



Law Number 12 of 2022 Regarding Crime of Sexual Violence as a Role and Form of Legal Protection of Victims of Sexual Violence in Indonesia

Nida Salmah ^{1*}, Ujang Badru Jaman ²

^{1,2} Law Study Program, Nusa Putra University

^{1,2} Sukabumi, West Java, Indonesia

^{1,2}(nida.salmah_hk19, ujang.badru)2nusaputra.ac.id

Abstract. Sexual violence is not about morality or punishment but rather about power dynamics and the exploitation of the weak by the powerful. The issue lies with the perpetrators who feel empowered to use victims for sexual gratification, not with the victims themselves. Consequently, victims of sexual violence can include not only women but also children and men in vulnerable positions. In patriarchal societies, women are often viewed as powerless and therefore more susceptible to such abuse. This vulnerability is even greater for individuals with disabilities. Sexual violence will persist unless the state takes decisive action, such as enacting comprehensive laws against it. Laws addressing sexual violence should be part of a broader political strategy to eradicate it, focusing not just on severe sanctions or punitive measures but also on prevention. Effective prevention involves more than simply protecting women; it requires challenging and changing societal attitudes towards relationships and sexuality. Education plays a crucial role in this, extending beyond formal classroom learning to include daily practices and interactions. By dismantling gender-based barriers and promoting equal humanity, we can address the root causes of sexual violence. Sexual violence encompasses any non-consensual sexual act, including those involving adults and children, known as child sexual abuse when consent cannot be given. Additionally, sexual violence within legal partnerships, such as between spouses, is a form of domestic violence. Unwanted sexual contact or threats from a husband or ex-husband can be considered rape in some jurisdictions and may be classified as assault.

Keywords: Legal Protection, Victims of Sexual Violence.

1 Introduction

Sexual violence is not morality (which is often interpreted by the dominant group) and punishment. There is a more fundamental problem: power relations, namely views on the relationship between the dominant and the weak. The problem is not with the victim, but with the perpetrator who sees the victim as helpless, so that he can be used as an object of sexual gratification. So it is not surprising that the victims of sexual violence

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are not only women, but also children and men who are in a power-deprived situation. However, in a patriarchal society, women are in a vulnerable position because they are considered powerless. Vulnerability is even higher for persons with disabilities.

Sexual violence will continue to exist if there is no serious effort by the state to overcome it. One way: to make laws regarding sexual violence. The law is a legal form of policy, i.e. a concerted effort, to eliminate sexual violence. So we're not just talking about scary sanctions or even "teams to hunt down sexual assault offenders". If only punishment is thought of, surely the law will fail.

Integrated efforts must include prevention. But prevention by placing women as objects of protection is no longer appropriate to use. This view will make efforts to prevent sexual violence be interpreted solely by keeping women and other vulnerable groups away from the public area and covering their bodies and anything that is considered to trigger sexual appetite. The problem is not the victim, but the perpetrator. Prevention of sexual violence means dismantling ways of thinking about power relations and sexuality. The medium is education, which does not only mean the learning process in the classroom, but also the practice of daily behavior. The barriers based on gender roles must be dismantled and returned to equal humanity.

Sexual violence is an act that leads to sexual solicitation without consent.[1] This also includes sexual acts against children committed by adults. For children or individuals who are too young to express consent, this is called child sexual abuse. Sexual violence against legal partners (husband and wife) is a form of domestic violence. When violence is committed with threats of unwanted sexual contact or forced sex by a woman's husband or ex-husband, it may be considered rape, depending on the jurisdiction, and may also be classified as assault. Child sexual abuse is a form of child sexual abuse in which a child is used as an outlet for sexual gratification by adults or older adolescents. Forms of sexual violence against children can be in the form of direct sexual contact, adults or older people showing indecent things (genitals, female nipples, etc.) to a child with the intention of satisfying their own sexual desires or to oppress and lure the child soliciting or pressuring a child to have sex, showing pornography to a child, or using a child to produce child pornography. Based on the type, sexual violence can be classified into sexual violence that is carried out by:

1. verbal,
2. non-physical,
3. physical, and
4. online or through information and communication technology.

