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Moral and Legal Problems Reviewed from: "Law no. 12 of 2022 Concerning Sexual Violence" Regarding Sexual Violence Cases in Indonesian Higher Education

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Abstract: This research entitled Moral and Legal Problems Reviewed from: "Law no. 12 of 2022 concerning Sexual Violence" Regarding Sexual Violence Cases in Indonesian Higher Education. Sexual violence is one of the problems that arises in society that has received special attention in recent years. Not only sexual violence against the opposite sex, sexual violence between the same sex often shows a significant increase in the higher education environment, both against the opposite sex and the same sex, which has the potential to damage the generation of people who oppose the implementation of the law in Indonesia. This research aims to analyze legal and social views regarding sexual violence that occurs in Indonesian universities. The author uses qualitative research methods and a juridical-sociological approach aimed at looking at the problem of sexual violence from a human rights perspective and the effectiveness of laws and regulations governing sexual violence. The research results show that legal protection efforts for victims of sexual violence are still lacking in the implementation of the law and there is a lack of understanding regarding victims' rights. This statement underlines several important challenges faced in handling cases of sexual violence, namely allowing an increase in same-sex rates, social stigma and legal uncertainty. Therefore, this research suggests that awareness among the public needs to be increased and laws that guarantee recovery for victims of sexual violence.

Keyword: Sexual Violence, Legal Protection, Higher Education.

INTRODUCTION

"Moral" comes from the Latin word "mos" which means habit. Morality, looks at the way humans interact with others in actions that have positive values. Morals are a person's actions, behavior or words when interacting with other people (Ikhnadito, 2023). When something a person does is in accordance with the values that apply in society and is acceptable

and pleasing to the social environment, then that person is considered to have good morals, and vice versa (Muallif, 2022). The definition of morals is closely related to moral and legal problems, where morality includes norms that determine good or bad behavior in society. This problem arises when moral values are not in line with applicable laws, creating a conflict between how something is considered ethical by society and how it is regulated by law.

Relationships that are carried out by force are referred to as sexual violence (Rahmasari, 2022). Any act that degrades, insults, harasses, or attacks a person's body and/or reproductive function due to inequality of power and/or gender, which can cause psychological and/or physical suffering, reproductive health problems, and hinder access to safe and optimal education, constitutes sexual violence. According to "Law no. 12 of 2002, sexual violence consists of all acts that fulfill the elements of a criminal offense as regulated in this Law, as well as other acts of sexual violence as regulated in the Law to the extent specified in this Law." According to "Article 2 of Law no. 12 of 2002, criminal acts of sexual violence include rape, obscene acts, child sexual intercourse, child pornography, forced prostitution, human trafficking that leads to sexual exploitation, and non-physical harassment." Even though the perpetrator convinces the victim and himself that he committed the act in a romantic context, sexual harassment is basically an abuse of power or authority. In other words, when the perpetrator succeeds in degrading another person sexually, he or she will feel "important." (Zarkasi & Siregar, 2024).

One of the most serious forms of human rights violations is sexual violence. Sexual violence directly damages a person's dignity, freedom, and physical and psychological integrity (Zahra et al., 2024). This action not only hurts the victim personally, but also shows the imbalance of power in society which often ignores everyone's basic rights. Legally, various national and international human rights instruments stipulate that everyone has the right to protection against all forms of violence, including sexual violence. However, the facts show that sexual violence is still a common problem and often does not receive adequate treatment. To ensure respect for human rights, all parties are responsible for preventing, protecting victims, and providing fair and equal access to justice. Sexual violence can occur in any environment, including the university environment.

As scientific institutions, universities have the responsibility to organize high-level education and teaching, and prioritize education and teaching based on Indonesian national culture, in order to form quality human resources. However, despite their important role in shaping the next generation, many universities face serious problems in the form of sexual violence. These cases often occur on campus and involve students and teachers, creating an unsafe environment for them. Victims of sexual violence not only have the potential to occur against students but also among lecturers, teaching staff, and other people on campus. Those who may be perpetrators of sexual violence can come from various backgrounds, including those who behave well and are smart, as well as fellow students who are seniors, juniors, or of the same year.

