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Patriarchal Culture, Sexual Violence, and Legal Protection for Women in Indonesia

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ARTICLE INFO	ABSTRACT
<p>Keywords: Patriarchal Culture, Sexual Violence, Feminist Legal Theory and Protection for Women in Indonesia</p> <p>How to cite: Nuraningsih. (2023). Patriarchal Culture, Sexual Violence, and Legal Protection for Women in Indonesia. <i>Veterans Law Review</i>. 6 Special Issues 85-103.</p> <p>Received: 2023-04-1 Revised: 2023-04-8 Accepted: 2023-04-17</p>	<p><i>Patriarchal culture cannot be separated from women's lives. Male domination over women has become a daily reality in many countries. Patriarchal culture assumes that women are "objects" and men are humans. In this case, men become subjects, and women as objects are regulated by men in various lines of life and culture. The impact of patriarchal culture is to place women who experience sexual violence in a worse position. At the level of the construction of a large Indonesian society that still uses a patriarchal paradigm, women are placed as second-class citizens. As a result, often the statements and reports from women are not heard. A further implication for women victims of sexual violence is that they are re-victimized by society, considered as the party that caused the violence. This article will raise two legal issues related to legal theory and law. The first legal issue in this paper is related to feminist legal theory based on the feminist view that in history, law is to perpetuate the position of women under the subordination of men. After discussing feminist legal theory, the author will discuss the second issue, namely law related to law enforcement in the field of sexual violence and its relation to feminist legal theory. Feminist legal theory is needed in building the basis of statutory norms (legal dogmatics) and the justice system to eliminate all forms of violence, especially sexual violence.</i></p>

1. Introduction

In early December 2021, Indonesia was excited by the disclosure of a case of sexual violence committed by a pesantren teacher against female students. Herry Wirawan alias Heri bin Dede, an Islamic boarding school teacher in Cibiru District, Bandung City, West Java, is currently in the spotlight because of his depraved act of raping dozens of his female students. In fact, some of the victims were pregnant and gave birth. Even more sadly, now a child has been born as a result of his actions.¹ A few days earlier, there was also a case of sexual violence by a police officer against his girlfriend in East Java. Novia Widyasari was found dead near her father's grave, Thursday 2 December 2021. It is strongly suspected that she committed suicide after experiencing depression as a result of being raped by her lover, and being forced to have two abortions in the 2020-2021 period. Novia's lover, Bripda Randy Bagus, has

¹ Guru Pesantren Perkosa Belasan Santri, Respons Pelaku Herry Wirawan Mengejutkan. Retrived April 16 2023, 07.00 WIB. <https://nasional.okezone.com/read/2021/12/09/337/2514492/guru-pesantren-perkosa-belasan-santri-responspelaku-herry-wirawan-mengejutkan>.

now been named a suspect and is being held at the Mojokerto Police. He is suspected of ethical sanctions and Article 348 of the Criminal Code concerning abortion, with a maximum penalty of 5.5 years in prison.²

The two cases above are only a small example of how bleak life is lived by women in Indonesia regarding the law and protection of women, especially related to sexual violence. In a patriarchal culture that is still very thick, women are vulnerable to sexual violence. In fact, according to Komnas Perempuan data, every 2 hours, there are 3 women in Indonesia who experience sexual violence. In addition, he said that an average of 30% of cases reported were sexual violence. Direct complaints to Komnas Perempuan also continue to increase every year. As many as 40% of the 1,419 cases reported in 2019 were sexual violence. Meanwhile, in 2020 it increased to 53% from 2,389 cases.³

Patriarchal culture cannot be separated from women's lives. Male domination over women has become a daily reality in many countries. According to Bressler, patriarchal culture is where women are considered as "objects" and men as humans. In this case, men become subjects, and women as objects are regulated by men in various lines of life and culture. Furthermore, Millet also argues that the emergence of patriarchy is a form of reconstruction of a culture that develops in differentiating views about the two.⁴

The impact of patriarchal culture is to place women who experience sexual violence in a worse position. At the level of the construction of a large Indonesian society that still uses a patriarchal paradigm, women are placed as second-class citizens. As a result, often the statements and reports from women are not heard. A further implication for women who are victims of sexual violence is that they are revictimized by society, considered as the party that caused the violence. The condition of women has become like the proverb, "The stairs have already fallen". As a result, in a downturn, women also experience gradual suffering. Arif Gosita⁵ explains that the stages of suffering of victims of sexual violence can be divided into three stages, namely:

1. Before the Court Session. The victim suffered mentally, physically and because he tried to report to the police was sick and mentally disturbed. Then in order to collect data for evidence of a crime, he must tell the police about the events that caused trauma. The victim also felt afraid of the perpetrator's threat as a result of reporting so that retaliation was against him.

² Bripda Randy Tersangka Kasus Novia Widyasari Dijebloskan ke Tahanan. Retrived April 16 2023, pukul 07.05 WIB. <https://www.cnnindonesia.com/nasional/20211205194015-12-730191/bripda-randy-tersangka-kasus-novia-widyasari-dijebloskan-ke-tahanan>.

³ Regulasi Dinilai Tak Cukup Redam Kekerasan Seksual di Kampus. Retrived April 15 223, 17.07 WIB. <https://www.dw.com/id/kekerasan-seksual-di-kampus/a-59838953>.

⁴ *Ibid.*, hlm. 150.

