






Mairil and Nyempet as Child Sexual Violence in Pesantren: Contradictions of Traditional Norms, Religion, and Criminal Law Policy in Indonesia

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Abstract

Pesantren, Islamic educational institutions in Indonesia, traditionally provide dormitories for santri, students dedicated to religious studies from childhood through adolescence. However, adolescence often coincides with heightened curiosity about sexuality, leading to behaviors like "*Mairil*" and "*Nyempet*." *Mairil* involves affectionate interactions between individuals of the same gender, which can escalate to physical actions known as *Nyempet*, distinct from sodomy. This socio-legal study employs a qualitative approach focusing on substantive justice in criminal policy. The research underscores that *Mairil* and *Nyempet* constitute forms of sexual violence prevalent in pesantren. Despite inconsistencies with religious norms and criminal law, enforcement remains inadequate. It advocates for a comprehensive approach involving pesantren and competent authorities to tackle these issues. Key recommendations include



enhancing victim protection, enforcing existing laws rigorously, and raising societal awareness through education on individual rights and humanitarian principles. In conclusion, addressing Mairil and Nyempet requires concerted efforts from all stakeholders to ensure justice, protect victims, and promote a more inclusive understanding within Indonesian society and its educational institutions.

Keywords

Child Sexual Violence, Mairil and Nyempet, Pesantren

Introduction

Based on various studies, sexual violence often occurs in the immediate and educational sphere. It includes relationships between family members, friends, and close acquaintances.¹ People who know or are related to the victim, such as parents, siblings, or other relatives, frequently commit sexual violence in the family setting.² This might be due to the trust that has developed between family members, as well as the victim's reluctance to report the violence for fear of the consequences to family relationships.

Apart from that, the world of education is also often a place where sexual violence occurs. Setyorini and Andini's research³ found that *Pesantren* are one of the educational institutions that are not completely

¹ Dharma Setyawan, and Dwi Nugroho. "Religion and Women's Socioeconomic Welfare: An Empirical Study of Women's Economic Empowerment Based on Entrepreneurial Pesantren." *Religious: Jurnal Studi Agama-Agama dan Lintas Budaya* 6, no.1 (2022): 49-58; Ainal Fitri, et al. "Sexual Violence in Universities in Indonesia: Between Student Negation and Resistance." *Kafaah: Journal of Gender Studies* 12, no. 2 (2022): 106-122.

² D Afrianty, "Gender, Faith, and Sexual Violence in Indonesia," *Routledge Handbook of Islam in Southeast Asia*, 2022, <https://doi.org/10.4324/9780429275449-13>.

³ I D Setyorini and A N Andini, "Breaking The Silence: Civil Society Organizations Promoting Women's Personal Security against Sexual Violence in Jombang Pesantren," *Salasika*, 2023, <http://www.salasika.org/index.php/SJ/article/view/114>.

safe. In fact, based on Arnez and Nisa's research,⁴ Cultural and institutional factors in Indonesia strengthen sexual violence occurring in *Pesantren*. The perpetrators are often teachers, lecturers, or administrative staff who are in a position of power and authority over students. Unfortunately, based on research by Wismayanti, et al⁵ violence with child victims in the educational environment. Sexual violence in the educational environment occurs because of inconsistencies that hinder the implementation of intervention and prevention programs. Research by Agastya, et al⁶ stated that in the realm of transformation, institutions that handle child rehabilitation experience obstacles in the form of limited funding. It can occur in various forms, ranging from verbal abuse, physical abuse, to being forced to have sexual relations. Other factors such as inequality of power, imbalance of power, and lack of protection for victims are triggers for sexual violence to continue to occur in educational environments. In the world of religion-based education, such as *Pesantren* or other religious educational institutions, there are also specific cases of sexual violence, such as *Mairil* and *Nyempet*. *Mairil* is a term that refers to the behavior of "affectionate relationships" that occur between individuals of the same type in the Islamic boarding school environment, such as between male students or female students. Meanwhile, *Nyempet* is a term used to refer to sexual contact that occurs in the context of *Pesantren*, which can involve students with teachers or fellow students. Based on research by Kamiasari et al,⁷ *Mairil* and *Nyempet* were

⁴ M Arnez and E Nisa, "Advocating for Change: Cultural and Institutional Factors of Sexual Violence in Indonesia," *Gender, Islam and Sexuality in Contemporary ...* (Springer, 2024), https://doi.org/10.1007/978-981-99-5659-3_2.

⁵ Yanuar Farida Wismayanti et al., "The Problematization of Child Sexual Abuse in Policy and Law: The Indonesian Example," *Child Abuse and Neglect* 118, no. August 2020 (2021): 105157, <https://doi.org/10.1016/j.chiabu.2021.105157>.

⁶ Ni Luh Putu Maitra Agastya et al., "Transformation of Child Welfare Institutions in Bandung, West Java: A Case of Deinstitutionalization in Indonesia," *Children and Youth Services Review* 159, no. February (2024): 107545, <https://doi.org/10.1016/j.childyouth.2024.107545>.

⁷ Yuli Kamiasari, Priyadi Nugraha P, and Emmy Riyanti, "Gambaran Perilaku *Mairil* Dan *Nyempet* Mantan Santri Dan Santri Terhadap Pencegahan HIV/AIDS Di Pondok Pesantren," *The Indonesian Journal of Health Promotion* 9, no. 1 (2014): 82–89.

committed by the perpetrator on victims who had an attractive appearance, clean skin and a beautiful face. This is also in accordance with the research results of Espelage et al⁸ that sexual violence is often based on gender and race.

Research indicates that victims of sexual violence in the immediate and educational spheres often experience serious impacts on their physical, emotional and psychological well-being.⁹ Therefore, it is important to raise awareness about this issue, provide appropriate education about individual rights and protection against sexual violence, and strengthen reporting and protection mechanisms for victims. However, based on Cakra Wikara's report,¹⁰ the mobility space outside the world and limited communication access for students are actually used to make it difficult for victims who want to report sexual violence. However, when the victim reported sexual abuse to the boarding school administration, he or she was accused of spreading slander.

