

A Preliminary Review of the Quality of Evidence on Victims of Sexual Violence in Indonesian Criminal Procedure Law

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Abstract

Over the course of time, the legal measures implemented to address sexual assault have primarily aimed at safeguarding victims of such acts, ensuring their physical and psychological well-being, and shielding them from potential retaliation, public shame, and mistreatment by individuals who advocate for women victims of abuse. This study examines the legal framework in Indonesia pertaining to the protection of victims of sexual assault, as well as the prosecution process for cases involving sexual violence. In this research, the State return approach is employed to elucidate the notion of trial in absentia. Normative legal research employs both a statute-based method and a conceptual approach. The rising prevalence of sexual violence incidents in Indonesia has rendered sexual violence a pressing issue. The existence of legal frameworks safeguarding victims of sexual abuse enables the efficient resolution of such cases and ensures the protection of the victims. Hence, the objective of crime prevention throughout Indonesian society can be effectively realized through the implementation of law enforcement measures in Indonesia.

Keywords

Evidence; Victims; Sexual Violence.

For quite some time, sexual assault has been a frequently discussed topic in Indonesian society. As the number of sexual harassment cases in Indonesia increases almost every year, the term sexual harassment has become commonplace in the country.² The English language takes the term "sexual violence",

meaning "violence", to mean violent and unpleasant. This suggests that forcing someone to have unwanted sexual contact is a form of violence. English takes the term "sexual violence", meaning "violence", which means violent and unpleasant. This suggests that forcing someone to have unwanted sexual

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² Komnas Perempuan, "Kekerasan Seksual Kenali Dan Tangani" (Komnas Perempuan, 2013).

contact is a form of violence.³

Violence is unlawful behavior, whether in the form of threats or actual actions, that causes physical harm, damage to property, or even the death of a person. In addition to physical violence, sexual violence also impacts the mental health of the victim. Victims of sexual violence recover more easily physically than mentally. Victims take a long time to recover from the incident.⁴

Sexual violence refers to one person's unwanted sexual advances towards another. Such sexual advances are not always physical; verbal communication can also be involved. As a result, sexual harassment can take many forms, such as rape, intentional touching of another person's body, teasing or jokes relating to sexual matters, questions about one's private sexual life, sexual gestures through hands or facial expressions, use of sounds that have a sexual context, and more.⁵

Sexual violence in Indonesia knows no boundaries of race or social group. It involves adults, adolescents, and children. In addition, both men and women can be involved in sexual violence. Sexual violence can occur in many places, such as workplaces, public places, schools, and even homes. The aforementioned violence violates human rights, is a crime against human dignity, and falls under the category of discrimination that must be eradicated. The majority of victims of sexual violence are women, and they need protection from the state and society to enable them to live freely and avoid violence, torture, and degrading treatment.⁶

In 2020, there were 7,191 cases of sexual violence, according to data collected by the Ministry of Women's Empowerment and Child Protection. Then, until June 2021, the online information system for the protection of women and children recorded 1,902 cases of sexual violence. In Indonesia, there are still

many cases of sexual violence experienced by minors. This is shown by news reports on cases of sexual violence that continue to appear in print and electronic media in Indonesia. Cases of violence against children, both physical and mental, have always been a topic of discussion throughout the country and the world. Cases like this have existed since humans appeared in the world, and will probably continue to occur in the future.⁷

Indonesian society recognizes cases of sexual violence. However, Indonesia's legal system has yet to fully provide strict legal consequences for perpetrators of sexual violence and adequate protection for victims. Very few cases of sexual violence are successfully brought to court.⁸ This is due to the fact that victims of sexual violence are often afraid to report to authorities due to the negative societal stigma against them. Such as going out at night, wearing revealing clothes, or going alone with the victim, the media sometimes reports on things that are perceived to encourage the perpetrator to commit sexual violence.⁹

Criminal law and social policy must address the very important aspect of protecting and considering victims of sexual violence. This can be achieved through fair and efficient judicial processes, as well as social efforts aimed at supporting victims. Law No. 12 of 2022 on Criminal Acts of Sexual Violence has provided a more precise explanation of criminal evidence, particularly for cases involving criminal acts of sexual violence, as stated in Article 24 paragraph (1) letter c. This article states that evidence includes various elements, including objects or goods related to the occurrence of criminal acts, as well as those resulting from criminal acts of sexual violence. In essence, evidence related to sexual violence includes any object used in committing a criminal act of sexual violence or arising as a

³ Komnas Perempuan, "15 Bentuk Kekerasan Seksual: Sebuah Pengenalan" (Jakarta Pusat: Komisi Nasional Perempuan, 2013).

⁴ Sayid Muhammad Rifqi Noval, Soeipto Soeipto, and Ahmad Jamaludin, "Modus Operandi dan Strategi Pencegahan Kejahatan Perdagangan Seksual Anak Secara Daring," *Undang: Jurnal Hukum* 5, no. 2 (December 30, 2022): 419–51, <https://doi.org/10.22437/ujh.5.2.419-451>.

