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Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes

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Abstract
Sexual violence is a massive phenomenon that occurs in society. Sexual violence occurs in various places in Indonesia, including in educational institutions. The Law on Sexual Violence Crimes is oriented as an effort to prevent and overcome criminal acts of sexual harassment. This research aims to analyze the progressive orientation of the Law on Sexual Violence Crimes, including how Law on Sexual Violence Crimes can provide and present substantive justice in society. This research is normative legal research, which seeks to discuss and analyze legal products through laws. The approach in this research is a conceptual approach and a statutory approach. The research results confirm that the Law on Sexual Violence Crimes is a responsive law with regulations related to preventive approaches to prevent sexual violence. One effort that can be made to minimize the occurrence of sexual violence by referring to the Law on Sexual Violence Crimes is by providing socialization and understanding regarding sexual violence regularly in every institution, community, and criminal law enforcement apparatus that is transparent, consistent, and thorough, as well as the need for mechanisms to guarantee recovery and fulfillment of rights for victims of sexual violence so that substantive justice can be achieved.

Keywords: Sexual Violence, Progressive, Substantive Justice

Abstrak
Kekerasan seksual merupakan fenomena masif yang terjadi di masyarakat. Kekerasan seksual terjadi di berbagai tempat di Indonesia, termasuk di lembaga pendidikan. UU TPKS diorientasikan sebagai upaya pencegahan dan penanggulangan tindak pidana pelecehan seksual. Penelitian ini bertujuan untuk menganalisis orientasi progresif UU TPKS, termasuk bagaimana UU TPKS dapat memberikan dan menghadirkan keadilan substantif dalam masyarakat. Penelitian ini merupakan penelitian hukum normatif yang berupaya membahas dan menganalisis produk hukum berupa undang-undang. Pendekatan dalam penelitian ini adalah pendekatan konseptual dan pendekatan perundang-undangan. Hasil penelitian menegaskan bahwa UU TPKS merupakan undang-undang yang bersifat responsif dengan adanya pengaturan terkait pendekatan preventif untuk mencegah kekerasan seksual. Salah satu upaya yang dapat dilakukan untuk meminimalisasi adanya kekerasan seksual dengan mengacu pada UU TPKS adalah dengan memberikan sosialisasi dan pemahaman terkait kekerasan seksual secara berkala di setiap institusi, masyarakat, serta aparatur penegak hukum pidana yang transparan, konsisten, dan teliti, serta perlunya mekanisme untuk menjamin penyembuhan dan pemenuhan hak. bagi korban kekerasan seksual sehingga keadilan substantif dapat terwujud.

Kata Kunci: *Kekerasan Seksual, Progresif, Keadilan Substantif*

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Introduction

Sexual violence, along with sexual harassment, is a phenomenon that often occurs in society. In this case, sexual violence has become a massive issue happening in society. National Commission on Violence Against Women Annual

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Notes until mid-2022, released the number of sexual violence in Indonesia in the last three years. Including in 2020, there were 226,062 cases. In 2021, there were 1,721 cases, and by mid-2022, it had reached around 338,496 cases. (Kementerian PPPA, 2022). Furthermore, sexual violence does not only occur in secluded places or places synonymous with public gatherings. Sexual violence also occurs in places where character and learning should take place, such as educational institutions. (Ariani Hasanah Soejoeti, 2020). In the scope of education, for example, based on data from the Indonesian Child Protection Commission in the range of January-July 2022, 12 cases of sexual violence occurred, with three cases or 25 percent in schools within the Ministry of Education and Research and Technology and 9 cases or 75 percent in academic units under the authority of the Ministry of Religion. (Yuantisya, 2022). This research shows that the reach of sexual violence occurs massively and comprehensively, reaching almost every sphere of people's lives.

Therefore, the state is expected to have a role in forming legal products that protect the public from the threat of sexual violence. The massive phenomenon of sexual violence has made the government and the House of Representative take the initiative to ratify the Law Number 12 of 2022 concerning Sexual Violence Crimes (Law on Sexual Violence Crimes), which was later ratified on April 12, 2022. (Azza Fitrahul Faizah, 2022). The Act's enactment is a hope for the community regarding the presence of the state's role in providing legal protection against the practice of the phenomenon of sexual violence increasing in number. The Act on the Crime of Sexual Violence has become a public concern and a public pressure to be ratified as soon as possible. However, the government and the House of Representatives can only ratify the Law in 2022. It is noted that the Sexual Violence Law has been ten years (or around 2012) started to become discussed and urgent to be ratified by the House of Representative and the President into Law. (Voges et al., 2022).

