

## Criminal Law and Gender Inequality

### Editorial

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### Articles

Criminal Code Draft and Protection for Victims of Gender-Based Violence  
*Sri Wiyanti Eddyono*

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*Lidwina Inge Nurtjahyo*

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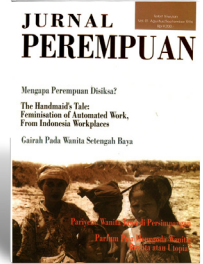
Fornication as Criminal Act, Women's Vulnerability and the Stigma Against Women's Movement  
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Women Facing Legal Cases: Reflection on the Use of Articles 284 and 285 of the Indonesian Criminal Code from the Experiences of their Legal Counselor  
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## Criminal Law and Gender Inequality

The 1998 reformation is often seen as a momentum for the improvement of the systems of life and nationhood. This becomes evident in the reform agenda, which was voiced at the time. We certainly remember that the reformation of the law was one of the points in the reform agenda. Now, 20 years later, we see that the efforts of the women's movement to integrate the rights of women victims of gender-based violence in a variety of regulations have manifested in a number of laws, such as the Human Rights Act, the Law on the Elimination of Domestic Violence, the Law on the Protection of Witnesses and Victims and the Law on the Elimination of Trafficking People. In early 2018, the Draft Law on Penal Code (RUU KUHP) has reached the final stage of discussions since the idea of revision was first initiated in 1963 and its formulation happened during the 1980s. The re-formulation of the Criminal Code, which is the basis of and framework for enforcing criminal law system in Indonesia, is expected to create justice for all citizens.

But several representatives of civil society have criticized the Criminal Code Bill, which is being discussed by the government and the House of Representatives, and even proceeded to reject it. The criticism and rejection, for one, focus on a rule that has the potential to criminalize every citizen, particularly women, children, indigenous people and marginalized groups. The criticism and refusal by civil society shows that there is something wrong with the revision process of the Criminal Code Bill. If the law is intended as a tool to regulate the citizens' behavior and create justice, then it should depart from the experience of all citizens. It shouldn't only represent the interests of half the people or a certain group of citizens.

Meanwhile, the criminal law draft under discussion just ignores the interests of women and marginalized groups. This is most evident in chapters governing morality, such as articles on adultery, rape, lewd acts, trafficking of women and children, access to contraceptive information and services, and abortion. The articles are essentially related to the body's authority and female sexuality, so that the voice and experience of women should be considered. The placement of articles on sexual violence such as rape, sexual abuse and trafficking of women and children in the moral chapter will obscure the nature of the offense and reduce it to a matter of violation of morality and public decency—while we actually look at a form of attack on the body and crimes against human dignity. In addition, the regulation of the sexual behavior of citizens with gender, class, ethnic and faith-based moral standards potentially criminalizes vulnerable

groups. On the other hand, the existence of a pro-women law does not guarantee the revision of the Criminal Code to result in gender equality.

Indeed, feminist lawyers have voiced criticism of the law since several decades ago. They criticize the neutrality of the law that is deemed incapable of recognizing women's experiences as protecting the interests of women. The ideology of legal neutrality is insensitive to the fact that differences exist in society. The principle of equality and legal protection that is said to be neutral is actually based on the standard of male values. This is because the law was originally created to govern the affairs of the public sphere, and in history, men dominated the public domain. Thus the law only recognizes the experience in the public domain, meaning the experience of men. With regard to criminal law, feminist jurists expose discrimination in criminal law against women who become defendants. They also highlight the inability of criminal law to provide protection for victims of sexual violence. Furthermore, they find that even criminal law rules that are not directly related to gender distinctions are also based on assumptions about gender. As a result, while appearing gender-neutral, the formulation and application of criminal law in fact discriminates against women or reinforces stereotypes about the behavior of women and men.

In the context of the revision of the Criminal Code, which allegedly ignores the voices, experiences as well as the interests of women and marginalized groups, it is important to conduct a study of criminal law and gender inequality. The studies and research published in this edition of JP show some important issues in the current Criminal Code practice, where the Criminal Code fails to protect women against the threat of gender-based violence, and instead becomes the means of controlling women's freedom and reproduces gender inequality. Women victims and women who face obstacles to access legal identities are potentially criminalized. In addition, the research on the application of the article of fornication indicates that the article is not able to provide justice and fulfill the rights of women victims. Meanwhile, the draft law on criminal law has not been fully oriented towards the interests of the victims. To that end, as a process of reflection over the 20 years of the journey of the ideals of legal reform and in response to the current deliberation process of the KHUP Bill, JP97 Vol. 23 No. 2 on Criminal Law and Gender Inequality is expected to open the perspective of policymakers and be considered in the revision of the Criminal Code. **(Anita Dhewy)**



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Sri Wiyanti Eddyono (Faculty of Law Universitas Gadjah Mada, Yogyakarta 55281, Indonesia)

**Criminal Code Draft and Protection for Victims of Gender-Based Violence**

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 55-65, 2 table, 14 ref.

