

Legal Analysis of Non-Physical Sexual Violence Crimes in Law Number 12 of 2022 Concerning Sexual Violence Crimes

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Abstract. *Non-physical violence is regulated in Articles 4, 5, 7 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. The purpose of this thesis research is to find out and understand the construction of regulations on elements of acts and implement evidence of non-physical acts of sexual violence regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence in court. The method used is the normative legal approach method. With the research specifications using normative descriptive, where secondary data is analyzed qualitatively. The formulation of the problem is analyzed based on the theory of legal certainty and the theory of evidence. The results of the study show that the Construction of Legal Regulations Against Criminal Acts of Sexual Violence is non-physically regulated in Articles 4, 5 and 7 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and Implementation in the realm of Evidence is based on the same theory of evidence in Criminal Procedure Law in Indonesia using the approach theory (negative wettelijk). Common practice in courts in Indonesia is the effort to prove by each party by presenting various kinds of evidence and the judge determines guilt based on his belief in the evidence. In Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, it regulates at least one piece of evidence, namely With the recognition of information, documents, and electronic recordings, as well as witness statements testimonium de auditu related to the crime, the case can be processed legally. In the context of proving criminal acts of sexual violence, supporting factors include the possibility of proof without physical evidence, clearer protection for victims, an increased role of expert witnesses, and social and cultural support.*

Keywords: *Analysis; Criminal; Sexual.*

1. Introduction

Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholding moral values, ethics, morals and the noble personality of the nation, believing in and being devoted to God Almighty, and respecting diversity in the life of society, nation and state.¹ Everyone has the right to feel safe and secure and to be protected from the threat of fear, this is regulated in The 1945 Constitution and Law Number 39 of 1999 concerning Human Rights, that in Article 28 G paragraph (1) The 1945 Constitution. Every person has the right to protection of themselves, their family, their honor, their dignity, and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right.

And in Article 30 of Law Number 39 of 1999 concerning Human Rights hereinafter referred to as (the Human Rights Law). That everyone has the right to a sense of security and peace and protection from the threat of fear, As it is known that the human rights of Women and Children have been guaranteed and regulated in the 1945 Constitution of the Republic of Indonesia and the Law on Human Rights. Therefore, the protection of the rights of Women and Children from violence should be respected, upheld and enhanced human dignity without discrimination, welfare and justice for Women and Children. Violence is any unlawful act with or without using means against the physical and psychological that causes danger to life, body or causes the deprivation of a person's freedom.

Sexual violence is any act that can cause physical, sexual or psychological injury and suffering to women, as well as acts in the form of threats, coercion, or arbitrary deprivation of liberty that occur in the public sphere or in private life. Sexual violence has a very broad scope, various physical and non-physical forms, ranging from verbal expressions (indecent comments, sexual jokes and so on) in physical forms (poking, groping, stroking, hugging and so on).

Based on data from the Ministry of Women's Empowerment and Child Protection (KemenPPPA), the number of complaints of cases of violence against children during 2023 was recorded to have increased threefold from 2022. "Complaint services via call center 129, WA 08111-129-129, the number of complaints in 2023 increased threefold from 2022 by 957 to 2,797 victims from 1,044 cases of violence against children. The largest number of complaints between January - October 2023 were cases of sexual violence, while from October to November 2023, the number of physical/psychological violence dominated, namely 1,078 victims, followed by sexual violence with 938 victims. the dominance of physical/psychological violence is due to the increasing number of victims of physical/psychological violence due to bullying cases..

¹Widayati, "Implementation of legal principles in the formation of participatory and equitable legislation", Unissula Law Journal, Volume 36 No. 2, September P-ISSN: 1412-2723.