This study aims to analyze the progressive orientation of the Law on Sexual Violence Crimes, including how the Law on Sexual Violence Crimes can provide and present substantive justice in society. Elizabeth Siregar, Dessy Rakhmawaty, and Zulham Adamy Siregar have researched sexual violence in legal aspects (2020) on Sexual Violence Against Women Reality and Law, which focuses on the legal reality of massive violence against women in society. (Elizabeth Siregar, Dessy Rakhmawaty, 2020). Furthermore, research conducted by Nurul Isnina Syawalia Arifah Nasution (2021) on the Criminal Law Politics of

Sexual Violence in the Indonesia Criminal Code bill focuses on analyzing the politics of criminal Law related to the regulation of sexual violence in the bill. (Nasution, 2021). Furthermore, the research conducted by Eko Nurisman (2022) on

the Minutes of Challenges in Law Enforcement of the Criminal Act of Sexual Violence after the Birth of Law No. 12 of 2022 focuses on aspects of law enforcement of sexual violence after the enactment of Law No. 12 of 2022. (Nurisman, 2022). Based on the three, previous research, particularly that discusses substantive justice in Law Number 12 of 2022, has yet to be carried out comprehensively. Therefore, this research is an original study.

In this research, the main concept studied is the concept of substantive justice. In general, substantive justice is understood as a conception in which the parties (especially the party whom legal action has harmed) receive fair and appropriate recovery as compensation for the losses they have experienced. In the context of sexual violence, the concept of substantive justice is relevant because victims of sexual violence must have their condition restored so that there can be a reasonable recovery, as in the concept of substantive justice. The novelty in this research is the development of a progressive legal conception in Indonesian criminal law, especially concerning criminal acts of sexual violence whose orientation is to produce substantive justice for victims.

Research Problems

This study seeks to answer two problem formulations, namely: (a) What is the progressive orientation of the formulation of the Law on Sexual Violence Crimes? and (b) How is the Law on Sexual Violence Crimes an effort to realize substantive justice in society?

Research Methods

This research is normative legal research that seeks to discuss and analyze legal products in the form of laws. Law as one of the legal products becomes the main study in normative legal research. (Peter Mahmud Marzuki, 2017). The primary legal materials are the Criminal Code and the Law on Sexual Violence Crimes. Secondary legal materials include studies and research on the Law on Sexual Violence Crimes and legal aspects of sexual violence. Non-legal material includes various non-legal studies on sexual violence. The approach in this research is the conceptual approach and the statutory approach. The analysis of legal materials in this research is carried out in a descriptive-prescriptive manner, first describing existing legal materials based on the formulation of the problem and then drawing a legal conclusion or prescription.

The analysis of legal materials in this research was carried out qualitatively-prescriptively. (Peter Mahmud Marzuki, 2017). Qualitativeprescriptive analysis is performed by carrying out categorization based on the legal material that has been collected and then analyzed by referring to the formulation of existing legal problems and issues. From the results of this analysis, a legal prescription or solution that answers the existing legal issues is formulated.

Discussion

Progressive Orientation of the Sexual Violence Crime Law

Substantive justice is one of the ideas that emphasizes justice should be given to guarantee the existence of the parties. (Fauzia et al., 2021). As part of the idea of justice, substantive justice certainly has characteristics that differentiate it from several other ideas of justice. There are two main orientations of the idea of substantive justice that stand out and differentiate it from other ideas of justice. First, substantive justice relies on "substance," which means it emphasizes the essence of the rights that have been violated. While formal justice only focuses on the orientation of restoring economic rights, substantive justice does not only focus on restoring economic rights, but it also includes substantive restoration of various other rights, including rights related to physical and psychological aspects.

Second, substantive justice does not only focus on the physical and psychological recovery of the victim but also includes re-socializing the perpetrator so that the perpetrator can return to living a normal life in society. The orientation of substantive justice in this context emphasizes the "win-win solution" element so that the parties genuinely feel the substance of justice. (Fahamsyah & Disantara, 2022). Efforts for substantive justice to guarantee the existence of the parties can be understood as efforts to guarantee the rights of the parties, which are not only the rights of those who have been materially injured, including also the rights of the parties to obtain compensation or immaterial recovery. (Angkasa et al., 2021). This idea of substantive justice is actually a deeper understanding of formal justice. (Busroh, 2017). If formal justice is related to guaranteeing limited legal rights, then substantive justice emphasizes guaranteeing legal rights substantively and deeply. (Fahamsyah & Disantara, 2022).

In the context of sexual violence, guarantees of substantive justice emphasize the fulfillment of victims' rights, not limited to narrow remedies such as mental and physical recovery of victims of sexual violence. (Syaputra, 2018). However, the substantive justice orientation in the Criminal Act of Sexual Violence is not only about the mental and physical recovery of victims of sexual violence but substantively also aims at aspects of recovery in the social and other dimensions that can substantively restore victims of sexual violence.

