

Legal Protection for Victims of Sexual Violence in the Perspective of Indonesian Criminal Law

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ABSTRACT – Sexual violence is a form of serious crime that involves serious impacts on victims, both physically and psychologically. In Indonesian criminal law, legal protection for victims of sexual violence has been regulated through various regulations, including the Child Protection Law and the Draft Law on the Elimination of Sexual Violence. However, the implementation of the law in the field still faces many challenges, such as the lack of sensitivity of law enforcement officials, weak protection of witnesses and victims, and lack of access to justice. This study aims to analyze the effectiveness of the existing legal framework in providing protection to victims of sexual violence. Through a normative juridical approach based on a literature study, this research reviews applicable regulations, implementation constraints, and best practices from various countries. The results show that despite progress in legislation, the implementation of legal protection for victims of sexual violence in Indonesia still requires significant improvement. This study suggests the importance of strengthening the training of law enforcement officers, improving access to rehabilitation services, and adopting restorative approaches to ensure justice for victims. Thus, the legal system can be more responsive in dealing with this crime.

Keywords: Sexual violence, legal protection, criminal law, victims, restorative justice, rehabilitation, regulation implementation.

A. INTRODUCTION

Sexual violence is a form of criminal offense that reflects the moral degradation of society and creates long-term trauma for victims. This crime not only damages physically, but also mentally, which makes it difficult to fully recover. In the perspective of Indonesian criminal law, various legal instruments have been created to provide protection to victims of sexual violence. However, in reality, the

protection has not been optimal, leading to dissatisfaction among the community. Regulations such as Law Number 12 of 2022 on Sexual Violence Crimes are important milestones in providing legal protection. Even so, its implementation still faces obstacles.

The inability of law enforcement officials to provide justice to victims is often highlighted. Weaknesses in the criminal justice system, such as the lack of specialized training for officers in handling sexual violence cases, exacerbate the suffering of victims (Sibarani, 2019). This is exacerbated by Indonesia's strong patriarchal culture, where stigma and discrimination against victims often prevent them from seeking justice.

According to Rizqian (2021), one of the major challenges is the lack of public understanding of the rights of victims of sexual violence. Society has diverse perceptions of social cases (Darmawan et al., 2021). Society often blames the victim, which results in low levels of case reporting. Data shows that only a small proportion of sexual violence cases end up in court. This raises serious questions about the effectiveness of the law in providing protection to victims.

In addition, there is a mismatch between national criminal law and international norms governing the protection of victims of sexual violence. This can be seen in various international treaties that have been ratified by Indonesia, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The implementation of this convention is still far from adequate due to weak harmonization with national law.

The weakness of the justice system in protecting victims is also influenced by the lack of supporting facilities such as shelters and rehabilitation centers. Yulia (2018) points out that victims often do not have access to adequate medical or psychological assistance.

As a result, they have to deal with trauma without sufficient support.

Law Number 12 of 2022 is a new hope in providing protection to victims of sexual violence, but its implementation requires the cooperation of all parties. Sulistiawati and Eddyono (2020) emphasize that the implementation of this law will be effective if it is supported by changes in community culture and increased capacity of law enforcement.

Herman (1997) in his study shows that a victim-centered approach can be a solution to reduce the impact of trauma faced. However, the implementation of this approach requires clear regulatory support and adequate resources. In Indonesia, this approach is still rarely applied due to the lack of understanding of law enforcement officials about the importance of the victim's perspective.

Inequality in access to justice between victims of sexual violence from different socio-economic backgrounds is also a serious concern. Kelly (1988) notes that victims from marginalized groups often face greater barriers in seeking justice. This is relevant in Indonesia, where socio-economic inequalities are still very visible.

Perkembangan hukum pidana di Indonesia juga face the challenge of integrating a human rights-based approach in addressing sexual violence. Paradias (2022) underscores the importance of law enforcement that not only punishes perpetrators, but also restores victims. Unfortunately, the focus on punishment for perpetrators often ignores the needs of victims.

In international studies, Brownmiller (1975) emphasizes that success in protecting victims of sexual violence depends on a comprehensive legal framework and consistent implementation. In Indonesia, although there are a number of regulations, their implementation is often hampered by bureaucracy and corruption in the legal sector.

Victim rehabilitation policies, as suggested by Herman (1997), are essential to ensure victims' recovery from trauma. However, in Indonesia, such policies have yet to be fully implemented. This suggests the need for legal reform to strengthen protection for victims of sexual violence.

