



Legal Protection Of Victims Of Sexual Violence At University

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ABSTRACT

The Higher Education Community is again under serious public scrutiny. This institution is for educated intellectuals to conduct scientific activities from various disciplines to moral and behavioral issues. Thus the public will always feel reassured if their children are entrusted to a higher education institution to gain knowledge according to their interests. However, various cases of sexual violence have turned out to be issues that have attracted public attention because, so far, this issue has never been openly exposed to the surface because it is considered just an issue. However, when a case of sexual violence occurred in a university on the island of Sumatra, committed by a lecturer who is also the highest ranking official in a faculty, various similar cases appeared in various educational institutions in the country. In this case, prosecution by means of criminal law cannot be avoided because positive law has regulated it clearly. Even the government, for that matter Ministry of Education, Culture, Research, and Technology, has responded seriously with the issuance of Regulations of the Minister Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment. This policy is a thoughtful, responsive action by the government because it turns out that this problem has become an iceberg phenomenon, which needs to be prevented and handled optimally to guarantee legal protection and legal certainty for all communities in the environment. College Tall. In this context, it is emphasized that sexual violence in tertiary institutions is a form of criminal action and behaviour closely related to using opportunities behind academic systems and processes within the campus environment. To answer these problems, this study uses normative legal research methods with statutory approaches (statute approach), conceptual approach (conceptual approach) and case approach (case approach). This study aims to unravel how the system in the campus environment becomes conducive, especially for students or women on campus who have a safe space and guaranteed freedom in activities and interactions following ministry policies in administrative and academic processes to close reproaches or opportunities for sexual violence to occur. This study concludes that it is essential Regulation of the Minister of Education, Culture, Research and Technology (*permendiknas ristek*) No. 30 of 2021 concerning the prevention and handling of sexual violence in Higher Education must be implemented concretely in the field to the maximum according to the mechanism so that the campus with its system can provide protection and security guarantees personal as well as its dignity.

Keywords: Legal Protection, Sexual Violence, Higher Education

INTRODUCTION

Sexual violence in tertiary institutions is an interesting phenomenon because it was revealed that this incident occurred on campus and was not carried out by an ordinary lecturer. However, the perpetrator was a high-ranking faculty official against students under his guidance at one of the government-owned universities. This event quickly went viral through social media, and almost all national television spread the news. This case suddenly tarnished the morale of all educational institutions in the country. Why not? Because it turns out that sexual violence in college takes many forms, and its manifestation (*modus*), ranging from forms of harassment to immoral acts (sexual intercourse), is suspected to occur in universities. Even though what appears to be legally being processed is a new case at a university on the island of Sumatra, cases of sexual violence in tertiary institutions are like an iceberg. This is indicated by the

response to the sexual violence case by the government, in this case, the Ministry of Education, Culture, Research, and Technology through the issuance Ministry of Education, Culture, Research, and Technology RI No 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education Environment [1].

Based on Article 1 Ministry of Education, Culture, Research, and Technology RI No 30 of 2021, "sexual violence is any act of humiliating, humiliating, harassing, and/or attacking a person's body, and/or reproductive function, due to an imbalance of power and/or gender relations, which results in or can result in psychological and/or physical suffering including ones bother one's reproductive health and lost the opportunity to carry out higher education safely and optimally" [1]. Often a person can do anything to fulfill their needs, even if it violates the human rights and interests of others. These needs can be recognition, wealth, or sexuality; when a person's rights are violated, a conflict begins; in fact, both social media and electronic media always talk about a conflict, even crime, so such a thing is not foreign. The problem of sexual harassment is a comprehensive and complex issue of gender reaction which concerns aspects of human life such as morals, religion, faith and others. Harassment is often perceived as deviant behavior because the act forces a person to engage in a sexual relationship or establishes a person as an object of unwanted attention (Rohan Collier, 1998: 4) [2].

