

THE LONG AND WINDING ROAD: CONFRONTING SEXUAL VIOLENCE ON WOMEN IN PESANTREN

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Abstract

One of the most prominent educational institutions that shaped the societal development of Indonesia as of today, would be Pesantren, the Islamic boarding school that spread nationwide. The existence of pesantren has managed to help open more doors in advancing women's education, but such achievement came with many challenges that put other women's rights in jeopardy. Discrimination, sexual violence, and the imbalance of power relations cause mayhem to women's rights, not only in terms of education but also for their religious freedom. This paper provides a qualitative study on the challenges that women faced in Pesantren conducted through observation and study of cases. A gender perspective is needed in order to ensure the protection of women in Pesantren.

Keywords: *Gender Perspective; Pesantren; Freedom of Religion.*

A. Introduction

Historically, the existence of *Pesantren* as an Islamic educational institution that has experienced rapid development until now in Indonesia cannot be separated from a very long process (Isbah, 2020). The process of institutionalization began when the preachers or guardians spread Islamic teachings in the early days of Islamic history in Indonesia through mosques, *surau*, or *langar* (Dhofier, 1994). The term *pesantren* came from the word *santri*, which refers to the students of *pesantren* (Srimulyani, 2007). Education in Islamic boarding schools, in essence, grows and develops completely based on religious motivation. This institution was developed to streamline broadcasting efforts and the practice of religious teachings. In its implementation, Islamic boarding schools carry out a process of fostering knowledge, attitudes and skills related to religious aspects. *Pesantren* are known as traditional Islamic educational institutions whose main purpose is to provide understanding, appreciation, and experience of Islamic teachings, and emphasize the importance of Islamic religious morals as guidelines in everyday society (Haryani, Amin, Arifah, & Husna, 2018). In addition, in the life tradition of the *pesantren* community, there is a value system that applies to the basis or goal of daily activities, which directly or indirectly encourages them to live and act within that value system. One of the main value systems that was born is an attitude of life that views all activities of life as works of worship. Religious educational institutions such as *pesantren* have a distinctive social order and a unique structure. In addition to that, they provide a glimpse into a way of life that is different and usually isolated from the life of the surrounding community. Apart from their function in the realm of religion, Islamic boarding schools also play an important role in the realm of society and culture. In the realm of social problems, its function is to act as a catalyst for social change and provide solutions to these problems. In this case, the life of the *pesantren* became a showcase of its uniqueness and privileges

compared to other educational institutions. In its later development, pesantren became a place for Islamic education and teaching to produce preachers, also known as *ulama*, *kiai* or *ustadz* who became religious leaders in the community (Suradi & Surahman, 2020). In modern times, the development of pesantren is shown, among others, by integrating the education system of schools, madrasas, and universities. Pesantren finally did not close themselves to the development of contemporary movements and discourses such as issues of democracy and feminism (Smith & Woodward, 2013). Most scholars have discussed the modernity of pesantren (Asrohah, 2011; Zakaria, 2010) but latest development shows that there are still prevalent challenges that create different kinds of horror for the *santri* and *santriwati*. One of which is the rising numbers of sexual assaults that happened within pesantren, a place that was supposedly being a safe haven for pursuing education and religious morals.

Gender-based violence, which often happens to women, is a conversation that gets more important and warmer every day and happens a lot. It is based on many incidents with similar patterns without being followed by policies for the protection of victims and communities that can accommodate and meet their needs. The chairman of the National Women Committee on Women, Andy Yentriyani, said there were 2,500 cases of violence against women between January and July 2021. This figure exceeded the record for violence that occurred in 2020, where there were 2,400 recorded cases. Most importantly, the cases of sexual harassment that have occurred in the training facilities have recently emerged more frequently. More and more victims find the power to publicly discuss their experiences with sexual violence. Recently, the public has become aware of a cases of sexual harassment at the Al-Ikhlas Tahfidz Islamic Boarding School and the Madani Boarding School, both in Bandung City's Cibiru neighborhood, where the perpetrators were the ustadz who raped 13 underage girls, and there were eight pregnant girls. According to data from the National Commission on Women, 2,851 cases of sexual violence occurred in religious institutions during the period 2011–2019, plus 46,698 cases in the public and private sectors (Komnas Perempuan, 2022). In addition, according to the latest information from the KPAI annual reports, there were 18 cases of sexual violence in educational institutions in 2021. Out of a total of 18 cases of sexual violence in educational settings, 4 cases (or 22.22 percent) occurred in schools supervised by the Ministry of Education, Culture, Education, and Technology, and 14 cases (or 77.78 percent) occurred at educational institutions under the supervision of the Ministry of Religion. In addition, with a total of 12 educational units, or about 66.66 percent, boarding schools, dorms, and Islamic boarding schools are the types of educational institutions where cases of sexual harassment are most common.