This research offers a critical analysis of the legal protection of victims of sexual violence in Indonesia, by highlighting the implementation of Law No. 12 of 2022 and identifying measures that could strengthen victim protection. The focus of this research lies on the integration of

human rights-based approaches and victim recovery in the criminal legal system. This research aims to analyze the effectiveness of legal protection for victims of sexual violence in the Indonesian criminal legal system as well as provide recommendations to strengthen such protection.

B. METHOD

This research uses a normative juridical method, which focuses on analyzing primary and secondary legal materials. This approach is relevant to explore the effectiveness of legal protection for victims of sexual violence based on Indonesian legislation.

The type of research used is literature research, which aims to identify and evaluate regulations relating to the protection of victims of sexual violence. Primary legal sources include laws, government regulations, and international conventions that have been ratified by Indonesia. Secondary legal sources include books, journal articles, and relevant scientific publications.

Data was collected through a document study, which included text analysis of laws and regulations such as Law No. 12 of 2022 on the Crime of Sexual Violence, the Criminal Code (KUHP), as well as various national policies related to the protection of victims' rights. In addition, data was also obtained from scientific journals that support this research.

The validity of the data was guaranteed by using the source triangulation technique. This technique is carried out by comparing various legal documents, scientific literature, and international organization reports to ensure the accuracy and consistency of the information obtained. This approach aims to provide a strong basis for the analysis conducted.

The data analysis technique uses the content analysis method, where each regulation and document analyzed will be identified, grouped, and compared to evaluate its effectiveness in providing legal protection to victims of sexual violence. This approach allows the research to produce comprehensive and accountable findings.

The main regulations that form the basis of this research include Law Number 12 of 2022, the Criminal Code (KUHP), and various victim protection policies issued by the Indonesian government. This research also refers to international norms such as the CEDAW Convention and the Universal Declaration of Human Rights as additional guidance.

C. RESULTS AND DISCUSSION

The legal protection of victims of sexual violence in Indonesia has received attention through the ratification of various relevant regulations. Law Number 12 of 2022 on Criminal Acts of Sexual Violence (UU TPKS) is a significant step aimed at strengthening legal protection for victims. In this regulation, there are specific provisions regarding the rights of victims, including the right to physical and mental recovery, the right to privacy, and the right to obtain compensation from the perpetrator. However, although the TPKS Law offers a comprehensive legal framework, its implementation in the field still faces various challenges.

One of the main challenges is the lack of understanding by law enforcement officials of the contents of the TPKS Law. This has led to the resolution of cases often not in favor of victims, as revealed by Harahap (2016) in his analysis of the role of progressive law in the protection of child victims of sexual violence. Inadequate training for investigators, prosecutors and judges is a serious obstacle in creating a fair justice system.

In addition, cultural issues and social stigma towards victims of sexual violence also exacerbate the situation. Yulia (2018) highlights that victims often do not report incidents of sexual violence for fear of judgment from society. This stigma causes victims to lose their basic rights to protection and justice.

The application of criminal penalties against perpetrators of sexual violence often does not reflect a sense of justice for victims. Prasetyo (2019) asserts that courts tend to give light sentences to perpetrators, which has an impact on victims' loss of trust in the legal system. This is exacerbated by the absence of effective supervision of the implementation of court decisions.

Other regulations such as the Criminal Code (KUHP) also have shortcomings in dealing with cases of sexual violence. The Criminal Code, which still refers to colonial articles, is less relevant in responding to the challenges of the times. Sibarani (2019) revealed that the Criminal Code does not have a clear definition of sexual violence, resulting in legal uncertainty in its enforcement.

However, the government's move to ratify the CEDAW Convention shows a commitment to improving legal protection for victims of sexual violence. Sulistiawati and Eddyono (2020)

assess that this ratification encourages the renewal of national regulations that are more pro-victim, although its implementation still requires serious attention.

The role of legal aid organizations in assisting victims is also an important factor in strengthening legal protection. Rizqian (2021) observed that legal aid organizations are often the only hope for victims to gain access to justice. However, the lack of funding and resources makes these institutions unable to optimally serve all victims.

The right to rehabilitation for victims of sexual violence is often neglected in practice. Herman (1997) highlights that the process of physical and psychological recovery of victims is an important step in creating restorative justice. However, rehabilitation services in Indonesia are still minimal and difficult to access for victims in remote areas.