However, it is very important to consider that the existence of *Mairil* and *Nyempet* is not a general representation of all religious-based educational institutions.¹¹ These are casuistic cases that occur in specific contexts and cannot be generalized to all religious educational institutions.

Emphasis must be placed on understanding that sexual violence, including *Mairil* and *Nyempet*, is a serious issue that needs to be taken seriously. While these cases may not be common, they still constitute serious violations of individual rights and should not be overlooked.¹²

⁸ Dorothy L Espelage et al., "Violence Perpetration Prevalence among Colorado (United States) High School Students across Gender, Racial/Ethnic, and Sexual Identities," *Preventive Medicine* 161 (2022): 107146, <https://doi.org/https://doi.org/10.1016/j.ypmed.2022.107146>.

⁹ Kamiasari, P, and Riyanti, "Gambaran Perilaku *Mairil* Dan *Nyempet* Mantan Santri Dan Santri Terhadap Pencegahan HIV/AIDS Di Pondok Pesantren."

¹⁰ Cakra Wikara Indonesia, "Rentannya Kekerasan Seksual Di Pesantren" (Jakarta, 2022).

¹¹ A Rahman, "Evaluation Of Child Friendly Pesantren Program In West Sumatra Province," *Al-Afkar, Journal For Islamic Studies*, 2023.

¹² Rahmawati Rahmawati et al., "Criminal Law Disparities against Perpetrators of Sexual Violence against Children Based on Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (2023): 667–96.

Protection of victims and law enforcement against perpetrators must be a priority for every educational institution, including religious-based educational institutions.¹³ Preventive, educational and advocacy efforts are also needed to ensure that the religious education environment is a safe and inclusive place for all individuals.

This research has two objectives. First, it aims to identify and understand the manifestations of sexual violence in the form of *Mairil* and *Nyempet* based on the experiences of santri students and alumni in various *Pesantren*. This aims to gain an in-depth understanding of how and why this kind of sexual violence occurs in the Islamic boarding school environment, as well as its impact on the victim and the surrounding environment.

Second, this research aims to analyze traditional norms, religious values, and modern criminal law policies which all oppose the practices of *Mairil* and *Nyempet*. Although there are norms and values that clearly reject sexual violence, this research also aims to highlight serious failures in enforcing these norms. This is reinforced by the fact that the practice of *Mairil* and *Nyempet* still exists in the Islamic boarding school environment. This analysis aims to explore what factors hinder the enforcement of these norms, including the cultural, social, political and legal aspects involved.

Thus, this research will provide in-depth insight into the complexity of sexual violence in the Islamic boarding school context, and will provide recommendations for policy changes and more effective preventive actions to overcome this problem.

¹³ Calvinna Bella Gisella, "Penegakan Hukum Terhadap Hak Asasi Manusia Anak Sebagai Korban Tindak Pidana Asusila Dihubungkan Dengan Undang-Undang Nomor 35 Tahun 2014 Tentang Anak." *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 2 (2023); Widia Fithri, Febri Yulika, and Ermagusti Ermagusti. "The Prevention of Sexual Violence Against Women Based on Minangkabau Local Wisdom." *PALASTREN: Jurnal Studi Gender* 15, no. 2 (2023): 275-304; Anggun Karomah, "Preventing Sexual Violence through AI-Based Smart Hug Website in Educational Institutions in Semarang." *BICC Proceedings* 1 (2023): 59-66.

Method

Methodologically, it is a legal sociology research.¹⁴ This study uses a qualitative approach with a criminal law policy perspective that uses a penal and repressive non-criminal law approach to the *Mairil* and *Nyempet* phenomena which are contradictory to the legal norms of the Indonesian State. Data collection techniques use interviews, questionnaires and document studies. Interviews were conducted with informants who were selected purposively and developed using snowball according to predetermined criteria based on the research objectives. Questionnaires were used to deepen the data with randomly selected respondents according to the research objectives. The analysis technique uses an interactive model, which begins with data collection, data reduction, data presentation, and drawing conclusions, with a continuous cycle, back and forth during and after the data collection process.¹⁵

Result and Discussion

A. *Mairil* and *Nyempet* in Pesantren: Juvenile Delinquency and Sexual Violence

Etymologically, the term "*pesantren*" in Indonesia originates from a combination of two words: "*pondok*" and "*pesantren*." While it is speculated that "*pesantren*" may derive from the Arabic word "*funduk*," meaning dormitory or hotel, the concept of *pesantren* on the island of Java, Indonesia, more closely resembles "*padepokan pesantren*." These are modest living facilities where students reside in rooms used as dormitories. *Pesantren* are distinct as educational institutions, emphasizing religious and academic studies. They serve as centers for Islamic learning, typically led by a religious teacher or scholar known as a "*kyai*." The environment encourages communal living among students, fostering a holistic educational experience that blends religious teachings with secular subjects. In essence, *pesantren* in Indonesia, particularly on Java, are characterized by their simple living arrangements and focus on

¹⁴ Ani Purwati, *Metode Penelitian Hukum Teori dan Praktek* (Semarang: Jakad Media Publishing, 2018).

¹⁵ Z Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

education, providing a unique cultural and educational heritage that continues to play a significant role in Indonesian society.

A kyai is the central person in charge of education and upbringing, and is generally the owner. Second, some Santri residents learn from Kyai. Third, there are mosques, educational facilities, and congregational prayer services; and fourth, there is a Pondok, which is a student dormitory.

Pesantren are traditional Islamic educational institutions in Indonesia that usually focus on Islamic religious teaching and character education. They are usually led by a kyai (religious teacher) and have an organized life structure, where the santri (students) live and study under the guidance of kyai and ustadz (religious teachers).

