
Preventing Sexual Violent Behavior**Comparative Study of Permendikbudristek No. 30 of 2021 and Islamic Law****Maqashid Sharia Perspective**

Muhtar Arifin¹, Wardah Yuspin²¹ Muhammadiyah University of Surakarta (r200210002@student.ums.ac.id)² Muhammadiyah University of Surakarta (wy204@ums.ac.id)

ABSTRACT

The purpose of this study was to determine the comparison between the concept of Permendikbudristek and the concept of Islam in an effort to prevent the occurrence of sexual violence behavior. This research is included in library research with maqashid shari'ah approach. The data collected in this study using the document study method. Among the results obtained are Permendikbudristek no. 30 of 2022 has similarities and differences with Islamic law in regulating relations between men and women. Among the forms of the equation is in terms of its purpose, namely to realize the general benefit and its formulation. While the difference between the two laws is in terms of the origin of the rules, in terms of accuracy in choosing pronunciation and in terms of willingness in terms of sexual violence behavior. In the Ministerial Regulation there are several things which are cases that should not be done between men and women, but when they are done voluntarily, they are not categorized as violating the rules. Whereas in Islam, these things even though they are consensual are still prohibited. The author concludes that the phrase "without the victim's consent" can lead to various mafsadat, which is contrary to the maqashid shari'ah in terms of hifdzud diin (religious protection), hifdzun nasl (protection of offspring), hifdzul 'irdh (keeping of honor) and hifdzul mal (protection of property). . This study recommends improving the text of the regulation, especially on phrases that contain many pros and cons.

Keywords: Comparison, Permendikbudristek, Sexual Violence, Islamic Law, Maqashid Syari'ah,

INTRODUCTION

One of the phenomena that occurs in academia is sexual violence committed in educational institutions. One of them is what happened in several campuses in Indonesia. Site www.voaindonesia.com have reported about this that in the campus rooms there have been a number of rows of sexual violence. Among them is a student from Gajah Mada University (UGM) who experienced it while carrying out a Real Work Lecture (KKN). There was also a student from the University of Muhammadiyah Yogyakarta (UMY) who was dishonorably dropped out by the university because he was involved in a sexual violence case.⁵⁹.

⁵⁹ *Kekerasan Seksual Tersembunyi di Ruang-Ruang Kampus*

Sumber: <https://www.voaindonesia.com/a/kekerasan-seksual-tersembunyi-di-ruang-ruang-kampus-/6392176.html>

It was also reported in the Tempo daily that there had been a series of cases suspected of being a form of sexual harassment on campus. Among other things is the existence of a thesis supervisor who forced to kiss his student during guidance. Then wanted to do more than that, but the student fought him to defend himself. This is at Riau University⁶⁰.

The data compiled by Komnas Perempuan mentions the high number of cases of sexual violence against women. In one year there have been 2,945 reports in 2020. Based on the calculations for the last 9 (nine) years, 45,069 cases of violence have been reported. These are astonishing numbers with regard to cases of sexual violence⁶¹.

Kompas.com also said that at Sriwijaya University (Unsri) there had been cases of sexual harassment against three of his female students. These actions are carried out by their own lecturers. They are students who are in the final semester of their studies. This also happens when they are finishing their thesis with their supervisor⁶².

Professor of Islamic Studies and Gender from the State Islamic University (UIN) Sunan Gunung Jati Bandung stated that what happened was an iceberg phenomenon. He stated that the cases that occurred in the field were likely to be much larger than the reported cases. This is due to the preservation of the campus reputation. There are also those who do not dare to report their cases⁶³.

These are a few of the phenomena that occur in the campus environment regarding sexual violence. These cases are likely to increase over time. That's because human lust does not stop, in fact it always accompanies it. In addition, the opportunity to do so is often open.

Juridically, the Government of the Republic of Indonesia has issued regulations to prevent sexual behavior deviations. One of them is the emergence of Regulation of the Minister of Education, Culture, Research and Technology No. 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education. This is an effort taken in order to avoid the occurrence of mafsadat in society, especially the university environment.

Even though there are regulations set by the government regarding sexual violence, case by case still occur. In some campuses there are cases of sexual violence until it is revealed by the mass media. This shows that these regulations and their implementation still need to be reviewed. This is in order to optimize the benefits to be achieved from the existence of these regulations.

Diakses tanggal 24 Maret 2022 pada pukul 02.42 WIB.

