

Formulation of Legal Regulations for the Prevention of Sexual Violence in Islamic Boarding Schools and Higher Education Institutions

Zainal Arifin⁽¹⁾, Emi Puasa Handayani⁽²⁾, Nur Musthofa⁽³⁾, Muhammad Firzha Kadya Lukita⁽⁴⁾, Naufal Ghani Bayhaqi⁽⁵⁾, Ahmad Faris Abdulloh⁽⁶⁾, Daffa Surya Ramadhan⁽⁷⁾

⁽¹⁾⁽²⁾⁽³⁾⁽⁴⁾⁽⁵⁾⁽⁶⁾⁽⁷⁾ Universitas Islam Kadiri

Correspondence: zainal.fh@uniska-kediri.ac.id

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Abstract

Sexual violence within educational institutions, encompassing Islamic boarding schools and universities, represents a grave issue that runs counter to the educational principles designed to promote students' positive development. This study delves into the legal and regulatory framework that is applicable within these educational institutions and assesses the degree of its implementation concerning cases of sexual violence. The research employs normative juridical methods for the analysis, scrutinizing laws, local regulations, and institutional policies. The data collection process involves an extensive document review, addressing elements like the definition of sexual violence, reporting protocols, punitive measures, and preventive initiatives contained within the legal framework. This study aspires to engender a comprehensive understanding of the legal framework's role in averting sexual violence and its practical application. The envisaged outcome includes recommendations that can fortify student protection and cultivate a more secure educational milieu. These findings can serve as a cornerstone for enhancements in sexual violence prevention within educational institutions, a crucial facet for students' development and the overall integrity of Islamic boarding schools and higher education institutions.

Keywords:

Legal Arrangements, Sexual Violence, Educational Institutions

Introduction

The increasing prevalence of violent incidents remains a complex social issue to address. Violence is closely intertwined with people's lives, extending to their family, educational, and workplace environments. In essence, educational environments are expected to be secure places for individuals to pursue knowledge and personal growth. Nevertheless, reality often falls short of these expectations. Sextortion, defined as the exploitation of power to gain sexual advantages, is frequently perpetrated by individuals who employ threats to expose sensitive personal information in exchange for these benefits. This issue is particularly evident in the public service sectors, including healthcare and education, and it is prevalent across all educational levels.¹ Islamic boarding schools and universities, being religious educational institutions, are expected to play a fundamental role in nurturing virtuous character and morals (akhlaqul karimah) among their students. Regrettably, these institutions often fall short of this noble objective as sexual harassment incidents involving educators have come to light. These instances of harassment within Islamic boarding schools and universities demand attention from various segments of society. One such incident occurred in May 2023 in Sikur District, East Lombok, involving the head of an Islamic boarding school, identified as HSN (50 years old). This case marked the second instance of sexual violence, following a prior incident involving an individual with the initials LM in a different educational institution. Notably, this case affected 41 victims from two institutions in the West Nusa Tenggara Province.²

Sexual violence perpetrated against students in Islamic boarding schools and universities constitutes a grave offence, inflicting profound

¹ Wahyudi F., "Pejabat Dan Gratifikasi Seks. Mahkamah Agung Republik Indonesia," Mahkamah Agung, 2019, <https://badilag.mahkamahagung.go.id/suara-pembaca-badilag/suara-pembaca/pejabat-dan-gratifikasi-seks-oleh-firman-wahyudi-18-11>.

²Farid Assifa Fitri Rachmawati, "Pencabulan 41 Santriwati Di 2 Pesantren NTB, Korban Trauma Dan Sebagian Pergi Ke Luar Pulau," Kompas.com, 2023, <https://regional.kompas.com/read/2023/05/22/131520078/pencabulan-41-santriwati-di-2-pesantren-ntb-korban-trauma-dan-sebagian?page=all>.

psychosocial repercussions and potential disruption of children's future development. The elevated frequency of such sexual harassment incidents is often attributable to inadequate oversight, notably the lack of vigilance within families and the neglect from the surrounding community. Policies addressing the issue of student sexual harassment in educational institutions, including Islamic boarding schools and universities, should not exclusively revolve around punitive measures. Instead, there should be a heightened emphasis on the preventive dimension, which necessitates rigorous supervision, especially within the educational context.³

A learning environment free from sexual violence is not merely the entitlement of each individual pursuing education but also a pivotal prerequisite for realizing students' full potential. Sexual violence can impede students' academic and social progress, impact their mental and physical well-being, and, in certain instances, lead to enduring trauma. Furthermore, the prevalence of sexual violence in educational contexts is exacerbated by the prevailing lack of awareness and the insufficient response to address this issue. Numerous instances of sexual violence go unreported, and even when reported, the absence of effective policies and robust law enforcement mechanisms often leads to inadequate consequences for the wrongdoers.

