




# The Problems of Fulfilling the Rights of Victims of Obscene Crimes

Rosalia Dika Agustanti<sup>1\*</sup>, Yuliana Yuli Wahyuningsih<sup>2</sup>, Kayus Kayowuan Lewoleba<sup>3</sup>

<sup>1, 2, 3</sup> Faculty of Law Pembangunan Nasional Veteran University, Jakarta, Indonesia.

 : [rosaliadika@upnvj.ac.id](mailto:rosaliadika@upnvj.ac.id)

Corresponding Author\*

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## Abstract

**Introduction:** Perpetrators of obscene acts have carried out various criminal acts. Obscene acts are included in sexual violence that results in physical and psychological suffering.

**Purposes of the Research:** This study aims to analyze the fulfillment of the rights of victims of obscene acts, whether it is appropriate or not. This is based on the phenomenon of indecent acts; the more extended the number of victims increases.

**Methods of the Research:** This study uses a normative juridical method with a statute and case approach.

**Results of the Research:** The results of the study indicate that the rights of victims of obscene acts have been regulated and guaranteed in the 1945 Constitution of the Republic of Indonesia, the Law on Human Rights, the Law for the Protection of Witnesses and Victims and the Act on the Crime of Sexual Violence. However, the problem is in the fulfillment of these rights, even though constitutionally, the duties and obligations of fulfilling the rights of victims are borne by the State, which in this case is in the components of the Criminal Justice System, the Ministry of Law and Human Rights, the Ministry of Women's Empowerment and Child Protection, The National Commission on Human Rights, the National Commission on Violence Against Women and the Witness and Victim Protection Agency. The importance of supervision and compliance with the application of rights in everyday life will determine how successful the State is in carrying out its obligations in fulfilling the requests of victims. So it is essential to cooperate between Ministries, Institutions, National Commissions, and law enforcement officials to realize the fulfillment of the rights of victims of criminal acts of obscenity.

## 1. INTRODUCTION

One of the goals of reform in Indonesia is to place the law in the highest place (*supremacy of law*) in the life of the nation and state, which until now has not been fully realized. The guarantee of fulfillment and protection of citizens is carried out by prioritizing human rights. Human rights are defined as rights that are patent, eternal, and owned by every living human being.<sup>1</sup> Some of the human rights problems in Indonesia are oppression, torture, and even so, which often occur in decency crimes.

<sup>1</sup> Henny Nuraeny, *Face of Basic Criminal Law and Development* (Jakarta: Gramata Publishing, 2012).

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The community considers decency a good and evil act and is related to actions of sexual value.<sup>2</sup> Morality is also related to politeness, both in word and deed. For this reason, decency firmly understands behavior by the laws and regulations.<sup>3</sup> Crimes of righteousness start from actions considered normal in the community and then lead to the emergence of victims. In this case, there is an abuse of the relationship between the perpetrator and the victim, both male and female, where one party feels harassed.<sup>4</sup> Several types of decency crimes are considered standard because there are no elements of violence or threats of violence, one of which is obscene acts.

Obscenity is a crime that violates human rights and destroys dignity, so it has a bad influence, especially on a person's physical and psychological condition. Often, obscene acts are carried out because of the sexual urge to do things that arouse lust.<sup>5</sup> In the laws and regulations, especially the Criminal Code (in the future referred to as the Criminal Code), there is not a single meaning of the criminal act of obscene. However, the Criminal Code classifies it as a crime against decency regulated in book II Chapter XIV in offenses against decency. Indonesia considers that the criminal law applied in Indonesia has a positive legal basis, not against legal norms.<sup>6</sup> The Criminal Code explains acts that contain elements of a criminal act where the act violates the rule of law, accompanied by the threat of criminal sanctions for anyone who does it.<sup>7</sup> To be considered a crime, it must at least have elements of the actions committed, namely subjective and objective elements. The individual part assesses that the component arises from the perpetrator or relates to the perpetrator with a piece of error. At the same time, the objective element is a specific situation with all actions against the law that the perpetrator has carried out.<sup>8</sup> The position of victims in the criminal justice system is often ignored; this is supported by the provisions in Indonesian law, which still rely on guarantees of protection for perpetrators of criminal acts (*offender oriented*). When viewed again from the perspective of criminal law and criminology, crime is defined as a conflict between individuals that causes significant losses to the victim, the community, and the violators themselves. From these three things, it can be said that the interests of the victims of crime are the central part of the crime, as stated by Andrew Ashworth, as *primary an offense against the victim and only secondarily an offense against the wider community or state*.<sup>9</sup>

In Indonesia, it can be seen that data on cases of sexual violence, such as obscene acts, dominates during the Corona Covid-19 virus pandemic; it can be seen from the data from the Service Institute for 2020 at CATAHU 2021, in this case, Komnas Perempuan shows the number of victims of obscene acts as many as 166 cases. In this case, the meanings of indecent acts and sexual intercourse still have the same elements in the courts and the police. This is because the type of crime still has a legal basis in the articles in the Criminal Code

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<sup>2</sup> Mudzakkir, "Analysis of Legal Handling Mechanisms Against Violent Crimes", Final Report on Scientific Writing," *Ministry of Law and Human Rights*, 2010, 12.