⁶⁰*Deretan Kasus dugaan Pelecehan Seksual di Kampus.*

Sumber: <https://nasional.tempo.co/read/1537859/deretan-kasus-dugaan-pelecehan-seksual-di-kampus/full&view=ok>

Diakses tanggal 24 Maret 2022 pada pukul 02.52 WIB.

⁶¹*Kekerasan Seksual Di Kampus Menjamur, Regulasi Dinilai Tak Cukup.*

Sumber: <https://www.dw.com/id/kekerasan-seksual-di-kampus/a-59838953>

Diakses pada tanggal 24 Maret 2022 pada pukul 03.01 WIB.

⁶²*Kasus Pelecehan Seksual di Kampus Unsri, 2 Dosen Terduga Pelaku, Korbannya 3 Mahasiswi.*

Sumber: <https://regional.kompas.com/read/2021/12/02/215123878/kasus-pelecehan-seksual-di-kampus-unsri-2-dosen-jadi-terduga-pelaku?page=all>

Diakses pada tanggal 24 Maret 2022 pada pukul 03.09 WIB.

⁶³*Kekerasan Seksual Di Kampus Menjamur, Regulasi Dinilai Tak Cukup.*

Source: <https://www.dw.com/id/violent-sexual-di-kampus/a-59838953>

Diakses pada tanggal 24 Maret 2022 pada pukul 03.12 WIB.

In the perspective of maqashid shari'ah, keeping humans from falling into adultery is one of the maqashid that should be guarded⁶⁴. When the roads that lead to adultery are opened, it opens the door for a lot of mischief on earth. On the other hand, blocking the way to the occurrence of this evil means blocking the occurrence of various kinds of damage on earth.

Based on the description of the background of the problem mentioned above, the formulation of the problem in this research is how is the concept of Prevention of Sexual Violence in Permendikbudristek when compared with Islamic law?

The purpose of this study was to find out about the comparison between the concept of Permendikbudristek and the concept of Islam in an effort to prevent the occurrence of sexual deviant behavior in the campus environment.

This research can be classified as library research with normative methods. The normative legal method is used in this research because it concentrates the discussion on the prevention and handling of sexual violence in universities compared to Islamic law. Meanwhile, the existing data were collected using the document study method. Among the legal materials are the Qur'an, As Sunnah, Regulation of the Minister of Education, Culture, Research and Technology, no. 30 year 2021, articles and others that are still relevant to this research.

DISCUSSION

1. The emergence of Permendikbudristek No. 30 year 2021.

This Permendikbudristek was established by the government with the official aim of protecting the public from various acts including sexual violence in the campus environment. This regulation has been signed by Nadiem Makarim as the Minister of Education and Culture or Mendikbud. The signing was carried out on August 31, 2021⁶⁵.

Among the considerations that led to the emergence of this Permendikbudristek is that every citizen has the right to obtain protection from all forms of violence. One of these violence is sexual violence. This is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In addition, the implementation of the Tridarma of Higher Education is not optimal when there are cases that lead to sexual harassment in the campus environment. In addition, cases like this will make the quality of higher education lower and decline⁶⁶.

⁶⁴Adnan Raja Syanitir, 2020, *Al-Maqashidul Juz-iyah fi Hifdzin Nasl 'Indal Imamil Bukhari al-Hanafī fi Kitabihi Mahasinil Islam* dalam [Anbar University Journal of Islamic Sciences 2020, Volume 11, Issue 43](#), , Hlm. 377.

<https://www.iasj.net/iasj/download/a521d7c304834c68>
Diakses tanggal 25 Maret 2022 pada pukul 02.24 WIB.

⁶⁵*Alasan permendikbud Nomor 30 Tahun 2021 Tentang PPKS di Perguruan Tinggi. Ini isi pasal yang Tunai Kontroversi.*

<https://beritadiy.pikiran-rakyat.com/citizen/pr-703014091/alasan-permendikbud-nomor-30-tahun-2021-tentang-ppks-di-perguruan-tinggi-ini-isi-pasal-yang-tuai-kontroversi>

Diakses tanggal 24 Maret 2022 pada pukul 03.25 WIB

⁶⁶ *Salinan Permendikbudristek No. 30 Tahun 2021.*
https://jdih.kemdikbud.go.id/sjdih/siperpu/dokumen/salinan/salinan_20211025_095433_Salinan_Permen%2030%20Tahun%202021%20tentang%20Kekerasan%20Seksual%20fix.pdf

Diakses tanggal 24 Maret 2022 pada pukul 03.32 WIB.

