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Protection and Fulfillment of the Rights of Women Victims of Sexual Violence

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Abstract

This paper discusses the efforts to protect the law and uphold the rights of women victims of sexual violence through various instrument including protection of victims of sexual violence in national legal instrument and international legal instruments. In addition, the human rights perspective of women as victims of sexual violence is

discussed. The significance of this study is that women are a group that is highly vulnerable to moral crimes. Moral crimes or moral crimes include sexual harassment and sexual violence, which are violations of modesty and are not only a matter of domestic law of a country, but have now also become a matter of international law.

Keywords: Protection of Women, Fulfillment of Women's Rights, Sexual Violence

Introduction

As is known, women are a group that is very vulnerable to crimes of morality, namely sexual violence or sexual harassment. The problem of sexual crimes is now a problem that must be handled seriously, because this problem of morality crimes is not only a problem in certain countries, but has become a problem in all countries in the world.¹ Violence or sexual crime itself can be interpreted as violent and unpleasant.² In this case, sexual violence is someone forcing someone else to have sexual contact, and is usually carried out with threats or violence or something that is not desired by the other party. In several cases, sexual violence is not only a physical attack, but also indirectly attacks the soul or mental state of the victim.

In fact, psychological or mental impacts are very influential as a result of sexual violence, because these impacts are very difficult to eliminate. This is of course very different from the impact experienced physically, because the physical impact with certain treatment or therapy will heal and after healing it will disappear even if it causes scars and so on. Meanwhile, psychological or mental impacts are very difficult to remove, and it takes a relatively long time for the victim to completely recover and be able to forget the tragic events they have experienced.³

Thus, the losses experienced by victims in a sexual crime are not only material losses that can be valued in money (for example, the victim suffered an injury, so a certain amount of money is needed to heal the wound), but also immaterial losses that cannot be valued in money (for example mental disorders, psychological and so on).⁴

The occurrence of sexual advances by someone towards another person in an unwanted way can be said to be sexual violence. However, it must be understood that sexual approaches do not always have to be physical, but can also be verbal. Thus, sexual violence can occur in various forms such as intentionally touching another person's body, rape, personal questions about sexual life, teasing or joking about things of a sexual nature, making sexual movements with hands or facial expressions, sexually directed sounds and many more.

¹ Romli Atmasasmita, *Kapita Selektia Hukum Pidana dan Kriminologi*, Mandar Maju: Bandung, 1995, hlm. 103.

² Ghinata Mannika, "Studi Deskriptif Kekerasan Seksual Pada Remaja Perempuan", *Jurnal Ilmiah Mahasiswa Universitas Surabaya*, 2018, Vol. 7 No. 1.

³ Dody Suryadi, *et al.* "Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan Seksual Terhadap Anak", *Jurnal Darma Agung*, 2020, Vol. 28 No. 1, hlm. 84-91.

⁴ Elda Maisy Rahmi, *et al.*, "Pelaksanaan 'Uqubat Restitusi Terhadap Korban Perkosaan,'" *Kanun Jurnal Ilmu Hukum*, Vol.21, No. 2 (2019), p. 227-240.

Sexual violence is regulated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence, namely in Article 8, 47, and 48. In Article 8 of Law No. 23 of 2004 there is only one type of sexual violence, namely forced sexual intercourse. Sexual violence can clearly be seen in the Convention on Torture and Cruel, Inhuman and Degrading Behavior, which was ratified in November 1998, which states that, "which means torture is any act that intentionally causes severe pain or suffering, whether physical or mental to someone."

In Law No. 23 of 2004, sexual violence is a violation if it causes concrete misery or suffering which requires it to be proven through a criminal investigation. In terms of protection for victims of sexual violence, Law no. 23 of 2004 and Law No.31 of 2014 have regulated that victims of sexual violence have the right to receive protection from the Witness and Victim Protection Agency.⁵

One form of state commitment and seriousness regarding accountability for legal protection of HAM is by ratifying international instruments related to HAM. Indonesia's responsibility in protecting HAM for victims of sexual violence is primarily through the ratification of a number of international legal instruments on HAM, namely the International Covenant on Civil and Political Right (ICCPR) through Law No. 12 of 2005, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law No. 7 of 1984 and Convention Against Torture (UNCAT) through Law Number 5 of 1998. Indonesia as a participating country is obliged to fulfill all responsibilities and ensure that Indonesia national law is in line with various international agreements and the mechanisms that are obligations of these international agreements.