As a rule of law country, Indonesia faces serious problems related to Gender-Based Sexual Violence (KBG). Data shows a significant increase in cases, with 338,496 cases of violence against women recorded. This figure has increased by 50% compared to 2021 which recorded 327,629 cases (Quran, 2022). The issuance of Minister of Education and Culture Regulation Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education gives hope for victims to receive legal protection and justice. This Minister of Education and Culture Regulation is also a preventive step in preventing sexual harassment in the campus environment. Even though administrative sanctions have been regulated, sexual violence can still be processed through criminal channels, in accordance with Article 18 of the Minister of Education and Culture Regulation. Comprehensive protection for victims, both psychological, physical and legal, is very important. World Health Organization, World Report on Violence and Health UN World Health Organization 2002 states that this protection includes

the rights of victims because sexual violence has a broad impact on physical, mental and social health. Ironically, the handling of cases through the judiciary is still minimal because of the stigma that blames the victim. Victims who dare to report often face obstacles. Like the less serious response from law enforcement officials. The dilemma experienced by the victim is the main challenge in handling sexual violence in the tertiary environment.

The issue of sexual violence in Indonesian universities continues to be a major concern, indicating that there are complex moral and legal issues. Sexual violence is a serious violation that damages not only the victim's physical and emotional well-being, but also the moral foundations of society as a whole. Current data indicates that incidents of sexual violence on campus are not only increasing, but also involve various complex causal factors. This is a serious problem that requires handling from all parties. With a comprehensive strategy that includes education, law and morality, it is hoped that a safe and conducive academic atmosphere will be created for the entire higher education community.

METHOD

In a journal entitled "Moral and Legal Problems reviewed from: "Law no. 12 of 2022 "Sexual Violence in Indonesian Higher Education", the author used qualitative research methods with a juridical-sociological approach. This method was used to analyze in depth the normative aspects of "Law no. 12 of 2022 concerning Criminal Acts of Sexual Violence" (UU TPKS) and its implementation in tertiary institutions in Indonesia.

The qualitative method was chosen because it allows for an in-depth exploration of the legal and social dynamics surrounding the problem of sexual violence in academic institutions, as well as providing space for a more comprehensive interpretation of the applicable legal regulations. The juridical-sociological approach itself is a research method that combines analysis of legal norms with social realities in society.

In the context of this research, this approach not only focuses on studying written law such as laws, statutory regulations, and legal doctrine, but also examines how the law is applied in real life, especially in the university environment. Thus, this approach aims to understand the extent of the effectiveness of the TPKS Law in the aspect of providing guaranteed protection for every victim of sexual violence in higher education, as well as how these legal regulations interact with the social, cultural and moral values that develop in society.

RESULTS AND DISCUSSION

Sexual Violence in Indonesian Higher Education from a Human Rights Perspective

Higher education is an academic environment that should uphold freedom of thought, security and welfare for the entire academic community. However, sexual violence is still a serious problem in Indonesian universities. There are many cases of sexual violence committed within universities.

According to data sourced from the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia as of April 2024, cases of sexual violence in tertiary institutions that have occurred have reached up to 2,681 cases (Fhuwmy, 2024). Victims of sexual harassment in universities are often linked to wearing revealing clothes, when in fact the victims are not only people who wear revealing clothes (Wartoyo & Ginting, 2023). The occurrence of an incident of sexual violence has nothing to do with the clothes a person wears, but rather the imagination of the perpetrator of sexual violence which is already negative. Sexual violence in higher education is caused by various factors, both structural and cultural. First, abuse of power, inequality of power can be abused by the more dominant party. Second, the lack of understanding about sexual violence, human rights and gender equality means that many people are unaware of the boundaries of social interaction. Third, many victims ultimately hesitate to report cases of sexual violence for fear of social stigma, threats from the perpetrator, or lack of an effective support system.

Victims of sexual violence are often viewed badly by society; however the victim is the victim, the perpetrator of the sexual violence is at fault. If the victim does not dare to speak up, what happens is that the perpetrator feels safe and will repeat it over and over again.

Sexual violence can occur because the perpetrator does not understand and respect someone's human rights. From a human rights perspective, sexual violence clearly constitutes a fundamental violation of individual rights, which include the right to security, dignity and freedom from degrading treatment. "Article 1 paragraph (6) of Law Number 39 of 1999 concerning Human Rights explains that a violation of human rights is any act of a person or group of people, whether intentional or unintentional, that limits and/or revokes the human rights of a person or group of people.". Sexual violence is a serious human rights violation, an act in which the perpetrator deprives the victim of their right to freedom. Sexual violence violates the right to personal security because the victim is forced to experience unwanted actions.