Cases of sexual violence occurring on campus are very high. There are several reasons that make the number of cases so high. One of the reasons is that people who are victims do not want to report the violence they have experienced. It was because he felt ashamed of what had happened to him. There are also other reasons, namely the absence of detailed and detailed regulations set by the government on this issue. Thus, the person who becomes the victim does not understand exactly the steps that must be taken in resolving the case that happened to him⁶⁷.

This Permendikbudristek consists of 9 (nine) chapters. Beginning with Chapter I contains general provisions that contain definitions. While the last chapter is about the closing provisions. The number of articles in it is 58 articles. The number of sheets of this regulation is 35 pages. This regulation was enacted in Jakarta on 31 August 2021 and promulgated in Jakarta on 3 September 2021⁶⁸.

Juridically, this country has also issued a law that aims to create peace in society by eliminating forms of humiliation against women. The regulation is Law no. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women⁶⁹.

Such is the effort of the government of the Republic of Indonesia in the context of realizing the benefit of its citizens. This is a noble step that is expected to create an environment for society, nation and state. However, it is undeniable that there are several cases showing that the implementation of the regulation still needs to be reviewed.

2. Comparative Study between Permendikbud, Research and Technology and Islamic Law on the Prevention of Sexual Violent Behavior

The Permendikbud, Research and Technology and Islamic law each have their own concepts relating to the prevention of sexual violence. In the following, the two laws will be presented

A. Permendikbudristek concept.

From the Minister of Education and Culture, Research and Technology no. 30 of 2021, there are several things that show important points regarding the prevention of sexual violence behavior, including:

1. Willingness to interact with the opposite sex.

The author analyzes some of the contents of paragraph 2 of Article 5 of the Permendikbudristek. After that, there are several things that if done without the consent of the victim, it is forbidden to do it, namely:

1. revealing their reproductive organs intentionally (Article 5 paragraph (2) letter b).

⁶⁷ Ahmad Fikri Oslami, 2021, *Analisis Permendikbudristek Nomor 30 Tahun 2021 dalam Upaya Pencegahan Kekerasan Seksual*, dalam Jurnal Al-Ahkam, Jurnal Syari'ah dan Peradilan Islam, Vol. 1, no. 2, hlm. 109-110.

<https://ejournal.unida-aceh.ac.id/index.php/jspi/article/view/191/139>

Diakses tanggal 24 Maret 2022 pada pukul 17.26 WIB.

⁶⁸

Permendikbudristek

https://jdih.kemdikbud.go.id/sjdih/siperpu/dokumen/salinan/salinan_20211025_095433_Salinan_Permen%2030%20Tahun%202021%20tentang%20Kekerasan%20Seksual%20fix.pdf

⁶⁹ <http://www.bphn.go.id/data/documents/84uu007.pdf>

Diakses tanggal 24 Maret 2022 pada pukul 03.38 WIB.

2. recording photos or audio or visuals that have sexual nuances, (Article 5 paragraph (2) letter f).
3. upload a photo of the victim's body or personal information that has sexual nuances, (Article 5 paragraph (2) letter g).
4. Disseminate information related to the victim's body or personal that has sexual nuances (Article 5 paragraph (2) letter h).
5. persuading or threatening the victim for a sexual activity transaction, (Article 5 paragraph (2) letter j).
6. touching or touching the victim's body (Article 5 paragraph (2) letter l).
7. undress the victim. (Article 5 paragraph (2) letter m).

2. Steps to Prevent Sexual Violent Behavior.

In order to prevent the occurrence of sexual violence, there are three ways to prevent it:

First: through learning, namely by studying the prevention and handling module of sexual violence set by the ministry. (Article 6 paragraph 2).

Second: through strengthening governance, including by formulating policies that support the Prevention and Handling of Sexual Violence in Higher Education, establishing task forces, providing sexual violence reporting services and so on. (Article 6 paragraph 3)

Third: through strengthening the culture of the student community, educators and education personnel in the form of communication, information and education regarding the prevention and handling of sexual violence by introducing campus life, student organizations and informal communication networks. (Article 6 paragraph 4 letters a, b and d).

ISLAMIC CONCEPT

1. Willingness to Interact.

In Islam, doing things that are prohibited by the Shari'a is still prohibited even though there is a willingness from both parties. A syar'i prohibition related to relations with the opposite sex does not become lawful because of mutual pleasure to do so. For example, in the case of adultery. Zina is still punishable by adultery even though it is done consensual and willingly from both parties.

