

# SEXUAL VIOLENCE AGAINST CHILDREN AND CRIMINAL SANCTIONS TOWARDS ACTORS BASED ON THE SYSTEM OF INDONESIAN LAW

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**Abstract:** This study aims to describe how the criminal law regulates sexual violence in Indonesian positive law and to analyze how criminal sanctions for perpetrators of sexual violence against biological children are in Indonesian positive law. This research was conducted using normative legal research in the form of library research using three types of legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials, with a qualitative descriptive research analysis. The results of the study stated that the crime of sexual violence as a whole is regulated in the Criminal Code (KUHP), the Human Rights Law Number 39 of 1999, the Elimination of Domestic Violence Law Number 23 of 2004. And specifically against children as victims regulated in Law Number 35 of 2014 concerning Amendments to Law number 23 of 2002 concerning Child Protection. The results of other studies state that criminal sanctions for perpetrators of sexual violence in the Criminal Code against minors are formulated in Article 285 of the Criminal Code, namely imprisonment for a maximum of twelve years. Whereas in the Child Protection Act, imprisonment based on Article is a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). Parents, guardians, caregivers of children, educators, or educational staff, then the penalty is added to 1/3 (one third) of the criminal threat as referred to in paragraph (1).

**Keywords:** Sexual Violence, Biological Children, Criminal Sanctions, Perpetrators.

## 1. INTRODUCTION

Crime is a social problem that is very troubling to humans in everyday life. Crime has occupied the top place as a target of discussion in various circles of scientific and legal experts. This is proven by the many news about various crimes of violence, murder, robbery, theft, and other crimes related to decency (Arief, 2021).

Crime is a problem that applies to humans from time to time. Why the crime occurred and how to eradicate it is a question that never stops being discussed. This means that crime exists and occurs as well as develops in the environment of human life. Meanwhile the existence of evil becomes a different picture than the existence of human life itself (Prayudi, 2009).

Various efforts have been made to eliminate evil from the surface of the earth. However, this evil has never disappeared from human civilization. Crime cannot be eradicated from the face of the earth, because it grows and develops in line with human culture and is carried out by humans as one of the supporting sub-systems of civilization, even though crime is not wanted by society, but it will always grow in society because it is committed by a member of society.

The various crimes that disturb the community and are at the same time contrary to the law, there is the crime of sexual violence. This crime is also called sexual crime which is generally experienced by women and even their own biological children. This crime occurs in society regardless of the social stratification of the perpetrators and victims, and can arise due to environmental influences or psychological background that influenced the perpetrators in the past or because of spontaneous psychological shocks due to sexual stimulation (Bawengan, 1977).

## **2. METHODS**

This research is normative legal research. The writer uses a statutory law approach, and focuses on primary legal material, namely Law Number 35 of 2014, Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 12 of 2022 concerning Sexual Violence Crime. The nature of qualitative descriptive analysis. Collection of legal materials through library research, processing of legal materials is carried out by inspection, tagging, reconstruction, and systematization.

Analysis of legal materials is carried out qualitatively and systematically to provide answers to the research problems.

### **3. RESULTS AND DISCUSSION**

#### **3.1. Rules for Sexual Violence in Indonesian Positive Law**

Sexual violence is a criminal act as regulated in the Criminal Code, namely Article 285 which states: "Anyone who by force or threat of violence forces a woman to have sex with him outside of marriage, is threatened with committing sexual violence, with a maximum imprisonment of twelve years." In addition to being regulated in the Criminal Code, specific acts of sexual violence against children are specifically regulated in Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection. Article 76D of Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection, which states "Everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with another person." The Law on Domestic Violence Number 23 of 2004 also regulates sexual violence. Article 5 states that domestic sexual violence includes:

- a. coercion of sexual relations committed against people who live within the scope of the household;
- b. coercion of sexual relations against one person within the scope of the household with another person for commercial purposes and/or certain purposes.

Meanwhile, Law Number 12 of 2022 concerning Crimes of Sexual Violence states "crimes of sexual violence are all acts that fulfill the elements of a crime as regulated in this Law and other acts of sexual violence as regulated in the Law as long as it is determined in this law". This law divides criminal acts of sexual violence into: a. non-physical sexual harassment; b. physical sexual abuse; Acts of sexual violence can harm other people, namely the victim. In the context of the household or family, not all victims of sexual violence experienced by victims were reported to law enforcement officials, caused by several factors including the victim feeling ashamed, the victim did not want the shame that had befallen her to be known by other people, the victim felt

afraid because she had been threatened will be killed by the perpetrator, the family considers the problem of violence that occurs in the household as a family matter, the family is reluctant to accept interference from outsiders or society, the family considers the violence that occurs as a family secret and is a shame if it is spread to other parties, as well as being ashamed of receiving disgrace, avoid the negative views of society, do not understand the law, and usually the trial process is long, misleading and tiring (Arief, Legal Protection Against Women Victims by The Indonesian Domestic Violence Act 23, 2004, January 2017).

