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LEGAL PROTECTIONS FOR VICTIMS OF SEXUAL VIOLENCE AND THE RIGHTS OF VICTIMS

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Abstract

WHO has conducted surveys from 2000 to 2018, revealing that out of 161 countries, at least one in three women in the world has experienced physical and/or sexual violence. Additionally, The United Nations Entity for Gender Equality and the Empowerment of Women states that an estimated 35% of women worldwide have experienced physical and sexual violence. The issues addressed in this research are the specific regulations on sexual violence criminal acts in Law Number 12 of 2022 concerning the Sexual Violence Crime Law and the legal protection policy for victims of sexual violence. This research adopts a normative juridical approach, utilizing a literature review as well as secondary data analysis with a statute approach. The research findings indicate that the specific regulations in Sexual Violence Crime Law can be classified based on their definitions, types, evidence arrangements, victim rights, and criminal sanctions. The victim rights encompass the right to assistance, restitution, and compensation, the right to temporary protection, the right not to appear at trial, and the rights related to handling, protection, recovery, and rights for the family of victims of sexual violence criminal. The new regulations and provisions in Sexual Violence Crime Law have introduced many new innovations, particularly in legal protection policies that are oriented towards the rights of victims. However, some aspects still need to be considered to ensure the effective implementation of these regulations. It is necessary to promptly establish further implementing regulations regarding granting victims' rights.

Keywords: *Criminal policy; sexual violence; victims.*

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Introduction

WHO has conducted surveys from 2000 to 2018, revealing that out of 161 countries, at least one in three women in the world has experienced physical and/or sexual violence (Tarigan et al., 2022). Additionally, The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) states that an estimated 35% of women worldwide have experienced physical and sexual violence (Shabrina, 2018). According to the National Commission on Violence Against Women (Komnas Perempuan) in the Annual Report (CATAHU) 2020, from 2008 to 2019 or within 12 (twelve) years, violence against women in Indonesia has increased by 792% (seven hundred ninety-two percent) (Komnas Perempuan, 2022). The CATAHU report by

the Komnas Perempuan in 2020 also indicates that cases of violence against women in public and community settings are predominantly dominated by sexual violence.

Victims are not limited to women only but also come from various backgrounds, including men, children, and even the elderly. Such violence can occur in various settings, such as schools, workplaces, and even within families (Eliza Anggoman, 2019). Victims are not always women but also men, the elderly, and even children. This is due to aspects of the victim in the victim's personality dimension, such as the victim provoking the perpetrator or the victim being easily deceived by the perpetrator's manipulation. Violence, but men, children, and the elderly can be victims of sexual violence.

The legal system in Indonesia is still oriented toward the perpetrators and the burden of proof rather than legal protection for the victims. The current legal regulations in Indonesia are insufficient to address the issue of sexual violence, particularly in terms of protecting the rights of the victims. Until now, the protection of victims of violent crimes is partially regulated in Law No. 23 of 2004 for victims of domestic violence, Law No. 17 of 2016 on the Establishment of Government Regulation instead of Law No. 1 of 2016 concerning the Protection of Children becoming law for victims of violence against children, and generally covered in Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, but specific legal protection for victims of sexual violence has not been explicitly addressed.

Several articles have reviewed the issue of legal protection for victims of sexual violence. First, Paradiaz and Soponyono (2022), in this article discuss law enforcement against criminal acts of sexual violence, legal protection efforts for victims of sexual violence in Indonesian criminal law, proving cases of sexual violence, and the urgency of the Draft Sexual Violence Crime Law. Second, Wadjo and Saimima (2020), in this article discuss legal protection efforts for victims of sexual violence in the context of realizing restorative justice, where restorative justice in legal protection for victims of sexual violence should be restored concerning the losses suffered by the victim and the losses borne by society and the importance of implementing restorative justice in resolving criminal acts of sexual violence. Third, Agustini et al. (2021), in this article discuss legal protection efforts for victims of sexual violence in a study of Indonesian criminal law policy and Islamic criminal law, where the concept of legal protection for victims of sexual violence is Indonesian criminal law policy and how the law reviews Islamic criminal law regarding crimes of sexual violence. This article differs from the preceding one in that it addresses the specific laws on crimes involving sexual violence, as well as

the legal protections for victims of such crimes and the ways in which Sexual Violence Crime Law governs victim rights.

Research Problems

Based on the introduction, this research will focus on discussing:

1. What are the specific regulations on victims of sexual violence and the rights of victims in the Sexual Violence Crimes Law?
2. How is the policy of protection towards victims of sexual violence crimes in the Sexual Violence Crimes Law?