Under the national legal framework, Law Number 18 of 2019 concerning Pesantren, ensures that institutions will be implemented in Indonesia and fulfill their obligations to provide education, *da'wah*, and empowerment. However, the legal instrument itself has not fully regulated how to deal with and prevent certain crimes, whether sexual crimes or violent. Article 289 of the Criminal Code (KUHP) states that "Anyone who by force or threats of violence forces someone to do or allow obscene acts to be done to him/herself, is punished for damaging decency with a maximum prison sentence of nine years". The article stipulates that the violence committed is a violation of the norms of honesty by committing acts of obscenity. Islamic boarding schools as religious educational institutions that should be a place to receive education about religion have become places of misconduct acts by religious leaders which include teachers, administrators, and even their kyai or gus by using doctrines that carry religious lies.

The discourse on gender is a new discourse for the world of Pesantren, in its development it has invited resistance and controversy because it is seen as an element that comes from the West and is not rooted in Islamic tradition. The main issue to be discussed in the article is how the female students in pesantren are still lingering in fear while trying to gain their right to education related to their religious freedom and how a gender perspective could help in transforming the vision and

mission of pesantren. The purpose of this article is to examine the role of women in pesantren and challenges that they faced within such institutions.

B. Research Method

This research is a qualitative study of the normative juridical approach (Ali, 2021), which is a study using the techniques and methods commonly used in legal research, namely describing, and synchronizing applicable laws and regulations, with a secondary data source consisting of primary legal materials and secondary legal materials. To accomplish this research, the writers did a literature review that included pertinent themes or subjects. These themes or topics were filtered and assessed to determine which had been addressed and which had not in prior writings or research. The collected data would then be analyzed qualitatively to uncover the disadvantages faced by women while pursuing education in *Pesantren*.

In order to understand the issue of increasing sexual assault across the country within an educational institution, a gender perspective and human rights framework are needed. This paper aims to provide legal resources for academics, law enforcement, legal practitioners, and other experts to use when dealing with women's rights, gender discrimination and other related issues. This study examines a number of crucial areas, such as the background and aims of Indonesia's regulation against sexual violence, the composition, scope, and components of that legislation, and other elements that have influenced its implementation, especially to handle the worrying situation that could be damaging to women's life.

C. Result and Discussion

1. Gender Perspective in Pesantren

Religious education institutions, or in this case, *pesantren*, tend to be identified with patriarchal culture. Pesantren and Madrasa were exclusively male establishments up until around 1910 (Azra, Afrianty, & Hefner, 2007). Religious education was provided to certain girls, particularly those from religious households, but it was mainly provided by teachers invited into the girls' homes or through informal religious study at a mosque or prayer house. Afterward, several pesantrens developed unique, separate facilities just for girls. The earliest was Pesantren Denanyar, which was founded in 1917 in the Jombang district. This was justified by the worldview that claims religious educational institutions are typically associated with patriarchal culture. This illustrates the gender injustice that women experience, including stereotypes and subordination, particularly when it comes to leadership succession or regeneration of pesantren leaders, which is frequently passed on to sons from a kyai compared to being passed on to girls because women are perceived as the weak, irrational, and emotional people who cannot lead. This reality demonstrates how the dominance of men in positions of leadership within the pesantren milieu has been codified into a culture or tradition in the pesantren's social life.

Even though the movement and struggle for gender equality are increasingly mature and has spread to all aspects of life, there are still groups who do not agree with it. Pesantren is one of the examples, they are still reluctant to agree with this statement, but this disagreement does not apply to all Pesantren in Indonesia. Pesantren that do not agree are usually boarding schools that live in remote villages with their own understanding and views on gender equality. However, there are also Islamic boarding schools that in their programme or system, have implemented the concept of gender equality but are not yet perfect and their residents or students are not yet aware of it. This type of pesantren usually did not foster a strict barrier between men and women, but the gender equality gap still exists because the understanding that women's resources influences men's is lower than men's.