This paper analyzes whether the Criminal Code Draft is oriented towards the interests and protection of the rights of victims, especially women victims of gender-based violence. This paper uses juridical or normative research methods, through analysis on the articles in the Criminal Code Draft. The analytical framework used in this study is feminist legal theory that puts law as a political product and often neglects the interests of women victims of different forms of violence. This paper finds that the main orientation of the Criminal Code Draft is towards the interests of the perpetrator and the community, but not explicitly towards the victim's interests. It is assumed that with reference to public interest, it has been victim-oriented. The victim is still seen as the party that helps to reveal the case, not as the party that has suffered and that needs protection and reparation. The responsibility of the perpetrator also tends to meet the interests of sense of community justice, not the victim. In addition, some of the regulatory articles on criminal offenses still contain problems because the Criminal Code Bill prefers to compile several laws outside the Criminal Code but does not revise articles based on the experiences of the victims that are difficult to implement, such as dealing with PKDRT (domestic violence). Furthermore, there are still articles that victimize victims by criminalizing those who are actually victims of gender-based violence.

Keywords: Criminal Code Draft, gender-based violence, victims rights, criminal law system

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Lidwina Inge Nurtjahyo (Gender Study Program School of Strategic and Global Studies Universitas Indonesia, Jakarta, 10430, Indonesia & Faculty of Law Universitas Indonesia, Depok, West Java, 16424, Indonesia)

**Formulation of Article 488 of the Indonesian Criminal Code Draft: A Portrait of Failure in Construing the Problem of Women's Access to Legal Identity**

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 67-74, 13 ref.

The Draft of the Indonesian Criminal Code has provoked a debate, especially with regard to the articles under the scope of morality. The formulation of Article 488 has the potential to create new problems for women, especially women who have obstacles in accessing legal identity. This Article 488 is a reflection of the failure of jurists to formulate laws, in understanding women's experience in relation to their access to the right to obtain legal identity, especially in the context of their relationships. The criminal law is not the answer to all problems. This paper is compiled using data obtained from field study related to the handling of cases of violence against women under customary law, carried out by the authors and the team from Legal and Community Studies Fields in 2015, 2016 and 2017 in Eastern Indonesia; as well as data on legal and non-legal text analysis. The overall method and analysis of research findings uses feminist legal studies and feminist legal theories.

Keywords: legal identity, legal analysis of feminist perspective, women's experience

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Laili Nur Anisah (Jejer Wadon, Banyudono, Boyolali, Jawa Tengah, 57373, Indonesia)

**Fornication as a Criminal Conduct in the Criminal Code Draft: Legal Protection Versus Criminalization Against Women**

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 75-82, 22 ref.

On 14 February 2018 the Draft of the Criminal Code (RUU KUHP) was adjourned for an undetermined time as several articles were deemed to be problematic. One of them is the criminal act of adultery. A new article states that a man, who has intercourse with a woman by promising a marriage but later denies it can be convicted, is also included in the criminal act of adultery. The article is formulated to protect the interests of women; on the other hand the article can also be a criminogenic factor that can make women victims turn into perpetrators of criminal acts. This paper examines the position of women among the protection articles and articles that threaten the criminalization of women. This paper is a normative juridical study by using literature reviews to find the problem and solving it. As a result, protection articles for women can be a factor that criminalizes women victims, and therefore they need to be carefully formulated so that the goals do not shift.

Keywords: Criminal Code Draft, fornication, courtship violence, criminogenic, victimogenic, enforcement

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Ajeng Kamaratih-Desjardins (Metro TV, Jakarta 11520, Indonesia)

**'Measuring' Adultery in Article 284 of the Criminal Code**

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 83-91, 23 ref.

After the resolution about the petition of extending the meaning of adultery was rampantly discussed within the community, Article 284 KUHP is still an interesting article to be reviewed. The diverse Indonesian community demands that a number of applied regulations have to be as fair as possible and become legal protection for all layers of society, including the regulations on crimes of morality. There is a different understanding about violating decency and morality within various community groups, which causes the article in the Crime on Morality section, especially in adultery cases, to marginalize some groups of the community. There are indeed some groups that might potentially become victims of adultery cases if the meaning of adultery is to be broadened. Furthermore, in its application, Article 284 of the Criminal Code makes the line between morality and crime very thin. This research was conducted by using the approach of feminist legal theory, by reviewing legal texts to gain an understanding on how sexuality and imagination about the woman victim is projected by law.

Keywords: law, human rights, criminalization, victim, criminal code

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Mariana Amiruddin (National Committee Against Violence Against Women, Jakarta 10310, Indonesia)

**Fornication as Criminal Act, Women's Vulnerability and the Stigma Against Women's Movement**

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 93-100, 8 image, 7 ref.

This paper explains how criminal code of zina (adultery/ fornication) criminalizes women victims of sexual violence. The data of Komnas Perempuan's annual records and direct complaints from the victims illustrate that women's personal relationships are particularly vulnerable to violence. The theories of feminism are used as an analytical tool of women's lives and their problems in the private sphere, including in terms of sexual relationships and love, whether married or not. This paper concludes with the challenge of the stigma of the feminist movement, which is considered to be opposed to morality and religion – and this is not happening in Indonesia only.

Keywords: fornication, Criminal Code Draft, feminism, personal relations, sexual relations, sexual violence

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Bella Sandiata (Jurnal Perempuan, Jakarta 12540, Indonesia)

**Women Facing Legal Cases: Reflection on the Use of Articles 284 and 285 of the Indonesian Criminal Code from the Experiences of their Legal Counselor**

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 101-110, 11 ref.