The pattern of activities in *Pesantren* includes Islamic religious learning, including reading the Koran, study of hadith, fiqh (Islamic law), and various other Islamic disciplines. Apart from that, it also often provides general lessons such as mathematics, science and languages. However, there is a risk that this strict and centralized activity pattern can create an environment in which teenagers experience the wrong channeling of sexual desires. This can be caused by various factors, including detachment from the wider social environment. Students often live far from home and separated from family and peers. This detachment can cause feelings of loneliness and social isolation, leading them to seek escape in undesirable behavior, including sexual misconduct.

Lack of effective supervision, although *Pesantren* are usually supervised by kyai and staff, sometimes the lack of effective supervision can open up opportunities for inappropriate behavior, including undesirable sexual expressions.¹⁶

Tensions between religious norms and adolescent life. Adolescents living in *Pesantren* often encounters tensions between the conservative teachings of Islam and their natural urge to form social and sexual relationships.¹⁷ This tension can lead to internal conflict that drives them

¹⁶ Kamiasari, P, and Riyanti, “Gambaran Perilaku *Mairil* Dan *Nyempet* Mantan Santri Dan Santri Terhadap Pencegahan HIV/AIDS Di Pondok Pesantren.”

¹⁷ Nur Mahmudah, “Memotret Wajah Pendidikan Seksualitas Di Pesantren,” *Quality* 3, no. 1 (2015): 133–57.

to seek inappropriate channels to fulfill their needs.

It is crucial to emphasize that not all *Pesantren* have these issues, and many of them have solid structures and cultures to help them overcome these challenges. However, raising awareness of this risk is critical so that educational institutions may take proper precautions to preserve the welfare of students.

Pesantren only recognize a homogeneous environment so that there are no relationships between male and female students, considering that students have to live permanently. At a young age, students are vulnerable to curiosity and excitement about sexuality. Channeling students' sexual desires occurs in several behaviors, including *Mairil* and *Nyempet*.

Mairil is the act of showing love and affection to members of the same sex whom they like. This affectionate relationship can take the form of a brother-sister relationship that involves guidance in learning, or in the form of help in daily life at the Islamic boarding school. Meanwhile, *Nyempet* is the activity of bringing the perpetrator's crotch closer to the thigh, especially the narrowed part between the two thighs, without engaging in anal or oral sexual behavior, with or without the victim's knowledge. This behavior is often done by one person to different victims and often occurs when the victim is asleep. If the victim is aware and refuses the act, they will become angry. It is very rare for *Nyempet* cases to occur with the victim's consent.¹⁸

Mairil and *Nyempet* have similarities in terms of targets or objects, which is the objects of younger students, new students, and even students who are far below the perpetrator's age. The difference is viewed in the object or target of these two behaviors. If *Mairil* is directed at a single object that receives affection, *Nyempet*, on the other hand, is applied to many different objects. Despite this, it is common for *Mairil* to be followed by *Nyempet*.

Nyempet and *Mairil* are primarily carried out by senior students and often involve young, unmarried administrators or teachers. There are also perpetrators who are married but have not yet reunited with their wives. *Mairil* perpetrators are typically older than the usual marriage age.

¹⁸ Interview With LB, IZ, HG, PK, DK sebagai pelaku *Mairil* dan *Nyempet* In XX City, Indonesia, February, 2024

Meanwhile, the victims, who are chosen for their physical attractiveness, are usually between the ages of 13 and 15, having just entered puberty.

Even though the Islamic boarding school teaches various sciences, even very in-depth religious knowledge, *Mairil* and *Nyempet*'s perpetrators feel in their hearts that they are at odds with the religious norms they adhere to. Unfortunately, this control is outweighed by the pleasure of connecting with the victim.¹⁹

Mairil and *Nyempet* are basically behaviors that constitute sexual violence.²⁰ This is because *Mairil* and *Nyempet* are involved in degrading, harassing someone's body or reproductive organs. Apart from that, the fulfillment of an element of unequal power relations results in psychological and physical suffering. *Mairil* often begins with coercion and uses the power relationship between the perpetrator, the senior student, and the victim, namely the junior student. Meanwhile *Nyempet* is very large and falls within the criteria for physical sexual violence.

Ironically, *Mairil* and *Nyempet* are not considered taboo in Pesantren. This lack of taboo results in ignoring and condoning homosexual behaviors. Several Islamic students as respondents admitted that when they complained about *Mairil* and *Nyempet* behaviors, no corrective actions were taken.²¹

TABLE 1. Perceptions about *Mairil* and *Nyempet* in Pesantren

¹⁹ Kamiasari, P, and Riyanti, "Gambaran Perilaku *Mairil* Dan *Nyempet* Mantan Santri Dan Santri Terhadap Pencegahan HIV/AIDS Di Pondok Pesantren."

²⁰ Mohammad Fajrul Fikri and Amika Wardana, "*Mairil* Dan Perkembangan Orientasi Seksual Alumni Santri Pondok Pesantren," *DIMENSIA: Jurnal Kajian Sosiologi* 8, no. 1 (2020): 37–46, <https://doi.org/10.21831/dimensia.v8i1.35567>.

²¹ Questionnaire to 200 random student respondents at random Pesantren, XX City Indonesia, February, 2024

		Percentage	Category
Understanding <i>Mairil</i> and <i>Nyempet</i>	Understand what is meant by the practices of <i>Mairil</i> and <i>Nyempet</i>	85%	High
	No answer	5%	Low
	Unaware or uncertain of the definition	10%	Low
Views on <i>Mairil</i> and <i>Nyempet</i> as Sexual Violence	<i>Mairil</i> and <i>Nyempet</i> are a form of habit that does not violate religious or moral norms.	60%	High
	Consider it an activity that reflects the loving relationship between fellow students, without referring to sexual violence.	30%	Low
	Acknowledge that <i>Mairil</i> and <i>Nyempet</i> are forms of sexual violence that should not be accepted	10%	Low
Views on whether or not the practice of <i>Mairil</i> and <i>Nyempet</i> is common	The practice of <i>Mairil</i> and <i>Nyempet</i> is something that is normal or commonly occurs in <i>Pesantren</i> .	75%	High
	Uncertain if this practice can be considered normal or not.	20%	Low
	<i>Mairil</i> and <i>Nyempet</i> practices are unusual or unnatural in Islamic boarding school environments	5%	Low

Sources: Questionnaire, February 2024

The results of a survey involving 200 random student respondents at random *Pesantren* in Indonesia revealed that the majority of them understood what *Mairil* and *Nyempet* were.²² Most respondents (85%) stated that they understood what was meant by the practice of *Mairil* and *Nyempet*. About 10% of respondents said they were not aware or were unsure about the definition of the practice.