Since Indonesia ratified UNCAT, several legislative steps have been taken by the government and the House of Representative (DPR). Normatively, the guarantee of protection for the right to be free from torture has been included in several legislative products, namely in: i) the State Constitution, Article 28G (2) and 28I (1) UUD 1945 Constitution, namely regarding HAM guaranteed by the state to obtain protection and the right to be free from discriminatory treatment. ii) Article 4, Article 33 (1), Article 34 and Article 66 (1) of Law no. 39 of 1999 concerning HAM. Thus, apart from being a constitutional right, the right to be free from torture has also become a legal right.⁶

Optional Protocol on the Convention Against Torture (OPCAT) is an agreement in the international community to oppose torture, other cruel, inhuman and degrading treatment or punishment. This agreement is preventive in nature to prevent torture and arbitrary behavior.⁷ OPCAT is

not only an instrument that determines a certain standard, but is an implementation treaty which is a follow-up agreement to UNCAT.⁸

In 2024 in Indonesia there will be at least 7,871 cases of women victim of sexual violence. Based on distribution data by province, there were 237 victims in Aceh province, 83 victims in Bali province, 58 victims in Bangka Belitung province, 148 victims in Banten province, 19 victims in Bengkulu province, 247 victims in DIY province, 14 victims in DKI Jakarta province, 16 victims in Gorontalo province, 115 victims in Jambi province, 406 victims in West Java province, 484 victims in Central Java province, 382 victims in East Java province, 39 victims in West Kalimantan province, 135 victims in South Kalimantan province, 99 victims in Central Kalimantan province, 174 victims in East Kalimantan province, 77 victims in Kalimantan province North, 83 victims in Riau Islands province, 71 victims in Lampung province, 75 victims in Maluku province, 50 victims in North Maluku province, 151 victims in West Nusa Tenggara, 202 victims in East Nusa Tenggara province, 24 victims in Papua province, 61 victims in West Papua province, 10 victims in Southwest Papua province, 18 victims in Mountainous Papua province, 33 victims in South Papua province, 3 victims in Central Papua province, 101 victims in Riau province, 29 victims in West Sulawesi province, 113 victims in South Sulawesi province, 103 victims in Central Sulawesi province, 66 victims in Sulawesi province Southeast, 77 victims in North Sulawesi province, 94 victims in West Sumatra province, 88 victims in South Sumatra province, and 231 victims in North Sumatra province.⁹

Sexual violence against women is a violation of HAM which was agreed upon at the world conference on HAM in Vienna in 1933, but not many people know that sexual violence is part of HAM violations.

Victims of sexual violence often do not know the rights they have, they tend to be afraid to report having experienced sexual violence. Not only victims, even law enforcers also feel satisfied when they have enforced punishment against the perpetrators according to the regulations contained in the Criminal Code (KUHP), Law No. 23 of 2004, Law No. 31 of 2014, Law No. 12 of 2022, ICCPR, CEDAW, UNCAT, and OPCAT. Sexual violence does not only impose criminal penalties on the perpetrators, but must also consider legal protection efforts for victims who experience sexual violence. One of the legal protection efforts for victims of criminal acts is the recovery of losses suffered by the victim.¹⁰

Violence against women and sexual harassment are generally only seen as crimes against body and life. In its

⁵ Mahfud & Rizanizarli, "Kekerasan Dalam Rumah Tangga terhadap Perempuan di Indonesia: Analisis UU Penghapusan KDRT Terkini", *Fiat Justitia: Jurnal Ilmu Hukum*, 2021, Vol. 15 No. 4. hlm. 393.

⁶ Laode M. Syarif, et al., *Jalan Panjang penghapusan Penyiksaan: Laporan: Jalan Panjang Penghapusan Penyiksaan: Laporan Studi Gap Analysis antara UNCAT (United Nation Convention against Torture) dan Sistem Hukum, Perundang-undangan Serta Kebijakan di Indonesia*, Cetakan Kedua, Kemitraan Bagi Pembaruan Tata Pemerintahan: Jakarta, 2012, hlm. 4-10.