This paper raises the narrative of the experience from legal counselors who have accompanied women victim in cases related to article 284 of the Criminal Code on adultery and article 285 of the Criminal Code on rape. In an interview with the author, four female public lawyers share their experiences including challenges and obstacles they encountered while advocating cases of adultery and rape. Reports that weren't accepted, a slow-running legal process or even a halt in the middle of the process, and facing the attitude of sexism towards victims and public lawyers are some of the obstacles and challenges experienced by the legal counselors of women victims. The interviewees could clearly see that the criminal law is still not on the side of women and has not provided justice for women. They directly saw and experienced the difficulty of the legal process regarding the article of adultery and rape. Using feminist legal theory, this paper finds that laws that do not yet have a gender perspective or side with women are major obstacles to the fulfillment of women victims rights.

Keywords: criminal law, legal counselor, women victim, experience, adultery, rape

## Fornication as Criminal Act, Women's Vulnerability and the Stigma Against Women's Movement

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### Abstract

This paper explains how criminal code of zina (fornication) criminalizes women victims of sexual violence. The data of Komnas Perempuan's annual records and direct complaints from the victims illustrate that women's personal relationships are particularly vulnerable to violence. The theories of feminism are used as an analytical tool of women's lives and their problems in the private sphere, including in terms of sexual relationships and love, whether married or not. This paper concludes with the challenge of the stigma of the feminist movement, which is considered to be opposed to morality and religion – and this is not happening in Indonesia only.

Keywords: fornication, Criminal Code Draft, feminism, personal relations, sexual relations, sexual violence

### Introduction: Fornication and the penal code

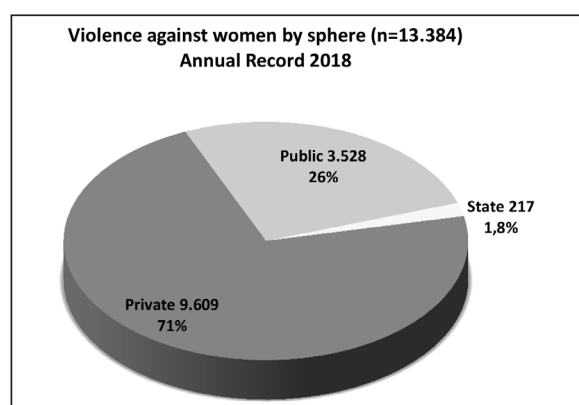
The problem of fornication has drawn a lot of attention and public debate, especially regarding the expansion on the crime of adultery in the draft law of the penal code. The House of Representatives and the government at the beginning of 2018 agreed on the aforementioned expansion on the crime of fornication. Article 484 paragraph (1) letter "e", the result of a meeting between the government and the House of Representatives, mentions men and women who are not legally married but engage in sexual intercourse. In paragraph 2, the Criminal Code Bill stipulates parties who can report or complain to people suspected of committing the criminal act of adultery. The imposed penalty is five years in prison.

In the current Penal Code, the meaning of "zina" (adultery/*overspel*) as set forth in article 284 is intercourse committed by men with women where one or both are married to another person or a violation of marital loyalty (infidelity). Meanwhile, in the Criminal Code Draft, the *overspel* is expanded from previously restricted to a married person to anyone, including unmarried persons (fornication). This expansion stems from the idea to deter people who are considered adulterous, immoral and damaging to the nation. The public of course easily accepts this "offer" on moral issues because it is seen as

a good effort to improve the morality of the nation. The public cannot imagine the serious problems – which are not evident on the surface – that can befall women victims in sexual relationships, whether they are raped or experience other forms of sexual violence.

### The Criminal Act of Adultery and Facts about the Victims of Violence in Personal Relations

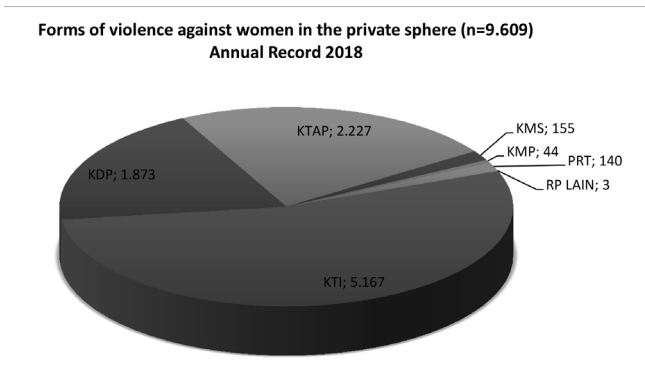
Komnas Perempuan launched its Annual Record 2018 about trends in violence against women during the year 2017, which was most prevalent in private spaces as shown in the following diagram.



**Image 1. Violence against women by sphere**

Source: Annual Record Komnas Perempuan 2018

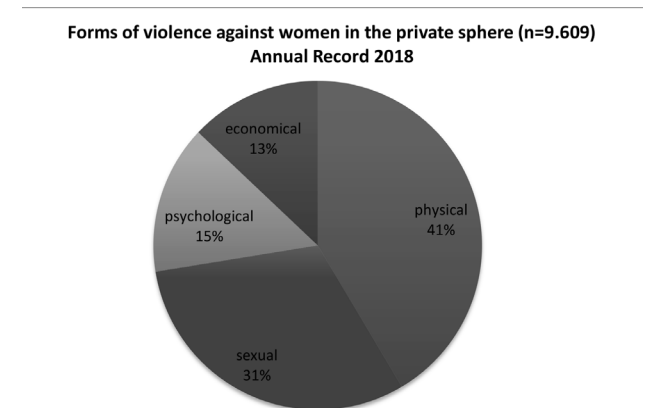
71% of violence against women in the private sphere was the highest number of complaints reported by victims to service provider institutions, either through NGOs or the government. The highest number of violence in the private domain is divided into several forms: violence against one's wife (KTI), violence against children (KTA), and violence in courtship (KDP) as can be seen in the diagram below.