⁵ Arif Gosita. (1987). *Relevansi Viktimologi Dengan Pelayanan Terhadap Para Korban Perkosaan*. Jakarta: INDHILL CO. hlm. 17-20.

2. During the Trial Session. Victims must be present at court hearings at their own expense/cost to become witnesses. The victim must repeat the story about his bitter experience and make a reconstruction of the events he experienced. He is confronted by the perpetrator he hates. In addition, he must face a defender or lawyer from the perpetrator's side who tries to eliminate the guilt of the perpetrator. Prosecutors in criminal justice, represent the victim. But it can happen that the representation does not benefit the victim. It is not uncommon for victims to face perpetrators of rape who are more mentally and physically capable than themselves.
3. After the Trial Session. After the trial was over, the victim continued to face various kinds of difficulties, especially not receiving compensation from anyone. The maintenance of his health remains his responsibility. He is still haunted by the fear of threats from the perpetrators. There is a possibility that he is not accepted in his family and environment as before, because he is considered disabled. His mental suffering will increase if the perpetrator is released or punished lightly.

Thus, the problems related to law enforcement faced by women victims of acts of sexual violence are very complex. The problem he faced was not only the rape that happened to him, but also the legal process against the case that happened to him. In fact, one form of protection for citizens is the protection of their rights to be free from threats and violence. It's just that, even though the 1945 Constitution has emphasized this right as one of the constitutional rights, not every citizen is free from violence.

The cultural construction of a patriarchal society means that the citizens who are the most victims of sexual violence are not only adult women, but also women in childhood. The right to be free from threats, discrimination and violence is a very important right to be realized. Fulfillment of this right is also related to other constitutional rights, namely protection and justice. protection and justice is also very important to emphasize its implementation for victims in handling cases of sexual violence.

From the explanation above, this article will raise two legal issues related to legal theory and law. The first legal issue in this paper is related to feminist legal theory based on the feminist view that in history, law is to perpetuate the position of women under the subordination of men. After discussing feminist legal theory, the author will discuss the second issue, namely law related to law enforcement in the field of sexual violence and its relation to feminist legal theory. The discussion on feminist legal theory will be linked to the discussion of the next issue regarding legislation which so far has often been detrimental to women who are victims of sexual violence.

2. Method

The research method in this paper is normative juridical law research, in which law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate. The research was carried out by examining library materials, therefore the data used was secondary data. The method is used in a study to achieve a goal, the level of accuracy, the number and the type encountered by classifying based on experience.⁶ Research is a scientific activity that is related to the analysis and construction done methodically, systematically and consistently. This research uses normative juridical as the legal approach, which is a procedure and scientific method that discovers and study sources juridically to uncover the truth based on scholarly law logic from the normative aspect,⁷ especially statute in this case. Statute approach is a study approach which focus on legal substance such as laws and regulations as primary reference in doing the research.

3. Results & Analysis

The first legal issue in this paper is related to feminist legal theory which is based on the view of the feminist movement that in history, law is an instrument to perpetuate the position of women under the subordination of men. History written by men has created biases in the concept of human nature, gender potential and abilities, and in societal arrangements. By declaring maleness as the norm, femaleness is a deviation from the norm and this constitutes hegemony in the concept and strengthening of patriarchal law and power.⁸

Differences in gender roles between men and women have given birth to various injustices, both for men, especially for women. Gender injustice, according to Mansour Fakih, is manifested in various forms of injustice, namely: (1) Marginalization or the process of impoverishment of women; (2) Subordination or notion of importance in political decisions; (3) Stereotypes or negative labeling; (4) longer and more workloads (multi-load), (5) violence (violence); and (6) ideological socialization of gender role values. All forms of gender injustice cannot be separated, because they are related to one another and are socialized, standardized through political, religious, social, economic systems, including the law.⁹

So far, traditional legal theory teaches that law is a set of rules and principles that enable society to maintain order and freedom. Adherents of traditional legal theory believe that law must be neutral and can be applied to anyone fairly, regardless of social status, race or gender. This view cannot be separated

⁶ Nasution, Dicky Kurniawan, Fauzi, Ahmad, & Ruslan. (2021). Legal Certainty on The Implementation of Electronic Registration of Liability Rights Performed by The Office of The Land Act Maker (Study at the Office of the Land Act Maker Deli Serdang). *Veteran Law Review*. 4(2). PP. 122

⁷ Ibrahim, Johnny. (2007). *The Theory and Methodology of Normative Legal Research*. Malang: Bayu Media Publishing. PP. 57

⁸ Laili Nur Anisah. (2018). Tindak Pidana Perzinaan RUU KUHP: Perlindungan Hukum Versus Kriminialisasi Perempuan. *Jurnal Perempuan*. 23 (2), 90.

⁹ *Ibid.*, hlm. 13-23.

from liberal legal theory which views the gender roles of men and women based on similarity. Basically, patriarchy is a power relation that subordinates women and places men in a more important and superior position. Over the course of history, the existence of the position of men who are present as "rulers and guardians" has developed as an order that is considered natural. The domination of men over women is also considered to be something natural. The proposition that men are the more important figure in the order of social reality.¹⁰

3.1. Feminist Legal Theory

According to Margaret Davies, as quoted by Niken Savitri, Western Jurisprudence and law in general are patriarchal and can have many meanings which may not be related to one another. This is evident from the following things¹¹: *First*, empirically it can be said that law and legal theory are the domain of men, those who write laws and legal theories.

