
PROTECTION OF VICTIMS OF THE CRIME OF RAPE REVIEWED FROM LAW AND HUMAN RIGHTS

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ABSTRACT

Rape is an act of forcing sexual intercourse in any form against one's will or against one's will. This form of crime knows no gender, age, socioeconomic status, place, and time. Commitment and firmness in upholding human rights and guaranteeing that all citizens have equal standing before the law. Rape victims do receive attention, but often the attention given by human rights defenders is only partial, not optimal and is only used as an object of research. Legal protection is the most important thing in the elements of a rule of law, because legal protection is the right of every citizen and the obligation of the state as the organizer of protection. Normative juridical research methods, how to analyze library materials, namely primary and secondary legal materials. That humans must get protection from things that take away human rights in life, so women's human rights must be protected, respected, maintained, and cannot be ignored, reduced, or seized by anyone. It is a fact that acts of violence against women are a constant threat to women anywhere in the world and acts of violence against women have become a global issue. Law enforcement officials must simultaneously respect justice and human rights, although the balance between respect for truth and justice and respect for and uphold human rights values in resolving criminal incidents is very difficult to define. However, this difficulty should not become a narrow and rigid technical reason in giving the perpetrators of criminal acts freedom to freely move around in society.

Keywords: Rape, Protection, Human Rights

INTRODUCTION

The crime of rape is a form of violence against women which is an example of the vulnerability of women's position, essentially to men's sexual interests. The sexual image of women who have been used as men's sexual objects, turns out to have far-reaching implications in women's lives, to the point that they are forced to constantly face violence, coercion and physical and psychological torture. Attention and protection for the needs of victims of criminal acts of rape both from the criminal justice process and from certain social care facilities is an absolute part that must be considered in criminal law provisions and social regulations, whether from the executive, judicial and legislative institutions as well as from relevant social institutions. There is. Based on the aim of creating equal distribution of justice and public peace, the rights of victims of criminal acts of rape to be maintained are basically an integral part of human rights in the field of social security.

Rape is a very barbaric, immoral, despicable crime that violates the norm that the victims are women, adults and minors. This situation is very miserable for a woman when her dignity and honor are at stake. Based on women's cases, violations of women's rights and rape are interpreted as prohibited acts¹⁰

Rapists must be punished severely, causing a deterrent effect on rapists. There must be legal norms that regulate punishments that are not light for rapists, apart from that, clarity is also needed by law enforcement officials when applying these penalties as well. Rape is clearly regulated in Articles 285 and 286 of the Criminal Code (KUHP).

Rape victims must receive attention, but often the attention given from human rights circles is only

¹⁰ Achie Sudiarti Luhulima. *Pemahaman Bentuk-bentuk Tindak Kekerasan Terhadap Perempuan dan Alternatif Pemecahannya*. (Bandung: Alumni. 2000), hal. 1

half, not optimal and is only used as an object of research. As a result, it is difficult to guarantee the validity of data regarding rape cases, because there are still many victims who are unable to reveal the cases that happened to them because they are afraid of being used as material for public criticism.

Legal protection is a vital part of the aspect of a legal state. Legal protection is the right of every citizen and the obligation of the state as the maker of its protection. Because basically humans who become victims of rape have their rights taken away. The interests of human rights (HAM) are defeated by behavior that prioritizes barbarism (abomination). Human dignity, which is essentially upheld, is left to be polluted and castrated.

Efforts to protect the law regarding rape in Indonesia have good momentum due to legal development in the current development era, including the aim of implementing the preparation of a national criminal law system. The draft draft of the National Criminal Code, under the title "Criminal Acts Against Violating Morals in Public", Chapter human rights and legal protection for women.¹¹

The crime of rape in the Criminal Code is regulated in Article 285 which states that "Anyone who, through violence or threats of violence, forces a woman who is not his wife to have sexual intercourse with him, shall be punished for raping with a maximum prison sentence of twelve years." Article 285 of the Criminal Code can also be concluded that (a) the victim of rape must be a woman without age limit; (b) the victim must receive violence or threats of violence. A vital aspect of this crime is proof that under a certain age, a child who is a victim of the crime of rape must be protected from the law.

