




The Power of Proof In Victims of Sexual Abuse

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Abstract

Introduction: Enforcement and legal protection for sexual assault cases has focused on protecting the victims of sexual assault law which consists of physical or psychological violence, retaliation, humiliation, and mistreatment of people who support victims of violence against women in particular. Where the focus of this tuilsan membahas about the legal protection of victims of sexual violence in Indonesian criminal law and how the penultimate case of sexual violence.

Purposes of the Research: The purpose of this study is to explain the concept Absentia trial by applying the return of State.

Methods of the Research: The research method used is normative legal research with a statute legal approach and a conceptual approach.

Results of the Research: Sexual violence itself becomes an urgency, given the rise of cases of sexual violence in Indonesia. By creating laws that protect victims of sexual violence, the resolution of sexual violence cases and the protection of victims of sexual violence cases can be executed well. So that the law in Indonesia can be implemented in accordance with its purpose, which is to protect all Indonesian people from crime cases.

1. INTRODUCTION

Sexual violence is an issue that has long been a discussion in Indonesian society. In Indonesia itself, the word sexual harassment is familiar because almost every year cases of sexual harassment occur. Sexual violence comes from the English language of sexual hardness where the word hardness itself means violent and unpleasant. Reveals that sexual violence is an act of violence committed by a person by forcing to carry out unwanted sexual contact.¹

Violence is one of the behaviors that are contrary to the law, either only in the form of threatening actions or actions that have led to real action that results in physical damage, objects, or can also cause the death of a person. In the case of sexual violence not only attacks on physical violence, but also indirectly attacks the victim's mental. The mental impact experienced by the victim due to sexual violence is not easily eliminated compared to

¹ Mannika," G. Studi Deskriptif Potensi Terjadinya KekerasaSeksua pada Remaja Perempuan," Calyptra: Jurnal Ilmiah Mahasiswa Universitas Surabaya 7, no.1 (2018): 2540-2553.

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physical violence that is also experienced, it takes a long time for the victim to truly recover from the incident.²

Sexual violence itself can be interpreted as the occurrence of unwanted sexual approaches by a person towards another person. Sexual approaches do not always have to be physical, but can also be verbal. Therefore, sexual harassment can come in many forms, such as rape, touching someone else's body intentionally, ridicule or jokes about sexual matters, personal questions about sexual life, making sexual gestures through hands or facial expressions, sexually suggestive voices, and much more.

Sexual violence in Indonesia itself occurs in various circles. Starting from children, adolescents, to adults. In fact, it doesn't just happen to women, it also happens to men. Not only various circles, sexual violence can also occur anywhere, namely the workplace environment, public places, places to study even in the family environment.³ Various forms of violence include violations of human rights, crimes of human dignity, and one form of discrimination that must be eliminated. Victims of sexual violence are mostly women who are obliged to obtain protection from both the state and society so that victims can remain free and avoid the shadow of violence, torture and treatment that leads to degrading human dignity and dignity.

According to the data collected by the Ministry of women's empowerment and Child Protection, it has been recorded that cases of sexual violence in 2020 are at 7,191 cases. While starting from June 2021 from the online information system for the protection of women and children, cases of sexual violence in 2021 have reached 1,902 cases (National Commission on Violence Against Women, 2021). Until now, sexual violence in Indonesia that has been felt by minors is still very much. This can be seen from the news both print and electronic media in Indonesia that still provide information related to sexual violence. Cases of child abuse both physically and psychologically has always been a hot talk either at the national or international level. This is because this case has happened since humans existed on Earth. This will probably continue to happen for the foreseeable future.⁴

The problem of sexual violence has often been heard in the ears of Indonesian society. However, Indonesian law has not fully provided firm legal consequences for perpetrators and protection for victims. Only a few cases of sexual assault have been brought to justice. This is due to the fear of victims to report to the authorities due to the bad stigma by the public against victims of sexual violence. Not infrequently the media cover the news about the victim side that is the cause of sexual violence, for example, the victim wears open clothes, the victim is out at night, the victim goes alone which can make the appearance of the perpetrator's lust.⁵ Victims are often stigmatized by the public that victims can also 'enjoy' sexual violence that occurs. When the victim has dared to complain of sexual violence that happened to him, it is not uncommon for officials or authorities not to respond to the complaint or even respond to the complaint with no seriousness and take it lightly.