The second, the law and the consequences posed by legal theory are a reflection of masculine values. Men have made laws and legal theories through their imaginations. Problems then arise when it comes to marginalized groups in decision-making and legal theories where these groups also apply the values that exist in their system and culture. So the two things reinforce each other like a container with a lid. Therefore, the law does not speak on behalf of women and other marginalized groups, so Margaret believes that forms of patriarchal ideology are generally repeated in law.

The third is when the law which is not neutral can then be used by experienced people who use it as a tool to pressure other people, it is not a consideration for law makers and it is also not considered that many people in many cases are influenced by certain messages from existing laws and culture. , so that only the power of a great ideology can win the discourse. So that it can be said that the legal system which is based on positivist legal theory has perpetuated gender inequality. Namely through the formulation of laws and regulations, law enforcement officials and their legal culture, which do not use women's perspectives and experiences, but still use patriarchal standards and values that live in society.

Until now, patriarchal culture is still developing in Indonesian society. This culture can be found in various aspects and scopes, such as economics, education, politics, even law. As a result, various social problems arise which shackle women's freedom and violate the rights that women should have. Even though Indonesia is a state of law, in reality the legal umbrella itself has not been able to accommodate these various social problems. The cause is still classic, because the realm of women is still considered too domestic. So that

¹⁰ Eko Mukminto. (2020). Hukum, Ideologi Patriarki, Dan Kekerasan Sistematis Atas Perempuan: Suatu Kajian Žižekian. *Nurani Hukum : Jurnal Ilmu Hukum*. 3(1), 6.

¹¹ Niken Savitri. (2008). *HAM Perempuan, Kritik Teori Hukum Feminis Terhadap KUHP*. Bandung: PT.Refika Aditama. hlm. 17-19.

law enforcement is still quite weak and gender unfair. The thickness of patriarchal culture in Indonesia shows the connection between patriarchal culture and various legal and social issues that discriminate against women in Indonesia.¹²

Ade Irma Sakina, quoting Alfian Rokhmansyah (2013) author of a book entitled "Introduction to Gender and Feminism", patriarchy comes from the word patriarchy, meaning a structure that places the role of men as the sole, central ruler, and everything. The patriarchal system that dominates the culture of society causes inequality and gender inequality that affects various aspects of human activity. Men have a role as the main control in society, while women have little influence or can be said to have no rights in general areas of society, both economically, socially, politically and psychologically, even including the institution of marriage. This causes women to be placed in a subordinate or inferior position.

Restrictions on the role of women by patriarchal culture make women shackled and get discriminatory treatment. This inequality between the roles of men and women is one of the structural barriers that causes individuals in society to not have equal access. In addition, the product of government policies that have so far been insensitive to women's needs has made women often victims of such policies.

Weak legal protection for women has also indirectly made women's position marginalized. The historical and cultural aspects place women as subjugated parties through patriarchal power relations, both personally and through state arrangements. The practice of patriarchal culture is still ongoing today, amidst various feminist movements and women's activists who are aggressively voicing and upholding women's rights. This practice can be seen in domestic, legal, political, economic and cultural activities. So that the results of this practice have led to various social problems in Indonesia, such as referring to the definition of social problems from Soetomo's book, social problems are conditions that most citizens do not want to occur, namely Domestic Violence, sexual harassment, rates of early marriage, and the stigma of divorce.

Viewed through the approach to the problem, the impact of patriarchal culture in Indonesia is included in the *system blame approach*, namely problems caused by a system that does not work according to wishes or expectations. Patriarchal culture positions men as strong and tends to have the freedom to do anything to women. This is what causes the high number of sexual harassment in Indonesia. This culture also provides construction and mindset when men are closely related to ego masculinity. Meanwhile, femininity itself is ignored and considered as irrelevant and weak. It's like society allows men to whistle and tease women who cross the street, their actions seem normal and natural because as men, they have to have the courage to face women. Men are considered to be seducers while women are objects or creatures that

¹² Ade Irma Sakina dan Dessy Hasanah Siti A.(2017). Menyoroti Budaya Patriarki di Indonesia. *Social Work Jurnal*. 7(1). hlm.72-73.

deserve to be seduced and women's bodies are used as the cause of the violence itself.

There is also what is known as victim blaming, which is a condition in which the victim becomes the object or target of an incident. In cases of sexual harassment, women are actually the ones to blame, whether it is related to the way they dress, their behavior, when the harassment occurred, or justifications that do not place men as perpetrators. The basis of this justification is that it is normal for men to commit sexual harassment because they have a high libido or lust, the problem lies in women who "according to society's morality" cannot take care of themselves properly or respectably. The victims were finally humiliated by being labeled by the social environment as ugly or even despicable.

In its development, a theory of legal approach with a women's perspective emerged which was based on gender equality and justice in the political, economic and social fields. This theory is called Feminist Jurisprudence or can be called Feminist Legal Theory which uses the point of view of feminist theories. This theory was born based on the view that in history, law has become an instrument used to perpetuate gender injustice. Besides using feminist theories, feminist legal theory also uses critical legal studies.

Feminist legal theory uses the method of asking women what women really want, and considering all the concrete and unique experiences of women. So that there is no difference between theory and legal practice that occurs. This theory focuses on¹³ (a) How did the law affect women and contribute to their oppression? (b) How can the law be used for transformation to change the status of women by changing the law and perspective on gender issues to be more just and balanced?