<sup>3</sup> (Marpaung, 2008)

<sup>4</sup> Debora Anggie Noviana, Bambang Waluyo, and Rosalia Dika Agustanti, "Analysis of the Implementation of Chemical Castration in Cases of Sexual Violence in Children in Juridical and Medical Perspectives," *Borneo Law Review* 4, no. 1 (2020): 45–63, <https://doi.org/10.35334/bolrev.v4i1.1399>.

<sup>5</sup> Rosalia Dika Agustanti, "Law Enforcement Perpetrators of Obscene Acts in Free Decisions Against Women," *Juridical* 7, no. 1 (2020): 27–46, <https://doi.org/http://dx.doi.org/10.35586/jjur.v7i1.1843>.

<sup>6</sup> Christianto Hwian, "Criminal Crimes Extensive Interpretation And Case Studies," *Journal of Chemical Information and Modeling* 53, no. 9 (2013): 1689–99.

<sup>7</sup> Moeljatno, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2008).

<sup>8</sup> (Lamintang, 1984)

<sup>9</sup> (Andrew Ashworth in Mulyadi, 2007)

whose purpose is to trap the perpetrators of criminal acts.<sup>10</sup> Furthermore, the 2022 CATAHU shows the number of victims of obscene acts as many as 281 cases. Likewise, the term obscenity is still widely used, especially by law enforcement officers and government-based service agencies, because the legal basis commonly used is the Criminal Code. So it is said that obscenity could be a scope of sexual harassment for which there is no legal reference.<sup>11</sup> From the data for 2021 and 2022, it can be conveyed that there has been an increase in the number of cases of obscene acts.

This causes problems in fulfilling the rights of victims of criminal acts of obscenity, whether those rights have been appropriately fulfilled or not, even if one of them has been fulfilled by parties to which the State has given authority. However, we know that the perpetrators of obscene acts can be male or female. However, looking at the situation and conditions and the facts on the ground, most of the perpetrators are men. So that the problem studied is how a legal state that already has a juridical basis in the implementation of the fulfillment of the rights of victims in the field based on data that has been collected by, among others: components of the Criminal Justice System, Ministry of Law and Human Rights, Ministry of Women's Empowerment and Child Protection, the National Human Rights Commission, the National Commission on Violence Against Women and the Witness and Victim Protection Agency.

## 2. METHOD

The research method used is normative juridical with a statutory *and* conceptual *approach*. The research technique begins with sorting out the laws and regulations governing human rights, witness and victim protection, and policies for fulfilling victims' rights. The legal provisions referred to are related to the rights of victims, primarily criminal acts of sexual violence, referring to the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 31 of 2014 regarding Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims and Law Number 12 of 2022 about Crimes of Sexual Violence. These legal provisions will be chosen from the side of their relevance to legal issues discussed with the importance of how they are applied to the fulfillment of the rights of victims of sexual violence by the State. A review of compliance with the principle of *inalienability and* human dignity *can* be identified in the number of cases of sexual violence between 2021 and 2022 that have been confirmed by the Ministry of Women's Empowerment and Child Protection. The indicators are related to the success of a country as a party responsible for fulfilling the rights of victims. The conformity obtained will be concluded to assess whether the laws and regulations fulfill the rights of victims of obscene acts or not.

## 3. RESULTS AND DISCUSSION

### 3.1 Principles of *Inalienability and Human Dignity* as the Foundation for Fulfilling the Rights of Victims of Criminal Acts of Obscenity

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<sup>10</sup> Komnas Perempuan, "Women in the Midst of a Pandemic: Rise in Sexual Violence, CyberViolence, Child Marriage, and Limited Handling Amid Covid-19," *Journal of Chemical Informationfile:///Users/Ghinahana/Downloads/10964-27747-1-PB. Pdfion and Modeling* 138, no. 9 (2021): 1689–99.

<sup>11</sup> Komnas Perempuan, "CATAHU 2022: Records of Violence Against Women in 2021. "The Shadows of Stagnancy: The Power of Prevention and Handling Compared to the Increase in the Number, Variety and Complexity of Gender-Based Violence Against Women" (Jakarta, 2022), <https://komnasperempuan.go.id/download-file/798>.

