

LEGAL PROTECTION OF WOMEN FROM HARASSMENT AND RAPE

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Abstract

Crime in Indonesia is on the rise, causing numerous victims in society, with women being particularly affected. Women, in general, are victims of various crimes, including acts of violence and sexual harassment, which is an unfortunately familiar occurrence with cases reported almost every year. Despite the prevalence of sexual harassment, Indonesian law lacks comprehensive legal consequences for perpetrators and adequate protection for victims. Consequently, this study aims to investigate the legal protection available for victims. Employing normative legal research methods within the doctrinal research typology, the study utilizes both statutory and conceptual approaches. The findings underscore the urgency of enacting criminal laws specifically addressing sexual violence cases due to their widespread occurrence in Indonesia. Developing laws that offer protection to victims and effectively address sexual violence cases is crucial for ensuring justice and safeguarding the rights of those affected.

Keywords: *sexual harassment, law, sexual violence, perpetrator, victim*

To cite this paper (in APA style):

Nadira Mantika Abdullah (2023). Title. *International Journal of Scientific Research*, 01(02),60-66. DOI: xxxxxx

INTRODUCTION

Sexual harassment and violence have been longstanding concerns in Indonesian society, with discussions on these issues being prevalent. The term "sexual harassment" is widely recognized in Indonesia, as incidents of such nature occur almost annually. The concept of sexual violence, originating from the English term "sexual hardness," underscores the severity of these acts in the local context (Afiyah,

2021) (Wirman, Sari, Hardianti, & Roberto, 2021).

Harassment occurs because women in a patriarchal life order are often seen as sexual objects and when women are victims of harassment are often blamed for the sexual harassment they experience. Women are still classified into a place called subordination and marginalization (gender injustice) where women can only be exploited, controlled and even enslaved by

men. Sexual harassment of women is a very cruel act and contrary to human rights, women should deserve human rights protection and basic freedom in all fields (Rahmawati, Eddyono, & Rahmat, 2017). Many cases of victims of sexual harassment that create an impression in their society are considered unholy, and demean victims because they consider themselves dirty and not the same as women in general and many still argue that women are inferior to men (Ariani, 2023).

Crimes against humans do not arise out of thin air, but develop through processes due to the influence of the surrounding environment and several other aspects. Perpetrators of sexual harassment are not only from the lower middle class but can also be from the upper class who feel they have power so that they become power abuse, where their position and position become an influence in all matters (Antari, 2021).

In line with research conducted by Jeremy Chandra Sitorus (2019) entitled *Quo Vadis Legal Protection for Victims of Sexual Harassment on Campus*. The results of this study conclude that there are still many victims of sexual assault who choose to remain silent and do not demand justice because of the imbalance of power relations and the normalization of sexual assault on campus. As well as the lack of firmness on the part of the parties so that the perpetrators can continue their activities on campus and cause deep trauma and fear in the victims. In addition, campus fact-finding activities cornered victims who dared to demand justice. Campus intervention is important to destroy the culture of normalizing sexual assaults that occur on campus. Including educating students to

understand the meaning of consensual sexual contact (Sitorus, 2019).

Sexual harassment in Indonesia has often occurred, as we know every day there are even reports in newspapers, television, radio, social media and many other media that report on incidents of sexual harassment, especially harassment that occurs in public spaces, almost in every incident of sexual harassment in public spaces the victims are always women (Pertwi & Rosnawati, 2022). Sexual harassment is an act that targets parts of a person's body sexuality carried out by individuals or groups that cause anxiety about themselves, such as shame, anger, hatred and feeling their self-esteem is degraded. Sexual harassment can occur to various groups, sexual violence can also occur in various places such as in the family environment, children's educational environments such as schools, and health environments such as patient examination rooms (Handayani, 2018). Even today many children experience sexual violence in the educational environment, namely schools (Sitompul, 2015).

The issue of sexual violence frequently resonates within the Indonesian community. Nonetheless, the existing legal framework in Indonesia does not comprehensively establish stringent legal consequences for perpetrators nor sufficient protection for victims. Only a limited number of sexual violence cases have made it to court, primarily because victims hesitate to report incidents to authorities, fearing societal stigma associated with being a victim of sexual violence. Media coverage often exacerbates this problem by focusing on aspects such as victims' clothing choices, nighttime activities, or being alone, perpetuating harmful stereotypes and

contributing to the reluctance of victims to come forward (Indainanto, 2020). Research that discusses efforts to overcome criminal acts of sexual violence against children is studied according to Indonesian criminal law (Rizqian, 2021). Research on law enforcement and protection in cases of sexual violence has predominantly concentrated on safeguarding victims experiencing second-degree sexual harassment, which encompasses both physical and psychological violence, retaliation, humiliation, and mistreatment of individuals providing support to victims of violence against women (Flecha Ortiz, Santos Corrada, Lopez, & Dones, 2021).