**Image 2: Forms of violence against women in the private sphere**

Source: Annual Record Komnas Perempuan 2018

Violence against wives is the highest number of violence followed by violence against girls and violence in courtship. If the crime of adultery is imposed, women who become victims of violence in courtship will potentially be subject to crime. The diagram below shows that in private relationships sexual violence is the second largest form of violence, compared to other forms of violence.

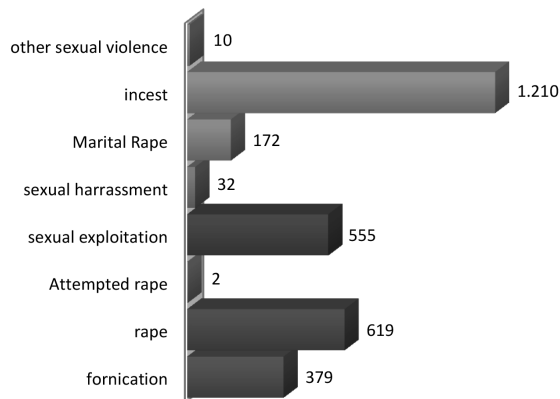


**Image 3: Forms of violence against women in the private sphere**

Source: Annual Record Komnas Perempuan 2018

In the category of sexual violence, there are forms of violence with a high number of cases, such as incest, rape, sexual abuse and sexual exploitation as seen in the following graph.

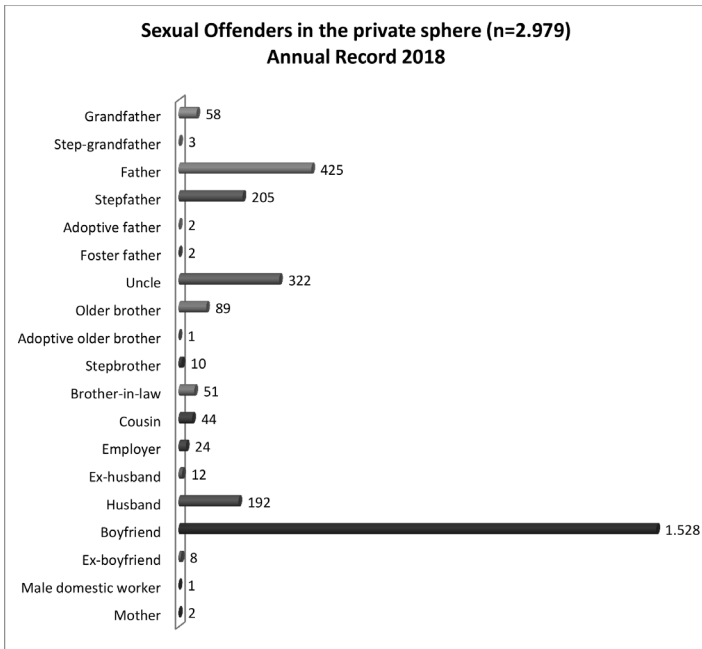
**Form of sexual violence in the privat sphere (n=2.979) Annual Record 2018**



**Image 4: Forms of sexual violence in the private sphere**

Source: Annual Record Komnas Perempuan 2018

The cases documented by Komnas Perempuan in the 2018 Annual Records show that there are facts that people cannot easily imagine about non-marital private relationships that can be categorized as adultery in the Criminal Code Bill, including victims of sexual violence. The graph below shows the most violent perpetrators are boyfriends. This shows that there is a lot of forced sexual intercourse by couples that fall into the category of rape. The highest data concerning dating violence was obtained from the police through the Women's and Children's Service Unit (UPPA), hospitals, and state courts. This means that if the case of courtship is considered adultery, at the very least there are women rape victims that are likely to be exposed to the article of criminal fornication. Victims who should be protected become potentially criminalized. In addition, many cases of alleged adultery in the context of raped women were resolved by forced marriage with the rapist. Not only that, the following graph shows the most sexual offenders are boyfriends, fathers and uncles.

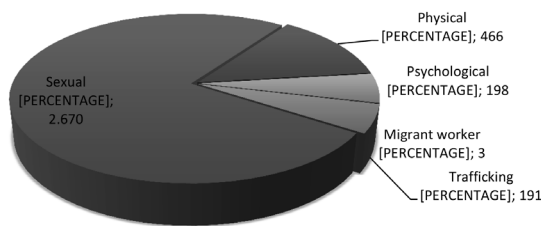


**Image 5: Sexual offenders in the private sphere**

Source: Annual Record Komnas Perempuan 2018

Similarly in the public sphere, sexual violence occupies the highest position with the most perpetrators being friends. This means that even in the public world, the closest person can become a perpetrator of violence against women in the case of sexual violence, and it is potentially labeled adultery even though when one party is a victim. Here are the charts and graphs in question.

