

ELIMINATION OF SEXUAL VIOLENCE IN FEMINIST LEGAL THEORIST

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RESEARCH ARTICLE

ELIMINATION OF SEXUAL VIOLENCE IN FEMINIST LEGAL THEORIST

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ABSTRACT

The closeness of women to poverty shows that development still maintains women's subordination and places women in a marginal position. What is the analysis of the Feminist Legal Theorist (FLT) in the elimination of sexual violence? Feminist Legal Theory (FLT) as one of the streams in Philosophy of Law is one of the schools of thought that was born from the main philosophy of the paradigm of Critical Theory Feminist Legal Theory (FLT) as one of the streams in the paradigm of critical theory. It is used to analyze the complexity of

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the needs of victims, both women, girls, boys, and girls. ⁴ The Bill on the Elimination of Sexual Violence uses the Feminist Legal Theory (FLT) as an analysis so that in every norm that is formulated this bill always considers what specific experiences of women, especially victims of sexual violence. Legal protection against ⁴ the elimination of sexual violence is a form of implementation of the second principle of Pancasila, namely a just and civilized humanity.

Keywords: Violence; Sexual; Feminist Legal Theory

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INTRODUCTION

THE CLOSENESS OF WOMEN to poverty shows that development still maintains women's subordination and places women in a marginal position¹. Poor women are not only women who are not well off financially, but also because they are not able to participate in development matters, are unable to access proper education, have difficulty accessing reproductive health, etc. which make women increasingly cornered. The poverty of women then leads to the vulnerability of experiencing domestic violence, being easily polygamous, divorced, cornered by society, and increasingly disrespected for their rights by many parties.

The marginalization of women is not only from development but also from their culture. Social values adhered to by certain cultures and maintained by certain societies often place women at a disadvantage. These social values contain the unequal division of roles between men and women which is formed and sustained by the patriarchal society and culture. For example, many women do household chores that do not generate wages such as caring for children, preparing food, farming for their own needs, and collecting firewood and water². Because most of their time is spent working for household interests, women do not have much time to participate in public spaces and even women are vulnerable to becoming victims of sexual violence. Based on the data collected, the most prominent types of violence against women, the same as in the previous year, were KDRT (Domestic Violence) / RP (personal sphere) which reached 71% (9,637). The private sphere was most frequently reported and not a

¹ Chusnul Mar'iyah, *Demokrasi dan Pembangunan Untuk Siapa: Dapatkan Perempuan Bertahan Di Desa Atau Menjadi Buruh Migran di Kota*, 38 J. ILMU PEMERINTAH. PENCERAHAN UNTUK MEMAJUKAN PEMERINTAH. (2012).

² *Id.*

¹ few of them experienced sexual violence. The second position is violence against women in the community / public domain with a percentage of 28% (3,915) and the last is violence against women in the realm of the state with a percentage of 0.1% (16). In the domain about residential viciousness / RP, the vast majority of conspicuous viciousness might have been physical roughness 3,927 situations (41%), positioned in took after by sexual viciousness with 2,988 instances (31%), mental 1,658 (17%), and investment brutality 1,064 situations (11%). ¹ In the public and community sphere, violence against women has recorded 3,915 cases. 64% of violence against women in the public or community sphere is sexual violence, namely sexual harassment (394), rape (762), sexual abuse (1,136), and intercourse in 156 cases ³.

To examine the elimination of sexual violence, it is appropriate to use the paradigm of Critical Theory ⁴. One of the streams in the paradigm of Critical Theory et. al. namely Feminist Legal Theorist (FLT). Feminist legitimate scholar (FLT) alternately feminist lawful hypothesis seemed for that main period in the 1970s, alongside those improvements from claiming basic lawful investigations (CLS) Likewise a school of thought that endeavored on getting through that establishment of a theory against ladies and the separation that ladies got starting with the law. Critical Legal Studies (CLS) with its thinker, Roberto Unger, states that law is not an orderly system but is

³ KOMISI NASIONAL PEREMPUAN, PEREMPUAN DALAM HIMPITAN PANDEMI: LONJAKAN KEKERASAN SEKSUAL, KEKERASAN SIBER, PERKAWINAN ANAK, DAN KETERBATASAN PENANGANAN DI TENGAH COVID-19 (2021).