⁵ M Sumera, "Perbuatan Kekerasan/Pelecehan Seksual Terhadap Perempuan," *Jurnal Lex et Societatis* 1, no. 2 (2013): 39–49.

⁶ Noval, Soeipto, and Jamaludin, "Modus Operandi dan Strategi Pencegahan Kejahatan Perdagangan Seksual Anak Secara Daring."

⁷ Siti Parhani, "Apa Itu Child Grooming Dan Mengapa Ini Kekerasan Seksual," *MAGDALENE*, January 8, 2021, <https://magdalene.co/story/apa-pun-alasannya-grooming-adalah-kekerasan-seksual>.

⁸ Iklimah Dinda Indiyani Adiasta, "Penerapan Restorative Justice Sebagai Inovasi Penyelesaian Kasus Tindak Pidana Ringan," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 2, no. 2 (2021): 143–70, <https://doi.org/10.19184/ijl.v2i2.25842>.

⁹ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (May 31, 2022): 170–96, <https://doi.org/10.14710/JPHI.V4i2.170-196>.

result of the criminal act (*corpora delicti*), as well as objects or goods related to the criminal act itself (*instrumenta delicti*). Therefore, to ensure that victims of sexual violence receive the appropriate protection and attention they deserve, existing social laws and state powers must function.¹⁰

Research Methods

The normative juridical research method used includes a comparative approach, conceptual approach, and statutory approach. Secondary data was the source of this research. The data is examined qualitatively and descriptively. This research uses an analytical descriptive approach, which means that the data is described with the aim of obtaining a complete picture of certain legal events that occur in society. Then, relevant rules are used to analyze the data.

Discussion

Sexual Violence from the View of Law Enforcement

Sexual harassment is a disgraceful act that violates the social and cultural standards that help society behave. Religious, moral and legal rules may violate these. Ratna Batara Munti stated that the Criminal Code (KUHP) does not have clear provisions on the criminal offense of sexual harassment. In fact, the article does not mention sexual harassment or sexual violence specifically.¹¹ In Articles 289 to 296 of the Criminal Code, the term "obscene acts" is used. Obscene acts can be defined as abominable behavior done solely to fulfill uncontrollable lust or behavior that is not in accordance with the principles of decency.¹² In addition to violating criminal law, sexual harassment also violates the human rights of victims. Everyone is protected by the Indonesian legal system, which includes the rights listed in the 1945 Constitution of the Republic of Indonesia. These rights are

regulated in Articles 28A-28J. Everyone has the right to life and the right to defend his or her life, according to Article 28A. In addition, Article 28B, paragraph 2 states that every child has the right to live, grow, and develop, along with the right to be protected from discrimination and violence. In order for children to grow and develop properly, they must be given protection that maintains their dignity where they live. Even Frans Magnis Suseno says that protecting children's rights is part of defending human rights.¹³

According to Article 28G of the Constitution of the Republic of Indonesia 1945, "everyone has the right to protection of his or her person, honor, family, dignity and rights". In addition, they have the right to feel safe and be protected from threats or fear when exercising their human rights. Furthermore, Article 28I, paragraph (1) states that "non-derogable human rights include the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be punished by retroactive laws". These articles demonstrate the commitment of the Indonesian legal system to protect human rights and prohibit violence, including sexual violence.¹⁴

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¹⁰ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana, 2017).

¹¹ Failin Alin, "Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (September 28, 2017): 14, <https://doi.org/10.33760/JCH.V3i1.6>.

¹² Sawitri Supardi Sadarjoen, *Bunga Rampai Kasus Gangguan Psikoseksual*, 1st ed. (Bandung: PT. Refika Aditama, 2005).

¹³ Mohammad Farid, "Kejahatan Seksual Terhadap Anak Implementasi Konvensi Hak Anak (di Indonesia) dan Agenda Aksi dari Stockholm" (Lokakarya Kekerasan Seksual Terhadap Anak dan Remaja, Jakarta: Perkumpulan Keluarga Berencana Indonesia (PKBI) DKI Jakarta, 1997).

¹⁴ Masyhur Effendi, *Dimensi Dan Dinamika Hak Asasi Manusia Dalam Hukum Nasional Dan Internasional* (Jakarta: Ghalia Indonesia, 1994).

violence.¹⁵

The Power of Evidence for Victims of Sexual Assault

In criminal law, the two legal processes refer to a series of procedures established by law as standard procedures that apply generally. Article 184 of KUHAP regulates evidence in criminal proceedings, and includes: a) witness testimony, b) expert testimony, c) letters, d) instructions, and e) testimony of the defendant. In relation to this, Article 24 of Law No. 12 of 2022 on Criminal Acts of Sexual Violence stipulates legal means of evidence to prove criminal acts of sexual violence. These include evidence, electronic information or documents, and victim witness testimony.