The rise of cases of sexual violence that have occurred in pesantren shows that gender issues relating to men and women need to be taken seriously, because such boarding schools still tend to

socialize religious values and teachings that are gender biased. The gap between men and women in the pesantren environment is the main problem. Kyai through their teachings, often maintain a patriarchal culture through the curriculum or education taught. In addition, pesantren use "the yellow book" and other traditional religious texts as the basis for their educational curricula, and these texts generally describe women as being in position inferiority. On top of that, the patriarchal worldview is permeating pesantren because teaching clerics or kyais frequently interpreted and textually Islamic narratives taken from the Qur'an, hadith, Islamic law, and other classic religious literature or writings (Sa'dan, 2018). The relationship between kyai and the santri, putting kyai as someone with the status of "patron" status. The figure of the kyai is seen as a charismatic person who has expertise in religious knowledge and has noble morals, so that he has influence in social life. The concept of total obedience practiced by santri to kyai in pesantren tends to be a cult of the individuals, which can be a boomerang for women or santriwati. A santri who has the status of a student takes up a lower position than the kyai, so the santri must respect and obey kyai's orders.

The case of sexual violence in the suburban area of Jember is a proof of how the concept of patriarchy in the pesantren, which was institutionalized by a kyai with a system of obedience or known as "*sami'na wa atho'na*" has become a tool in committing sexual violence against female students. In this case, a kyai's son, known as Gus Romli, committed sexual violence using the approach that female students who had entered the senior year at the senior high school level would face many exams at school so that in order to pass the exam smoothly, a santriwati will transfer knowledge through sexual relations, and these students must listen, obey and obey whatever is ordered. As a result, these conditions put the students, especially santriwati, at a disadvantage and give them no bargaining power, because women must obey the rules made by their teachers.

Gender as a perspective can be interpreted in variety of general assumptions, models, concepts, theory and methods used to express and display the existence of gender phenomena in a society and the various social and cultural problems experienced. To reduce gender bias, Kyai, who is also the pesantren leader, should understand and instill in the students thoughts about the meaning of the concepts of justice and gender equality, as well as concepts related to human rights through educational materials. *Kiai, ustadz, ustadzah*, and other Pesantren management structures should be understood as agents of gender socialization. In other words these socialization agents are people or social groups that provide information about values and behavior related to gender messages (Sudjak, Asiyah, & Prasetyo, 2017). Implementating gender integration into the pesantren curriculum to create a gender-sensitive and responsive pesantren environment can be through the provision of sex education materials to students (Riswani, Susanti, Bakhtiar, Zein, & Khaidir, 2019). However, implementing this policy is not easy, because some people still think that discussing sex education is taboo because it teaches people to have free sex. Furthermore, the explanations of sexuality are not common materials to be discussed in several Indonesian educational institutions, including pesantren (Khan, Rassool, Mabud, & Ahsan, 2020). Besides, discussing sexuality in some Islamic boarding schools is considered unethical because it does not conform to the values of or religious norms. In fact, the delivery of material about sex education is not the provision of material related to vulgar things or pornographic content that teaches children to have sexual relationships. Providing material on sexual education is actually intended to give children an understanding of the rights and authority of the bodies and sexual organs they possess so that they can be responsible for being treated and protected so they can protect themselves from sexual harassment or violence, and to instil ethics in children to respect the authorities of others and how to behave with the opposite sex. Cultivation of this perspective is consistent with one of the principles of comprehensive sexual education for adolescents, which places an emphasis on promoting equal and healthy partnerships. Moreover, sex education not only covers aspects related to biological and psychological changes experienced by children or students, but also includes the reproductive system and health, psychological changes, and learning to understand how their social environment is (Leung, Shek, Leung, & Shek, 2019).

