

# CONDITIONAL CONSENT AND THE ELIMINATION OF SEXUAL VIOLENCE IN INDONESIA

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## Abstract

In various studies, sexual consent is considered an important aspect, especially as one of the determining factors in cases of sexual violence. As a concept in criminal law, many countries have recognized the role of consent in sexual violence. With the increasing number of types of sexual violence such as *stealth*, a new concept has emerged in criminal law known as conditional consent in sexual relations. Countries such as the United Kingdom and the United States have experience in handling cases of violation of conditional consent in sexual relations. This research wants to respond to whether violation of conditional consent in sexual relations is a criminal offense. This research was conducted using an empirical juridical method that describes the violation of sexual relations with conditions. Unfortunately, through the data collected and interviews with respondents, it was found that there are various key roles in placing certain conditions on sexual consent. If these conditions are violated, such actions will alter and undermine the consent given. Research also found that women have special vulnerabilities. However, in terms of criminal elements, violation of conditional consent is not a criminal act of sexual violence in Indonesia. One of the weaknesses is that conditional consent is not a criminal element in the Sexual Violence Crime Law (TPKS Law) and there is no provision in the Criminal Code in Indonesia. The TPKS Law does not specifically regulate the concept and paradigm of sexual consent with conditional consent and does not regulate the criminal provisions against it particularly. In the end, the individual who victims of the prerequisite consent in having sexual intercourse are not protected.

**Keywords:** Conditional Consent, Sexual Violence, Violence Against Women, Sexual Autonomy, Gender Transformative Approach.

## INTRODUCTION

Historically, women are the majority group, in the context of the world's population being subjectivized as victims of sexual violence. Starting from victims of war crimes to sexual slavery as a tool of war to destroy the morale and integrity of "enemy groups" and now developing into victims of violence in daily life as well.<sup>1</sup>

For example, the practice of sexual crimes in the form of rape was committed in the second world war, namely "*The Rape of Nanking*".<sup>2</sup> In addition, rape cases that are also part of the history of war lie in the case of "*Comfort Women*" (comfort woman *lanfu*) experienced by women from various Asian countries including Indonesia.<sup>3</sup>

Various responses from the state, including Indonesia, are trying to unravel and resolve until efforts to stop violence against women are carried out. But unfortunately, Indonesia has not been able to solve many cases of sexual violence, especially those experienced by women or other marginalized groups.<sup>4</sup> The situation in Indonesia is still in a precarious state as the number of cases and models of violence is increasing and the victims are getting younger.

Based on data from the Ministry of Women's Empowerment and Child Protection (KemenPPPA), there are 8585 cases of sexual violence in Indonesia.<sup>5</sup> In addition, the increase in cases of sexual violence is also supported by rapid technological developments.

The development of technology facilitates online-based sexual violence such as the dissemination of sexual content, *revenge porn*, child pornography content, and all forms of sexual violence through technology<sup>6,7</sup>

Keep in mind that sexual violence can happen to anyone regardless of background such as gender, sexual orientation, ethnicity, socioeconomic status, religion, and others.<sup>8</sup> However, basically, sexual violence is closely related to gender-based violence and manifests in various forms. There are at least 15 (fifteen) forms of sexual violence which include actions such as rape, sexual intimidation, sexual harassment, sexual exploitation, and others.<sup>9</sup> Of the 15 (fifteen) forms of sexual violence, unfortunately, only 9 (nine) forms of sexual violence have succeeded in becoming part of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law). Although not all the 15 forms of sexual violence are part of the TPKS Law,<sup>10</sup> it is important to recognize that the TPKS Law is a major development in legal reform related to the protection of victims of sexual violence in Indonesia which was previously only limited to the Criminal Code<sup>11,12</sup>

These changes are certainly due to global encouragement and modern and democratic society to view violence, especially sexual violence, along with the development of society, which should also be able to adapt to the new situation.<sup>13</sup> One of the developments in the law of protection from sexual violence in developed countries is the introduction of a new concept, namely *Conditional Consent*. This right is to avoid one of the examples of sexual violence such as the case known as *stealthing*. Stealthing is an act of sexual violence in which a couple removes a condom without their partner's knowledge during sexual intercourse.<sup>14</sup>

As part of legal protection, the human right to individual freedom from violence must also be fulfilled by the state which is derived in various policies. There is an argument that sexual relations are a human right (*Sexual Autonomy*).<sup>15</sup> Likewise, the sexual relationship between the parties concerned has their own requirements that both parties must agree upon before the sexual relationship is carried out. Examples that usually happen often include, "*I want to have sex with you, if using a condom*" or "*I want to have sex with you if it's not recorded*."<sup>16</sup> This points to the requirements that sexual partners must respect. If this condition is violated then the *consent* given should not be valid – this is known as *conditional consent*, which can then be categorized as a form of sexual violence if the "*condition*" is violated by one of the parties.<sup>17</sup>