As mentioned earlier, there are several things that can be used as evidence to support a case if there are allegations of sexual abuse. A *visum et repertum* is evidence that is often used in cases of sexual abuse or rape. In the field of forensic medicine, the term “*visum et repertum*” is often used. *Repertum* is a report on the results of a medical examination of the victim, and *visum* comes from Latin and means “sign of seeing”. Therefore, *visum et repertum* means a report of what was seen and found. It is crucial to seek additional evidence to support the allegation of sexual assault if the *visum et repertum* does not show signs of violence. Ultimately, the judge will determine whether the act constitutes sexual assault.¹⁶

Proving physical violence is not as easy as showing psychological violence. Psychological violence can only be felt by victims through their minds and souls, whereas evidence of physical violence can be easily seen and documented through a *visum et repertum*. As a result, uncovering the facts in cases of psychological abuse is often difficult. Specialists such as psychologists or psychiatrists who understand mental health and have studied how sexual violence impacts others are often needed to help with the psychological impact of sexual violence.¹⁷

Law enforcement officials must improve disclosure and investigation procedures in handling sexual violence cases. Many problems are encountered when handling sexual violence cases, which causes many cases not to reach the courts.¹⁸ Until recently, there was news that law enforcement often rejected reports of victims of sexual harassment or violence due to difficult evidence. The process of proof is often difficult because sexual violence usually occurs without witnesses present at the time of the incident.¹⁹

Law enforcement officials should avoid discriminatory attitudes during the process of proving sexual violence. It is crucial to avoid blaming victims or stigmatizing them. This is because victims who dare to report incidents are often still traumatized, scared, and burdened. They need protection and support rather than a victim-blaming response, which will only make their situation worse.²⁰

In cases of sexual violence, law enforcement must act with full responsibility and provide legal certainty to victims.²¹ They should not slow down or even delay the process of resolving such cases. Regardless of their status, whereabouts, or status, every perpetrator of sexual violence should face fair legal consequences. In fact, if the law can impose appropriate punishments on perpetrators and society provides social support to victims, the number of sexual crimes will probably reduce.²²

Conclusion

Sexual violence in Indonesia is a significant social problem. Unfortunately, the current criminal laws lack comprehensiveness and do not provide sufficient protection for victims of sexual violence. This phenomenon instills fear in some survivors of sexual violence, preventing them from pursuing the legitimate legal channels to which they are entitled. Individuals may refrain from reporting cases of sexual violence due to concerns regarding

¹⁵ Inrawati, *Etika Politik Dalam Pemenuhan Hak Asasi Manusia*, 2022.

¹⁶ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2010).

¹⁷ Fauziah Lubis, *Bunga Rampai Hukum Acara Pidana* (Medan: CV. Manhaji, 2020).

¹⁸ Siti Parhani, “Apa Pun Alasannya, Grooming Adalah Kekerasan Seksual: Anak-Anak Rentan Terkena Kejahatan Grooming Oleh Orang Dewasa Dengan Dalih Pacaran,” *Magdalene*, August 2021, <https://magdalene.co/story/apa-pun-alasannya-grooming-adalah-kekerasan-seksual>.

¹⁹ Alin, “Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia.”

²⁰ Kendi Setiawan, “Ditjen Pendis Keluarkan Pedoman Pencegahan Dan Penanggulangan Kekerasan Seksual Pada PTKI,” *NU Online*, October 29, 2019, <https://nu.or.id/nasional/ditjen-pendis-keluarkan-pedoman-pencegahan-dan-penanggulangan-kekerasan-seksual-pada-ptki-jznmN>.

²¹ KPPPA RI, “Data Kasus Kekerasan Perempuan Dan Anak Di Indonesia,” *SIMFONI-PPA*, April 2022, <https://kekerasan.kemenpppa.go.id/ringkasan>.

²² Anna Maria Salamar et al., “Child Grooming Sebagai Bentuk Pelecehan Seksual Anak Melalui Aplikasi Permainan Daring,” *SASI* 26, no. 4 (December 25, 2020): 490–99, <https://doi.org/10.47268/SASI.V26i4.381>.

inadequate legal protection. In addition, no adequate consideration is given to victims of sexual violence within the framework of existing criminal laws. The application of laws relating to sexual violence cases in Indonesia is quite difficult due to confusing language in the laws and poor regulations. Therefore, there is an urgent need to improve regulatory measures to protect those who have experienced sexual violence from criminal action. The increasing prevalence of sexual violence incidents in Indonesia raises urgent concerns. Optimizing case handling and victim protection can be achieved by establishing laws that aim to protect those who experience sexual violence. By implementing this measure, the Indonesian legal system will be able to effectively achieve its main goal, which is to protect the entire Indonesian population from criminal activities.

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