⁴ Boyee Alvhan Clifford, Erlyn Indiarti & R.B Sularto, *TELAAH PARADIGMATIK TENTANG PENERAPAN DISKRESI PADA PERTIMBANGAN DAN PUTUSAN HAKIM DALAM PERKARA PIDANA DENGAN TERDAKWA LABORA SITORUS*, 5 DIPONEGORO LAW REV. 1–16 (2016).

something irregular, unpredictable and that law is strongly influenced by the perceptions of observers in interpreting the law ⁵.

Based on the background above, this paper has focused on the study of What is the analysis of the Feminist Legal Theorist (FLT) in the elimination of sexual violence? The normative research method was applied in this study. Secondary data is obtained via library studies in the form of primary legal materials (legislation) and secondary legal materials (doctrines)⁶. Furthermore, auxiliary legitimate materials alternately doctrines. To reply to inquiries in the plan of the problem, an administrative What's more doctrinal approach will be utilized. The information introduced is qualitative, also will be exhibited for a spellbinding system for analytics.

ELIMINATION OF SEXUAL VIOLENCE IN THE PERSPECTIVE OF THE FEMINIST LEGAL THEORY

BEFORE FURTHER EXAMINING the elimination of sexual violence through the Feminist Legal Theorist (FLT), the author must describe the paradigm used as a tool for analysis in this paper. Of the number masters who offer Comprehension also standard classification, and Authors have a tendency will embrace the assessment about Guba What's more Lincoln, which as stated by Erlyn Indarti will be a greater amount far-reaching in those same runs through systematic, compact, Also normal. Five principal paradigms, aggregated from Lincoln,

⁵ ROBERTO MANGABEIRA UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT (2015).

⁶ C. Stutz & S Sachs, *Facing the Normative Challenges: The Potential of Reflexive Historical Research*, 5 SAGE JOURNALS 1–25 (2016).

Lynham, Also Guba, 2011, incorporate positivism, post-positivism, basic principle, constructivism, furthermore participatory ⁷. Guba and Lincoln, who are more disposed towards a worldwide comprehension of the worldview, recognize standards dependent on their responses to 3 (three) 'essential inquiries' disturbing:

- a. the structure and nature of the real world, along with what can be thought about it (known as the 'ontological' question);
- b. the nature of the relationship or connection between an individual or gathering of individuals and the climate or all that is outside him/herself, including what can be thought about this (alluded to as 'epistemological' questions, which incorporates 'axiological' questions); and
- c. how people or gatherings of individuals (counting specialists, obviously) find the solutions to what they need to know (known as methodological inquiries).

Feminist Legal Theory (FLT) as one of the streams in Philosophy of Law is one of the schools of thought that was born from the main philosophy of the paradigm of Critical Theory. In light of the comprehension of the worldview as indicated by Guba and Lincoln, the nature, nature, and strategy for the Feminist Legal Theory (FLT) are by the worldview working of Critical Theory, both ontology, epistemology, and methodology. ⁸ In this paper the focus of writing is related to the analysis of the critical theory et.al paradigm, which includes questions ⁹:

⁷ Erlyn Indarti, *Pancasila dan Pembaharuan Hukum: Suatu Telaah Paradigmatik*, in NATIONAL SEMINAR MIH UNDIP 1–13 (2019).

⁸ Aditya Yuli Sulistyawan, *Feminist Legal Theory Dalam Telaah Paradigma: Suatu Pemetaan Filsafat Hukum*, 47 MASAL. HUK. 56–62 (2018).

⁹ ERLYN INDIARTI, *FILSAFAT ILMU: SUATU KAJIAN PARADIGMATIK* (2019).