*Conditional consent* and discussion regarding sexuality and how sexual activities can be carried out are considered taboo by society.<sup>18</sup> This makes the need for various legal and policy foundations that can ensure protection for victims of sexual violence, especially with the element of *conditional consent*. In addition to the existence of legal and policy bases that have a victim protection approach, it is also necessary to have a socio-cultural climate of society that no longer excludes or even blames victims of sexual violence.<sup>19</sup>

Seeing this background, this research will answer whether the violation of *conditional consent* in sexual relations is a criminal offense and the perpetrator can be held accountable for his/her crime and how to protect the victim from sexual violence in the form of a violation of the conditional consent in sexual relations.

## RESEARCH METHOD

This study is an empirical juridical law research using primary and secondary data collection methods. Primary data collection will be carried out directly through the field, namely by the method of interviewing victims who feel they have experienced sexual violence. The interview method is the best in voicing the aspirations of victims in obtaining justice.<sup>20</sup> Through this interview, the researcher as an interviewer can interview several respondents regarding the violation of conditional consent in sexual relations. Data from interviews with victims of sexual violence are intended to show that acts of sexual violence based on the violation of conditional consent have a real impact on the victim. Interviews also need to be conducted because there is a possibility that the impact experienced by the victim or the aspirations between the victims varies and cannot be generalized. Interview speakers include victims of sexual violence with violation of conditional consent in sexual relations (victim's name and initials changed) residing in Indonesia (Jakarta and Bandung).

Through secondary data, namely laws and regulations, government/state policies, books, journals, and news become the basis for obtaining data, information, or other views and conclusions from different research. For example, the research conducted by Karamvir Chadha entitled "*Conditional Consent*" is the main basis for the study of conditional consent in sexual relations. In addition, the decision from the United Kingdom is also the basis or example of a case related to conditional consent - *Assange v. Swedish Prosecution Authority (EWHC, 2011)*, *R (on the applicant of F) v. DPP and "A" (EWHC, 2013)*, and *R v. McNally (EWHC, 2013)*. This secondary data, it can be a source of reference for an interpretation that will be carried out on the legal state of the act of violating conditional consent in sexual relations.

## RESULT AND DISCUSSION

### 1. Gender and Conditional Consent

The definition of gender as interpreted by Candace West and Don Zimmerman is the foundation for various kinds of gender-related research. West and Zimmerman's famous statement is<sup>21</sup>: "*Gender is not something we are, but something we do*". West and Zimmerman explain that gender is a social construct associated with gender between men and women. Francine M. Deutsch underlines the manipulated gender of what is considered to be conforming to masculine or feminine behavior – behavior influenced by normative teachings given by parents, teachers, and other authority figures.<sup>22</sup> West and Zimmerman examine gender-related normative concepts that include the cultures of societies that are different from each other.<sup>23</sup> In this writing, the normative concept used is patriarchal culture rooted in various creations in society.<sup>24</sup>

Historically, patriarchy was defined as a social organization that concentrated power and authority on a group of men. However, with the development of feminist theory, patriarchy has a broader meaning by showing that patriarchy is a system that distributes power in society unfairly between men and women.<sup>25</sup> Patriarchal culture can be reflected in cases of sexual violence and manifest into a separate culture known as rape culture or *rape culture*. The patriarchal culture that has practically placed women below men affects cases of sexual violence in various forms such as blaming women for clothing, women's behavior not to report incidents, and others.<sup>26</sup> This behavior causes the statements and experiences of victims of sexual violence to

be minimized. With that, victims of sexual violence often experience revictimization by blaming the act of sexual violence on the victim himself.<sup>27</sup>

Gender has a close relationship with victims of sexual violence, in this research, we will concentrate on conditional consent. Conditional consent can be seen from both terms, namely an agreement and a conditional/conditional. When these conditions are breached, consent becomes non-consensual and void, as is known in the United Kingdom Law, *Section 74 Sexual Offences Act 2003*,<sup>28</sup> which states that conditional consent in sexual relations usually reads:<sup>29</sup>

**"I agree to have sex if you use a condom"**

The term "if you use a condom" is a form of a condition that must be met. If these conditions are violated, the consent given in the sexual intercourse is invalid.<sup>30</sup> If this is violated, it shows that there is a trust that is exploited. The most frequently used example of a conditional consent violation can be seen in the case of *stealthing* or referred to as *Non-Consensual Condom Removal (NCCR)*. *Stealthing* is an act in which a person removes a condom during or before sexual intercourse without the knowledge of their partner (*non-consensual*). The act of *stealthing* itself can be associated with the inequality of gender relations between men and women - the existence of a man's desire to dominate and determine the sexual rights of women where the majority of victims of *stealthing* are women.<sup>31</sup> The impact of *stealthing* varies but the main impact is health threats such as *sexually transmitted diseases* or unwanted *pregnancies*.<sup>32</sup>