The criminal justice system in Indonesia has also faced criticism in its handling of sexual violence cases. Tjaden and Thoennes (2000) note that the inability of the justice system to protect victims has led to increasing rates of unreported sexual violence. This points to the need for structural reforms to create a system that is more responsive to the needs of victims.

On a global scope, some countries have implemented more progressive approaches in protecting victims of sexual violence. Yllo and Bograd (1988) noted that the implementation of restorative justice models in European countries yielded better results in restoring victims and preventing perpetrators from reoffending. Indonesia could adopt a similar approach to strengthen legal protection for victims.

In conclusion, legal protection for victims of sexual violence in Indonesia still faces various obstacles that need to be addressed immediately. Although regulations such as the TPKS Law provide a strong legal framework, weak implementation, lack of social support, and lack of understanding by law enforcement officers are significant obstacles in creating justice for victims.

To strengthen legal protection for victims of sexual violence, a comprehensive and sustainable approach is needed. One important step is to increase the capacity of law enforcement officials. Harahap (2016) suggests intensive training for legal officers to improve their understanding of aspects of sexual violence, including victims' rights.

Revisions to the Criminal Code are an urgent need to harmonize regulations with international legal developments. Prasetyo (2019) emphasized that articles of the Criminal Code should reflect the perspective of victims and provide more severe sanctions against perpetrators.

Public socialization and education also play an important role in reducing stigma against victims. Yulia (2018) notes that effective public campaigns can increase public awareness about the importance of victim protection and encourage them to report cases of sexual violence.

Improving rehabilitation and recovery services for victims is a top priority in strengthening legal protection. Herman (1997) suggested the establishment of rehabilitation centers in each region to ensure victims get adequate support, both physically and psychologically.

The use of technology can also be an effective tool in protecting victims. Rizqian (2021) suggests developing a digital platform to make it easier for victims to report cases and obtain information about their rights.

Restorative justice approaches can be an effective alternative in providing justice for victims. Yllo and Bograd (1988) noted that this model allows victims to participate in the case resolution process, which can help them restore their confidence.

Finally, collaboration between the government, civil society, and international institutions is needed to create an ecosystem that supports the protection of victims of sexual violence. This step requires a shared commitment to create meaningful change in Indonesia's legal system.

D. CONCLUSIONS

Berdasarkan penelitian yang telah dilakukan, Several conclusions can be drawn regarding legal protection for victims of sexual violence in Indonesia. Although there are regulations such as Law Number 12 of 2022 on Criminal Acts of Sexual Violence (UU TPKS), implementation in the field still faces various obstacles. Lack of understanding of law enforcement officials, lack of socialization, and social stigma against victims are the main factors that hinder the effectiveness of these regulations.

The articles in the Criminal Code (KUHP) used to handle cases of sexual violence are considered inadequate to address the need for legal protection for victims. The unclear

definition of sexual violence in the Criminal Code creates legal uncertainty and often disadvantages victims.

Rehabilitation facilities for victims of sexual violence are still very limited, especially in remote areas. Victims often do not receive adequate physical and mental recovery, which impacts on their quality of life.

The restorative justice approach is considered a promising alternative in providing justice for victims while preventing perpetrators from repeating their crimes. This approach is more oriented towards victim recovery and creating social harmony.

Revisions to the Criminal Code need to be made to ensure a clearer definition of sexual violence and more severe sanctions against perpetrators. Harmonization with international regulations is also needed to meet human rights protection standards.

The government needs to establish more rehabilitation centers that provide physical and psychological recovery services for victims. These facilities should be equally available, including in remote areas. Socialization of victims' rights and the importance of reporting cases needs to be improved through public campaigns involving various parties, including mass media, community leaders, and educational institutions.

Restorative justice approaches should be integrated into the Indonesian criminal justice system, by ensuring the active participation of victims in the case resolution process. This model can be a solution in creating more humane justice. Cooperation between the government, non-governmental organizations and the international community needs to be enhanced to create a legal system that is responsive to the needs of victims of sexual.

