



Law Brakes to Protect Victims of Sexual Violence Against Children and Women in the Private Field

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ABSTRACT - Various laws and regulations have been established to prevent sexual violence against children and women. Various violations in the laws and regulations have been made to minimize the occurrence of sexual violence, especially in the private sphere. This private domain is a family area where the perpetrator is a person who is still related by blood, kinship, marriage or who has an intimate relationship with the victim. This is what causes the victim does not dare to report to the authorities. One of them is the case of a 12-year-old child in Medan who became a victim of his mother's girlfriend and ended up suffering from the HIV virus. Based on this, the problem in this study is how to violate the law in protecting victims of violence against children and women in the private sphere. This study aims to find out legal breakthroughs in protecting victims of sexual violence against children and women in the private sphere. This study uses a normative juridical research method, because there is an examination of norms regarding legal protection for victims of violence against children and women in the private sphere. This research uses library law sources. The establishment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) aims to provide protection to women. Meanwhile, legal protection for children is contained in Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. The law has not been able to prevent and track sexual violence that occurs in the private sphere. The government finally made a breakthrough to form Law No. 12 of 2022 concerning the Crime of Sexual Violence.

Keywords: Legal Breakthrough, Sexual violence, Private sphere

I. INTRODUCTION

Various laws and regulations have been established by the Government of the Republic of Indonesia together with the House of Representatives of the Republic of Indonesia (DPR RI) in the context of preventing and overcoming criminal acts of sexual violence against children and women. However, in reality, the number of sexual violence crimes against children and women continues to increase. Specifically regarding sexual violence in the form of obscenity that occurs against children, according to the annual report of the Ministry of Women's Empowerment and Child Protection (PPPA), the number of children who became victims of sexual violence throughout 2019 to 2020 has increased. In 2019, the number of child victims of sexual violence reached 6,454, then increased to 6,980 in 2020 (Kompas.com, 2022)

The incoming sexual violence data decreased in 2021 due to the increasing outbreak of the Corona virus throughout the world, including Indonesia. However, cases of child sexual violence that are widely reported in the mass media and online media make the public restless and concern. One of them is the case of a 12 (twelve) year old child in Medan who was allegedly raped by the mother's boyfriend, and finally the child was infected with HIV (Kompas.com, 2022). The crime of sexual violence is not only a problem that burdens developing countries but also developed countries (Ivo Noviana, 2015). Considering that Indonesia is a state of law, based on Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, states: The State of Indonesia is a State of Law. This implies that all arrangements in the life of the nation, society and state are based on applicable law.

The Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that in the fourth paragraph the objectives of the Republic of Indonesia are to protect the entire Indonesian nation and to promote the general welfare. The same thing is also contained in Article 28 A-J of the 1945 Constitution which explains guarantees for the protection of the human rights of every citizen including protection to be free from torture or treatment that degrades human dignity (Article 28 G paragraphs (1) and (2)) and free from discriminatory treatment on any basis. Then in the second principle of Pancasila which reads "just and civilized humanity" and the fifth principle reads "social justice for all Indonesian people" it is interpreted in the same way as the principle guarantees the protection of every human right of its citizens to get fair treatment. Indonesia already has a legal instrument that regulates violence, which is contained in the Criminal Code (KUHP). The contents of the Criminal Code are arranged in 3 (three) books, namely:

- a. Book I: General Rules, which includes 9 (Nine) Chapters. (Article 1 to Article 103).
- b. Book II: Crime, which includes 31 Chapters. (Article 104 to Article 488)
- c. Book III: Offenses, which includes 9 (Nine) Chapters. (Article 489 to Article 569).

Regarding Crimes against Morals as regulated in CHAPTER XIV regarding criminal acts committed by means of violence or threats of violence related to crimes against morality as contained in Article 284 to Article 294. The description of the article is as follows:

1. Adultery, Article 284;
2. Rape, Article 285;
3. Sexual intercourse with an underage woman, Article 286 to Article 288;
4. Obscenity, Article 289 to Article 294;
5. Crime against decency, Article 281 to Article 283.

