

LEGAL PROTECTION AGAINST WOMEN IN SEXUAL VIOLENCE

by Absori Absori

Submission date: 03-Jan-2020 11:37AM (UTC+0700)

Submission ID: 1239096399

File name: ARTIKEL_ENGLISH_041219.doc (66K)

Word count: 3034

Character count: 16204

LEGAL PROTECTION AGAINST WOMEN IN SEXUAL VIOLENCE

Absori Absori¹ Fitriani Nur Damayanti² Kelik Wardiono¹ Sri Rejeki²

¹ Lecturer at Universitas Muhammadiyah Surakarta

² Lecturer at Universitas Muhammadiyah Semarang

Email: absorisaroni@gmail.com

Phone : +628122639131

7

Jl. A. Yani, Mendungan, Pabelan, Kec. Kartasura, Kabupaten Sukoharjo, Central Java, Indonesia

Abstract

Introduction: Sexual violence is one of the morbidities and mortality factors in women. Sexual violence of women causes physical and physiological sequences that make them vulnerable to health problems.

Material and method: It was normative legal research with a literature study and document study as a method to collect the research data.

Findings: Marital sexual abuse or the highest personal relation was incest with 1,071 cases followed by raping with 818 cases, and molestation with 321 cases. Meanwhile, marital rape reached 195 cases. The forms of sexual violence consist of sexual harassment, sexual exploitation, coercion of contraceptive use, compulsion in abortion, rape, marital compulsion, prostitution, sexual bondage, and sexual torture. The protection against victims of sexual violence was considered to be not optimal due to a lack of public understanding of the causes and effects of sexual violence.

Conclusion: So far, the legal protection against women in sexual violence cases have not been optimally implemented. The minimum legal protection triggered impunity, reoccurrence, and even the victims' frustration to accept justice and recovery.

Keywords: Legal Protection, Sexual Violence, Women

Introduction

Sexual violence is considered a serious human right violation with a huge impact, especially for women¹. Sexual violence is also a form of violence frequently experienced by women related to the stereotype that put women as an object of sexuality². It can be stated as violence against women, gender-based violence, and gender violence³. Any form of sexual violence can be categorized as violence against morality and domestic violence. This act is characterized by some indicators such as carried out in the house, behind the closed door, involves physical violence, performed by people with a close relationship to the victim, and reoccurring. The victims are usually women and children, with men (father or husband) mostly as the subject of the act. However, in some kinds of literature, domestic violence refers to violence performed by a husband to his wife or also known as wife beating⁴.

In Indonesia, sexual violence is divided into three categories, which are molestation (911 cases), sexual harassment (704 cases), and rape (699 cases). The high rate of sexual harassment leads to weak legal protection against women⁵. It is more difficult to reveal and handle sexual violence compared to the other forms of violence as it is frequently correlated to society's concept of morality. Women are considered as the symbol of purity and dignity. Therefore, it is such a shame to be the object of sexual violence. It makes women tend to be silent when they are involved in sexual violence⁶. Sexual violence is the main factor of morbidities and mortality in women. Sexual violence of women causes physical and physiological sequences that make them vulnerable to health problem⁷. Women face significant risks such as genital and extragenital trauma, an unexpected pregnancy, sexual dysfunction, and sexually transmitted disease (STD)⁸.

The draft of the law about sexual violence is aimed to prevent sexual violence, act against the subject of sexual violence (includes rehabilitation), victim's recovery, implement the duty of a country to remove violence against women⁹. Victim protection during the judicial process strongly relates to the applied legal provisions. Today, the law about sexual violence already exists, but it has not been optimally implemented. The scope of sexual violence is mentioned in Law No. 23 of 2004 about the elimination of domestic violence and Law No. 39 of 1999 about human rights mentions the limited scope of criminal justice for sexual violence which limits the criminal act and forms of sexual

violence experienced by victims. According to the law, the victim of sexual violence can only get protection by following the legal process. Therefore, legal protection is needed for women as victims of sexual violence.

Methods

It was normative legal research, which is research about legal principles. The research focused on the material of primary and secondary law¹⁰. It was descriptive research that gave a detailed and systematic description of legal protection against women in sexual violence. The data was collected through literature and document study. The literature study was done by analyzing the law and regulations, books, literature, and other research papers. The research data was qualitatively, completely, and comprehensively analyzed to produce empiric-normative legal research¹¹. The data collected from the research was analyzed and systematically outlined to conclude.