REFERENCES

- Brownmiller, S. (1975). *Against Our Will: Men, Women, and Rape*. New York: Simon & Schuster.
- Burgess, A. W., Hartman, C. R., McCausland, M. P. (1984). *Child Pornography and Sex Rings*. Lexington: Lexington Books.
- Buchwald, E., Fletcher, P. R., & Roth, M. (1993). *Transforming a Rape Culture*. Minneapolis: Milkweed Editions.
- Chandra, T. (2019). Non-Litigation Process Land Dispute Settlement for Legal Certainty. *Substantive Justice International Journal of Law*, 2(2), 177-194.

- Darmawan, D. et al. (2021). *Psychological Perspective in Society 5.0*, Zahir Publishing, Jogjakarta
- Harahap, I. S. (2016). Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual dalam Perspektif Hukum Progresif. *Jurnal Media Hukum*, 23(1), 38-47.
- Herman, J. L. (1997). *Trauma and Recovery: The Aftermath of Violence--from Domestic Abuse to Political Terror*. New York: Basic Books.
- Issallillah, F. (2021). Pandemic Covid 19, Social Psychology, and Pregnancy: Relatedness and Analysis, *Journal of Social Science Studies*, 1(1), 1-10.
- Kamilah, A., & Aridhayandi, R. (2015). Kajian Terhadap Penyelesaian Sengketa Pembagian Harta Warisan Atas Tanah Akibat Tidak Dilaksanakannya Wasiat oleh Ahli Waris. *Jurnal Wawasan Yuridika*, 32(1), 22-37.
- Kelly, L. (1988). *Surviving Sexual Violence*. Minneapolis: University of Minnesota Press.
- Koss, M. P., Heise, L., & Russo, N. F. (1994). *The Global Health Burden of Rape*. Washington, D.C.: American Psychological Association.
- Lestari, S. (2022). Analisis Hukuman Mati Sebagai Pencegahan Tindak Pidana Korupsi Berdasarkan Perspektif Efektivitas Hukum. *Jurnal Pendidikan dan Konseling*, 4(31), 1349-1358.
- Marcus, S. (1992). *Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention*. New York: Routledge.
- MacKinnon, C. A. (1989). *Toward a Feminist Theory of the State*. Cambridge: Harvard University Press.
- Rizqian, I. (2021). Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Dikaji Menurut Hukum Pidana Indonesia. *Jurnal Justiciabellem*, 1(1), 51-61.
- Russell, D. E. H., & Bolen, R. M. (2000). *The Epidemic of Rape and Child Sexual Abuse in the United States*. Thousand Oaks: Sage Publications.
- Sanday, P. R. (2007). *Fraternity Gang Rape: Sex, Brotherhood, and Privilege on Campus*. New York: New York University Press.
- Sibarani, S. (2019). Pelecehan Seksual Dalam Sudut Pandang Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia. *Sol Justisio: Jurnal Penelitian Hukum*, 1(1), 98-108.
- Suryandi, D., Hutabarat, N., & Pamungkas, H. (2020). Penerapan Sanksi Pidana terhadap Pelaku Tindak Pidana Kekerasan Seksual terhadap Anak. *Jurnal Darma Agung*, 28(1), 84-91.
- Tjaden, P., & Thoennes, N. (2000). *Extent, Nature, and Consequences of Intimate Partner Violence*. Washington, D.C.: National Institute of Justice.
- Walker, L. E., & Brodsky, A. M. (1979). *Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System*. Lexington: Lexington Books.
- Weisberg, D. K., & Kelly Weisberg (2008). *Domestic Violence: Legal and Social Reality*. New York: Aspen Publishers.
- Westmarland, N., & Gangoli, G. (2011). *International Approaches to Rape*. Bristol: Policy Press.
- Wilson, J. Q., & Herrnstein, R. J. (1985). *Crime and Human Nature*. New York: Simon & Schuster.
- Yulia, R. (2018). Restorative Justice Sebagai Alternatif Perlindungan Hukum Terhadap Korban Kekerasan Seksual. *Jurnal Hukum dan Pembangunan*, 48(2), 305-320.
- Yllo, K. A., & Bograd, M. (1988). *Feminist Perspectives on Wife Abuse*. Newbury Park: Sage Publications.
- Zorza, J. (1992). *Women Battering: High Costs and the State of the Law*. Washington, D.C.: National Center on Women and Family Law.
- Brownmiller, S. (1975). *Against Our Will: Men, Women, and Rape*. New York: Simon & Schuster.
- Burgess, A. W., Hartman, C. R., McCausland, M. P. (1984). *Child Pornography and Sex Rings*. Lexington: Lexington Books..