



The Attempted Crime of Sexual Violence in Keeping with Human Rights

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Abstract

Protection from all forms of sexual violence is part of human rights, the right to individual safety, the right to personal freedom and security, and the self-protection of a person's honor and dignity guaranteed by the constitution. The growing number of sexual violence over the years is no match for the low legal settlement experienced by victims of sequential violence. Various rules have been set up in conjunction with criminal sexual violence intended to fight for human rights. Legal instruments relating to the protection of victims of current sexual violence are not able to umbrella a comprehensive law. The absence of a specific legislation governing the protection of victims of sexual violence makes it impossible for the victims of sexual violence to become maximum.

Keywords: *Settlement; Criminal Sexual Violence; Human Rights*

Introduction

Sexual violence is the kind of violence that can happen both in public and domestic. The subject of a law of sexual violence is usually suffered by women and children who are often thought to be weak victims. Sexual violence occurs repeatedly and continuously, but few societies understand and are sensitive to the issue. Sexual violence is often considered a crime of mere chastity, when the fact remains that the effects of sexual violence on victims are serious and traumatic and may last a lifetime. Even in some cases, sexual violence can lead to suicide¹. Elimination of sexual violence is all that can be done to prevent sexual violence, to deal with, to protect and restore the victim, to act against the perpetrators and to prevent further sexual violence.

The view that sexual violence as a crime against chastity is even supported by the state through the content of the penal code (criminal law). In criminal law, sexual violence like rape is considered a

¹ Mary . M. Gerden., *Measuring Gender : Options and Issues. In Handbook of Gender Research in Psychology* (New York: Springer International Publishing, n.d.).

violation of the norm of decency. This categorization not only reduces the degree of criminal abuse but also fosters the view that sexual violence is merely a matter of morality. This, in turn, results in many cases of sexual violence that are not handled legally, but through peace efforts outside the judicial process, whereas the experience of female victims of sexual violence shows that sexual violence can destroy the entire integrity of the victim causing the victims to feel unable to continue their lives any longer. The typical aspect of sexual violence always associated with the narrative of morality is also one of the greatest obstacles in the victim's quest for truth, justice, recovery, the fulfilment of justice, and the assurance of unrepeating events.

Human rights violations occur in all subject laws, including women and children, who are often vulnerable to human rights violations. The United Nations charter states clearly that women and men should enjoy equality. And yet the truth is not so. Nondiscrimination in the enjoyment of rights and freedom is fundamental to modern human rights regimes. Most instruments contain nondiscriminatory rules. All mention the gender based ban on discrimination².

Formulation of The Problem

1. How does a victim protect a sexually abused criminal?
2. What forms of legal instruments can be used to combat sexual violence?

Research Methods

The method used in the study is the normative-juridical approach. The normatitic juridical approach is the approach made based on the main legal material by studying the theories, concepts, principles of law and the regulations of legislation related to the study. It is also known as the approach to literature, that is, by studying books, regulations of legislation and other documents relating to the study.

Result and Discussion

1. "Protection of Victims," Sexual Assault

Conceptually, victim or criminal, known only by a legal perspective especially in criminal law and human rights. Cited and translated freely from the Oxford dictionary is defined as "a person who is hurt, hurt, or killed, as a result of another crime, accident, or event or another act." Then the kbpi, defines sacrifice as "people, animals, and so forth who suffer (death and so forth) because of an event, an evil deed, and so forth." Next, the reference to the victim's definition according to international human rights law is the declaration of basic principle of justice for victims of crime and victims of power or the fundamental declaration of justice for victims of crime and abuse of power (further called the declaration of the principles of justice for victims). The victim is defined as:

"Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power".

When translated, the victim is those who, individually or collectively, have suffered losses, including physical or mental wounds, emotional suffering, economic or substantial damage to basic

² Rhona K.M. Smith, *Hukum Hak Asasi Manusia* (Yogyakarta: PUSHAM UII, 2008).

rights, by actions or inequitable incorporation in member states, including those that prohibit the abuse of criminal power. Whereas in the perspective of Indonesian criminal law, the victim's definition can be found in article 1. 2 of the witness and victim protection act. It is said that the victim is a person who suffers physical, mental, and/or economic harm caused by a criminal act. From the foregoing definitions, both in international human rights perspectives through the declaration of the principles of justice for victims and Indonesian criminal law through witness protection laws and victims, the victim has always been synonymous with criminal action. Witness protection act and the victim as part of criminal law cannot be dismissed from criminal law. Studies of victims of sexual violence in Indonesian criminal laws will be further discussed below.

