

## Sexual Harassment Criminal Law Policy In Criminal Law Revision Of Indonesian

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Abstract. Sexual harassment is behavior that approaches related to unwanted sex, including the demand for sex, and other behaviors being verbally or physically refer to sex. In studies using the theory of criminal law policy, legal certainty and legal policy research law enforcement. The result of goal against sexual offenders stipulated in the Penal Code and the Child Protection Act and women and Pornography Law issued regulations while for the area of Semarang District, is regulated by Regional Semarang District Number 1 of 2015 About the Empowerment and Protection of Women. In addition to the regulation, Semarang District Government also set about the task area devices pertaining to the protection of women and children namely Semarang Regent Regulation Number 52 Of 2016 on Positions, Organizational Structure, Duties and Functions, Work Procedures, and details of the regional Task Semarang regency. The weakness of criminal law policy against sexual harassment at this time that the recognition of the victim and the offender only from one specific sex which affects the exclusion of rape victims of the other sex, and the absence of an exact definition of sexual abuse, rape or sexual abuse, so that the diversity of cases of sexual violence understood as rape. In any law enforcement agencies have set up special treatment for sexual violence against women, whereas there is nothing available in the case of victims of sexual violence for men, this can lead to many sexual deviations that occur. Criminal law policy against sexual harassment in the reform of criminal law in Indonesia through the Bill the Code of Penal (Criminal Code draft) 2019, In these terms, rape is not just intercourse with a woman outside of marriage against the will of the woman, but rather expanded, including male insert his penis into the anus or mouth of a woman. Description of rape also in view of not just as sexual but also as a life-threatening crime, and in the abovementioned article does not describe the victim or the perpetrator of a particular gender.

Key words: Policies; Criminal Law; Sexual Harassment.

### 1. Introduction

Sexual harassment is behavior approaches related to unwanted sex, including the demand for sex, and other behaviors being verbally or physically refer to sex. Sexual harassment can happen anywhere, either public places such as bus, market, school, office, or in a private place like home. In the event of sexual harassment usually consist

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of 10 percent of the words of abuse, 10 per cent of intonation that indicates abuse, and 80 percent of non-verbal.<sup>3</sup>

Based on the above understanding the level of sexual harassment can be divided into three levels. First, light levels, such as naughty temptation, an invitation for fun, and humor porn. Secondly, a moderate level, such as holding, touching, touching certain body parts, until a serious invitation to "dating". Third, the level of severe, such overt acts and force, the imposition of the will, to attempted rape. Medium rape itself is already included in the category of sexual crimes (sexual crime).<sup>4</sup> On the beginning in 2018, many incidents of sexual harassment cases were revealed in the media. A woman claimed to have been sexually abused by a male nurse, initials J at the National Hospital Hospital Surabaya. Sobbing patients ask nurses to confess. Perpetrators of sexual harassment and even then admitted and apologized for what he did. Previously, the East Java Police once processing reports alleged sexual abuse by a doctor to prospective nurses in the same hospital.<sup>5</sup>The same case has ever happened to a woman in Jatinegara, the victim at the time was about to go out to buy food in shops. However, while it is running, suddenly from behind he was held captive by the perpetrators and hold body parts.<sup>6</sup>

Another case was when public attention is the case that has been reported Baiq Nuril Muslim betters the former Head of School 7 Mataram. The legal process criminal reports Baiq Nuril against Muslims have been stopped at the level of an investigation by the Police of West Nusa Tenggara (*Polda* NTB) by reason of criminal reports of Baiq Nuril as victims of sexual abuse insufficient evidence and did not meet the elements of Article 294 paragraph (2) 1st the Code of Penal (Penal Code).<sup>7</sup>

Cases of sexual abuse not only affect women, often children also become victims of sexual abuse, such as sexual harassment cases singer Saiful Jamil minors victims of male initials DS. Over the case pedangdut Saipul Jamil judge convicted three years in prison after being convicted of violating Article 292 of the Criminal Code of lewd acts against children.<sup>8</sup>