The crime of rape is generally regulated in Article 286 of the Criminal Code, which states that "Anyone who has sexual intercourse with a woman outside of marriage, even though it is known that the woman is unconscious or incapacitated, is threatened with imprisonment for a maximum of nine years." If we look at the formulation of the Criminal Code which regulates rape, there are many shortcomings in providing protection to the victims themselves. For example, there is no maximum limit on the sentence imposed for the perpetrator, so this weakness will be an opportunity for a "bad" judge to determine a verdict that is completely far from the expectations of the community, which of course will be very detrimental to the victim and more broadly. will tarnish the good name of the judiciary in Indonesia.

RESEARCH METHODS

This research is a type of normative legal research or what is often called doctrinal research. Soerjono Soekanto explained that normative legal research is research on legal principles, research on legal systematics, research at the level of legal synchronization, legal history research and comparative legal research.¹²

This article applies normative juridical research methods, how to analyze library materials, namely primary and secondary legal materials.¹³The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This writing also applies data analysis techniques with deductive logic. This conclusion is based on a literature analysis regarding the rules that explain the chapter on rape of minors. This brand dispute will be analyzed according to existing regulations, from a brand law perspective in order to understand its essence and intent in resolving the legal problems discussed in this research.

¹¹ Salam Amrullah, 2020, *Perlindungan Hukum Terhadap Korban Tindak Pidana Pemerkosaan*, Jurnal Andi Djemma | Jurnal Pendidikan P-ISSN : 2622-6537 & E-ISSN : 2622-8513 Volume 3 Nomor 1, Februari 2020, hal. 60

¹² Soerjono Soekanto, 2005, *Sosiologi Suatu Pengantar*, Rajawali, Rajawali Press, Jakarta, hal. 10

¹³ Khudzaifah Dimiyati & Kelik Wardiono, 2004, *Metode Penelitian Hukum, Surakarta:Fakultas Hukum UMS, hal. 4.*

RESULTS AND DISCUSSION

Legal Protection and Human Rights for Victims of the Crime of Rape

In Law of the Republic of Indonesia Number 31 of 2014, as in the amendment to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims regarding the rights of victims of criminal acts of rape outside of criminal law, there are also articles 6 paragraph (1) of Law Number 31 of 2014 explained that:¹⁴

"Victims of serious human rights crimes, victims of criminal acts of trafficking in persons, victims of criminal acts of torture, victims of criminal acts of sexual violence and victims of serious abuse, then have the rights as intended in article 5, and have the right to obtain: a) Medical assistance; b) Psychosocial and psychological rehabilitation assistance."

Victims of criminal acts of rape must receive medical assistance, psychosocial rehabilitation assistance and psychologists, because it does not rule out the possibility that victims of criminal acts of rape will experience physical injuries as a result of the violence carried out by the perpetrator of the rape, which then requires the victim's protection for medical services.

The victim factor has an important impact on finding a solution or dealing with rape cases. This requires courage from the victim to report the situation that happened to him to the police, because usually the victim is threatened with being raped again by the perpetrator and this situation creates feelings of trauma and fear. It is hoped that from this complaint, the case can be opened and an investigation process can be carried out until the victim gets justice for what happened to him.

Even though many rape crimes have been handled by the Court, the perpetrators of these cases have not been sentenced to the maximum punishment in accordance with the provisions of the Criminal Code (KUHP) CHAPTER XIV concerning crimes committed by moral violations (articles 281 to 296), in particular the rape section (article 285) regulates:

"Anyone who, through violence or the threat of violence, forces a woman to have sexual intercourse with him outside of marriage, is threatened with rape, with a maximum imprisonment of twelve years."

If we look at the formulation of the Criminal Code which regulates rape, there are many shortcomings in providing protection to the victims themselves. For example, there is no maximum limit on determining the sentence for the perpetrator, so even this shortfall will be an opportunity for an evil judge to hand down a verdict that is different from the wishes of the community which will certainly be very detrimental to the victim himself and more broadly will tarnish the good name of the judicial institution in Indonesia.