The Ministry of Women's Empowerment and Child Protection (KPPPA) and the Central Statistics Agency (BPS) 2017 released the results survey, which stated that at least one in three women had experienced physical or sexual violence during their lifetime (Februanti & Kartilah, 2019) [3]. In Pariniti and Wiryawan (2020), National Commission on Violence against Women stated that in 2019 there was a 14% increase in violence against women, 406 out of 178 cases [4]. In the context of women and girls in particular conditions, in this case, women/girls with disabilities, women/girls with HIV/AIDS and women/girls of sexual minorities, as well as women human rights defenders, the dominant form of violence experienced is sexual violence. Abdul Wahid and Muhammad Irfan (2021), in Purwanti and Hardiyanti's research (2018), state that sexual violence refers to actions that can be categorized as sexual relations and behaviour that are not reasonable, causing severe harm and consequences for the victims [5]. Sexual violence itself can be in the act of rape or obscenity. Furthermore, the results of Ivo Noviana's research (2019), cited by Nashriyah, Alfiatunnur and Hermawan (2021), explain that sexual violence against children includes acts of all-encompassing or kissing a child's sexual organs, sexual acts or rape of children, showing pornographic media/objects, showing genitals in children and so on [6]. As a result, acts of sexual violence can have various impacts or influences, especially psychologically. These impacts include victims of sexual abuse will experience bitter post-trauma. Sexual abuse can change a child's personality one hundred and eighty degrees, from cheerful to gloomy, energetic to lethargic and loss of enthusiasm for life (S.Romauli & Vindari, A, V, 2012: 96) [7].

This means that sexual violence, such as sexual harassment, can be indecent behaviour, such as touching vital body parts, or it can only be in the form of words or statements that seem indecent [8] even though the person who is the target of the touch or the object of the touch disagrees. Even more sensitive again are acts of sexual harassment as contained in the Ministry of Education, Culture, Research, and Technology No. 30 of 2021. However, it is pretty broad, from flirting, pinching, poking or touching certain body parts to having sexual relations or rape [1]. These things can be subject to sanctions because a legal event can be declared criminal if it fulfills its elements (Abdoel Djamali, 2014, p. 175) [9]. In everyday life, many women experience sexual violence, especially rape; women cannot do much to avoid it and are forced to let it happen [10]. The existence of violence against women shows that the position of women is still considered not equal to men. Sadli in Porter (2003) states that women are still placed in a position of marginalization [11].

Therefore it is very relevant to respond to the phenomenon of sexual violence that occurs in the campus environment Ministry of Education, Culture, Research, and Technology No. 30 of 2001 instrument laws to protect the rights of individual communities related to programs to protect women from acts of violence (Niken Savitri and Gunarsa Aep, 2008: 48-490) [12]. That is why

all actions related to crimes against women are included in acts of violence that receive attention in criminal law [13].

Although there have been various regulations in Indonesia that explain criminal acts related to sexual violence, all of these laws and regulations have not provided a specific understanding regarding criminal acts related to sexual violence. These laws and regulations include the Criminal Code or Criminal Code regarding crimes against decency, sexual crimes in Law Number 23 of 2004 concerning eliminating domestic violence and Law Number 44 of 2008 concerning Pornography and so on.

RESEARCH METHODS

The type of research used in this research is legal research normative or library law research. Legal research normative or library law research (library research) is done by examining secondary data or library materials (Soerjono Soekanto dan Sri Mamudji, 1995: 13-14) [14]. Legal research normative examines the law conceptualized as a norm or rule that applies [15]. The applicable legal norms are written legal norms formed by statutory institutions (constitutional laws, codifications, statutes, government regulations, presidential regulations, etc.). So the juridical method normative will be used if what is to be studied is the juridical aspect and simultaneously the value content of the rule of law (Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, 2010: 227-228) [16]. Meanwhile, the approach used in this study is the statutory approach, which is carried out by examining all laws and regulations related to the issue under study. Then the concept approach is carried out by departing from the views and doctrines in the science of law; researchers will find ideas that give birth to legal notions, legal concepts, and legal principles related to issues studied (Peter Mahmud Marzuki, 2011: 93, 95) [17].