Hence, the researchers embarked on a study titled "Formulation of Legal Regulations for the Prevention of Sexual Violence in Islamic Boarding Schools and Higher Education Institutions." The primary objective of this research is to devise efficacious strategies for preventing and addressing instances of sexual violence within educational establishments, particularly focusing on Islamic boarding schools and universities. By delving into these matters, this research aspires to provide a valuable contribution towards fostering safer and more nurturing educational environments for students, while also advocating for constructive transformations in the prevailing culture and practices within these educational institutions.

³ Iku Nurhidayah Neng Lani Liginia, Ai Mardhiyah, "Peran Orang Tua Dalam Pencegahan Kekerasan Seksual Pada Anak Sekolah Dasar Di Kota Bandung" 9 (2018): 111.

Method

The normative juridical research methodology serves as a pertinent approach for examining the establishment of legal regulations aimed at preventing sexual violence within Islamic boarding schools and higher education institutions. This research involves a comprehensive analysis of both primary and secondary qualitative data. Within this method, there is an intricate scrutiny of the applicable legal framework, along with an exploration of the legal principles underpinning the development of these preventive regulations. Furthermore, an essential aspect of this research involves an extensive literature review, providing a robust theoretical framework. All these components are aligned with the overarching objectives, working collectively to underpin the attainment of substantial research outcomes.

Implementation and efficacy of this legal framework in addressing incidents of sexual violence.

The legal and regulatory framework applicable to educational institutions, including Islamic boarding schools and universities, generally incorporates the prevention of sexual violence as an essential element within the educational system. These regulations often delineate the rights and responsibilities of both students and educators, outlining the repercussions of sexual violence. In numerous cases, child protection laws and related regulations establish a legal structure that prohibits sexual violence within educational environments. Nevertheless, the practical implementation and efficacy of these legal frameworks can exhibit variations. Several factors influencing their effectiveness encompass public awareness and comprehension, along with the extent of adherence and enforcement. There are instances where the legal framework may not be consistently applied, and reports of sexual violence might not be treated with the requisite seriousness, ultimately compromising the safeguarding of students. Furthermore, inadequacies in supervision, training, and

educational programs for teachers and staff concerning the prevention of sexual violence can impede effective implementation. Thus, enhancing understanding, training, and law enforcement are pivotal for optimizing the effectiveness of the existing legal framework in safeguarding students from sexual violence in educational settings.

The legal framework for preventing sexual violence within Islamic boarding schools and universities plays a pivotal role in establishing a secure and nurturing educational atmosphere for students. In the contemporary context of these institutions, there exist several primary components within the legal framework for sexual violence prevention, notably the Child Protection Law. This law serves as the legal foundation for establishing a structured framework to safeguard students against various forms of violence, including sexual violence. It prescribes the rights and responsibilities that all parties engaged in Islamic boarding schools and higher education must adhere to. Additionally, the Ministry of Religion and the Ministry of Education have introduced various regulations aimed at preventing sexual violence, including the Minister of Religion Regulation (PMA) No. 73/2022 concerning the Prevention and Management of Sexual Violence in Educational Institutions. In the realm of higher education, the Ministry of Research, Technology, and Higher Education has also enacted regulations designed to prevent sexual violence on campuses, such as Minister of Education and Culture Regulation Number 30 of 2021.

Secondly, internal policies are imperative within Islamic boarding schools and universities, mandating the existence of explicit regulations that prohibit sexual violence. These policies should encompass a comprehensive definition of sexual violence, guidelines for reporting incidents, specified sanctions, and preventive measures that demand adherence from all members constituting the Islamic boarding school and university community.

Furthermore, thirdly, the legal framework should encompass training and awareness initiatives aimed at preventing sexual violence. It is

imperative that all personnel, including staff, educators, and administrative members of Islamic boarding schools and universities, undergo thorough training to recognize indicators of sexual violence, comprehend reporting protocols, and acquire the knowledge and skills to provide support to student victims.

