

CRITICAL REASONING FOR PROTECTION OF VICTIMS OF SEXUAL VIOLENCE AT COLLEGE

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Abstract

Unequal power relations and gender relations are criminogenic factors of sexual violence in the higher education environment. The power relationship between lecturers and students is placed in a line of subordination where lecturers have power over students in terms of position, function, and role, subordinated to a weak and powerless position. Not many victims can speak out about the sexual violence they have experienced because the system for handling sexual violence has not been able to support and protect victims. Hence, the university community tends to blame the victim and often places students as victims a second time. The narrative of the existence of victims of sexual violence is an essential issue for policymakers in higher education to hear through integral policies that are formed by considering the interests of victims. By using a phenomenological approach and a philosophical approach (Philosophy Approach) to see the development of practical law (*Meuwwissen*), the researcher tries to see how universities respond in seeing the interests of victims who are internalized in the attitudes and actions of universities in harmonizing individual interests with the interests of universities within the framework of legal protection. In the reconstruction of critical reasoning attempted by two universities, countermeasures have been taken by handing over the perpetrators to the competent authorities to be punished based on the applicable laws and regulations after the code of ethics trial process at the university level has been carried out. This means that mitigation efforts still do not use a victimology approach, which is vulnerable to giving rise to victimization victims. Regulations at the tertiary level have only been discovered in one of the tertiary institutions passed since December 2020, the implementation of which still requires exceptional operational standards as well as a complaint and action service unit to advocate and rehabilitate victims.

Keywords: Victims, Sexual Violence, College, Protection.

1. INTRODUCTION

Discussing sexual violence is still often associated with efforts to punish the perpetrator as the end of the struggle in the name of legal certainty. Blaming the victim as the cause of sexual violence often appears (Wulandari & Krisnani, 2021) (Fredrik et al., 2020), and in the end, sexual violence continues to be a social fact whose growth rate continues to increase every year. (Komnas Perempuan, 2021), (Rifky lindawati, 2021). The increasing increase in sexual violence is no longer caused by the absence of legal regulations that regulate it. However, rape culture (Nikmatullah, 2020) is the main factor that silences the voices of victims of sexual violence (Sitorus, 2019). It makes victims afraid to report the sexual violence they have experienced (Elindawat, R, 2021).

Sexual violence can occur anywhere, not only in private spaces but also in public spaces, including in universities (Sitorus, 2019, pp. 30–31). Sexual violence in higher education. Unequal power relations and gender relations are criminogenic factors of sexual violence in higher education environments. The power relationship between

lecturers and students is placed in a line of subordination where lecturers have power over students in position, function, and role, subordinated to a weak and helpless position. (Erika Putri Wulandari & Hetty Krisnani, n.t.) Because sexual violence is described as a manifestation of relationships. Unequal power between men and women has historically been uneven between men and women (Kartika, 2015, pp. 36–37). This condition is the sociological reason that places universities as the first location vulnerable to sexual violence, which has been accumulated from 2015 to 2020 by KOMNAS Perempuan (Komnas Perempuan, 2020) (Amal, 2021).

In essence, talking about sexual violence is not only related to issues of causes and treatment, but it is very closely related to a criminological perspective which bases treatment on the causes caused by the perpetrator. In short, the efforts have only been limited to punishing the perpetrators. Sexual violence as a form of unlawful act does not only involve one legal subject of the perpetrator but also involves the presence of victims who experience various pressures so that the impact felt by the victim is no longer physical and psychological but also social and educational impacts. (Artaria, M. D., 2012) (Nikmatullah, 2020, p. 43). Universities need to take concrete steps to create a safe space for voicing the experiences they feel, see, and experience themselves. Creating safe spaces in higher education is part of the support system, which universities must build sustainably with a victim perspective. (Richards et al., 2021)

Handling sexual violence from the perspective of assisting victims is one of the essential keys to realizing higher education that is safe from sexual violence because it is not only related to the impact felt by victims both physically and psychologically but there are still many general public and academics in higher education who considering sexual violence as a disgrace that must be hidden and even considered a regular act so that resolving it is not a priority for universities. (Marfu'ah & Rofi', 2021, pp. 94–95)

In the name of law and justice, that is the spirit attached to law enforcement efforts in Indonesia, which is also attached to the series of law enforcement on sexual violence. It started with the issuance of a Decree of the Director General of Islamic Education Number 5494 of 2019 concerning Guidelines for Preventing and Handling sexual violence in Islamic Religious Universities, which was then continued with the issuance of Regulation by the Minister of Education and Culture Number 31 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education. These two forms of regulation are *lex specialis* from general regulations issued later in 2022 as a Law entitled Criminal Acts of Sexual Violence Number 12 of 2022. Based on this description of conditions, the State has guaranteed legal certainty, which is a step toward realizing legal justice.