Through the meaning of *conditional consent* or the real act (*stealthing*) of the violation of conditional consent obtained from state decisions such as in the United Kingdom, there will be a clarity on how Indonesia can anticipate cases that have the same nuances. Examples of cases related to violation of conditional consent that will be used in the writing of this research are:

1. *Assange v. Swedish Prosecution Authority (EWHC, 2011)*

In the case of *Assange v. Swedish Prosecution Authority (EWHC, 2011)*, Julian Assange is a journalist and defendant for sexual violence in the form of rape against AA and SW. The verdict illustrates Assange's efforts to question the Swedish Prosecution Authority's authority in Assange's detention regarding the rape case he has committed.<sup>33</sup> The verdict describes the various actions that Assange has taken against AA and SW, including, first, unlawful *coercion* and the use of force to restrict the movement of victims. Second, sexual molestation - *stealthing*, by having sexual intercourse without safety and without the victim's consent. Third, the second count of sexual *molestation* - Assange attaches an erect penis to the victim's body without consent. Fourth, rape - having sexual intercourse while the victim is asleep.<sup>34</sup> Through this case, the panel of judges was confident that Assange had a belief that the victims would not give consent to sexual intercourse without a condom.<sup>35</sup>

2. *R v. McNally (EWHC, 2013)*

Case *R v. McNally* discussed the consent given by the victim who gave consent to have sexual relations with M (the perpetrator). The agreement was considered invalid by the court because there was an element of deception (*deception*). The element of the trick occurred with M claiming to be a man and having sexual relations with the victim who considered himself a man.<sup>36</sup>

The time that had passed, the victim realized that M's actions were suspicious because he always wanted to have sex in dark conditions. The facts of the case prove that M has been having sexual relations with the victim using a sex object or *Dildo*.<sup>37</sup> The victim felt aggrieved so she sued M. The case decided that the consent given by the victim was considered invalid because the victim's freedom to choose a sexual partner was violated through an act of deception.<sup>38</sup>

### 3. *R (on the applicant of F) v. DPP and "A" (EWHC, 2013)*.

The DPP (Director of Public Prosecution) was prosecuted for not taking any action or investigation process into the rape case committed by the ex-spouse against the victim (F).<sup>39</sup> The victim and her ex-partner had been in a marital relationship, in which F stated that her ex-partner always imposed the actions that dominated F - especially in sexual intercourse.<sup>40</sup> This case involves the fact that F as the plaintiff stated that he had clearly stated that he did not want to have sexual relations if his ex-partner ejaculated in the vagina.<sup>41</sup> However, her ex-partner's dominant attitude towards F resulted in vaginal ejaculation and ended in an unwanted pregnancy.<sup>42</sup>

Another fact is that the statement of her ex-partner given during sexual intercourse that she wants to ejaculate in F vagina is not a consent. The panel of judges said that the issue related to sexual relations where the act of ejaculation in the vagina certainly has a relevance in the decision of the case but does not necessarily prove the occurrence of the act of rape.<sup>43</sup> It is important to state that the former partner F has agreed not to ejaculate inside the vagina of F. With such prior consent, the case is proven that the former partner F has violated conditional consent and rape.<sup>44</sup>

The three cases above are the main cases that pioneered the concept of conditional consent in the legal sphere. The consideration taken by the judges will be an illustration of the investigation of the violation of conditional consent violated in sexual relations.

## 2. **Sexual Consent in Sexual Relations in a Transformative Gender Approach in Responding to the Principle of Causality and Sexual Autonomy.**

### 2.1 Consent

In terminology, "*consent*" has a translation as "consent". The consent given in sexual relations is an agreement that has clarity to enter into a relationship agreement or sexual activity.<sup>45</sup> So, a sexual relationship that is not based on *consent* or approval by both parties will have an impact on sexual violence.<sup>46</sup> Ngozi Anyadike-Danes, *et.al.*, stated that the characteristics of a consent can be reviewed from both general and legal aspects.<sup>47</sup> Ngozi states that consent in a lawful sexual relationship must include:<sup>48</sup>

- 1) Consent can be given by a competent party (consent does not apply to children and individuals with disabilities).
- 2) Consent is only valid if there is no threat of any kind (physical, verbal, financial, etc.).<sup>49</sup>
- 3) Consent can only be given without any element of coercion.<sup>50</sup>

In Indonesia, proficiency is also regulated in Article 1 number 5 of Law Number 12 of 2022 concerning the Crime of Sexual Violence which states that children are defined as those under the age of 18. Consent to sexual intercourse given by a child is

considered invalid.<sup>51</sup> This has become an issue in the criminal laws of other countries that recognize the term "*statutory rape*".