- a. ontological (the essence of science) historical realism, namely virtual reality, which is formed by political, social, economic, cultural, gender values, ethnic and then crystallized over time;
- b. epistemology (the relation between the researcher-science) transactional/subjectivist, namely the researcher and related science interactively, the findings are mediated by values;
- c. dialectical/dialectical methodology (the study of science), namely the dialectical dialect between the researcher and science, the transformation of indifference and misunderstanding into the awareness that historical structures can be changed through real action.

Feminist Legal Theory (FLT) as one of the streams in basic hypothesis et.al can't be isolated from the different existing women's activist schools. Well before the introduction of the Feminist Legal Theory (FLT), which explicitly centers around legitimate articles, woman's rights as a way of thinking have arisen since the eighteenth century ¹⁰. There are several streams of feminism, namely liberal, radical, socialist, Marxist, eco-feminist, Islamic feminist, anarcho-feminist, and Afro-American feminism to third-world feminism, each of which sees the source of women's oppression differently from the others. Thus, feminism exists and grows in every community, region, race, religion, and country, although it may be using different terms. Broadly speaking, the Feminist Legal Theory (FLT) provides an overview of feminist theory in law as conveyed by Niken Savitri that the Feminist Legal Theory (FLT) which led to a run of the mill women's activist investigation strategy in law is generally used to examine expansive issues in different fields of law. His investigations incorporate censuring law from a women's activist perspective as a significant report. Since the Feminist Legal Theory (FLT) can't be

¹⁰ Sulistyawan, *supra* note 8.

isolated from the different existing schools, there is no consistency in the technique. In any case, there are in any event five things that can be underlined from the variety of Feminist Legal Theory (FLT) which is designated "*think like women's activist*", including ladies' encounters, implied sex predisposition, servitude/twofold bonds, and the difficulty of contrasts, multiplication of a male mastery model, and opening up ladies' selection ¹¹.

The essence of knowledge in feminism is an idea / thought to fight the injustices that befall women ¹². People who fight for it are called feminists. Thus, rejecting feminism is tantamount to agreeing that injustice against women continues ¹³. Especially about Muslims, the struggle of the Prophet Muhammad SAW to elevate the dignity of women is a struggle for feminism. Prophet Muhammad SAW is a true feminist. He called on the public to eliminate violence against women; giving inheritance rights to women where previously women were the inheritance itself; limiting polygamy which previously could be done without restriction, abolishing forced marriage to women by requiring the consent of the woman to marry; and abolish slavery. What the Prophet SAW did was the teachings of Islam that he had spread since the 7th century in the Arabian Peninsula. Therefore, it is very wrong if there are parties who reject feminism and consider it from the West and oppose Islam and feminism. Feminism is not single-dimensional, it varies depending on how one views the source of women's oppression ¹⁴.

The notion of presenting ³ the Draft Law on the Elimination of Sexual Violence was a requirement based on facts and statistics on

¹¹ Indiarti, *supra* note 7.

¹² Erlyn Indarti, *PROGRESSIVE LAW REVEALED: A LEGAL PHILOSOPHICAL OVERVIEW*, 03 DIPONEGORO LAW REV. 28–42 (2018).

¹³ KOMISI NASIONAL PEREMPUAN, *supra* note 3.

¹⁴ Nuril Hidayati, *Teori Feminisme: Sejarah, Perkembangan dan Relevansinya dengan Kajian Keislaman Kontemporer*, 14 J. HARKAT 21–29 (2018).

sexual violence that occurred in Indonesia, which were compiled in Komnas Perempuan's yearly record of violence against women (Catahu) since 2001. Sexual violence is visible and occurs in Indonesia's homeland, encouraging the population, particularly victims of sexual assault, to demand that their rights be protected¹⁵. The occurrence of sexual violence shows that the human value of the perpetrator of sexual violence as a human being is reduced. The perpetrator also attacked the dignity of the victim's humanity. To restore human values that have been violated as a result of the perpetrator's actions, the state must take fair and civilized actions, both to the victim, as well as to the perpetrator and society. Such actions can only be taken if there is clear legal protection to deal with sexual violence. At this time, there is no legal protection capable of providing justice and restoration for victims, even though efforts to restore human values that have been violated can no longer be postponed.