Human rights are fundamental, so their existence is necessary (*condition sin qua non*). Inviolability must be protected, respected, and defended from all threats and obstacles.<sup>12</sup> Every human has the right to freedom and is not limited to whether he is a woman or a man, so the purpose of human rights is to ensure equality for men and women.<sup>13</sup> Human rights are also interpreted as the need to guarantee the protection of victims who have an essential role in the criminal justice process so that the information the victim provides can reveal a criminal act without any threat from any party. The part of law enforcement, including the Police, Attorney General's Office, Courts, and Correctional Institutions, cannot be separated from this problem. To achieve the legal objectives, namely justice, certainty, and expediency, efforts are needed in the framework of comprehensive disclosure of a crime, especially the crime of obscene acts.

It can be seen in the image below that the *real-time* SIMFONI-PPA data in 2020 shows that men are more likely to be perpetrators of sexual violence, as many as 15,627 people, and women as perpetrators are 1889 people with a total of 17,516 people. Furthermore, SIMFONI-PPA *real-time* data in 2021 shows that 17,775 men are perpetrators of sexual violence and 3,139 women are perpetrators for 19,914 people. This shows an increase in sexual violence from 2020 to 2021, and this does not change the situation that men are indeed the majority of perpetrators of sexual violence. Thus, as previously stated, the discussion in this chapter focuses on the fulfillment of the rights of women as victims of sexual violence and incredibly obscene acts.

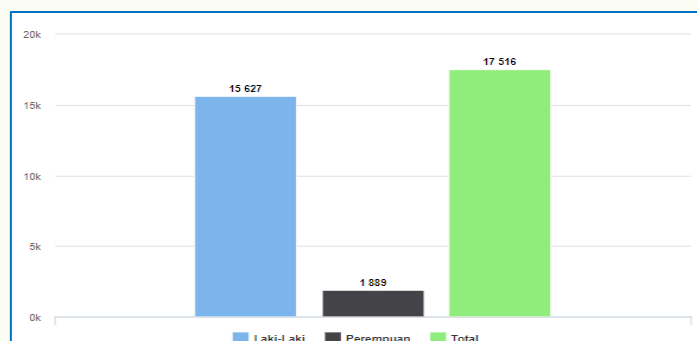
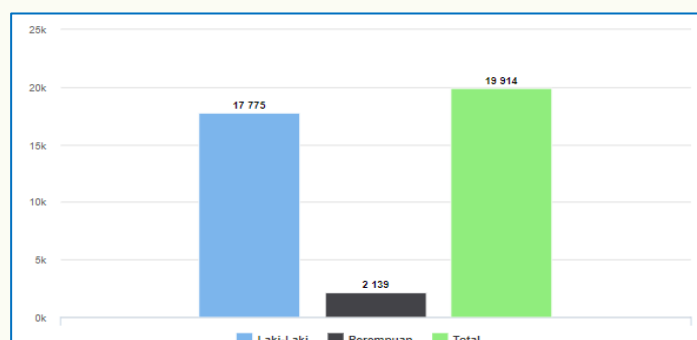


Figure 1. Actors by Gender in 2020  
Source: SYMPHONY-PPA



<sup>12</sup> OC Kaligis, *Legal Protection of the Human Rights of Suspects, Defendants and Convicts: In the Indonesian Criminal Justice System* (Bandung: Alumni, 2006).

<sup>13</sup> Naili Azizah and Syaiful Rozaq, "Application Of Gender Justice Values In Constitutional Court Decisions," *Journal Of Justice Law* 1, no. 2 (2021): 33-39.

*Figure 2. Actors by Gender in 2021*

*Source: SIMFONI-PPA*

Talking about women as victims of obscene acts, Article 1 point 3 of Law Number 31 of 2014 stipulates that victims are those who suffer physical, mental, and economic losses due to the occurrence of a crime. So about the problems mentioned above, that obscene acts can cause several consequences, both physical and mental suffering. Furthermore, related to human rights, the 1945 Constitution of the Republic of Indonesia has regulates starting from Article 28A to Article 28J. Some of them are the right to recognition, guarantee, protection, fair legal certainty, and equal treatment before the law. Obstacles in fulfilling the requests of victims of obscene acts are the absence of corroborating witnesses and the lack of legal interpretation carried out by those interested in the settlement. So many cases of indecent acts are released based on not fulfilling the elements of the articles that are indicted. At the same time, it is clear that everyone has the right to self-protection, honor, dignity, and the freedom to a sense of security and protection from the threat of fear to do or not do something. If it is related to the explanation above, there are not a few victims of obscene acts who get threats from the perpetrators not to tell anyone about what happened. Of course, this is also an obstacle to fulfilling their rights.

The Republic of Indonesia recognizes and upholds human rights and fundamental human freedoms as rights that are inherently inherent in and inseparable from humans, which must be protected, respected, and enforced for the sake of increasing human dignity, welfare, happiness, and intelligence and justice. Completely humans have been given the right to live, the right not to be tortured, the right to freedom of thought and conscience, the right not to be enslaved, and the right to be recognized as a person before the law are human rights that cannot be reduced under any circumstances. This phrase of any situation is also strengthened by the principle of justice, where a right must be given to the victim to maintain the measure of justice intended for the victim and the perpetrator.