⁷ Protokol Opsional untuk Konvensi Melawan Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak

Manusiawi atau Merendahkan Martabat, UN Doc. A/RES/57/199, diakses pada 15 Mei 2024.

⁸ Association for the Prevention of Torture, *Protokol Opsional untuk Konvensi PBB Melawan Penyiksaan-Pedoman Pelaksanaan*, <https://www.apt.ch/sites/default/files/publications/opcat-manual-bahasa-indonesia.pdf>. hlm. 4, diakses pada 16 Mei 2024.

⁹ <https://kekerasan.kemenpppa.go.id/ringkasan>, diakses pada tanggal 02 Juni 2024.

¹⁰ Thantawi, et al., "Perlindungan Korban Tindak Pidana Cyber Crime dalam Sistem Hukum Pidana Indonesia," *Jurnal Ilmu Hukum*, Vol.2, No.1, 2014, p. 32-40.

development, the desires of women, pioneered by Charlotte Bunch, who wanted a transformation of human rights in accordance with women's needs, such as preventing violence against women, had to enter into serious issues with a juridical dimension. Women's rights, like men's rights, are guaranteed in the Universal Declaration of Human Rights (UDHR) which was accepted and announced by the UN General Assembly on 10 December 1948 through resolution 217 A (III).¹¹

Harkristuti believes that the meaning of violence is not only physical but also includes psychological violence.¹² Preventing violence against women means talking about one aspect of efforts to uphold women's HAM in general. Women's HAM are something specific that need to be standardized to prevent the large number of violations that occur against women.

Victims of sexual violence have the rights to receive physical assistance (first aid, clothing), to receive assistance in resolving the case from the beginning of the report to the next stage, such as obtaining assistance from a lawyer or paralegal, receiving rehabilitation and guidance, among other things, asking not to be published in the mass media, openly, receive protection from threats that may come from the perpetrator or his family, obtain restitution for damages, obtain compensation from the perpetrator of the sexual crime, and use *rechtsmiddelen* (legal remedies) as regulated in Law No.12 of 2022 Article 67 to 69. The rights of victims above need to be followed up seriously, so that the psychological feeling of trauma within victims can be reduced and law enforcement against perpetrators can be dealt with firmly.

Realizing, protecting and respecting the rights of sexual violence is a constitutional task. Since 1998, the human rights guarantees provided by the Constitution have been elaborated in various laws and regulations, but these rights have only been normatively stipulated. Therefore, it is very important for Indonesia to have legal instruments that can prevent and overcome problems related to sexual violence and implement and protect the rights of victims. The various provisions on the protection and rights of victims of sexual violence and their implementation fail to provide a comprehensive legal framework, making the issue of sexual violence an uncoordinated and incomplete issue.

There are no special provisions that guarantee that victims receive their rights as victims of sexual violence. Efforts to mainstream HAM within the national legal framework are still in progress. Meanwhile, the Indonesian government's commitment to being part of international efforts to protect HAM faces its own challenges, especially domestic political dynamics.¹³

¹¹ Boer Mauna, *Hukum Internasional: Pengertian, Peranan dan Fungsi Dalam Era Dinamika Global*, Alumni: Bandung, 2001, hlm. 601-602.

¹² Harkristuti Harkriswono, "Tindakan Kekerasan Terhadap Perempuan dalam Perspektif Sosio Yuridis", *Jurnal Hukum Ius Quia Iustum*, 2000, Vol. 7. No. 14.

¹³ M. Gaussyah, et al, *Menagih Janji Ratifikasi: Analisis Terhadap Rencana Ratifikasi Empat Konvensi Internasional di Bidang HAM, Kemitraan Bagi Pembaruan Tata Pemerintahan*: Jakarta, 2014, hlm. 1-2.

Research Methods

Based on the description given above, research is needed that uses a certain research method. The aim of this research method is to find out the symptoms of an event which is carried out logically, systematically and consistently. The method used is to analyze and research the materials found in depth so that an event can be resolved.