Based on his nature as a civilized and dignified creature created by God, everyone is obliged to avoid all forms of violence, both physical and psychological. However, according to Komnas Perempuan, violence can occur anywhere, anytime and to anyone. Therefore, Komnas Perempuan groups the areas of violence into three domains, namely the private/personal realm, the community/public realm and the State realm (Komnas Perempuan, CATAHU 2020).

The private/personal realm is an area of violence where the perpetrator is a person who is still related by blood, kinship, marriage or who has an intimate relationship with the victim. Furthermore, the community/public realm is an area of violence where the perpetrators are not related by blood, are not relatives, or who do not have marital relations as well as intimate relationships such as relationships in work, education, society, or people who are not known personally, then in the state realm it is a areas of violence where the perpetrator is a state apparatus who has the capacity and authority as a state apparatus.

The existence of sexual violence that occurs in the private / personal realm is difficult to reveal, because it occurs in the family area where the perpetrators are people who are still related by blood, kinship, marriage or who have an intimate relationship with the victim. The disclosure of violence that occurs is due to the courage of the victim to report the crime that occurred, but if the victim does not report the violence, the law enforcement officers will not process the violence and the victim will never get justice. There is a gap in norms governing the legal protection of

women and children victims of sexual violence in the private sphere. Based on this, the authors are interested in discussing the problem of how are legal breakthroughs in protecting victims of sexual violence against children and women in the private sphere?

II. METHODS

The type of research used is normative legal research. Normative legal research is researching the law with the object of research being legal norms. Normative legal research is research conducted by examining library materials (secondary data) which includes legal principles, legal systematics, comparative law and legal history (Soekanto & Mahmudji, 2013). Normative legal research serves to provide juridical arguments when there is a void in norms, unclear norms, and/or conflicting norms (Diantha, 2017). The approach used in this research is a statutory approach. Research materials that will explain things related to research from various books, journals, papers, newspapers and articles related to the problems discussed in the research (Ibrahim, 2006). In this study, there are empty norms regarding legal protection for victims of sexual violence against children and women in the private sphere.

III. RESULTS AND DISCUSSION

Acts of violence against children and women are often associated with judgments about the imprint of morality. By nature, children are a mandate as well as a gift given by God Almighty, who must always be protected because they have inherent dignity, worth, and rights as human beings that must be upheld. In terms of national and state life, children are the future of the nation and the next generation of the ideals of the nation, so that every child has the right to survive, grow and develop, participate and have the right to protection from acts of violence and discrimination as well as civil rights and freedoms. Because of this mandate, all nations in the world through the Convention on the Right of the Child (CRC) have agreed that children must be given their human rights and special protection.

As an effort to fulfill the rights and protection of children, Indonesia ratified the Convention on the Rights of the Child through Presidential Decree no. 36 of 1990. This is in line with Article 28B (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination. Based on a strong commitment to children's welfare and guarantees for the fulfillment of children's rights which are part of human rights, Indonesia has also participated in the global commitment 'A World Fit for Children' initiated by the United Nations General Assembly in 2002.

Children's rights are part of the human rights contained in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child. Therefore, parents, families, and the community are responsible for maintaining and maintaining these human rights in accordance with the obligations imposed by law. Likewise, in the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development.

Kartini Kartono stated: a child is a normal human condition who is still young and is determining his identity and is very unstable in spirit, so he is very easily affected by environmental influences (Kartini, 1981). Children need family warmth in the process of growth and development in building a civilized life process. Not only families but also a healthy community environment is needed by children to carry out their growth and development.

To ensure that a child has a normal life, the government also shows its seriousness in handling child cases. The state has provided protection by issuing Law Number 23 of 2002 concerning Child Protection. However, over time, the Law underwent changes. First, with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, one of the amendments focused on the weighting of criminal sanctions against

perpetrators of sexual violence against children. In addition, the State also needs to take optimal and comprehensive steps by not only giving weighting criminal sanctions, but also implementing preventive forms by providing additional sanctions in the form of chemical castration, installation of electronic detection devices and rehabilitation for perpetrators of sexual violence against children. To address this, the government has also issued Government Regulation in Lieu of Law (Perpu) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection.