Law Number 26 of 2000 concerning Human Rights Courts protects the rights of victims of Human Rights violations from their physical and mental protection as regulated in Article 34 which reads:

1. *All victims and witnesses of serious human rights violations can receive physical and mental protection from threats, harassment, terror and violence from any party.*
2. *Protection as intended in paragraph (1) must be provided by law enforcement officers and security employees free of charge.*
3. *Provisions regarding protection procedures for victims and witnesses are discussed further in Government Regulations.*

In Law No. 39 of 1999 concerning Human Rights, Article 33 paragraph 1 explains that "everyone can be free from torture, punishment or treatment that is evil, inhumane, lowers the level and dignity of their humanity", and Article 45 explains that " Women's rights are human rights." So the article explains that humans must receive protection from things that take away their human rights in life, then women's human rights must be protected, respected, maintained, and cannot be ignored, reduced, or taken away

¹⁴ Undang-Undang Republik Indonesia Nomor 31 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban, Lembaran Negara Republik Indonesia Nomor 5602, Pasal 6 ayat (1).

from anyone. It is a reality that acts of violence against women are an ongoing threat to women everywhere and acts of violence against women have become a global issue.

Minimum and maximum sentences of life imprisonment should be applied to rapists. Some even demanded the death penalty. Severe punishment serves to deter rapists and warn people never to commit crimes. Apart from the problem of law enforcement and harsh penalties, procedures for reporting rape victims must be implemented properly so that society is better protected. The government also feels it must create a traumatic center, at least at the district level, where psychological support and counseling can be provided to rape victims. Psychological trauma will leave scars for life.

Indonesia's criminal justice system revolves around criminals. This situation can be seen from the various articles in the Criminal Code which regulate the various rights that a suspect or defendant has, in the name of protecting human rights. Meanwhile, the rights delegated to crime victims are only regulated in one article, namely Article 98 of the Criminal Procedure Code which provides the right for crime victims to file a lawsuit for compensation against the perpetrator.¹⁵

So that legal certainty must guarantee and protect the human rights of those who are harmed by other people, legal protection for victims can ensure the safety of victims in carrying out the legal process. So every form of regulation must look at the human rights side to provide legal certainty for rape victims. And victims who are seriously harmed in a rape case must receive protection that protects their good name, and does not corner the victim in seeking justice.

Law Enforcement Officials' Efforts to Protect the Law and Human Rights of Rape Victims

In the context of protection for crime victims, there are preventive and repressive efforts¹⁶ which is carried out whether by citizens or the government through law enforcement officials, for example providing protection from various threats that could endanger the victim's life, providing medical assistance, adequate legal control, examination and fair trials for perpetrators of crimes, is basically one form of protection of human rights and balancing instruments.

Sometimes victims act or are appointed as witnesses in court. Witnesses are usually aggravating witnesses who support the claims and court decisions. In the Criminal Procedure Code, victims who are designated as witnesses are also given protection under Article 162 of the Criminal Procedure Code. It is said to be a form of protection and respect for victims, and it is also possible not to give testimony at trial, the testimony can be read from the BAP. The Criminal Procedure Code also provides a process for victims to become witnesses in order to submit claims for compensation for losses (article 98 paragraph (1) of the Criminal Procedure Code).

The form of legal protection for victims of criminal acts of rape that exists starting from the investigation, prosecution and trial stages is the rights distributed by law to victims in an effort to provide feelings of security and legal certainty that can be obtained from victims.

a) Investigation Stage

Forms of legal protection for victims of criminal acts of rape at the investigation stage are:

1. There is immediate assistance.
2. Placed in the Special Service Room (RPK).
3. Rights for the benefit of victims take the form of a post mortem at revestum.
4. Identity hidden.
5. Free from cornering questions.
6. Obtain an explanation of case developments through legal advisors.
7. Obtaining a court decision.
8. Obtain temporary residence at the Regency/City UPTD PPA

¹⁵ Nur HH. Kebijakan hukum pidana sanksi kebiri kimia dalam perspektif ham dan hukum pidana Indonesia. *Junral magister Hukum Udayana*. 2018:7(3)

¹⁶ Edy Suwito & Mulyadi Aribowo "Perlindungan Hukum Terhadap Korban Tindak Pidana Pemerkosaan Dalam Peradilan Pidana." *Jurnal Ilmu Hukum*, Volume 8, Nomor 1, Juni 2019: 29.