Subsequent research focused on legal powers and limitations to address violence against women in semi-liberal regimes (Brysk, 2016). Finally, there is research that focuses on protecting children from sexual assault, sexual abuse and pornography, while safeguarding children's interests at every stage of life based on the Child Protection Law (Mohanty & Banerjee, 2021).

This study will center on the legal safeguards for victims of sexual violence within the framework of Indonesian criminal law. It will delve into the methods for substantiating cases of sexual violence and emphasize the critical importance of enacting legislation aimed at eradicating sexual violence, drawing insights from various preceding research endeavors.

METHOD

This study utilizes normative legal research methods within the doctrinal research framework. Employing a conceptual and legal approach, the research relies on secondary data gathered through literature studies. The secondary data is

classified into primary legal rights, secondary legal materials, and tertiary legal materials. Primary legal materials include data with legal authority, such as laws and regulations, while secondary and tertiary legal materials comprise supporting data, such as previously published research and relevant books. The obtained legal materials undergo descriptive-qualitative analysis to derive scientifically valid conclusions. The data used in this research involves an analysis of the legal protection provided to women who are victims of harassment and rape in Indonesia.

RESULTS AND DISCUSSION

Law Enforcement against Sexual Violence

Sexual harassment is a condemnable behavior that can be assessed through violations of methods or norms rooted in socio-cultural values, serving as a framework for behavior and guidelines for citizens' actions. It encompasses religious, moral, and legal norms. In the article titled "Sexual Violence: Myth and Reality," Ratna Batara Munti points out that the criminal act of sexual harassment lacks clear regulation in the Criminal Code. Notably, there is no mention of the terms "sexual harassment" or "sexual violence," with only the term "obscene act" addressed in Articles 289 to 296 of the Criminal Code. The lewd acts described therein can be understood as behaviors inconsistent with a sense of decency or as vile actions driven by uncontrollable passions.

The protection of an individual's rights is fundamentally governed by the Criminal Procedure Code, specifically Articles 98 to 101. However, this legal framework is confined to addressing the

rights of criminal offenders. Over time, the proliferation of diverse criminal acts has led to significant losses for witnesses and victims. Recognizing this gap, the government introduced Law No. 13 of 2006, subsequently revised as Law No. 31 of 2014, focusing on the Protection of Witnesses and Victims. This legislation extends rights to victims of sexual harassment that were previously unaddressed in the Criminal Procedure Code. Beyond the realm of criminal law, sexual violence also constitutes a violation of human rights. The Indonesian legal system, as stipulated in the Basic Law of the Unitary State of the Republic of Indonesia 1945 (Articles 28A-28J), ensures the protection of human rights for every citizen. Article 28A emphasizes the right to life and the right to defend one's life and livelihood.

Proving Sexual Violence Cases

Due process of law is defined as a set of procedures required by law as procedural standards in criminal law that are universally applicable (Safitri, Sari, & Gamayuni, 2020). Evidence Stating evidence based on Article 184 of the Code of Criminal Procedure: a) Witness statements; b) Expert information; c) Letters; d) Instructions; e) Testimony of the accused.

If there is suspicion of sexual harassment, the five factors mentioned can serve as valuable tools to substantiate cases of sexual violence. In instances involving fornication or rape, a commonly utilized evidentiary tool is the visum et repertum. This term, rooted in forensic medicine, comprises "visum," derived from Latin, denoting the sign of seeing, and "repertum," meaning reporting, referring to information obtained from a doctor's examination of the victim. Therefore, visum et repertum can be understood as a report detailing what has

been observed and discovered. In cases where the results of visum et repertum reveal no signs of violence, it is advisable to seek additional evidence to establish the occurrence of sexual violence. Ultimately, the determination of whether an act constitutes sexual violence rests with the judge's decision.

Demonstrating psychological violence is more challenging compared to proving physical violence. Unlike physical violence, which is readily observable and verifiable through techniques such as visum et repertum, the evidence of psychological violence remains elusive. This is because the anguish inflicted is internal, affecting the victim's mind and soul, making it inherently difficult to discern or validate through external means.

The Urgency of Law Enforcement in Sanctioning Perpetrators

Law enforcement officials must effectively manage and ensure legal certainty for victims, ensuring that the resolution of sexual violence cases remains unhindered. Perpetrators of sexual violence should face fair legal consequences regardless of their status, position, or existence. A substantial decrease in sexual crimes is probable if legal processes and outcomes genuinely deliver proportional punishment to the perpetrators, coupled with robust social support from the community for the victims (Aji, Pramono, & Rahmi, 2018).

A more definitive arrangement in classifying what constitutes sexual violence is very necessary, this also requires a commitment from law enforcement officials to have an open mind and pay more attention to victims. Because sexual violence is not always about coercion or violence in the penetration of the penis into the vagina.

There are many types of sexual violence beyond that.