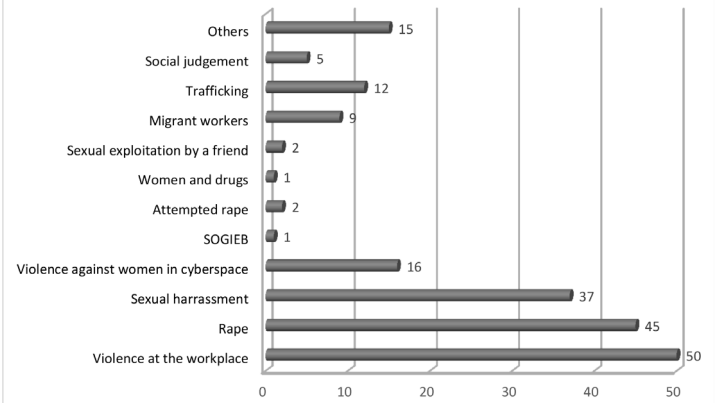
**Form of Violence Against Women in the Public Sphere/Community (n= 3.528) Annual Record 2018**



**Image 6. Forms of violence against women in the public sphere/community**

Source: Annual Record Komnas Perempuan 2018

**Form of violence in the community directly reported to Komnas Perempuan in 2017 (n=195) Annual Record 2018**

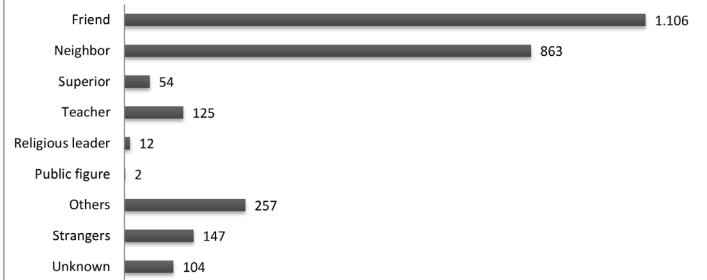


**Image 7. Sexual offenders in the public sphere/community**

Source: Annual Record Komnas Perempuan 2018

Komnas Perempuan in its 2018 Annual Records gained a new form of complaint of violence through cyberspace, including those who became victims of life-long stigma when their personal videos or photos were made public on social media. Such private videos might be exposed to the Pornography Act, even potentially to the definition of fornication in the Criminal Code Bill, and because in the video it is usually the women who are highlighted, they are vulnerable to criminalization. The modus of dispersal is usually caused by revenge, and for the purpose of threats, extortion, whether committed by a boyfriend or an ex-boyfriend, often because of jealousy or anger, or people who use their victims through cyberspace. Victims of sexual violence in the virtual world have become a new phenomenon and the number of those who directly reported their cases to Komnas Perempuan were as many as 16 as the following graph shows.

**Sexual offenders in the Public Sphere/Community (n= 2.670) Annual Record 2018**



**Image 8. Forms of violence in the community directly reported to Komnas Perempuan**

Source: Annual Record Komnas Perempuan 2018

Violence in the public sphere shows that the virtual world is not a safe space for women. Of course these facts should not be used to then blame the victim for dating and committing adultery so that they become vulnerable to sexual violence; because even in marriages women experience the same violence committed by their husbands (see figures 4 and 5, there is a high number of marital offenders in the case of marital rape). Violence against wives, including marital rape, has also emerged in complaints received by service providers both NGO and government.

The data shows that morality cannot become a standard in punishment. Violence should be a major concern in criminal prosecution because it clearly harms the victims materially, physically and mentally. The Draft Law on the Elimination of Sexual Violence is one of the tools of law that was drafted and born from the women's movement that has been working alongside women victims and is well aware of their experiences. Therefore, it is necessary to draft policies that can prevent, overcome and protect victims, not criminalize them. In addition, the criminal law should not regulate a person's personal relations unless there is a crime or violence that threatens either party such as domestic violence, which even leads to physical disability, disrupts mental health, and death like the case of Letti's doctor who was shot five times by her own husband for suing for divorce.

### **Feminism and the Problem of Sexual Relations**

Adultery is a term that merely portrays a matter of morality in relation to sexual relations outside of marriage. Marriage is considered the solution of one's morality, regardless of the social and mental facts that occur within it. Whether married and unmarried, women are vulnerable. This kind of thing is not seen in the moral and social values of society. They tend to be ignorant and do not believe in women's issues in the private realm, pretending that all is well. Komnas Perempuan even once received a complaint from a woman wearing a long headscarf to cover her entire body, and she showed her injured back being torn apart with a sharp weapon, being persecuted by her husband. There was also the case of a wife who every night was rudely commanded by her husband to have sex with him after returning drunk in the company of other women. The women's pain in personal relationships, including sexual relations, are never talked about in open spaces because the women feel ashamed, and consequently, in most societies they are not easily believed. However, both NGOs and the government have

documented the pain they are going through as a daily reality that should be given full attention.

For feminism, the experience of women and their rights is very important, as well as in personal and sexual relationships. Feminism sees that sexual relations both inside and outside marriage result in complex problems experienced by women, and often women experience both psychological and physical pain. Feminism doesn't see sexual intercourse in connection to morality, because it does not solve women's problems, and does not improve women's lives. Feminism sees that there are reasons for the presence of such problems, such as love. Love is believed to be a pair of humans who are dating or married. However, more than a few women complained to Komnas Perempuan that sexual intercourse with their boyfriends or husbands ended with violence.