b) Prosecution Stage Sub System

Forms of legal protection for victims of criminal acts of rape at the prosecution stage are:

1. Identity kept confidential/not shared.
2. Obtain an explanation of how far the prosecutor has gone in completing the case at hand.
3. Protected during inspection

c) Court Stage Sub System

Forms of legal protection for victims of criminal acts of rape at the court stage are:

1. Done fairly without discrimination.
2. The right not to be confronted by the perpetrator.
3. Provide explanations without pressure.
4. The trial is closed to the public

At the investigation stage, the victim's confession from the investigator was only carrying out investigations such as compiling reports and the need for a post mortem at repertum. Regarding the costs for psychological counseling for victims, these costs are not paid by the police or others. Due to the police, there are no special medical services related to clinical psychologist counseling.

The process of seeking justice at every stage of the criminal justice process needs a flow so that there is clarity and systematicity to provide victims' rights and provide sanctions against perpetrators. So that the authorities create a scheme to make it easier for law enforcement officials to impose sanctions on perpetrators and to fight for victims' rights in accordance with procedures.

Forms of protection at court hearings are also regulated in Government Regulation Number 2 of 2022 concerning Procedures for Protection of Victims and Witnesses in Article 4. Similar protection is also contained in Law Number 13 of 2006 concerning Protection of Witnesses and Victims Article 5 paragraph (1) letters a to g.¹⁷

In carrying out judicial functions, law enforcement officials are obliged to simultaneously respect justice and human rights, although the balance between truth and justice and respect and upholding human rights values when handling criminal incidents is very difficult to explain. However, this difficulty should not be a narrow and rigid technical factor in providing freedom for criminals to roam freely in the community.¹⁸

Law enforcement officials are required to have a thorough and careful attitude in handling each case of criminal action submitted to them which will be decided so that law enforcers are not caught in errors or defects in the implementation of the law which could cause the decision not to reflect the sense of justice, the benefits of the law and certainty. Law enforcers, in carrying out the mandate to uphold justice, must be able to handle legal problems by guaranteeing justice for justice seekers.

After each judicial process has gone through and has received permanent legal force, the victim who is most disadvantaged in a rape case must still receive assistance and maintain his good name so that the victim's trauma can improve and he can live his life as he should. Therefore, the role of parents, family, the surrounding environment, and people who are competent in their fields must provide motivation or assistance that is really good and does not put the victim in a corner.

CONCLUSION

Referring to the postulates that regulate rape, it provides certainty of sanctions for someone who violates it and becomes an effort to eliminate the existence of this crime. The crime of rape does not only focus on providing sanctions for the perpetrator, but there is also something more urgent, namely

¹⁷ Nurul QM. Penerapan hukuman kebiri kimia bagi pelaku kekerasan seksual. *Jurnal Konstitusi*. 2017:14(1).

¹⁸ Akbar Sayudi, 2016, *Upaya Perlindungan Korban Tindak Pidana Pemerkosaan Dalam Sistem Peradilan Pidana Indonesia, Jurnal Hukum Fiat Justisia Volume 10 Issue 1, January-March 2016: pp. 1-220.*

protection for the victim who clearly feels very deep loss and trauma. Then the rights of victims are guaranteed by Law Number 30 of 2014 concerning Protection of Witnesses and Victims, then victims need legal assistance to obtain their rights in a court of law.

Law enforcement officials' efforts to provide protection for victims must be in accordance with the law and cannot be biased against one of them. Law enforcers only provide freedom of speech during the trial process, delegate their rights as victims and provide the freedom for victims to participate in the proceedings. In this situation the victim can see the proceedings and may not see the proceedings if the victim feels embarrassed because of what they feel is happening.

It is recommended that law enforcement officials protect children targeted for rape by safeguarding the victims' rights, so that the victims receive permanent mental and social rehabilitation. Request the government to provide facilities and infrastructure for the rehabilitation of child rape victims, so that victims can continue their lives in the future. Suggestions for the community to help child victims of violence (rape) to be protected by law, so that Indonesia becomes a prosperous country for human-based welfare of the population.

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