²² Questionnaire to 200 random student respondents at random *Pesantren*, XX City Indonesia, February, 2024

Meanwhile, if asked in more depth about whether *Mairil* and *Nyempet* fall into the category of sexual violence, it turns out that more than half of respondents (60%) consider *Mairil* and *Nyempet* to be a form of habit that does not violate religious or moral norms. Around 30% of respondents considered it an activity that reflects affectionate relationships between fellow students, without referring to sexual violence. Only around 10% of respondents admitted that *Mairil* and *Nyempet* were forms of sexual violence that should not be accepted.²³

Meanwhile, regarding whether *Mairil* and *Nyempet* were accepted or not, the survey results were quite surprising. The majority of respondents (75%) consider the practice of *Mairil* and *Nyempet* to be normal or common in *Pesantren*. Around 20% of respondents were unsure whether this practice could be considered normal or not. Only around 5% of respondents considered the practices of *Mairil* and *Nyempet* to be unusual or unnatural in the Islamic boarding school environment.

The majority of student respondents in *Pesantren* throughout Indonesia hold the view that *Mairil* and *Nyempet* are normal practices and are not considered a form of sexual violence. This indicates the need for efforts to increase understanding of individual rights and humanitarian principles, as well as the importance of law enforcement and prevention of sexual violence, including the practices of *Mairil* and *Nyempet*, in the Islamic boarding school environment.

TABLE 2. *Mairil* and *Nyempet*'s contradictions with various norms

Types of Norms	Rule	Regulation
International Agreement	UN Convention on the Rights of the Child, which was adopted in 1989 and ratified by	Articles 19 and 34 have special importance in protecting children and young people from sexual violence. Article 19 emphasizes the state's responsibility to protect children from various

²³ Questionnaire to 200 random student respondents at random *Pesantren*, XX City Indonesia, February, 2024

Types of Norms	Rule	Regulation
	Germany in 1992 ²⁴	forms of violence, including sexual violence. In accordance with Article 34 of the UNCRC, states are required to explicitly guarantee the protection of children from all forms of sexual exploitation and sexual violence. UNCRC has been expanded with the addition of three additional protocols. The second protocol regulates other children's rights, which include the sale of children, child prostitution and production of pornographic material involving children.
Islamic Religious Norms	Prohibition of homosexuality in the Koran Surah Hud verses 82-83 ²⁵	When our judgment came, we overturned the land of the Luṭ people, and we showered them with stones from the burning earth, which were marked by your Lord. And torment is not far from the wrongdoer.
	Protection of children and not committing sexual violence against children ²⁶	"Hadith from Abu Bakr bin Abî Syaibah and Hannâd bin al-Sirrî, from al-Ahwash, from Syabîb bin Gharqadah, from Sulaimân bin `Amr bin al-Ahwash, from his father who heard the Prophet SAW say during the Hajj Wada` : "O you all man. Remember, which day is holier?" The crowd answered: "The Day of the Great Hajj." The Prophet SAW said:

²⁴ Stewart MacPherson, "The Convention on the Rights of the Child," *Social Policy & Administration* 23, no. 1 (1989): 99–101, <https://doi.org/10.1111/j.1467-9515.1989.tb00500.x>.

²⁵ M Quraish Shihab, *Al-Quran Dan Maknanya* (Lentera Hati, 2020).

²⁶ Tim Penyusun Universitas Al-Azhar dan UNICEF, "Hak Dan Perlindungan Anak Dalam Islam," *UNICEF Indonesia*, no. Mi (2022): 1–298.

Types of Norms	Rule	Regulation
Indonesian Law	The 1945 Constitution of the Republic of Indonesia ²⁷	"Indeed, your blood, your wealth and your riches are holy among you as is holy in this day, in your month, in your land. Remember, it is never someone who commits a crime but the consequences will befall him or herself. Parents must not do evil to their children and a child must not do evil to his parents." (H.R. Ibnu Majah)
	Laws of the republic Indonesia Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection ²⁸	Article 28B paragraph (2) states that "every child has the right to survival, growth and development and the right to protection from violence and discrimination". A derivative of this article is Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection, this law provides responsibilities and obligations to the State, Government, Regional Government, community, family and parents and guardians in terms of child protection providers.
	Law Number 12 of 2022 on Crime of Sexual	The Law on Child Protection stipulates that perpetrators of sexual abuse against children are subject to enhanced prison sentences. This law has several breakthroughs regarding the fulfillment of children's rights from sexual violence, including: Article 4

²⁷ Pemerintah Indonesia, "Undang-Undang Dasar Negara Republik Indonesia 1945" (1945).

²⁸ RI Kemensesneg, "Undang - Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *UU Perlindungan Anak*, 2014, 48.

Types of Norms	Rule	Regulation
	Violence ²⁹	paragraph (2) letter c, regulates the types of criminal acts of child sexual violence, criminal severity is 1/3 (one third) if sexual violence is committed to child victims. Procedural legal arrangements for child perpetrators or victims, and others.