² Suryandi, Dodi., Hutabarat, Nike., & Pamungkas, Hartono, "Penerapan Sanksi Pidana terhadap Pelaku Tindak Pidana Kekerasan Seksual terhadap Anak," *Jurnal Darma Agung* 28, no.1 (2020): 84-91..p .84-91. <http://dx.doi.org/10.46930/ojsuda.v28i1.p.464>

³ Anggoman, E, "Penegakan Hukum Pidana Bagi Pelaku Kekerasan Seksual Terhadap Perempuan," *Lex Crimen*.8, no.1, (2019): 3. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/25631/0>

⁴ Yusyanti, D, "Perlindungan Hukum Terhadap Anak Korban Dari Pelaku Tindak Pidana Kekerasan Seksual," *Jurnal Penelitian Hukum de Jure* .20,no.4, (2020): .68. <http://dx.doi.org/10.30641/dejure.2020.V20.619-636>

⁵ Indainanto, YofiendiI, "Normalisasi Kekerasan Seksual Wanita di Media Online," *Jurnal Komunikasi* 14, no.2,(2020) :105-118.

Protection and attention to the interests of victims of sexual violence both through the judicial process and through certain means of social concern is an absolute part that needs to be considered in Criminal Law Policy and social policies, both existing social institutions and institutions of state power.⁶ Based on these descriptions, the research focuses on the power of proof in victims of sexual abuse.

2. METHOD

This study uses a type of normative legal research (doctrinal research). Doctrinal legal studies analyzes authoritative texts (with binding legal force) and readers whose strength persuasive (reinforcement). Texts that have binding legal force are the main legal material that includes laws and regulations relevant to research issues.⁷ related to this, considering that this normative legal research analyzes the rule of law, the object under study is in the form of regulatory documents and library materials.⁸ in this case the object of this study is in the form of rules or literature related to persidangan absentia and corruption In the implementation of this study, the authors use several approaches to research a field science so that research focuses on solving problems following a predetermined scope. This approach in this study consists of legal and conceptual statute approach approach. The statutory legal approach is done by examining laws and regulations.⁹ The legal approach of this statute is used to examine the legislation or legislation related for absentia trial with the application of the explicit cost of the return of State losses. About conceptual approach, it is done based on legal principles obtained in view of the law scholars or other legal doctrine by not deviating from the existing regulations this approach is necessary because there are no rules governing it.¹⁰ application of conceptual approach is to seek the definition of absentia trial, explicit charges and corruption in the perspective of Islamic law, which is available in the law books, and other legal journals.

3. RESULTS AND DISCUSSION

3.1 Sexual Violence In The Perspective of Law Enforcement

Sexual harassment behavior is a disgraceful act that can be measured by the violation of the methods or norms that are rooted in socio-cultural values as a system of behavior and guidelines for the actions of citizens, which can involve religious norms, morality and law. According to Ratna Batara Munti stated that the criminal act of sexual harassment is not clearly regulated in the Criminal Code, not even one article mentions the words of sexual harassment or sexual assault, there is only the term of obscene acts regulated in Article 289 to Article 296 of the Criminal Code. While the obscene act itself can be interpreted as a behavior that is not in accordance with the sense of decency or vile treatment that is done because it solely meets the passions that cannot be controlled.

⁶ Surayda, Helen, " Perlindungan Hukum Terhadap Korban Kekesaran Seksual dalam Kajian Hukum Islam." *Jurnal Ius Constiuendum* 2, no.1, (2017) :30. <http://dx.doi.org/10.26623/jic.v2i1.543>

⁷ Dyah Ochtorina Susanti and A'an Efendi, *Penelitian Hukum (Legal Research)*, (Jakarta: Sinar Grafika, 2014),. 11.

⁸ Salsabila Fitri Pratami, Zilva Karimah Azahra, Supriyono, "Kekeerasan Sexasual dan Keterkaitannya Sebagai Faktor Pemicu Generalized Anxiety Disorder (GAD)", *Jurnal Harkat* 17, no.1, (2021) : 11

⁹ Pratami , Azahra and Supriono, "Kekeerasan Sexasual dan Keterkaitannya Sebagai Faktor Pemicu Generalized Anxiety Disorder (GAD),"10.