Results and Discussion

The sexual violence mostly experienced by victims within their family in a form of domestic violence or their private are. The form of domestic violence was dominated by incest (1,071 cases), followed by rape (818 cases) and molestation with 321 cases. In 2017, a surprising finding mentioned 1,210 cases of incest. Meanwhile, in this year, the incest case was reduced to 1,071 cases. The level of marital rape was quite high with 195 cases; meanwhile, marital rape in 2017 was 172 cases. It meant that the marital rape report was increased from 172 to 195 reports and needed to be taken seriously. The courage to report the marital rape cases showed that the victims were more aware of the coercion of sexual intercourse was considered as marital rape which can be sued¹³.

There was no comprehensive protection mechanism as the scope of the cases was wider than the related regulation. The impact of the minimum legal protection triggered impunity, reoccurrence, and even victims' frustration of justice and recovery. On the other hand, the existed law and judgment were not able to prevent and handle the case using due diligence principles. Here are the forms of sexual violence reported based on the victims' experience and complaint.

1. Sexual harassment

Sexual harassment was not identified in the Criminal Code of Indonesia; the section of morality violence only mentioned adultery, molestation, and rape which the criminal act was in the form of physical activity. On the other hand, in the real situation, sexual harassment may in a form of non-physical contact such as verbal insult and attack that made someone feel humiliated and insulted. The draft of the law about sexual harassment mentioned sexual harassment involves physical and non-physical harassment. Some examples of sexual harassment cases were: A non-physical and insulting sexual harassment experienced by BN, an administration employee in a state school in Mataram, NTB. It was said that the school principals said about his sexual fantasy of BN and pursued BN to fulfill his sexual need either on the phone or when they went face to face. It insulted BN and made her uncomfortable. Meanwhile, the local cop of NTB considered the criminal act as molestation as there was no physical contact. Besides, he also showed some sexual content either from social media or from his document to the victim¹⁴.

Physical sexual harassment in affirmative law is also known as molestation, of which the definition ranges very wide as it also includes sexual intercourse. Meanwhile, the mentioned sexual harassment above didn't include sexual intercourse and categorized as a morality violation. The National Committee on Violence against Women (*Komnas Perempuan*) found many forms of physical sexual harassment. The physical sexual harassment frequently aimed women's breasts as the target in some situations including the act done by a medical practitioner or employees in any asylum or social orphanage when they cleaned their patients' bodies in an open space in which people can see the patients easily. The employees thought that the patients would feel ashamed of their bodies. Besides, in 2018 a physical social harassment was experienced by a commuter line train passenger. A male passenger rubbed his sexual organ on her body. She tried to

move, but the man did the same thing again. However, despite the shock and anger, the female passenger could not do anything. She then felt so much regret to be angry but could not fight against it.

2. Sexual exploitation

Sexual exploitation is attached in Law No. 21 of 2007 about human trafficking eradication as the objectives, and also in Law No 35 of 2014 as the revision of Law No 23 of 2002 about protection for children. Sexual exploitation includes a sexual activity that tends to take benefit from the object and mainly for the subject's benefit only. Sexual exploitation had not been included in the Criminal Code and Law as a form of sexual violence. Therefore, any cases related to sexual exploitation rarely forwarded into the legal court. The modus of this case usually happened when women were promised to work abroad with a high salary, but they ended up being trafficked or raped by a foreigner. As an example, SF was promised to work abroad. Although she canceled her intention after experiencing sexual violation, the agent asked her to pay a huge amount of money as the substitution of administration fee the agency was spent for her during the training. SF forced to do the sexual activity for the agency benefit, or she would be fined. It was a clear form of sexual exploitation¹⁵.

3. Rape

Rape commonly involves coercion, manipulation, violence, and threat. Sometimes, sexual intercourse does not only involve sexual organ penetration but other things besides the sexual organs such as finger or other kinds of stuff. The act also includes sexual activity with children, also take benefits from the powerlessness, inability, and disability of the victim. Those activities are mentioned as rape in the bill of sexual violence elimination. The National Committee of Violence Against Women identified a rape case back in 2018 as experienced by AG, a college student of UGM in her internship from June – August 2017 in Maluku. Her fellow member, HS raped AG in her sleep. AG went through a long way to get justice. However, the compensation was not equal to what she expected. Instead, the university tended to blame AG with a statement that comered AG as a woman who pursued the man to get into the sexual activity, of which no man would not deny accepting that. The case was then closed on February 4th, 2019 through the non-litigation process. No legal process was applied for this case. Both HS and AG were allowed to finish their studies and gave them counseling. HS was asked to apologize in front of the UGM commissionaires and HS parents. Meanwhile, AG was compensated with a scholarship until she finished her degree. the other case was experienced by NA, a woman who was raped by her neighbor named Marhon.