That is in line with the struggle of the community regarding the enactment of the Law on Sexual Violence Crimes. Since being fought massively, starting in 2012 through people's representative institutions, studies, and direct submissions through various available channels, the Law on Sexual Violence Crimes was finally promulgated in 2022. Although it took time and a long struggle, in the end, the public can look forward to the Law on Sexual Violence Crimes can be implemented and enforced optimally. (Hario Mahar, 2018). Related to the Law on Sexual Violence Crimes, there are various demands from the community who want the Law on Sexual Violence Crimes to be immediately ratified with various arguments. First, the Law on Sexual Violence Crimes is expected to be present to fill the void and legal needs of the community regarding the reality of sexual harassment and violence in the community, which is increasing in number and implemented massively and systematically. Legal products in Indonesia, before the ratification of the Law on Sexual Violence Crimes, there were no specific provisions governing sexual violence

crimes. The existence of this legal vacuum has an impact on not being able to be prosecuted for a crime of sexual violence because there is no particular law that regulates it. That is aligns with the principle of legality, which is the "heart" of the Criminal Code. One of the essences of the principle of legality is that a crime must be regulated in positive Law, namely the Act. (Suhariyanto, 2018).

Second, the Law on Sexual Violence Crimes is also present as a preventive and repressive effort against the phenomenon of sexual violence. As a preventive measure, the Law on Sexual Violence Crimes also determines the potential for sexual violence and mandates the establishment of policies that can inclusively tackle sexual violence. Moreover, the development of information and technology, as well as the phenomenon of legal modernization, makes every type of crime develop even beyond the provisions contained in positive law (Suatmiati & Kastro, 2020). In this context, the development of a crime is linear with the times. Therefore, the role of the law, especially the law, becomes essential as a preventive tool in tackling crime, especially the crime of sexual violence. In addition, the Law on Sexual Violence Crimes also offers repressive measures in the form of criminal sanctions, which are expressively stated in the Law on Sexual Violence Crimes. (Agus, E., 2021). Third, the Law on Sexual Violence Crimes is a "first step" in dealing with the massive phenomenon of sexual violence in society. As a first step, of course, after the Law on Sexual Violence Crimes ratification, various legal and non-legal steps must be continued as part of efforts to implement the Law on Sexual Violence Crimes. Based on the three urgencies for ratifying the Law on Sexual Violence Crimes, it can be concluded that the Law on Sexual Violence Crimes is one of the laws that were born and present following the demands and needs of the community. (Aswandi & Roisah, 2019). When explicitly viewed, the philosophical basis for forming the Law on Sexual Violence Crimes, namely in guaranteeing the right to security and freedom from violence in any form (including sexual violence), is part of human rights that must be guaranteed, protected, and facilitated by the state. (Fauzia & Hamdani, 2021).

In addition, the right to a sense of security from the threat of sexual violence, which is a human right, is a universal human need in the world which is in line with the principle of human rights as a direct gift from God Almighty regardless of status, ethnicity, religion, or views politically. (Setiaji & Ibrahim, 2018). Referring to that, ratifying the Law on Sexual Violence Crimes is an essential step toward guaranteeing human rights. Based on the sociological basis, it can be seen that the phenomenon of sexual violence can disrupt various community activities, especially disturbing the peace and order of society (Lathif, 2017). In this context, the presence of the Law on Sexual Violence Crimes is also required to guarantee public peace and order, especially concerning the threat of sexual violence, including involving various elements of society, especially in the prevention aspect. Based on the juridical basis for establishing the Law on Sexual Violence Crimes, it can be understood that prior to the establishment of the Law on Sexual Violence Crimes, there was no law that specifically regulated the criminal act of sexual violence prior to its establishment. (Purwoleksono, 2016). The character of criminal law dictates that criminal law must be written, clear, and not lead to multiple interpretations, and is very strict, and even analogy is not allowed. In this case, the existence of a legal vacuum related to

criminal acts of sexual violence can affect efforts to prevent, guarantee access and legal certainty, as well as fulfill the rights of victims in criminal acts of sexual violence, which cannot be optimally carried out without the ratification of the Law on Sexual Violence Crimes.

Based on the philosophical, sociological, and juridical foundations of the establishment of the Law on Sexual Violence Crimes, substantively, the Law on Sexual Violence Crimes is present to fulfill and, at the same time, facilitate urgent legal needs in society. Regarding the typology of the formation of laws, the Law on Sexual Violence Crimes can be said to be a law with a responsive character. (Hidayat & Arifin, 2019). The responsive character of law is based on the views of Nonet and Selznick, who view that a law or law has three characteristics: repressive, autonomous, and responsive character. (Philippe Nonet, 2017). The repressive character of law as a legal product if a law is not intended to meet the legal needs of the community but is an "order" of certain parties who politically have a position or control specific resources so that their wishes must always be respected. (Suhartono, 2019). In this context, the repressive character of law places the law under politics so that every legal product (including laws) is the practical political will of power. People in this repressive legal character are only forced to obey the law and cannot question the law's substance or validity. (Sulaiman, 2021). The autonomous character in the Act places that law is formed because it only fulfills procedural aspects as one of the characteristics of a state of law. (A. A. Oka, 2021). Undeniably, the characteristic of a modern legal state is the existence of laws regulating society. In this context, a law with an autonomous character is formed only for procedural requirements as a legal state, even though the community does not want the law enacted.

