used definition is the definition of sustainable development in accordance with the Brundtland Report in WCED (1987) which is development that meets the needs of the

[16] Lina Warlina, "Principles of Environmentally Sound Development and Environmental Management," *Development and Environmental Management Module*, 2009, 1–38.

current generation without sacrificing the needs of future generations whose concept consists of three aspects, namely economic, social and environmental. . More specifically, in the book[17] *Green Constition* written by Jimly Asshiddiqie writes that sustainable development is a model that must be applied in development policy. According to Jimly, because currently environmental norms have been adopted into the provisions of the constitution, the principle of sustainable development and the necessity of environmental insight becomes absolute. Sustainable development is one of the stages of long-term development that is complex and involves various disciplines.[18][19]

The paradigm of sustainable development is a political ethic of development regarding development as a whole and how it is carried out. The main agenda of sustainable development is to synchronize, integrate, and give equal weight to the three main aspects of development. Thus, the goals to be achieved from sustainable development are not only from the

[17] Longyu Shi Bin Yang, Tong Xu, "Analysis on Sustainable Urban Development Levels and Trends in China's Cities," *Journal of Cleaner Production* 141 (2017), https://doi.org/https://doi.org/10.1016/j.jclepro.2016.09.121.

[18] Anton F Susanto Moh Mahfud MD, Sunaryati Hartono, Sidharta, Bernard L Tanya, *Deconstruction and the Progressive Legal Thought Movement*, First (Yogyakarta: Thafa Media, 2013).

[19] Bin Yang, Tong Xu, "Analysis on Sustainable Urban Development Levels and Trends in China's Cities."

economic aspect but also include socio-cultural development, and the environment. [20]

In order to achieve the main agenda, there are three main principles of sustainable development, namely the principle of democracy, the principle of justice, and the principle of sustainability. The principle of democracy ensures that development is carried out as an embodiment of the common will of the people for the benefit of the people. The principle of fairness that provides equal opportunity for everyone to be involved in the development process, there is a proportional distribution of mandates and burdens equal to the generations to come to benefit equally or proportionally from existing economic resources. Meanwhile, the principle of sustainability requires the design of a development agenda in a long-term visionary dimension.

The development agenda in Indonesia cannot be separated from national economic policy. Article 33 of the 1945 Constitution is a moral message and cultural message in the constitution of the Republic of Indonesia in the field of economic life. This article not only provides guidance on the economic structure and state authority to regulate economic activities, but reflects the ideals, a belief that is firmly held and fought consistently by government leaders. Indonesian leaders who drafted the 1945 Constitution have confidence that the ideals of social justice in the economic field can achieve

[20] A. Sony Keraf, *Environmental Ethics* (Jakarta: Kompas, 2010).

equitable prosperity, namely social justice for all Indonesian people. Therefore it was established in the 1945 Constitution, Article 33 which is in Chapter XIV under the title "Social Welfare". That is, Article 33 of the 1945 Constitution is an economic system that aims to achieve social welfare. Article 33 of the 1945 Constitution is the main joint for economic and social politics of the Republic of Indonesia.[21][22]

In Indonesia, sustainable development is contained in the Indonesian State Constitution of 1945 in article 33 paragraph (4). It is explained *"the national economy is organized based on economic democracy with the principles of togetherness, efficiency, fairness, sustainability, insight, independence and by maintaining balance, progress and national economic sustainability.* "The statement in paragraph (4) of Article 33 contains economic democracy. Indonesia's economic democracy does not have to be fully interpreted as the absolute principle of *"equal* treatment". Indonesia's Economic Democracy aspires to realize social justice for all Indonesians *(social justice, fairness, equity, equality),* so that it bears the favor (partialism, special *favour)* of the weak, the poor and the underdeveloped to get special attention and treatment towards empowerment. Partialism towards the left is not a discriminatory attitude let alone a "sara" attitude, but gives a positive

[21] Sharer Manan, *Growth and Development of a Country's Constitution* (Bandung: Mandar Maju, 1995).