Source: Research data and statutory regulations

B. Why do *Mairil* and *Nyempet* still exist?

Mairil and *Nyempet* are not something new that have happened in *Pesantren*. The existence of *Mairil* and *Nyempet* is in line with the existence of *Pesantren* themselves, although *Mairil* and *Nyempet* can be said to be the "dark side" of *Pesantren*. The factors that encourage the continued practice of *Mairil* and *Nyempet* in *Pesantren* vary greatly, and this can be reflected in the results of interviews and surveys with santri and santri alumni. Here are some factors that might be the driving force. First, there is an inequality of power: One of the main driving factors is the inequality of power between the perpetrator and the victim. Santri are often in a vulnerable position and dependent on the authority of kyai and teachers. This can be exploited by perpetrators to carry out sexual harassment or abuse of power.

Secondly due to the lack of Comprehensive Sexual Education. The lack of comprehensive sexual education in *Pesantren* can lead to a lack of understanding of healthy boundaries in interpersonal relationships, including understanding of consent and individual rights in intimate situations.³⁰

²⁹ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," 1 Kementerian Sekretariat Negara Republik Indonesia § (2022).

³⁰ Interview With KJ, FK, RN, GH, KI, LB, IZ, HG, PK, DK as the perpetrators of *Mairil* and *Nyempet* In XX City, Indonesia, February, 2024

Third,³¹ there is a culture of silence and stigmatization. The culture of silence and stigma around issues of sexuality can make it difficult for victims to report the sexual harassment or violence they experience. They may feel embarrassed or afraid of the consequences for their reputation or relationships with the boarding school community.

Fourth, inadequacy of the Protection and Law Enforcement System. The lack of an adequate system to protect victims and take action against perpetrators can allow the practice of *Mairil* and *Nyempet* to continue to exist without fear of serious legal consequences.³²

Fifth, Victim's inability or helplessness. Some victims may feel they have no choice but to accept *Mairil* and *Nyempet* practices due to their economic, social, or psychological limitations. They may not have the support or resources to escape an unsafe situation.³³

Sixth, because of the influence of patriarchal culture.³⁴ The strong patriarchal culture in many Islamic societies and institutions can reinforce the view that power and authority rests largely in the hands of men. This can reinforce norms that support domination and abuse of power over weaker individuals.

Mairil and *Nyempet* actually contradict the teachings of the Islamic religion which are highly emphasized and taught in *Pesantren*. In Islam, sexual relations are carried out within a legal marriage bond between a man and a woman, which is based on commitment, responsibility and mutual understanding. Any form of sexual relations outside marriage is considered a grave sin and violates basic moral principles.

The Qur'an and hadith of the Prophet Muhammad SAW emphasize the importance of maintaining personal purity and honor, as

³¹ Interview With KJ, FK, RN, GH, KI, LB, IZ, HG, PK, DK as the perpetrators of *Mairil* and *Nyempet* In XX City, Indonesia, February, 2024

³² Interview With KJ, FK, RN, GH, KI, LB, IZ, HG, PK, DK as the perpetrators of *Mairil* and *Nyempet* In XX City, Indonesia, February, 2024

³³ Interview With KJ, FK, RN, GH, KI, LB, IZ, HG, PK, DK as the perpetrators of *Mairil* and *Nyempet* In XX City, Indonesia, February, 2024

³⁴ Interview With KJ, FK, RN, GH, KI, LB, IZ, HG, PK, DK as the perpetrators of *Mairil* and *Nyempet* In XX City, Indonesia, February, 2024

well as respecting the rights of other individuals.³⁵ The practices of *Mairil* (affectionate relations between members of the same sex) and *Nyempet* (sexual contact outside marriage) are contrary to these values, as they involve the violation of the boundaries set by the teachings of the Islamic religion.

Pesantren as Islamic educational institutions should play an active role in conveying the teachings of this religion to students, as well as forming strong characters and high moral awareness. However, the practice of *Mairil* and *Nyempet* may still exist due to various factors, including lack of understanding, social pressure³⁶, and lack of effective supervision in the Islamic boarding school environment.

Even though *Mairil* and *Nyempet* still occur in some *Pesantren*, these practices clearly contradict the Islamic teachings taught within these institutions. Therefore, it is important to enhance understanding and awareness of true religious values, as well as to strengthen the enforcement of moral norms and rules in keeping with Islamic religious teachings, in order to create a safe environment that aligns with Islamic teachings in *Pesantren*.

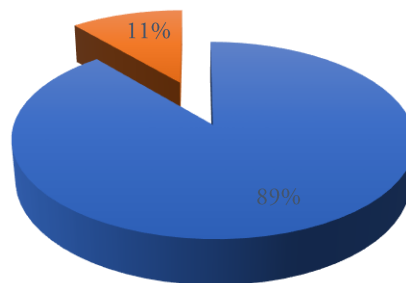
Interestingly, religious teachings are not always fully adhered to. In the Islamic boarding school environment, students' culture or social norms sometimes develop that permit or even encourage practices contrary to religious teachings. Peer pressure or influence from specific social groups can compel some students to conform to these norms, even if it means violating religious principles. A lack of proper understanding of religious teachings and moral principles can make some students susceptible to negative influences from their environment. Without awareness of the dangers and consequences of practices like *Mairil* and *Nyempet*, some students may not realize that they are violating religious

³⁵ M Arnez, "Gender, Islam and Sexuality in Contemporary Indonesia: An Overview," *Gender, Islam and Sexuality in Contemporary ...* (Springer, 2024), https://doi.org/10.1007/978-981-99-5659-3_1.

³⁶ Yunas Derta Luluardi et al., "Gender Equality-Based Anti-Sexual Violence Islamic Boarding School at Ribatul Muta'alimin Islamic Boarding School, Pekalongan City," *Islamic Studies Journal for Social Transformation*, 2023, 110–23.

norms.³⁷ Some santri may engage in *Mairil* and *Nyempet* practices as a way to escape the emotional and psychological stress they experience in the Islamic boarding school environment. Factors such as loneliness, academic pressure, or feeling unaccepted by their peers can drive them to seek out inappropriate relationships or experiences.