The existence of the law is certainly not a guarantee of reducing the number of sexual violence because several conditions that occurred after the promulgation of regulations regarding the handling and prevention of sexual violence, both in Islamic religious universities and general universities, faced different implementation dynamics in each university. Among the dynamics faced is related to drafting derivative regulations in higher education adapted to higher education's structural and cultural conditions. Therefore, critical reasoning in forming regulations for preventing and handling victims must truly be realized to support a system of legal protection from a victim's perspective.

Based on the description above, this article will provide an overview of the victims' efforts to survive the pressure of victimization, which continues to plague them even though legal regulations have been passed and implemented. The author will then summarize the defense efforts made by the victim in a narrative that forms critical reasoning to realize legal protection from the victim's perspective. So, the phenomenological and philosophical approaches are the methods that the author uses to outline the portrait of the victim's defenses for the author to then analyze as a contribution to the formation of regulations for preventing and handling sexual violence from the victim's perspective in higher education.

2. GENERAL DESCRIPTION

Sexual violence is not only a moral crime but also constitutes a violation of Human Rights (HAM) and is related to gender injustice (Rohani Budi Prihatin et al., 2017, pp. 7–10). Efforts have been made, yet the incidence of violence has not declined, as evidenced by a report published by the National Commission (KOMNAS) on anti-violence against women, which recorded 321,752 incidents in 2015, escalating to 431,471 in 2019 (Komnas Perempuan, 2020, pp. 20–30). In 2020, there was a decrease in reported sexual violence cases, with 299,911 recorded in CATAHU 2021 (Komnas Perempuan, 2022, pp. 1–20).

In 2021, there was a notable increase in complaints of sexual violence, indicated by a 50% rise in victim reports (Total Gender Based Violence Data in 2020), totaling 226,062. Additionally, there was an increase in the number of cases to 338,496. The public is becoming more accustomed to online-based services and complaints, leading to a heightened awareness and willingness to report incidents of sexual violence experienced.

In its annual report, KOMNAS Perempuan also notes that higher education institutions are at the forefront, with 35% of cases reported originating from Islamic religion-based education, while public school education, such as high school or vocational schools, ranks third (Komnas Perempuan, 2022).

The Criminal Act of Sexual Violence outlines various forms of criminal acts of sexual violence in Article 4, paragraphs 1 and 2 (See Law No. 12 of 2022). In PERMENDIKBUD number 30 of 2021, the meaning of sexual violence is outlined in Article 5, where an important element that differentiates sexual violence from crimes of morality is highlighted: the presence of phrases without consent, either directly or indirectly, which can cause harm to the victim (See Minister of Education and Culture Regulation number 30 of 2021). Sexual violence is more challenging to uncover and handle than other cases of violence. This is because sexual violence cannot be separated from the highly patriarchal concept of societal morality. In patriarchal cultures, women are often assigned the task of maintaining chastity and honor; consequently, women may be viewed as disgraced if they experience sexual violence. The societal labeling that arises from this viewpoint can lead women to tolerate sexual violence because they are unable to maintain their chastity and are instead considered seductresses. This assumption is deemed appropriate for women to accept, including being subjected to acts of violence. As a result, women who are victims of violence may not dare or may be reluctant to disclose their experiences, let alone seek assistance from service institutions (Marfu'ah & Rofi', 2021, pp. 94-95).

3. SPECIAL DESCRIPTION

Sexual violence on campuses has reached epidemic proportions (Fredrik Bondestam & Maja Lundqvist, 2020). Campuses are often perceived as lacking an effective approach towards victims, which exacerbates the victimization experienced by individuals, particularly when victims come forward to report incidents (Gillian M. Pinchevsky et al., 2020). Therefore, it is imperative for universities to play an active role in treatment and prevention efforts from the victim's perspective.

Several previous studies have emphasized the importance of universities and the government taking sexual violence prevention and response seriously within higher education. Masykur Wahid, for instance, highlights the necessity of creating a safe campus environment, which includes strengthening the legal framework for preventing and addressing sexual violence in higher education. This framework should actively incorporate the voices of victims and other vulnerable groups affected by the power dynamics inherent in higher education. Unequal power relations and gender dynamics are significant factors contributing to sexual violence within higher education environments. The hierarchical relationship between lecturers and students places students in a subordinate position, where lecturers wield power over them in terms of position, function, and role, leaving students vulnerable and powerless (Erika Putri Wulandari & Hetty Krisnani, n.t.). Consequently, universities bear a significant responsibility in handling sexual violence cases by establishing clear mechanisms for reporting, handling, and providing support and compensation for victims.