Before engaging in a sexual relationship, feminism sees that there is an important issue of the discourse about the ideal love women dream about, often called "Cinderella Complex", ie the women who have the illusion of becoming Cinderella, beguiled by the prince. Ideal love is a woman who hangs her entire life on a well-established man, both in courtship and in marriage, including surrendering her body regardless of the consequences, self-esteem or salvation. Some do not even enjoy the sexual relationship itself, and regard it merely as a "form of service" to the person they love, or as a wife's obligation to the husband. The ideal man in romance stories is likened to a handsome prince, full of treasures, who comes with glass shoes and rescue Cinderella from poverty and life-long suffering. Cinderella then receives a proposal of marriage by the prince, a story that women covet. These romance stories even make a lot of women to accept polygamy or a hush marriage, because their concept of love is a prince who can give love throughout his life.

The romances that later develop into sexual relationships plunge women into unfair realities. The illusion they have is far from reality in everyday life, ranging from the problems of virginity until becoming a widow, and even an agreement to have sex. The stigma in a woman's body in a sexual relationship in the name of love or marriage is like "sealed goods to be licensed" to be examined by their partner. A virgin is considered a sealed item, while a widow is considered an experienced and ready-made item. The experience of women in the context of sexual intercourse makes it difficult to find a "consensual" as long as women do not know or do not understand and are not taught how to choose something

that is good for her. The sex drive that women have is never considered real and overshadowed by the fear that they are considered to be cheap, dirty or a prostitute. Women are not introduced to free will. When women begin to recognize their free will, they will be judged cheap and excessive. For that reason, they are created as passive and silent creatures that accept everything just the way it is, unless they become a prostitute, then they will be trained in a way to benefit from customers.

Women are like people who are waiting for shooting stars, waiting for good luck. They are not allowed to pursue ideals, or to have room for ideals of a happy relationship. They are stuffed with the consumption of a romance that is far from reality. They must obey the culture, as if culture is the absolute truth, so they cannot make their own choices. Sexual intercourse is also something women don't know about, because sex is a taboo, and women do not even study their own body. They only know that it will be started and taught from and by men. Meanwhile, men are accustomed to consume pornography, starting from their teenage years: a concept of sexual intercourse in the wild imagination of men, where women are usually used as objects.

The experience of women in sexual relations is a critical problem. Sexual intercourse between men and women cannot be separated from cultural standards and norms dominated by patriarchal values and male masculinity. Space for women is almost nonexistent. In the relationship of love and then in sexual relationships, there have been a lot of communication errors, even misconceptions between women and men about love and sex itself as quoted by Carol Travis in her book *Mismeasure of Woman* below.

Men and women speak different languages of love, but in psychotherapy, research, and popular lore, the female language has become the dominant one. Women appear to be better than men at intimacy because intimacy is defined as what women do: talk, express feelings, and disclose personal concerns. Intimacy is rarely defined as sharing activities, being helpful, doing useful work, or enjoying companionable silence. Because of this bias, men rarely get credit for the kinds of loving actions that are more typical of them. (Travis 1992, p. 253)

Travis (1992) explains in her research that men and women are the exact opposite in expressing love. She quotes psychotherapists, researchers, and in popular knowledge, the female language of love being the dominant one. Women experience intimacy with expressions such as: talking, expressing feelings, and expressing personal problems. Men find this expression

disturbing and say that women are fussy and want too much. Intimacy is rarely defined as sharing, helping, doing useful work, or enjoying a friendly silence. The point is that it is far from the illusion of romance imagined by women.

Travis also describes the different expressions of sexual relations between men and women as follows:

Cancian describes an interview with a twenty-nine year-old carpenter who said that after sex he feels especially close to his wife, that he feels then that they are truly a family: "I don't talk to her very often, I guess, but somehow I feel we have really communicated after we have made love." Many women, of course, want to feel that they have "really communicated" – that is to say, communicated in words— before making love. (Travis 1992, p. 255)

Here, Travis shares the story of a 29-year-old carpenter who says that after sex, he feels very close to his wife, so he feels that they are really family, but he seldom talks to his wife, except after making love. Meanwhile women, or his wife, prefer to communicate with words, before making love.

### About Sexual Relationships in a Patriarchal Frame

Imelda Whelehan, in her book *Modern Feminist Thought, from the Second Wave to 'Post-Feminism'* states that men define human sexual desire. On top of that, the feminist movement thinks that sexuality should have its own history determined by women, a history that does not repress women. Meanwhile, Victoria C. Woodhull, a feminist spiritualist in her book *Sexual Revolution*, has strongly criticized marriage and women's rights in sexual matters. This criticism led to her arrest and imprisonment in 1872. She proposed the idea of "free love" and considered the institution of marriage to have hurt many women. She was arrested and imprisoned for an obscure piece of writing through a letter, which declared war on marriage. According to Woodhull, marriage is man-made and brutal and has destroyed the potential of a couple's true love. Marriage, she felt, forced women to submit to men and erased love relationships to become hypocritical and repressive relationships. Technically, free couples should establish relationships solely based on love, passion, and common good, and should not be deprived of their liberty by marriage rules. "Love is a true companionship, justice and equality in a couple, which will be able to transform society to be more just," she said.

Woodhull even said that marriage is like a curse. First, marriage makes it impossible for the couple to make improvements because of the rules in marriage.

Secondly, marriage causes many people to suffer, causing more misery, illness and even early death. According to her, marriage is man-made; it misuses natural instincts and can be used as a license for sexual trafficking without consent and dissent.