Of the 1,044 cases that entered SAPA 129, the most were via WhatsApp Channel as many as 570 cases, 234 cases via media reports, 189 cases via letters, 40 cases via direct complaints, 7 cases via SP4N Lapor, 2 cases via service notes, and 2 cases of complaints via telephone from 84 callers who agreed to be continued. The most complaints came from West Java, DKI Jakarta, and Central Java, totaling 457 cases, and 14 other cases were of Indonesian children living abroad.²

In Article 4 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), which regulates the forms of crimes against sexual violence, namely:

- a. non-physical sexual harassment;
- b. physical sexual abuse;
- c. forced contraception;
- d. forced sterilization;
- e. forced marriage;
- f. sexual abuse
- g. sexual exploitation;
- h. sexual slavery; and
- i. electronic based sexual violence

Definition of Non-Physical Sexual Harassment is inappropriate statements, gestures, or activities directed at the body, sexual desire, and/or reproductive organs with the intention of degrading a person's dignity and honor. Included in non-physical sexual harassment are actions such as comments, teasing, jokes, ogling, whistling, body gestures, or asking unwanted sexual questions or making the victim uncomfortable.

An example of a case of non-physical sexual violence by a group of mothers from Pasar Seluma Village, Seluma Regency, who wanted to visit a mining company that was in operation, Saturday, (07/01/23) yesterday. The group of mothers intended to video the mining activities. Suddenly, the five mothers were immediately subjected to indecent treatment. One of the employees uttered obscene words in the local language. (female genitals) kaba (you) kujilati kelo (later)" said the employee while closing the gate.

At the verdict hearing Number 46/Pid.B/2023/PN.Tas, 5 women as victims along with the Pasar Seluma community who fought to reject the mine were also present to oversee the verdict that would be read out by the panel of judges. After several trials, the Panel of Judges finally decided that Proven had been proven to have violated Article 5 of the Law on Sexual Violence and was

² tribrataneews.polri.go.id, "Number of Child Violence Cases to Increase 3-fold in 2023", January 03, 2024, <https://tribrataneews.polri.go.id/blog/pppa-9/kemenpppa-nomor-kas-kekerasan-anak-naik-3x-lipat-di-2023-68423>, accessed February 2, 2024, 14.30 WIB.

sentenced to 5 months in prison. The verdict handed down by the Panel of Judges of the Class II B Tais District Court was higher than the demands previously demanded by the Public Prosecutor (JPU) of the Seluma District Attorney's Office in his demands, namely a sentence of 4 months in prison.³ The phenomenon of non-physical sexual harassment can be subject to legal sanctions that can be accepted by perpetrators of non-physical sexual harassment. With the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, it is a breath of fresh air for Indonesian society, especially for victims of sexual violence and reducing the rate of violence.

Examining the background of the problem above, several problems can be formulated as follows: How is the Construction of Regulation of Elements of Acts against Non-Physical Sexual Violence in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence and How is the Implementation of Proving Elements of Non-Physical Sexual Acts based on Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence in Court?

This study aims to determine and understand how the construction of regulations regarding elements of non-physical sexual violence in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. implementing the proof of elements of non-physical acts of sexual violence in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence in court. Which will later be useful for academics, victims, society and law enforcement.

2. Research methods

This research is a normative legal research, and the research specifications used are qualitative research methods, namely by means of descriptive analysis research. The data sources used are laws and regulations, as well as legal materials that support and complement primary legal materials and tertiary legal materials.

3. Research and Discussion

3.1 Construction of Regulation of Elements of Acts against Non-Physical Sexual Violence in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence?

The construction/layout of the Regulations before the TPKS Law regarding non-physical sexual violence crimes can be regulated in:

1. Criminal Code Articles 281 to 269 of the Criminal Code (Criminal Code) only contain two types of sexual violence that are recognized by law, namely rape and molestation.