From a legal standpoint, the state has enacted regulations aimed at preventing and addressing sexual violence. Therefore, it is crucial for universities to ensure the enforcement of these regulations, as it represents their responsibility in fostering a safe and supportive higher education environment that is free from all forms of sexual violence.

4. METHOD

The research conducted here is of a juridical-empirical nature, specifically sociological research, and can also be categorized as field research (B. T. Putri & Zakaria, 2022). This type of research examines both the applicable legal provisions and the actual occurrences within society. In other words, it investigates the real situations or conditions prevalent in society with the aim of uncovering the necessary facts and data. Once the required data is collected, problem identification ensues, ultimately leading to empirical research (Nasution, 2018). The goal is to understand the legal protection afforded to student victims of sexual violence, as outlined in PERMENDIKBUD No. 30 of 2021.

5. RESULTS AND DISCUSSION

5.1 Challenges in Implementing Regulations for Preventing and Handling Sexual Violence in Higher Education

Sexual violence often remains a concealed problem in higher education settings, as victims of sexual violence frequently face victim-blaming, positioning them as contributing factors to the occurrence of sexual crimes. Various research findings suggest that women's vulnerability to criminal victimization is exacerbated by the fear of crime, which is significantly higher for women compared to men. This heightened fear stems from the suffering experienced by women both during and after the

occurrence of violence, resulting in more profound trauma for women, despite the existence of legal regulations.

Despite the promulgation of several regulations aimed at preventing, handling, and addressing sexual violence (such as the Decree of the Director General of the Ministry of Religion No. 5494 of 2019, Minister of Education and Culture Regulation No. 30 of 2021, and Law Number 12 of 2022 concerning Crimes of Sexual Violence), universities still encounter numerous challenges. These challenges span systematic, technical, structural, and cultural issues.

Systematically, universities face challenges related to the need for derivative regulations tailored to the specific needs and circumstances of each institution. According to data from the coordinator of the PTKIN Gender Studies Center, among the 58 existing PTKINs, only 26 have implemented regulations at the Rector level. This discrepancy poses challenges to the effective implementation of legal measures.

Technical challenges persist in handling sexual violence cases, often equating them with ethical violations and exacerbating power imbalances that leave victims feeling powerless to report incidents.

In addition to technical and systematic hurdles, universities grapple with misogynistic and sexist cultures that are unfriendly towards women. This hostile environment often results in victims being denied justice and recovery. Moreover, issues of perspective among university leaders contribute to the tendency to ignore or deny the occurrence of sexual violence, with concerns about institutional reputation taking precedence.

Drawing from research findings and data published by the National Commission on Violence against Women, several challenges and obstacles faced by universities in implementing regulations can be categorized into three groups.

5.1.1 Structure

Structure as a framework the creation of legal certainty and justice is a strong foundation that represents the existence of the state. In a structural context, the state can be represented by educational institution officials in handling sexual violence cases. The role of structure is very important in order to provide protection against acts of victimization or victim blaming on victims of sexual violence. Because victims of sexual violence bear multiple burdens in their lives. Higher education as a sturdy structure and framework should guarantee a sense of security and protection for the campus community against the impact of sexual violence which may occur at any time (Nikodemus Niko (2020): 25–46)

In the Minister of Education and Culture and Decree the Director General of the Ministry of Religion requires the existence of an implementing structure for handling sexual violence

5.1.2 Substance

Substance as a road map for handling and preventing sexual violence has an important role in realizing legal certainty for victims. In substance, the existence of regulations governing sexual violence has been promulgated in Law Number 12 of 2022, where previously Minister of Education and Culture Regulation No. 30 of 2021 concerning Prevention and handling of sexual violence in Higher Education and Decree of the Director General of the Ministry of Religion No. 5494 of 2019 were issued. Regulates guidelines for preventing and handling sexual violence at PTKIN.

At the implementation level in tertiary institutions, the drafting of derivative regulations has not been carried out by many tertiary institutions.

In the substantive aspect, there are still regulations for the prevention and handling of sexual violence that still have to deal with code of ethics rules that equate sexual violence with immoral acts. The impact is felt again by victims who are re-victimized and considered as human beings who should be able to maintain their chastity and honor as women.

