

Sexual Violence Resulting From Sexually Nuanced Punitive Sanctions In The University Environment

Diva Vania Gatot, Ahmad Munir, Shalahuddin Serbabagus

divavaniagatot@gmail.com

Faculty Of Law, Universitas Islam Darul 'Ulum Lamongan, East Java, Indonesia

Abstract

Sexual violence is a criminal act that leads to unilateral and unwanted sexual behavior, causing negative reactions in the victim. Sexual violence often occurs in the world of education, including in higher education. Higher education should be a safe environment for students, but cases of sexual violence that occur can actually cause trauma and depression in victims. This study aims to identify the elements of imposing sexual-nuanced punishments and forms of legal protection for victims of sexual violence in the higher education environment. Using a normative juridical method with a statutory and conceptual approach, this study utilizes primary and secondary legal materials. The results of the study indicate that imposing sexual-nuanced punishments requires special attention because of its sensitive and complex impacts. Based on Permendikbudristek Number 30 of 2021, various forms of sexual violence, including physical discrimination, gender identity harassment, and sexual threats, are strictly regulated. However, the limits of sexual-nuanced punishments have not been specifically explained. Legal protection for victims includes preventive and repressive efforts, such as education about sexual violence on campus and the imposition of prison sentences for perpetrators. This protection also includes emotional support and concrete assistance, such as guarantees of continuing education and employment and confidentiality of identity. The study suggests increasing awareness of sexual violence on campus, developing specific curricula, regular training, and further research to create a safe and inclusive academic environment

Keyword: *Sexual Violence; Sexually Influenced Punishment Sanctions; Legal Protection*

Abstrak

Kekerasan seksual merupakan tindak pidana yang melibatkan perilaku seksual sepihak dan tidak diinginkan, yang menyebabkan reaksi negatif pada korban. Kekerasan seksual sering terjadi di dunia pendidikan, termasuk di lingkungan perguruan tinggi. Padahal, perguruan tinggi seharusnya menjadi lingkungan yang aman bagi mahasiswa, namun kenyataannya, kasus kekerasan seksual justru dapat menyebabkan trauma dan depresi pada korban. Penelitian ini bertujuan untuk mengidentifikasi unsur-unsur penerapan sanksi yang bernuansa seksual serta bentuk perlindungan hukum bagi korban kekerasan seksual di lingkungan pendidikan tinggi. Metode yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual, serta memanfaatkan bahan hukum primer dan sekunder. Hasil penelitian menunjukkan bahwa penerapan sanksi yang bernuansa seksual memerlukan perhatian khusus karena dampaknya yang sensitif dan kompleks. Berdasarkan Permendikbudristek Nomor 30 Tahun 2021, berbagai bentuk kekerasan seksual, termasuk diskriminasi fisik, pelecehan identitas gender, dan ancaman seksual, telah diatur secara tegas. Namun, batasan mengenai sanksi yang bernuansa seksual belum dijelaskan secara spesifik. Perlindungan hukum bagi korban mencakup upaya preventif dan represif, seperti edukasi tentang kekerasan seksual di kampus dan pemberian hukuman pidana bagi pelaku. Perlindungan ini juga mencakup dukungan emosional dan bantuan konkret, seperti jaminan kelanjutan pendidikan dan pekerjaan, serta kerahasiaan identitas korban. Penelitian ini merekomendasikan peningkatan kesadaran terhadap kekerasan

seksual di kampus, pengembangan kurikulum khusus, pelatihan rutin, dan penelitian lanjutan untuk menciptakan lingkungan akademik yang aman dan inklusif.

Kata Kunci: Kekerasan Seksual; Sanksi Bernuansa Seksual; Perlindungan Hukum



Copyright ©2024 Diva Vania Gatot, Ahmad Munir, Shalahuddin Serbabagus
Published in Law Specialist by Universitas Islam Darul 'Ulum, Fakultas Hukum
2024

Introduction

Every citizen, according to the values of Pancasila and the 1945 Constitution, has the right to feel safe and free from all forms of crime.¹ Article 28G paragraph (1) of the 1945 Constitution emphasizes that everyone has the right to protection for themselves, their families, their honor, and their dignity, and has the right to feel safe from all forms of threats.² In the era of globalization, human rights violations are increasing, including in Indonesia, where sexual violence against women is one of the most common issues.