Based on the things described above, feminist legal theory is very important for efforts to form regulations that are more in favor of gender equality. These two theories can help provide direction for the formation of regulations which must involve legal subjects including law enforcement officials, as well as other parties who have experience in preventing, handling, recovering from cases of sexual violence.

To see the differences that have occurred so far between men and women, for a moment we look back at history. In simple terms, it is necessary to distinguish between two concepts about men and women in sex and gender. The concept of gender refers to the biological characteristics of men and women. There is an absolute difference between men and women, that men have a penis and sperm, while women experience menstruation, have uterine organs so they can conceive and give birth, and have mammary glands for

¹³ Nursyahbani Katjasungkana. Metode Analisa Kasus Berperspektif Gender. Perkembangan Hukum Positif Yang Mengatur Kejahatan Seksual. *Makalah pada Pertemuan Ilmiah tentang Penanggulangan kejahatan Yang Dilakukan Oleh Anak Usia Muda, BPHN*. hlm.7

breastfeeding. Thus, the biological nature between women and men lies in the unique biological characteristics of each.¹⁴

There are also different trends, but not absolute, for women and men. For example, men tend to be more muscular, women contain more fluids in their bodies. Or men often have greater physical strength than women, although there are also women who are more muscular and stronger than men. This is also included in biological characteristics, where there are differences between males and females in chromosomes and hormones.¹⁵

Differences in biological and reproductive characteristics in turn lead to interpretations, or constructions, which differentiate the positions, roles and values of men and women.¹⁶ Meanwhile, the concept of gender is referred to as a social construction, because in fact it is human creation itself, not innate as the will of the Creator. Gender ideology as a social construction causes the perpetuation of myths and distinctions or discrimination against women. Women are seen as inferior, different, as objects, property rights, companions, unable and do not have the right to self-regulate, exist for the benefit of men and so on.¹⁷

Such views and beliefs logically imply that women are indeed more vulnerable to experiencing violence than men. It also influences the structures and systems that exist in society.¹⁸ Another manifestation of the distinction between men and women is the creation of an unequal pattern of power relations. Strausz-Hupe defines power as "the ability to impose will on others, and emphasizes that all social organizations, from philatelic associations to barracks states, all have an element of coercion, in which one or several of its members act openly blatant coercive functions"

In addition, C. Wrights Mills said that power is domination, namely the ability to carry out one's will even though others oppose it. Harold D. Laswell considered it "nothing other than the use of forceful coercion. Furthermore, Barrington Moore added that power is concluded in his efforts to discover and explain how certain groups and individuals succeed in dominating others.

So it can be concluded that an act of sexual violence is mostly committed by groups of men, is an action that is driven by several factors behind it. Among other things: social construction factors that symbolize men have power, domination that is different from women.

¹⁴ Kristi Poerwandari. (2008). *Penguatan psikologis untuk menanggulangi Kekerasan Dalam Rumah Tangga dan Kekerasan Seksual, Panduan dalam Bentuk Tanya-Jawab*. Jakarta: Program Studi Kajian Wanita Program Pascasarjana Universitas Indonesia. hlm. 1.

¹⁵ *Ibid.*, hlm. 2.

¹⁶ *Ibid.*, hlm. 2.

¹⁷ *Ibid.*, hlm. 2.

¹⁸ *Ibid.*, hlm. 3.

This power is manifested in the form of actions that impose will on others, whether done individually or more than one individual. In the future, legislation related to sexual violence needs to incorporate principles that are in accordance with a feminist legal perspective. The principles are:

1. Respect for human dignity; is a principle that includes respect for and protection of human rights and the dignity of victims as citizens of Indonesia.
2. Feeling of security; is a principle that reflects the state's responsibility to provide protection and guarantees for a sense of security for victims as Indonesian citizens.
3. Non-discrimination; is the principle that reflects treatment that does not discriminate, does not exclude/exclude victims based on any background, or prioritizes other parties.
4. Benefits; is a principle that reflects the circumstances in which the elimination of sexual violence must provide special benefits for victims of sexual violence.
5. The legal process from the victim's perspective; is a principle that reflects that the entire legal process in the elimination of sexual violence must create a climate that is conducive and from the perspective of the victim by respecting the rights of the victim, maintaining the confidentiality of the victim, not blaming the victim, respecting the victim's decision and respecting the special needs of the victim based on the victim's experience which can influence the response victims of sexual violence.

3.2. Legal Patriarchy and It's Implication for Women Victims of Sexual Violence in Indonesia

As a statutory regulation that is a reference for all forms of criminal acts that occur, the Criminal Code is also a reference for law enforcement officials to uphold justice for women victims of violence who are in conflict with the law, including those who experience sexual violence. Basically, the community is the main component in the process of making policies and laws and regulations, in this process policies must be prepared with community involvement in the dialogue space because every product of the policy will have an impact on the lives of the people.¹⁹

The problem regarding the regulation gave birth to an idea for the criminalization of commercial sex workers and service users as an effort to enforce the law so that it can be strictly acted upon and not pass the prostitutes and service users from the legal trap. However, on the other hand, the question

¹⁹ Dirkareshza, R., Dirkareshza, N. P., Taupiqqurrahman, T., Agustanti, R. D., & Ramadhita, M. P. (2022). URGENSI PARTISIPASI MASYARAKAT DALAM PROSES PEMBENTUKAN PERATURAN PEMBERLAKUAN PEMBATAAN KEGIATAN MASYARAKAT MENUJU INDONESIA TANGGUH DAN INDONESIA MAJU. *Gorontalo Law Review*, 5(2), 391-398.