[22] Nelly Pinangkaan, "Meaning of Article 33 of the 1945 Constitution in the Development of Indonesian Economic Law," *Lex Administratum* III, no. 5 (2015), https://doi.org/10.1145/3132847.3132886.

meaning to the doctrine of togetherness in the principle of Indonesian family. This is where the starting point to assert that economic efficiency has dimensions of social interest.[23]

The application of sustainable development by putting forward three main aspects that include economic, socio-cultural, and environmental is not yet visible. In addition to facing obstacles stemming from the governance of legislation (overlapping rules) in the field of environmental law, the constraints of implementing sustainable development are more emphasized on the commitment of State organizers in formulating policies that have not led to social welfare. When observed, in fact the principle of sustainable development is to improve the common welfare of all social layers of society which is an extension of the fifth precept of Pancasila*"social justice for all Indonesian people.".*social justice is different fromdistributive justice which emphasizes more on aspects of the division of public property and is more individual. Social justice has a broader understanding, namely as a state that allows every individual and group in society to develop optimally, so that pressure on the individual is placed in his social or communal dimension. Related to power or the state as the holder of power, the state with the power in its hands is obliged to realize social justice

[23] Pinangkaan.

through policies and concrete efforts (active) and obliged to prevent the onset of injustice (passive). [24][25]

The prospects for sustainable development in Indonesia cannot be separated from the structuring of environmental law. By regulation, environmental law in Indonesia still has overlapping rules, both in terms of criminal application, and from defined customary forest areas. Considering that customary forests in Indonesia still exist mainly among indigenous peoples in some areas in Indonesia. The definition of customary forests when viewed from environmental law there are several legal products that regulate, including Law No. 26 of 2007, Law No. 41 of 1999, and ratification of UNDRIP*(United Nations Declarations on The Rights of. Indigenous Peoples).* This overlap results in legal uncertainty in applying which laws will be used by law enforcement officials. This becomes important considering that environmental issues often intersect with customary forests and indigenous law communities that have the potential to increase environmental conflicts, thus, the Government must make laws and regulations governing the use of national law and customary law regarding customary forest management permits, the preparation of written agreements on agreements between entrepreneurs and

[24] Al Andang L Binawan, *Law at the Center of the Market: Fading Social Justice In Social Justice Efforts to Find the Meaning of Shared Welfare in Indonesia*, ed. A Presetyantoko Al Alndang L Binawan (Jakarta: Kompas, 2004).

[25] Ahmad Fadlil Sumadi, "Law and Social Justice in the Perspective of Law And Social Justice in Constitutional Law Perspective," *Sultan Agung Islamic University of Semarang* 12, no. 4 (2016): 853-54.

indigenous law communities, customary law communities to rent or use capital participation in its customary forests, empowerment of indigenous law communities, and customary forest management obligations in accordance with the spatial plan of districts / cities and customary forest functions.[26]

From the aspect of criminal sanctions, environmental law in Indonesia is still not heading towards legal certainty. The imposition of criminal sanctions and administrative sanctions is considered less effective to overcome violations of life. Criminal sanctions in the field of environment tend not to be severe and unable to cause deterrent effects for entrepreneurs / corporations. While the administrative sanctions given have not led to the revocation of business licenses which are more feared for entrepreneurs / corporations because it affects corporate income or regional income. That's the legal loophole. In addition to corporate criminal liability that has not been regulated in a mandalam and concrete manner resulting in a law that is confusing.

Conclusion

1. Balance and harmony in the environment can be interpreted as fundamental and holistic principles in the management and protection of the environment in Indonesia. The application of these principles can include the balance of the right of control by citizens and private companies. The right to enjoy a just environment between generations, as well as balance in terms of treatment between Indonesians and non-Indonesians.
2. The prospect of sustainable development in Indonesia can be implemented by structuring environmental laws first. Islamic values canprovide a reasonable understanding if it is taken asa system and used in such a way that it applies in the paradigm of tawhid that regulates the structuring of the synergy of national law and customary law, the imposition of criminal sanctions and proportional administrative sanctions, as well as corporate criminal liability in terms of environmental violations.