¹⁰ Pratami , Azahra and Supriono, "Kekeerasan Sexasual dan Keterkaitannya Sebagai Faktor Pemicu Generalized Anxiety Disorder (GAD),"15.

If we look at the formulation contained in the criminal code, broadly the classification of sexual violence is divided into, adultery, intercourse, abuse, pornography. Related to sexual violence or sexual harassment is not clearly regulated in the Criminal Code, the Criminal Code only regulates crimes against decency. This crime against decency is regulated in Chapter XVI of Book II of the Criminal Code, which is as follows: a). crimes resulting from an open violation of public decency (Article 281); b). the crime of pornography (Article 282); c). the crime of pornography against children (Article 283); d). the crime of pornography when carrying out its lighting (article 283b); e). the crime of adultery (Article 284); f). the crime of committing rape for intercourse (article 285); g). the crime of intercourse in a state of unconsciousness and helplessness without committing marriage (Article 286); h). the crime of intercourse with a daughter (Article 287); i). intercourse with a woman who is not old enough to marry causes minor and even severe injuries (article 288; j). the crime of rape of fornication or behavior that attacks the honor of decency (article 289); k). the crime of lewdness against a person who is unconscious and not old enough to marry (Article 290); l). If the crimes in articles 286, 287, 289, and 290 result in serious injury (article 291); m). the crime of lewdness against a child of the same sex (article 292); n). crime encourages people to commit lewdness with people who are not of legal age (article 293); o). the crime of lewdness with a child (article 294); p). evil makes it easier to commit lewdness for children (Article 295); q). crime makes it easier to commit lewdness as a livelihood or habit (Article 296); r). the crime of selling either women or men who are not of legal age (article 297); s). crime makes as a source of work the abusive activity carried out by another person (article 298).

Not only related to criminal law, the occurrence of sexual violence also violates the human rights owned by the victim. The Indonesian legal system guarantees the human rights of every society. Listed in the Basic Law of the Unitary State of the Republic of Indonesia 1945 in Article 28A-28j. In Article 28A it is explained that every person has the right to live and has the right to maintain his life and life. Furthermore, in Article 28B paragraph (2) it is explained that every child has the right to the survival of growing, and developing, and has the right to protection from violence and discrimination. A child should have the protection of dignity and martbat in the surrounding environment so that he can grow and develop both physically and psychologically. Even Frans Magnis Suseno argues that protecting children's rights is part of defending human rights.¹¹

Then in Article 28g explained that every human being is entitled to personal protection, honor, family, dignity and dignity, and entitled to a sense of security and protection from the threat of fear to do something or not do something that is a human right. Then it is reaffirmed in Article 28i paragraph (1) that the right to life, the right not to be tortured, the right to freedom of mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances. It can be seen from the various articles above, that the Indonesian legal system is against violence, including sexual violence.

3.2 The Power of Proof In Victims of Sexual Assault Cases.

Due process of law is defined as a set of procedures required by law as a standard procedure in criminal law that is universally applicable . Evidence states evidence based on

¹¹ Antari, Putu Eva D, " Pemenuhan Hak Anak yang mengalami kekerasan seksual berbasis Restorative Justice Pada Masyarakat Tenganan Pegringsingan," Karangasem, Bali. Jurnal HAM 12, no.1,(2021): 10 p.76.<http://dx.doi.org/10.30641/ha m.2021.12.75-94>.

Article 184 in the Code of Criminal Procedure: a) witness testimony; b) expert testimony; c) letter; d) instructions; e) defendant's testimony.¹²

If sexual harassment is suspected, the things that can be used to help prove the case of sexual assault are the five things above. And for cases related to abuse or rape, usually use one of the evidence in the form of visum et repertum. Visum et repertum is a common term in the world of Forensic Medicine. Visum comes from the Latin language which has the meaning of the sign of seeing. While repertum, means reporting which means what has been obtained from the doctor's examination of the victim. So visum et repertum can be interpreted as reporting what is seen and found. If there are no signs of violence after the results of the post-mortem et repertum, it would be much better to look for other evidence so that the act of sexual violence can be proven. And ultimately the decision on whether this was an act of sexual assault will be returned to the judge's verdict.