arises whether criminalization is the only way that can and should be done to eradicate the practice of prostitution.²⁰

Even so, the Criminal Code has not fully integrated the need to fulfill a sense of justice for victims. Several provisions in the Criminal Code that serve as references in handling cases of sexual violence have, on the contrary, so far made women victims experience re-victimization (victims who become victims again); and unable to answer the fulfillment of the sense of justice needed by women victims of sexual violence. This can be seen from a number of articles in the Criminal Code for rape cases which require a state of unconsciousness and helplessness; underage, not a wife, and does not explicitly accommodate forms of rape if it is not committed through the penis (men) to the vagina (women).

In practice, rape cases are often prosecuted using the offense of obscenity because there is a lack of clarity about the intent of the regulation of the offense of obscenity. Apart from that, there is an article on trafficking in persons in the Criminal Code which in practice is no longer used because there is already another special law, namely Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

3.3. Patriarchalism in The Criminal Code

Various provisions in the Criminal Code that are used to deal with cases of sexual violence in their enforcement refer to the Criminal Procedure Code (KUHAP) as procedural law. In fact, there are peculiarities experienced by victims of sexual violence, especially female victims of sexual violence who have the potential to experience re-victimization, because the procedural law used is procedural law for general crimes. As a result, there is a law that can solve the problem.

Actually, the Criminal Code (KUHP) does not recognize the term sexual violence. The Criminal Code only recognizes the term obscenity. This obscene act is regulated in the Second Book on Crimes, Chapter XIV on Crimes of

²⁰ Dirkareshza, R., Sihombing, E. N., & Agustanti, R. D. (2022). The Problem of Criminalization of Commercial Sexual Workers and Users of Prostitution Services. *Jurnal Penelitian Hukum De Jure*, 22(4), 525-536.

Decency (Article 281²¹ up to Article 303²²). According to Soedarsono²³, Sexual violence can be interpreted as an act or intimidation related to intimacy or sexual relations committed by the perpetrator against the victim by coercion, which results in the victim suffering physically, materially, mentally or psychologically. A crime of decency in general is an act that violates decency that deliberately damages decency in public or in other words not of the will of the victim through threats of violence. The Criminal Code only regulates sexual violence and is limited to:

1. Rape;
2. Adultery;
3. Fornication.

We can see that sexual violence regulated in the Criminal Code has not fully answered the problems that have arisen. For example, regarding the definition of obscenity in the Criminal Code which is not very clear. This makes the perpetrators who have committed rape often charged with the crime of obscenity. The definition of rape included in the Criminal Code is neither broad nor very narrow. In the Criminal Code it is stated that rape is an act of forcing someone to have intercourse, meaning that it is only limited to penetration.

If these elements cannot be met then it is not considered as rape. According to the author, the current Criminal Code is not enough to guarantee protection and recovery for victims of violence. In addition, the provisions of evidence are very difficult to prove cases of sexual violence. This is because procedural law is relatively not oriented towards protecting the rights of victims.

²¹ Pasal 281. Diancam dengan pidana penjara paling lama dua tahun delapan bulan atau pidana denda paling banyak empat ribu lima ratus rupiah: 1. barang siapa dengan sengaja dan terbuka melanggar kesusilaan; 2. barang siapa dengan sengaja dan di depan orang lain yang ada di situ bertentangan dengan kehendaknya, melanggar kesusilaan.

²² Pasal 303. (1) Diancam dengan pidana penjara paling lama sepuluh tahun atau pidana denda paling banyak dua puluh lima juta rupiah, barang siapa tanpa mendapat izin: 1. dengan sengaja menawarkan atau memberikan kesempatan untuk permainan judi dan menjadikannya sebagai pencarian, atau dengan sengaja turut serta dalam suatu perusahaan untuk itu; 2. dengan sengaja menawarkan atau memberi kesempatan kepada khalayak umum untuk bermain judi atau dengan sengaja turut serta dalam perusahaan untuk itu, dengan tidak peduli apakah untuk menggunakan kesempatan adanya sesuatu syarat atau dipenuhinya sesuatu tata-cara; 3. menjadikan turut serta pada permainan judi sebagai pencarian. (2) Kalau yang bersalah melakukan kejahatan tersebut dalam menjalankan pencariannya, maka dapat dicabut haknya untuk menjalankan pencarian itu. (3) Yang disebut permainan judi adalah tiap-tiap permainan, di mana pada umumnya kemungkinan mendapat untung bergantung pada peruntungan belaka, juga karena pemainnya lebih terlatih atau lebih mahir. Di situ termasuk segala pertarungan tentang keputusan perlombaan atau permainan lain-lainnya yang tidak diadakan antara mereka yang turut berlomba atau bermain, demikian juga segala pertarungan lainnya.

²³ Ahsana Nadiya. Retrived April 16 2023, 13.00 WIB. Penegakan Hukum Kekerasan Seksual Terhadap Perempuan di Indonesia: Sudahkah Berperspektif Korban?. <https://kawanhukum.id/penegakan-hukum-tindak-kekerasan-seksual-terhadap-perempuan-di-indonesia-sudahkah-berperspektif-korban/2/>.