The responsive character in the formation of law emphasizes that the formation of a law is to meet legal needs and the crystallization of the will of the community. (Antasari, 2019). Politics and law go hand in hand and side by side in law with a responsive character. (Suriadinata, 2019). That means that legal needs must be responded to by political mechanisms in the form of the formation of laws. (Saiya et al., 2021). In addition, people's political aspirations must also get legal priority if they need legal products to follow up on community needs. Referring to the formation of the Law on Sexual Violence Crimes, the Law on Sexual Violence Crimes is a law with a responsive character based on at least three arguments. First, the Law on Sexual Violence Crimes is a long struggle for community aspirations that has been fought for since 2012 and was approved in 2022. This explanation means that the Law on Sexual Violence Crimes is the will of the people's long struggle. Second, the substance of the Law on Sexual Violence Crimes is a crystallization of public demands related to the phenomenon of massive sexual violence in the community. That confirms that the substance of the Law on Sexual Violence Crimes is a crystallization of the community's will, which is facilitated by a legal product in the form of a law.

Third, the formulation of the Law on Sexual Violence Crimes also has an anticipatory and progressive character in fulfilling the rights of victims of sexual violence. That also encourages the state (in this case, the government) and the

community to participate in prevention efforts, jointly provide healing efforts, and fulfill the rights of victims of sexual violence.

Based on the three arguments that the Law on Sexual Violence Crimes is a law with a responsive character, the Law on Sexual Violence Crimes has a progressive orientation in various efforts related to sexual violence crimes. In this context, the progressive orientation in the Law on Sexual Violence Crimes is in the form of a preventive approach to prevent sexual violence, the need for policies and mechanisms in each institution to prevent and take action against sexual violence, the need for regular socialization and understanding of sexual violence in the community, and the enforcement of criminal law related to violence which transparent, consistent, and conscientious sexual relations, as well as the need for different mechanisms related to efforts to ensure healing and fulfillment of rights for victims of sexual violence.

Seeking Substantive Justice in the Law on Sexual Violence Crimes

The Law on Sexual Violence Crimes, which is present as an effort to fulfill legal needs in the community, actually has an orientation to affirm substantive justice in society. (Suswoto, 2018). Substantive justice is interpreted as an effort to fulfill justice by prioritizing substantive aspects, including efforts to maintain human dignity and rights. (Menashe, 2018). In this context, the Law on Sexual Violence Crimes has an orientation to maintain aspects of human dignity and rights. From the aspect of dignity, this can be understood from the act of sexual violence, which is an immoral act. (Fabre, 2020). That confirms that all acts of sexual violence are despicable and inhumane by society in any civilization. That also confirms that the Law on Sexual Violence Crimes aims to maintain human dignity, mainly to prevent sexual violence. The Law on Sexual Violence Crimes is present as an effort to protect human rights. In considering the Law on Sexual Violence Crimes, it was emphasized that one of the objectives of The Law on Sexual Violence Crimes was to protect human rights. (Vatter, 2020). That is significantly related to the right to freedom from violence in this case, including freedom from acts of sexual violence. (Ilyasa, 2020). The right to freedom from violence is part of human rights, so it is not a product of the state. Human rights are natural rights that are inherent in the existence of humanity. (Suhariyati et al., 2020).

That means every human being must be bound by human rights (Bisariyadi, 2017). The state's task regarding human rights is to protect and facilitate these rights. The state must not be negligent and negligent with the human rights that every society has. Concerning human rights, the existence of the Law on Sexual Violence Crimes is an effort to protect human rights, especially the right to freedom from sexual violence. In the context of substantive justice, the Law on Sexual Violence Crimes also guarantees substance, especially regarding other substantive guarantees for victims of sexual violence. (Wildan Nafis, 2020). That confirms that the Law on Sexual Violence Crimes guarantees not only aspects of criminal law related to sexual violence but also other substantive aspects, which emphasize that the Law on Sexual Violence Crimes is present as a comprehensive tool for the legal needs of the community as a result of sexual violence. In a formal context, the Law on Sexual

Violence Crimes is only present to confirm the formulation of criminal acts of sexual violence that have not been regulated in the Criminal Code or other positive criminal law formulations in Indonesia. (Ishak & Seksual, 2020). The Criminal Code, the "mother" of positive criminal law in Indonesia, has not provided specific regulations regarding the crime of sexual harassment.

