



Juridical Analysis of Legal Protection for Victims of Sexual Harassment Crime in the Perspective of Law Number 12 Year 2022

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Article Info

Article history:

Received :
Acceptance :
Published :
Available online

<http://aspublisher.co.id/index.php/kolaborasi>

E-ISSN: 3064-4054

How to cite:

Gulo, Nifati, Nius, Anasitas., Purba, Lodewijk, Van., Damanik., Jenriswandi (2024). "Juridical Analysis of Legal Protection for Victims of Sexual Harassment Crime in the Perspective of Law Number 12 Year 2022". KOLABORASI: Journal Of Multidisciplinary, vol. 1, no. 1, pp. 65-72, 2024.



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ABSTRACT

Sexual harassment is deviant behavior that forces a person to become the object of unwanted attention or sexual acts, either physically or verbally. Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS) regulates protection for victims, as stipulated in Articles 42 and 45, granting law enforcement and judges the authority to restrict the perpetrator's movement to safeguard victims. The legal enforcement issues surrounding sexual harassment involve three key aspects: qualification of criminal acts, challenges in legal protection, and the effectiveness of victim protection. First, sexual harassment is an evolving crime, with an increasing number of victims each year, yet many victims still do not receive adequate legal protection. Second, the main challenge in ensuring legal protection lies in the suboptimal implementation of the UU TPKS, which aims to address law enforcement challenges, from prevention to victim recovery. Third, the UU TPKS provides a systemic protection framework for victims, including compensation-restitution, medical assistance, psychosocial rehabilitation, legal assistance, and an integrated criminal justice system that places victims as subjects in legal proceedings. To address these issues, the study adopts a library research method, examining legal literature, legislation, and expert theories related to penal policy and victim protection in sexual harassment cases. The findings affirm that the UU TPKS serves as a more comprehensive legal umbrella compared to the Indonesian Penal Code (KUHP) in safeguarding victims and prosecuting perpetrators of sexual harassment.

Keywords: Legal Protection, Victims, Sexual Harassment.

1. INTRODUCTION

Sexual harassment is a serious social issue that affects individuals across various social strata and environments, including workplaces, educational institutions, and public spaces. Cases of sexual harassment have significantly increased in Indonesia, raising concerns about the safety and dignity of individuals, particularly women and vulnerable groups. The National Commission on Violence Against Women (Komnas Perempuan) reported a substantial rise in sexual harassment cases, indicating that legal protection for victims is still inadequate (Hanum, 2022; Triguswinri, 2023). Despite increasing awareness of gender-based violence, many victims hesitate to report incidents due to fear of stigma, victim-blaming, and lack of legal support. This situation necessitates strong legal frameworks and mechanisms to protect victims and ensure justice.

The urgency of legal protection for victims of sexual harassment has been recognized in various international and national legal instruments (Vidu et al., 2021; Parra et al., 2021). The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) urges states to take appropriate measures to prevent and address sexual violence (Isa, 2022; Orta, 2023). At the national level, Indonesia has enacted Law Number 12 of 2022 on Sexual Violence Crimes (Undang-Undang Tindak Pidana Kekerasan Seksual - UU TPKS), which aims to provide a comprehensive legal framework for preventing sexual harassment and ensuring justice for victims (Suhartini, 2022). This law introduces critical legal provisions, including victim protection, access to legal aid, and stringent penalties for perpetrators (Peacock, 2022; Wechsler, 2022). However, challenges remain in its implementation, particularly in law enforcement and victim support services.

This study aims to examine the legal protection mechanisms provided by Law No. 12 of 2022 for victims of sexual harassment and evaluate its effectiveness in addressing sexual violence cases (Hasibuan & Romdoni, 2023; Taufiqurrohman et al., 2024). Specifically, this research seeks to analyze the strengths and limitations of the legal framework, assess the role of law enforcement agencies in handling sexual harassment cases, and explore the challenges victims face in accessing justice. By critically analyzing these aspects, this study aims to provide insights into potential legal and policy reforms needed to enhance protection for victims and ensure their rights are upheld.

The implementation of Law No. 12 of 2022 is expected to strengthen legal protection for victims of sexual harassment by establishing clear legal definitions, criminalizing various forms of sexual violence, and ensuring victim-centered approaches in legal proceedings. However, challenges such as inadequate legal awareness, lack of coordination between law enforcement agencies, and societal stigma may hinder its effectiveness. This research hypothesizes that while the law provides a solid foundation for victim protection, its successful implementation

requires significant improvements in legal enforcement, public education, and institutional support for survivors.