In 2000, Mrs. Shinta Nuriyah also initiated what she called Pancasila Feminism. This idea is to underline that feminism is also part of the values of the Indonesian nation and does not conflict with Indonesian culture, namely, the feminism that rests on the values of God, Humanity, within the framework of the Republic of Indonesia, promotes the democratic process and is aimed at achieving social justice for all Indonesian people¹⁶. To regard feminism as a school that rejects family life is a sign of laziness to read, even though laziness in reading is the entrance to human fooling. In contrast to the context of the function of Feminist Legal Theory (FLT) in scientific studies, feminism as a value is not new in Indonesia. Tracing the cultural history of the archipelago shows that some women fighters in

¹⁵ Siti Dana Retnani, *Feminisme Dalam Perkembangan Aliran Pemikiran Dan Hukum Di Indonesia*, 1 J. ILMU HUK. ALETH. 95–109 (2017).

¹⁶ KOMISI NASIONAL PEREMPUAN, *supra* note 3.

Indonesia have promoted women's rights for equality¹⁷. For example, Raden Ajeng Kartini (Central Java) and Dewi Sartika (West Java) have promoted the right to education for women. This is in line with the thought of liberal feminism which at that time has been developing in other parts of the world. Demands for improving the condition of women then do not stop at equal access to education.

In the history of the feminist movement, there is an "anti-male" campaign that is suspected of being an attempt by capitalism and patriarchy to hit back every women's movement against injustice. Capitalism and patriarchy easily label anti-family, hostile to men, and anti-marriage to anyone who fights against injustice.¹⁸ The meaning of "feminist" is then labeled with a bad connotation so that when capitalism continues to exploit natural resources, society is preoccupied with accusations and hatred of feminists and feminism¹⁹. The existence of a Feminist Legal Theory (FLT) which is the breaker of inequality caused by law which has been argued as the bearer of justice for all, is neutral, objective, and equal to anyone, including men and women. Feminists believe that law is a reflection of political philosophy. dominant one²⁰. Amid patriarchy, the law is only seen from the point of view of men because it is men who write the law and enter their interests. This is emphasized by Anthony Synott who said "men have justified their hegemony, and the male-female inequality, in several ways and every discipline"²¹. As part of the academic research method, Feminist Legal Theory (FLT) analysis knife as one of the streams in the paradigm of critical theory et.al. It is

¹⁷ Hidayati, *supra* note 14.

¹⁸ Indah Dwiprigitaningtias & Yuniar Rahmatiar, *Perempuan Dan Kekuasaan Dihubungkan Dengan Feminist Legal Theory*, 5 JUSTISI J. ILMU HUK. 54–68 (2020).

¹⁹ KOMISI NASIONAL PEREMPUAN, *supra* note 3.

²⁰ N SAVITRI, *HAM PEREMPUAN KRITIK TEORI HUKUM FEMINIS TERHADAP KUHP* (2008).

²¹ A SYNOTT, *TUBUH SOSIAL: SIMBOLISME DIRI DAN MASYARAKAT* (2003).

used to analyze the complexity of the needs of victims, both women, girls, boys, and girls. So, the assumption of conflict between men and women due to Feminist Legal Theory (FLT) is an unfounded accusation. The establishment of norms that regulate the management, protection, and recovery of victims that were not previously regulated in legislative laws is the true application of Feminist Legal Theory (FLT) ideals as defined in the Bill on the Elimination of Sexual Violence.⁴ There is no singular formulation of norms in this bill that addresses men and women as opposing parties. The Proposed Law on the Elimination of Sexual Violence⁴ once again prioritizes victims, including women, girls, boys, and men.

The law is "*male sex*," according to feminist legal theory because lawmakers are governed by men. So, like a critical law school, legal discourse then forgets the voices of the marginalized, which in this context are women. Therefore, legal studies as per Feminist Legal Theory (FLT) should be carried out to posit women's experiences. As a result, it is reasonable to conclude that this way of thought positions itself to side with women to break through the legal establishment, which claims to be neutral but discriminates and oppresses women. Feminist Legal Theory (FLT) is a school of thought with a subjective epistemology in this context. To dismantle the hegemony of men's thoughts in the domination of a patriarchal world, Feminist Legal Theory (FLT), which is part of a feminist study, based the study on women's experiences. Women's experiences can be said to be particular experiences because not all women are the same, so this is subjective²².