There are many reasons why men as a rape victim is reported that she was raped. Donaldson argued that perhaps the biggest reason for many men is the fear of being perceived as homosexual. Whereas male sexual assault has nothing to do with sexual orientation either the attacker or the victim. Clearly sexual assault does not make the victim being gay, bisexual or heterosexual. This is a violent crime that affects heterosexual men as gay men. The phrase "homosexual rape", for example, are often

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<sup>3</sup>Regina Ignasia Gerungan, "*Perlindungan Terhadap Korban Tindak Pidana Pelecehan Sexual Di Tempat Umum Di Kota Manado*", *Lex Crimen*, Vo.II/No.1/Jan-Mrt/2013,, p. 70.

<sup>4</sup> Ibid.

<sup>5</sup> *Fakta-Fakta Pencabulan di RS National Hospital*, <https://news.detik.com>, Accessed May 24, 2019).

<sup>6</sup> *Pelaku Pelecehan Seksual di Jatinegara Tak Mampu Menahan Diri Saat* (<https://megapolitan.kompas.com>, Accessed May 24, 2019)

<sup>7</sup> *Urgensi Undang-Undang Penghapusan Kekerasan Seksual*, Accessed May 24, 2019)

<sup>8</sup> Sexual Harassment Saipul Jamil sentenced to 3 years of prison, (<https://www.dream.co.id>, accessed May 24, 2019).

used by people who lack information about male rape, disguises the fact that the majority of rapists are generally not homosexual.<sup>9</sup>

Lipscomb et al stated, many people believe that the majority of male rape happen in prison, but there is no research in Tennessee that destroys this myth. A study of male rape in prisons and who are not in prison, concluded that the similarities between the two groups showed that male sexual violence is not due to the unique conditions in jail, but that all men are potential victims.<sup>10</sup>

Some authors noted that sexual violence against men is often not named as such, but listed under the rubric of "abuse" or "torture". Sivakumaran showed a lot of people consider sexual relations between two men showed homosexuality, although there is an element of coercion or force involved, so it is not considered a sexual assault case.<sup>11</sup>

Sexual abuse as an example the case of the above cause injury, trauma victims and many victims of sexual abuse who are silent because they do not know who to talk to, feel helpless, self-blame, confused, ashamed to tell the sexual harassment experienced by , Most tried to forget the incident, but in certain situations such bad memories will suddenly reappear and will haunt the victim throughout his life.<sup>12</sup>

Based on the three example cases of sexual abuse committed by doctors to nurses, nurse to patient, and the principal to his subordinate, it can be seen that the perpetrators have not been determined as a suspect or termination of the investigation due to lack of evidence. This shows that the existing legal provisions currently not reach sexual offenders be sentenced according to his ways and give justice to the victims.

Law enforcement cases of sexual abuse is difficult to prove if using provisions in the Criminal Code by using the Code of Criminal Procedure in the process of proving. When sexual harassment is regulated as general crime in the penal code then needs the victim for special handling will not be met. Therefore, the preparation needs to be done along the Criminal Code draft comply with the provisions of the Criminal Code that the bill only contains provisions governing the crime of a general nature. The special nature of the Criminal Code in order to set out the rules for effective implementation of criminal itself.

In the case of sexual abuse, victims factors play an important role in enforcement. this requires the courage of victims to report this incident to the police, since most victims are reluctant to report the incident. It is expected from this complaint, so the case can be open and do the inspection process so that the victims will get justice for what happened to him. On the other hand the imposition of criminal sanctions will provide a deterrent for perpetrators of sexual abuse. Criminal sanctions are oriented to the

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<sup>9</sup>Donaldson, Donald. (1990). *Male Rape*," dalam dyne, Wayne, ed*Ensiklopedia Homoseksualitas* New York... Garland Publikasi. *Male rape* www.svfreenyc.org accessed June 10, 2013 at 14:00 pm

<sup>10</sup>Lipscomb, Gary H. et al. (1992). *Male Victims of Sexual Assault*. Journal of the American Medical Association, 267(22): 3064 - 3066 *Male rape* www.svfrecnyc.org accessed June 10, 2013 at 14:00 pm

<sup>11</sup>*The Nature, Scope and Motivation for Sexual Violence Against Men and Boys in Armed Conflict*, Use of Sexual Violence in Armed Conflict: Identifying gaps in Research to Inform More Effective Interventions UN OCHA Research Meeting - 26 June 2008. hlm.2.