The unregulated criminal act of sexual harassment in the Criminal Code, as well as various favorable laws in Indonesia, can lead to several legal implications. First, the unregulated criminal act of sexual harassment in the Criminal Code and various favorable laws in Indonesia can have an impact that sexual violence cannot be processed because there are no references. in positive criminal law. (Hiariej, 2019). That is understandable because Indonesian criminal law, which is substantially derived from the Criminal Code, is a "transition" from *Wetboek van Strafrecht* (WvS), which is the Dutch Criminal Code based on the principle of concordance, also applied in Indonesia. (Aries, 2022). That impacts the existence of the principle of legality, which emphasizes that every crime in law is positive. The unregulated substance of criminal acts in positive law makes sexual violence legal events unable to be legally processed. Second, the Criminal Code is a product of past laws and is a regulator of general crimes in society. The development of the times, technology, and information, as well as the development of society's level of civilization, is linear with the development of crime in society. That means that crime develops in line with the level of development of society. That confirms that there is a need for separate unique criminal acts in criminal law outside the provisions of the Criminal Code. Apart from that, the main problem with sexual violence in the Criminal Code, in general, is that there is no corrective justice orientation for victims of sexual violence, so it requires *lex specialis* regulations as in the Law on Sexual Violence Crimes.

The criminal law that regulates the substance of a particular crime has a *lex specialis* character, which means it has special validity outside the Criminal Code. (Irfani, 2020). In this context, the Law on Sexual Violence Crimes is part of the substance of special criminal law outside the Criminal Code, which regulates particular crimes that the provisions in the Criminal Code have not regulated. That also confirms that the Law on Sexual Violence Crimes is *lex specialis* to the Criminal Code. Third, the existence of the Law on Sexual Violence Crimes is a part of Indonesia's criminal law reform. In general, Indonesian criminal law reform is interpreted as a process of improving and formulating criminal Law that follows the times, has Indonesian aspirations, and seeks to meet the community's legal needs. (Appludnopsanji, Hari Sutra Disemadi, 2021). In this case, formulating the Law on Sexual Violence Crimes is part of reforming Indonesian Criminal Law. Based on the description above, it can be concluded that the Law on Sexual Violence Crimes is present to strengthen substantive justice for the community, primarily to protect the community from the existence of criminal acts of sexual violence. Furthermore, the character of substantive justice is the emphasis on the aspect "which goes beyond" the formal aspect in the purpose of establishing a legal product, especially the Law.

The Law on Sexual Violence Crimes's purpose is to regulate the legal substance related to sexual violence crimes that have not been regulated by the

Criminal Code and other favorable laws. However, the Law on Sexual Violence Crimes is present substantively and progressively by facilitating various aspects such as efforts to prevent criminal acts of sexual violence, the role and participation of the parties (particularly community participation in preventing and cracking down on sexual violence, law enforcement related to criminal acts of sexual violence, and guarantees of legal protection) and non-legal for victims, including physical and psychological recovery from sexual violence. (Suprihatin, 2020). If it refers to the substantive aspect of the ratification of the Law on Sexual Violence Crimes, the Law on Sexual Violence Crimes focuses more on recovering and fulfilling the rights of victims in criminal acts of sexual violence. The urgency and focus on victims of sexual violence is a manifestation of Indonesia's criminal law reform, which is also one of the ideals of the Criminal Code Bill. (Tomalili & Ariadi, 2021). In addition, the focus on victims of sexual violence in the Law on

Sexual Violence Crimes confirms the orientation in the form of enforcing criminal law with the spirit of restorative justice or based on restorative justice. (Tio et al., 2022).

The aspect of restorative justice in criminal law emphasizes criminal law with a victim perspective so that healing and fulfilling the rights of victims is a priority. (Annemieke Wolthuis, Jacques Claessen, 2019). That is a development of the conventional criminal law view that views criminal acts as something deviant and must receive appropriate retribution. Retaliation in criminal law is commonly referred to as suffering or physical torture that reduces human rights. If referring to the dimension of restorative justice in the Law on Sexual Violence Crimes, there is an orientation and urgency that the Law on Sexual Violence Crimes emphasizes aspects of victims, including recovery and fulfillment of their rights. (Tio et al., 2022). The essence of substantive justice in the Law on Sexual Violence Crimes is embodied in the spirit of restorative justice in the Law on Sexual Violence Crimes. Suppose referring to the legal system theory of Lawrence M. Friedman, the Law on Sexual Violence Crimes has become a means for developing the legal system, primarily based on the spirit of restorative justice. The first element in building a legal system is a legal substance. The legal substance, in this case, has been manifested in the ratification of the Law on Sexual Violence Crimes, which has the characteristics of futuristic regulation of various sexual violence crimes that escape the provisions of the Criminal Code and various other favorable laws. (Appludnopsanji, Hari Sutra Disemadi, 2021). Furthermore, in terms of the legal structure, the Law on Sexual Violence Crimes invites the role of various institutions to prevent sexual violence. In Article 79, paragraph (4) of the Law on Sexual Violence Crimes, it has been emphasized that one of the orientations for preventing sexual violence is in various places with the potential for sexual violence.