This type of research uses normative juridical methods, namely research that uses secondary data or library research originating from books, official documents, research results in the form of report and anything in the form of documents as the main data source.¹⁴

The approaches that will be used in this research are the statutory approach, concept approach and comparative approach. In this research, the method used to search for legal materials is literature study, namely data collection carried out through written data.¹⁵ The research was carried out through library research to search for secondary data which was carried out by looking at legal materials related to this research. The data analysis used is qualitative analysis. The results of this analysis method will be described and explained in the form of systematic sentences which are then connected to theories from literature studies and conclusions are made to answer the problems in this research.

Results and Discussion

1. Efforts to protect the law and fulfill the rights of women victims of sexual violence

Victims of sexual violence have the right to apply to court for: The right to compensation in cases of serious human rights violations, and the right to compensation or restitution which is the responsibility of the perpetrator of the crime. Victims' rights can be submitted through LPSK. Decisions regarding compensation and restitution will be given or decided by the court. Further provisions regarding the provision of restitution and compensation are regulated by Government Regulation (Article 17 of Law No. 31 of 2014). The aforementioned law recognizes the rights and interests of victims as authorized by the LPSK; however, in practice, victims continue to play a secondary role as mere witnesses in the Criminal Justice System. Their rights and interests are still represented by police and prosecutors. Moreover, according to The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, it is imperative that the rights of female victims be fully upheld. This includes the right to receive information, the right to have their voices heard and their interests acknowledged at every phase of the criminal justice process, access to adequate assistance, prompt resolution of cases, the right to compensation (restitution), and other essential rights that must be genuinely enforced for the benefit of victims.

Legal protection fundamentally means protection provided to victims in the form of legal instruments (laws). The role of law enforcers and the state in processing and realizing forms of law enforcement against victims is an effort that must be carried out systematically. If there is a violation of these rights, legal protection can provide full protection to the legal subjects who are victims.

¹⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press: Jakarta, 2010, hlm. 6.

¹⁵ Jhony Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing: Malang, 2007, hlm. 27.

Women who are victims of sexual violence face too many obstacles when it comes to accessing justice or needing legal protection. Weak implementation of the law and negative views towards victims are considered to be the basic reasons that not many women complain about what they experienced.

Victims' rights include the right to protection and the recovery they receive, which can be used and enjoyed by the victim and can be handled quickly. Then the handling is carried out to provide complaint services, legal services, law enforcement, health services, social rehabilitation, repatriation and social reintegration of victims with the community in their environment. One aspect of victims' rights involves the restoration of their physical, mental, spiritual well-being, and social connections with their environment. Additionally, restitution is imposed on the offender or a third party, as determined by a court ruling or a decision that holds permanent legal authority. This restitution is manifested in the form of monetary compensation paid to the victim for both tangible and intangible losses incurred by them or their heirs. Moreover, aid funds are available for victims, which the state provides directly to those who have experienced sexual violence. Rehabilitation efforts also exist, targeting both victims and offenders to help them recover from disruptions to their physical, mental, and social states, enabling them to fulfill their roles effectively in society as individuals, family members, and community participants. This is crucial, as humans inherently thrive in social contexts, who must interact with other humans at all times in their lives and daily lives.

Various instruments that provide protection for women as victims of violence are:

a. Protection of Victims of Sexual Violence in National Legal Instruments

Article 29 (1) of the Human Rights Law provides guarantees for personal protection of a person's honor and dignity. This law also requires more protection for vulnerable groups as stated in Article 5 (3).

The state's guarantee of human rights does not arise from ratifying international regulations or issuing any regulations, but the state is responsible for guaranteeing the human rights of its citizens which humans have naturally had since birth and showing the state's respect for these rights.

Women as a group of people in a country, are a group whose rights must be guaranteed. The state is obliged to guarantee the protection of the human rights of women's groups like other groups.

b. Regulations Regarding Sexual Violence in Criminal Law

Men or women have the right to be recognized and protected by law. Laws will always be needed to accommodate the state's commitment to protecting the human rights of its citizens, including women. Indonesia, through its positive law, should guarantee protection for women victims of violence.

The KUHP regulates criminal acts of violence through the formulation of articles, including those contained in the chapters on crimes against morality, crimes against life, on maltreatment and on death or injury due to negligence. The KUHP does not specifically regulate criminal acts of violence that do not result in physical injury, for example harassment, insults or verbal violence which can result in more psychological injury.

Article 285 of the KUHP which regulates rape, where a person with violence or threats of violence forces a woman to have sexual intercourse with the person concerned outside of marriage and the person concerned can be punished with a maximum prison sentence of 12 years." "Then Article 286 of the KUHP regulates sexual intercourse outside marriage with a woman who is known to be incapacitated (such as in a state of unconsciousness), so that the person concerned is threatened with a maximum sentence of 9 years." Furthermore, Article 287 regulates sexual relations with underage women. Article 288 regulates sexual intercourse with underage women which results in injury, serious injury or death. Meanwhile, Article 297 regulates trafficking in women and boys who are not old enough.

The regulation of criminal acts of violence in the KUHP appears to be intended to regulate a person's morality and not to protect women who are victims of these criminal acts. The term used is a crime against morality. Morality focuses on regulating morals and modesty, not on protecting women. Crimes against decency also focus on the place where the crime occurs, namely public spaces.

Sexual violence which includes rape, sexual harassment, unwanted touching, forced sexual intercourse, sexual trafficking, female circumcision, sexual immorality, child marriage, forced contraception, sexual slavery, forced prostitution, and forced pregnancy are separately regulated in various laws. There is no law that specifically regulates sexual violence. So in cases that cannot be resolved by the PKDRT Law, for example the TPKS Law, law enforcement officials will return to general criminal law, namely the KUHP.

c. Protection of Women Victims of Violence in International Legal Instruments

The dignity and worth of a human being in international legal instruments is protected by various regulations such as the right to individual safety, the right to freedom and personal security as well as protection from all forms of discrimination. Personal freedom and security and the rights related to them are regulated in international human rights instruments starting from UDHR, ICCPR, CEDAW, UNCAT, OPCAT and the accompanying General Comments and General Recommendations. Quoted and translated from the United Nations, General Comment is an interpretation of an agreement regarding provisions, thematic issues or the workings of international agreements on human rights. Meanwhile, a General Recommendation is an authoritative statement used to clarify reports which are the obligations of a party or state party to an agreement.

These various international legal instruments are the basis for direct and indirect protection for victims of sexual violence.

1). Universal Declaration of Human Rights (UDHR) 1948

The UDHR is acknowledged globally as a fundamental legal principle and serves as the primary foundation for establishing legal obligations across nations, having even been embraced by the International Court of Justice. Although the UDHR lacks binding authority over countries from a legal standpoint, numerous provisions, norms, and rules outlined in the document have been integrated into the national legislation of each member state. When evaluating human rights implementation within a nation, the UN references the UDHR as a guiding framework for those countries.

The fundamental tenets found in the UDHR emphasize the acknowledgment of equality and equal rights as essential to human dignity, facilitating access to freedom, peace, justice, and the safeguarding of human rights through the rule of law. Article 1 of the UDHR articulates that every individual, from the moment of birth, possesses equal dignity along with corresponding rights and freedoms.

2). International Covenant on Civil and Political Rights (ICCPR) 1966

The ICCPR is specifically aimed at strengthening the basic HAM in the civile and political fields contained in the UDHR so that they become legal provisions. This covenant itself was ratified by Indonesia on 28 October 2005 through Law No. 12 of 2005.

Article 9 No.1 ICCPR reads "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." Which, when translated, means that everyone has the right to personal security and freedom. Guarantee that no one can deprive him of his personal freedom except for valid reasons according to law and that must be in accordance with certain procedures that have been determined by legally applicable regulations.

Article 9 of the ICCPR guarantees the right to security and freedom, this is for everyone including women and men, soldiers, people with disabilities, lesbians, gays, bisexuals and transgender people, foreigners, refugees and asylum seekers, stateless people, migrant workers, people who have been convicted of crimes, and people involved in terrorist activities.

3). Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

Indonesia has ratified CEDAW through Law no. 7 of 1984 because Indonesia is included as one of the CEDAW participating countries. So it is natural and appropriate for Indonesia to ratify CEDAW, in fact if it is not ratified it will be considered that Indonesia does not support CEDAW and supports discrimination against women. This is as stated in Article 2 of CEDAW which states that CEDAW participating countries agree to eliminate discrimination against women and condemn discrimination against women in all its forms and also agree to carry it out in various ways quickly and precisely and without delay.

The above provisions can be interpreted to mean that countries participating in CEDAW have an obligation to make appropriate laws and other regulations to prevent discrimination against women or girls. Apart from that, it must also contain strict sanctions if there are certain parties or someone who commits acts of discrimination, namely discrimination against women or girls. In addition, if such discrimination occurs, participating countries are obliged to immediately enforce the law and immediately provide legal protection to women or girls on the same basis as men and to guarantee through competent national courts and other government bodies, so that against These acts of discrimination can create effective protection for women.

The above recommendations request that CEDAW participating countries make effective efforts to anticipate all forms of gender-based violence, whether committed by the public or private individuals. One way is to create and enforce regulations that indicate or contain violence and harassment against family members, sexual harassment,

rape and other gender-based violence. Apart from that, we also participate in providing maximum protection for all women and respecting their integrity and honor. Then, CEDAW participants must also strive to protect victims by providing adequate aid institutions that can always serve the victims.

4). Convention Against Torture (UNCAT)

In 1998 through Law no. 5 of 1998 Indonesia has ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The ratification of UNCAT through statutory regulations aims to prevent and prohibit all forms of torture, as well as showing Indonesia's seriousness in efforts to promote human rights. As a realization of UNCAT ratification, Indonesia has taken various steps necessary to ensure the prevention of torture and carry out punishment against perpetrators of torture and other ill-treatment. These efforts include drafting an Anti-Torture Bill which is expected to prevent the practice of torture and carry out effective punishment for the crime of torture. According to this convention, effective steps that need to be taken by state parties include ensuring that acts of torture can be punished as a crime.

Since Indonesia ratified UNCAT in 1998 and since then Indonesia has become a party to the UNCAT convention. Consequently, from that moment on, Indonesia was bound by a commitment to implement this convention in order to carry out its obligations in accordance with the mandate specified in the convention. However, this does not mean that after Indonesia ratifies the UNCAT convention, Indonesia will automatically be free from torture practices, because after all, if it is not accompanied by a strong commitment to implementing the UNCAT convention, it will be very impossible for Indonesia to be free from torture. Therefore, there needs to be a strong commitment from the government along with concrete or real steps from the Indonesian government, because the challenge that is so big is the challenge of declaring war against torture.

As a country party to the convention, Indonesia has obligations to implement the UNCAT mandate, especially as stated in Article 2 UNCAT. According to this convention, each country party to the convention is obliged to take legislative, administrative and judicial measures, or other effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment, within its jurisdiction. By looking at the contents of the Convention, these steps are steps that must be taken by Indonesia to ensure: i) Anti-Torture Norms as regulated in UNCAT are adopted in its national legal system, ii) there are effective procedures for preventing torture; and iii) the existence of a support system that is indirectly able to prevent the development of torture practices.

Understanding in society regarding law only focuses on law as rules, norms and principles. In this case, law must be seen as a system consisting of three components, namely legal substance (as legal products, policies, statutory regulations), legal structure (institutions or law enforcement), and legal culture (legal culture includes ideas, attitudes, beliefs, expectations, and views about the law). Awareness regarding women's rights in society cannot be created by itself without social engineering efforts. This condition can be achieved if all levels of society, both at the executive, legislative, judicial and community levels, have a complete

understanding of women's HAM and this is our shared responsibility.

Next are structural obstacles. In this case, the public's understanding or understanding of law enforcement officials regarding the issue of violence against women is not yet gender sensitive, and there is even a tendency not to side with women as victims. This problem is not only due to the absence of a gender perspective or lack of understanding among law enforcers, but also sometimes due to misunderstandings. There are some who think that acts of violence against women are only physical, even though behind this there is a very basic problem that is not understood, where acts of violence against women can also occur non-physically. Non-physical what is meant here is psychological, economic, socio-cultural and even political influence. As a result of this understanding, the cases handled by the police seem to be more about cases of physical violence, without touching on psychological violence. Strict structures and procedures can influence law enforcement and can even prevent them from making breakthroughs and new interpretations.¹⁶

The third obstacle comes from a culture that is closely related to "patriarchal" culture, or "male-dominated culture" adopted by society which is not accommodating to women's problems and those concerned (the women themselves) do not have the desire to fight for them. Right or stupid. Women victims of violence to take legal action.