The concept above is based on several foundations from the Qur'an and As-Sunnah. Are as follows:

In the Qur'an, Allah has forbidden the act of helping one another in evil. Among them are His words:

أَوْنُوا لِي الْبِرَّ النَّفْوَى لَا أَوْنُوا لِي الْإِثْمِ الْعُدْوَانِ اتَّقُوا اللَّهَ اللَّهَ الْعِقَابِ

*Help you in goodness and piety and do not help each other in sin and enmity. Have your fear of Allah. Verily, Allah is very severe in His punishment*⁷⁰.

Ibn Kathir explains that in that verse Allah has ordered His servants to help each other in carrying out the virtues called birr, and leave the evils and what is called piety. In addition, Allah also forbids His servants from doing evil deeds help each other in wrongdoing and help each other in sins

⁷⁰QS. Al-Maidah: 2.

and forbidden things⁷¹. Based on this verse, mutual assistance in evil is a forbidden matter even though both parties are willing, such as touching each other between adult men and women who are not mahram.

In the hadith of Abu Hurairah, the Messenger of Allah - sallallahu 'alaihi wasallam - said:

لا الزاني
There is no one who commits adultery when he commits adultery while he is in a state of faith⁷². This hadith explains that when a person commits adultery, his faith leaves him. If he still believes in truth, then his faith will prevent him from committing adultery. This hadith does not mention a condition that the prohibition of adultery is valid if one of the two parties is not willing to do it. From here, an act of sexual violence is still prohibited even though there is a willingness from both parties.

2. Prevention Steps.

With regard to adultery and sexual violence, Islam has warned against it since fourteen centuries ago. Among them can be seen from a verse contained in the letter Al-Isra':

لا الرِّبَا اِنَّ اِحْسَهٗ اء لا
And do not approach adultery, for it is abominable and the worst way⁷³.

Imam Ibn Kathir in his commentary explains that in this verse Allah forbids His servants from committing adultery and approaching it, namely interacting with the causes of adultery and the driving factors.⁷⁴ If you pay attention to the verse above, what is forbidden by Allah is not only committing adultery itself⁷⁵, but includes taking the road and interacting with means that can lead to adultery.

In Islam, several things have been determined that aim to cover the occurrence of adultery and sexual violence, including:

a. Prohibition of Opening Aurat.

The disclosure of a person's genitalia is a matter that has a major influence on the rise of other people's libido. Therefore, the aurat should not be opened except in an emergency, which is permitted by law. Even to the same sex is forbidden to show it. This is based on the following hadith:

لا الرَّجُلُ لِي الرَّجُلِ، لَا الْمَرْأَةُ لِي الْمَرْأَةِ
Don't let a man see another man's nakedness, and let a woman not see another woman's nakedness⁷⁶.

As for revealing the aurat that is allowed, among others, is to a legal partner. In addition, in an emergency or in need, it is permissible to open the genitals to other than the spouse. Among

⁷¹Ismail bin Umar bin Katsir, 1420 H/1999 AD, Tafsirul Qur'anil 'Adhim, Dar Thaibah (II/13).

⁷²HR. Bukhari and Muslim. Sahih At-Targhib wa At-Tarhib, No. 2387.

⁷³QS. Al-Isra': 32.

⁷⁴Ismail bin Umar bin Katsir, 1420 H/1999 AD, Tafsirul Qur'anil 'Adhim, Dar Thaibah (V/72).

⁷⁵Sayyid Abdul Hamid Yusuf Asy-Syimi, 2015, *Manhajul Islam fil Hifadz 'Aladh Dharuriyatil Khams, dalam Jurnal Hikmatuna*, vol 1, no. 1, hlm. 180.

<http://e-journal.iainpekalongan.ac.id/index.php/hikmatuna/article/view/476>

Diakses tanggal 27 Maret 2022 pada pukul 16.33 WIB.

⁷⁶HR. Muslim, no. 338.

them are: when treatment on the limbs associated with the genitalia⁷⁷, when doing circumcision⁷⁸, when giving birth⁷⁹ and others.

b. No entry without permission.

When someone is about to enter someone else's house or room, it is prescribed to ask permission first before entering⁸⁰. It is as in the following hadith:

إِلَّ الشَّيْئَةَ لِي الْبَصَرِ

*Indeed, asking permission is stipulated in order to maintain the view*⁸¹.

Shaykh Faishal al-Mubarak explained that from this hadith there is a prohibition against looking into the house from the door opening for people who ask permission⁸². Among the wisdom behind this Shari'a is in order to close the way for mafsadat to occur when seeing the owner of a house that is not appropriate to be seen.

c. Prohibition of being alone with a woman who is not her mahram.