Chart 1 Awareness of religious norms of *Mairil* and *Nyempet* perpetrators



■ Being aware that it violates religious norms ■ Being unaware that it violated religious norms

As many as 80% of the 10 respondents who committed *Mairil* and *Nyempet* were aware that they had violated religious norms, while 20% of the perpetrators were unaware that they had violated religious norms. In fact, almost 97% of santri are unaware that they are committing sexual violence which is regulated by legal norms in Indonesia.

Outside influences, including social media, pop culture, or personal experiences outside the Islamic boarding school, can also influence a student's decision to violate religious norms. Exposure to cultures that celebrate sexual freedom or promote lifestyles that are incompatible with religious values can influence some students to follow these trends. Some students may feel compelled to go against religious norms as they feel trapped in an unsafe or undesirable situation. Lacking the support or resources to change their circumstances, they may choose to conform to existing norms, even though these conflict with religious teachings. It is important to remember that each individual has a unique background and

³⁷ Interview With KJ, FK, RN, GH, KI, LB, IZ, HG, PK, DK as the perpetrators of *Mairil* and *Nyempet* In XX City, Indonesia, February, 2024

experiences, and the reasons for going against religious norms can be complex and varied. Therefore, a holistic and comprehensive approach is needed to address this issue, including appropriate education, social support, character development, and reinforcement of correct religious values.

C. Deviations in sexual orientation and a bit of the impact of *Mairil* and *Nyempet*

Mairil and *Nyempet* are uncommendable behaviors and are classified as criminal acts of sexual violence. One significant impact of these practices is the deep emotional trauma inflicted on the victim. This trauma can affect various aspects of the victim's life and have long-lasting effects.

Victims may endure painful emotions such as feeling insulted, abused, or betrayed by individuals they should trust, like friends, mentors, or authority figures within the Islamic boarding school environment. This can result in self-doubt, loss of self-confidence, and deep feelings of inferiority. Such experience of emotional trauma can cause high levels of stress and anxiety in victims, leading to persistent feelings of unease, restlessness, or fear, even in safe and normal situations. Chronic anxiety can disrupt daily functioning and significantly diminish overall quality of life.³⁸

Victims of *Mairil* and *Nyempet* practices often experience feelings of sadness, hopelessness, and loss of interest or pleasure in activities they once enjoyed. These symptoms of depression frequently emerge as a response to the painful and damaging experience of trauma.

The impact of emotional trauma from *Mairil* and *Nyempet* practices can lead to severe conditions such as PTSD (Post-Traumatic Stress Disorder). Victims of PTSD may experience distressing flashbacks, nightmares, or intense physical reactions like an increased heart rate when

³⁸ Cindy Choalensia, and Damien Hugo Heriyando. "Analisis Kerentanan Antara Hubungan Pelaku dan Korban Kekerasan Seksual Pada Anak Dalam Perspektif HAM." *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 1 (2022).

recalling the traumatic event. This emotional trauma can severely impact the victim's long-term mental and emotional well-being. Intensive support and treatment from mental health professionals may be necessary for them to overcome the trauma and restore their well-being. Therefore, it is crucial to provide proper attention and support to victims of *Mairil* and *Nyempet* practices to help them recover and continue their lives effectively.³⁹

The second impact of experiencing sexual harassment or violence in the form of *Mairil* and *Nyempet* is that it leaves a long-term impact on the victim's mental health. Victims may experience deep feelings of inferiority as a result of the traumatic experiences they have endured. They may feel worthless, unworthy, or unworthy of love or attention from others. These feelings can interfere with your self-confidence and ability to have healthy relationships with others.

Victims frequently experience feelings of guilt regarding their encounters with sexual harassment or violence, despite not being responsible for the events. They may wrongly believe they contributed to or worsened the situation, although they were actually the unfairly victimized party. Traumatic incidents like *Mairil* and *Nyempet* can lead victims to feel socially isolated. They may struggle to confide in others or share their experiences, leading to a withdrawal from social interactions and profound feelings of isolation.

The long-term effects of sexual harassment or violence can lead victims to suffer from depression. They may endure profound feelings of sadness, a lack of interest or pleasure in their daily activities, and difficulties with sleep or appetite. Depression can significantly disrupt daily functioning and overall quality of life. In response to the trauma they have endured, some victims may develop eating disorders. They may turn to food as a means of coping with stress or alleviating emotional distress, resulting in unhealthy eating habits such as overeating or refusal to eat.

With a deep understanding of the long-term impacts of *Mairil* and *Nyempet* practices, it is important to provide appropriate support to

³⁹ Anastasia and Hana Sitompul, "Kajian Hukum Tentang Tindak Kekerasan Seksual Terhadap Anak Di Indonesia," *Lex Crimen* 4, no. 1 (2015): 46–56.

victims and direct them to the appropriate resources to get the care and recovery they need. This includes supporting them in seeking professional help from counselors or psychologists trained in treating trauma and related mental disorders

Certain victims may try to alleviate the psychological symptoms they endure by resorting to illicit substances like alcohol or illegal drugs. While this may initially be an effort to alleviate anxiety or emotional distress, it can ultimately exacerbate mental health issues and escalate into more severe addiction. Recognizing the profound and long-term effects of *Mairil* and *Nyempet* practices, it is imperative to offer tailored support to victims and guide them toward the necessary resources for their care and recovery. This entails helping them in accessing professional help from counselors or psychologists specialized in addressing trauma and associated mental disorders.⁴⁰

The Disruption of Social Relations is a significant consequence of *Mairil* and *Nyempet* practices on victims. Traumatic incidents like *Mairil* and *Nyempet* can fracture the victim's social ties with peers, family, and society in general. After enduring betrayal or abuse from individuals they trusted, victims may struggle to confide in and rely on others. They often face challenges in trusting others following experiences of sexual harassment or violence. This wariness or suspicion towards others' intentions can impede the formation process of healthy, intimate relationships.