*Statutory rape* is an act in which sexual relations are carried out by an adult with a child who gives consent. Even though the child gives a "consent", according to the consent is invalid or does not have a binding legal force<sup>52, 53</sup> Article 4 paragraph (1) of the TPKS Law, which is included as a Crime of Sexual Violence is non-physical sexual harassment; physical sexual harassment; forced contraception; forced sterilization; forced marriage; sexual torture; sexual exploitation; sexual slavery; and electronic-based sexual violence.

Sexual violence is regulated in several articles, including Article 6 letter (a) of the TPKS Law regarding physical sexual acts aimed at the body, sexual desires, and/or reproductive organs with the intention of degrading the dignity and dignity of a person based on his sexuality and/or morality, Also in Article 6 letter (b) concerning physical sexual acts aimed at the body, sexual desires, and/or reproductive organs with the intention of unlawfully placing a person under his or her authority, either inside or outside of marriage."

Article 6 letter (c) of the TPKS Law regulates the abuse of position, authority, trust, or act arising from deception or circumstance or taking advantage of a person's vulnerability, inequality or dependence, forcing or by misleading to move that person to do or allow sexual intercourse or obscene acts with him or with another person." Article 12 of the TPKS Law regulates criminal acts with violence or threats of violence or by abusing position, authority, trust, or carrying arising from deception or relationship of circumstances, vulnerability, inequality, helplessness, dependence of a person, debt entanglement or providing payments or benefits with the intention of obtaining benefits or utilizing sexual organs or other organs of the person aimed at sexual desire with him or with others."

Article 14 paragraph (1) letter (a) of the TPKS Law regulates criminal acts that without the right to record and/or take sexually charged images or screenshots without the will or without the consent of the person who is the object of recording or images or screenshots are convicted of committing electronic-based sexual violence."

Many research results admit that the crime of sexual violence is a gender-based crime.<sup>54</sup> According to the United Nations High Commissioner for Refugees (UNHCR), Gender-Based Crime (Gender-Based Crime (GBA) is violence directed directly against a person on the basis of sex or gender,<sup>55</sup> where the crime causes physical, mental, sexual, financial, and other suffering.

This research related to gender issues will apply the *Gender-Transformative* approach. The approach helps analyze and explore structural problems related to gender power inequality, norms, and inequality.<sup>56</sup> The *Gender-Transformative* approach examines sexual violence as a social phenomenon that can affect anyone and provides a perspective on the consideration of gender factors with the existence of a case of sexual violence that exists in traditional norms of society.<sup>57</sup>

In addition, the *Gender Transformative* approach, in addition to examining a problem related to gender injustice, is also a method that involves men in preventing violence against women and other minority groups,<sup>58</sup> to create a safe place for men to express trauma that can have an impact on violent behavior - the impact of the norms of masculinity hegemony.<sup>59, 60</sup>

### 3. The Principle of Causality or the *Causa Proxima Testing Theory*

This principle of causality is a principle of criminal law by finding out who can be held accountable in a criminal act.<sup>61</sup> The theory or test of *Causa Proxima* (Theory of Individualization) explains the conditions that are closest and cannot be separated from the effect. G.E. Mudler states that: "*such a direct cause. So that it can therefore be predicted in advance (zodaning rechtsreeksen voorzienbaar gevelog)*".<sup>62</sup>

Through this teaching, cause is an action that directly results in an event based on intention or forgetfulness (Van Hamel).<sup>63</sup> By testing *Causa Proxima* as the principle of causality to test the cause and effect of an event of a victim who is harmed by an act of sexual violence. This test can describe a direct relationship (*Causa Proxima*) or a cause that is far away or distant from the effect (*Causa Remota*).<sup>64</sup> This approach explains that there is a relationship between the victim's behavior and the actions of the perpetrator of sexual violence that occurs from an intentional act and is a juridical consideration of criminal law.<sup>65</sup>