Government Regulation in Lieu of Law (Perpu) Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, then enacted into Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law. Thus, the government hopes that the number of crimes against children, especially crimes of sexual abuse against children, has decreased.

Sexual violence in the private/personal realm is an area of violence in which the perpetrator is a person who is still related by blood, kinship, marriage or who has an intimate relationship with the victim. There is a more specific law, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). The principle of *lex specialis derogat legi generali* is a principle which states that special laws override general laws. Article 1 paragraph (1) of the PKDRT Law states: Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion or deprivation of liberty against the law in the domestic sphere. Based on the formulation of Article 1, it is more concisely described in the formulation in Article 5 which stipulates that: everyone is prohibited from committing domestic violence against people within the scope of his household, by:

1. Physical violence;
2. Psychic Violence;
3. Sexual Violence; or
4. Domestic Abandonment.

The first legal breakthroughs accommodated in the PKDRT Law are forms of domestic violence that include physical violence, psychological violence, sexual violence and economic violence or family neglect. As it is known that before the PKDRT Law, the only known violence in the law was physical violence with the term persecution. With this legal breakthrough, victims of domestic violence who have been subject to legal discrimination can seek justice as expected for the various forms of violence that have occurred and befell them.

Psychic Violence which became a breakthrough in the PKDRT Law in its legal process, among others, made it possible for a *Visum et Psychiatric* as proof. However, this breakthrough has not been widely used by both law enforcement officers and assistants. This is because there are still few psychologists/psychiatrists who have an understanding of the context in which domestic violence occurs.

Sexual violence, one of which is sexual violence against the wife (marital rape) is also a breakthrough in the PKDRT Law, although it is still a complaint offense. This particular crime is regulated in Article 8 letter (a) which reads as follows: forcing sexual intercourse against a person who resides within the scope of the household. This means that the PKDRT Law no longer separates the private and public spheres when violence occurs, in other words the barrier between civil law which is better known for solving problems in the private sphere and criminal law which is used to solve problems related to the public sphere becomes non-existent.

From these forms of domestic violence, where there are many legal breakthroughs, in the implementation of the criminal process there are many obstacles or difficulties faced, both by victims, assistants and law enforcement officers themselves. For example, related to the complaint offense, the gradation of violence (especially physical) experienced by the victim, criminal elements in neglect of the household and psychological violence.

From the household scope, the PKDRT Law also makes legal breakthroughs by widely accommodating family members, namely those who are related by blood, marriage, breastfeeding, parenting, and guardianship, as well as those who work in the household who for a certain period of time stay or are in the house. So, this PKDRT Law in addition to using the concept of the 'nuclear' family, namely mother, father and child, also uses the concept of the 'batih' family which is commonly found in families in Indonesia. This includes parents-in-law, daughter-in-law, *besan*, brother-in-law, stepdaughter, adopted child, uncle, aunt, and others. Along with the times, cases of sexual violence are increasingly diverse in their motives. So that the legal umbrella that regulates sexual violence is deemed not to protect victims of sexual violence. In 2015, Commission VIII of the House of Representatives (DPR) proposed a draft law on violence to provide legal certainty for criminal acts that are currently taking place. The Draft Law on the Elimination of Sexual Violence (RUU PKS) is actually a legal product created for the community's need to guarantee the protection of victims due to the increasing number of cases of sexual violence.

The PKS Bill states that there are 15 (fifteen) types of sexual violence, but only 9 (nine) types of sexual violence are classified as criminal acts. The types of sexual violence crimes contained in the PKS Bill include:

1. Sexual Harassment,
Sexual harassment is unwelcome sex-related approach behavior, including requests for sex, and other behaviors that verbally or physically refer to sex.
2. Sexual Exploitation,
Sexual exploitation is a form of coercion and violence carried out in the form of modern slavery
3. Obscenity,
Obscenity is the tendency to engage in sexual activity with helpless people such as children, both male and female, with violence or without violence.
4. Forced use of contraceptives,
Forced use of contraceptives is a form that requires women to use devices that can prevent pregnancy during sexual acts.
5. Sexual Slavery,
Sexual slavery is an act of violence during sexual intercourse with violence and is carried out more than once.
6. Forced Marriage,
Forced marriage is a form of coercion in terms of doing marriages that are actually not wanted.
7. Forced Abortion,
Forced abortion is a form of forcing women to abort the fetus they are carrying.
8. Rape,
Rape is a form of sexual intercourse that is carried out not based on mutual will. Because it is not based on mutual will, sexual relations are preceded by threats and physical violence or carried out against victims who are helpless, underage, or who have mental retardation.
9. Forced Prostitution,
Forced prostitution is a form of forcing women to practice prostitution.