The absence of pesantren in responding to discourses or issues regarding gender then has an impact on social and cultural life within the pesantren environment, which perpetuates the gap between male students and female students, which includes gaps in access, roles, and participation in policy making, the structural system of management in Islamic boarding schools, and role differences. This gap then also has an impact on the lives of students after leaving the pesantren, in which male students have a greater opportunity to play a role in the social life of society. In addition, the gap experienced by female students since attending pesantren also has an impact on the scarcity of female clerics, who are also urgently needed to address gender issues in Muslim communities and as an effort to increase women's empowerment to achieve the Millennium Development Goals (MDGs). If Islamic boarding schools choose the path of not just being a preservative or support for values, but as promoters of productive thoughts by collaborating with the needs of the times, then it becomes one of the pesantren's tasks not to allow gender injustice to continue, which has so far been neatly wrapped up in false consciousnesses that are developing in society. On the contrary, the institution must be critical and invite the pesantren community and the surrounding community to change or dismantle these falsehoods, as well as transform them into practices that are more in favor of justice for others, especially justice for women. Justice and equality are the basic ideas, goals, and main missions of human civilization to achieve prosperity, build harmony in social life as a nation and build quality families (Nugraha & Subaidi, 2022). The female population is almost half of the entire population of Indonesia and represents a huge potential in achieving progress and a higher quality of life. A gender perspective would help to advance the fair treatment of women and men. Biological differences cannot be used as a basis for discrimination regarding the social, cultural, legal, and political rights of one sex. In relation to the Sustainable Development Goals (SDGs) pesantren could potentially contribute to goal number 4 on the right to equal education and goal number 5 in enhancing gender equality by advancing women's role in pesantren. Positive progress is shown as there has been a lot of cooperation between government institutions, NGOs, and pesantren to create an appropriate program for achieving those goals, such as workshops, training, and seminars.

2. The Adversity of Women in Pesantren

The definition of sexual violence in Article 1 of the Minister of Research, Technology and Higher Education Regulation Number 30 of 2021 is any act of humiliating, harassing and/or attacking a person's body and/or reproductive function due to an imbalance of power or gender relations that results in or can result in psychological or physical suffering, including interfering with one's reproductive health and failing to carry out higher education safely and optimally. Article 5 then explains the types of sexual violence: verbal, physical, non-physical, and through information and communication technology.

The occurrence of sexual violence in educational environments in general is inseparable from the social construction of society regarding sexual violence itself. People tend to blame the victim for the incident, also known as victim blaming. Society also tends to humiliate rape perpetrators and reinforce gender-based power disparities (Peretz & Vidmar, 2021). The concept of blaming a victim is an excuse for injustice by trying to find a mistake with the victim (Kelly, 2011). In 2020, Statista released a survey conducted in Indonesia on the perceptions of the causes or sexual harassment that occurs in Indonesia. Based on the results of the survey, 75.8% of respondent said there was a lack of security at the scene of the sexual harassment incident. The second highest ranking was 71.5% who said that the flirtatious behavior carried out by the victim was the cause of sexual harassment. In addition, the third stage was followed by the perception that wearing exposed clothes was one of the factors affecting victims of sexual harassment. At the second and third levels, there is still a culture of blaming the victims committed by Indonesian society. There is still a social stigma that considers the issue of sexual violence as a taboo issue to be discussed,

which means that incidents of sexual violence, especially among women, continue to occur, and victims also have a fear of reporting or speaking to the public about sexual violence experienced.

The case of sexual violence involving 13 female students at a pesantren in Bandung, with one of the Gus become the perpetrator, has been in the public spotlight since the case was broadcast in various mass media in the country in 2021. The sexual violence case of 13 female students is part of the iceberg phenomenon related to sexual violence in institutions of religion-based education and boarding. The case itself has been going on since 2016 and was only be revealed in 2021. Nine babies were born as a result of this sexual violence. Along with their position of authority and influence, Ustadz or Kyai frequently oppress female pupils by imposing religious ideology. This demonstrates how the strategy used in the case of sexual assault by a Gus from the Shiddiqiyah Islamic boarding school located in Jombang was connected to the ideology that the perpetrator is in possession of meta-fact knowledge and is allowed to wed whoever he chooses, and that a female santri who can 'marry' a Gus, as in engaging in sexual activity, is considered lucky (Setiawan, 2022).