In addition to the rights above, there are also rights stipulated in Law Number 39 of 1999 concerning Human Rights. Some of them protect human rights and fundamental human freedoms without discrimination. Then there is also the right not to be tortured and not to be enslaved. Often in cases of sexual violence, one of the elements is the presence of violence or threats of violence, and the direction of sexual violence is also open to the practice of sexual slavery. At the same time, everyone should be recognized as an individual human being entitled to the same protection by his human dignity before the law, with the assurance that the assistance and protection are far from an objective and impartial court.

As mentioned above, to support and realize the fulfillment of these rights, a Human Rights Commission was formed, which aims to develop conducive conditions for implementing human rights by Pancasila, the 1945 Constitution, and the United Nations Charter. And the Universal Declaration of Human Rights; and improve the protection and enforcement of human rights to fully develop the Indonesian human person and his ability to participate in various fields of life.

The rights in the Human Rights Law certainly provide complete guarantees for the continuity of human life, but the problem for the umpteenth time is how to fulfill these rights. Then, those rights are also considered very general and still need something more specific, especially in cases of sexual violence.

Next, are the rights regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Some of them are obtaining protection for personal security from the threat of violence, and being free from hazards related to the testimony that will be, is being, or has been given. Talking about this right, of course, it applies to criminal acts in general and all types of criminal acts. Still, the focus of this right is to provide guarantees when they testify to what they have seen, heard, and experienced. Next is the right to assistance. Assistance is undoubtedly needed at every stage of the criminal process.

In addition to the rights above, several things need to be considered, victims of serious human rights violations, victims of criminal acts of terrorism, victims of criminal acts of trafficking in persons, victims of criminal acts of torture, victims of criminal acts of sexual violence and victims of severe abuse, are also entitled to receive compensation. Media assistance and psychosocial and psychological rehabilitation assistance.

Other rights have been regulated in Law Number 12 of 2022 concerning the Crime of Sexual Violence. Victims of sexual violence have the right to Handling, Protection, and Recovery since the Crime of Sexual Violence occurred. In addition to victims in average physical condition, this law also guarantees the rights of victims with disabilities. Those with disabilities are given the right to get accessibility and proper accommodation to fulfill their requests by the provisions of the legislation.<sup>14</sup>

Victims' rights include the right to treatment, protection, and the freedom to recovery. First, Article 68 of the TPKS Law further regulated the right to Handling. Some of them are the right to information on the entire process and results of Handling, Protection, and Recovery. Of course, these rights also include the right to obtain legal services. In the beginning, it was stated that indeed the rights of victims of obscene acts had problems in their fulfillment, so when the TPKS Law was passed in 2022, it began to show that with the existence of this law, the rights of victims of obscene acts would be granted by the mandate of the law. Although it has been a long road, the rights contained in the TPKS Law are broader and even cover all criminal justice processes. Starting from the Police to the Examination in the Court session, the victim is still considered and their rights guaranteed even after the verdict is given to the perpetrator. Especially in cases where the victim experiences severe psychological trauma, the victim always feels insecure and threatened. The renewal of victims' rights has also been included in the TPKS Law, especially in cases of sexual violence with electronic media, where victims have the right to delete content that is the object of a crime.

Second, the right obtained is the right to protection as regulated in Article 69 of the TPKS Law. Some are protected from threats of violence by perpetrators and other parties and repeated violence. The concept of the right to protection expects protection before and during sexual violence. Cases of sexual violence do not only arise when there has been physical contact between the perpetrator and the victim; even verbally, it can be said as sexual violence if it contains words of sexual value. Of course, the targets are no longer those who will experience sexual violence but also those who have experienced sexual violence and have the potential to share it again in the future. Regarding this, their rights have been guaranteed as the TPKS Law regulates. Even the TPKS Law protects the attitudes and

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<sup>14</sup> Republic of Indonesia, "Law Number 12 of 2022 concerning the Crime of Sexual Violence" (2022), <https://www.dpr.go.id/dokjdi/dokument/uu/1800.pdf>.

behavior of law enforcement officers who demean victims. This issue has been developing for a long time, so the TPKS Law pays particular attention, regardless of who is doing it. The reason is straightforward the legal apparatus are those who should protect, but in cases of sexual violence, they have the potential to become perpetrators.

The third is the victim's right to Recovery. When talking about recovery, of course, the measure of achieving recovery is how the victim's condition is after being sexually assaulted. So that to achieve these goals, the methods that are carried out include providing medical rehabilitation, mental and social rehabilitation, social empowerment, restitution and compensation, and social reintegration. The point of the repair success is about how victims carry out their roles regularly, both as individuals, family members, and society. Especially for the right to Remedy has also been expanded; this right is given at the stage before, during, and after the judicial process. Of all the rights conveyed above, the state is obliged to be responsible for fulfilling these rights and carrying them out to the conditions and needs of the Victim.