That is a substantive construction because it implies arrangements for all institutions and various levels of society to contribute to preventing the occurrence of criminal acts of sexual violence in society. In addition, this aspect of the legal structure also mandates the need for synergy between law enforcement officers in carrying out law enforcement related to criminal acts of sexual violence. (Suhariyati et al., 2020). From the aspect of legal culture, the presence of the Law on Sexual Violence Crimes with a spirit of restorative justice confirms that the phenomenon

of sexual violence is a shared responsibility, so prevention and enforcement efforts must also involve the role of the community. In addition, the legal culture aspect of the Law on Sexual Violence Crimes also emphasizes the need for a victim-based approach to restoring and, at the same time, guaranteeing the rights of victims of sexual violence they experience.

Referring to the Law on Sexual Violence Crimes, several articles regulate efforts to provide recovery for victims, including mental, physical, medical, and social recovery. This effort to provide optimal recovery is one implementation of the concept of restorative justice. Regarding sanctions for perpetrators of criminal acts of sexual violence, the restorative justice emphasizes the perpetrator's accountability, which is more restitutive (compensation-based), so that the perpetrator can be oriented to have a deterrent nature and not repeat his actions while helping the victim recover.

Based on the description above, the Law on Sexual Violence Crimes, as an effort to realize substantive justice, is manifested in the orientation of the Law on Sexual Violence Crimes by prioritizing the aspect of restorative justice. Restorative justice in the Law on Sexual Violence Crimes has been contained in the substance, structure, and legal culture established by the Law on Sexual Violence Crimes. That also confirms that the substantive justice to be aspired by the Law on Sexual Violence Crimes is restorative justice based on victims. Therefore, the focus is on healing and recovering victims and comprehensive fulfillment of the rights of victims of sexual violence.

Conclusion

The Law on Sexual Violence Crimes is a law with a responsive character, so in fact, the Law on Sexual Violence Crimes has a progressive orientation in various efforts related to the crime of sexual violence. In this context, the progressive orientation in the Law on Sexual Violence Crimes is in the form of a preventive approach to prevent sexual violence, the need for policies and mechanisms in each institution to prevent and take action against sexual violence, the need for regular socialization and understanding of sexual violence in the community, and the enforcement of criminal law related to violence which transparent, consistent, and conscientious sexual relations, as well as the need for other mechanisms related to efforts to ensure healing and fulfillment of rights for victims of sexual violence. The Law on Sexual Violence Crimes, as an effort to realize substantive justice, is manifested in the orientation of the Law on Sexual Violence Crimes by prioritizing the aspect of restorative justice. Restorative justice in the Law on Sexual Violence Crimes has been contained in the substance, structure, and legal culture established by the Law on Sexual Violence Crimes. The aspect of Restorative justice in the Law on Sexual Violence Crimes is also seen in efforts to provide recovery for victims, including mental, physical, medical, and social recovery. In particular, the implementation of restorative justice, as stated in The Law on Sexual Violence Crimes, progressively also mandates the provision of restitution for victims of sexual violence who are still children. Apart from that, in the sanctions for perpetrators of

criminal acts of sexual violence, the restorative justice aspect emphasizes the responsibility of the perpetrator is more restitutive (based on compensation) so that the perpetrator can be oriented to have a deterrent nature and not repeat his actions while helping the victim recover.

Suggestion

The presence of the Law on Sexual Violence Crimes is expected to be a substantive effort to prevent, enforce the law, and orientate to heal and fulfill the rights of victims. In addition, in practice, a restorative justice approach needs to be an orientation in applying the Law on Sexual Violence Crimes, especially for law enforcement officers.

References

A. A. Oka, M. (2021). Harmonisasi Peraturan Perundang-Undangan. *Artikel Hukum Tata Negara Dan Peraturan Perundang-Undangan*.

Agus, E., H. S. (2021). Mewujudkan Sistem Peradilan Pidana Terpadu Melalui Case Management System (Studi di Kejaksaan Negeri Kota Bogor). *Suara Hukum*, *3*(1), 9–10.

Angkasa, A., Windiasih, R., & Juanda, O. (2021). Efektivitas Rancangan UndangUndang Penghapusan Kekerasan Seksual Sebagai Hukum Positif Dalam Perspektif Viktimologi. *Jurnal Usm Law Review*, *4*(1), 117. https://doi.org/10.26623/julr.v4i1.2696

Annemieke Wolthuis, Jacques Claessen, G. J. S. and A. V. H. (2019). Dutch developments: restorative justice in legislation and in practice. *The International Journal of Restorative Justice*, *2*(1), 119.