Traumatic experiences can cause it challenging for victims to cultivate healthy and intimate relationships with others. They may encounter difficulties in expressing themselves or feel isolated within interpersonal relationships. Consequently, due to struggles with trust and relationship-building, victims may endure social isolation. Preferring to withdraw from social interactions rather than risking vulnerability, they may find solace in solitude. Victims of trauma often grapple with interacting with others due to fear, anxiety, or discomfort stemming from

⁴⁰ Diningrum, Wahyu, and Taun Taun. "Dasar Pertimbangan Hakim dalam Menjatuhkan Putusan Perkara Pidana Mati Terhadap Pelaku Kekerasan Seksual Pada Anak (Studi Putusan Mahkamah Agung Nomor 5642 K/Pid. Sus/2022)." *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 3211-3223.

their traumatic encounters. This impediment can curtail their engagement in social or group activities.

Such Disruption of Social Relationships can profoundly affect the psychological and emotional well-being of victims, impeding their recovery journey. Hence, it is crucial to provide tailored support, encompassing social assistance and therapy focused on re-establishing robust social connections, enhancing self-assurance, and refining interpersonal abilities. With adequate support, victims can overcome the consequences of this social trauma and reconstruct the healthy, meaningful relationships with those in their lives.

Apart from that, there is also a risk of sexual disorders for both the perpetrator and the victim. Sexual harassment is a serious impact of *Mairil* and *Nyempet* practices on victims.⁴¹ Changes in Sexual Perception and Experience: The encounter with *Mairil* and *Nyempet* can warp an individual's understanding and experience with sexuality. Victims may grapple with internal conflict as they navigate between religious doctrines and their sexual desires or experiences. Consequently, they may wrestle with feelings of confusion, guilt, or shame regarding their sexual identity and orientation.

Disturbances in Sexual Identity Formation: The practices of *Mairil* and *Nyempet* can interfere with the process of forming a victim's sexual identity. They may feel unsure or confused about their sexual orientation, or even feel forced to hide their sexual identity due to social or cultural pressure.

Difficulty in Establishing Healthy Relationships: The experience of sexual trauma can hinder the victim's ability to form healthy and meaningful relationships in the future. They may have difficulty trusting romantic partners or find it difficult to open up about their traumatic sexual experiences.

Conflict in Sexual Orientation and Religion: Victims may experience inner conflict between their sexual orientation and the teachings of the religion they follow. This can lead to deep internal conflict and feelings of guilt or sin due to the discrepancy between sexual

⁴¹ Fikri and Wardana, "*Mairil* Dan Perkembangan Orientasi Seksual Alumni Santri Pondok Pesantren."

identity and religious values.

Lingering Feelings of Anxiety and Stress: The experiences of *Mairil* and *Nyempet* can leave lasting feelings of anxiety and stress related to sexuality and interpersonal relationships. Victims may feel anxious or afraid to form intimate relationships because of the trauma they have experienced.

Such instances of sexual harassment can profoundly affect the mental and emotional well-being of victims, impeding their path to recovery.⁴² Consequently, it is imperative to offer victims tailored support, including sexual counseling or therapy geared towards aiding them in comprehending and embracing their sexual identity, surmounting internal conflicts, and cultivating healthy relationships moving forward. With adequate support, survivors can overcome the effects of this sexual trauma and reclaim their sexual and emotional well-being.

Another significant impact is the loss of trust in religious and educational authorities. Victims of sexual harassment or violence may perceive a betrayal by individuals they once trusted, including religious authority figures and educators within the community. They may feel that these figures not only neglected to safeguard them but also potentially abused their power or condoned harmful practices through inaction.

The experience of sexual trauma can cause victims to lose trust in religious authorities and educational institutions. They may feel that the moral and ethical values taught are not upheld by the people who should be examples and guardians of these teachings. Victims may feel hopeless or lose hope regarding the ability of educational and religious institutions to protect and guide them. They may feel that there is no safe or fair place for them to develop and grow as a complete individual.

Experiences of sexual harassment or violence in a religious environment can cause victims to experience inner conflict with the religious values they adhere to. They may wonder how God could allow such things to happen, or doubt the truth and justice of the religion's teachings. Loss of trust in religious and educational authorities can also

⁴² Fikri and Wardana.

cause victims to feel like they have lost their once strong identity tied to their religious and moral beliefs. They may feel adrift and confused about who they really are and what they believe.

Loss of Trust in Religious and Educational Authority can have a deep and lasting impact on the victim's mental, emotional, and spiritual well-being. Therefore, it is important to provide appropriate support to victims, including helping them understand that the crimes they have experienced do not reflect the true values of religion or education, as well as guiding them towards restoration and restoration of their faith.

D. Criminal policy theory approach in dealing with *Mairil* and *Nyempet*

Using criminal policy theory as a framework for dealing with *Mairil* and *Nyempet* practices could be an effective approach, especially in the context of law enforcement and sexual crime prevention. It can provide clear guidance for law enforcement in handling *Mairil* and *Nyempet* cases.⁴³ By identifying these behaviors as unlawful criminal acts, authorities can take firm enforcement action against the perpetrators and prevent similar cases from recurring in the future. The theory emphasizes the importance of the deterrence effect in preventing crime. By announcing clear and firm consequences for perpetrators of *Mairil* and *Nyempet* practices, and providing appropriate sanctions, this can reduce the incentive for individuals to engage in such behavior.

Criminal policy theory is also concerned with victim protection and the restoration of justice.⁴⁴ By providing adequate protection for victims, as well as ensuring that the perpetrators of *Mairil* and *Nyempet* are punished fairly in accordance with the law, the criminal policy system can help repair the harm experienced by victims and restore their trust in the legal system. Through criminal policy theory, educational efforts and

⁴³ John Kenedi, "Kebijakan Kriminal Dalam Negara Hukum Indonesia: Upaya Mensejahterakan Masyarakat," *L-IMARAH: Jurnal Pemerintahan Dan Politik Islam* 2, no. 1 (2017): 17.