Not many know that recovery for victims of sexual violence is significant. Especially for the crime of sexual violence, besides being physical, it will also be psychologically disturbed because this crime is related to sexuality which involves self-esteem and ensuring the mood in living daily life. To obtain their rights, victims are highly dependent on law enforcement officers; when the stage of development of cases of criminal acts of sexual violence reaches the Police, then to assist in the fulfillment of the rights of victims, it is necessary to carry out a series of efforts called investigations and investigations. In this process, the role of the Police is to determine the guarantee the rights of victims of sexual violence. The method of collecting evidence often encounters obstacles, especially regarding sexual violence; the main block is the absence of witnesses.

Article 184 paragraph (1) of the Criminal Procedure Code stipulates that witness testimony is one type of evidence. The importance of evidence is to be able to prove whether it is true that someone has committed a crime. In addition to witness testimony, expert testimony, letters, instructions, and statements from the defendant are also required. However, the fact is that for obscene acts, witness statements will be complicated to fulfill because these indecent acts occur spontaneously, and often the place chosen by the perpetrator is a quiet/more private place.

After all the processes at the Police level have been completed, the next stage is the Prosecutor's Office as a public prosecutor. If this stage is complete, it will be transferred to the Court. After the district court receives a letter of delegating the case from the public prosecutor, the chairman studies whether the issue is within the authority of the court he leads. In carrying out their duties, judges have an *absolute nature* because law enforcement is by Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>15</sup> Law enforcement is a process of implementing a law that has a purpose as a guide in behaving by legal norms in the life of the nation and state.<sup>16</sup> Law enforcement is a way to enforce the law through a statute formulated based on legal regulations and can be realized. Law enforcement is made to emphasize further the legal rules that have been implemented.<sup>17</sup> Soerjono Soekanto

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<sup>15</sup> M. Yahya Harahap, *Powers of the Supreme Court for Examination of Cassation and Review of Civil Cases* (Jakarta: Sinar Graphica, 2008).

<sup>16</sup> Jimly Asshiddiqie, "Law Enforcement," *Writer*, 2007.

<sup>17</sup> Satjipto Rahardjo, *Law Enforcement* (Yogyakarta: Genta Publishing, 2019).

considered that the implementation must involve all the components and factors.<sup>18</sup> The perpetrator must have responsibility for what has been done. All of this is based on the applicable laws and regulations and regulates what crimes were committed by the perpetrators. Gustav Radbruch also stated that the law is the will to be fair.<sup>19</sup> This proves that law enforcement has a critical position in influencing social life.

In line with this, law enforcement must also be by internationally agreed human rights principles, namely the principles of *Inalienability and Human Dignity*. The focus on *Inalienability* means that some rights cannot be transferred, cannot confiscate, or exchanged with certain things, so these rights can be excluded by being snatched away, released, and moved.<sup>20</sup> Then there is the principle of *Human Dignity*, namely the concept of fulfillment based on the inherent and ownership rights of every human in the world. Strictly speaking, this principle wants everyone to respect and respect the rights of others, to live life in diversity, and to build a tower for ance fellow human beings.<sup>21</sup> These two principles are why the rights of victims of obscene acts must be fulfilled without exception. The high number of cases of sexual violence certainly raises questions about the success of legal protection for victims. As seen in the image below, the ratio of women becoming victims of violence shows a graph that rises and falls in each region, possibly due to geographical, cultural, and other factors. It can be seen from the picture below *real-time data* from SIMFONI-PPA in 2020 shows that for cases of sexual violence, the highest is occupied by East Java Province with the number of victims of as many as 1.912 people, and West Sulawesi Province occupies tlowestste as many as 30 people. Furthermore, real-time *data* from SIMFONI-PPA in 2021 shows that for cases of sexual violence, the highest is occupied by East Java Province, with the number of victims as many as 1.912 people, and West Sulawesi Province occupies the lowest as many as 30 people.

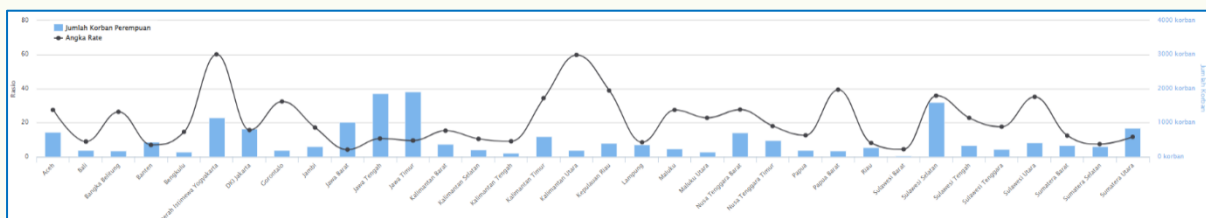


Figure 2. Ratio of Women Victims of Violence (per 100,000 women) in 2020  
Source: SYMPHONY-PPA