Antasari, R. R. (2019). Telaah Terhadap Perkembangan Tipe Tatanan Hukum Di Indonesia Perspektif Pemikiran Nonet-Selznick Menuju Hukum Yang Berkeadilan. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, *19*(1), 103–118. https://doi.org/10.19109/nurani.v19i1.3344

Appludnopsanji, Hari Sutra Disemadi, N. S. P. J. (2021). Reformasi Sistem Peradilan Pidana Indonesia Berwawasan Pancasila. *Kertha Wicaksana*, *15*(1), 4. https://doi.org/https://doi.org/10.22225/kw.15.1.2021.1-10

Ariani Hasanah Soejoeti, V. S. (2020). Diskusi Keadilan Restoratif dalam Konteks Kekerasan Seksual di Kampus. *Deviance*, *4*(1), 67–83.

Aries, A. (2022). *Merdeka dengan KUHP Nasional*. nasional.kompas.com.

Aswandi, B., & Roisah, K. (2019). Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham). *Jurnal Pembangunan Hukum Indonesia*, *1*(1), 128. https://doi.org/10.14710/jphi.v1i1.128-145

Azza Fitrahul Faizah, M. R. H. (2022). Pelindungan Hukum Terhadap Korban Revenge Porn Sebagai Bentuk Kekerasan Berbasis Gender Online Ditinjau Dari Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual. *Jurnal Hukum Lex Generalis*, *3*(7), 523.

Bisariyadi, B. (2017). Menyibak Hak Konstitusional Yang Tersembunyi. *Jurnal Hukum Ius Quia Iustum*, *24*(4), 509–534. https://doi.org/10.20885/iustum.vol24.iss4.art1

Busroh, F. F. (2017). Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan. *Arena Hukum*, *10*(2), 227–250. https://doi.org/10.21776/ub.arenahukum.2017.01002.4

Elizabeth Siregar, Dessy Rakhmawaty, Z. A. S. (2020). Kekerasan Seksual Terhadap Perempuan Realitas dan Hukum. *Hukum Progresif*, *14*(1), 4.

Fabre, C. (2020). The Morality of Treason. *Law and Philosophy*, *39*(4), 427–461. https://doi.org/10.1007/s10982-020-09392-5

Fahamsyah, E., & Disantara, F. P. (2022). The Dignified Justice Perspective on the Enigma of Health Protocols COVID-19 as a Code of Ethics. *Jurnal Pembaharuan Hukum*, *9*(1), 1–15. https://doi.org/http://dx.doi.org/10.26532/jph.v9i1.17413

Fauzia, A., & Hamdani, F. (2021). Aktualisasi nilai-nilai pancasila dan konstitusi melalui pelokalan kebijakan Hak Asasi Manusia (HAM) di daerah. *Jurnal Indonesia Berdaya*, *2*(2), 157–166.

Fauzia, A., Hamdani, F., & Octavia, D. G. R. (2021). The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law. *Progressive Law Review*, *3*(1), 12–25. https://doi.org/10.36448/plr.v3i01.46

Hario Mahar, M. (2018). Fenomena Dalam Kekosongan Hukum. *RechtsVinding Online*, 2.

Hiariej, E. O. S. (2019). United Nations Convention Against Corruption dalam Sistem Hukum Indonesia. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, *31*(1), 112. https://doi.org/10.22146/jmh.43968

Hidayat, A., & Arifin, Z. (2019). Politik Hukum Legislasi Sebagai SocioEquilibrium Di Indonesia. *Jurnal Ius Constituendum*, *4*(2), 147–159. https://doi.org/10.26623/jic.v4i2.1654

Ilyasa, R. M. A. (2020). Prinsip Pembangunan Infrastruktur yang Berlandaskan HAM Terhadap Eksistensi Masyarakat Hukum Adat di Indonesia. *Sasi*, *26*(3), 380. https://doi.org/10.47268/sasi.v26i3.296

Irfani, N. (2020). Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum. *Jurnal Legislasi Indonesia*, *17*(3), 305. https://doi.org/10.54629/jli.v17i3.711

Ishak, D., & Seksual, K. (2020). Pelecehan Seksual Di Institusi Pendidikan : Sebuah Perspektif Kebijakan. *Ilmiah Nasional*, *2*(2), 136–144.

Kementerian PPPA. (2022). *KemenPPPA Dukung Implementasi Pencegahan dan Penanganan Kekerasan Seksual di Perguruan Tinggi*. www.kemenpppa.go.id.

Lathif, N. (2017). Teori Hukum Sebagai Sarana Alat untuk Memperbaharui Atau Merekayasa Masyarakat. *Palar | Pakuan Law Review*, *3*(1), 73–94. https://doi.org/10.33751/palar.v3i1.402

Marijan, K. (2019). *Sistem Politik Indonesia: Konsolidasi Demokrasi Pasca Orde Baru* (6th ed.). Kencana.

Menashe, D. (2018). A critical analysis of the online court. *University of Pennsylvania Journal of International Law*, *39*(4), 921–953.

Nasution, N. I. S. A. (2021). Politik Hukum Pidana Kekerasan Seksual Dalam Rkuhp. *Khazanah Multidisiplin*, *2*(1), 45–56. https://doi.org/10.15575/km.v2i1.11636

Nurisman, E. (2022). Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022. *Jurnal Pembangunan Hukum Indonesia*, *4*(2), 170–196.