Training staff, teachers, and administrators within Islamic boarding schools and universities in the prevention of sexual violence constitutes a significant stride towards fostering a secure and nurturing educational milieu. This training serves to enhance comprehension of the issue of sexual violence, and the ability to identify its manifestations and equips individuals with the knowledge to take preventive measures. The subsequent segments delineate key components that can be integrated into sexual violence prevention training. Firstly, the aptitude to identify warning signs is paramount. Personnel, including teaching and support staff, should receive training to adeptly discern indicators that may manifest in students who have fallen victim to sexual violence includes recognizing behavioural alterations, sleep disturbances, and other psychological symptoms. Secondly, the training encompasses initial treatment and support. It necessitates instructing individuals on the initial steps to be undertaken upon discovering an incident of sexual violence. This includes extending emotional support to victims and directing them to appropriate sources of assistance. Thirdly, prevention strategies are addressed within the training. Educators and staff members are equipped to proactively prevent sexual violence through methods such as instilling positive sexual education, advancing gender equality, and promoting a culture of support.⁴

Fourthly, the inclusion of a secure reporting mechanism is vital. Therefore, the legal framework should establish a confidential and secure reporting procedure for students or individuals who may have suspicions of

⁴ Vanessa Ingka Putri Nelly Dahlia, Yurike Siti Mariyam, "Tinjauan Hukum Pidana Islam Terhadap Pelaku Kekerasan Seksual Di Satuan Pendidikan Kementerian Agama," *Al-Mizan* 6 (2022): 1–14.

sexual violence. This provision is of utmost importance to safeguard the victims and to promote a culture of reporting. Safe and confidential reporting protocols for individuals, including students and any concerned parties, who harbour suspicions of sexual violence are indispensable for preserving personal privacy and overall well-being.

The initial measures for establishing secure and confidential reporting procedures include, first, Ensuring Confidentiality. It is imperative that the reporting processes guarantee the confidentiality of the information provided by the reporting individual. Students or concerned parties who suspect sexual violence should have confidence that their reports will remain confidential and that they will not face adverse consequences or retaliation from the alleged perpetrator. Second, Providing a Secure Reporting Point of Contact, implement a secure reporting channel, such as a dedicated phone line, email address, or an online portal, accessible only to designated personnel responsible for handling sexual violence cases. Ensure that this contact method is inaccessible to unauthorized parties.

Third, an alternative point of contact must be made available. In addition to official institutional contacts, educational institutions should offer reporters the opportunity to reach out to external, independent entities, such as non-governmental organizations (NGOs) or government agencies with expertise in sexual violence issues. This serves as an additional layer of assurance for maintaining confidentiality.

Fourth, there should be clear, sequential instructions on the process of reporting sexual violence. These guidelines need to encompass details on where, when, and how to file a report, along with an explanation of the rights and protections afforded to those who report such incidents.

Fifth, there should be a focus on safeguarding the identity of the reporter, ensuring that the reporter's identity remains confidential. This involves maintaining the confidentiality of whistleblower information and allowing access only to authorized individuals. Sixth, counselling and support services should be made available, providing psychological support

or counselling to the reporter if desired by the victim. This can assist the reporter in coping with the emotional aftermath of sexual violence. Seventh, educational and training initiatives should be implemented for both students and staff concerning reporting procedures and stressing the significance of upholding confidentiality. All individuals participating in the process should grasp the significance of upholding the confidentiality of the reporter.

Eighth, independent investigations should be conducted for every inquiry into reports of sexual violence to ensure that the investigative procedure remains free from prejudice or interference by involved parties. Nine, provisions should be in place to protect the reporter from any form of retaliation or adverse consequences as a result of their report on sexual violence against them.

In addition to these eight measures, two actions are imperative: first, the imposition of stringent sanctions against sexual violence offenders. These sanctions should convey the gravity of the offence and serve as a strong deterrent. Second, there should be cooperation and coordination with legal institutions. Islamic boarding schools and universities should collaborate with legal authorities and law enforcement agencies when addressing sexual violence cases involving students. This cooperation is essential to ensure that perpetrators undergo proper legal procedures.

The legal framework aimed at preventing sexual violence in Islamic boarding schools and universities should establish a robust legal foundation for safeguarding students and enhancing the safety of the educational environment. Furthermore, this legal framework must be consistently applied and subject to vigilant oversight to ascertain its efficacy in ensuring student protection.

The enhancement and refinement of legislation to bolster the prevention of sexual violence within educational institutions

Regulations about the prevention of sexual violence can still be further modernized in several respects, including within the scope of the

Constitution. More precisely, certain articles within the 1945 Constitution of the Republic of Indonesia encompass provisions concerning the fundamental rights of citizens, encompassing aspects related to safeguarding against violence and discrimination.