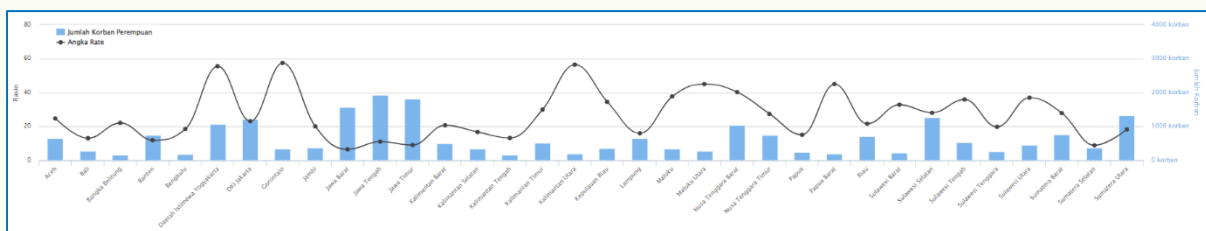


Figure 3. Ratio of Women Victims of Violence (per 100,000 women) in 2021  
Source: SYMPHONY-PPA

<sup>18</sup> Soerjono Soekanto, *Factors Influencing Law Enforcement* (Jakarta: Rajawali Pers, 2010).

<sup>19</sup> Soerjono Soekanto.

<sup>20</sup> Andi Akhirah Khairunnisa, "Application of Human Rights Principles in the Formation of Legal Products by Local Governments," *JOURNAL OF MP (GOVERNMENT MANAGEMENT)* , 2018, 65-78, <https://ejournal.ipdn.ac.id/JMP/article/ views/451>.

<sup>21</sup> Khairunnisa.



As contained in the Convention on the Elimination of All Forms of Discrimination against Women adopted by the General Assembly of the United Nations on 18 December 1979, *noting* that the Universal Declaration of Human Rights affirms that everyone is not allowed to be discriminated against and states that all human beings are born free. And equal in dignity and rights without any distinction. Thus, it has been clearly explained that, constitutionally and legally, anyone, including the State, prohibits discriminatory practices.<sup>22</sup>

### 3.2 The State's Responsibility in Fulfilling the Rights of Victims of Obscene Crimes

Reason and conscience are gifts received by humans from God Almighty, which makes humans the ability to distinguish between good behavior and bad behavior. The result is that with reason and conscience, humans have the freedom to decide their behavior or actions. Humans can be responsible for all their efforts to compensate for this freedom. Until now, various sufferings and social intentions caused by unfair and discriminatory behavior based on ethnicity, race, skin color, culture, language, religion, class, gender, and another social status still exist in Indonesia. In fact, during the seventy-six years of the Republic of Indonesia, the implementation of respect, protection, or enforcement of human rights is still far from satisfactory. Thus, the next problem is regarding fulfilling the requests of victims of obscene acts as mentioned above; it is known that the number of victims is increasing daily. It all started with a different mode of crime. As has been explained, obscene acts are included in criminal acts that have a threat of punishment as the types of punishment in Article 10 of the Criminal Code. This crime does not look at whether the victim is an adult or still in the category of a child under 18 (eighteen). Year. If a child is involved in this crime, whether it is the perpetrator or the victim, then what needs to be considered again is the Child Protection Act and the Child Criminal Justice System Act. With the number of impacts caused by the crime of obscene acts, it is considered that the problems will be increasingly complex and require special attention and handling.

Obscene acts happen not only to women but also to men. Likewise, if it is seen from the provisions of Article 289 of the Criminal Code that " anyone with violence or threats of violence forces a person to commit or allow obscene acts to be carried out, is threatened for committing an act that attacks the honor of decency, with a maximum imprisonment of nine years." If we examine more deeply, there are only elements/criteria for someone to commit obscene acts. In contrast to other general criminal acts, the meaning is already contained in several laws expressly. Therefore, the criminal act of obscenity still has a broad definition, where the purpose of the obscene act itself is still different from what is conveyed by one law enforcement officer and another.

The State has carried out several ways in fulfilling the rights of victims, but in its application, there are still many problems, both in terms of human resources and the laws and regulations. In addition to the broad meaning of obscene acts, Komnas HAM has carried out the functions of assessment, research, counseling, monitoring, and mediation on human rights. Komnas HAM consists of professional, dedicated community leaders who have high integrity and live up to the ideals of a state of law and a welfare state with a core of justice, respect for human rights, and essential human obligations. There is little hope that they can

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<sup>22</sup> Hwian Christianto and Dewi Masita, "The Act of Disclosing the Identity of Confirmed Covid-19 Patients by Hospitals Based on Human Rights and Criminal Law," *Journal of HAM* 13, no. 1 (2022): 131-50.

help in efforts to fulfill the requests of victims, which so far have not been able to be felt by victims as they should.