Asni Damanik²⁴, The Coordinator of the Substance Team for the Bill on the Elimination of Sexual Violence, revealed that protection for victims of sexual violence in Indonesia is currently still minimal and not optimal. Victims of sexual violence are still difficult to prove when they become victims of sexual violence. In addition, the lengthy judicial process often hampered this case and left no follow-up. It is also unfortunate, when cases submitted by victims receive SP3 or are declared to have been unable to be followed up, victims are instead sued again by perpetrators of sexual violence with demands for defamation, and so on. So this requires the need for some improvement.

First, the articles in the Criminal Code do not yet take the perspective of victims of sexual violence. Asni took the example of the rape article. In the Criminal Code, rape only occurs against women who have never been married, then there must be elements of violence and threats, as well as acts of penetration. Penetration must be proven by a post mortem, and if it is not proven then the act cannot be decided by rape, but by sexual immorality.

Second, expert testimony, according to Asni there are still many experts who do not have a victim's perspective. The understanding of the experts is still lacking regarding the victim's position, so that many experts who are presented to court often corner the victim for their testimony.

Third, from the legal structure. In Indonesia, both human resources (HR) and government agencies or institutions, there are still very few who are trained to be able to understand victims. There are still many institutions that don't care about victims of sexual violence, and not a few people who even blame victims of sexual violence.

Fourth, the legal culture still applies patriarchal culture. The complicated justice system often makes victims physically and financially exhausted, which causes them to choose to withdraw their lawsuit. Society still positions victims as the cause of violence and sees cases of sexual violence as a victim's problem. Lack of empathy and concern from witnesses who know about the act of sexual violence.

The National Commission on Women, based on its monitoring, identified problems in law enforcement in cases of sexual violence, namely as follows²⁵: First, Law Enforcement Officials can only use the Criminal Code which does not yet cover all forms of sexual violence and the Criminal Procedure Code which does not fully accommodate the needs of victims to obtain their rights. Komnas Perempuan received various complaints of cases of sexual violence that encountered obstacles in the legal process. The existing Criminal

²⁴ Perlindungan Hukum Korban Kekerasan dan Pelecehan Seksual Minim. Retrived April 16 2023, 12.00 WIB. <https://www.uui.ac.id/perlindungan-hukum-korban-kekerasan-dan-pelecehan-seksual-minim/>.

²⁵ Naskah Akademik Rancangan Undang-Undang Tentang Penghapusan Kekerasan Seksual. (2015). hlm. 39-44.

Procedure Code (KUHAP) does not accommodate the needs of victims of sexual violence to obtain their rights as victims. The Criminal Procedure Code has not moved from a pattern that prioritizes the protection of the rights of suspects and defendants alone.

The Criminal Procedure Code also makes it difficult for victims of sexual violence to reveal and prove the incidents of violence they experienced. Fulfillment of legal evidence (Article 184 of the Criminal Procedure Code)²⁶ often becomes an obstacle in handling cases of sexual violence. Because of this, it is often found that victims' reports are terminated (SP3) on the grounds that there is not enough evidence. The findings of Komnas Perempuan and the Service Providers Forum noted that almost half of reports of sexual violence did not proceed to court. Even if the case goes to the level of the Prosecutor's Office or Court, there will still be obstacles if the Panel of Judges examining the case only relies on providing evidence alone without insight into the perspective of the victim and paying attention to gender justice.

Some of the cases that encountered obstacles in settlement included cases of alleged sexual harassment in the work environment of the Indonesian National Land Agency which was handled by the Metro Jaya Regional Police. The victim reported this incident to the Metro Jaya Regional Police with the charge of the criminal act of obscenity Article 294 paragraph (2) number 1 of the Criminal Code. However, this report was stopped by investigators on the grounds that it was difficult to find evidence and find witnesses because the complainants (victims) reported this incident 3 months after the incident, between the suspect and the victim-witness the statements were different, and there were no witnesses who knew directly and there were no witnesses to corroborate, so that none of the elements are met. In fact, in cases of sexual violence, it is certain that the perpetrator will only commit his actions when there is no one who can be a witness to his actions other than the victim.

Another case that was also reported to Komnas Perempuan was a case of sexual violence that was handled by the Cirebon Resort Police and the Sumber District Attorney, Kab. Cirebon. This case is a case of Dating Violence, where even though at the beginning the relationship was consensual, the victim was raped by her boyfriend. SP2HP Cirebon Resort Police stated that there was an obstacle, namely the issuance of P19 (instruction) of the State Attorney General's Office which contained elements of violence or threats of violence forcing someone to commit or allow obscenity to be carried out to him/herself was not found, because: (1) Initially the suspect and witness the victim were dating and liked each other like; (2) The suspect and the victim-witness had sexual intercourse more than 1 (one) time and up to 3 (three) times; (3) There are different testimonies between the suspect and the victim-witness, and none of the witnesses know directly and there are no corroborating witnesses, so none of the elements are fulfilled.

²⁶ Pasal 184. (1) Alat bukti yang sah ialah: a. keterangan saksi; b. keterangan ahli; c. surat; d. petunjuk; e. keterangan terdakwa. (2) Hal yang secara umum sudah diketahui tidak perlu dibuktikan.