In fact, "Law Number 39 of 1999 concerning Human Rights" guarantees that everyone has the right to protection from sexual violence. "Article 1 paragraph (1) of Law Number 39 of 1999 concerning Human Rights reads thus, human rights are rights inherent in the nature and existence of humans as creatures of the Almighty God who must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity.". Every academic community should have the right to a learning environment whose security is guaranteed and free from any threats. Human rights give every individual the right to a safe environment and free from all forms of violence. Legally, sexual violence violates the Universal Declaration of Human Rights (UDHR) Articles 3 and 5, which emphasize that every individual has the right to life, liberty and personal security, and must be free from inhumane treatment.

From a human rights perspective, victims of sexual violence have the right to have access to a transparent and fair legal system to take action against the perpetrators. Victims also have the right to have their identities protected so that they do not experience discrimination. Victims have the right to receive all physical and mental health services, such as psychological counseling and social support. Victims will definitely feel very humiliated after receiving sexual violence, they will feel very dirty and disgusting. Therefore, handling this case must not only depend on individual actions, but must be a collective responsibility of educational institutions, the government and the wider community. Universities have an important role in ensuring the protection of victims, upholding justice, and providing a learning environment that is free from the threat of sexual violence. Thus, cases of sexual violence in universities are not just a matter of internal discipline, but are a form of human rights violation that must be dealt with seriously.

Effectiveness of Legal Protection Law no. 12 of 2022 on Sexual Violence in Higher Education

The Indonesian government passed "Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence" with the aim of providing legal protection for victims, clarifying law enforcement mechanisms, and preventing the occurrence of sexual violence in various sectors, including higher education institutions (Salsabilla & Sumanto, 2024). Universities have a crucial role in implementing the TPKS Law through various policies and protection mechanisms for students, lecturers and educational staff. Implementation of this law includes the formation of a Task Force for the Prevention and Handling of Sexual Violence (Satgas PPKS) in each tertiary institution, as mandated in Minister of Education and Culture, Research and Technology Regulation No. 30 of 2021. In addition, universities are required to provide safe, transparent and accountable complaint services, which enable victims to report incidents without fear of threats or discrimination. Educational institutions also have a responsibility to enforce discipline against perpetrators of sexual violence, both in the form of academic and

legal sanctions in accordance with the provisions of the TPKS Law. Education and outreach to the entire academic community is an important part of protecting the university community from the threat of sexual violence.

Even though the TPKS Law has provided a strong legal basis for dealing with sexual violence in higher education environments, there are still various challenges in its implementation. One of the challenges is the lack of understanding and socialization about this law, both among students, lecturers and educational staff (Salsabilla & Sumanto, 2024). In addition, patriarchal culture creates minimal community participation in preventing sexual violence and makes victims often reluctant to report it for fear of stigma or negative impacts on their academics. Another obstacle faced is the lack of resources and support for victims, including a lack of professional staff to provide legal and psychosocial assistance. Some universities are also still hesitant to take firm action against perpetrators, especially if the perpetrator is an individual who has a high position in an educational institution. In addition, there is still an imbalance in law enforcement mechanisms, where some cases of sexual violence are difficult to process legally due to lack of evidence or administrative obstacles.

The implementation of the TPKS Law is still not fully effective in reducing the number of sexual violence. So that the TPKS Law can be more effective in providing legal protection in higher education, various strategic steps are needed.

Increasing socialization and education about this law is very necessary so that the entire academic community understands their rights and obligations in preventing and dealing with sexual violence. Apart from that, the role of the PPKS Task Force needs to be strengthened by providing adequate training and resources so that it can work professionally in handling cases of sexual violence. Transparency in the process of reporting and handling cases also needs to be improved by providing guaranteed protection for victims so that they do not experience victim blaming.

In addition, collaboration with law enforcement officials and civil society organizations can ensure that victims receive optimal justice and protection. Although the TPKS Law guarantees legal protection for victims, its effectiveness also depends on the victim's courage to report it. "Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence" is the basis for legal protection for victims of sexual violence in Indonesia, including in tertiary institutions. Even though it has a strong legal basis, challenges in implementation still need to be overcome through education, improving reporting mechanisms, and strengthening the role of educational institutions in preventing and dealing with sexual violence. With strong commitment from various parties, it is hoped that the TPKS Law can be implemented effectively so that a safer university environment can be created and there will be no more sexual violence.