#### 3.1 Sexual Autonomy

The application of the concept of Human Rights, namely sexual *autonomy*, is a freedom based on freedom of *bodily autonomy*.<sup>66</sup> Freedom of bodily autonomy is a fundamental right that encourages the fulfillment of the right to equality and privacy for individuals, especially women.<sup>67</sup> The freedom of bodily autonomy is a freedom that ensures that each individual has the right to his own body in relation to a choice and reproductive function.<sup>68</sup> Basically, sexual autonomy is a right that a person has over his sexuality and reproductive health.<sup>69</sup> Sexual autonomy can be associated with Women's Human Rights as a right or freedom to be able to refuse sexual intercourse, unprotected use in sexual intercourse (condoms), and other actions related to the body.<sup>70</sup> The relevance of the concept of Human Rights in this writing has relevance, where Human Rights are a government obligation to protect, respect, and fulfill these fundamental rights. However, in reality there are many contradictions with the occurrence of violations of Human Rights (sexual autonomy) with the disproportionate restriction of Human Rights. For example, regulations on abortion, commercial sex workers, criminalization of extramarital relationships, same-sex sexual relations, and others.<sup>71</sup>

Law Number 39 of 1999 concerning Human Rights regulates women's rights in Articles 45 to 51, specifically, for example, women's rights to the protection of reproductive functions that must be guaranteed and protected by law. The *Convention on the Elimination of all Forms of Discrimination Against Women*. CEDAW) regulates the principles in efforts to protect women, namely substantive equality, non-discrimination, and state obligations.<sup>72</sup> The explanation of the main principles is quoted from a journal written by Yudanto Prawira P and Prabowo Chayandaru.<sup>73</sup>

Consent in the context of sexual relations (*sexual consent*) is a consent that provides clarity to carry out sexual relations or activities without coercion - given freely and voluntarily.<sup>74</sup> The elements that need to be met in giving sexual consent are:

1. There is knowledge. This is an important element because without knowledge of the activities that will take place, the activities cannot be legally carried out.<sup>75</sup> Knowledge between parties to sexual activities is the process of legitimizing a sexual relationship between the parties involved. Knowledge is key that the parties have enough information to make a decision.<sup>76</sup>

2. Elements of freedom and voluntariness of the parties. In sexual intercourse, sexual consent given must be done freely and *voluntarily*.<sup>77</sup> Consent given freely and voluntarily means that the consent must not be motivated by threats (verbal, physical, psychological, sexual, and/or economic) or any influence (circumstances, status, fraud, etc.).<sup>78</sup>

Does consent in sexual intercourse always mean consent to do other things that are sexually nuanced? For example, consent to oral sex does not mean consent to penetration.<sup>79,80</sup> Through this approach, it can be seen that consent is an important aspect of having sexual intercourse.<sup>81</sup> The absence of explicit consent to one sexual activity does not mean that the consent applies to other sexual activities.<sup>82</sup>

Buwono and Tyas stated that *sexual consent* given to a person to undergo sexual intercourse has its own complexity motivated by different factors. This factor is the level of sexual contact behavior that differs from one relationship to another.<sup>83,84</sup> Willis and Smith stated that consent in sexual relations has to do with sexual behavior and the degree of intimacy of a relationship such as; kissing; hugs, oral sex, genital touch, anal sex, penetration, and others.<sup>85</sup> Thus, the consent given by a person in having sexual relations can be affected by different sexual contact behaviors and levels of intimacy.<sup>86</sup>

That complexity in itself can be a barrier in handling cases of sexual violence, where consent – especially given in a relationship such as dating or marriage – is often overlooked (in the investigation or investigation stage).<sup>87,88</sup> Neglect of consent as an important element in distinguishing whether there is coercion or not in sexual relations certainly has an impact on the handling of sexual violence cases in Indonesia.<sup>89</sup>

The complexity of Sexual Consent can also be seen from the form of communication in giving such consent. Research conducted by Muehlenhard, C., *et al.* Divide the granting of sexual consent into three.<sup>90</sup> In sexual consent as an *internal state of willingness*, Muehlenhard, C., *et al.* explained that consent given due to willingness (*willingness*) internally is an agreement that has a private nature and is unknown.

Usually, consent in the context of internal willingness cannot be a threshold for a person to give consent, especially in a legal context. While sexual consent as an act that is explicitly approved (*verbal cues*) is explained as sexual consent that is given explicitly which is consent that is usually regulated and becomes standard in laws and regulations. Where in this context, sexual consent is given directly, usually verbally or in writing. Verbally, the parties clearly said they agreed to the sexual activity to be carried out.<sup>91</sup>

For example, A says "I want to have sex with you" to B. B replies "I agree/disagree to have sexual relations with you". While in Consent as a behavior that can be interpreted as willingness - to do *nonverbal cues*, Muehlenhard, C., *et al.* explain that consent in this context is given intrinsically or implicitly. This is in line with the behavior of sexual contact, which is usually non-verbal as a signal of consent to have sexual intercourse.<sup>92</sup> Nonverbally given consent has several different factors that can affect the consent given. Consent granted from non-verbal behavior usually includes sexual contact behaviors such as kissing, hugging, groping, oral sex, penetrative sex, and others.<sup>93</sup>