³ Praise Hendri Julita, Zemi Sipantri, "Walhi Bengkulu." August, 23, 2023, <https://www.walhibengkulu.or.id/2023/08/25/pelaku-pelecehan-perempuan-pasar-seluma-di-vonis-berlahan-pt-faminglevto-baktiabadi-tidak-tersentuh/>

- Article 281 paragraph 1 of the Criminal Code Anyone who deliberately and openly violates morality;
- Article 281 paragraph (2) of the Criminal Code states that morality is violated when someone acts against their will. However, this clause prioritizes violations of morality over attacks on the victim's body and dignity.
- The Criminal Code here only regulates criminal acts of violating Article 281 paragraph 1 and indecency (Articles 290, 292, 293, 294, and 296).

At that time, the Bill on the Elimination of Sexual Violence (2017) tried to fill the legal gap in the Criminal Code regarding non-physical sexual harassment by providing a definition of sexual harassment: "sexual violence carried out in the form of physical or non-physical actions against another person, which is related to a person's body parts and related to sexual desire, resulting in another person being intimidated, insulted, degraded, or embarrassed.

2. Article 1 number 1 of Law Number 44 of 2008 concerning Pornography states that "Pornography is a picture, sketch, illustration, photo, writing, voice, sound, moving picture, animation, cartoon, conversation, body movement, or other form of message through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates moral norms in society."
 - Pornography Law Articles 8, 9, 34, and 35 can be used as a legal basis for non-physical sexual harassment, although the implementation of the above articles was not enough to guarantee legal clarity at that time. Non-physical sexual harassment requires a separate set of standards to be regulated.
3. Often the ITE Law is used as a diversion to handle cases of harassment that occur non-physically, in this case the act only uses electronic media.
 - Article 27 paragraph (1) states that:

"Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality."
 - The threat of criminal sanctions for these acts is regulated in Article 45 paragraph (1), with a maximum prison sentence of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).
4. Then with the existence of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence which contains detailed regulations on sexual violence carried out non-physically in articles 4, 5, 6 and 7 with the enactment of the law is carried out in order to provide a sense of security to the public when in public places, especially in the field of infrastructure, government obligations for a safe and comfortable environment and public facilities, as well as an integrated security system in public areas and open spaces. However, in the law there are still vague norms, where the law.

The elements of non-physical sexual violence crimes in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence are:

1. Article 4 paragraph (1) of the TPKS Law contains 9 types of sexual harassment crimes, namely:
 - a. non-physical sexual harassment;
 - b. physical sexual abuse;
 - c. forced contraception;
 - d. forced sterilization;
 - e. forced marriage;
 - f. sexual torture;
 - g. sexual exploitation;
 - h. sexual slavery; and
 - i. electronic based sexual violence

2. Non-physical sexual violence as regulated in Article 5 of the TPKS Law reads:

"Any person who commits a non-physical sexual act directed at the body, sexual desire, and/or reproductive organs with the intention of degrading a person's dignity and honor based on their sexuality and/or morality, shall be punished for non-physical sexual harassment, with a maximum imprisonment of 9 (nine) months and/or a maximum fine of Rp. 10,000,000.00 (ten million rupiah)."

That the elements of Article 5 of Law No. 12 of 2022 are as follows:

- a. Every person is a legal subject, namely an individual or legal entity/corporation.
- b. Performing non-physical sexual acts directed at the body, sexual desire, and/or reproductive organs.

What is meant is Non-physical sexual acts are statements, gestures, or activities such as teasing by commenting on someone's body shape based on sexual desire. Example (your breasts are big so I want to touch them).

5. With the intention of degrading someone's dignity based on their sexuality and/or morality.

In this case, the victim feels that his dignity is being degraded by non-physical treatment. The TPKS Law does not find the definition of sexuality and morality, therefore, to explain the meaning of the two words, we take the meaning of medical literature, sexuality has a broad meaning that includes all aspects related to sex including values, attitudes, orientations, and behavior. Then morality has the meaning of good manners, politeness, civility, customs, and order.