It should be realized that the Indonesian laws and regulations are still not in agreement and uniform in determining which acts can be categorized as obscene, so the role of law enforcement officers is needed in this case to maintain the law by fulfilling the rights of victims. To enforce the law against the crime of obscenity, law enforcement officers must prioritize a sense of justice for the victims of obscene acts, even though the perpetrators also get their rights.

First, it is based on the argument that the impact experienced by the victims is inconceivable and unmeasurable. Especially if what is being discussed is the psychological impact that can be in the form of anxiety disorders, depression, trauma, and hysteria. In addition, obscene acts can potentially trigger health problems such as sexually transmitted diseases.

Due to obscene acts as an act that violates decency or *Engelbrecht*, acts that attack the honor of character, and acts that contravene morality<sup>23</sup>, there is not only one article regulating obscene acts. In addition to Article 289 of the Criminal Code, there are several other articles, starting from Article 290 of the Criminal Code to Article 296 of the Criminal Code. The definition of obscene acts is not clear. It causes various interpretations due to being confused with the terms sexual intercourse and lewd acts, which raises the question of whether a criminal act of imposing obscene acts can be used to indict the perpetrators of sexual intercourse or only specifically for indecent acts without intercourse.

The obscene act in the Hoge Raad decision in 1926 was if a man forced a woman by holding the woman's hand to hold her genitals and ignored the resistance given by the woman, the man had caused others to take actions that violated decency. If a man against a woman carries out the coercion until sexual intercourse occurs, the perpetrator can be charged with Article 285 of the Criminal Code concerning rape.<sup>24</sup> Dutch writers have views and comments on the question of lewd acts, including acts of sexual intercourse or the terms they stand for, respectively. The show called 'forced' in Article 289, namely obscene acts, is a general definition that also includes acts of sexual intercourse, so Article 289 of the Criminal Code can also be used to prosecute acts of sexual intercourse.<sup>25</sup>

SR Sianturi said the exact phrase that explained that what was meant by sexual immorality was not formulated in the Criminal Code. Obscenity in general also includes sexual intercourse, which is associated with the difficulty of evidence for the act of intercourse due to various opinions. The first difference is that entering the male genitals to exit sperm can fertilize or impregnate the woman. The second opinion is that the genitals are inserted, and whether sperm can reach its target or be removed by the man cannot be used as a yardstick. Acts intended to get pleasure using/through the genitals of two or more people are acts of obscenity.<sup>26</sup>

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<sup>23</sup> Swingly Sumangkut, "Violent Crime Forces Obscene Acts according to Article 289 of the Criminal Code (Study of Supreme Court Decision Number 1639 K/Pid/2015)," *Lex Crimen* 8, no. 1 (2019): 190–200.

<sup>24</sup> PAF Lamintang, *Fundamentals of Indonesian Criminal Law (Basics for Studying Criminal Law Applicable in Indonesia)*.

<sup>25</sup> Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, Issued to (Bandung, 2012).

<sup>26</sup> SR Sianturi, *Criminal Acts in the Criminal Code The following is the description* (AHM-PTHM Alumni, 1983).

In some cases, obscene acts in practice. In these courts, issue decisions, actions that attack the honor of morality, such as forcing to open the victim's clothes or pressing the victim's body, can be charged with article 289 of the Criminal Code, where these acts are intended to commit rape or sexual intercourse. Meanwhile, sexual intercourse is regulated in a separate article, Article 285 of the Criminal Code. So it can be concluded that the act intended to commit rape and is not carried out until intercourse will be charged with Article 289 of the Criminal Code concerning acts of attacking the honor of decency. The act of intercourse will be charged with Article 285.<sup>27</sup>

According to a feminist perspective, sexual abuse is an act of violence<sup>28</sup>. Feminism itself is a movement that emerged as a result of violence and anti-authoritarianism, and anti-acceleration movements during the Cold War.<sup>29</sup> The origin of the word feminism is feminism, which means a fighter for women's rights, and later expanded into feminism, an understanding that fights for feminism. The development of movements and studies related to feminism triggers an expansion of the definition of sexual violence, namely disagreement on everything related to sexuality, both verbally and non-verbally. From a feminist perspective, using the benchmark of 'disagreement' or *without consent* in measuring the presence or absence of harassment, where all forms of action that have a sexual connotation and are carried out without the permission of the other party or are not expected by the target party can be said to be a form of sexual violence. So it can be said that because obscene acts are a type of sexual violence, the criteria should be the existence of an act that causes emotional discomfort to women.