[26] Mayer Hayrasi DS, "Development of Environmental Criminal Law," *Journal of Lesigasi Indonesia* 15, no. 4 (2018).

References

Binawan, Al Andang L. *Law at the Center of the Market: Social Justice That Fades In Social Justice Efforts to Find the Meaning of Common Welfare in Indonesia.* Edited by A Presetyantoko Al Alndang L Binawan. Jakarta: Kompas, 2004.

Dien, Mawil Izzi. "Islam and the Environment : Theory and Practice Islam and the Environment : Theory and Practice," no. May 2013 (2006): 37–41.

DS, Mayer Hayrasi. "The Development of environmental criminal law." *Jurnal Lesigasi Indonesia* 15, no. 4 (2018).

Fazlun M Khalid. "Islam and the Environment." *Social and Economic Dimensions of Global Environmental Change* 5, no. October (2015): 3.

Gade, Anna M. "* J H Islamic Law and the Environment in Indonesia *" 19 (n.d.): 161–83.

Hamed, Safei El Deen. "Seeing the Environment through Islamic Eyes: Application of Shariah to Natural Resources Planning and Management." *Journal of Agricultural and Environmental Ethics* 6, no. 2 (1993): 145–64. https://doi.org/10.1007/BF01965481.

Harahap, Rabiah. "Islamic Ethics in Managing the Environment." *EduTech: Journal of Educational Sciences and Social Sciences* 1, no. 01 (2015). https://doi.org/10.30596/edutech.v1i01.271.

Keraf, A. Sony. *Environmental Ethics.* Jakarta: Kompas, 2010.

Manan, Divide. *Growth and Development of a Country's Constitution.* Bandung: Mandar Maju, 1995.

Moh Mahfud MD, Sunaryati Hartono, Sidharta, Bernard L Tanya, Anton F Susanto. *Deconstruction and the Progressive Legal Thought Movement.* First. Yogyakarta: Thafa Media, 2013.

Mohammed Agil Aliansyah. "The grip of foreign companies behind indonesia's forest fires," https://www.merdeka.com/. Accessed May 1, 2022. https://www.merdeka.com/peristiwa/cengkraman-perusahaan-asing-di-balik-kebakaran-hutan-di-indonesia.html.

Central Government. LAW OF THE REPUBLIC OF INDONESIA NUMBER 32 OF 2009 CONCERNING THE PROTECTION AND MANAGEMENT OF THE ENVIRONMENT, LN. 2009/ No. 140, TLN NO. 5059, LL SETNEG: 71 HLM § (2009).

Pinangkaan, Nelly. "The meaning of Article 33 of the 1945 Constitution in the Development of Indonesian Economic Law." *Lex Administratum* III, no. 5 (2015). https://doi.org/10.1145/3132847.3132886.

Rizal, Shamsul. "The Effectiveness of The Implementation of Environmental ImpactAnalysis (ANALYSIS ON ENVIRONMENTAL IMPACT)and Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) in Environmental Management in Aceh Tamiang Regency," 2018.

Sands, Philippe, Jacqueline Peel, With, Adriana Fabra, and Ruth MacKenzie. *Emerging Principles of International*

Environmental Law. *International Law and Development*. Vol. 7, 2012. https://doi.org/10.1163/ej.9781571051820.i-536.

Soemartono, RM Gatot. *Know the Environmental Law of Indonesia.* Jakarta: Sinar Grafika, 1991.

Sumadi, Ahmad Fadlil. "Law and Social Justice in the Legal Perspective of Law and Social Justice in Constitutional Law Perspective." *Sultan Agung Islamic University Semarang* 12, no. 4 (2016): 853–54.

Warlina, Lina. "Principles of Environmentally Sound Development and Environmental Management." *Development and Environmental Management Module,*2009, 1–38.

Yang, Tong Xu, Longyu Shi Bin. "Analysis on Sustainable Urban Development Levels and Trends in China's Cities." *Journal of Cleaner Production* 141 (2017). https://doi.org/https://doi.org/10.1016/j.jclepro.2016.09.121.