2. RESEARCH METHOD

This research uses a normative legal research approach or also known as library research, which focuses on legal analysis based on written sources and applicable norms. Normative legal research is a research method carried out by examining various legal materials, both primary legal materials such as relevant laws and regulations, secondary legal materials in the form of legal books, scientific journals, and previous research results, as well as tertiary legal materials which include legal dictionaries and legal encyclopedias (Marzuki, 2021).

In this research, the author uses a statutory approach to examine various regulations related to legal protection for victims of sexual harassment crimes, especially Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). In addition, this research also applies a conceptual approach by examining legal concepts related to victims' rights and legal protection mechanisms that have been regulated in the criminal justice system in Indonesia (Sudjana, 2022).

Data collection was conducted through a literature study that included analysis of legal documents, laws and regulations, court decisions, and scientific articles relevant to the object of study. The data obtained is analyzed descriptively-analytically, namely by describing the existing legal provisions and then analyzing their implementation and effectiveness in providing legal protection for victims of sexual harassment (Rahardjo, 2020).

The analytical method used in this research is content analysis, which analyzes the content of the legal sources obtained, both from the normative and implementative aspects. This approach aims to understand how existing legal rules can be applied in the context of protecting victims of sexual harassment crimes, as well as identifying weaknesses or obstacles in their implementation (Harahap, 2021).

3. RESULT AND ANALYSIS

Formulation of Criminal Offenses of Sexual Harassment and Rape in the Criminal Code

In the Indonesian criminal justice system, acts of sexual violence have been regulated in the Criminal Code (KUHP) under the category of crimes against morality. In Moeljatno's translation of the KUHP, sexual violence is specifically defined in terms of rape and indecent acts (*perbuatan cabul*) (Diana et al., 2024). However, this categorization presents a substantive legal weakness, as it fails to

explicitly recognize sexual violence as a crime violating the bodily and psychological integrity of the victim (Joaquín, 2023; Keenan & Zinsstag, 2022). Another issue is that rape is still perceived as a violation of morality, whereas in human rights perspectives, rape constitutes a violent crime against personal bodily autonomy and sexuality (High, 2021).

Moreover, the KUHP does not consistently differentiate between rape and indecent acts. For example, Article 299, paragraphs 1 and 3, combine both crimes within a single provision, failing to establish a clear distinction (Mitsilegas & Billis, 2022). According to P.A.F. Lamintang, the KUHP places provisions on rape and indecent acts under Chapter XIV of Book II, intending to protect individuals from immoral acts (*ontuchte handelingen*) and behaviors that contradict social norms regarding sexual propriety (Lamintang & Lamintang, 2009).

Despite its outdated approach, the KUHP remains the primary legal basis for prosecuting sexual harassment, as outlined in the following provisions:

1. Article 285, which defines rape as forcing a woman to have sexual intercourse through violence or threats of violence, carrying a maximum penalty of 12 years in prison.
2. Article 286, which criminalizes sexual intercourse with a woman in an unconscious or powerless state, punishable by 9 years in prison.
3. Article 289, which defines indecent acts involving violence or threats of violence, with a maximum penalty of 9 years in prison (KUHP, 2022).

Legal scholars have criticized the definitions of rape and indecent acts in the KUHP, highlighting their narrow focus on biological aspects rather than psychological and social harm. Soesilo (2003) asserts that sexual intercourse must involve the penetration of the male genitalia into the female genitalia, culminating in ejaculation, in order to constitute rape. This definition aligns with the Hoge Raad ruling of February 5, 1912, which established that rape occurs only when penetration is followed by ejaculation. This perspective reflects a limited understanding of sexual violence, failing to consider its psychological trauma and human rights violations (Harahap, 2021).

Furthermore, the KUHP categorizes rape and indecent acts as general offenses (*delik biasa*), meaning that legal action can be taken without a victim's complaint. However, certain related offenses are classified as complaint-based offenses (*delik aduan*), requiring the victim to file a report before prosecution can proceed (Soesilo, 2003). R. Soesilo differentiates between two types of complaint-based offenses:

1. Absolute complaint-based offenses, which can only be prosecuted if the victim files a report, as found in Articles 284, 287, 293, 310, 332, 322, and 369 of the KUHP.