Legal marriage is an invention of man, and so far as it performs anything, it defeats and perverts this natural instinct. Marriage is a license for sexual commerce to be carried on without regard to the consent or dissent of this instinct. Everything else that men consent or dissent of this instinct. Everything else that men and women may desire to do, except to have sexual commerce, may be and is done without marriage. (Woodhull 2002, p. 48)

Marriage is a brutal sanction, Woodhull wrote:

Night after night, thousands of rapes are committed, under the cover of this cursed license; and millions of poor, sad, and miserable wives are forced to serve their insatiable husbands when every body instinct is actually hatred and disgust. The world should be shocked by this pretense; marriage invests men who are given the right to shame women sexually, against their will (women). However, marriage is considered to be synonymous with morality! I say, eternal condemnation drowns such morality! (Woodhull 2002, p. 49).

American feminist Betty Friedan even conducted important research on the secret complaints of wives in America and England. "In the early 1960s, many American women began to admit that they were very dissatisfied with their lives as housewives or as mothers," she wrote. Wives associate such dissatisfaction with the mismatch between the ideals of the women themselves and the culture that shapes a wife's life. In Friedan's findings of "feminine mystique", the culture says that women find the highest satisfaction in passivity, male dominance, and motherhood. Friedan argues that this myth cultivated a popular culture in the 1960s, which forced women to reject their intelligence, autonomy, and full humanity. Friedan is a writer and founding member of the National Organization of Woman (NOW), who wrote *The Feminine Mystique*, an amazing influence on the feminist movement.

Friedan goes on to the important question, "Why have so many of these American wives become dissatisfied over the years, and each and every one of them thinks that they alone have this experience?" Friedan describes how an editor in the editorial room of a popular American magazine was like in the following conversation:

Our readers are housewives, full-time. They are not interested in broad public issues. They are not interested in national or international affairs. They are only interested in

family and home. They are not interested in politics, except when it comes to an urgent need at home, like the price of coffee. Humor? Must be soft, they do not understand satire. Travel? There is none. Education? They generally have a high school education and many are attending university but they are only interested in education for their children. You cannot write about today's broad issue ideas for women. (Friedan 2002, p. 139)

### Misogynic Punishment on Female Sex

Returning to the issue of adultery, Kristi Poerwandari in her book *Mengungkap Selubung Kekerasan: Telaah Filsafat Manusia (Revealing a Violent Shroud: The Human Philosophy Study)* cites the case of a Nigeria female teenager who was sentenced to 180 whips as follows:

Despite being urged by the federal government to cancel the caning, the Zamfara state governor reiterated the 180-whip punishment for 17-year-old teenage girl Bariya Ibrahim Magazu for having sex out of wedlock. The Islamic court in Tsafe, last September, sentenced Bariya to a 180-time caning, as she was pregnant without being married. Bariya confessed that she became pregnant after having been raped by three men in her village. Her confession was unsuccessful, she was found guilty and the verdict was dropped. (Poerwandari 2004, p. 200)

The case above is an example of how women are destroyed because they are considered to be committing adultery. Nobody thinks that Bariya is a victim of sexual violence that had resulted in an unwanted pregnancy, destruction of self-esteem that has implications for mental disorders, reproductive disorders, severe injuries and disabilities, even death. How difficult it is to be a woman in this matter, Kristi writes.

Kristi later wrote about the sexual aggression of men when treating women's sexuality. The understanding of some men as subjugation or conquest triggers a lot of male sexual aggression. In foreign language, it's common to hear the following words in men's conversations like: "I'd like to bang her box; he knocked her up; he shot his load into her." In Indonesian it is sometimes said as: "I must conquer her" or "I'll show her that she has to bow" or "I just do the part of the shooting (ejaculate)." Kristi argues that sex for men is often seen as an achievement, marked by the acquisition of ownership of something, and that something is the woman. She quotes Banneke that there are four basic aspects that often color male sexual acts, namely status, hatred, control, and domination. In terms of status, sex for men is associated with the ability to master, direct, win the war, conquer, and be served. Ownership of the female body determines the degree of the male image before other men. The second one is hatred. Perpetrators see women as a commodity for

hateful actions. Third, control; the man who manages to control women shows his self-performance. Finally, domination, as a commodity, that men must dominate women.

Kristi again cites Banneke who concludes that rape is a pseudosexual action, a pattern of sexual behavior that is more characterized by status, hatred, control and domination, rather than by sensual pleasures and sexual gratification. Rape is a sexual behavior that is actually used to meet nonsexual needs. If women cannot be subdued or conquered, then the man feels himself failing, and feels as though he is humbled, and that is where violence easily occurs (Poerwandari 2004). The case of the caning of women indicates that in adultery cases women tend to get a multiplied punishment, because it is assumed that adultery is caused by women who cannot take care of themselves and control their sexuality. Meanwhile, Kristi explains that sexual aggression mostly comes from men, and it is not impossible in personal relationships.