Based on the explanation above, there are 9 (nine) types of violence that are included in the criteria for sexual violence against women. The cases of sexual violence as defined above are mostly women and the perpetrators are men. In this case, it leads people to pay attention to the factors that develop in the world of gender.

Cases of sexual violence that occurred in a number of areas became an iceberg phenomenon. Data from the Online Information System for the Protection of Women and Children (Symphony PPA) from 2021 to March 17, 2022, shows that out of 8,478 cases of violence against

women, 1,272 of them were sexual violence. Of the 11,952 cases of violence against children, 7,004 cases (58.6 percent) of them were sexual violence (Kompas.com, 2022).

Meanwhile, the results of the 2021 National Women's Life Experience Survey conducted by the Ministry of Women and Child Protection Empowerment (PPPA), the Central Statistics Agency and the Demographic Institute of the University of Indonesia found that 1 in 19 women (aged 15-64 years) had experienced sexual violence other than a partner. The National Survey of Child and Adolescent Life Experiences 2021 also found that 4 out of 100 men and 8 out of 100 women aged 13-17 years in urban areas have experienced sexual violence in any form in their lifetime. As for 3 out of 100 men and 8 out of 100 women aged 13-17 years in rural areas have experienced sexual violence in any form in their lifetime (Kompas.com, 2022).

To optimize the prevention and handling of cases of sexual violence, the PKS Law was passed into the Sexual Violence Criminal Act (UUTPKS), Law no. 12 of 2022. There are nine regulations in criminal acts of sexual violence, namely: non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. There are a number of crucial articles in UUTPKS, namely:

Article 4 paragraph (1):

scope of criminal acts of sexual violence:

- (1) Non-physical sexual harassment;
- (2) Physical sexual harassment;
- (3) Forced contraception;
- (4) Forced sterilization;
- (5) Forced marriage;
- (6) Sexual torture;
- (7) Sexual exploitation;
- (8) Sexual slavery; and
- (9) Electronic-based sexual violence.

Article 4 paragraph (2):

A number of other TPKS, including: Rape, obscene acts, sexual violence within the household, criminal acts of trafficking in persons for sexual exploitation.

Article 5:

Perpetrators of non-physical sexual harassment are sentenced to a maximum of 9 months in prison and/or a maximum fine of Rp. 10 million

Article 10:

Perpetrators of forced marriages including child marriages, cultural practices and marriages of victims with perpetrators of rape are sentenced to a maximum of 9 years in prison and/or a maximum fine of Rp. 200 Million

Article 14:

Perpetrators of electronic-based sexual violence are sentenced to a maximum of 4 years in prison and/or a maximum fine of Rp. 200 million.

Article 15:

Expanding the scope of the perpetrator and the condition of the victim as a reason for the severity of the criminal threat (with an addition of 1/3) of the main criminal threat.

Article 16:

Restitution, which was previously an additional crime, is placed as part of the main crime.

Article 23:

TPKS cases cannot be resolved outside the judicial process, except for child perpetrators.

Article 25:

The testimony of witnesses and/or victims is sufficient to prove the defendant guilty if accompanied by one valid piece of evidence.

Article 35:

in the event that the perpetrator is unable and there is no third party to pay restitution to the victim, the State provides compensation for the amount of restitution that is underpaid to the victim in accordance with the court's decision.

Article 35 paragraph (2):

Arrangement of victim aid funds.

Articles 66 – 71:

victims are given the right to treatment, protection and recovery since the occurrence of TPKS.