Research Methods

The research used in this study is descriptive in this context, aimed at providing a comprehensive portrayal of a particular condition or issue under research. This research uses a normative legal research method, part of the doctrinal research typology. The research approach used is a conceptual and statutory approach. The legal regulations used the Sexual Violence Crimes Act as data. Sexual Violence Crimes Law is used in this data to determine the legal protection policy for victims of sexual violence and what rights this law provides to victims of sexual violence and then analyzed based on the research problem. The results of this research can find out and conclude to what extent this law can provide protection policies to victims of sexual violence and what rights are provided by this law to victims of sexual violence.

Discussion

1. Special regulation of sexual violence crimes in Sexual Violence Crimes Law

The background to the enactment of the Sexual Violence Crimes Law is to protect the rights of citizens, especially those relating to sexual violence issues. The regulation is in accordance with its mission of protection and prevention and as part of government efforts to provide justice to the victims (Mahabbati & Sari, 2019). As for the existence of this law, it will be the primary and first special regulation in tackling the criminal act of sexual violence, as well as a complement to laws and the regulations that have previously regulated the substance of sexual violence crimes (Nurisman, 2022). This regulation provides not only a form of prevention of sexual abuse from occurring but also, with new innovations, it seeks to prevent the same behavior from occurring again in the future. It is also a legal reform to overcome and/or improve previous forms of regulation that have not solved the problem. On

April 12, 2022, the Draft Sexual Violence Crimes Law was passed into law in the Plenary Session of the House of Representatives of the Republic of Indonesia. The legality of the Sexual Violence Crimes Act has an essential meaning in strengthening regulations regarding the treatment and responsibility of the state to prevent and handle cases of sexual violence and comprehensively recover victims (Nurisman, 2022). The existence of this regulation as a policy is the initial stage or formulating phase of the whole implementation phase of criminal law policy. Barda Nawawi Arief proposed that this stage is a policy in setting and formulating in the legislation process, so often legislative policy is called formulative policy (Arief, 2008). The concept of the formulation phase basically attempts to explain that the prevention and countermeasure of crime are also the duties of law enforcement authorities, so formulative policy is considered the most effective (Arief, 2018).

The definition of sexual violence was explicitly regulated in Law No. 12 of 2022. In other words, regulations related to sexual violence before the enactment of this policy did not provide a specific definition of sexual violence. However, they merely mentioned sexual violence as one form of criminal act. Therefore, the law enforcement process would be challenging if the formulation of sexual violence itself remains unclear. Sexual violence is a violation of human rights, a crime against human dignity, and a form of discrimination that must be eliminated (Wirawan & Permatasari, 2022). Referring to Article 1 number 1 Sexual Violence Crimes Law, Sexual Violence Crimes are all acts that fulfill the elements of a criminal act as regulated in this Law and other acts of sexual violence as regulated in the Law as long as they are not specified in this Law (Nurisman, 2022). In the Academic Text of Sexual Violence Crimes Law, the definition of sexual violence had three types of sexual violence that were found to be norms in existing laws and regulations, namely: rape, sexual exploitation, and human trafficking, although it was not specifically stated for sexual purposes. However, the legal regulations for these three forms of sexual violence are still very limited compared to the facts about the types of sexual violence that have been identified.

Rules regarding the types of sexual violence are scattered across various regulations in Indonesia, such as in the Indonesian Penal Code (KUHP) Article 285 and Article 289; the 2023 KUHP in Article 407, Article 408, Article 411, Article 414, and Article 473. Although they have been regulated in the Criminal Code, the types of sexual violence are still very limited in scope. Formulation of types in the National Criminal Code (2023) is also very limited, such as covering pornography, adultery, indecent acts, providing abortion or pregnancy termination devices, and rape. Although the National Criminal Code can be considered more comprehensive, the formulation of its types is still limited compared to what happens in reality. Forced marriage is one of the crimes that has just been criminalized in Indonesia. Previously, forced marriages always took cover behind customary law and the power of parents over children. Sexual Violence Criminal Law then defines *forced marriage*

as a crime of sexual violence. However, preventing the practice of coercive sexual violence must be in line with the community mindset and customary laws that have been maintained so far (Bunga et al., 2022).