#### 4. Violation of Conditional Consent in Sexual Intercourse in Indonesia

Conditional consent has the meaning of consent given during sexual intercourse that has conditions as conditions that must be done and respected.<sup>94</sup> *Conditional consent* is a new concept known in the development of sexual violence cases, but countries such as the United Kingdom, United States, Sweden, Germany, and Australia, have implemented this concept in their legal systems.<sup>95</sup> Violation<sup>96,97</sup> of conditional consent in sexual relations can be tried criminally as well as civil - especially in cases of *stealthing*.<sup>98, 99</sup> Conditional consent in sexual intercourse cannot be limited only to the act of *stealthing* or *nonconsensual condom removal* (NCCR). However, it is also related to a conditional sexual consent with the aim of not violating a person's right to bodily autonomy.<sup>100</sup> In the 3 respondents below, there are several types of conditional violations in sexual relations:

**Table 1: Conditional Violation**

Subject, Age, Gender	Interview Subject Experience	Elements of Conditional Consent
	<p>OT was twenty (20) years old at the time of the violence, online in Thailand.</p> <p>OT who are looking for a partner through dating applications such as <i>T****</i> and <i>B****</i> to find VCS (<i>Video Call Sex</i>) friends. After finding a partner, OT starts talking through the application's communication features. Starting from small conversations such as acquaintances, and others. Furthermore, <u>both parties agreed to carry out the VCS on the condition that the VCS was carried out through another social media application</u> – let's call it X. Furthermore, the VCS action was carried out between the two parties by showing their faces on the camera, so that the OT's face was clearly visible. The perpetrator is a man, but using a female video</p> <p>After the VCS was carried out, OT received a message via <i>WhatsApp</i> containing a <u>video recorded by VCS between OT and the perpetrator, accompanied by a message threatening to spread the video</u>. In addition to threats, there was extortion against OTs to send money starting from S\$300 accompanied by threats that if OTs did not send the money to the listed account, the video would be disseminated to various parties including the campus. This information is accessed from accounts followed by OTs on the Instagram application.</p> <p>OT called the perpetrator to negotiate, but as a result the extortion was getting higher to S\$1000. The perpetrator carried out the mode by promising to delete the video, but before the video was deleted, the perpetrator increased the price higher. Then, the OT sent the money that the perpetrator wanted with the help of a friend who lives in Canada.</p>	<p>The consent given in this case is consent to have sexual intercourse electronically, which is known as Video Call Sex (VCS). By agreeing to perform the VCS, the OT does not give any consent to record the relationship. The element of threat in this case can be known as sextortion.</p>
GD, 21, Female	GD and her partner are in a relationship that has been going on for less than 1 year and are actively having <u>sexual intercourse</u> .	Unconsent One: Sexual consent is given by GD on the condition that it does not ejaculate in or around the

		vagina. However, the former GD continued sexual intercourse by ejaculating in the vagina.
	<u>The sexual relationship that GD has carried out runs during the relationship with consent. However, there were several incidents when GD felt uncomfortable when being invited to have sex with her partner.</u>	Unconsent Two: Consent was given to enter the bathroom while GD was cleaning, but did not give consent to have sexual intercourse.
	In the first incident, <u>GD gave consent to have sexual intercourse. However, intercourse is not accompanied by safety or in other words, condoms. With that, GD tells her partner not to ejaculate in or in the vaginal area of GD. With the condition that GD says to her partner, this condition is not considered by her partner so that the partner ejaculates in GD's vagina. GD felt uncomfortable but felt okay because it was her own partner who did it.</u>	
	<u>Second, when GD took a shower, the GD couple came and initiated intercourse in the bathroom. At that time, GD felt that he could not refuse her partner's invitation so GD gave up and let the action happen. After the incident, GD also felt uncomfortable but felt okay because it was her partner who did it.</u>	
ES, 22, Female	ES stated that during her dating relationship with her ex, she often experienced various violence, from verbal violence, physical violence, to repeated sexual violence.	The consent given by ES to have sexual intercourse was accompanied by a requirement, namely not to hurt her violently during sexual intercourse. This condition is violated by her couple resulting in injuries to ES's genitals.
	<u>ES's ex-partner has a high sexual desire that results in ES because often sexual intercourse occurs in the absence of full consent given by ES. Her ex-partner often comes to ES's place with the intention and purpose of having sexual intercourse, which is sometimes rejected but there is a compulsion to have sexual relations with her ex-partner. ES is uncomfortable and depressed when she is sick, her partner tightens his genitals. Her ex often used violence that resulted in pain to ES's genitals. ES said that with the pain, she was afraid of pregnancy so she took herself to the doctor for examination. The results of the examination showed that the pain that occurred in ES's genitals was caused by sexual intercourse carried out violently.</u>	
	ES's ex-partner is often manipulative after having sex, for example, saying, "I'm sorry I was wrong, if you want to report to the police or your father just report it".	