Several breakthroughs in the Law on the Crime of Sexual Violence include:

1. Apart from qualifying the types of Sexual Violence Crimes as regulated in this Law, there are also other crimes which are expressly stated as Sexual Violence Crimes as regulated in the provisions of other laws and regulations;
2. there is a comprehensive procedural law arrangement starting from the stage of investigation, prosecution, and examination in a court session while still paying attention to and upholding human rights, honor and without intimidation;
3. The Victim's Right to Handling, Protection, and Recovery since the occurrence of the Crime of Sexual Violence which is the obligation of the state and is carried out in accordance with the conditions and needs of the Victim. In addition, great attention to the suffering of the victim is also seen in the form of restitution. Restitution is given by the perpetrator of the crime of sexual violence as compensation for the victim. If the assets of the confiscated convict are not sufficient for the cost of restitution, the state shall provide compensation to the victim in accordance with the court's decision; and
4. Sexual violence cases cannot be resolved outside the judicial process, except for child perpetrators

This Law regulates the Prevention of all forms of Sexual Violence; Handling, Protecting, and Restoring Victims' Rights; coordination between the Central Government and Regional Governments; and international cooperation so that the Prevention and Handling of Victims of Sexual Violence can be carried out effectively. In addition, community involvement in the Prevention and Recovery of Victims is also regulated in order to create environmental conditions that are free from sexual violence.

IV. CONCLUSION

Various laws and regulations have been passed to provide legal protection to women in criminal acts of sexual violence. Among them are the Criminal Code (KUHP), Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection. However, the legislation is not able to provide legal protection to children and women as victims of sexual violence in the private sphere because it is still a complaint offense. In 2022, Law No. 12 of 2022 was passed on the Crime of Sexual Violence (UUTPKS). Several breakthroughs in this Law are: in addition to qualifying the types of Sexual Violence Crimes as regulated in this Law, there are also other crimes which are expressly stated as Sexual Violence Crimes as stipulated in the provisions of other laws and regulations; there is a comprehensive procedural law arrangement starting from the stage of investigation, prosecution, and examination in a court session while still paying attention to and upholding human rights, honor and without intimidation; The Victim's Right to Handling, Protection, and Recovery since the occurrence of the Crime of Sexual Violence which is the obligation of the state and is carried out in accordance with the conditions and needs of the Victim. Restitution is given by the perpetrator of the crime of sexual violence as compensation for the victim. And cases of sexual violence cannot be resolved outside the judicial process, except for child perpetrators.

REFERENCES

- Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (2 ed.). Jakarta: Prenada Media Group
- Ibrahim, J. (2006). *Teori dan Metode Penelitian Hukum Normatif*. Malang: Bayu Publishing
- Ivo Noviana, (2015). *Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya Child Sexual Abuse: Impact And Hendling*, Jurnal Sosio Informa, Vol. 01 No. 1, Januari-April 2015.
- Kartini, (1981). *Gangguan-gangguan Phiskis*, Bandung: Sinar Baru.
- Soekanto, S., & Mahmudji, S. (2013). *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Raja Grafindo Persada.
- Komnas Perempuan, CATAHU 2020: Kekerasan terhadap Perempuan Meningkat: Kebijakan Penghapusan Kekerasan Seksual Menciptakan Ruang Aman Bagi perempuan dan anak perempuan. Catatan Kekerasan Terhadap Perempuan Tahun 2019, (<https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2020-kekerasan-terhadap-perempuan-meningkat-kebijakan-penghapusan-kekerasan-seksual-menciptakan-ruang-aman-bagi-perempuan-dan-anak-perempuan-catatan-kekerasan-terhadap-perempuan-tahun-2019>)
- Kitab Undang-Undang Hukum Pidana (KUHP)
- UU No 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga (UU PKDRT)
- Undang-Undang Nomor 1 tahun 2016 tentang Perubahan Kedua atas Undang-Undang Nomor 23 tahun 2002 tentang Perlindungan Anak.
- UU No 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UU TPKS)
- <https://amp.kompas.com/nasional/read/2022/03/04/17062911/kemenpppa-797-anak-jadi-korban-kekerasan-seksual-sepanjang-januari-2022>
- Kasus Bocah 12 Tahun Diperkosa hingga Terinfeksi HIV. <https://medan.kompas.com>