There is an uprising urgency to establish clear and comprehensive regulation on sexual violence as a distinct criminal offense with a broader scope. After the Sexual Violence Crime Law was issued, there were nine types of sexual violence crimes, consisting of non-physical sexual harassment, physical, sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Apart from these nine types, sexual violence crimes also include rape; obscene acts; sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children; an act of violating decency that goes against the will of the victim; pornography involving children or pornography that explicitly contains violence and sexual exploitation; forced prostitution; the crime of trafficking in persons aimed at sexual exploitation; sexual violence in the domestic sphere; the crime of money laundering, the original crime of which is the crime of sexual violence; and other criminal acts which are expressly declared as crimes of sexual violence as regulated in the provisions of the laws and regulations (Nurisman, 2022). The provisions regarding these forms of sexual violence can be seen more widely and accommodate various types of sexual violence such as sex trafficking, non-physical sexual abuse, sexual violence/electronically-based sexual content, as well as sexual coercion in forms of psychological coercion such as the compulsion of sterilization.

The Sexual Violence Law regulates evidentiary rules relating to testimonies and letters differently, expanding the standard of evidentiary material to reduce the burden on victims and law enforcement. Witness testimony, according to Article 24, paragraph 2, is expanded in its construction to include the results of an examination of Witnesses and Victims at the investigation stage through electronic recording. The letter in the same article is also expanded to include letters from health professionals (doctors, psychologists, psychiatrists), medical records, forensic examinations, and bank accounts. Victims may be questioned outside the court through audio-visual recording ; this situation considers many things, such as security risks for victims, Advice from the Witness and Victim Protection Agency (LPSK), geography, and the number of witnesses. These considerations are stated in Articles 48 Clause (1) and (2) and in Article 49 Clause (5). The examination process outside the court is very effective if adapted to technological and technological developments. In recent years, cases of both direct and electronic violence, including *revenge porn, have* often *gone viral* and social media (Herisasono et al., 2023). Due to this, out-of-court examination through recording tools or audio-visual can greatly help victims avoid the widely enhanced information regarding their identity, as well as protect the victims and their families.

The Sexual Violence Crime Law formulates the rights of victims in full, including the rights given to the families of victims and victims of re-victimization. The rights of victims are regulated explicitly in the SPPA Law, including assistance to victims at all levels of examination (Article 26), restitution-compensation (Article 35), the right to be accompanied (Article 68); the right to protection from threats and intimidating attitudes of law enforcement officials (Article 69); the right to recovery before and after trial (Article 70), and the right for the victim's family to suffer losses (Article 71). The revised victims' rights paradigm reflects a shift in the focus of law enforcement from punishment alone to victim and family rehabilitation.(Angkasa et al., 2021) The new rights for victims in the regulation also reflect the fulfillment of the government's responsibility and commitment to respond to the dangers of sexual violence.(Iskandar et al., 2021) Thus, the position of victims in the Indonesian criminal justice system has been improved, and the comprehensiveness of rights is prioritized over the role of victims in the trial.

The criminal penalties outlined in Articles 5 to 18 inflict punishment (shame) in response to the offender's actions. Changing the punitive nature of personal vengeance into community retribution gives rise to the concept of retributive justice (Herisasono et al., 2023). In other words, retributive justice is a smoothing of primitive norms that emphasize retaliation for an injury of a biological nature. Retributive justice explains the question of the extent to which crime should be given to criminals, especially sexual violence crimes. The crime will satisfy the feelings of revenge of the victim, friends, and family of the victims; these feelings cannot be avoided. Punishment is intended to warn criminals and other members of society that any threat that harms others or gains advantage of others unreasonably will receive punishment for their actions. Based on these discussions, it can be seen that the Sexual Violence Crime Law has a combination of penal and non-penal policies. Penal facilities are used to deal with sexual violence crimes. That is, the types of violent crimes and several acts that fall under sexual violence crimes have been criminalized (Nurisman, 2022). Criminalization is the act or determination of the authorities regarding specific actions that the community or groups of society consider as an act that can be punished into a criminal act or make an act a criminal act (Prasetyo, 2020). As mentioned before, the criminalization of the 9 (nine) forms of sexual violence is a new breakthrough to fill the void of criminal law to overcome the problem of sexual violence.

2. Policy of legal protection of sexual assault victims in Sexual Violence Crime Law

The substance of victim protection is regulated in the Criminal Procedural Code (1981) in articles 98 to 101 relating to the merger of criminal matters with civil matters through the facilitation of claims for damages from the Prosecutor. Legal developments in Indonesia realized these provisions were insufficient, so the

President and Legislative Council approved the Witness and Victim Protection Act in 2006 and revised it in 2014 with the paradigm of recognizing and protecting victims' rights (Putri, 2021). This protection effort is guaranteed by the establishment of the Witness and Victim Protection Institution (LPSK). The testimony of witnesses and victims is the key to obtaining material truth in the criminal justice system (Kristanto & Kristiyadi, 2023). It shows that the development of criminal law in Indonesia is experiencing a new paradigm, bringing about a restorative paradigm to remove the retributive paradigm.