As for the forms of criminal acts of sexual violence according to Law Number 12 of 2022 concerning Crimes of Sexual Violence according to Article 4 paragraph (1) consists of non-physical sexual harassment and physical sexual harassment. Meanwhile, according to Mulyana W. Kusuma, among others (Wahid & Irfan, 2001):

- a. Sadistic Rape; In this type, sexuality and aggressiveness combine in a destructive form of violence. The perpetrator of sexual violence seems to enjoy erotic pleasure not through sex, but through terrible attacks on the genitals and body of the victim.
- b. Anger Rape; is sexual abuse characterized by sexuality, being a means to express and release pent-up feelings of anger and anger. Here the victim's body seems to be an object against which the perpetrator projects a solution to his frustrations, weaknesses, difficulties and disappointments in his life.
- c. Domination Rape; is a sexual violence that occurs when the perpetrator tries to persistently fight against the power and superiority of the victim. The goal is sexual conquest, the perpetrator hurts the victim, but still has the desire to have sex.
- d. Seductive Rape; a sexual violence that occurs in stimulating situations, created by both parties. At first the victim decides that personal intimacy should be limited not to the extent of intercourse. Actors generally have beliefs that require coercion, therefore without it they have no guilt regarding sex.
- e. Victim Precipitated Rape; is sexual violence that occurs (takes place) by placing the victim as the originator.
- f. Exploit Rape; sexual violence which shows that at every opportunity to have sexual relations obtained by men by taking advantage that is contrary to the position of women who depend on them economically and socially.

### **3.2. Criminal Sanctions Against Perpetrators of Sexual Violence**

Crime of sexual violence can be committed by anyone, against whom, when and where. Therefore, legislators formulate crimes of sexual violence in two ways, namely crimes of sexual violence in general and crimes of sexual violence in a special nature. These two characteristics of the crime of sexual violence are formulated in the form of different laws and regulations and the sanctions given are also different. The differences in the forms of legislation and sanctions provided in these laws and regulations are of course based on what considerations are behind them, whether philosophical, sociological, juridical and others.

Sexual violence is something that women are very afraid of. There are two aspects that cause sexual violence to have a frightening meaning. These aspects can be viewed from a formal juridical and sociological perspective. These aspects greatly influence the public's perception of an act called sexual violence (Marzuki, 1997).

The article that regulates the crime of sexual violence, namely Article 285 of the Criminal Code which states: "Whoever by force or threat of violence forces a woman to have sex with him outside of marriage, is threatened with committing sexual violence, with a maximum imprisonment of twelve years." Apart from being regulated in the Criminal Code, the crime of sexual violence is also contained in Article 8 of Law Number 23 of 2004. It is stated that sexual violence includes: a. Coercion of sexual relations committed against people who live within the scope of the household; b. Forcing sexual relations with someone within the scope of the household with another person for commercial purposes and/or certain purposes.

In Law no. 23 of 2002, has been amended by Law no. 35 of 2014 concerning Child Protection. Article 76D states, "everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with another person." In Law Number 12 of 2022 concerning Crimes of Sexual Violence; 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 rupiahs), physical sexual harassment with the intention of demeaning a person's dignity based on sexuality and/or decency with a maximum penalty of 4 (four) years and/or a maximum fine of Rp. 50,000,000.00 (fifty million rupiahs or 300,000), physical sexual harassment with the intention of

unlawfully placing a person under his authority, both within and outside of marriage, with imprisonment a maximum of 12 (twelve) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

Sanctions are suffering given to someone after an offense, crime or mistake has occurred. Sanctions are also interpreted as an act of punishment to force someone to comply with rules or laws and regulations. There are two terms related to the word "sanction" namely: criminal sanctions and action sanctions. Criminal sanctions are sanctions related to ideas relating to the imposition of sanctions on perpetrators of an act, while action sanctions are related to the idea of protection provided by society.

Indonesian positive law is a collection of written and unwritten legal principles and rules which are currently in effect and generally or specifically binding and enforced by or through the Indonesian government or courts. Law is also interpreted as a law made by humans, obliging or determining an action. This term also describes the establishment of certain rights for an individual or group.

Sexual violence is divided into two, namely:

1. Serious sexual violence, in the form of sexual harassment with physical contact, such as groping, touching sexual organs, forcibly kissing, embracing and other actions that cause disgust, terror, humiliation and feelings of being controlled. Forced sexual intercourse without the victim's consent or when the victim does not want it. Forcing sexual intercourse in a way that is not liked, degrading and or painful, Forcing sexual intercourse with another person for the purpose of prostitution and/or a specific purpose, Having sexual relations where the perpetrator takes advantage of the dependent position of the victim that should be protected, Sexual acts with physical violence with or without the aid of tools causing pain, injury, or injury.
2. Mild sexual violence; in the form of verbal sexual harassment such as verbal comments, pornographic jokes, whistling, ridicule and nicknames and or non-verbally, such as facial expressions, body movements or other actions that call for sexual attention that the victim does not want that are harassing and or insulting to the victim. Repeating minor sexual violence can be classified as a type of serious sexual violence.