There are indeed several factors that could contribute to phenomena of sexual violence within Islam (Hajjar, 2004). First, a religious-biased interpretation of certain passage within the Qur'an, like the one in Surah Al-Nisa [4]:34,

“So virtuous women are those who are obedient, and guard the secrets of their husbands with Allah’s protection. And as for those on whose part you fear disobedience (*nushuz*), admonish them and leave them alone in their beds, and chastise them. Then, if they obey you, seek not a way against them. Surely, Allah is High, Great.”

Religious texts are understood differently in patriarchal societies than they are in egalitarian ones, and vice versa. Patriarchy is firmly entrenched when religious scriptures are interpreted by men. Some muslims believed that husbands should chastise their wives when they made mistakes. Wives were given the right to employ physical violence against their husbands in order to discipline them properly. Domestic violence is still prevalent among Muslims today as a result of this kind of interpretation. Violence against women has also occurred in pesantren, including limits on their access to public spaces, the requirement that wives submit completely to their husbands, forced daughter marriages, and polygamous customs.

Second is the intricate relationship between traditional culture and values shared by most muslim families. Gender relations have been molded by patriarchal cultural norms and beliefs, in which women have been viewed as less significant than males. This implies that women should always obey men because they are viewed as the ultimate decision-makers. In many facets of life, including the family, the workplace, and society, women are subordinated. Violence against women increases as a result of culturally ingrained notions of male superiority.

Last is the ingrained nature of general family structure in Indonesia. In general, Indonesia's social structure gives men access to the public sphere while keeping women in the home. Many people continue to think that domestic labor is a woman's *kodrat* (innate nature). *Kodrat*, thus, refers to the natural and inherent domestication of women. Women should take care of their families at home, cook, and perform other domestic duties. Men, on the other hand, are expected to be family leaders and breadwinners. As a result of not having their own source of income, women become economically dependent on men. In the end, this causes an imbalance in the relationships between men and women in the household. The gender gap has been used to justify domestic abuse against women.

Through some of the factors mentioned above, there is also the case of a santriwati that was molested by a pesantren administrator in Mojokerto as a result of power domination; the position of female students as controlled (powerless) and caretakers of the boarding school is in a position of power (powerful). The motive used by the perpetrator was the pretext of getting the blessing of the kyai. The same thing also happened at several educational institutions. Actors with lecturer backgrounds think they have more power than female students. Pretexts of ease in guidance,

speeding up graduation, and perfect academic scores are used to commit acts of harassment. These efforts trigger an attitude of dependency on the victim's existing choices and then create obedience to that choice. This exact situation also prompted various reasons why cases of sexual violence are not reported by victims to law enforcement, including the victim feeling ashamed and not wanting the shame that has befallen them to be known by others, or the victim is afraid of being threatened by the perpetrator that they will be killed if they reports the incident to law enforcers, the legal basis is not strong, the sanctions for the perpetrators are not adequate yet, and the protection for victims is empty. Apart from that, the feeling of fear because of the re-victimization of the police and the difficulty in obtaining evidence makes the victims reluctant to face the existing legal process.

In addition, the sexual violence experienced by santri does not only have an impact on their psychological side, but also has an impact on their religious practice or faith. In this case, santriwati could experience conflicts with their beliefs, religion, and even with the God they believe in. In turns, it affects the decrease in the level of their spirituality or religiosity, such as hating the holy book, leaving the obligation to pray, and leaving their faith in God and religion for a while. Such things could happen because of the disappointment they experienced, that religious leaders who are often seen as holy figures and as role models in religion become predators of sexual violence in religious institutions, which are perpetuated through religious narratives, and abuse the authority they have. One would describe this incident as a disruption to the santri's religious freedom, for they could not, in a proper manner, exercise their faith.