Legal protection imposed on victims of sexual violence conforms to common rules of criminal law regulated in books I criminal law (common law) and book ii penal code (criminal law) common in relation to a ban on practices and criminal crimes. In books iii of criminal law, as well as criminal law that is outside the fold. The arrangement of sexual crime in criminal law on morality, which in criminal law, brings its own ambiguity and tends to combine underlying issues, since sexual crime is viewed as a violation of human existence because chastity often has a connotation of action contrary to current moral or moral values.

Criminal laws basically contain legal norms on prohibitions and imperatives, on the threat of crime, who violate them. Criminal law violations are often referred to as crimes. Criminal ACTS, crimes and criminal events, as well as criminal offenders can be sanctioned by the law. Criminal law threatens sanctions, known as penalties law, and also distinguishes criminal laws from other areas of law such as civil law, state administration, and administration. This sanction exists not only to encourage compliance, but it also has legal consequences for transgressors.

Conscious that victims of sexual violence are also victims of a system of law enforcement that still frequently ignores the protection forms that are given to victims and perpetrators, often forcing law enforcement officers into abuse or impose sanctions on the perpetrator. That article 5 of act no. 13 of 2006, as was changed with law no. 31 of 2014, on witnesses and victims and the rights to public health assistance, providing legal protection, compensation, and compensation to victims of harassment in Indonesia. This was the right of victims who were expressly to be protected.

Protecting victims of sexual violence is a struggle for the victims' rights. As a legal state, Indonesia is a holder of obligation (duty holder) who plays a role in providing protection to everyone's human rights. The role is attended by the state's responsibility to honor (to honor), protect (to protect), and fulfill (to protect) human rights for its citizens. One of the conservation efforts is the legal defense approach to every crime victim, including the victim of sexual violence, whether real or virtual. And when it comes to the legal system theory proposed by Lawrence M. Friedman, Therefore, legal protection against victims of sexual violence should be comprehensive by constructing adequate legal systems, from legal sources, legal structures, to legal cultures³.

a. A legal substance development a legal substance is done with a political law oriented victim of sexual violence. In general, Indonesia has defined legal properties of forms of legal protection for victims in *KUHAP* and *KUHAP*, as well as specifically in 2006's law of RI no. 13 on witness protection and renewed sacrifices under the 2014 article no. 31 of 2014 on the transfer of the 2006 article no. 13 of the law on witness protection and victims. These two laws define protection as all due compensation and aid efforts to provide security to witnesses and/or victims required by witness and witness protection services and other agencies in accordance with the rule of the law.

³ 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 (2022): 170–96, <https://doi.org/10.14710/jphi.v4i2.170-196>.

Under the law, protection against the victim may be provided by a court ruling of restitution as stipulated by article 14c (1) of the penal code (1), which reads "under the general order that a convict shall not commit a crime, the judge can stipulate a specific condition that a convict shall not commit a crime, which is shorter than his probation, Had to compensate for or part of the damage inflicted by the crime."

Under section 14c of verses (1), chapters 14a and 14b kuhap, judges can pass down a criminal by specifying specific conditions to the convict with the intent of recharging the damage inflicted on the victim. Almost as with the criminal code, it also guarantees protection to victims of the crime by making amends. Article 98 to article 101 of kuhap arranged for damages to be made by combining criminal and civil cases (princess, 2018). If criminal code and kuhap were to set up a law-protection policy against victims of criminal crimes in general, then the 2006 law of ri no. 13 and the 2014 article no. 31 on witness protection and the victim set even more specifically on criminal protection efforts. The two invitations set up two forms of protection for victims of the crime of compensation and restitution. Victims through witness protection and victims have the right to appeal to the court of rights to compensation and restitution. Compensation is making up for the losses given by the state because the perpetrator is unable to make up for the full losses that he or she is responsible for. The restitution is the loss rendered to the victim or his family by the perpetrator or a third party.

Under ri's law number 31 in 2014 on the change to ri's invitation number 13 in 2006 on witness protection and victims, in addition to filing both applications, the victim is entitled to medical assistance and psycho-social rehabilitation assistance. Medical assistance is aid provided to restore the victim's physical health, including management in the case of the deceased, such as funeral management of the body. Psychosocial rehabilitation, on the other hand, is all forms of psychological and social assistance intended to help alleviate, protect, and restore the victim's physical, psychological, social, and spiritual condition and thus restore his or her social functions to a reasonable degree. In this case, the lprost seeks to enhance the quality of life of the victim by collaborating with the relevant agencies of food, clothing, shelter, employment assistance, or educational sustainability assistance.