The subjectivity that governs the understanding of Feminist Legal Theory (FLT) is the keyword that may be highlighted to discover the paradigm that houses the concept of Feminist Legal

²² L. G LAPIAN, ³DISIPLIN HUKUM YANG MEWUJUDKAN KESETARAAN DAN KEADILAN GENDER (2019).

Theory (FLT). Furthermore, Feminist Legal Theory (FLT) is a school of thought that advocates for women's rights to protect, empower, and emancipate them ²³. Here it can be seen that this alien is subjective, not objective as the law promoted by legal positivism. The idea of feminism is to create justice, both social justice and family justice. To achieve this, education is needed in the community and the family so that each member does not commit violence against others, including sexual violence. The occurrence of domestic violence experienced by women and children shows the reality of the existence of injustice in the family, namely from the dominant person to those with lower relations. Likewise with sexual violence committed by family members. Prevention and handling of sexual violence at the family level are not contradictory to feminism because feminism teaches everyone to respect the rights of others, not to commit violence against others, to have control over oneself to dare to fight sexual violence, to speak up for reporting the violence they have experienced, and rejecting sexual violence either through words or deeds, including in the family environment. ²⁴ Family resilience is envisioned as an ideal bulwark for every social problem in society, including sexual violence.

The perpetrator of sexual violence is within the family itself, whether it's father, uncle, grandfather, or sister. The concept of family resilience cannot provide an answer to where victims should seek help when they become victims of sexual violence from their own families. An example, where were the bearers of family resilience when the rape case in Lampung (2018) was exposed by his father and

²³ Budi Hermawan Bangun, *Hak Perempuan dan Kesetaraan Gender dalam Perspektif Filsafat Hukum*, 15 PANDECTA RES. LAW J. 74–82 (2020).

²⁴ Rima Vien permata Hartanto, Adi Sulistiyono & Isharyanto Isharyanto, *Feminist Perspective towards the Legal Theory on Fisher-Women's Legal Entity*, 13 FIAT JUSTISIAJURNAL ILMU HUK. 345–360 (2019).

uncle? Or the case in Jambi where the perpetrator was a sibling until the victim became pregnant and aborted her womb? Legal ¹protection for victims of sexual violence will strengthen the existence of family institutions to become a safe space for everyone in it to avoid sexual violence, as well as provide a space for protection for people who experience sexual violence from their own families.

Epistemologically, the use of Feminist Legal Theory (FLT) does not at all create conflict between men and women ²⁵. Feminist Legal Theory (FLT) is used in the academic paper of the Bill on the Elimination of Sexual Violence as an analytical tool to understand the diversity of experiences of women victims when dealing with sexual violence and the law. The victims have different backgrounds and responses to the events experienced, so it is not appropriate to homogenize one victim with another. For example, when women experience one type of sexual violence crime, some women scream and dare to fight back and report to the police, but some are silent ²⁶. Even so, in general, women victims were unable to defend themselves or report the perpetrators for fear of being stigmatized and blamed again by various parties for the cases that happened to them ²⁷. The analysis knife helps to find that in general, the victim is powerless over the perpetrator and for the sexual violence perpetrated by the perpetrator.

Besides, there is no legal protection that facilitates victims of sexual violence to carry out routine checks whether or not they have AIDS. If it is known too late, the handling will also be too late. ⁴The Bill on the Elimination of Sexual Violence will overcome this obstacle, by

²⁵ INDIARTI, *supra* note 9.

²⁶ Erlyn Indarti, *Profesionalisme Pengemban Fungsi Utama Kepolisian Dalam Penegakan Hukum Di Polda Jawa Tengah*, 43 J. MASAL. HUK. UNDIP 348–355 (2016).