Anticipate Sexual Violence So It Doesn't Increase LGBT

Moral problems in Indonesia related to sexual violence between individuals of the same gender reflect challenges in the application of law and public understanding. In the legal system in Indonesia regarding sexual violence, it appears that the current TPKS Law tends to focus more on prohibiting sexual violence that occurs between individuals of different genders (heterosexual), while the provisions regarding sexual violence involving individuals of the same sex are still less clear. This creates the impression that sexual violence between members of the same sex is not explicitly protected in law. If this is not regulated, it is possible to make people think that sexual violence cannot be carried out against the opposite sex, but it is permissible to do it against members of the same sex. Sexual violence involving people of the same sex is regulated in the Criminal Code (KUHP), namely in Article 292 of the Criminal Code, but there is no specific regulation in "Law no. 12 of 2022 concerning Crimes of Sexual Violence". This could be a loophole that allows sexual violence to occur without adequate legal protection, especially if you see that the existing provisions are more focused on heterosexual relationships. In "Article 292 it is stated that an adult who commits an obscene act with another person of the

same sex, whom he knows or should reasonably suspect is not yet an adult, is threatened with imprisonment for a maximum of five years".

Indonesian society still has a strong stigma against same-sex relationships, which is often rooted in cultural and religious norms. This causes sexual violence in this context to often be ignored or not reported. Even though Indonesia rejects and does not legalize same-sex relationships or so-called LGBT, this should not be a reason not to protect individuals from sexual violence, regardless of their sexual orientation. Sexual violence is a problem that must be addressed regardless of sexual orientation, and therefore, there needs to be more specific regulations prohibiting sexual violence against people of the same sex. This will emphasize that sexual violence is not justified in any context, whether between individuals of the opposite sex or the same sex. Making regulations to prohibit sexual violence against people of the same sex does not mean that Indonesia approves of LGBT. In fact, this regulation needs to be confirmed in the law in order to prevent the increase of LGBT.

It is important to remember that there is no reason that can justify sexual violence, because this is a violation of human rights, whether it occurs between individuals of different sexes (heterosexuals) or people of the same sex (homosexuals). Thus, there should be greater efforts from the government and legal institutions to address this inequality by issuing clearer and more comprehensive regulations, which not only protect victims of sexual violence originating from heterosexual relationships but also those who experience sexual violence in same-sex relationships, to ensure that every Indonesian citizen experience equality and justice, without exception.

Sexual Violence is a Serious Threat to National Morality

Policies regarding sexual violence against same-sex individuals in Western European countries are generally based on the principles of equality and non-discrimination. This shows that legally, sexual violence is treated the same regardless of the sexual orientation of the victim or perpetrator. The Netherlands is known as one of the most progressive countries in the world, in terms of protecting same-sex rights. Sexual violence is handled within Criminal Code. As in Article 242 "Rape" (Rape), where this article criminalizes forced sexual relations with violence or threats of violence. This article does not mention gender or sexual orientation, so it applies to all rape cases, regardless of the gender or sexual orientation of the victim or perpetrator. Furthermore, in Article 246 "Indecent Assault" (Fornication), criminalizes indecent acts committed with another person without their consent. Just like the rape article, this article also applies to all cases of indecent assault. This law applies to everyone regardless of sexual orientation, gender identity, or other status. Thus, there is no legal difference in how heterosexual or homosexual sexual violence is handled. The Netherlands has a broad definition of sexual violence, covering a wide range of acts from verbal harassment to rape. Dutch law places great emphasis on consent, with sexual relations without free and voluntary consent considered sexual violence and a criminal offence. The Netherlands has a variety of support services for victims of sexual violence such as crisis centers, hotline, counseling, and legal assistance. In principle, these services are open and inclusive to everyone regardless of their sexual orientation. Therefore, looking at the Netherlands, Indonesia is deemed to need to emphasize that sexual violence against the opposite sex or the same sex is not permitted. The prohibition of sexual violence against members of the same sex also needs to be emphasized in the law, not just in the Criminal Code. In this case, this does not mean approving or even legalizing same-sex relationships, but rather protecting the rights of every individual regardless of sexual orientation. Because sexual violence is a very serious threat to national morality.