Legal Protection of Women Victims of Sexual Harassment

Legal protection provided to women who are victims of sexual harassment in public spaces has been regulated in various laws, such as Constitution 1945 contained in Article 28G and Article 28I, the Criminal Code (KUHP), Law No. 31 of 2014 concerning the Protection of Witnesses and Victims and Law No. 39 of 1999 concerning Human Rights.

Discussions about victims' rights are often neglected, squeezed from the issue of criminalization. There are many laws that have regulated criminalization caused by an act. While the law only specifies a crime punishable by a crime, there is little explicit mention in the law about victims and their rights. This also happens in laws that contain criminal acts for sexual violence, even though sexual violence is not just a criminal offense, but there is something far more important and urgent, namely the rights of victims. [9]

The regulation of victims' rights in the Law on the Protection of Witnesses and Victims is further developed, which includes the right to personal and family safety, the right to legal assistance, and the right to information about the resolution of a case, medical and psychosocial, and to give testimony outside the court, and not to be prosecuted for what has been reported and the rights of victims will be given at all stages of criminal justice within the scope of criminal justice.

As well as the implementation of the rights of victims of sexual harassment in public spaces as stipulated in Article 5 of Law No. 31 of 2014 concerning the Protection of Witnesses and Victims.

Draft Law on the Elimination of Sexual Violence

Faced with the facts on the ground, namely the high number of cases of sexual violence that occur in Indonesia, it is an irony that sexual violence is not clearly regulated and is not even mentioned even in the Criminal Code. Sexual violence in the Criminal Code is only regulated indirectly.

From the monitoring results of Komnas Perempuan from 1998 to 2013, in Indonesia for 15 years there were at least 15 forms of sexual violence, namely: a) rape; b) sexual slavery; c) sexual intimidation; d) sexual prostitution; e) sexual exploitation; f) forced marriage; g) sexual trafficking of women; h) forced contraception and sterilization; i) forced pregnancy; j) forced abortion; k) sexual abuse; l) sexual control; m) inhuman and sexually nuanced punishment; n) sexual harassment; and o) traditional practices related to harmful sexual or female discrimination (National Commission on Violence against Women, 2021)

Sexual violence is discussed more clearly in Law No. 23 of 2004 concerning the Elimination of Domestic Violence in Article 8, Article 47, and Article 48. In Article 8 of Law No. 23 of 2004, there is only one type of sexual violence, namely forced sexual intercourse. And so is the situation in Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons Article 1 number 8 which only regulates sexual exploitation. From this it can be seen that the Indonesian legal system has not been able to provide legal certainty to the community related to 13 other types of sexual violence that occur. The Draft Law on the Elimination of Sexual Violence is also needed because it requires the formulation of the types of sexual violence crimes and their punishment both

as basic and additional crimes. The Sexual Violence Elimination Bill also drafts fines as one of the criminal threats because fines will go to the state treasury but are not related to the provision of compensation for victims. And specifically for certain sexual violence crimes, the Draft Law on the Elimination of Sexual Violence will present special rehabilitation. Apart from that, there are also various other criminal threats such as special coaching, revocation of custody, revocation of profession, revocation of political rights, and also social work. Then the Criminal Procedure Code does not have provisions in terms of the need for the assistance of psychologists or other medical teams for victims in providing testimony or testimony, while the Draft Law on the Elimination of Sexual Violence affirms that it is the right of victims to get assistance and it is an obligation for law enforcement officials to accompany victims of sexual violence.

CONCLUSION

Based on the results of the research presented, it can be concluded that law enforcement against sexual violence in Indonesia still faces several obstacles. Sexual harassment behavior is considered a reprehensible act that is not clearly regulated in the Criminal Code, which only uses the term obscene acts. Although Law Number 31 of 2014 concerning the Protection of Witnesses and Victims has been issued to overcome the legal vacuum, challenges still arise along with the variety of criminal acts of sexual violence and the harm caused to witnesses and victims.

Proving cases of sexual violence is also a complexity in itself. Although evidence such as witness statements, expert information, letters, instructions, and testimony of the accused are regulated in

the Code of Criminal Procedure, proving psychological violence becomes more difficult than physical violence. *Visum et repertum* is used as one of the evidence, but the final decision still depends on the judge's discretion.

The urgency of law enforcement in imposing sanctions against perpetrators of sexual violence is emphasized as an important step. Law enforcement officials need to provide legal certainty to victims without delaying the process of solving cases. More definite regulation is needed in classifying types of sexual violence, as well as the commitment of law enforcement officials to pay more attention to victims.

Legal protection for women victims of sexual harassment has been regulated in various laws, including the 1945 Constitution and Law Number 31 of 2014. However, discussions about victims' rights are often overlooked. Therefore, further efforts are needed to ensure that victims get adequate protection and attention to the issue of criminalization does not override the rights of victims of sexual violence.

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