RESULTS AND DISCUSSION

One of the reasons behind the issuance of the Regulation of the Ministry of Education, Culture, Research, and Technology Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education Environments is because various provisions governing the protection of victims of sexual violence are seen as not being adequate to prevent tendencies to act of sexual violence. Legal instruments related to the protection of victims of sexual violence have not been able to provide a solid and comprehensive legal umbrella [18]. Therefore, until now, no legislation specifically regulates sexual violence in tertiary institutions. Later, after the case of sexual violence that occurred in one of the tertiary institutions on the island of Sumatra was exposed to the surface (public), the problem of violence, even sexual became a legal issue that must receive special and serious attention because it occurred on campus and has tarnished the good name of higher education institutions, the government through the Ministry of Education, Culture, Research, and Technology issued Ministry of Education, Culture, Research, and Technology The number 30 of 2021. However, it is known that there are several laws and regulations in Indonesia that regulate and provide special protection for women and children.

Alleged cases of sexual violence that occurred at a university in Sumatra South is, a case that received public scrutiny and went viral massively because it was suspected that the perpetrators were the highest-ranking officials in the faculty. Alimatul Qibtiyah, National Commission on Violence against Women in Sitorus (2019), said cases of violence and sexual harassment in tertiary institutions were like an iceberg phenomenon [19]. The Ministry of Education and Culture 2020 conducted a survey, and the results showed that 77% of the surveyed lecturers stated that sexual violence had occurred on campus. However, 63% did not report the incident because they were worried about the negative stigma attached to society survivors [20]. National Commission on Violence against Women also said that one of the reasons why victims were reluctant to report acts of sexual harassment they experienced was because no policy on campus could guarantee that perpetrators would not repeat their actions. There was no legal certainty regarding the recovery of the trauma experienced by victims. The victim's reason for preferring to remain silent is exacerbated by the power relations that the perpetrators have, for example, from unscrupulous lecturers to campus seniors. As for goals and rules, this ministry is to fill the legal vacuum and protect victims of sexual violence in the campus environment [21]. The data is interesting enough to be explored further; from January to October 2021, National Commission

on Violence against Women received 4,500 complaints of violence against women [22]. A figure that shows a two-fold increase in cases compared to 2020.

Suppose one observes more broadly the spectrum of sexual violence in the campus environment. In that case, some values have formed a wrong culture due to traditions and culture related to the campus system. "Campus tradition and culture" conditions the system in administrative and academic processes where students and lecturers, with their obligations and authorities, are given flexibility in the consultation process even though the students are always subordinated. This is in line with what was said by Mansour Fakih (2016: 23) that women are often seconded by tradition and culture to enjoy their rights and always impact disadvantaged positions [23]. The direct face-to-face consultation system is still widely practiced in a few colleges. This condition can be a space and opportunity that specific individuals with low morality can exploit. The arrangement of the system on campus in the context of anticipating and preventing sexual violence did not have a positive legal umbrella foundation for overcoming sexual violence that occurs internally on campus. The campus authorities will certainly and convincingly be able to act proportionally if they are legally protected and guaranteed to act. Therefore, with discharge Ministry of Education, Culture, Research, and Technology No. 30 of 2021 can control potential tendencies to manifest abnormal sexual impulses because there are norms and anticipatory signs that can guarantee conduciveness in academic and non-academic processes on campus.

Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning Prevention and Handling Violence Sexual violence in tertiary institutions is felt to be very necessary because it is very urgent, judging from the tendency for acts of sexual violence in general, the escalation shows an increase and the frequency increases. Therefore it is the state's responsibility to be present to provide guarantees of protection and personal freedom for the honor and dignity of each citizen and also against forms of torture or treatment that can degrade their degree and dignity. Pasaribu, Tendean, and Situmorang (2022), in their article entitled "Reflection on Ministry of Education, Culture, Research, and Technology No. 30 of 2021 About Prevention and Treatment and Sexual Violence", mention that Ministry of Education, Culture, Research, and Technology No. 30 of 2021 is an important matter that must be responded positively by all universities, both public and private, in Indonesia without exception [24].