A person who experiences sexual violence can experience many negative impacts that affect their life, even causing trauma. One of the traumas that can occur in someone who has experienced sexual violence is Post-Traumatic Stress Disorder (PTSD). This can cause the person to experience fear, anger, guilt, anxiety, and even sadness (Ramadhani & Nurwati, 2023). The stigma that circulates in society is also challenging to eliminate, so people feel embarrassed and try to avoid it socially. So, legal protection is needed for victims of sexual violence to eliminate the trauma felt by the victims (Rohmy et al., 2022). Legal protection is created as a crucial matter for the victims of criminal acts as a consequence of the suffering they have endured (Hendriana, 2016). The purpose of formulating a policy is not only for preventive protection but also for repressive protection when a criminal offense has occurred. Repressive protection, as explained by Barda Nawawi Arief, is provided to victims who have suffered in order to obtain legal guarantees and remedies, such as restitution, compensation, rehabilitation of their reputation, and other forms of redress for the suffering or losses they have experienced (Arief, 2018).

Restitution and compensation have not been facilitated by the Witness and Victim Protection Law (2014) because of the lack of synchronization of regulations with KUHAP (1981) and the Human Trafficking Crime Law (2007) (Najemi, 2021). This leads to an incomplete regulation of reimbursement and compensation and results in legal protection for victims being only repressive by reporting the perpetrator through punishment. Protection for victims of sexual violence is regulated only for children, regulated in Sections 67B and 69A of the Child Protection Law (2014). The design of protection for children who are victims of sexual offenses in the revision of the Children's Protection Law in 2014 is to facilitate rehabilitation efforts, protect identity from reporting through the mass media, and provide security guarantees for children. (Saputra & Rado, 2023). Thus, guaranteeing the right to protect victims has not yet become a commitment to the national legal policy framework.

The rehabilitation of victims of sexual violence is comprehensively carried out in the medical, psychosocial, and psychological spheres. These three rehabilitation areas are responsible for the LPSK under the Witness and Victim Protection Act

(2014) to avoid prolonged trauma to the victims (Kevin et al., 2022). The potential for repeated victimization of victims, victim families, and witnesses during or after the trial can be prevented by such rehabilitation. Rehabilitation functions to restore the status of a victim of sexual violence that is generally a woman, to be able to make decisions in her life and to re-exercise her role in society as a woman and a member of society (Surayda, 2017). The Sexual Violence Crime Law is being introduced to ensure that the rehabilitation of victims of sexual violence is not limited only to children but also to adult women or other specific victims.

The impacts experienced by victims of abuse or sexual violence can include emotional instability, increased tendency to be more withdrawn than usual, isolation, depression, anxiety, fear, severe trauma, frequent daydreaming, feeling ashamed and inferior in the presence of others, feeling humiliated, and loss of selfconfidence (Qurotul Ahyun et al., 2022). Moreover, the trauma experienced by the victims can affect their self-perception and general outlook, rendering it unhealthy or abnormal (Widiastuti, 2016). Given the compromised condition of the victims, they may face scrutiny during court testimony, being cornered or accused of lying if they forget details. Hence, the presence of an escort is crucial so that the victim does not bear his problems and can recover quickly (Oktaviani & Azeharie, 2020). However, there are still some obstacles to implementing this policy, such as the establishment of a new institution called the Integrated Service Center as mandated by Article 83 of the Sexual Violence Crime Law, which requires funding from both the State Budget (APBN) and Regional Budgets (APBD). Therefore, the necessary funding and preparation for law enforcement agencies, which will have more complex tasks, can pose challenges in implementing the Sexual Violence Crime Law (Angkasa et al., 2021).

Victims are entitled to restitution for all losses they have suffered, both losses related to loss of property and income and other suffering, including medical and/or psychological costs, as per Article 30 of the Sexual Violence Crime Law. The emergence of victims is considered a failure of the state to protect its citizens; therefore, the state is responsible for providing the right to restitution and compensation (Frananta, 2019). The opportunity for victims to access compensation and restitution in various laws and regulations depends on the perpetrator's punishment. The availability of imprisonment as a subsidiary instrument results in perpetrators not committing to restitution and compensation (Ali et al., 2022). This weakness is corrected in Article 33 of the Sexual Violence Crime Law, which states that the offender's obligation to pay restitution and compensation is valid for 30 days from receiving a copy of the court decision; otherwise, the court will order the prosecutor to auction the offender's assets, and failure of the auction due to the unavailability of new assets results in the subsidiary instrument (imprisonment) being applied. Thus, the regulation of restitution and compensation in the Sexual

Violence Crime Law not only recognizes that victims have access to both but also stipulates that the state is responsible for providing them.