4. Sexual bondage

Sexual bondage is a form of sexual violence which is aimed to give sexual service under the control of the subject in a certain period until the victim got helped. An example of sexual bondage found by National Committee on Violence against Women was in 2018 which was experienced by CT (27 years old).she was the only victim who was brave enough to report the sexual bondage done by Gatot Brajamusti, ex-chief of PARFI, a spiritual guru, and a leader of a hermitage. The case attracted public attention as the subject was a public figure added with the assumption that there were many women that might be involved in that case (although most of them were not brave enough to report the case) and most of the victims were very young women which were promised to be an actress or singer¹⁶.

5. Sexual torture

Sexual torture is a form of sexual violence that was not regulated in any law and Criminal Codes. The bill of law about sexual violence elimination tries to include sexual torture in the law as a form of effort by anti-torture convention to comprehensively handle sexual torture. Sexual torture involves some acts to intentionally attack sexual organs for certain reasons so that it can cause terrible physical, spiritual, and sexual pain. A Malaysian citizen reported that she was a victim of sexual torture during the body checking in Adisucipto Airport Yogyakarta. ML arrived at Adisucipto Airport on December 31st, 2017 at 10.30. just like the other passenger, she went through the

x-ray scanning, dog screening, and document checking. However, her baggage was arrested, and she was required to go for another checking. She was placed in a special room. In that room, the officers checked her belongings but did not find any forbidden stuff. However, the officers kept on asking about a package of food and her private stuff. Instead of being released, she was asked to enter another room for body checking. In that room, a female officer asked her to take off all of her clothes without any further explanation. When she was naked, she was asked to stand in front of a big mirror. She didn't know if that mirror was only a common mirror or a two-way mirror. At that time ML was not able to do anything other than following the officers' instruction as she did not want to be claimed as a rebel foreigner. In the end, there was no further explanation about all the security checking, and she left with a stressed, ashamed, and humiliated feeling. It was categorized as sexual torture as it was done by those who owned the authority to do all the checking which was aimed to satisfy their assumption that ML carried drugs¹⁷.

Based on the data about sexual violence cases, the protection for women as the victims of sexual violence was considered to be not optimal due to the lack of understanding of the cause and effect of sexual violence. Besides, the legal institution in Indonesia was not able to properly protect the victims due to the limitation of regulating law¹⁸. In the affirmative law about sexual violence did not comprehensively understand the cases. The limited scope of sexual violence criminal act limited the form of sexual violence experienced by victims¹⁹. For example, sexual harassment, sexual exploitation, coercion of contraceptive use, compulsion in abortion, rape, marital compulsion, prostitution, sexual bondage, and sexual torture did not clearly state in the law. Legal protection only protected those who were brave enough to bring the case to the court²⁰.

Sexual violence also affected both the victim and her family as they suffered from the threat, restriction, exclusion, also social, political, and economic discrimination. Further example of the impact was when the victim was blamed by the society and family, denied by the family, expelled and excluded by her society, workplace or school, forced to marry the perpetrator, got some difficulty to access citizenship documents. They also did not get any social security, economically dependent on family and close relatives, lost her beneficiary, did not get any medical and psychological treatment by considering the victim as the wrongdoer²¹. To give optimum service for sexual violence victims, collaboration and coordination are needed to evenly distribute the jobs of each related institution, including the agreed mechanism, policy support, and the availability of the resource. A country should have protected its citizens from the fear, as free from fear is a basic human right.

Conclusion

Sexual violence case on women was considered very high and psychological mental trauma, fear, shame, anxiety, and even a suicide trial. The legal protection of women has not been well implemented. The protection mechanism was not comprehensively available due to the case complexity that surpassed the availability of the cases in the established regulation or law. The minimum legal protection triggered impunity, reoccurrence, and frustration of the victims to get justice and recovery.