There are indeed several regulations which regulate the imposition of criminal sanctions against perpetrators of sexual violence had been regulated before publication Ministry of Education, Culture, Research, and Technology. These various laws include the Criminal Code (KUHP), Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (Domestic Violence Act), Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which provides various forms of legal protection relating to the issue of protecting children against acts of sexual violence, Law Number 39 of 1999 concerning Human Rights, and Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

According to Anastasia Hana Sitompul (2015), the Criminal Code (KUHP) regulates acts of violence through its articles, including those in Chapters concerning crimes against decency, crimes against life, persecution and death or injuries due to negligence. Several articles in the Criminal Code for crimes of violence regulate the protection of victims of violence, both male and female, namely types of violence that result in physical injury. For violence whose victims are female, it can be found in forms of sexual violence regulated in Articles 285, 286, 287, 288, and 297. These articles are under Chapter XIV of the Criminal Code concerning crimes against decency (Anastasia Hana Sitompul, 2015: 48) [25]. Meanwhile, according to Niken Savitri and Gunarsa Aep (2008), regulation of the internal violence crimes criminal Code seems intended to regulate a person's decency and not protect women who are victims of these crimes. The term used is a crime against decency. However, decency focuses on regulating morality and modesty, not women's protection. A crime against decency focuses on where the crime occurred, namely the public space (Niken Savitri and Gunarsa Aep, 2008: 5) [12].

Therefore still, according to Anastasia Hana Sitompul (2015), the form of legal protection provided by the Criminal Code for children against sexual violence is criminal responsibility for the perpetrator, not responsible for the loss/suffering of the victim directly and concretely, but more focused on accountability that is private/individual. (Anastasia Hana, 2015: 48) [25]. What has been stated above is very reasonable because the various provisions governing protection against sexual violence are felt insufficient, or even understanding violence sexually explained. The scope is clear, and the definition of sexual violence is also not comprehensive. Regarding the scope and definition of sexual violence from various laws, as previously mentioned, we cannot find a precise formulation of what constitutes sexual violence. This is understandable because of the dynamics of the development of the times and the emergence of new civilizations, which, of course, have social impacts and consequences even to the legal consequences of excess hostile a new civilization, which at the time, the law was made could not yet predict concrete phenomena that would come. On the other hand, legal instruments related to the protection of victims of sexual violence have not been able to provide a comprehensive legal umbrella. The issue of sexual violence has become a severe legal issue-apprehensive should quickly and seriously get attention and handling or prevention by the state.

When we listen Ministry of Education, Culture, Research, and Technology Number 30 of 2021, especially Article 2, there we will find a legal basis for Higher Education which states 1) As a guideline for Higher Education to develop policies and take action to prevent and deal with sexual violence related to the implementation of the Tridharma on or off campus; and 2) to foster a humane, dignified, equal, inclusive, collaborative and non-violent campus life among students, educators, academic staff, and campus residents in tertiary institutions [1].

Universities, as a vehicle for educated people, are not spared from immoral acts, starkly contrasting their predicate as educated people/scholars. Cases of sexual violence that have only been revealed in the public sphere and other institutions show that this phenomenon is sticking out in tertiary institutions. So far, universities have been far from assuming this could happen. Sexual violence in universities is like an iceberg phenomenon. Matter this was emphasized by Alimatul Qibtiyah, National Commission on Violence against Women, who said cases of violence and sexual harassment in tertiary institutions were like an iceberg phenomenon. The Ministry of Education and Culture independently conducted a survey in 2020, conveying that as many as 77% of lecturers surveyed stated that sexual violence had occurred on campus. However, 63% did not report due to fear of negative stigma, which will be pinned on survivors [20].

According to Bahder Johan Nasution (2013), the lack of a legal umbrella available is not comparable to the complexity of cases of sexual violence causing impunity, indebtedness, and taste-frustrated victims in demanding their rights above justice, truth, and restoration. The existing instrument of comprehensive law did not accompany many cases of sexual violence. Protection for Indonesian women to be free from gender-based violence is still not a serious concern from the state. (Bahder Johan Nasution, 2013) [26]. However, if we understand one of the characteristics of statutory law, it is unlikely that it will precede the phenomenon of world development, which cannot be predicted. Sexual violence can also occur on campus. As Sulistyowati Irianto said, the rapid development of society cannot be followed by a new legal paradigm, so the law becomes inconsistent. Responsive to women's issues (Sulistyowati, 2006: 67) [27]. This is still open for discussion or debate regarding responsive law according to the case context.