Peter Mahmud Marzuki. (2017). *Penelitian Hukum* (13th ed.). Kencana.

Philippe Nonet, P. S. (2017). *Law and Society in Transition* (1st ed.). Routledge.

Prilani, P., & Hutomo, S. B. H. (2020). Konfigurasi Komunikasi Politik atas Fenomena Calon Tunggal Pada Pilkada Kabupaten Kediri Tahun 2020. *Jurnal Komunikasi*, *12*(2), 282. https://doi.org/10.24912/jk.v12i2.9624

Purwoleksono, D. E. (2016). *Hukum Pidana* (1st ed.). Airlangga University Press.

Riyan Ramdani, D. M. (2021). Urgensi Persidangan Secara Elektronik (E- Litigasi) Dalam Perspektif Hukum Acara Peradilan Agama Di Era Digitalisasi. *AlAhwal Al-Syakhsiyyah*, *2*(2), 220.

Saiya, A. J., Alfons, S. S., & Tita, H. M. Y. (2021). Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Cipta Kerja. *TATOHI: Jurnal Ilmu Hukum*, *1*(6), 619.

Setiaji, M. L., & Ibrahim, A. (2018). Kajian Hak Asasi Manusia Dalam Negara the Rule of Law : Antara Hukum Progresif Dan Hukum Positif. *Lex Scientia Law Review*, *2*(2), 123–138. https://doi.org/10.15294/lesrev.v2i2.27580

Suatmiati, S., & Kastro, E. (2020). Legal and Institutional Framework on Counter-Terrorism in Indonesia. *Jurnal Media Hukum*, *27*(1), 68–78. https://doi.org/10.18196/jmh.20200143

Suhariyanto, B. (2018). Problema Penyerapan Adat oleh Pengadilan dan Pengaruhnya bagi Pembaruan Hukum Pidana Nasional. *Mimbar Hukum* -

Fakultas Hukum Universitas Gadjah Mada, *30*(3), 421. https://doi.org/10.22146/jmh.33227

Suhariyati, S., Haryanto, J., & Probowati, R. (2020). Trends of Early Marriage in Developing Countries: A Systematic Review. *Jurnal Ners*, *14*(3), 277. https://doi.org/10.20473/jn.v14i3.17019

Suhartono, S. (2019). Hukum Positif Problematik Penerapan Dan Solusi Teoritiknya. *DiH: Jurnal Ilmu Hukum*, *15*(2), 201–211. https://doi.org/10.30996/dih.v15i2.2549

Sulaiman, K. F. (2021). Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012. *Jurnal Konstitusi*, *18*(1), 091. https://doi.org/10.31078/jk1815

Suprihatin Suprihatin, A. M. A. (2020). Pelecehan Seksual Pada Jurnalis Perempuan di Indonesia. *Palastren*, *13*(2), 413–434.

Suriadinata, V. (2019). Penyusunan Undang-Undang Di Bidang Investasi: Kajian Pembentukan Omnibus Law Di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, *4*(1), 115–132. https://doi.org/10.24246/jrh.2019.v4.i1.p115-132

Suswoto, S. (2018). Kajian Kritis Terhadap Teori Positivisme Hukum Dalam Mencari Keadilan Substantif. *Jurnal Ilmiah Ilmu Hukum QISTIE*, *11*(1), 108– 136.

Syaputra, D. (2018). Kewenangan Presiden, DPR dan DPD Dalam Pembentukan Undang-Undang di Republik Indonesia. *Jurnal Menara Ilmu*, *XII*(4), 29–38.

Tio, G., Adi, Y., & Setiawan, J. (2022). Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif. *Respublica*, *21*(2), 155–178.

Tomalili, R., & Ariadi, A. (2021). Implementasi Restorative Justice Dalam Perspektif Hukum Pidana Melalui Pendekatan Kearifan Lokal. *Akrab Juara*, *6*(4), 212.

Vatter, M. (2020). Dignity and the Foundation of Human Rights: Toward an Averroist Genealogy. *Politics and Religion*, *13*(2), 304–332. https://doi.org/10.1017/S1755048319000336

Voges, K. K., Palilingan, T. N., & Sumakul, T. F. (2022). Penegakan Hukum Kepada Pelaku Pelecehan Seksual Terhadap Perempuan Yang Dilakukan Secara Online. *Lex Crimen*, *11*(4), 3.

Wildan Nafis, N. R. (2020). Hukum Progresif dan Relevansinya Pada Penalaran Hukum di Indonesia. *El Ahli: Jurnal Hukum Keluarga Islam*, *1*(2), 1–16.

Yuantisya, M. (2022). *KPAI Ungkap Ada 12 Kasus Kekerasan Seksual Anak Sepanjang Januari-Juli 2022*. nasional.tempo.co.