Proof of psychic violence is not as easy as proof of physical violence. Because the evidence of physical violence is easily visible to the eye and can be proven by visum et repertum while the evidence of psychic violence is not visible because the pain can only be felt by the victim through his mind and soul. Therefore, attempts to disclose facts in cases of psychic violence often have difficulties. In relation to the psychological consequences of sexual violence, it is necessary the help of experts, namely psychologists or psychiatrists who are experts in psychiatric matters and have studied the mental health of others in more depth.

Law enforcement officers should strengthen the disclosure or investigation system in proving cases of sexual violence. The number of difficulties in handling cases of sexual violence causes many cases that are not brought to the realm of the court, even often we see the news that the report of victims of sexual abuse or violence is rejected by law enforcement officials because of the difficulty of proof. Difficulty in the process of proof because when the occurrence of sexual violence is generally done without the presence of others.¹³

This must be overcome because it results in perpetrators who do not get consequences, victims who are neglected, and the potential for repeated cases of sexual violence.

In the process of proving sexual violence, it is expected that law enforcement officers are not discriminatory. Especially, it is expected not to blame the victim or give a bad stigma to the victim. This is because the victim who has been willing to come with a condition that still feels depressed, and afraid, of course, need protection not even find a response someone who blames the victim (Victim Blaming) that can make the victim's situation worse.¹⁴

As best as possible, law enforcement officers must handle and provide legal certainty to victims, and not even slow down or even stop the process of solving sexual assault cases. The perpetrator of sexual violence must still have legal consequences that are as fair as possible from whatever position, existence, and position of the perpetrator. Because of the fact, this sexual crime is likely to be reduced if the legal process and products can actually

¹² Savitri, N, " Pembuktian Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak," *Jurnal Bina Mulia Hukum* 4, no.2, (2020) :276-293. <http://dx.doi.org/10.23920/jbmh.v4i2.323>.

¹³ Sibarani, "Pelecehan Seksual Dalam Sudut Pandang Undang-undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia," *Sol Justisio: Jurnal Penelitian Hukum* 1, no.1, (2019):98-108. Lihat juga Yonna Beatrix Salamor, Anna Maria Salamor, "Kekerasan Seksual Terhadap Perempuan (Kajian Perbandingan India-Indonesia," *Balobe Law Journal* .2, no.1, (2022):9.

¹⁴ Iqbal, Muhammad., Emilda, Firdaus., & Ferawati. Pengaruh Prilaku," *Menyalahkan Korban Dalam Tindak Pidana Kesusilaan di Indonesia," JOM Fakultas Hukum Universitas Riau* 7, no.2,(2020):1-15.

punish the perpetrator of sexual violence with appropriate punishment, and the community provides social support to the victim .¹⁵

A more definitive arrangement in classifying what constitutes sexual assault is very much needed, it also requires the commitment of law enforcement officials to have an open mind and more attention to the victim. Because sexual violence is not always about coercion or violence in the penetration of the penis into the vagina. There are many types of sexual violence beyond that.

4. CONCLUSION

The power of evidence of sexual violence in Indonesia is a social problem in the community. But unfortunately, the criminal law created to protect victims of sexual violence still seems haphazard and does not show any alignment on the victim. This makes many victims of sexual violence afraid to fight for the justice they deserve. Victims of sexual violence are afraid to file reports related to sexual violence cases, due to the lack of legal protection in Indonesia that guarantees protection for victims of sexual violence. The rules of criminal law that have been made, show less partiality in victims of sexual violence. The presence of several ambiguous phrases, making law enforcement related to sexual violence cases in Indonesia difficult to apply. In addition, in practice, the application of the sexual violence case law in Indonesia still encounters some obstacles because the existing legal regulations are not implemented properly several times. Therefore, appropriate legal regulation is needed to protect victims of sexual violence from the crimes they experience. For the case of sexual violence itself becomes an urgency, given the rise of cases of sexual violence in Indonesia. By creating laws that protect victims of sexual violence, the resolution of sexual violence cases and the protection of victims of sexual violence cases can be executed well. So that the law in Indonesia can be implemented in accordance with its purpose, which is to protect all Indonesian people from crime cases

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¹⁵ Atikah Rahmi, "Urgensi Perlindungan bagi Korban Kekerasan Seksual dalam Sistem Peradilan Pidana Terpadu Berkeadilan Gender," MERCATORIA 11, no.1,(2018):.37-60,

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