Through the 3 (three) subjects, it can be seen how the consent given by the interview respondents has their own requirements that have been violated by the perpetrator in various ways such as fraud, extortion or taking advantage of circumstances and/or status. The three respondents stated that if they knew their partner would violate the condition, then they would choose not to have sexual relations. In this case, it can be

concluded that with the violation of these requirements, the respondent does not have the power to make a decision (*decision making*).<sup>101</sup> A power to make a decision on whether or not to have a sexual relationship is an important aspect because it correlates with sexual consent itself<sup>102</sup> or consent to engage in one sexual activity with no other sexual activity. This is very closely related.<sup>103</sup>

Karamvir Chadha states that there are two aspects in which a person can provide requirements for sexual consent: moral (*morally valid consent*) and legal (*legally valid consent*) - both have a relationship.<sup>104</sup> Chada gave a concept known as *Tracking Assumptions*. The concept of *Tracking Assumption* used by Chada is accompanied by examples such as, "Does Susan give legal sexual consent to Abi's actions in relation to the morally valid consent that Susan gives to Abi's actions?" Sexual consent that is given legally (*legally valid consent*) is based on laws and regulations which usually include elements such as rational, voluntary, free, and notified.<sup>105,106</sup> Laws and regulations usually restrict sexual consent to groups deemed incapable such as children, individuals with intellectual disabilities, individuals with disabilities, and/or those under the influence of alcohol or drugs.<sup>107</sup>

*Morally valid consent* is a moral right that a person has in sexual intercourse.<sup>108</sup> For example, A has the right to have sexual intercourse with B if desired, so B has an obligation not to have sexual intercourse if A does not give moral consent based on the rights that A has.<sup>109</sup> Conditional consent must be accompanied by *morally valid consent* first.<sup>110</sup> Such morally valid approval must include factors;

- 1) One must give consent that comes from him (internally) and manifests in verbal and clear form,<sup>111</sup>
- 2) The consent given must be valid (e.g. adult), and
- 3) The moral sphere must be fulfilled in the sense that the act taken by a person to have sexual intercourse must fall within the moral sphere set by the partner.

The fulfillment of the elements of *Morally Valid Consent* and *Legally Valid Consent*, then a person can provide conditions for sexual consent that must be respected by the parties in sexual intercourse. Conditional consent must certainly be met with approval that has clarity. namely the clarity of information to be able to provide valid decisions.<sup>112</sup> Conditional consent is limited only to verbally communicated consent. Without active communication between couples, the consent given is only limited to sexual consent internally or through consent in the form of *non-verbal cues*. Muehlenhard, C., *et al. declared the Internal State of Willingness* as an agreement that could not be considered by law.<sup>113</sup>

The TPKS Law has a difference with *the Sexual Offences Act 2003* – regarding sexual consent. The difference lies in the legal systems of Indonesia and the different countries of the United Kingdom. Indonesia's legal system is *civil law*, while the United Kingdom's legal system is a common law system. Indonesia as an adherent of the civil law system prioritizes laws and regulations as the main source of law, where the rule (TPKS Law) must clearly regulate the violated act and focus on proving every element of the violated act.<sup>114</sup> Thus, if sexual consent is not part of the elements of a criminal act regulated in the TPKS Law, then the burden of proof is only limited to the elements codified in the TPKS Law.

Sexual violence is a criminal act because sexual violence is an act related to public morality, and is an act that threatens human dignity (especially women and children) and public order.<sup>115</sup> Thus, the violation of conditional consent in sexual relations certainly fulfills these elements. For example, public morality can be threatened by sexual intercourse which can result in an opportunity for a person to earn money such as selling sexual intercourse content.<sup>116</sup> However, these acts do not necessarily depend only on morality but must also be able to include actions that threaten human dignity, especially women and children, as well as actions that threaten public order.

In the context of sexual violence, sexual autonomy from a part of bodily autonomy is an important aspect especially in giving consent. Sexual consent is associated with the right to *self-determination*.<sup>117</sup> Sexual violence is an act that usually has various consequences, but the initial act is an act that results in a violation of bodily autonomy and integrity.<sup>118</sup> Violation of consent and conditional consent in sexual relations is closely related to the violation of the right to autonomy and bodily and/or sexual integrity as a result (*causa remota*).