In fact, in cases of sexual violence, the victim's consent should not be construed as unqualified consent, because when a relationship turns into coercion or threats, the victim has the right to revoke her consent.²⁷ Cases of sexual violence that were reported to Komnas Perempuan encountered many obstacles in the legal process, especially in relation to proving the elements of the offense in the Criminal Code. Incidents of sexual violence that occurred with the perpetrator as a boyfriend and personal relationship were also often directed at consensual relationships. It will be even more difficult to prove the elements of threats of violence and assault because often victims of rape or sexual violence immediately clean themselves by bathing or washing their bodies or the clothes they were wearing when the incident occurred and it is not uncommon for victims to dare to report the incident of violence that they experienced long after the incident took place.

The requirement to have a witness as a fulfillment of the element of proof of sexual violence has not been fully understood by law enforcement officials, that the victim is also a witness in the incident of sexual violence they experienced. In addition, the Criminal Code identifies forms of sexual violence as limited to rape and obscenity. In addition, the criminal element in it also requires violence or threats of violence. Meanwhile marriage vows, persuasion, abuse of power in an unequal relationship between the victim and the perpetrator are not recognized as elements of sexual violence referred to in the Criminal Code. In fact, it is precisely from such things that many cases of sexual violence originate, where the victims and perpetrators have a dating relationship; perpetrators exercise power as parents, guardians, teachers, and so on.

National Commission on Women looked at the 37 cases observed from the Verdict on the General Judiciary Body's website, there were 21 cases of rape in which 3 cases of rape in dating relationships (perpetrators of boyfriends), 1 case of rape by brother-in-law, and 4 cases of rape of girls with 2 perpetrators biological father and 2 stepfathers. Another case was a sexual exploitation case in 5 cases where the average perpetrator was a boyfriend. Then there were 4 cases of attempted rape. Trafficking for sexual purposes was 1 case and 6 cases of obscenity. Decisions for cases of sexual violence in 15 cases used Article 285 of the Criminal Code²⁸ with a minimum sentence of 3 months 10 days and a

²⁷ Lihat <http://time.com/3211938/campus-sexual-assault-consent-california/>. Retrived tanggal April 14 2023, 10.00 WIB.

²⁸ Pasal 285. Barang siapa dengan kekerasan atau ancaman kekerasan memaksa perempuan yang bukan isterinya bersetubuh dengan dia, dihukum, karena memperkosanya, dengan hukuman penjara selama-lamanya dua belas tahun. (K.U.H.P. 35, 37-2e, 89, 291, 298, 335 s). Selain terhadap pelaku sebagaimana dimaksud pada ayat (2), penambahan 1/3 (sepertiga) dari ancaman pidana juga dikenakan kepada pelaku yang pernah dipidana karena melakukan tindak pidana sebagaimana dimaksud dalam Pasal 76E. (4) Dalam hal tindak pidana sebagaimana dimaksud dalam Pasal 76E menimbulkan korban lebih dari 1 (satu) orang, mengakibatkan luka berat, gangguan jiwa, penyakit menular, terganggu atau hilangnya fungsi reproduksi, dan/atau korban meninggal dunia, pidananya ditambah 1/3 (sepertiga) dari ancaman pidana sebagaimana dimaksud pada ayat (1). (5) Selain dikenai

maximum sentence of 10 years. 17 cases used Article 81 and Article 82 of the Child Protection Law with a maximum sentence of 13 years and a minimum of 2 years and 8 months. The remaining cases were decided using articles 286, 287 and 289 of the Criminal Code and 1 case using the Law on the Eradication of the Crime of Trafficking in Persons. This means that for cases other than rape and sexual abuse, law enforcement officials use the Criminal Code in handling cases, bearing in mind that there is no specific legal umbrella for other sexual violence, such as sexual exploitation and attempted rape.

Second, coercion of mediation in the judicial process, in which law enforcement officials or state officials act as mediators between perpetrators and victims. Obstacles encountered in the legal process of sexual violence cases often encourage various parties, starting from the victim's family, schools, to law enforcement officials to seek mediation and negotiation. Especially when sexual violence causes the female victim to become pregnant, reconciliation by marrying the victim to the perpetrator is often used as a way out.

As was the case with SB, a rape victim who reported her case to the Belawan Harbor Resort Police. While there has been no follow-up on the victim's report, the perpetrator was not subject to detention and instead various parties, both the victim's family and the perpetrator's family, pushed for this case to be resolved by marrying the perpetrator to the victim. Or the case of a female student at the Plered State Madrasah Aliyah, Bantul, who received obscene behavior from her sports teacher. The teacher as the perpetrator did not receive any sanctions from the school, instead the victim was married off based on a solution from the Regional Office of the Ministry of Religion of DIY Province.

The police, who also participated in mediation efforts, were also found in cases of abuse and rape that befell victims whose cases were handled by the Metro Tanah Abang Sector Police in 2012, where the police released the perpetrators. According to the victim's testimony, the Police also urged the victim to reconcile by marrying the perpetrator. Forced mediation by the Police also occurred in the case of sexual violence experienced by RW, whose case was handled by the State Security Sub-Directorate of Polda Metro Jaya. It is known that the investigators who examined this case attempted mediation and negotiations by sending short messages and calling the victim's mother, conveying the message of the perpetrator who wanted to be responsible by marrying the victim.

pidana sebagaimana dimaksud pada ayat (1) sampai dengan ayat (4), pelaku dapat dikenai pidana tambahan berupa pengumuman identitas pelaku. (6) Terhadap pelaku sebagaimana dimaksud pada ayat (2) sampai dengan ayat (4) dapat dikenai tindakan berupa rehabilitasi dan pemasangan alat pendeteksi elektronik. (7) Tindakan sebagaimana dimaksud pada ayat (6) diputuskan bersama-sama dengan pidana pokok dengan memuat jangka waktu pelaksanaan tindakan. (8) Pidana tambahan dikecualikan bagi pelaku Anak.