Article 28 B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia underscores the entitlement of every child to a secure existence, an environment conducive to growth and development, and the prerogative to be shielded from violence and any form of prejudicial treatment. Furthermore, Article 28 G underscores the prerogative of every individual to safeguard their own well-being, preserve personal integrity and dignity, and experience a sense of security and protection from threats and apprehensions that could hinder their freedom to act or abstain from action. Additionally, Article 28 I of the 1945 Constitution of the Republic of Indonesia underscores the entitlement of every individual to be shielded against torture and to be exempt from any form of biased treatment.

In the realm of sexual violence prevention, these articles establish a vital constitutional foundation for upholding human rights, particularly about safeguarding against sexual violence. Nevertheless, there remains a necessity for collaborative efforts to formulate and reinforce more comprehensive regulations that intricately and unequivocally address the issue of sexual violence and its prevention.⁵

Secondly, the Criminal Code (KUHP) lacks explicit provisions concerning the prevention of sexual violence. The current regulations within the Criminal Code primarily pertain to the prohibition and punishment of individuals who commit sexual offences against women, yet these regulations remain of a general nature in addressing such crimes.

Thirdly, within Law Number 35 of 2014 concerning Child Protection, there exists an absence of comprehensive provisions that explicitly govern the prevention of criminal acts related to sexual violence. This gap is

⁵ Luh Made Khristianti Weda Tantri, "Perlindungan Hak Asasi Manusia Bagi Korban Kekerasan Seksual Di Indonesia," *Media Iuris* 4 (2021): 145–72.

particularly evident in specific settings like Islamic boarding schools, universities, schools, and similar educational institutions. Despite the Child Protection Law assigning the responsibility of child protection efforts to the state, government, regional authorities, and society as a collective in Indonesia.⁶

Fourthly, within Law Number 39 of 1999 concerning Human Rights, there is an absence of explicit provisions that govern preventive strategies for criminal acts related to sexual violence. These strategies are designed to safeguard the honour and dignity of victims, thereby preventing them from becoming victims again. This law primarily addresses the protection of human rights by the state but lacks specific details regarding tangible measures to prevent criminal acts of sexual violence.

Some of the deficiencies in the aforementioned regulations have prompted legislative revisions. Notably, the enactment of Law (UU) Number 12 of 2022, titled "Criminal Acts of Sexual Violence," addresses various aspects, including the prevention of sexual violence, the handling of cases, the protection of victims' rights, coordination between central and regional governments, and international cooperation. This comprehensive legislation aims to facilitate effective prevention and victim support. Moreover, it mandates community engagement in preventing sexual violence and supporting victims to establish a safe environment free from such incidents.

The Sexual violence crime law holds significant relevance in enhancing the effectiveness of societal protection, both in the realms of preventing and addressing sexual violence crimes. This legislation addresses previous regulatory gaps that were deemed inadequate in dealing with sexual violence issues in Indonesia. The Sexual violence crime law plays a crucial role in ensuring that society receives comprehensive and maximum protection to confront the challenge of sexual violence.⁷

⁶ Darmini, "Peran Pemerintah Dalam Pencegahan Kekerasan Seksual Terhadap Anak," *Qawwam: Journal For Gender Mainstreaming* 15 (2021): 45–68.

⁷ Et.al Reno Efendi, "Urgensi Percepatan Pengasahan Rancangan Undang-Undang Penghapusan Kekerasan Seksual," *Jurnal Suara Hukum* 3 (2021): 26–52.

The presence of legal regulations not only ensures the constitutional rights of sexual harassment victims but also underscores the crucial need for meticulous implementation and enforcement of these laws. Law enforcement about these regulations should consistently prioritize the principle of safeguarding the rights of sexual harassment victims, who are frequently the primary targets of such offences. Above all, these regulations must exhibit gender sensitivity and remain free from discrimination.⁸

The process of developing, amending, or enhancing current laws and regulations holds significant potential in fortifying the prevention of sexual violence within educational institutions and establishing safer and more supportive environments for students. Various avenues through which legal modifications can yield a positive impact encompass, first and foremost, the formulation and reinforcement of prevention provisions. By revising existing laws and regulations, we can articulate more precise and robust provisions about sexual violence prevention, encompassing comprehensive definitions, preventive measures, and more efficient reporting procedures.