<sup>12</sup> *Pengaturan Pelecehan Seksual di Indonesia dalam Perspektifus Constitutum dan Ius Constituendum*, accessed May 24, 2019)

interests of victims will not hinder efforts to improve the perpetrators, but instead will accelerate the rehabilitation process on offenders.

Based on the above background, the authors are interested in doing research on "Sexual Harassment Criminal Law Policy In Criminal Law Revision Of Indonesian".

Based on the description of the background described above, then the problem is formulated as follows: How sexual abuse of criminal law policy at this time? What are the disadvantages of criminal law policy sexual harassment at the moment? How the criminal law policy of sexual abuse in criminal law reform in Indonesia?

## **Research Methods**

The method used in this research is normative juridical approach. Other research is legal normative legal research laying down the law as a system of building norms. Norm system in question is about the principles, norms, rules and regulations, court decisions, agreements and doktrin.<sup>11</sup> specifications used in this research is descriptive analytical, that picture is clear, detailed and systematic. The data used are primary data and secondary data collection methods of field studies and literature. The method of analytical data using qualitative analysis

## **2. Discussion**

### **2.1. Sexual abuse of criminal law policy**

Factual conditions of protection and enforcement of human rights in Indonesia is still very concern especially the protection of women's rights.

#### **Policy sexual harassment law**

Policy of legal protection for women stipulated in the legislation, namely: Act of 1945, Act No. 8 of 1981 About the Code of Penal (Penal Code), Act No. 1 of 1974, Act No. 8 Of 1981 About the Code of Criminal Procedure (Criminal Procedure Code), Act No. 7 of 1984 concerning the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, Act No. 30 Of 1999 on Human Rights, Act No. 23 2004 on the Elimination of Domestic violence and Act No. 21 of 2007 on the Eradication of Trafficking in Persons

#### **Law policy through legislation in the area of Semarang District**

State of Indonesia as a State law also regulates the rights of women, for the Semarang District on regulating the rights of women, the Semarang District Regulation Number 1 Of 2015 About Empowerment and Protection of Women. Besides Regional Regulation Number 1 of 205 About Empowerment and Protection of Women, Government of Semarang district also set about the task area devices pertaining to the protection of women and children, namely decree Semarang Number 52 Of 2016 on Positions, Organizational Structure, Duties and Functions, Work Procedures, Details of the regional and district task Semarang.

#### **The weakness of the sexual harassment policy of criminal law today**

Act on the Elimination of Domestic Violence (Law PKDRT) considered Legal Aid Association of Indonesian Women for Justice (LBH) still have many shortcomings, namely in the PKDRT Act practice of witnesses can be done with evidence of one person is victim of its own and the autopsy report, many of the police who refused to run it, he said, the police often request additional witnesses when domestic violence occurs within the domestic sphere and are less likely to do anyone other than the offender and the victim. "Even if the presence of the child, the child is often confused and unable to testify, often also occur penyulitan reporting domestic violence cases, especially when the victim complained in the police station that is different from their houses. In fact, he says victims often have to go out of the house where cases occur due to seek protection from the relatives or friends.

Continuation, the court also often not granted protection to the victim before the trial process begins. In addition, the costs of the post mortem to be borne by the victim when making a complaint also often burdensome.

## **2.2. Policy criminal law of sexual abuse in criminal law reform in Indonesia**

The Code of Penal (Penal Code) Indonesia, which made the main reference for legal practitioners to capture the perpetrators of crimes of sexual violence substantially contains shortcomings in terms of protecting victims of crime. The victim in this juridical side did not get special protection. The criminal act of rape in the Criminal Code can be divided into two; the crime of rape to sexual intercourse under Article 285 and the crime of rape to commit lewd governed by Article 289. Sanctions punishment in the form of punishment that terumus in article 285 of the Penal Code states that the longest sentence that will be borne by the offender was twelve years in prison. This is the maximum penalty, and not a standardized legal sanctions should be applied once. Number minimum sanctions,

In the new Code designers have attempted to clarify the concept of a rape conviction so that the rapist is not punished lightly. The concept is a step forward compared to the presence of the formulation in the articles of the Criminal Code that old tend not able to accommodate the development of life and the nation. Cases of crimes of sexual violence that the modus of rude, vile, vulgar and very drop of human dignity equated with morality crimes in general.