Trials on the documentation of cases of sexual violence by Komnas Perempuan and the 2015 Service Providers Forum also found that mediation as an attempt to reconcile is actually a form of silencing survivors of violence. Of the 22 survivors who had been mediated, 4 of them were mediated by the police, 1 by the prosecutor's office, 4 by the urban village, 8 by the perpetrator's family, 3 victims by the perpetrator's boss and family, and 2 by companions at the survivor's request. It should be noted that of the 22 survivors, 16 of them are undergoing legal proceedings.

The implications of mediation are certain not to benefit the victim, because in the end 2 survivors are married to the perpetrator, the case is not continued, they receive threats so that the case is not continued, they are criminalized, and the mediation process is used to lighten the perpetrator's sentence. This means that when one form of sexual violence occurs it has the potential to give rise to other forms of sexual violence, for example rape resulting in the forced marriage of survivors.

In addition, this shows that there is still a lack of understanding by many parties, including law enforcement officials, that sexual violence as a crime cannot be mediated and the legal process should continue. Regarding these various obstacles, proper handling is really needed without delay so that law enforcement services can deliver the State to be able to fully fulfill the rights of victims without being hindered or reduced by various actions that reduce them.

Third, the occurrence of criminalization of victims. Komnas Perempuan examines efforts to criminalize victims of sexual violence as a way to silence victims. One of the cases reported to National Commission on Women was a rape case in Tanjung Pinang. Before the victim reported what happened to the Police, the perpetrator first reported the victim on charges of extortion. The perpetrator gave some money to the victim and travel tickets as promised by the perpetrator before the victim agreed to meet the perpetrator. The perpetrators also spread the news to the print media.

Another case is a victim of sexual violence in Depok. The victim cut off the perpetrator's genitals to free himself from his rapist who continuously belittled him with the stigma of not being a virgin. Instead of considering it as an effort to defend the victim from a disadvantageous situation, law enforcement officers only see the victim's actions as abuse against their rapist without considering the victim's efforts as self-defense from incidents of sexual violence that were previously experienced by the victim.

Fourth, the occurrence of victimization in the judicial process. Victimization occurs when victims of sexual violence who strive for their right to justice actually become victims. This is due to the criminal justice system not having the perspective of victim protection. Mapping conducted by LBH APIK Jakarta shows a number of vulnerabilities of women victims when faced with the law. Among other things, law enforcement officials tend to issue

statements or questions that blame the victim, information gathering is done with questions that demean, corner or harass the victim, shows an impatient attitude when digging for information from the victim, intimidates by spreading fear to the victim if the perpetrator is imprisoned, assumes violence experienced by victims is common, extortion in the form of asking for money if the victim wants to continue the legal process, not acknowledging the presence of the victim's companion or not allowing the victim's assistant to enter the courtroom.

The 2015 Documentation Trial conducted by Komnas Perempuan and the Service Providers Forum also noted that out of 22 cases handled by the courts, perpetrators of sexual violence against children generally received higher criminal convictions than sexual violence against women over the age of a child. This also shows that the judicial stereotype in cases of sexual violence experienced by adult women is very strong. Blaming the victim, doubting the victim's statement, considering sexual violence as an act of consent, giving compensation from the perpetrator as a basis for mitigating sentences are some of the judicial stereotypes that appear in law enforcement services.

There are even survivors who experience trauma after being examined in court. This means that even if survivors obtain their rights to truth and justice, the law enforcement process itself is actually vulnerable to being colored by things that revictimize women victims. As long as these things are not minimized, women victims of sexual violence will always be hampered in accessing justice through the criminal justice system.

Fifth, blaming against the victim for the crime that befell him. In cases of sexual violence, the victim is often blamed as the party causing the sexual violence. This often discourages victims from reporting their cases to law enforcement officials to avoid stigma that will burden their lives. The blaming of victims can be seen, among other things, from a number of statements made by public officials who discriminate against women victims, for example linking rape cases to the clothes the victim was wearing. In fact, Komnas Perempuan notes that this myth is not true. The case of sexual violence experienced by a survivor with the initials IN undermines the view that rapes occur on women who are scantily clad, because IN is a veiled figure. This case also confirms that sexual violence often occurs against victims, in fact they know the perpetrators who are close to the victims

4. Conclusion

First, at the level of social construction in Indonesian society, where most of them still use a patriarchal paradigm, women are placed as second-class citizens. As a result, women's words are often not heard. A further implication for women who are victims of sexual violence is that they are revictimized by society, considered as the party that caused the violence.

Second, the implication of this is that the existing Criminal Procedure Code (KUHAP) does not accommodate the needs of victims of sexual violence to obtain their rights as victims. The Criminal Procedure Code has not moved from a pattern that prioritizes the protection of the rights of suspects and defendants alone. The Criminal Procedure Code also makes it difficult for victims of sexual violence to reveal and prove the incidents of violence they experienced. The fulfillment of legal evidence (Article 184 of the Criminal Procedure Code) is often an obstacle in handling cases of sexual violence.

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