There are several comparisons of the forms of legal protection regulated in the Criminal Procedure Code, the PSK Law and the TPKS Law, including:

- First, provisions related to certain requirements for law enforcement officers in handling sexual violence crimes that were not previously stipulated in the Criminal Procedure Code and the PSK Law have been regulated through the TPKS Law.
- Second, the provisions of restitution in the Criminal Procedure Code are only for defendants due to wrongful arrest, detention, prosecution and trial without reason based on the law, and restitution is limited to the consolidation of compensation claims. While the PSK Law and the TPKS Law regulate restitution for the interests of victims of sexual violence crimes.
- Third, the Criminal Procedure Code only regulates assistance for defendants in criminal acts, while victims do not receive assistance. In the PSK Law, assistance is given to victims of criminal acts in general and does not regulate assistance for victims of sexual violence specifically, and the TPKS Law provides protection for victims of sexual violence and also has the right to receive assistance.

In this case, the author uses the Theory of Legal Certainty, namely that the formation of this law is to provide legal certainty to regulate the lives of society so that they are orderly and follow norms and protect citizens. In the TPKS Law, the form of protection from the government for women in Indonesia is very clear, especially including non-physical sexual harassment in Indonesian legal regulations. Non-physical sexual violence is included in the category of sexual violence in the TPKS Law in accordance with the hopes of organizations that have protected Indonesian women. In order to provide a sense of security to the public when in public places, especially in the field of infrastructure, government obligations for a safe and comfortable environment and public facilities, as well as an integrated security system in public areas and open spaces.

3.2 Implementation of proof of elements of non-physical sexual acts based on Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence in court?

Article 20 of the TPKS Law regulates the investigation, prosecution and examination in court of sexual violence crimes carried out based on the law regulating criminal procedure law in Article 184 paragraph (1) of the Criminal Procedure Code ("KUHP") states that Valid evidence is: witness statements, expert statements, letters, clues and statements from the accused.

Implementation Proof of non-physical elements of sexual acts The elements are regulated in Article 5 of Law no. 12 of 2022 as follows:

- a. Every person is a legal subject, namely an individual or legal entity/corporation.
- b. Performing non-physical sexual acts directed at the body, sexual desire, and/or reproductive organs. What is meant is Non-physical sexual acts are statements, gestures, or activities such as teasing by commenting on

someone's body shape based on sexual desire. Example (your breasts are big so I want to touch them).

- c. With the intention of degrading someone's dignity based on their sexuality and/or morality. In this case, the victim feels that their dignity is degraded by non-physical actions. The TPKS Law does not find the definition of sexuality and morality, therefore, to explain the meaning of the two words, we take the meaning of medical literature, sexuality has a broad meaning that includes all aspects related to sex including values, attitudes, orientations, and behavior. Then morality has the meaning of good manners, politeness, politeness, civility, customs, and order.

Provisions regarding evidence are specifically regulated in the TPKS Law, namely Article 24 and Article 25, namely:

- 1) Article 24 Valid evidence in proving a crime of sexual violence consists of:
 - a. evidence as referred to in criminal procedure law;
 - b. other evidence in the form of electronic information and/or electronic documents as regulated in statutory provisions; and
 - c. evidence used to commit a crime or as a result of a crime of sexual violence and/or objects or goods related to the crime.
 - d. Including evidence of witness statements, namely the results of examination of witnesses and/or victims at the investigation stage through electronic recording.
 - e. Including written evidence, namely a certificate from a clinical psychologist and/or psychiatrist/mental health specialist; medical records;
 - f. forensic examination results; d,an/or
 - g. bank account check results.
- 2) Then Article 25 relates to witness statements, namely:
 - a. The testimony of witnesses and/or victims is sufficient to prove that the defendant is guilty if accompanied by 1 (one) other valid piece of evidence and the judge is convinced that a crime has indeed occurred and that the defendant is guilty.
 - b. The family of the accused may provide information as a witness under oath/promise, without the consent of the accused.
 - c. In the case where the witness's statement can only be obtained from the victim, the witness's statement is not made under oath/promise, or the witness's statement is obtained from another person, the evidentiary force can be supported by statements obtained from:
 1. a person who can provide information related to a case of Sexual Violence Crime even though he/she did not hear it