In addition to some of the above forms of protection, the sacrifice has the right to other forms of protection, such as protection of personal, family, and material security, as well as freedom from threats concerning cascsian that it will be, moderate, or given. Protected from the pressure of giving information, free from the questions entices, identity kept secret (using the name samara or alias), acquired a new identity, acquired temporary residence or new assistance, and given legal assistance. All of them are the rights granted to the victims under the 31st year 2014 law on witness protection and victims. All such forms of protection can be implemented if the established and or available legal structures also have a victim's perspective.

b. The Legal Structure

The legal structure referred to in this sub-chapter is the criminal justice system along with all its sub-systems, police, prosecutors, justice, and correctional institutions. Mardjono reksodiputro points out that criminal justice system was, in truth, a system designed to address crime problems that could disturb order and threaten security in society. Indonesia recognizes this concept as a condition where functional and functional connections exist. This is defined as coordination between subsystems or among others according to their respective functions and privileges as governed by the laws of criminal events in order to uphold the accepted criminal law (reksodiputro, 1994). As for the criminal justice system, there are three objectives⁴:

⁴ Afrizal, "Penguatan Sistem Peradilan Pidana Melalui Kewajiban Penyampaian Surat Pemberitahuan Dimulainya Penyidikan (Kajian Putusan Mahkamah Konstitusi Nomor 130/PUU-XIII/2015)," *Jurnal Yudisial* 13, no. 3 (2020): 391.

- 1) To prevent people from becoming victims of crime;
- 2) To solve the crimes that took place so that the public would be satisfied that justice had been upheld and that the guilty were convicted; and
- 3) To make it possible for those who have committed the crime not to do it again.

The above three objectives can be achieved by intermingling. It is their *masse* (SPPT) or integrated criminal justice system, which has served as a unified criminal (turbulent and synchronization), clear aims, process (inputthroughput-output), and effective control mechanism (rofiq, cemented & jaya, 2019). In order to achieve the goal of settling crimes so that people are satisfied that justice has been upheld and that the guilty have been convicted, the protection of the victims of crime should also be considered in the process of law enforcement. Muladi argued that, fundamentally, there are two criminal law enforcement models against victims of crime, the procedural rights model and the service model. The procedural rights model stresses on the possibility of the victim being viewed as a subject rather than an object. As for the reason the victim views the victim as a subject because the victim plays an active role in the judicial process by being given the right to file criminal charges or entitled to appear and hear at every level of the court, including the right to be consulted by the prison before making parole. Victims have the right to an act of peace or civil justice. In this approach model, a victim (subject) should be given broad juridical rights to Sue and pursue his interests ⁵.

The second model is service model. It emphasizes the need to create a standardized building of crime victims, which police can use. Such as example in useful guidelines as notification to the victim and or the prosecutor in the course of his prosecution. As well as the granting of compensation as a consensual criminal sanction and the impact of the victim's statement before the crime was pronounced. In essence, this service model sees crime victims as a special target to be served in conjunction with law enforcement by police and or other law enforcement agencies.

c. Legal Culture

In legal cultures there is still some problem because law enforcement personnel still adopt the public's view of morality and sexual violence (sugiarto etc., 2021). This results in the attitude of law enforcement officials toward the case by not showing empathy to the female victim, even inclined to blame the victim. For example, the forms of questions usually asked when the victim filed a report of sexual assault, such as rape. Some forms of the question are like asking what clothes are worn, where they are, with whom. Questions like these show that a law-enforcement culture exists in a nonperspective of the victim, as well as a form of judging the victim and bringing the victim back into violence (revictimisation), which is enacted in the penal code of sexual violence.

There's a lot of perspective on law enforcement that doesn't have the victim's perspective. As a result, cases of sexual violence are considered personal, trivial, and better placed first on the family and community. This is reflected in the behavior of law enforcement and state organizers in dealing with cases of sexual assault, such as showing no empathy for the female victim, even inclined to blame the victim. The victim had to restate the sexual assault that he endured from investigation to trial. Victim confidentiality is also often overlooked. The lack of expertise is in understanding the case of sexual violence and the lack of a victim's perspective becomes a problem in handling cases of sexual violence.

⁵ Muladi, *Hak Asasi Manusia, Politik Dan Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 2002).

2. Legal Instruments That Can Be Used to Combat Sexual Violence

a. An Instrument of National Law Asan Attempt to Eradicate Sexual Violence

In the context of national law, the 1945 bill nri and its legislation have also guaranteed the protection of human dignity and dignity. By the 1945 bill nri, it had generally contained private protection to a guarantee of freedom from degrading treatment of human dignity. The underlying legislation that also gives the corresponding arrangement is the bill of rights. Then, criminal law regarding sexual violence is passed through legislation, PKDRT laws, child protection laws, and ptpo laws. Collateral protection for victims of sexual violence was contained in the 1945 bill of rights and the underlying regulations.