In the Sexual violence crime law, the revisions to previous regulations have introduced the possibility of imposing more stringent penalties, which may involve escalating sanctions against sexual violence offenders. This enhancement serves as a more potent deterrent for individuals contemplating such actions.

Thirdly, the Sexual violence crime law also encompasses provisions for empowering victims, thereby offering enhanced legal safeguards and assistance to survivors of sexual violence. This includes facilitating their access to the justice system and support services.

Fourthly, it can lead to enhanced monitoring and enforcement of the law, which may involve the establishment of independent bodies responsible for overseeing educational institutions and addressing reports of sexual violence.

⁸ Dede Kania, "Hak Asasi Perempuan Dalam Peraturan Perundang-Undangan Di Indonesia The Rights of Women in Indonesian Laws and Regulations," *Jurnal Konstitusi* 12 (2015): 717–34.

The consequence of these changes is the establishment of a more secure and nurturing educational atmosphere for students. This can heighten consciousness regarding sexual violence, promote increased reporting, and decrease the likelihood of sexual violence occurrences. It can further transform the norms and culture within educational institutions, constituting a significant measure to ensure that sexual violence is neither disregarded nor tolerated. Therefore, alterations in laws and regulations serve as crucial instruments in the endeavour to prevent sexual violence in educational settings.

Concerning the prevention of sexual offences within Islamic boarding schools and higher education institutions, a range of preventive models can be incorporated into policies and regulations. This involves enhancing the involvement of the state, government, and society. The significance of amplifying the roles of the state, government, and society in the prevention of sexual offences within Islamic boarding schools and universities cannot be overstated. This encompasses efforts related to the monitoring and evaluation of Islamic boarding schools and universities across Indonesia. The issuance of operational licenses for Islamic boarding schools and higher education institutions by the government, administered through the Ministry of Religion, should adopt more stringent criteria that align with policies to combat sexual offences, particularly in safeguarding victims of sexual harassment.

Secondly, the establishment of dedicated sexual offence reporting centres within each Islamic boarding school and higher education institution is proposed. These centres are designed to serve as platforms where students, including female students, can report incidents of sexual misconduct. It is recommended that these complaint centres be equipped with psychologists and healthcare professionals, and they should maintain close integration with both regional and central government authorities.

Thirdly, the regulation stipulates the inclusion of sexual education as a mandatory subject within the curricula of Islamic boarding schools and

universities. This inclusion is intended to equip students with comprehensive knowledge about various aspects of sexuality. Furthermore, the curriculum also integrates education on the perils of sexual crimes among Islamic boarding school students and university students. This educational approach is further supplemented with assertiveness training, which aids students in effectively communicating and confidently reporting any instances of unwarranted treatment.

Fourthly, the Department of Religion has established Standard Operating Procedures (SOP) by the regulatory requirements for Islamic boarding schools and universities. These SOPs serve as essential guidelines for addressing sexual crimes within Islamic boarding schools and higher education institutions. They play a crucial role in providing clear instructions to students, particularly female students, on the necessary steps to take in the event of experiencing sexual crimes.

Fifthly, under the latest government legislation, Islamic boarding schools and universities are placing greater emphasis on addressing issues related to sexual crimes. The government is taking proactive measures to support the implementation of policies and regulations aimed at preventing sexual crimes within these institutions. Higher Education Institutions are now required to establish a dedicated team of officers to address cases of sexual violence, and compliance with this requirement is mandatory. Failure to do so may result in a reduction of accreditation.

Incorporating these models into the regulations and policies of Islamic boarding schools and higher education institutions represents a crucial stride in establishing a secure and nurturing educational environment, as well as delivering efficient safeguards against sexual crimes. The execution of these pivotal models must be undertaken meticulously and with efficacy to realize these objectives.

Conclusion

The research concludes that the prevailing legal framework in educational institutions, including Islamic boarding schools and universities, comprehensively addresses all facets of addressing sexual violence. This encompasses precise definitions, secure reporting procedures, and suitable penalties for individuals engaged in sexual violence. Educational initiatives and training programs regarding sexual violence prevention have been seamlessly incorporated into the educational curriculum, facilitating the recognition, prevention, and reporting of such acts by students and staff. Additionally, the existence of formal complaint mechanisms, manifesting as institutional task forces, offers protection for whistleblowers and facilitates access to health and psychological support. Furthermore, regulations have been put in place to ensure active and effective law enforcement against sexual violence perpetrators, encompassing investigative processes, equitable trials, and the application of pertinent penalties.

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