- himself/herself, did not see it himself/herself, and did not experience it himself/herself, as long as the person's information is related to the crime;
2. Witnesses whose statements stand alone but are related to each other in such a way that they can confirm the existence of a certain event or situation and whose statements can be used as valid evidence both in terms of qualifications as witness statements and as an indication; and/or
 3. experts who create written evidence and/or experts who support proof of criminal acts.
- d. Statements from witnesses and/or victims with disabilities have the same legal force as statements from witnesses and/or victims who are not disabled.
 - e. The statements of witnesses and/or victims as referred to in paragraph (a) must be supported by personal assessments as regulated in laws and regulations regarding appropriate accommodation for persons with disabilities in the judicial process.

That Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence regulates at least one piece of evidence, namely: With the recognition of information, documents, and electronic recordings, as well as witness statements *testimonium de auditu* related to the crime, the case can be prosecuted.

So basically, the evidence in the TPKS Law in non-physical sexual violence is still the same as that in the Criminal Procedure Code, the difference is that the TPKS Law only has an expansion of valid evidence, namely Evidence as Recognized electronic information/documents, Written evidence includes the following explanations (statement from a clinical psychologist, medical records, forensic examination results, and information from bank account examinations), expansion of witness statements, namely that the family can testify without the defendant's consent, Witness statements can be expanded by acknowledging witness statements that are not directly witnessed, heard.

Case example Case example of non-physical evidence of Sexual Violence Crime based on Decision No. 46/Pid.B/2023/PN.TAS. namely Victim 1 together with Victim 3, Victim 4, Victim 5 and Victim 2 held a demonstration in front of the gate of PT.Faminglevto Baktiabadi (PT.FBA) then there was a quarrelThe defendant said: "Awaklah Pisak Mangko Tambah Pisak Nanggung Pulo" (It's hard to bear the burden)" then Victim 1 Sipantri replied: "kami nido penjilat" (we are not sycophants) after that the Defendant said to Victim 1 "Photograph me ni, ku jilat patuk kaba tu kelo" (Take a picture of me, I'll lick your vagina later) then Victim 1 felt harassed, embarrassed and hurt by the defendant's words that demeaned the dignity of Victim 1 as a woman and reported the incident to the police by bringing 1 (one) white Toshiba brand 8 GB Flashdisk containing a video

recording of the sexual harassment that occurred on Saturday, January 7, 2023 at around 11.55 WIB in front of the gate of PT. It was mentioned in Seluma Regency, then the investigation, prosecution and panel of judges issued a verdict. The panel of judges in this case only needed to use at least 1 piece of electronic evidence and other witnesses to impose a 5-month sentence on the defendant who was legally and convincingly proven to have violated Article 5 of the TPKS Law.

4. Conclusion

The Construction of Legal Regulations Regarding Non-Physical Sexual Violence Crimes is regulated by Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence in Article 4 Forms of Sexual Crimes, Articles 5, 7 Non-Physical Violence and The implementation of proof of non-physical sexual violence crimes in the TPKS Law is essentially the same as that regulated in the Criminal Procedure Code, namely using a proof system *negative negative*. Common practice in courts in Indonesia is the effort to prove by each party by presenting various kinds of evidence and the judge determines guilt based on his belief in the evidence. In Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, it regulates at least one piece of evidence, namely With the recognition of information, documents, and electronic recordings, as well as witness statements *testimonium de auditu* related to the crime, the case can be processed legally. And in the context of proving criminal acts of sexual violence, it cannot be separated from supporting factors including the possibility of proof without physical evidence, clearer protection for victims, the role of expert witnesses that is increased, and social and cultural support.

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