Apart from various analyzes with the views and arguments of each expert in the context of sexual violence against women, at least the Ministry of Education, Culture, Research, and Technology has brought "new hope" to one segment of society, especially campus residents. This can be seen from the positive response from various parties and the community. Nevertheless, this does not mean that Ministry of Education, Culture, Research, and Technology Number 30 of 2021 cannot be separated from debate and criticism to the point where it becomes polemic. The source of the debate is in the provisions of Article 5, paragraph (2), which states that sexual violence, as referred to in paragraph (2), includes [1]:

1. In letter b, namely, deliberately showing his genitals without the victim's consent. This can be interpreted if the victim's consent does not include sexual violence as stipulated in Article 5, paragraph (1).
2. In letter f, namely taking, recording, and/or distributing photos and/or audio and visual recordings with sexual nuances without the victim's consent. This can be interpreted if there is the consent of the victim. It is not considered sexual violence as stipulated in Article 5, paragraph (1).
3. Then, on the letter g, upload photos of the victim's body and/or personal information with sexual overtones without the victim's consent. This can also mean that if there is an agreement from the victim, it does not include sexual violence as stipulated in Article 5 paragraph (1).
4. In letter h, namely, spreading information about the victim's body and/or person with sexual nuances without the victim's consent. Also, if there is the victim's consent, it does not include sexual violence as contained in Article 5, paragraph (1).
5. In letter l, namely touching, rubbing, touching, holding, hugging, kissing and/or rubbing body parts on the victim without the victim's consent. This means that if the victim has consented, it does not include acts of sexual violence as stated in the provisions of Article 5 paragraph (1).
6. Then, on the letter m, namely, undressing the victim without the victim's consent. This also means that if there is the victim's consent, it is not an act of sexual violence, as stated in Article 5, paragraph (1).

The six points in Article 5, paragraph (2) have become the subject of debate and argumentation, leaving polemic, for the researchers themselves to see it from a positive spectrum, in the sense that the most important thing is that we must be able to capture the enthusiasm, motivation and noble intention of the legislators to provide legal protection for victims and potential victims of sexual violence, especially on campus. Indeed, judging by the phrase without an agreement, which has been used in the 6 (six) point formula: b, f, g, h, l and m, simply logically, it must interpret phrase it can legalize forms of sexual violence that are very contrary to religious and moral values in general. However, in a religious society like Indonesia, this does not mean that the elements of sexual violence formulated in the six points can be carried out freely. These elements are inappropriate actions contrary to our society's religious values, morals and culture. Prof. Dr Sulistyowati Irianto, MA, a professor of legal anthropology at the University of Indonesia say that basically Ministry of Education, Culture, Research, and Technology The said law fulfills three requirements in the formation of a statutory regulation, namely the philosophical basis, the juridical basis and the sociological basis. Therefore he continued to minister that Education and Culture Research and Technology can be accounted for; in fact, the regulation is a response to the state's partiality when sexual victims in tertiary institutions appear. A similar opinion was conveyed by a Professor of Law at Airlangga University, Surabaya, Basuki Rekso Wibowo, that juridical universities can take legal steps against perpetrators of sexual violence. This Regulation of the Minister of Education and Culture provides legal certainty for higher education leaders to take firm steps against individuals on campus who commit sexual violence, he continued. Meanwhile, the formulation of the Victim's consent sentence, as referred to in letters b, f, g, h, l, and m, must be considered invalid if the victim: a) is not yet of age according to the provisions of laws and regulations; b) experienced a situation where the perpetrator threatened, forced, and/or abused his position; c) experiencing conditions under the influence of drugs, alcohol, and/or narcotics; d) is sick, unconscious, or asleep; e) has a vulnerable physical and/or psychological condition; f) experiencing temporary paralysis (tonic immobility); and/or g) experience a state of shock. Therefore various interpretations as a form of concern with genuine and sincere motivation (towards sexual violence) are the leading spirit, and the most important thing is its implementation in the field because aspects of legal certainty and legal protection have been provided and have been regulated in the Ministry of Education, Culture, Research, and Technology.