In general, acts of sexual violence have various consequences such as physical and mental injuries.<sup>119,120</sup> An act of sexual violence as an act that degrades a person's dignity, honor, and integrity.<sup>121</sup> Thus, a healthy sexual relationship is a sexual relationship that is carried out without elements of violence, coercion, threats, and others.<sup>122</sup>

As discussed above, sexual consent with its conditions is an important element and cannot be ruled out. Violations of autonomy as a result show that the obligations of individuals and states in respecting, protecting, and fulfilling these rights have been violated. Jonathan Herring states that freedom of autonomy is the basis for fulfilling the will of an individual, not as an obligation to fulfill the will of another individual - within the scope of sexual relations.<sup>123</sup>

The freedom of autonomy must be practiced by the individual so as not to injure or harm other individuals. That means, if a person refuses to have sex on the basis of his autonomy, it does not mean that a person can force himself to have sex on the basis of that autonomy.<sup>124</sup> Through this explanation, it can be seen that body/sexual autonomy and body/sexual integrity are a result of sexual intercourse.

Where if there are elements of violation of sexual consent and its conditions, it can be concluded as a violation of body/sexual autonomy and body/sexual integrity. As an illustration of the interpretation of the violation of conditional consent in sexual relations, he referred to the example of the case *R (on the applicant of F) v. DPP and "A"* (EWHC, 2013).

In the case of *R (on the applicant of F) v. DPP and "A"* (EWHC, 2013), F (the victim) reported A (the perpetrator - F's husband) with an allegation of rape because A ejaculated in F's vagina.<sup>125</sup> In this case, the court held that A had actively and knowingly violated the conditional consent given by F to A. Here, the court interpreted that prior to the intersex penetration of F and A, A had the intention and ended up ejaculating in F's vagina.<sup>126,127</sup>

Through this case, it can be seen that the form of interpretation of British state law is the *Sexual Offences Act 2003*. Section 74 of the *Sexual Offences Act 2003* (SOA 2003) reads: "A person consents if he agrees by choice, and has the freedom and capacity to make that choice."

The article shows that a person can give sexual consent on the basis of having choice, freedom, and the capacity to make such decisions. Implications of Section 74 of the Sexual Offences Act 2003 in the case of *R (on the applicant of F) v. DPP and "A"* (EWHC, 2013) shows that with the act of ejaculation (as a result of - *Remote cause*), the perpetrator has deprived the victim of the right to vote in giving his original consent.

Logically, this can be interpreted that if the victim knows that the perpetrator will ejaculate in her vagina, then the victim can refuse the invitation to have sex. Previously, it was discussed that knowledge is an important aspect in showing that the victim has genuine and full information based on honesty to give sexual consent.<sup>128, 129</sup>

## CONCLUSION

Sexual consent is an important element in sexual relations. Sexual consent is not only limited to granting a "permission" but is an important factor in distinguishing between consensual and non-consensual sexual relationships. Through sexual consent, it can be concluded that a person gives consent to have sexual intercourse without threats, violence, extortion, and others.

This means that valid sexual consent can only be given freely, voluntarily, and the party giving sexual consent has the capacity to give such consent. Sexual consent is also the fulfillment of the element of the right to bodily and/or sexual autonomy. Bodily and/or sexual autonomy is a right for a person to determine his or her fate, especially the body. Body and/or sexual autonomy is the basis for a person to give sexual consent.

The three respondents who were studied also confirmed that sexual intercourse carried out with conditional consent when violated will result in psychological and physical violence suffered by the victim, such as fear, threatening, and even causing damage or pain in the victim's body.

The concept of conditional consent in sexual relations is a new term known in developed countries such as the European Union and the United States. In many of the cases that have been described, sexual consent has various conditions that must be respected and fulfilled by the parties in having sexual intercourse. Where violations of these conditions can have an impact on the manifestation of an act into a criminal act of sexual violence. Cases such as *Assange v. Swedish Prosecution Authority*, *R v. McNally*, and *R (on the Applicant of F) v. DPP and "A"* have replied that the violation of consent in sexual relations constitutes sexual violence.

The vulnerability of women as victims of sexual violence or from acts of violation of conditional consent. Vulnerability is caused by a patriarchal culture in a society that still places women as subordinate to men. This subordination has the potential to affect sexual consent given by women and potentially violate conditional consent in sexual relationships.

Unfortunately, the criminal law in Indonesia has not been able to protect victims from violating this prerequisite agreement because it is not included in the elements of criminal acts normatively and morally, sexual relations carried out outside of marriage are immoral acts that actually harm victims, especially women or people with sexual minorities. Revictimization arises when the victim questions the act. As a result, the perpetrator is still considered not to be the offender of a criminal act because his act is not a criminal offense.

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