Being alone with a woman who is not a mahram is a way that can lead to adultery or sexual violence⁸³. Therefore, both of these are prohibited in the Shari'a. The Prophet sallallahu 'alaihi wasallam said:

لَا تَوْنُ لَ امْرَأَةٍ لَّا

*A man should never be alone with a woman except with her mahram*⁸⁴.

When alone with a woman who is not her mahram, she will be accompanied by shaitan⁸⁵. If Satan has entered into them both, then he will invite both of them to evil and evil deeds. Therefore, do not be surprised if these two are included in the case that is prohibited by the Shari'a, one of which is adultery which is a very heinous act.⁸⁶

d. Prohibition of traveling without a mahram.

Traveling that falls into the category of safar if it is done by a woman alone, then this is an act that is forbidden in the Shari'a. This is based on the following hadith:

لَا إِفْرَ الْمَرْأَةُ لَّا

*A woman should not go on a journey except with her mahram*⁸⁷.

⁷⁷Ali in Muhammad Al-Fasi, 1433 H/2012 AD, *Ihkamun Nadzar fi Ahkamin Nadzar Bihassatil Bashar*, Darul Qalam: Damaskus, hal. 451.

⁷⁸Ibid, hal. 455.

⁷⁹Ibid, hal. 462.

⁸⁰Zaid bin Muhammad Ar-Rummani, 1415, *Maqoshidusy Shari'atil Islamiyyah*, Riyadh: Darul Ghait, hal.91.

⁸¹HR. Bukhari, no. 6241 and Muslim, no. 2156.

⁸²Faishal bin Abdul Aziz Al-Mubarak, 1423 H/2002 AD, *Tathriz Riyadhish Shalihin*, Riyadh: Darul Ashimah (I/524).

⁸³Zaid bin Muhammad Ar-Rummani, 1415, *Maqoshidusy Shari'atil Islamiyyah*, Riyadh: Darul Ghait, hal.91.

⁸⁴HR. Bukhari, No. 5233.

⁸⁵Sahih At-Targhib wat Tarhib, No. 1908.

⁸⁶Nashir Isa Al-Ballusy, 2019, *Maqashidu Takwinil Usrah Fisy Syari'atil Islamiyyah: Dirasah Ta'shiliyyah*, dalam Jurnal Al-Qalam, tahun 6, edisi 14, hal 219.

⁸⁷HR. Muslim, No. 1341.

Imam Nawawi said in his book *Riyadhus Shalihin*: "Chapter It is forbidden for a woman to travel alone"⁸⁸. Shaykh Muhammad bin Salih Al-Utsaimin explained that all trips that fall into the category of safar, then a woman is not allowed to do it alone without her mahram. This is in order to avoid slander, evil and evil.⁸⁹.

- e. Do not wear jewelry when going out of the house.

In Islam, jewelry worn by a woman is only for certain parties. This means that when a woman wears jewelry, it is permissible if it is shown to only a few people, such as her husband if he is already married, to his father and some people who have been mentioned by Allah in the Qur'an. Allah has said:

لَا زِينَتُهُنَّ لِأَلْبُعُولَتِهِنَّ أَيْ أَبَائِهِنَّ لِتِهِنَّ...⁹⁰

*They should not reveal their adornments except to their husbands, their fathers, their husbands' fathers, or their children...*⁹⁰. Among the wisdom of the existence of this Shari'a is in order to protect women from slander, and sexual violence. If a woman shows her jewelry to the public, it can cause a lot of mafsadat.

ANALYSIS OF RESEARCH RESULTS

- a. Equality.

The two concepts above have several similarities, including in two aspects:

- 1) In terms of intent.

If you look at the background of the existence of these two rules, both positive law and Islamic law both want benefit. The government wants to solve various problems related to sexual violence and anticipate it before it occurs⁹¹. This can be seen from the title of the regulation, which contains the word "about the prevention and handling of sexual violence". While Islamic law in it has a noble purpose, namely the realization of maqashid shari'ah. Imam Ibn al-Qayyim said about the purpose of the existence of sharia is to bring various benefits, perfect it, eliminate mafsadat and minimize it.⁹².

- 2) In terms of formulation.

In order to realize the benefit and goodness, then in the legislation there is a formulation regarding the prevention of sexual violence. This is realized by the drafting of

⁸⁸Yahya bin Syaraf An-Nawawi, 2009, *Riyadhush Shalihin*, Cairo: Darussalam, p. 267.

⁸⁹Muhammad bin Salih Al-Utsaimin 1426 H, *Syarah Riyadhish Shalihin*, Riyadh: Darul Wathan, (IV/628).