Conflict of interest

5

No conflict of interest

Ethical clearance

Not required

Source of funding

Self-funding research

References

1. Blake Mde T, Drezett J, Vertamatti MA, Adami F, Valenti VE, Paiva AC, Viana JM, Pedroso D, de Abreu LC. *Characteristics of sexual violence against adolescent girls and adult women*. *BMC Womens Health*. 2014 ; 22 (1). doi: 10.1186/1472-6874-14-15.
2. Helen Intania Surayda. *Legal Protection For The Sexual Violence Victims In Islamic Law Study*. Accessed on 11 November 2019
3. Setiadi. *Legal Protection for Women from Violence*. No. 3 Th.XVII July – September 2001. 338-348.
4. Sapp MV, Vandeven AM. *Update on Childhood Sexual Abuse*. *Curr Opin Pediatr*. 2005;17:258–264p. doi: 10.1097/01.mop.0000158731.64293.c7.
5. Pebriansyah Ariefana. *Legal Protection for Female Victims*. <http://www.suara.com>. Monday, November 19th 2018.
6. National Committee of Violence against Women. 2018. Available from www.komnasperempuan.go.id. Accessed on 22 November 2019
7. Krug EG, Dahlberg LL, Mercy JA, Zwi AB, Lozano R. *World Report on Violence and Health*. Geneva: World Health Organization (WHO); 2002. Available from <https://www.who.int/>. Accessed on 6 October 2019.
8. Drezett J, Kurobe FC, Nobumoto CT, Pedroso D, Blake MT, Valenti VE. *Hydatidiform Mole Resulting From Sexual Violence*. *Int Arch Pediatr*. 2012;5 (8). doi: 10.1186/1755-7682-5-8
9. Aguilar A, Salcedo M. *Characteristics of Sexual Violence In Adolescents From 10 To 19 Years Of Age*. *Colomb Med*. 2008;39:356–363p.
10. Abdul Kadir Muhammad. *Law and Legal Research*. Bandung : Citra Aditya Bakti. 2004. 34p
11. Soerjono, Soekanto. *Introduction to Legal Research*. Jakarta : Universitas Indonesia. 2010. 58p
12. Booklet Komnas Perempuan. *15 Forms of Sexual Violence An Introduction*, Jakarta. 2013
13. National Committee of Violence against Women. *Voice Victims, Data Talk, Pass the Bill on the Elimination of Sexual Violence as a Form of State Commitment*. 2019. Available from <https://www.komnasperempuan.go.id/>. Accessed on 13 November 2019
14. FGD Women in Disaster Contextsa. *National Committee of Violence against Women*. 2018.
15. Tempo. *Sexual Violence in Women*. 2018. Available from <https://www.tempo.com/>. Accessed on 7 November 2019.
16. INews. *Cases of Sexual Violence*. 2018. Available from <https://www.inews.id/>. Accessed on 7 November 2019.
17. ICJR. Indonesia Pro Torture: 16 Years After the Ratification of the Convention Against Torture in Indonesia. Notes for Commemoration of the 2014 Anti-Torture Day. Available from <http://icjr.or.id/data/wpcontent/uploads/2014/06>. Accessed on 18 November 2019
18. Mertokusumo, Sudikno. *Know the Law An Introduction*. Yogyakarta: Liberty. 2005. 75p.
19. Akhtie Fadjar. *Contemporary Legal Theories*. Malang : Setara Pers. 2013. 85p.
20. Du Mont J, Macdonald S, Rotbard N, Asllani E, Bainbridge D, Cohen MM. *Factors Associated With Suspected Drug-Facilitated Sexual Assault*. *CMAJ*. 2009 ;18 (2) :513–519p. doi: 10.1503/cmaj.080570.
21. Ramos CRA, Medici VPG, Puccia MIR. *Sexually Abused Women: Social And Demographic Profile And Health Care Procedure Analysis At A Referral Center*. *J Health Sci Inst*. 2009;7:22–27p.

LEGAL PROTECTION AGAINST WOMEN IN SEXUAL VIOLENCE

ORIGINALITY REPORT

8%

SIMILARITY INDEX

7%

INTERNET SOURCES

6%

PUBLICATIONS

5%

STUDENT PAPERS

PRIMARY SOURCES

1

www.biomedcentral.com

Internet Source

4%

2

Submitted to University of Melbourne

Student Paper

1%

3

ebooks.cambridge.org

Internet Source

1%

4

Submitted to Universitas Airlangga

Student Paper

1%

5

Submitted to Maryville University

Student Paper

<1%

6

Submitted to University of South Africa

Student Paper

<1%

7

jurnal.unived.ac.id

Internet Source

<1%

8

Submitted to University of Lincoln

Student Paper

<1%

9

Submitted to Europa Universitat Viadrina

Exclude quotes Off

Exclude matches Off

Exclude bibliography Off