From a morality perspective, sexual violence is a serious violation of the values and norms that apply in society, so that the perpetrators of these acts must be held accountable for their actions. This obligation to account is based on the perpetrator's capacity as a human being who has reason, a special gift that distinguishes humans from other creatures. Considering that

humans are entities gifted with reason, every action they take must always be evaluated and considered from the "actus humanus" perspective. The concept of "actus humanus" emphasizes that human reason must function optimally, so that the individual concerned has full constraints and is responsible for every action. In other words, the possession of reason gives humans sufficient knowledge and freedom to determine the direction of their actions, so that they can differentiate between good and bad actions, and understand the consequences of every choice they make. Acts of sexual violence certainly have a detrimental impact on the moral and ethical values that underlie a society, some of which are:

- a. Contrary to Human Values, not only does sexual violence cause physical and emotional harm, it also undermines noble human values. This act destroys a person's honor and self-esteem, and denies the fundamental rights that every individual should have.
- b. Undermining the Foundations of Trust and Social Solidarity, because sexual violence creates fear, suspicion, and even hostility between people which can eliminate feelings of trust and social solidarity, where a sense of trust and social solidarity is one of the things that is really needed in building a harmonious and prosperous society.
- c. Shaping the Character of the Next Generation, the long-term impacts of sexual violence such as psychological trauma, mental health problems, and difficulty in establishing healthy relationships with those around you. This can certainly influence an individual's ability to become a productive and responsible member of society, as well as passing on positive moral values to the next generation.
- d. Normalizing violence, with a lack of regulation, handling and strict consequences for sexual violence, is feared to lead to the normalization of sexual violence itself, both sexual violence against the opposite sex and the same sex.

Therefore, sexual violence is certainly an act that is wrong and unacceptable regardless of the sexual orientation, gender identity, or other personal attributes of the parties involved. Sexual violence is a violation of basic human rights that cannot be tolerated under any circumstances. Every human being has the right to live without fear and free from all kinds of violence, harassment or sexual coercion.

CONCLUSION

Acts of sexual violence are a violation of morals and human rights that should not occur in Indonesia. Sexual violence is a serious human rights violation of individual rights. With the existence of Law no. 12 of 2022, victims of sexual violence in tertiary institutions should feel protected under the umbrella of law in Indonesia. However, the effectiveness of implementing this legislation is still lacking due to lack of public knowledge and outreach.

The implementation of the TPKS Law, which in terms of providing legal protection for victims, faces many challenges, such as a lack of understanding of the law, social stigma, and an imbalance of power between the perpetrator and the victim. It is feared that the regulation of the TPKS Law which focuses on sexual violence against the opposite sex could increase sexual violence against the same sex because it is not regulated. Sexual violence against the opposite sex and same sex is very contrary to moral values in Indonesia as a country that upholds religious values. Acts of sexual violence in tertiary institutions in Indonesia are quite serious human rights violations.

A comparison with the Netherlands is helpful in illustrating the need for legal recognition of sexual violence without limitations on the sexual orientation and gender of the victim or perpetrator. In this case, the regulatory articles regarding sexual violence against people of the same sex in Indonesian law need to be strengthened so that everyone can be guaranteed protection. With the commitment and participation of the entire community as well as the government in this country, creating a safer and more peaceful environment and better protection for victims can be created. The recommendation from this research journal is that it is hoped that there will be increased firmness in the implementation of the TPKS Law and the

rights that victims should receive as stated in Article 26 and Article 30 of Law no. 12 of 2022 which contains the rights to assistance, reporting and recovery of victims. Sexual violence against people of the same sex in higher education must be taken seriously by the law and the government. By protecting same-sex sexual violence, it does not mean that Indonesia recognizes sexual deviation. In this context, universities must also provide safe and transparent reporting services to improve the quality of life for a more prosperous life. The community must have a high enough level of awareness of Human Rights so that the academic environment of universities can feel safer and more comfortable.

Therefore, to overcome this problem, it is hoped that the addition of special provisions in the TPKS Law can be one solution. By including provisions that clearly regulate sexual violence between individuals of the same gender, it is hoped that legal loopholes can be prevented, which can be exploited by perpetrators. In addition, it is very important for society to increase education regarding human rights and gender equality. Society needs to be taught about the importance of respecting every individual regardless of sexual orientation. Legal awareness must also be increased so that victims feel safe to report cases of sexual violence without fear of stigma or discrimination.

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