What is important but often forgotten is the continuation of the victim's life. Sexual violence has a long-lasting impact because there is a deep trauma experienced by the victim. Ironically, female victims are often blamed by those around them. Assumptions about women's mistakes are indeed common in a patriarchal society. This is because women are pinned on the desire of a patriarchal society for people to submit, serve and be controlled. Whereas sexual violence against LGBTIQ groups (lesbian, gay, bisexual, transgender, Intersex queer) is ignored because this group is considered to deserve punishment as a result of violating nature.

So far, sexual violence is considered to have no serious psychological impact. As a result, there is often no psychological assistance to victims. The law enforcement process also often carries a patriarchal view, so questions or treatment by law enforcement officials often places the victim as the guilty person. For example by questioning what clothes she was wearing or why she didn't fight back when she was raped. We cannot talk about sexual violence the way we talk about cases of fraud or theft. The cause of sexual violence is not opportunity or greed, but a wrong way of thinking, which requires a systemic effort to dismantle it. The handling of cases of sexual violence also requires specificity because it must focus on the victim.

So eliminating sexual violence requires state intervention through law as its formal form. The existence of the Law on the Elimination of Sexual Violence will bring about changes in at least three ways.

First, this law will provide recognition of the existence of sexual violence as a common problem whose solution will be facilitated by the state. Don't just see it as a mode of imposing sanctions, laws are the state's commitment to solving problems. Therefore, the Bill on the Elimination of Sexual Violence does not only contain criminal provisions, but also prevention, handling of victims, and treatment of law enforcement against victims.

Second, there is a theory that places law as a driving force for social change. Society's persistently repetitive behavior, which is often loosely called culture, can be changed through laws that regulate behavior (Seidman, Seidman, and Abeyeskere, 2002). This change is made by forcing people to carry out new repetitive behaviors because there is coercive power of law, through threats of sanctions or incentives.

Third, the existence of a law will provide better and more up-to-date guidance for law enforcement regarding sexual violence. Currently, articles in the Indonesian Criminal Code regarding rape, for example, often cannot be applied to certain cases, because rape according to the Dutch-era Criminal Code requires genital penetration. Whereas findings from the field show various other forms of physical violence against a person's sexual organs, sexual slavery, and forced abortions, which must be within reach of laws that eliminate sexual violence.

Legal guidance is needed not only in criminal law enforcement, but also in accessing state resources. For example, to ensure that there is a psychological assistant for victims or the existence of a special unit for women and children in the police, which requires a legal basis so that it can be carried out by the relevant agencies. This research is reviewed from Law No. 12 of 2022 which reads:

1. Weigh:
2. that everyone has the right to protection from violence and the right to be free from torture or treatment that degrades human dignity as guaranteed in the 1945 Constitution of the Republic of Indonesia;
3. that sexual violence is contrary to divine and human values and disturbs the security and peace of society;
4. that laws and regulations related to sexual violence are not yet optimal in providing prevention, protection, access to justice, and recovery, do not meet the needs of victims of sexual violence crimes, and are not yet comprehensive in regulating procedural law;

5. that based on the considerations referred to in letters a, b, and c, it is necessary to enact a Law on Sexual Violence;

1.1 Formulation of the Problem

Referring to the discussion underlying the problems arising from sexual violence committed by anyone, the following problems can be formulated:

1. What are the effects of sexual violence?
2. What is the function of Law No. 12 of 2022?

1.2 Research Methods

The type of research in this research is to use analytical descriptive legal research where the research is intended to provide an overview of the object of the problem through processing and analyzing data in order to then obtain materials or suggestions on what to do in order to produce a solution to the problem.

It is said to be an analysis because an analysis will be carried out on various formulations of legal principles contained in the 1945 Constitution in order to find out the legal basis for the object of the problem. This study combines descriptive and analytical processes so that through this method the solution to a problem under study is expected to critically find the expected solution. The form of this research is in line with the following approach:

1. The statutory approach is used to analyze the laws and regulations in Indonesia related to the object of research. The statutory regulations which become legal norms are abstract and general in nature so that they have the potential to be further implemented concretely by state apparatus. Through the statutory approach, it can be assessed how the regulatory design regulates the infiltration of the constitution in the formation of laws and regulations in Indonesia.
2. The conceptual approach is a type of approach that provides an analytical perspective on problem solving in terms of the legal concepts behind it. This approach departs from the views and doctrines that have developed in the science of law with the aim of assessing and understanding the theoretical aspects of the constitution as the written constitution of the state.