The ratification of the law criminalizing sexual violence (Law No.12/2022) has an important meaning for strengthening regulations regarding the treatment and responsibility of the state to prevent, handle cases of sexual violence, and comprehensively recover victims. In the law itself there are nine types of criminal acts of sexual violence, which consist of non-physical sexual harassment, physical sexual harassment, forced contraception; forced sterilization, enforced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Not only is it related to criminal law, but incidents of sexual violence also violates the human rights of victims. Efforts to protect victims of sexual violence also include the struggle for victim right. As a rule of law, Indonesia has a duty to protect the human rights of all people. This role is due to the responsibility of the state to respect, protect, and fulfill human rights for its citizens. One of the protective measures taken is through a legal defense approach that applies to every victim of crime, including victims of sexual violence, both in the real world and in cyberspace. The Indonesian legal system guarantees the human rights of every citizen, as enumerated in 1945 in Articles 28A-28J. Article 28A explains that "everyone has the right to live and has the right to defend his life and existence". Furthermore, in Article 28B paragraph (2) it states that "every child has the right to survival, growth, and development, and has the right to protection from violence and discrimination". Then in Article 28G it is explained that every human being has the right to protection for himself/herself, honor, family, honor, and dignity, and has the right to feel safe and protected from threats of fear to do something or not do something which is a human right. Then it is emphasized again in Article 28I paragraph (1): The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted under retroactive law are human rights cannot be diminished under any circumstances.

The Ministry of Religion has prepared regulations on preventing sexual violence in religious education institutions. Cases of sexual violence in recent years have been reported in a number of religious and educational institutions. Several irresponsible individuals within a religious education institution were reported to the authorities for allegedly committing immoral acts. More than 95% of respondents considered it essential to have special regulations and mechanisms to prevent acts of sexual violence within religious education institutions. In addition to regulations, several suggestions that surfaced in the survey were the importance of strengthening guidance and

counseling and establishing a prevention task force. The Ministry of Religion said that pesantren caregivers must read regulations related to protecting children and women. One could even call this regulation the new yellow book. The Law on the Protection of Children and Women should become a guideline for Islamic boarding schools. The government is also drafting a regulation concerning the Prevention and Handling of Sexual and Child Violence in Pesantren. The drafting process has entered the adjustment stage at the Ministry of Law and Human Rights.

To educate on creating a gender conscious environment, it does not need to be discreet or to be separated from other discourse, but it also cannot be treated as a mere viewpoint. The existing curricula only touch on the issue of gender perspective loosely, and it is futile to a misdirection caused by the lack of proper structure and poor mentorship, resulting in an empty discourse on gender issues. By giving proper recognition to gender education as a special program and, at the same time, spreading or integrating with other subjects, it will have greater responsibility and control. There needs to be proper regulation regarding what material and how the learning process is carried out so that continuous evaluation and improvements can be made until the gender perspective becomes the culture of the community. The government has the capacity to provide regular training sessions for educators and school staff members, with a focus on improving their ability to identify indicators of sexual violence, respond to such situations effectively, and report incidents of sexual violence appropriately. Special education programs can provide opportunities for children to gain knowledge related to their rights, the identification of inappropriate behavior, and reporting incidents involving sexual violence.

In addition to guaranteeing women's constitutional rights, rules and regulations must be obeyed so that they can be upheld. The protection of women who are often the target of sexual crimes, must be a priority in law enforcement. Gender sensitivity and anti-discrimination would be suitable guidance in fulfilling that necessity. Pesantren should not remain silent for the sake of maintaining the good name of the school but should help solve problems if there are cases of sexual violence that occur in Islamic boarding schools by taking the side of the victim. Because denial or attempts to cover up information about cases of sexual violence against students in Pesantren give the impression that the institution is not serious about responding to these cases, even though religious education institutions should be able to create a safe space for students.

D. Conclusion and Recommendation

Pesantren, historically revered as sacred sites for acquiring religious knowledge, are not a secure environment for their pupils, particularly female students. The Ministry of Religion, which serves as the umbrella of religious institutions, and the pesantren itself need to take serious action to address the high cases of sexual violence that are committed by the ustadz, gus, or kyai themselves and are sustained by the power and authority possessed as well as a culture that has been ingrained to the point that it is institutionalized. Understanding gender perspectives in Pesantren needs to be continuously developed, especially in overcoming gender bias that happened within. It is essential for the santriwati to fulfill their educational rights and religious freedom in a safe environment. A gender perspective is needed to avoid gender inequality due to stereotypes that lack understanding of gender. It is also part of the systemic abuse that could factor in the increasing cases of sexual assault. An effective way to shield victims of sexual violence from the crimes they have endured is by criminalizing such acts. Given the increase in sexual violence cases in Indonesia, cases of sexual violence themselves are an urgent problem. However, settling sexual assault cases in the victim's favor requires tremendous commitment.

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