1) The Penal Code

Violent crimes are regulated in criminal code by protecting victims of violence of both sexes and females, the type of violence that results in physical expansion. For violence whose victims are only female sexes can be found in forms of sexual violence arranged in chapters 285, 286, 287, 288, and 297. The chapters are under chapter xiv of crimes against propriety. "36 Article 285 reads "anyone by violence or the threat of violence forces a woman to have sex with him outside of marriage is threatened with rape, with a prison sentence of 12 years at most." Then chapter 286 says "whoever is found with a woman outside of marriage, when it is known that she is unconscious or helpless, is threatened with the maximum criminal of nine years." Next, section 287 sets about sexual intercourse with underage women. Article 288 Outlines sexual intercourse with underage women resulting in injuries, injuries, or death. Meanwhile, section 297 sets up the trafficking of women and boys of insufficient age.

2) Constitution of The United Republic of Indonesia 1945 (Bill Nri in 1945)

Specifically, on personal protection of honor, and dignity as well as abuse or degrading treatment, human dignity is governed in article 28g of the 1945 bill nri that reads:

"Everyone has the right to personal, family protection, honor, dignity, and property under his rule, and to a sense of security and protection from fear of doing or not doing what is rightfully his. And everyone has the right to be free of torture or abuse of human dignity and to get political asylum from another country." Then, in general, chapter 29 of the book of ham provides assurance of personal protection for one's dignity and dignity. The bill also requires more protection against vulnerable groups featured in article 5 of the verse (3), the placement of children's rights and women's rights as separate forms of protection as part of the specific groups. This coincides with the international development that is evidenced by separate international instruments of law for children and women.

3) Act Number 23 in 2004 for the Elimination of Domestic Violence

Violent crimes that do not result in physical wounds, such as harassment, reproach, or verbal violence that lead to new psychic augmentation are orchestrated by the PKDRT act. Set rules against domestic violence against those within the household. Ban on physical, psychological, sexual and domestic desensitization.⁴⁴ The term "sexual violence" is new to this legislation. Under article 8 of PKDRT, the scope of sexual violence is referred to as "...a. Coercion of sexual relations with one within the household; "The coercion of sexual intercourse of one in his household with another for commercial and/or specific purposes." Nevertheless, there is no explanation or definition of sexual violence.

4) The 2014 Statute of 35 on Changes to the Statute 23 of 2002 on Child Protection

Specifically, on child protection from sexual violence, has been enacted into the child protection act. Chapter 15 of the letter f of the child protection law states that "every child has the right to receive protection from: jurisdicf. Sexual crimes." The child protection act provides protection for children as victims of sexual abuse. However, the child protection act also provides no definition or explanation for both crime and sexual violence.

5) The 2007 Act on Eradicating Criminal Trafficking

Another form of sexual abuse is that sexual exploitation has been regulated under the ptpo act as well. Article 1 chapter 8 act ptpo defines sexual exploitation as "all forms of the use of sexual organs or other sacrificial organs for profit, including but not limited to all activities of prostitution and fornication." Trafficking in people in particular constitutes ACTS contrary to human dignity and human dignity and infringes on human rights and therefore must be eradicated. The widespread distribution of organized crime networks of people from country to country poses a threat to honoring human rights.

Victims of a person's trade crime (tpo) are not only for purposes of prostitution or other forms of sexual exploitation but also for other forms of exploitation. The majority of tpo cases in Indonesia include employment exploitation, sexual exploitation, improper employment with commitments, organ sales, and child trafficking. Tppo has become an exceptional crime that needs special treatment.

6) Act 12 Year 2022 on A Felony of Sexual Violence

In the article noor 12 years 2022 of the article on criminal sexual violence described in detail the whole from the victims' rights and legal devices that can be found in cases of sexual abuse. It is also universally explained that it is not subject to gender alone, so that all can have certain legal protection.

b. International Instruments in the Quest for the Elimination of Sexual Violence

1) Universal Declaration of Human Rights (UDHR) 1948

UDHR has been recognized as a general principle of law and source that gives legal obligations to all countries and has even been adopted by the international court,²⁷ though UDHR's laws do not have the power to bind, the provisions contained therein are incorporated into many of the national laws of the United Nations. UDHR has been a referral when assessing the implementation of human rights of a country. The principles in UDHR include recognition of basic dignity and equal rights as the basis of freedom, justice, and world peace, and human rights as its rule of law.²⁹ It says in chapter 1 UDHR that "all human beings are born free and equal in dignity and rights. , "which, when freely translated, means" every man, from birth, has freedom and has equality of dignity and rights." Furthermore, "everyone has the right to life, liberty and the security of person." It can be seen that protection against freedom and individual safety is what UDHR guarantees.