2 Discussion

2.1 Impact of Sexual Violence

Cases of sexual violence not only have an impact on the victim's body, but also psychologically. Worse, this psychological impact can trigger various complications. Cases of sexual violence still occur today. Women and children are often victims of sexual harassment cases. Although this case often occurs, not much is known about how to handle it. As a result, many victims of sexual harassment cases experience severe trauma.

Please note, this case not only injured the victim physically, but also psychologically and emotionally. The psychological impact of sexual harassment on the victim is no joke. Not a few of them may have experienced severe trauma after a heartbreaking tragedy. Therefore, it is important to understand the physical and psychological impact of sexual violence on victims, the psychological impact on victims of sexual violence.

Victims of sexual abuse can experience significant psychological effects. So, here are some psychological impacts that generally occur:

1. Easy to anger.
2. Feeling always insecure.
3. Experiencing sleep disturbances.
4. Nightmares
5. Fear.
6. Great shame.
7. Shock.
8. Frustration.
9. Blame or isolate yourself.
10. Stress.
11. Depression.

In short, the combination of the psychological problems above can have a negative impact on the mental well-being of the victim. In addition, it is not uncommon for victims to experience difficulties in carrying out their normal activities after experiencing sexual harassment. Victims of Sexual Harassment Can Experience Post-Traumatic Stress Disorder (PTSD). The psychological impact of sexual harassment does not stop there. In some cases, this can also cause post-traumatic stress disorder (PTSD), especially if the harassment leads to assault, rape, intimidation or threats of rape, to sexual torture. Among women who experienced sexual assault, 90 percent who experienced sexual violence displayed symptoms of acute stress. Well, the effects of this trauma can increase the risk of developing PTSD. The thing that worries him the most is that PTSD symptoms that are not handled properly can lead to the victim's desire to commit suicide. Psychological Stress Can Also Trigger Physical Symptoms. The thing that needs to be underlined, this psychological impact can trigger a series of complications, especially regarding physical health. So, the assumption that sexual harassment only causes emotional pain is clearly wrong.

Sometimes sexual abuse is noted as trauma, and it is difficult for a person to deal with it. Therefore, the body begins to be overwhelmed. The mental pressure experienced by the victim will trigger severe stress, causing various physical symptoms. Starting from muscle pain, headaches, even chronic physical health problems, such as high blood pressure and problems with blood sugar. In the long term, this psychological pressure can cause heart problems. This happens because the part of the brain that processes emotion, including stress, is right next to the brainstem, which is associated with reflex or automatic functions such as heart rate and breathing. If stress pressure goes to that part of the brain, then this can have an impact on a person's physical condition. For example, problems with cardiovascular function, metabolism, and so on. So, don't be

surprised if someone who is experiencing severe stress or depression will also experience a series of physical symptoms that can be felt.

Therefore, psychological and physical impacts must be handled properly. If you or someone close to you is a survivor of sexual violence, make sure you are always open to those closest to you.

2.2 Functions of Law Number 12 of 2022

Law number 12 of 2022 which reads:

Weigh:

1. That everyone has the right to protection from violence and the right to be free from torture or treatment that degrades human dignity as guaranteed in the 1945 Constitution of the Republic of Indonesia;
2. Whereas sexual violence is contrary to divine and human values and disturbs the security and peace of society;
3. Whereas the laws and regulations relating to sexual violence are not yet optimal in providing prevention, protection, access to justice, and recovery, do not fulfill the needs of the rights of victims of the Crime of Sexual Violence, and are not yet comprehensive in regulating procedural law, that based on the considerations as intended in letter a, letter b, and letter c, it is necessary to enact a Law on Crimes of Sexual Violence.

So that everyone knows about this law, Law Number 12 of 2022 was promulgated on May 9, 2022 by the Minister of Law and Human Rights, Yasonna H. Laoly in the State Gazette of the Republic of Indonesia of 2022 Number 120.

One of the reasons behind the presence of this law is because laws and regulations relating to sexual violence have not been optimal in providing prevention, protection, access to justice, and remedy. In addition, the existing laws and regulations also do not meet the needs of the rights of victims of sexual violence crimes, and are not yet comprehensive in regulating procedural law. Definition of Crime of Sexual Violence. In Article 1 point 1 of Law Number 12 of 2022, Sexual Violence Crimes are defined as all acts that fulfill the elements of a criminal act as stipulated in this law and other acts of sexual violence as stipulated in the law as long as it is determined in this law. Based on the definition above, we know that what is meant by criminal acts of sexual violence are all forms of criminal acts, both those regulated in Law Number 12 of 2022 and other crimes that are declared as crimes of sexual violence which are regulated in statutory provisions. other.