The concept of the criminal act of decency or morality crimes, as in the Bill that the Criminal Code already started to progress, especially in terms of the threat of legal sanctions to be imposed on the offender. Each crime morals have been threatened with punitive sanctions are weighting. Moreover, in the Bill of the Criminal Code has been Numberprogress on the basis of double punishment to the culprit, which can impose sanctions other than imprisonment, can also be sentenced to penalties in accordance with the type of crimes they have committed

Breakthrough law contained in the PKDRT Act not only in the forms of criminal acts, but also in the process of the event. Among others with the groundbreaking law to prove that the victim be the main witness of the tools supported by evidence. So it is hoped that this legal breakthrough, constraints in evidence as the scene of domestic violence in general in the domestic sphere. Even in Article 15 of Law PKDRT set the

responsibilities of the public in an effort to prevent domestic violence in order to avoid recurrence.

The first legal breakthrough PKDRT accommodated in the Act are forms of domestic violence that includes physical violence, psychological violence, sexual abuse and economic abuse or neglect of the family.

### **3. Closing**

#### **3.1. Conclusions**

- Sexual harassment criminal law policy at this time; Law policy against sexual offenders stipulated in the Criminal Code and the Law on the Protection of children and women, while the regulations issued for the area, such as the author did research in Semarang district, governed by the Semarang District Regulation Number 1 Of 2015 About Empowerment and Protection of Women.
- The weakness of the sexual harassment policy of criminal law today; Act on the Elimination of Domestic Violence (Law PKDRT) considered Legal Aid Association of Indonesian Women for Justice (LBH) still has many weaknesses. In PKDRT Act practice the witness to do with evidence of one person is victim of its own and the autopsy report, many of the police who refused to run it, the police often request additional witnesses when domestic violence occurs within the domestic here and are less likely to do someone other than the perpetrator and the victim, often also occur the reporting cases of domestic violence, especially when the victim complained in the police station that is different from the domicile. In fact, says the victims often have to go out of the house where cases occur due to seek refuge from relatives or friends. Although sometimes still in the same province, police station refused to accept the complaint and ordered the victim reported in the cases, the courts are also often not granted protection to the victim before the trial process begins. In addition, the costs of the post mortem to be borne by the victim when making a complaint also often burdensome.
- Sexual harassment policy of criminal law in criminal law reform in Indonesia; In the new Code designers have attempted to clarify the concept of a rape conviction so that the rapist is not punished lightly. The concept is a step forward compared to the presence of the formulation in the articles of the Criminal Code that old tend not able to accommodate the development of life and the nation. Cases of crimes of sexual violence that the modus operandi of rude, vile, vulgar and very drop of human dignity equated with morality crimes in general. Breakthrough law contained in the PKDRT Act not only in the forms of criminal acts, but also in the process of the event

#### **3.2. Suggestion**

- To suppress the increasing crime in the form of sexual harassment and rape should be made a rule that is more firmly and clearly to punish the perpetrators of the

rape Aparta fullest extent so that people who intend to commit rape will be afraid and wary.

- Rape victims should be protected given the result and rape suffered severe enough that sometimes not comparable with dijatuhkan punishment to the perpetrators. By providing protection to victims of rape against weighing punishment for the offender is expected to be achieved primarily arsa justice for rape victims who are citizens of the Republic of Indonesia.
- Protection and empowerment of women is necessary for women to actualize potential optimally to participate in the development according to the capacity and role of the law enforcement officers in this case the Police dangat needed to crack down firmly, if there are measures that squeeze and not arbitrary seman against women in accordance with applicable regulations, so that the protection of women to work well

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