

SEXUAL VIOLENCE AGAINST WOMEN IN THE VIEW OF LEGAL AND HUMAN RIGHTS IN INDONESIA

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Abstract:

Sexual violence is a term that refers to derivative sexual behavior or relationships that are distorted, harming the victim and destroying the peace in society. For example, cases of sexual violence that occur to women (including girls) are carried out by those closest to them. Based on the fact sheets in the 2020 Komnas Perempuan Annual Records, sexual violence was perpetrated by 1,528 boyfriends, 425 biological fathers, 322 uncles, 205 stepfathers, 192 husbands, 89 siblings, and 58 biological grandfathers. This research is normative legal research. One form of violence against women is sexual violence. The available data shows that sexual violence against in places against women is as much as non-sexual violence. Our country's Criminal Code only includes articles on rape or obscenity. From a human rights perspective, it is then that the position of women's human rights feels humiliated and even abused. In contrast, human rights issues in our country already have rules that regulate and even guarantee human rights guarantees for everyone, namely Law Number 39 of 1999 concerning Human Rights.

Keywords: Sexual Violence, Legal, Human Rights, Women, Women Rights.

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INTRODUCTION

Until now, sexual violence against women continues to occur. The rise of cases of sexual violence experienced by women is one of the topics that is always discussed for study. Various efforts and studies continue to be carried out to overcome and reduce the number of sexual violence against women (Husin, 2020). Women are often the targets of victims of sexual violence from time to time. Women in society are known as weak creatures, do not have the strength and ability and are still looked down upon, making women often get inappropriate behavior. Intimidation, difficulties in assistance and injustice have made women still the target of inappropriate behavior (Husin, 2020).

In society, there is a view that places women low, so judgment has taken place from the start when women are in a position as victims of crime. Women at risk (women at risk) are women who are at significant risk of experiencing disturbances or problems in their development, both psychologically (mentally), socially, and physically (Hehanussa & Salamor, 2019). The 21st-century society has entered the era of globalization, and the discourse on upholding human rights (HAM) has developed, but there are still differences between women and men. Stigmatization of women's sexuality seems to be firmly rooted in society's culture. This dichotomous view ultimately makes it difficult for women to access their rights when society and the authorities place women as victims of crime (Hehanussa & Salamor, 2019).

Crimes in the form of sexual violence experienced by women include violations of human rights. Human rights violations are a significant threat to a country's peace, security and stability (PUSHAM, 2008). What is meant by human rights violations? Until now, no one definition has been generally accepted. Even though there is no generally agreed definition yet, among experts, there is a general agreement in defining human rights violations as a "violation of state obligations arising from international human rights instruments" (Puwanti & Zalianti, 2018).

Human rights violations occur in all legal subjects, including women and children, who are often vulnerable to human rights violations. Women are entitled to all rights and freedoms, so what is needed is not a new instrument on women's rights but rights without discrimination. Sexual violence is a term that refers to derivative sexual behavior or relationships that are distorted, harming the victim and destroying the peace in society. The existence of sexual violence that occurs suffering for the victims has become a severe consequence that requires attention and human rights guarantees (Puwanti & Zalianti, 2018).

As an example of cases of sexual violence that occurred to women (including girls) carried out by those closest to them. Based on the fact sheets in the 2020 Komnas Perempuan Annual Records, sexual violence was perpetrated by 1,528 boyfriends, 425 biological fathers, 322 uncles, 205 stepfathers, 192 husbands, 89 siblings, and 58 biological grandfathers. It makes Indonesia listed as a country that often commits cases of human rights violations, one of which is violence against women (Komnas Perempuan, 2019).

The research conducted by the author solely to find out the description of cases of sexual violence against women in Indonesia at this time; of course, this will be related to the positive legal and human rights views that exist in the country of Indonesia regarding the resolution and protection of women who are affected as victims of sexual violence.

METHODS

This research method is normative legal or library law research conducted by examining library materials or secondary data (Soekanto, 2007). The secondary data includes primary legal materials, which consist of statutory regulations in this case in the form of the Criminal Code, Law Number 23 of 2004 and other related regulations and secondary legal materials, which explain primary legal materials, such as writings from legal circles, opinions of legal experts. The collected legal materials were then processed and analyzed qualitatively and normatively.

RESULT AND DISCUSSION

Overview of Cases of Sexual Violence Against Women in Indonesia. Sexual violence is an important and complicated issue in all maps of violence against women or children because there are dimensions that are very specific to victims. The problem of unequal power relations between perpetrators and victims is the root of sexual violence against women. In sexual violence against women, the imbalance in power relations is between men and women. Women are put in a vulnerable and unprotected group; therefore, they are always at high risk and very vulnerable to danger. One of them is violence that comes from other groups. As victims of violence, this vulnerability makes women experience a higher fear of crime than men (Purwanti & Zalianti, 2018).

Sexual violence against women is a major problem for every country, including developed countries, which are said to highly respect and care about human rights. It should be in a country where there is a need for protection for women who are victims of crime. One of these human rights is the rights of women and children, especially victims of sexual violence (Hehanussa & Salamor, 2019). Women as a group in society within a country is a group that is also obliged to get guarantees for the rights they have as a basis. In the Convention on the Elimination of All Forms of

Discrimination against Women, thirty articles contain the rationale for eliminating discrimination against women and the obligations that must be carried out by the government (Valerina, 2008).

Most perpetrators of sexual violence in organizations are in an equal or higher position than women who experience harassment/violence, such as supervisors or male bosses who have economic power over them, and most are married. Wise and Stanley (1987) mentioned three characteristics of male perpetrators of sexual harassment, namely (1) lack of social skills and experience of social confusion, (2) people with problems, who drink too much, and are too close to their mothers and (3) generally are nervous and childish people.