⁹⁰QS. An-Nur: 31.

⁹¹Ahmad Fikri Oslami, 2021, *Analisis Permendikbudristek Nomor 30 Tahun 2021 dalam Upaya Pencegahan Kekerasan Seksual*, dalam *Jurnal Al-Ahkam, Jurnal Syari'ah dan Peradilan Islam*, Vol. 1, no. 2, hlm. 111.

<https://ejournal.unida-aceh.ac.id/index.php/jspi/article/view/191/139>

Diakses tanggal 24 Maret 2022 pada pukul 17.26 WIB.

⁹²Muhammad bin Abu Bakr bin Qayyim, 1423 H, *I'lamul Muwaqqi'in 'an Rabbil 'Alamin*, Dar Ibnul Jauzi, (I/58)

the Regulation of the Minister of Education, Culture, Research and Technology⁹³. Likewise, in Islamic law there are formulations contained in the foundation of the life of its adherents. The foundation is the Al-Qur'an and As-Sunnah.

DIFFERENCE

1) In terms of the origin of the Rules.

The rules mentioned above are from the Ministry of Education of the Republic of Indonesia. This means that this law comes from human products. This regulation is included in the positive law in this country. He is also known as Al-Qawaninul Wadh'iyyah (Laws made by humans). In this review of Shari'ah maqosid, it is included in the rules:

التَّصَرُّفُ لِي الرَّعِيَّةِ الْمَضْلُحَةِ.

What a ruler does to his people is to consider the benefit⁹⁴. Meanwhile, Islamic law is derived from Allah the Exalted, Who is All-Knowing of all His creatures⁹⁵.

2) In terms of Accuracy in Choosing Pronunciation

Choosing the right words and can bring benefits to all parties is not an easy thing. The choice of words requires a process that is not simple. Therefore, it is appropriate when someone says:

اختيار الكلام السهام.

Choosing words is harder than sharpening an arrow⁹⁶. From this it is known that humans have limitations in compiling words.

In the Permendikbud text above, there is a phrase that has caused a lot of controversy, namely "without the consent of the victim". This is a phrase that when applied will result in a banyak mafsadat, that is adultery voluntarily⁹⁷.

3) In terms of the willingness of perpetrators and victims of sexual violence.

⁹³Robiatu Adawiyah, et. al, 2022, *Analisis Permendikbud Ristek No. 30, Tahun 2021 dan Konstruksi Sosial Kekerasan Seksual di Perguruan Tinggi Perspektif Sosiologis*, dalam Jurnal Al-Qodiri: Jurnal Pendidikan, Sosial dan Keagamaan, vol. 19, no. 3, hlm. 792.

<http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/download/4526/3229/>

Diakses tanggal 24 Maret 2022 pada pukul 17.07 WIB.

⁹⁴Muhammad Shidqi Al-Burnu, 1998, *Al-Wajiz Fii Idhai Qawa'idl Fiqhil Kulliyah*, Bairut: Muassasah Ar-Risalah, hal. 347.

⁹⁵Shalih bin Fauzan Al-Fauzan, 'Aqidatut Tauhid wa Bayanu Maa Yudhaduha Auyanqushuha, Riyadh: Muassasah Haramain Khairiyah, hal. 49.

⁹⁶Zaid bin Muhammad Ar-Rummani, 1424 H/2003 CE, *Al-Arba'un Min Asbabit Ta-alif wa Asrarut Tashanif*, Riyadh: Madarul Wathan, hal. 3.

⁹⁷Muhammad Akml Rizki Rivaldi, et. al, 2021, *Pro Kontra Pengaturan Pencegahan dan Penanganan Kekerasan Seksual di Perguruan Tinggi: Tinjauan Perspektif Hukum Islam*, dalam Jurnal Mutawasith: Jurnal Hukum Islam, vol. 4, No. 2, hlm. 113.

<http://jurnal.iailm.ac.id/index.php/mutawasith/article/download/370/247>

Diakses tanggal 27 Maret 2022, pada pukul 11.46 WIB.

In the Permendikbud there are several things which, if done consensually, do not fall into the category of sexual violence as stated in Article 5 paragraph 2. In the research conducted by Bahrul Akmal it was concluded that the phrase "without the victim's consent" was intended to protect the privacy of the victim. This discretion cannot be determined by the consequences except by the victim himself. He also concluded that the phrase is in order to sort out which cases are possible to be processed by the Sexual Violence Prevention and Handling Task Force Team directly or indirectly. In other words, this purpose can be termed as a distinction between a complaint offense and an ordinary offense⁹⁸.