Sexual violence against women is generally caused by the perception of gender differences, where women are considered inferior, and men are positioned as superior. Nandika revealed that in several cases of sexual violence against women, the characteristic possessed by perpetrators of acts of violence is a special feeling that feels more powerful than the victim, namely women who are considered weak.<sup>30</sup> Therefore, as stated earlier, although the victim could be a woman or a man, women are vulnerable to becoming victims. This is a cultural heritage where people still adhere to a patriarchal culture and regard sexual desire as a crime, a taboo subject, and must be tightly shrouded in the various norm.<sup>31</sup>

The state of society with a patriarchal culture is considered unfair, resulting in the position of women being subordinated in front of men, especially in the context of sexual violence, which creates a stigma on women's bodies and the imbalance of power between perpetrators and victims. Feminism then emerged, triggered by the discomfort over inequality in a patriarchal culture, and feminist thoughts continued to develop indefinitely because feminism was born in a context, as expressed by Prabasmoro, where feminism is a

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<sup>27</sup> Swingly Sumangkut, "A Violent Crime Forces Obscene Acts according to Article 289 of the Criminal Code (Study of Supreme Court Decision Number 1639 K/Pid/2015)."

<sup>28</sup> Fiana Dwiyantri, "Sexual Harassment of Women in the Workplace (Case Study of the DKI Jakarta Provincial Satpol PP Office)," *Indonesian Journal of Criminology* 10, no. 1 (2014): 29-36.

<sup>29</sup> Gitadi Teas Supramudyo, "Feminism and Sexual Harassment in the Bureaucracy of Government Power," 2008.

<sup>30</sup> A Hasriani, "Gender Violence Against Women in a Collection of short stories of Suara Merdeka (Criticism of Feminism)," *National Seminar on UNM's Anniversary*, no. 2 (2018): 125-34.

<sup>31</sup> Astuti Nurlaila Kilwouw, "SEXUAL VIOLENCE AGAINST WOMEN IN THE STUDY OF ISLAMIC PHILOSOPHY (Study of Feminist-Muslim Thought)," *Al-Wardah* 13, no. 1 (2020): 89, <https://doi.org/10.46339/al-wardah.v13i1.160>.

problem that was born and grew up in a socio-cultural context. And is in a specific condition of society and the environment of women.<sup>32</sup>

The explanations above, both obscene acts contained in Article 289 of the Criminal Code and rape as contained in Article 285 of the Criminal Code, and obscenity, according to a feminist perspective, which is more often referred to as sexual violence, is an act of coercion by one party against another party in it is the victim to have a sexual relationship. Law enforcement against criminal acts of sexual violence does not provide a deterrent effect and does not reduce the number of victims, especially in general; the victims of these acts are women. So it would be strange if suddenly there might be a decrease in the number of victims; this could be the result of solving cases that only demand criminal responsibility from the perpetrators and still adhere to a patriarchal culture.

Human rights cannot be separated from individual humans because without human rights; a person will lose his human dignity. Therefore, the government is obliged, both legally and politically, economically, socially, and morally, to protect, promote, and take definite steps to uphold and fulfill human rights. Human rights are not a gift from the government. And the government should not detain or give it to only some people.<sup>33</sup>

To carry out the obligations stipulated in the 1945 Constitution, the People's Consultative Assembly of the Republic of Indonesia, with the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVII/MPR/1998 concerning Human Rights, assigns the High State Institutions and all Government Apparatus, to respect, uphold and disseminate understanding of human rights to the entire community, and immediately revise various instruments of legislation relating to the rights of victims, as long as they do not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia.

#### 4. CONCLUSION

The Criminal Code only regulates elements that can be considered obscene acts. There has not been a firm formulation regarding the meaning/ understanding of indecent acts, so in practice, there are often differences in interpretation by law enforcement in interpreting obscene acts with existing legal instruments. Law enforcement efforts against lewd acts also need attention because even though it has been regulated in laws and regulations, its implementation is often unable to fulfill a sense of justice for victims, especially in guaranteeing their rights. Let alone to get their rights, even the accused of a criminal act of obscenity gets an acquittal only because the elements of the obscene act are not fulfilled, so there is no reason to impose a sentencing decision. Considering the magnitude of the impact felt by the victims, not only physically but also psychologically, this affects the psychological condition of the victims who have borne the brunt of the obscene acts they experienced, mainly if currently, all cases include sexual violence. More sensitive if it has to be revealed by the media. These fundamental freedoms and rights are human rights inherent in humans by nature as a gift from God Almighty. These rights cannot be denied. Denial of these rights means denying human dignity. Therefore, any state, government, or organization must recognize and protect human rights for every human being without exception. Human

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<sup>32</sup> Khusnul Khotimah, "The Meaning of the Reality of Sexual Violence, Patriarchal Practices, and Feminism in the Hush Film," *Journal of Development and Social Change* 2, no. 1 (2020): 71, <https://doi.org/10.20961/jodasc.v2i1.41659>.

<sup>33</sup> Herlambang P Wiratraman, "Human Rights Principles" (Surabaya, 2017), <https://herlambangperdana.files.wordpress.com/2008/06/principles-ham.pdf>.

rights must always be the starting point and goal in implementing social, national, and state life.

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