The number of cases of sexual violence in Indonesia, among others, is as follows.

Table 1. Forms of Sexual Violence against Women in 2020

No.	Forms of Sexual Violence	Total Case
1.	Fornication	321
2.	Rape	818
3.	Rape Attempt	53
4.	Intercourse	236
5.	Sexual Harrasement	58
6.	Marital Rape	195
7.	Incest	1071
8.	Sexual Slavery	14
9.	Sexual Exploitation	200
10.	Forced Abortion	6

Source: Author, 2023

One form of violence against women is sexual violence. The available data shows that sexual violence against women is as much as non-sexual violence. Sexual violence is often equated with sexual harassment. From the perspective of women as victims, the two are no different. Henceforth, the two are not distinguished in this paper, and this paper uses the term sexual harassment more than sexual violence (Marshall, Worthing. & Heath, 2020).

Sexual Violence in the View of Law and Human Rights in Indonesia. Sexual violence, as gender-based violence against women, does not always take the form of rape. Sexual violence contains nuanced aspects such as threats, coercion, or physical violence, so sexual violence can also take the form of sexual harassment or sexual assault. Cases of sexual violence result in broader problems, including becoming legal issues when victims of sexual harassment submit their cases to legal institutions to seek justice. Sexual harassment is categorized as a form of sex discrimination, so sexual harassment is considered illegal. The above issues reinforce the boundaries of sexual harassment, which indicate legally discriminatory actions that can be used as guidelines for victims of sexual harassment to file a case through legal channels (Zastrow, Kirst-Ashman, & Hessenauer, 2019).

In our positive law, sexual violence is not recognized in the Criminal Code (KUHP). Even so, according to Sampurna, several articles in the Criminal Code regulate sexual crimes, defined as any sexual activity committed by another person against a woman. This sexual crime can be committed by coercion or without coercion, either through physical violence or threats of violence. In the Criminal Code, sexual violations with elements of coercion are given particular terminology, namely rape, which is regulated in Article 285 of the Criminal Code (Susiana, 2012).

The Criminal Code, sexual crimes are regulated under the Crimes Against Decency chapter. This positioning brings confusion and tends to obscure the fundamental issue of sexual crimes, namely violating human existence, because decency often connotes actions contrary to morality or

prevailing norms. It means that sexual crimes are only seen as a violation of moral values rather than a crime against humanity. The values used reflect the values or norms of the dominant group (men's interests), which often discriminate against women as a subordinated group (Sumera, 2013).

Crimes included as immoral crimes, namely those related to sexual problems, are regulated in Book III of the Criminal Code, starting from Article 281 to Article 299. So patterns of legal protection that can be given to women who are victims of acts of sexual violence can be given through Law no. 23 of 2004 concerning PKDRT and the Criminal Code concerning 'rape' Article 285 of the Criminal Code, which is an act of sexual violence which is very horrific and is the cruelest act of violating human rights against women, also by Law no. 13 of 2006, especially in Article 5, Article 8, and Article 9 which are the rights of a woman who is a victim (Sumera, 2013).

In the eyes of our country, Indonesia is a rule-of-law country. It is spelled out in Article 1, paragraph (3) of the 1945 Constitution: "Indonesia is a country of laws. The pattern is based on the explanation of the 1945 Constitution that the Indonesian state is based on the law (*rechtstaat*) and not based on sheer power (*machstaat*). The state may not carry out its activities based on sheer power. However, it must be based on the law (Kansil & Kansil, 2008) so that the problem of sexual violence in Indonesia is the regulation of relations between citizens carried out by the government based on Criminal Law and State Administrative Law (Basah, 1992).

The Universal Declaration of Human Rights (UDHR, 1948), among other things, says that: "...all people are born free and with equal dignity", but in practice life anywhere in this part of the world, there will still be acts or actions that an act that clearly shows the absence of equality in dignity and worth between the two creatures of God's creation, namely women and men.

Violence against women is generally defined in Article 1 of the 1993 UN Declaration on the Elimination of Violence against Women, namely: any act of gender-based violence that results in or has the potential to result in suffering or suffering physical, sexual or psychological, including threats of specific actions, coercion or arbitrary deprivation of liberty, whether occurring in public (in society) or in private life (Susiana, 2012).

The Declaration of Human Rights contains that everyone should have rights and freedoms without discrimination, including not discriminating based on gender. It is reviewed based on women's experience; violations of women's rights, such as acts of violence against women, are easily interpreted as actions that are prohibited (no shall be subject to torture or cruel, inhuman or degrading treatment or punishment) (Sadli, 2000).

So, it is evident in Law no. 39 of 1999 concerning Human Rights (HAM), Article 45 especially states that "Women's human rights are human rights". Thus, because women's human rights are human rights, these women's human rights must be protected, respected, and maintained and must not be ignored, diminished, or seized by anyone.

CONCLUSION

Sexual violence against women occurs due to inequality in position between the degrees of women and men. It is due to the culture created in everyday life in our country from the beginning of history and even before our country's independence. As with several cases of sexual violence that occurred in Indonesia, in a country, there should be protection for women who are victims of crime.

From the point of view of the law in our country, the issue of sexual violence, especially what happens to women, does not have specific rules or what is then called *lex specialist*. Even our country's Criminal Code only includes articles on rape or obscenity. From a human rights perspective, it is then that the position of women's human rights feels humiliated and even abused. In contrast, human rights issues in our country already have rules that regulate and even guarantee

human rights guarantees for every human being. People, namely Law Number 39 of 1999 concerning Human Rights.

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