²⁷ ⁶Habib Shulton Asnawi, *Kritik Teori Hukum Feminis terhadap UU Nomor 1 Tahun 1974 tentang Perkawinan, Suatu Upaya dalam Menegakkan Keadilan HAM Kaum Perempuan*, 4 AL-AHWAL 117–130 (2011).

setting norms that facilitate sexual violence victims to obtain periodic health check services ²⁸. Those who reject the Draft Law on Sexual Violence seem to be wrong in understanding what Feminist Legal Theory (FLT) and feminism are, by confusing their definitions with each other so that the conclusions drawn are also wrong.

As for the methodology ²⁹, we can describe the efforts of the community movement, namely the National Commission on Violence Against Women, BEM UI joined the Civil Society Movement (GEMAS) alliance, the Interfaith Movement of West Java (GEULIS), the Solo Community Alliance Movement, the Program Network. The Pro-Legislation Women's (JKP3) staged a protest because the need to protect the right to the Elimination of Sexual Violence is a need to address problems that exist in Indonesia, rather than those entrusted to it from the West or the East, and it demands that the Proposed Law on the Eradication of Sexual Abuse be passed immediately. Komnas Perempuan has taken many steps to ensure that the Proposed Law on the Eradication of Sexual Abuse is passed as soon as possible, namely:

1. Cooperating with the government, which already has a mechanism to build and process data from all provinces in Indonesia, namely the Religious Courts (BADILAG). BADILAG has complete data on divorce rates and has categorized the causes of divorce based on the Marriage Law and the Compilation of Islamic Laws. This data helps Komnas Perempuan find causes based on gender-based violence in the realm of marriage or household.
2. Send a questionnaire form that needs to be filled out by institutions that deal with women victims of violence to the government and civil society organizations. The questionnaire form prepared by Komnas Perempuan contains the identification of cases of gender-based violence. The willingness of the government and civil society

²⁸ Wirasandi, *Wanita dalam Pendekatan Feminisme*, 7 J. ILM. RINJANI 47–58 (2019).

²⁹ Indiarti, *supra* note 26.

organizations helps Komnas Perempuan in presenting data on findings of violence against women.

3. Processing data on complaints that come directly to Komnas Perempuan from the Complaints and References Unit as well as from email.
4. Presenting additional data from partners based on vulnerable groups of women, namely violence against sexual minority communities, women with disabilities, women with HIV, and Defenders of Human Rights for Women.

CONCLUSION

FEMINIST LEGAL THEORY (FLT) as one of the streams in basic hypothesis can't be isolated from the different existing women's activist schools. Feminist Legal Theory (FLT) criticizes law as a source of subordination to women. Feminist Legal Theory (FLT) in essence emphasizes that the formation of laws is not gender-neutral, biased, or even promotes male supremacy if the formation of laws fails to consider women's experiences. The Bill on the Elimination of Sexual Violence uses the Feminist Legal Theory (FLT) as an analysis so that in every norm that is formulated this bill always considers what specific experiences of women, especially victims of sexual violence. The voices of victims who are silenced, tend to be stigmatized and blamed, and fail to get recovery and justice are the realities of the experiences of women victims of sexual violence that are of concern in this bill to find a solution and solution. Therefore, legal protection is needed as a form of implementation of the second principle of Pancasila, namely just and civilized humanity. The need for protection against sexual violence has prompted various political parties to rally support for the ratification on the Eradication of Sexual

Abuse. In the end, hating feminism and also hating efforts to eliminate sexual violence will only hamper victims of sexual violence from their rights to truth, justice, and restoration. Thanks to feminism, women in various countries can enjoy their human rights as human beings. Women can go to school, work, enjoy welfare, think and have an opinion, be chosen and choose, and even enjoy everyday life in the household based on their conscious choices thanks to the work of feminism. So, it seems paradoxical, if there are parties who reject the Bill on the Elimination of Sexual Violence because this bill adopts feminism, while those who reject it can express their opinions, conduct discussions, analyze, even demonstrate, also because of the work of feminism.

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*You're not a victim for sharing
your story. You are a survivor
setting the world on fire with your
truth. And you never know who
needs your light, your warmth,
and raging courage.*

Alex Elle

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