### **Resistance to Feminism on the Issue of Women's Rights**

In addition to the Draft Law on the Elimination of Sexual Violence (RUU PKS), the Criminal Code Bill is also tinted by a discourse on hatred against feminist movements. An anti-feminist women's group considers feminists to be a movement that undermine family endurance and consider the two products of the bill to include feminist ideologies that have been accused of causing family disintegration. According to them, this stems from a feminist view of unequal or unsatisfying relationships that result in women hating men and marriage. They consider feminists to oppose morality, being hostile to men and oppose religion. On KIBLAT.NET site on the occasion of National Family Day, an organization called Family Love Alliance (AILA) invites all parties to save families from harmful thinking viruses by strengthening families and creating programs to destroy the virus. The virus in question is feminism and LGBT. "In addition to strengthening the family, of course do not forget the program how to avert off dangerous viruses that threaten families such as feminism and LGBT," said Dinar Dewi Kania Chairman of AILA Research and Development in a statement. AILA also requests that the public and government organizations seriously confront the dangers of feminist thinking and counseling those already infected with this dangerous virus. AILA has many members of highly educated women, and some among them are housewives.

Hatred against feminism is not only happening in Indonesia. In America and England, Naomi Wolf (1999) once described the same situation in her article titled "Why Women Are Divided: What's Wrong?" Naomi revealed the fact that the majority of women feel far removed from the women's rights movement. From the results of a poll conducted in America, it was found that many Americans view feminists as selfish fighters rather than fighters for the interests of most women and their families. "Many women are personally uncomfortable with the term feminist, although they themselves have the same goals as the women's rights movement that feminists refer to. Feminists are perceived as not embodying their priorities over families, nor represent the daily struggles of many women who are constantly playing a push for time and money for themselves."

Naomi then examines why women oppose feminism. She said the main problem of the conflict was due to the alienation of the majority of women who did not know the women's movement itself. Women tend to be lied to about feminism, or as a result of persistent campaigns from various parties to tarnish the face of the women's movement. Naomi quotes the Ms Foundation report as follows:

In the West, the image of feminism is often bent in various media. Many women formulate feminism based on a handful of statements from the mass media, and they feel that the issues raised do not include their interests. They do not see feminists as a theory of women's self-worth that applies to every woman's life without exception. (Wolf 1999)

This is the view of many people about feminists, as Naomi illustrates in a dialog:

"Is feminism about abortion?"

Well, I'm not sure if I know at what point life begins.

"Is feminism about lesbianism?"

Well, I'm already married.

"Isn't feminism for white middle-class women?"

I'm working class.

"Is feminism about fighting against men?"

I'm an Afro-Caribbean woman, and there is no way I'm going to beat an "Afro-Caribbean" man.

"And it's about anti-pornography, right?"

I don't believe in censorship, and I don't want to want to be lectured about what I am doing in my own room.

"Is it about not wearing make up?"

I'm happy to look beautiful.

"Isn't feminism specifically for women only?"

Well, I am a parent, I obviously care about my daughter, but I am a man.

"Is it about sexual abuse or rape?"

It may have happened to me, but I want to forget about it, and I don't want to be known as victim. (Wolf 1999, p. 92)

Naomi notes that there is a hard-line ideological group that has alienated thousands of women - as well as men - from feminism, just as it did with the bending of images of feminism in the mass media. Meanwhile in England, in 1911, Wolf quotes author Edward Carpenter as saying that women who embrace feminism can be ascertained as abnormal, have no maternal instincts, and a manly temperament. She also quotes a psychiatrist named William Lee Howard - who wrote a novel called "The Perverts" - melting feminism, lesbianism and moral perversion into one thing: psychosis-mental illness. "Women who are dominated by masculine ideas of independence are degenerate" (Wolf 1999, p 102).

## Conclusion

As described at the beginning of this paper, violence against women occurs mostly in private spheres. Even in the public sphere, close friends can become perpetrators of sexual violence against women such as a boyfriend, father and uncle. When it comes to the crime of adultery, women will be vulnerable to criminalization, because adultery touches the private sphere, and in it there are many issues related to women's lives. In addition, criminal offenses should pay attention to criminal acts that harm a person materially, physically and mentally, not on moral grounds. The moral ground is rooted in cultural, religious and educational spaces, not in punishment.

The feminism perspective in this paper shows the complex and complicated nature of personal relationships in the lives of women, including in sexual relationships, both in marriage and outside marriage, which consciously or unconsciously surrounds and plunges them into injustice. The data of Komnas Perempuan's Annual Record in 2018 clearly shows that these issues were reported and documented. Mistakes in viewing women, sexual aggression, conquests, and so on are indispensable in women's personal relationships. The patriarchal framework in view of sex also makes women become increasingly undefined when it comes to the risks of sexual relations, because women become passive

objects and loyal watchers of "luck" as in romance tales.

Meanwhile the women's movement by feminists on one side has seen its impact through the bill protecting women, but on the other hand find more and more tripping stones. The rejection of feminist groups on the crime of adultery is considered a great threat and pro-statement to free sex. Efforts to enforce women's rights are difficult because stigma precedes the understanding of the substance of the feminist movement. The feminist movement is stigmatized as a movement against morality and religion, simply because many people do not understand and recognize the women's movement itself. The crime of adultery implies that a person who has sex outside of marriage is a person who has no problems and considers sex to be only for pleasure and thus sins. In other words, this article sees adultery as the appetite of an animal, and not the occurring reality. Meanwhile, to prove that a person commits adultery or has sex outside of marriage or not allows for the emergence of allegations, assumptions and even raids. As a result, two people sitting in a house with the doors closed can be considered adultery. Everyone will be afraid - not because of the crime itself, but because of allegations of adultery, slander, false reports, revenge, criminalization of the victims who report, and so forth.

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