Types of criminal acts of sexual violence are regulated in Chapter II concerning Crimes of Sexual Violence Article 4 paragraph (1) of Law Number 12 of 2022 concerning Crimes of Sexual Violence. Based on these provisions, the types of crimes of sexual violence are as follows:

- a. Non-physical sexual harassment;
- b. physical sexual harassment;
- c. coercion of contraception;
- d. w. forced sterilization;
- e. x. forced marriage;

- f. y. sexual abuse;
- g. sexual exploitation;
- h. sexual slavery; and
- i. electronic based sexual violence.

In addition, other types of sexual violence crimes contained in Article 4 paragraph (2) of Law Number 12 of 2022, namely:

- a. Rape;
- b. Obscene acts;
- c. Sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children;
- d. acts of violating decency that are contrary to the will of the Victim;
- e. pornography involving children or pornography that explicitly contains violence and sexual exploitation;
- f. forced prostitution;
- g. criminal acts of trafficking in persons aimed at sexual exploitation;
- h. sexual violence within the household;
- i. money laundering crime whose predicate crime is a Sexual Violence Crime; and
- j. other criminal acts that are expressly stated as Crimes of Sexual Violence

As stipulated in the provisions of the legislation. Regulation of the types of crimes of sexual violence above, is strictly and clearly regulated with the aim of:

- a. to prevent all forms of sexual violence;
- b. to treat, protect and recover victims;
- c. to carry out law enforcement and rehabilitate perpetrators;
- d. to create an environment without sexual violence; and
- e. to ensure the non-repetition of sexual violence.

3 Conclusion

Sexual violence is an act that leads to sexual solicitation without consent. This also includes sexual acts against children committed by adults. For children or individuals who are too young to express consent, this is called child sexual abuse. Sexual violence against legal partners (husband and wife) is a form of domestic violence. When violence is committed with threats of unwanted sexual contact or forced sex by a woman's husband or ex-husband, it may be considered rape, depending on the jurisdiction, and may also be classified as assault.

Sexual violence is not a morality (often defined by the dominant group) or a punishment. There is a deeper problem: the view of power relations, the relationship between the powerful and the weak. The problem is not with the victim, but with the perpetrator who feels powerless to use the victim as an object of sexual gratification. Therefore, it is not surprising that victims of sexual violence are not only women, but also children and men who are in a state of helplessness. However, in a patriarchal society, women are seen as powerless and therefore vulnerable. Vulnerability is even higher for persons with disabilities. Sexual violence will continue unless the state takes serious action. One possibility: enact laws against sexual violence. The law is a form of political law,

a coordinated effort to eradicate sexual violence. So we're not just talking about dire sanctions and "sexual assault hunting teams."

References

1. Fu'ady, Muh Anwar; Mahpur, Mohammad (2011-12-30). "Psychological Dynamics of Sexual Violence: A Phenomenological Study". *Psikoislamika : Journal of Islamic Psychology and Psychology*. 8(2):12.
2. Patricia, Mahoney. "The Wife Rape Fact Sheet". National Violence Against Women Prevention Research Center. National Violence Against Women Prevention Research Center. Retrieved 28 January 2018
3. Skip to:a b "Child Sexual Abuse". Medline Plus. U.S. National Library of Medicine. 2008-04-02.
4. Committee on Professional Practice and Standards (COPPS); Board of Professional Affairs (BPA); American Psychological Association (APA); Catherine Acuff; Steven Bisbing; Michael Gottlieb; Lisa Grossmann; Jody Porter; Richard Reichbart; Steven Sparta; C. Eugene Walker (August 1999). "Guidelines for Psychological Evaluations in Child Protection Matters". *American Psychologist*. 54(8): 586–593.. Retrieved 2008-05-07.
5. Summary – APA PsycNET (2008-05-07). Abuse, sexual (child): generally defined as contact between a child and an adult or other person significantly older or in a position of power or control over the child, where the child is being used for sexual stimulation of the adult or other person.
6. Martin, J.; Anderson, J.; Romans, S.; Mullen, P; O'Shea, M (1993). "Asking about child sexual abuse: methodological implications of a two-stage survey". *Child Abuse and Neglect*. 17(3): 383–39

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