The author appreciates the conclusions that have been obtained by previous researchers. However, when the author looks at the concept above, he finds that the phrase "without the consent of the victim" in Article 5 of the Permendikbudristek if applied without a clear explanation, will be able to lead to various interpretations. The existing mafsadat can be viewed from several aspects:

First: Hifdzud Din (Religious care). This phrase can destroy one's religion. Because if he does things in the form of inappropriate behavior related to the opposite sex, then his religion will be damaged. Even though religion is the greatest maqashid compared to other maqashid⁹⁹. It is also a source of true happiness felt by a person. In a study conducted by Dr. Ahmad Muhammad Abdulkhaliq and Dr. Abdul Hakim Muhammad Husain, it was concluded that students who consider themselves to be happy people are those who are more committed to religion. Therefore, his research both recommends taking a religious approach in solving various musykilat nafsiyah (psychic problems).¹⁰⁰

Second: Hifdzun Nasl (Protection of descendants). When someone understands the above phrase dhahirnya, it will result in damage to the nasl (descendants). This can be viewed from several perspectives, including:

1. Zina is committed starting from doing the muqaddimat (preliminary). Then it will be able to lead to the real adultery. Therefore, in the case of adultery, it is not only forbidden to commit adultery, but it is also forbidden to take the road and approach the means that can lead to adultery.¹⁰¹
2. The phrase allows seven actions if they are done voluntarily or willingly from both parties. If this is done on campuses, negative and destructive events will occur. These include: showing reproductive organs to others, recording sensual videos or audio,

⁹⁸ Bahrul Amal, 2021, *Tinjauan Hukum Terhadap Frasa "Tanpa Persetujuan Korban" dalam Permendikbud Nomor 30 Tahun 2022 Tentang Pencegahan dan Penanganan Kekerasan Seksual*, dalam Jurnal Krepido, Vol. 03, No. 02, hlm. 93.

<https://ejournal2.undip.ac.id/index.php/crepido/article/download/12885/6750>

Diakses tanggal 24 Maret 2022 pada pukul 17.22 WIB.

⁹⁹ Zaid bin Muhammad Ar-Rummani, 1415, *Maqoshidusy Syari'atil Islamiyyah*, Riyadh: Darul Ghait, hlm. 50.

¹⁰⁰ Ahmad Muhammad Abdulkhaliq, et. al. 2017, *As-Sa'adah wa 'Alaqatuha bil Hayatith Thayyibah wat Tadayyun* dalam Jurnal Al-Andalus, Vol. 17, edisi 16, hlm. 258.

¹⁰¹ Zaid bin Muhammad Ar-Rummani, 1415, *Maqoshidusy Syari'atil Islamiyyah*, Riyadh: Darul Ghait, hlm.91.

uploading photos of other people's sensual bodies, touching and touching body parts of the opposite sex and so on. This is a means that can lead to adultery.

3. This phrase will lead to consensual adultery¹⁰². Adultery is an act that is contrary to the straight human nature¹⁰³. This is as stated in the following hadith:

أَلِدٌ لَّا دَلِّي الْفِطْرَةَ، أَهْ إِنَّهُ إِنَّهُ

*There is no child but born in a state of fitrah. So it was his parents who made him a Jew or a Christian or a Magian*¹⁰⁴. This hadith shows that the origin of man is to have a straight fitrah. It's just that the environment has a big influence on the straightness of its nature or its deviation.

4. If this phrase is applied, it will lead to the destruction of the ummah. The spread of adultery in a society can be the cause of the destruction of the past¹⁰⁵. The Messenger of Allah - sallallaahu 'alaihi wasallam - has reported that in his noble hadith:

الرِّبَا الرِّبَا لَوْ أَبَّ اللَّهُ

*If adultery and usury appear in a country, then indeed they have allowed themselves to get the punishment of Allah.*¹⁰⁶

5. This phrase can also lead to the occurrence of mixing of offspring. This can happen if humans consider it permissible to have intercourse with the opposite sex on the basis of the ministerial regulation, then produce illegitimate offspring. So in the end it cannot be distinguished between legitimate children from legal marriages and children resulting from illegitimate relationships¹⁰⁷.

¹⁰² Muhammad Akmal Rizki, dkk, 2021, *Pro Kontra Pengaturan Pencegahan dan Penanganan Kekerasan Seksual di Perguruan Tinggi: Tinjauan Perspektif Hukum Islam*, dalam Jurnal Muawasith, Vol. 4, No. 2, hlm. 108.