⁴⁴ Prianter Jaya Hairi, "Problem Kekerasan Seksual: Menelaah Arah Kebijakan Pemerintah Dalam Penanggulangannya," *Negara Hukum* 6, no. 1 (2015): 16.

public awareness can also be strengthened.⁴⁵ By conveying information about sexual crimes, their consequences, and how to report these cases, the public can be more aware of the importance of protecting themselves and others from the practice of *Mairil* and *Nyempet*.

Criminal policy theory encourages collaboration between various agencies, including the police, criminal justice system, social institutions, and civil society. By working together, various parties can support each other in efforts to prevent, enforce the law and restore the practice of *Mairil* and *Nyempet*. Although criminal policy theory can be an effective tool in addressing *Mairil* and *Nyempet* issues, it is important to remember that this approach must also be accompanied by a deep understanding of the cultural, social, and religious contexts in which these practices occur. Collaboration with local experts and stakeholders is also important to ensure that the crime policy strategies implemented are truly relevant and effective in preventing and dealing with this issue.⁴⁶

A view or approach to handling criminal problems that tries to explain and design strategies to overcome crime. In the context of *Mairil* and *Nyempet*'s practice, criminal policy theory can be used as a framework to formulate an effective approach in dealing with this issue.

The preventive approach includes various strategies to prevent *Mairil* and *Nyempet* before they occur.⁴⁷ This may include education and training programs in *Pesantren* aimed at raising awareness of the risks and consequences of such practices, as well as promoting healthy norms and safe behavior.

Effective law enforcement is an important part of criminal policy

⁴⁵ Iqbal Kamalludin et al., "Sexual Violence and the Politics of Criminal Law in Indonesia: A Gender Equality Approach and Maqāsid Al-Sharī'a," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 57, no. 1 (2023): 51–81; Iqbal Kamalludin et al., "Politik Hukum Dalam Kebijakan Hukum Pidana LGBT," *Cita Hukum* 6, no. 2 (2018): 317–42, <https://doi.org/10.15408/jch.v6i2.7805> Abstract.; Luluardi et al., "Gender Equality-Based Anti-Sexual Violence Islamic Boarding School at Ribatul Muta'alimin Islamic Boarding School, Pekalongan City."

⁴⁶ G Peter Hoefnagels, "The Other Side of Criminology [Electronic Resource]: An Inversion of the Concept of Crime," n.d.

⁴⁷ G Peter Hoefnagels, "Mediation: A Method of Law and Psychology in the Netherlands," in *Divorce Mediation* (Routledge, 2014), 185–90.

theory. This includes law enforcement against perpetrators of *Mairil* and *Nyempet* practices to ensure that they are prosecuted and given appropriate sanctions in accordance with applicable law. Strict law enforcement can act as a deterrent for other people who have the potential to carry out similar practices. Victim protection is an important aspect of criminal policy theory that focuses on ensuring that *Mairil* and *Nyempet* victims receive the protection, support and access to the services they need. This includes providing victims with access to medical assistance, counseling and legal guidance, as well as ensuring that they do not experience further treatment or discrimination.

The rehabilitation approach aims to help *Mairil* and *Nyempet* practitioners to improve their behavior and avoid returning to the criminal path. This may include rehabilitation programs within *Pesantren* that aim to help offenders overcome the psychological or emotional problems underlying their behavior, as well as providing skills and support to change undesirable behavioral patterns.⁴⁸

Public education and awareness are key components of criminal policy theory in dealing with *Mairil* and *Nyempet*. This includes efforts to increase public awareness of the issue, eliminate stigma or negative stereotypes, and promote healthy norms and a better understanding of sexuality and safe, meaningful relationships.⁴⁹

By applying these various approaches within a criminal policy theoretical framework, it is expected that the practice of *Mairil* and *Nyempet* can be minimized, victims can be protected and get the support they need, and perpetrators can be rehabilitated and prevent similar crimes from occurring in the future.

⁴⁸ G Peter Hoefnagels and G Peter Hoefnagels, "Criminology: Its Definition, Nature and Subfields," *The Other Side of Criminology: An Inversion of the Concept of Crime*, 1973, 43–70.

⁴⁹ Iqbal Kamalludin, "Restoration of Pancasila Values Against Criminal Law Reform Strategy in Indonesia Political Perspective of Islamic Law," *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 1 (2022): 31–47.

Conclusion

Sexual violence against children in the form of *Mairil* and *Nyempet* is committed by perpetrators in *Pesantren* who are often senior students, or even young teachers, indirectly receiving support, being perpetuated and legitimized by a sense of disregard and indifference towards sexual violence against children. *Mairil* and *Nyempet* are often considered taboo in *Pesantren*. Although this practice may be considered an "affectionate" interaction by some parties, in reality, this practice is a form of sexual violence that violates religious norms and criminal law. The incompatibility between the practices of *Mairil* and *Nyempet* and existing norms, as well as the low level of law enforcement against this practice, is caused by the main factor being the low level of mindset towards handling sexual violence in any form, the management is too closed off and considers *Mairil* and *Nyempet* too excessive to follow up. Therefore, more serious efforts are needed to deal with this issue, including protection of victims, strict law enforcement, and increasing awareness and education in society about individual rights and humanitarian principles. There is a need for a better understanding of the complexity and seriousness of the problem of *Mairil* and *Nyempet* practices in Indonesian *Pesantren*, as well as emphasizing the need for concrete steps to overcome this problem in order to create a safer and more supportive environment for the students.

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DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

We present this research paper as a tribute to all *Pesantren* in Indonesia which have taken steps to care about protecting students from all forms of violence, including sexual violence. It is the result of independent initiation research funded independently. It is expected that this research can open up the perspective of the *pesantren* community regarding the importance of preserving the dignity of sexuality and not considering the issue as taboo.

HISTORY OF ARTICLE

Submitted : July 23, 2023

Revised : October 14, 2023; December 11, 2023; March 21, 2024

Accepted : April 18, 2024

Published : May 30, 2024