Sexual violence in Indonesia is often categorized as a crime against morality or indecency in the Criminal Code, although the term is not explicitly mentioned. Data from the 2022 Annual Report of the National Commission on Violence Against Women (CATAHU) shows a significant increase in reports of violence against women, including sexual violence in higher education environments. In 2021, 459,094 cases were recorded, an increase from 302,300 cases in 2020.³ Many of these cases occur due to the unequal position between the perpetrator and the victim, where the perpetrator usually has a dominant position that makes the victim vulnerable, an unequal power relationship, and the social normalization of such actions. Cases at various universities show that perpetrators, often lecturers, use their power to carry out harassment.

Sexual violence is not only a physical act, but can also be a sanction with sexual nuances, either explicit or implicit, that humiliates or degrades the victim. This kind of sanction can be verbal abuse, threats, or other forms of intimidation related to the victim's sexuality. This has a profound psychological impact on victims, who are often

¹ Septi Yunita and Dinie Anggraeni Dewi, "Urgensi Pemenuhan Hak Dan Kewajiban Warga Negara Dalam Pelaksanaannya Berdasarkan Undang-Undang," *De Cive : Jurnal Penelitian Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 12 (2021): 429–35, <https://doi.org/10.56393/decive.v1i12.274>.

² Komisiyudisial, "Undang-Undang Dasar Negara Republik Indonesia 1945, Ps. 28G Ayat (1)," https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945PerubahanKedua.pdf.

³ Komnas Perempuan, "Bayang-Bayang Stagnasi: Daya Pencegahan Dan Penanganan Berbanding Peningkatan Jumlah, Ragam Dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan," CATAHU 2022 : Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2021, <https://komnasperempuan.go.id/download-file/816>.

afraid to report the incident for fear of not being believed or fear of retaliation, especially since the harassment usually occurs in a quiet place without witnesses.

The Indonesian government has issued various policies to address this issue, one of which is the Regulation of the Minister of Education, Culture, Research, and Technology Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education Environments. This regulation aims to prevent and handle sexual violence in academic environments. Article 5 paragraph (1) states that sexual violence includes verbal, non-physical, physical, and/or information and communication technology actions.⁴ Article 5 paragraph (2) details the forms of sexual violence, such as discrimination against physical appearance, harassment of gender identity, to threats or coercion to engage in sexual activities.

The article is important because it explains various forms of sexual violence. Among these forms, one that needs to be emphasized is "giving punishment or sanctions that have sexual nuances". This study needs to analyze what actions are included in the imposition of punishment sanctions that contain sexual elements, either explicitly or implicitly, that embarrass, degrade, or intimidate victims in ways related to their sexuality, as well as their impact on victims, and how effective prevention and handling efforts can be implemented in the academic environment. With clearer regulations, it is hoped that universities can be more proactive in preventing and handling sexual violence, creating a safe environment for the entire academic community.

Based on the background description, several problems can be drawn that will be the limitations of the discussion of this study later, the problems are: 1. What are the elements of the imposition of sexual sanctions in Higher Education? and 2. What is the form of legal protection for victims of sexual violence for the imposition of sexual sanctions in the Higher Education environment?

Method

This study uses a normative juridical method with a statute approach and a conceptual approach, using primary and secondary legal materials collected through

⁴ Kemendikbudristek, *Peraturan Menteri Pendidikan, Kebudayaan, Riset Dan Teknologi Nomor 30 Tahun 2021 Tentang Pencegahan Dan Penanganan Kekerasan Seksual Di Lingkungan Perguruan Tinggi (Berita Negara Republik Indonesia Tahun 2021 Nomor 1000)*, Ps. 5 Ayat (1).

literature study techniques to compile the necessary data, where the legal materials that have been collected are analyzed by formulating them in general and then explained and described in detail in the next stage according to the problems related to legal protection for victims of sexual violence in the scope of higher education.

Elements of Imposing Sexually Influenced Punishment Sanctions in Higher Education

Legal Sanctions in the Legal System

Legal sanctions have an important role in maintaining order and legal compliance. There are three types of legal sanctions: criminal sanctions, civil sanctions, and administrative sanctions. Criminal sanctions are imposed for criminal acts with the aim of providing a deterrent effect and preventing future violations, while civil sanctions focus on resolving civil rights disputes without physical punishment, rather on restoring violated rights. Administrative sanctions are applied for administrative violations to ensure compliance with regulations in various sectors, including education. In addition, this study highlights that punishments that are not applied properly can degrade human dignity. Overall, sanctions and punishments serve as mechanisms to enforce the law and ensure compliance with applicable norms.