There are several laws that prohibit acts of sexual violence and provide criminal sanctions for perpetrators of sexual violence, namely the Criminal Code, the Law on

Domestic Violence Number 23 of 2004 and the Child Protection Law Number 35 of 2014, Amendments to Law Number 23 2002, and Law Number 12 of 2022 concerning Crimes of Sexual Violence.

The imposition of criminal sanctions on the perpetrators of criminal acts in this case is the crime of sexual violence by ensnaring the articles on sexual violence in the Criminal Code, for example Article 285, Article 286, Article 287, Article 288.

If the crime of sexual violence does not fulfill the elements in the articles on sexual violence in the Criminal Code, then the perpetrators can be subject to other legal regulations outside the Criminal Code such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and specifically for victims of immature women, Law Number 35 of 2014 on Child Protection can be applied, an amendment to Law Number 23 of 2002 concerning Child Protection.

As for criminal sanctions for perpetrators of sexual violence in the Criminal Code against minors, it is formulated in Article 285 of the Criminal Code, namely imprisonment for a maximum of twelve years. In Law Number 35 of 2014 on Child Protection, amendments to Law Number 23 of 2002, perpetrators can be imprisoned under Article for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000 .00 (five billion rupiah). In the event that a crime is committed by a parent, guardian, babysitter, educator, or educational staff, then the penalty is added to 1/3 (one third) of the criminal threat referred to in paragraph (1).

#### 4. CONCLUSIONS

- a. The criminal act of sexual violence as a whole is regulated in the Criminal Code (KUHP), the Human Rights Law Number 39 of 1999, the Elimination of Domestic Violence Law Number 23 of 2004. And specifically against children as victims it is regulated in Law Number 35 of 2014, Amendments to Law Number 23 of 2002 concerning Child Protection, and Law Number 12 of 2022 concerning Crimes of Sexual Violence.
- b. Criminal sanctions for perpetrators of sexual violence in the Criminal Code against minors are formulated in Article 285 of the Criminal Code, namely

imprisonment for a maximum of twelve years. Whereas in the Child Protection Act, imprisonment under Articles 81 and 82 is a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

- c. In the event that a crime is committed by a parent, guardian, babysitter, educator, or educational staff, then the penalty is added to 1/3 (one third) of the criminal threat referred to in paragraph (1). In Law Number 12 of 2022 concerning Crimes of Sexual Violence, imprisonment is based on Article 5 (non-physical sexual acts) for a maximum of 9 (nine) months and/or a maximum fine of Rp. 10,000,000.00 (ten million rupiah), also Article 6 (physical sexual acts) for a maximum of 12 (twelve) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

## 5. SUGGESTION

- a. Victims of sexual violence not only receive social impacts, but also physical and psychological impacts. Given the severe impact, law enforcers should take the maximum sanction in imposing penalties.
- b. The handling of victims of sexual violence should involve many parties, both the government and the private sector or social and religious institutions. Therefore, integrated cooperation needs to be carried out in order to achieve maximum results

## REFERENCES

### Book

- Abdul Wahid, Muhammad Irfan, 2001, *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi Atas Hak Perempuan*, Bandung: Refika Aditama.
- Gerson W. Bawengan, 1977, *Pengantar Psikologi Kriminil*, Jakarta: Pradnya Paramita.
- Guse Prayudi, 2009, *Berbagai Aspek Tindak Pidana Kekerasan dalam Rumah Tangga*, Yogyakarta: Merkid Press

Hanafi Arief, Rohani Abdul Rahim, 2020, *Wanita dan Keganasan Rumah Tangga di Malaysia dan Indonesia*, Selangor Bangi: Penerbit Universiti Kebangsaan Malaysia.

Hanafi Arief, 2021, *Teori-teori Kekerasan dalam Keluarga*, Banjarmasin: Penerbit Universitas Islam Kalimantan.

Suparman Marzuki, 1997, *Pelecehan Seksual*, Yogyakarta, Fakultas Hukum Universitas Islam Indonesia.

### **Website**

Hanafi Arief, Legal Protection Against Women Victims by The Indonesian Domestic Violence Act 23, 2004, *Sriwijaya Law Review*, Vol. 1 Issue 1, January 2017, hlm. 90. (<https://media.neliti.com/media/publications/181720-EN-legal-protection-against-women-victims-b.pdf>, Access March 2023

### **Legislation**

Kitab Undang-Undang Hukum Pidana (KUHP)

Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan dalam Rumah Tangga

Undang-Undang Nomor 35 Tahun 2014 Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual