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The urgency of the criminal act of sexual violence as the empowerment of women's rights

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Abstract--Efforts to discriminate against women in the form of actions carried out based on gender differences, with the aim of attacking the dignity and worth, harming or endangering women. Discrimination against women can occur in the form of violence that attacks physically, psychologically, and sexually. In the development of an increasingly rapid and sophisticated world as it is today, crimes are not only committed directly through physical contact. However, it can also be done online by means of technology and the internet. The problem that then arises is whether the instruments in the enforcement of women's human rights, especially in their efforts to prevent and reduce the number of sexual violence, are sufficient to serve as a legal umbrella that can protect women's rights. This research is a normative juridical research, namely legal research on legal principles, legal regulations and comparative legal inventory of positive law. The normative legal research studied is library material or secondary data in the form of primary, secondary and tertiary legal materials needed in discussing legal issues in this study. Research is preferred in the form of research that prioritizes secondary data. The importance of the existence of a law that specifically regulates sexual violence is as follows: 1) The number of sexual violence in Indonesia continues to increase. 2) Cases of sexual violence have caused a lot of harm to women as parties who often become victims. 3) There is no deterrent effect for perpetrators after the incident 4) Enforcement of cases of sexual violence often does not have a victim's perspective. 5) Lack of legal instruments that are able to maximally resolve any sexual violence that has occurred, especially from the aspect of the availability of regulations. 6) In order to reduce the number of sexual violence, it is necessary to optimize the function of the commissions that oversee various sectors of sexual violence cases. 7) The prosecution of cases of sexual violence is considered less firm. 8) The importance of maximizing the function of rehabilitation and proper recovery for victims of sexual violence. 9) Access to seek, seek, and

obtain justice for victims 10) The justice system for sexual violence, especially against children, has not been supported

Keywords---gender, sexual violence, marriage law, tpks law, pkdrts law.

Introduction

Human rights are basic rights inherent in every human being naturally because humanity is direct. These human rights apply universally, which means they apply to everyone without any distinction based on race, ethnicity, religion, or gender. In Indonesia, the legitimacy of the guarantee of the protection of human rights has been clearly regulated in the laws and regulations. Despite going through a long history of discussion, the regulation on human rights ultimately leads to the recognition of human rights which have been clearly and clearly stated in the Constitution and other laws, one of which is Law Number 39 of 1999. Talking about equal rights based on gender, biologically humans can be distinguished between men and women.

Therefore, human rights are attached to both of them. However, in reality there is often a different treatment of women. Women are often considered only as domestic creatures, so it is known that there is a term that women only need to take care of three things. These three things include the kitchen, the well and the mattress. Women are also included in a group that is vulnerable to actions that can damage or injure their dignity, such as violence, rape or harassment.

Such treatments occur because of the position of women who are considered weak and inferior to men. Women are human beings who are entitled to the same rights as men*. For example, the right to education, the right to a decent life, the right not to be tortured and enslaved, and other human rights. Discussions that previously only started with small groups began to expand and create more serious and universal discussions.

The United Nations, which is the starting point for the formation of various guidelines for countries in the world in the life of the nation and state, is the forum for voicing the aspirations of women. The discussion on women has begun to reach the international level, including demands for equality for the position between women and men and the need for equal rights. The struggle of women who have gone through a long process until now has yielded results, so that several instruments, both international and national, have been formed that provide guarantees for the protection of women.† In the national scope, for example, women do get a special place through the regulation of the protection of human rights guaranteed in Law Number 39 of 1999 concerning Human Rights.

* Knut D Asplund, 2008, Suparman Marzuki, Eko Riyadi, Hukum Hak Asasi Manusia, Yogyakarta: PUSHAM UII, p. 269

† ibid

In general, the rights granted to women in the law are the same as those of men, but women's rights are further emphasized. Women's human rights are based on gender perspective rights and anti-discrimination rights. In addition to being contained in Law Number 39 of 1999, detailed arrangements for the protection of women's rights are contained in several laws and regulations that are still scattered, such as the Criminal Code (KUHP), Law Number 1 of 1974 concerning Marriage and Law No. -Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). However, of course, the existing formal rules do not necessarily eliminate various efforts of discrimination and marginalization.

Efforts to discriminate against women in the form of actions carried out based on gender differences, with the aim of attacking the dignity and worth, harming or endangering women. Discrimination against women can occur in the form of violence that attacks physically, psychologically, and sexually. In the development of an increasingly rapid and sophisticated world as it is today, crimes are not only committed directly through physical contact. However, it can also be done online by means of technology and the internet. The ease of technology and internet access has led to the development of various kinds of violence experienced by women online. Whereas according to the mandate of the Declaration of Human Rights, whoever it is, whether it is a woman or a man, must be free from various violent and discriminatory efforts, the protection of women's rights has been recognized by the world as part of the protection of human rights. Thus, whether it is carried out in person or online, violence against women must be eradicated and the protection of women's human rights, which is essentially a human being, is guaranteed. The problem that then arises is whether the instruments in upholding women's human rights, especially in their efforts to prevent and reduce the number of sexual violence, are sufficient to serve as a legal umbrella that can protect women's rights. The purpose of this paper is to find out the urgency of the TPKS Law related to women's rights.

The urgency of this research theoretically, is expected to be useful for the development of legal knowledge and insight, especially civil law, considering that this research is aimed at the application of principles and rules related to women's rights. Practically, the results of this research, for society in general and women in Indonesia in particular.

Methods

This research is a normative juridical research, namely legal research on legal principles, legal regulations and comparative legal inventory of positive law. The normative legal research studied is library material or secondary data in the form of primary, secondary and tertiary legal materials needed in discussing legal issues in this study. Research is preferred in the form of research that prioritizes secondary data

Discussion

Women who are biologically different from men, have long been treated as secondary humans. Women are a group vulnerable to various kinds of violations of law and human rights, in a conflict or war women are often victims of slavery,

prostitution, rape, and various other crimes. Women also do not have autonomy over themselves, because they always belong to men. As a child or unmarried she belongs to her father or brother, and when married belongs to her husband who can determine various public affairs. There is no doubt why there is so much violence that occurs in the house, such as beatings, torture, neglect, and rape.

Gradually, thoughts emerged about women's[‡] duties only in domestic affairs or what in society is referred to as the three obligations of women, namely taking care of the well, the kitchen, and the mattress. Concepts like this cannot be separated from the view of gender. Gender itself must be separated from sex. Based on gender, women and men are naturally different. While gender is a cultural concept that seeks to create differences in behavior, mentality and emotional characteristics between men and women that develop in people's lives. The existence of a social construct regarding gender differences then places the position of men to be higher and superior to women. Men are considered stronger than women and vice versa, women are weaker and powerless.

The placement of men as superior beings and women as subordinates is what is referred to as patriarchal culture. Such a culture will lead to discrimination, marginalization, exploitation and violence against women. Until finally, efforts were born to equalize the rights and roles of women against men. Despite going through a long history to date. Women who are finally aware of the oppression of the existing culture, gradually voice their rights to be given the same treatment in social life[§]. Thus, several legal provisions or instruments have emerged containing gender equality and anti-discrimination against women. Human rights instruments that already exist in Indonesia today, for example, will not be released with the establishment of human rights enforcement instruments at the international level.**

In this case, the instruments for the enforcement of women's rights that are being studied in this paper are also included in the discussion. The current international instruments began with the formation of the United Nations (UN) on June 26, 1945.⁷ Then the next step was the United Nations to make a charter containing the reaffirmation of the nation's belief in the existence of human rights, the worth and dignity of every human being and equal rights between men and women. This Charter is the first international instrument that regulates the existence of equal rights for women and men.⁸ Article 1 of the United Nations Charter states that one of the goals of the United Nations is to achieve international cooperation in promoting and increasing respect for human rights

[‡] Yeni Handayani, 2016, "Perempuan dan Hak Asasi Manusia", Jurnal Rechtsvinding Online, Available on website:

https://rechtsvinding.bphn.go.id/jurnal_online/20161014_PEREMPUAN%20DAN%20HAK%20ASASI%20MANUSIA.pdf, Accessed November 11th, 2020, p. 1.

[§] Anwar, "Implikasi Budaya Patriarki dalam Kesetaraan Gender di Lembaga Pendidikan Madrasah (Studi Kasus pada Madrasah di Kota Parepare)", Jurnal AlMaiyyah, Vol. 10, No. 1, 2017, p. 47.

** Nanang Hasan Susanto, "Tantangan Mewujudkan Kesetaraan Gender dalam Budaya Patriarki", Jurnal Muwazah, Vol. 07, No. 2, 2015, p. 122

and the liberation of all human beings with does not address issues of race, gender, language or religion.^{††}

Upholding Women's Human Rights Sexual violence is a hot topic that is always discussed in the community. The number of cases of sexual violence with women as victims has led to the emergence of sexual protection emergencies. Data from the National Commission for the Protection of Women (Komnas Perempuan) shows the number of violence against women in 2016 was 259,150 cases, this number then increased in 2017 to 348,446, and increased again in 2019 to 431,471 cases.^{‡‡} The high number of cases of sexual violence has made many parties demand the DPR RI to draft a law that provides protection for victims of sexual violence and include it in the national legislation program or prolegnas.

Then by the DPR, this push was responded to by the inclusion of the Bill on the Elimination of Sexual Violence (RUU PKS) in the priority prolegnas. However, the discussion of the bill was very protracted. Until finally it was removed from the list of priority prolegnas. The discussion on the PKS Bill, which has not yet come to an end, can be seen as the government's lack of seriousness in considering cases of sexual violence, especially against women, as important. Although, as in the previous subtopic, it has been mentioned that Indonesia has CEDAW or the Convention on the Elimination of All Forms of Discrimination Against Women. Ratification of the convention is contained in Law No. 7 of 1984.^{§§}

There are five points that the Government and DPR should focus on on the PKS Bill. First, it is necessary to affirm nine forms of sexual violence, namely sexual harassment, sexual exploitation, forced contraception, forced abortion, forced marriage, rape, forced prostitution, sexual slavery, and sexual torture. Second, legal procedures including the evidentiary system must be sensitive and based on the experience of the victim. Third, provide integrated and integrated legal services for victims. Fourth, giving recognition and always prioritizing the rights of victims and realizing the state's obligation to fulfill and protect the rights of victims. Fifth, there must be an emphasis in the PKS Bill so that it can change the paradigm of cases of sexual violence in the community.

Overall, the existing legal system has not comprehensively guaranteed the elimination of sexual violence including aspects of prevention, protection, recovery and empowerment of victims. Existing regulations still see sexual violence as a violation of public peace and order, this creates a perception that sexual violence is new.

The descriptions that have been presented in the previous paragraphs open the discussion regarding the urgency of the existence of legal instruments in the form of regulations that are able to provide an umbrella for sexual violence itself. Both

^{††} Osgar S. Matompo, Muliadi & Andi Nurul Isnawidiawinarti A., 2018, *Hukum dan Hak Asasi Manusia*, Malang: Intrans Publishing, p. 88.

^{‡‡} Komnas Perempuan, CATAHU, *Kekerasan Meningkat: Kebijakan Penghapusan Kekerasan Seksual Untuk Membangun Ruang Aman bagi Perempuan dan Anak Perempuan*, 2019, p. 1-2

^{§§} Osgar S. Matompo, Muliadi & Andi Nurul Isnawidiawinarti A., *Hukum dan Hak Asasi Manusia*, p. 124

from the point of view of the victim, the perpetrator, as well as the conditions that create opportunities for sexual violence to occur. The existence of several regulations that are substantially preventing sexual violence such as the PKDRT Law (Elimination of Domestic Violence) and the Child Protection Act may have already shown their existence. However, what is expected here is not a regulation that only covers a small scope as small as a household or children. Referring to the previous paragraph, it has been said that sexual violence is an emergency, not only for certain age groups or parties, but for all layers and sections that have the potential to experience sexual violence. This means that both the Criminal Code, the PKDRT Law and the Child Protection Law are still not substantial enough to accommodate sexual violence.

The need for a law that is able to meet the community's need for the gravity of sexual violence is increasingly cornered. The emptiness that arises from all existing regulations requires a law that can complement it with its special nature to regulate and oversee all forms of sexual violence (*lex specialis propensionem sexuales identitatemque*). So that the existence of a law that specifically regulates sexual violence is very important to provide guarantees of protection and legal certainty for victims of sexual violence within a more perfect range. So, what is clearly emphasized in this study is that in this country there is still a legal vacuum in terms of sexual violence, both verbal and in action. This is because the essence of sexual violence lies in "threats" (verbal) and "coercion" (actions). Not only that, even the law that specifically regulates sexual violence or in this case is the TPKS Law can not only fill the legal vacuum but is also a commitment of this nation to carry out the 5th point Sustainable Development Goals (SDGs), which is about gender equality. and protection of women.

Regarding the SDGs itself, it has been stated in Presidential Regulation Number 59 of 2017 concerning the Implementation of Achieving Sustainable Development Goals. Thus causing the need for a law that specifically regulates sexual violence is increasingly justified normatively. The law that has specific material regulating sexual violence in Indonesia has actually been planned since 2015. The bill is called the Elimination of Sexual Violence or commonly known. From the point of view of the importance of the PKS Bill being passed into the PKS Law, it produces several important points, these points the result of comprehensive observations made by the author related to the realm of sexual violence that has been alluded to in the PKS Bill. Therefore, it is necessary to clearly see what kind of reasons seem to be the driving force.

Conclusion

The importance of the existence of a law that specifically regulates sexual violence is as follows: The number of sexual violence in Indonesia continues to increase. Cases of sexual violence have caused a lot of harm to women as the parties who often become victims. There is no deterrent effect for perpetrators after the incident. Enforcement of cases of sexual violence often does not have a victim's perspective. The lack of legal instruments that are able to maximally resolve any sexual violence that has occurred, this is mainly from the aspect of the availability of regulations. In order to reduce the number of sexual violence, it is necessary to optimize the function of the commissions that oversee various

sectors of sexual violence cases. The prosecution of cases of sexual violence is considered less firm. The importance of maximizing the function of rehabilitation and proper recovery for victims of sexual violence. Access to seek, seek, and obtain justice for victims. The justice system for sexual violence, especially against children, has not supported

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