Before discussing the forms of legal protection formulated in Regulation of the Minister of Education, and Culture (*permendikbud*) Number 30 of 2021, it is necessary to understand what and how legal protection means. Satjipto Rahardjo in Antari (2021) states that legal protection is a different picture of the function of the law itself; the law provides justice, order,

certainty, benefit and peace. Legal protection must look at the stages, namely legal protection born from a legal provision and all legal regulations given by the community, which are community agreements to regulate behavioral relations between members of the community and between individuals and the government who are considered to represent the interests of society [28]. Raharjo further in Rahmat, Adhyaksa, and Fathanudien (2021) said that legal protection is to protect human rights (HAM) that are harmed by other people and protection that is given to the community in order to be able to enjoy all the rights given by the law [29].

Philipus M. Hadjon, in Syaafi (2017), says that protection is given to legal subjects following the rule of law, both preventive and repressive forms, written and unwritten, in the context of stand-up rules of law [30]. Philipus M. Hadjon argues that legal protection is the protection of dignity and recognition of hacked human rights owned by legal subjects based on legal provisions of arbitrariness [31]. In line with Philipus M. Hadjon's theory of legal protection, according to Muchsin in Kirana (2018), legal protection protects legal subjects through applicable laws and regulations. It enforces its implementation with a sanction [32]. But by Lili Rasjidi and IB. Wyasa Putra in Sugiantoro (2016) says that the law can function to create protection that is not only adaptive and flexible but also predictive and anticipatory [33]. Meanwhile, according to Setiono in Dermawan and Akmal (2020), legal protection is an act or effort to protect society from arbitrary acts by authorities that are not following the rule of law, to create order and tranquility to enable humans to enjoy their dignity as human beings [34].

The form of legal protection that has been formulated by the Ministry of Education, Culture, Research, and Technology Number 30 of 2021, as referred to in Article 12 Paragraphs (1) and (2), protection is given to victims or witnesses whose status is students, educators, and education staff and campus residents. Protection for Victims or Witnesses is in the form of: a) continuity guarantees for completing education for Students; b) guarantee of continuity of work as educators and/or Education Personnel at the Higher Education concerned; c) guaranteed protection from physical and non-physical threats from perpetrators or other parties or the recurrence of sexual violence in the form of facilitating reporting of physical and non-physical threats to law enforcement officials; d) protection of identity confidentiality; e) provision of information regarding rights and protection facilities; f) provision of access to information on the implementation of protection; g) protection from the attitudes and behavior of law enforcement officers that reduce and/or strengthen the stigma against victims; h) protection of victims and/or reporters from criminal charges; i) civil lawsuits over reported incidents of sexual violence; j) provision of safe housing; and/or k) protection of security and freedom from threats related with the testimony given [1].

Regarding acts of violence related to sexual violence, which are regulated in various laws and regulations, the difference is evident with Ministry of Education, Culture, Research, and Technology Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment. Because inside the Ministry of Education, Culture, Research, and Technology, The definition of sexual violence is straightforward and comprehensive. As for the sanctions for perpetrators of sexual violence, in addition to being subject to sanctions administrative from mild, moderate and severe levels internally on campus, it does not mean that the perpetrators escaped from other legal entanglements. Perpetrators of criminal acts of sexual violence can be prosecuted under criminal law as a positive law that regulates forms of criminal acts.

CONCLUSION

Birth Ministry of Education, Culture, Research, and Technology Number 30 of 2021 guarantees legal protection for the campus community, as well as provides legal certainty for higher education leaders to take firm action against perpetrators of sexual violence that occur in the neighborhood. The campus can also provide a sense of security in activities. The campus system needs to be organized in such forms concerning academic processes (teaching and learning processes, face-to-face consultations, academic guidance and non-academic matters (non-student). Meanwhile, the phrase without the consent of the police does not mean that the legislators legalize acts of sexual violence because Indonesian people are known to be very religious and uphold religious, moral and cultural values as well as well-maintained daily values.

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