In Indonesia, victims of violence against women do not receive adequate legal protection. Various legal products have not responded to the needs of women as victims, so that when victims have to face the justice process they do not receive protection but there is a tendency to be blamed or be seen as having played a role in the violence. Treatment. This condition really hinders women from fighting for their rights.

2. Human Rights Perspective on Women Victims of Sexual Violence

One of the gifts that Almighty God has given to his creation is the rights granted to humans, namely human rights, which cannot be separated from the individual or the individual existence of human beings, let alone abolished or revoked. Human rights cannot be abolished for any reason, not even for the reason of power.

So, if this happens, it will have a huge impact on humans, namely the loss of true human dignity as the core of human values. However, this does not mean that these human rights can be realized absolutely, especially if they violate other people's human rights, because after all other people have human rights that we must respect and protect. So it cannot be justified if you fight for your own rights, while other people's rights are ignored. If this happens then it is also an inhumane act. Thus, we must realize that our human rights always border on the human rights of other people, therefore compliance with legal norms is very important.

Based on the provisions in Article 1 (1) of the Human Rights Act, human rights are the most essential rights possessed by humans and cannot be contested by anyone. Therefore, regarding human rights, the state as protector of its citizens is expected to accommodate the interests and rights of its citizens.

There are various human rights that coincide with the rights of victims of sexual violence against women, including the right to equal treatment before the law and government, which is the right to be related to legal life and government or the right to legal equality. Legal human rights include: The right to equal treatment before the law and the right to legal assistance and protection. In addition, there is the right to assistance from the beginning of the investigation process, all the way through the investigation and up to the trial. The realization of human rights in a country is inseparable from the obligations assumed by a country or the people of that country, thus forming a harmonious balance between human rights and obligations.

Furthermore, while drafting the International Bill of Rights, the United Nations began to use treaties to guarantee certain areas of human rights. One of these is the most important women-specific convention ratified by Indonesia, the Convention on the Elimination of All Forms of Violence against Women (CEDAW).

Article 2 of the UDHR is the basis for the prohibition and rejection of discrimination: "Everyone, without exception, shall be entitled to all the rights and freedoms set forth in this Declaration, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. "In addition, no distinction shall be made on the basis of the political, legal or international status of the country or territory from which the person comes, whether it be an independent country, a trust territory, a colony or other sovereign state."

The Human Rights Law, especially Article 45, states that "Women's rights are HAM". Thus, because women's HAM are HAM, these women's HAM must be protected, respected, maintained, and must not be ignored, reduced, or taken away by anyone.

Conclusion

One of the social problems in Indonesian society today is the problem of violence against women. However, it is very unfortunate that the criminal law (KUHP) in force which is intended to protect victims of sexual violence, seems to still be haphazard in its implementation. So it does not show any bias towards victims of criminal acts of violence against women. Therefore, it is not surprising that there are victims (women) who experience sexual violence who do not want to report it to anyone, whether reporting it to the authorities, community leaders, people around them, their own family and friends. But just leave it alone with a heart full of wounds, trauma and depressed feelings. So his right to justice is allowed to pass him by, even though the person concerned has the right to justice. The victim of (sexual) violence is afraid to report the problem, because he feels there is a lack of legal protection that guarantees protection for him. The rules of criminal law (KUHP) show little support for victims of (sexual) violence. In fact, one of the most urgent problems currently is the problem of sexual violence against women, which has recently become increasingly common in cases of sexual violence.

Suggestions

Regarding sexual violence, which currently does not have specific regulations, creating laws and regulations related to sexual violence is considered important because as a form of state, it guarantees fair legal certainty for all Indonesian people. It is then hoped that women who experience sexual

¹⁶ S. Ruhani & Y Susi Eja, *Kekerasan Terhadap Perempuan di Ruang Publik*, Pusaka UGM: Yogyakarta, 2002.

violence can immediately report the problem to the authorities, or to village officials in their area or to their own relatives. This is intended so that sexual violence that occurs can be immediately processed according to applicable legal regulations.

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