2) International Covenant on Civil and Political Rights (ICCPR) 1966

In addition to UDHR, when discussing international instruments on human rights, there are at least 2 (two) the other major instruments: the international covenant on economic, social and cultural rights (further called ICCPR) and ICCPR along with its two protocols. These three instruments are known as the international bill of human rights. ICCPR is specifically intended to maintain the civic and political fundamentals contained in UDHR and thus form legally binding provisions. The agreement itself was ratified by Indonesia on October 28, 2005 by the 2005 act of ratifying the international covenant on civil and political rights No one shall be distressed or detention. No one shall be established of his liberty except on such grounds and in procedure with such procedure as established by law. "Which, when translated, everyone has the right to personal freedom and security. Assurance that no one can be deprived of freedom on the basis of valid reasons according to the procedure prescribed by the law.

3) General Comment No. 35 - Article 9: Liberty and Security of Person 1982

The adoption process of the general comment discussing article 9 of ICCPR on liberty and security of person over a long journey. It took 2 (two) years and began with a half - day discussion and filing of opinions. In part I number 2 it states that:

“Recognizes and protects both liberty of person and security of person. In the Universal Declaration of Human Rights, article 3 proclaims that everyone has the right to life, liberty and security of person. That is the first substantive right protected by the Universal Declaration, which indicates

the profound importance of article 9 of the Covenant both for individuals and for society as a whole. Liberty and security of person are precious for their own sake, and also because the deprivation of liberty and security of person have historically been 156 Luh Made: Perlindungan Hak Asasi... principal means for impairing the enjoyment of other rights”

Protection against freedom and personal security is recognized in article 9 of ICCPR that is also guaranteed in chapter 3 UDHR. The right to freedom and personal safety is the first substantiated right protected by UDHR, this indicates the importance of protecting personal freedom and security for individuals and communities as a whole. Freedom and personal security are invaluable to its own interests as well as historically as major means in reducing fulfillment of other rights.

4) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

CEDAW is designed to fight against all forms of discrimination against women. All human beings are born free and equal in dignity and rights and that everyone has a right to all rights and freedoms without any difference, including gender based differences. Equality and justice between men and women in all areas and activities is an emphasis that CEDAW wants to achieve as one of the CEDAW participants has ratified CEDAW through 1984's no. 7 1984 act on the elimination of all forms of discrimination against women. The terms set forth that each country of the CEDAW participants has an obligation to refrain from performing any ACTS or practices of discrimination against women, and to ensure that government officials and state agencies will act accordingly.

5) General Recommendation No. 19: Violence Against Women 1992

In 1991 the committee on the committee of discrimination against women (the CEDAW committee) in its 11th session, discussing and studying chapter 6 and other CEDAW chapters that deal with violence against women, sexual violence and the exploitation of women. The CEDAW committee gains a consensus that countries participants in the CEDAW still do not reflect close relations between discrimination against women, gender-based violence, and fundamental human rights violations and freedoms. The above recommendation is that the CEDAW parties should try to effectively assess any gender-based violence, whether public or personal, by enforcing legal regulations against violence and family abuse, rape, sexual harassment and gender-based violence, provide appropriate protection to all women, and respect their integrity and honor. Moreover, CEDAW countries should strive to protect their victims by providing adequate aid agencies and able to serve them constantly.

Conclusion

Legal protection for the victim of sexual violence can be earned as part of human rights, the right to individual safety, the right to freedom and personal security, and the protection of a person's dignity and dignity that is inherent in a human being since his birth. Legal protection for victims of sexual violence can be drawn from international instruments on human rights, including UDHR (chapter 1), ICCPR (chapter 9 Numbers 1), and CEDAW (chapters 2 and chapter 6). The criminal law that regulates the crimes of sexual violence is spread across several stipulations, among them the criminal code by article 285-288 and section 297, the PKDRT act, the child protection act, and the ptpo act. Protection for victims of sexual violence in the legislation in Indonesia is already available but is still circulating through certain legislation, such as cell phones, PKDRT laws, child protection laws, and ptpo laws. Legal instruments relating to the protection of victims of current sexual violence are not able to umbrella a comprehensive law. The absence of a specific legislation governing the protection of victims of sexual violence makes it impossible for the victims of sexual violence to become maximum.

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