<http://jurnal.iailm.ac.id/index.php/mutawasith/article/download/370/247>

Diakses tanggal 27 Maret 2022, pada pukul 11.46 WIB.

¹⁰³ Abdulmalik Abdulmajid Bakr, 2012, *Wasathiyatul Islam Fi Tasyri'il 'Uqubat wa Tanfidziha: 'Uqubatuz Zina Anmudzajan*, dalam [Journal of Tikrit University for the Humanities, Volume 19, Issue 12](#), hlm. 2.

<https://www.iasj.net/iasj/download/2b0459e9ef666026>

Diakses tanggal 25 Maret 2022 pada pukul 09.59 WIB Accessed March 25, 2022 at 09.59 WIB.

¹⁰⁴HR. Bukhari and Muslim.

¹⁰⁵ Ahmad Mahmud Ar-Rubai'I, 2013, 'Uqubatu Jarimatiz Zina Bainal Qawaninil Wadh'iyah wasy Shari'atil Islamiyyah, dalam Tikrit University Journal For Rights, [Volume 6, Issue 20/1](#), hlm. 377.

<https://www.iasj.net/iasj/article/100825>

Accessed March 25, 2022 at 10.11 WIB.

¹⁰⁶Sahih At-Tarhib wa Tarhib, No. 2401.

¹⁰⁷Maha Muhammad Hamid, 2019, *Mumarasat Manhi 'Anha wa Fawaidujtinabiha Lil Wiqoyah Min Intisyaril Amradh*, dalam Journal of The College of Basic Education, Volume 25, No. 103, hlm. 1048.

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Diakses tanggal 25 Maret 2022 pada pukul 10.52 WIB.

Third: Hifdzul 'Irdh (Honorary Guard). When a person commits fornication, his honor will fall, be it before Allah or before his fellow human beings. If viewed from the maqashid shari'ah, honor is a matter that is ordered to be guarded and protected¹⁰⁸.

Fifth: Hifdzul Mal (Protection of Assets). The above phrase can also lead to the wasting of wealth. That is when someone does one of the seven things accompanied by that phrase, then someone will easily squander his wealth in order to be able to carry out this dishonorable act with the willingness of the victim. He will be able to use his wealth to seduce her into doing what she wants voluntarily. While property is one of the things that must be protected¹⁰⁹.

CONCLUSION

Permendikbudristek no. 30 of 2022 has similarities and differences with Islamic law in regulating relations between men and women. Among the forms of the equation is in terms of its intention, namely to realize the general benefit. In addition, the similarities are in terms of formulation. Just as this Ministerial Regulation formulates rules for preventing and dealing with sexual violence, so Islamic law has formulated these regulations since fourteen centuries ago.

While the difference between the two laws is in terms of the origin of the rules. Positive law is a human product, while Islamic law is derived from Allah's revelations that were conveyed to the Prophet Muhammad - sallallaahu 'alaihi wa sallam -. In addition, there are also other differences in terms of accuracy in choosing pronunciation. The text of the law is the result of human composition, while Islamic law contains sacred texts from Allah and from the Prophet. Another difference is in terms of willingness in terms of sexual violence behavior. In the Ministerial Regulation there are several things which are cases that should not be done between men and women, but when they are done voluntarily, they are not categorized as violating the rules. Whereas in Islam,

The author concludes that the phrase "without the victim's consent" can bring about various meanings. The mafsadat is contrary to the maqashid shari'ah in terms of hifdzud diin (religious protection), hifdzun nasl (protection of offspring), hifdzul 'irdh (keeping of honor) and hifdzul mal (protection of property). This study recommends improving the text of the regulation, especially on phrases that contain many pros and cons. In addition, it also recommends increasing faith and piety so as not to fall into sexual violence behavior. One of the steps is to always be eager to attend science assemblies accompanied by praying to Allah so as not to fall into things that He does not love.

¹⁰⁸ Usamah Ar Rababi'ah, et. al, 2019, *Tathbiqat Maqshidil 'Irdhil Mu'ashirah : Dirasah Maqashidiyyah Qanuniyah*, dalam Jurnal Al-Urduniyyah, Vol. 15, No. 4, hlm. 60-61.

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¹⁰⁹Shiddiq Abdulfattah Shiddiq, 2017, *Maqashidusy Syari'ah fi Hifdzil Mal*, dalam Jurnal Hauliyat Kulliyatid Da'watil Islamiyyah, Vol 11, no. 29, hlm. 534.

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