Several new rights for victims to obtain protection have been introduced in the Sexual Violence Crime Law. First, regarding the right to temporary protection in Article 42, the police, for the first 14 days, protect the victim from meeting the perpetrator. This right is imposed on the police because it initiates the criminal justice system (Yulia et al., 2019). Victims must be protected from meeting the perpetrator, especially for children in whom the perpetrator carefully treats his victims by systematically separating them from their family and peers and then redefining the coercion or deception of sexual intercourse as a feeling of love (Lawson, 2003). Second, the right to be forgotten through removing sexual content in electronic media (including the Internet) in Article 68, letter g. This right serves to protect victims from the dissemination of sexual content in electronic media (including the Internet). This right serves to protect victims from the dissemination of lasting memories caused by Internet content by the perpetrator (Maietta, 2020), which is also one of the hallmarks of privacy regulation on the Internet (Azurmendi et al., 2022). The right to be forgotten is a way to give individuals back control over their personal data and initiate a consent regime in disseminating Internet content, as long as it is unrelated to the public interest (Ausloos, 2012). Third, the right not to be prosecuted by the perpetrator for the crime report submitted as Article 69 letter g. This right is based on the realization that the experiences of the perpetrators of a crime are not the same. This right is based on the realization that the experience in the courtroom (including giving testimony to the police) is frightening for most people; they do not really understand the consequences of their testimony and fear not being trusted by law enforcement(Yang et al., 2009). These three rights have shown that the Sexual Violence Crime Law has provided comprehensive legal protection for victims as long as the government, through its apparatus, is committed to this regulation.

The formulation of victims' rights in the Sexual Violence Crime Law is in line with the rights of victims, as regulated in Article 71. In principle, the rights of victims' families are the same as those of victims, except for two specific matters. The first is the right to custody of the victim's child unless the right is revoked through a court decision. Second, victims' families need the right to obtain civil registration documents and other supporting documents. Families, in the understanding of Indonesian law, are people who have blood relations in a straight line up or down and sideways lines up to the third degree, people who have a marital relationship, or people who are dependent on witnesses or victims (Tajuddin & Tarsan, 2019). For victims, family existence is a place of mutual strengthening and natural solidarity to respond to crimes that occur; the victim's family is also directly affected by the suffering experienced by the victim(Yudistira & Husodo, 2022). The

presence of victims is particularly important when sexual crimes are committed against children, as they are often not considered legal subjects and cannot express a position on what type of assistance and care is best during the reintegration process (Querol & Lerner, 2021). Focusing on harm, families (especially parents) also experience the unpleasantness of the crime. Families live isolated or socially alienated lives and are potentially behaviorally, cognitively, and emotionally impaired, as the right to live with dignity is undermined by perpetrators of sexual violence (Goswami et al., 2023). As a new right, the rights of victims' families experience the same initial phase as the rights of victims, and the Sexual Violence Crime Law does not formulate in detail how the rights of victims' families are accommodated.

Conclusion

The Sexual Violence Crimes Law (2022) is a comprehensive criminal law policy reform that responds to uncontrolled sexual crimes. This law accommodates various forms of sexual violence that were not previously formulated, sending a message to society to stop the practice of violence, deception, and intimidation in all aspects of sexuality. Women and children are vulnerable to sexual violence and receive greater attention in Indonesia's criminal justice system through provisions for restitution, compensation, rehabilitation, and case examination. The scope of protection is extended to victims and their families, responding to the social fact that those who suffer and bear shame include those closest to the victim. Through the Sexual Violence Crimes Law, victims become the center of the orientation of the criminal justice system, and the orientation of the system does not just leave the punishment of the perpetrator alone and accommodates the role of the victim but also facilitates victims to continue their lives as human beings who have protected honor.

The formulation of victims' rights in The Sexual Violence Crimes Law has responded to the shortcomings of previous regulations such as the Criminal Procedure Code and the Law on Witness and Victim Protection. Commitment to implementing this regulation is next needed for victims and their families. In particular, updates to the KUHAP are needed for restitution and compensation because this regulation is the legal umbrella and is recognized by all law enforcement officials. The Government Regulation then needs to be formulated as an implementing provision so that the execution of restitution, compensation, or other rights can be possible and not constrained by technical regulations. This article has limitations in the data and approach that focuses on normative research/library research, although using the latest regulations (2022), the article has not answered how the commitment of law enforcement responds to the rights

and protection efforts for victims of sexual violence such as auctions of the perpetrator's assets, the perpetrator's counterclaim to the victim, and the availability of rehabilitation facilities for victims.

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