5.1.3 Culture

Discussing culture, it is closely intertwined with patriarchal culture, which several studies have identified as a primary cause of sexual violence (Ariani Hasanah Soejoeti and Vinita Susant, October 2020: pp. 207–22). According to Murray, patriarchal culture defines men's subordination to women. He noted that *Shulamith Firestone* was one of the foremost interpreters of the revolutionary development of a radical feminist analysis of sexual power imbalances operating in men's interests. Patriarchy operates as a system of oppression against women, stemming from biological imbalances between men and women, particularly exemplified in women's ability to conceive and give birth, which men lack. Consequently, women must assert control over reproduction to liberate themselves from male oppression (Murray, M., New York: Routledge, 1995).

Culture can manifest in various forms, including a person's attitudes, speech, and perspective regarding sexual violence. In the cultural context, preventing sexual violence necessitates extensive education and outreach about understanding and addressing sexual violence in all its forms. The persisting misogynistic culture within campus societies often fosters sexist jokes, contributing to the misconception that women are responsible for the sexual violence they endure. Currently, sexual violence is often normalized. Some universities, in handling cases of sexual violence behind closed doors, dismiss the incidents as mere mistakes by the perpetrators, perpetuating a culture of rape normalization and sexual violence (Laras Nadiananda Iswari, 2022).

Culture significantly influences the perpetuation of violence by attributing it to the victim's negligence. Women, as a vulnerable group, are confined within a culture believed to safeguard women's dignity for generations. In various Indonesian cultural beliefs, it appears that only women are bound by the plethora of cultural norms they adhere to. Double standards are applied to men and women, imposing undue pressure on women. Men's apprehension about shifting traditional roles often results in assigning various penalties that women must endure, or subscribing to the belief in a just world, to justify their own fragility (Wulandari & Krisnani, 2021).

5.2 Building Harmonization of Victims' Interests to Realize Justice, Benefits, and Legal Certainty in Efforts to Prevent and Overcome Sexual Violence

In harmonizing the interests of victims with the interests of power, the establishment of regulations for preventing and addressing sexual violence cannot be detached from the Ideal Norm or the legal ideals of the Indonesian nation, which uphold individual and collective human rights as a reflection of the second principle of just and civilized humanity. This principle signifies that everyone, regardless of gender, is entitled to equal access to justice and the right to fight for their rights.

The state guarantees the constitutional rights of every citizen as stipulated in the 1945 Constitution of the Republic of Indonesia. Fulfilling citizens' rights, including women's

rights in legal matters, is the state's endeavor to achieve the goals outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia.

Citizens' rights encompass the rights of women involved in legal proceedings, as articulated in Article 28D(1) of the Constitution of the Republic of Indonesia Year 1945, which states: "Everyone has the right to recognition, guarantees, protection, and legal certainty, as well as fair and equal treatment before the law." Furthermore, Article 28I specifies that "the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be subject to retroactive laws are human rights that cannot be diminished under any circumstances." Therefore, it can be inferred that Pancasila and the 1945 Constitution serve as a philosophical foundation capable of harmonizing the interests of victims and universities in the pursuit of humanity and justice.

Sociological or empirical considerations involve examining societal conditions and society's need for clear legal regulations in addressing sexual violence. Additionally, sociological considerations are pertinent to the evolving nature of crimes, including the emergence of various forms of sexual violence, such as Online Gender-Based Sexual Violence (KGBO), which can occur in virtual spaces and social media.

Bruggink refers to the empirical and sociological nature of a legal rule as the factual basis upon which the validity of a legal rule is grounded. The factual validity must be utilized as a basis for consideration in the initial drafting of a rule. To meet the criteria of factual considerations, rules formulated in regulations must stem from societal values and community needs. The objective of these factual considerations is to ensure the effective acceptance and compliance of a legal rule by society.

6. CONCLUSION

A critical challenge in addressing situations of sexual violence in higher education lies in evaluating the degree to which the interests of victims and the campus community as a whole are considered and incorporated into higher education policies. Equally significant is the examination of whether these policies, including handling guidelines, effectively address the sociological issue of sexual violence on campus. Do the policies for the Prevention and Control of Sexual Violence in Higher Education adhere to juridical aspects, and what potential sociological and legal problems might arise from the implementation of these regulations?. It is paramount, in policymaking, to scrutinize policy contents from philosophical, juridical, and sociological perspectives. This entails conducting a philosophical assessment of the prevention and handling of sexual violence, ensuring compliance with the structure or hierarchy of legislation, known as a juridical review, and demonstrating sensitivity to the sociological context that underlies the accuracy of the policy content in alignment with the rights and needs of individuals vulnerable to becoming victims of sexual violence or who have already experienced victimization. Many policies crafted by state administrators, spanning legislation, government regulations, ministerial regulations and regional regulations are inefficient and cannot even be implemented. Persistent issues include non-compliance with higher-level laws, unimplemented regulations, resource constraints, and regulations that fail to resonate with the societal context in which they are formulated.

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