2. Relative complaint-based offenses, which are generally prosecutable offenses but require a complaint under specific circumstances, such as in Articles 367, 370, 376, 394, 404, and 411 (Soesilo, 2003).

Although the KUHP remains the primary legal reference for sexual violence cases, its provisions do not comprehensively address modern forms of sexual violence, particularly concerning human rights violations and victim protection. To address these gaps, Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS) was introduced, offering a more comprehensive legal framework to protect victims from various forms of sexual violence, including non-physical and technology-based harassment (Sudjana, 2022).

As Indonesia's legal system continues to evolve, harmonizing the KUHP with the UU TPKS is necessary to provide stronger legal protection for victims of sexual violence. This legal reform should ensure that definitions of sexual crimes move beyond a morality-based framework toward a human rights-centered approach, prioritizing victim protection and justice (Harahap, 2021).

Formulation of the Crime of Sexual Harassment in the Law

The enactment of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) represents a significant legal breakthrough in Indonesia's efforts to combat sexual violence, as it provides a victim-centered approach, comprehensive legal protections, and stringent sanctions against perpetrators, addressing the gaps in the existing Criminal Code (KUHP), which previously failed to comprehensively define and criminalize various forms of sexual violence beyond rape and indecent acts (Harahap, 2021). As a *lex specialis*, UU TPKS explicitly categorizes various forms of sexual violence, including sexual harassment, exploitation, forced contraception, forced abortion, rape, forced marriage, forced prostitution, sexual slavery, and sexual torture, thereby ensuring broader legal recognition and protection for victims (UU TPKS, 2022).

The victim protection framework under UU TPKS mandates three fundamental rights: handling, protection, and recovery, encompassing legal assistance, psychological support, healthcare, employment protection, educational access, and social inclusion, with the Ministry of Social Affairs overseeing victim rehabilitation programs (Rahayu, 2022). Furthermore, the law introduces dual-layered sentencing, where principal punishments include imprisonment and rehabilitation, while additional penalties such as compensation, confiscation of criminal proceeds, community service, and revocation of political or professional rights are imposed to enhance deterrence and ensure justice (UU TPKS, 2022). Despite its progressive framework, UU TPKS faces enforcement challenges, including reactive law enforcement approaches, weak political will, public misconceptions regarding the role of security forces, and persistent societal stigma against victims, which hinder access to justice and discourage victims from

reporting cases (Saraswati, 2020). To address these challenges, UU TPKS mandates preventive measures across education, public services, and governance, ensuring gender-sensitive policies, promoting community involvement in prevention efforts, and fostering international cooperation in combating sexual violence (Sudjana, 2022). Additionally, the law's four key innovations include comprehensive classification of sexual crimes, procedural safeguards for victims, mandatory state intervention in victim protection and recovery, and strict prohibition of out-of-court settlements except for juvenile offenders, reinforcing Indonesia's commitment to human rights and gender equality (UU TPKS, 2022). Ultimately, UU TPKS serves as a landmark reform that integrates legal, educational, and social interventions to create a safer, more just society, free from sexual violence and gender-based discrimination (Harahap, 2021).

4. CONCLUSION

Based on the discussion regarding sexual harassment offenses as regulated under Law No. 12 of 2022, it can be concluded that sexual harassment remains an enduring crime, unaffected by the passage of time, with an increasing number of victims each year, particularly women and children, who are more vulnerable due to subordination and marginalization, often having their rights ignored or trivialized. The Sexual Violence Crime Law (UU TPKS) serves as a crucial legal framework for ensuring gender equality, comprehensively accommodating victims' rights by categorizing various forms of sexual violence that are criminally prosecutable, including non-physical and physical harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence, while also establishing legal protection mechanisms for victims, their families, and witnesses, ensuring adequate legal recourse and institutional support (UU TPKS, 2022). Furthermore, UU TPKS eliminates major legal enforcement challenges by encompassing a holistic approach to preventing, handling, and rehabilitating victims, reinforcing systematic legal protection through substantive legal provisions such as compensation, restitution, medical aid, psychosocial rehabilitation, and personal protection, ensuring victims' rights throughout judicial processes, and implementing an integrated criminal justice system that positions victims as active subjects within legal proceedings, while simultaneously fostering a legal culture that educates society to recognize sexual violence as a serious criminal offense. Consequently, UU TPKS not only strengthens legal enforcement but also fosters societal awareness, offering a transformative legal instrument that upholds justice, gender equality, and comprehensive protection for sexual violence victims in Indonesia.

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