Forms of Sexual Violence in Higher Education

Sexual violence in higher education occurs due to excessive interaction between students, with academics as perpetrators or victims. Many victims are reluctant to report because of shame, unequal power and gender relations, or lack of legal protection. Sexual violence, as a form of gender-based violence (GBV), includes any act that degrades, attacks, or controls a person's body and reproductive functions without consent.⁵ The legal and social definition of sexual violence, including in Law No. 12 of 2022 and Permendikbudristek No. 30 of 2021, highlights the importance of protecting victims in educational environments. Types of sexual violence include rape, intimidation, harassment, exploitation, trafficking of women for sexual purposes, and various forms of coercion such as pregnancy or abortion.⁶ This study emphasizes the

⁵ Kemen PPPA, *Peraturan Menteri Pemberdayaan Perempuan Dan Perlindungan Anak Republik Indonesia Nomor 2 Tahun 2022 Tentang Standar Layanan Perlindungan Perempuan Dan Anak (Berita Negara Republik Indonesia Tahun 2022 Nomor 85)*, Ps. 1.

⁶ Komnas Perempuan, "15 Bentuk Kekerasan Seksual: Sebuah Pengenalan," https://drive.google.com/file/d/1jtyyAgVsJ0O07bRUqE00zWM_pzADMEs8/view.

importance of a safe and violence-free educational environment to support the well-being and academic development of students.

Elements of Punishment or Sanctions with Sexual Nuance

The imposition of punishment in criminal acts, especially those with sexual nuances, requires special attention because of its sensitive and complex nature. This punishment is not only intended to provide a deterrent effect on the perpetrator, but also to protect the victim who may experience psychological and physical impacts. Punishment or sanctions with sexual nuances, as regulated in Permendikbudristek Number 30 of 2021, can be in the form of actions or deeds that embarrass, degrade, or intimidate the victim through sexual elements, both physically and non-physically. Examples of this punishment include actions that force the victim to do or show something of a sexual nature, the use of sexually nuanced words, or punishments that touch inappropriately. All of these forms of punishment are considered to violate human rights and can worsen the victim's trauma, so it is important to ensure that the sanctions given are not only retributive, but also rehabilitative and preventive.

Legal Protection for Victims of Sexual Violence for the Provision of Punishment Sanctions with Sexual Nuances in the Higher Education Environment

Legal Protection for Victims of Sexual Violence in Higher Education

Legal protection for victims of sexual violence is a very important issue both at the national and international levels.⁷ Resolving cases of sexual violence often faces difficulties, especially in providing evidence because violence usually occurs without witnesses at the scene. Legal protection consists of preventive and repressive protection.⁸ Preventive protection is protection provided by the government with the aim of preventing violations before they occur. On the other hand, repressive protection is final protection in the form of sanctions such as fines, imprisonment, and additional penalties, given after the violation occurs. Legal protection for victims can be abstract or concrete. Abstract protection refers to protection that can only be felt emotionally (psychologically), such as a sense of satisfaction. Concrete protection

⁷ Yufi Tania Kusuma, "Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual Di Perguruan Tinggi," *Jurnal Legisla* 15, no. 1 (2023): 1–13, <https://doi.org/10.58350/leg.v15i1.245>.

⁸ Agustinus Sihombing, Ranat Mulia Pardede, and Fahmi Amrico, *Hukum Perlindungan Konsumen* (Sumatera Barat: Azka Pustaka, 2023).

includes real actions that can be felt directly by victims, such as material compensation, restitution, and freedom from threats or news that degrades their dignity.⁹ These steps aim to ensure that victims not only get justice but also adequate protection against the impact of the violence they experience.

Arrangements for Legal Protection for Victims of Sexual Violence in Higher Education Based on KUHP

Legal protection for victims of sexual violence in higher education is regulated in the Criminal Code (KUHP), especially in the chapter on Crimes against Morality (Articles 281-299).¹⁰ For example, Article 289 of the Criminal Code stipulates a prison sentence of up to nine years for perpetrators of sexual violence who use violence or threats of violence. Article 14c paragraph (1) of the Criminal Code allows judges to impose special conditions on convicts to compensate for losses experienced by victims, supporting financial protection for victims.

Although the Criminal Code includes provisions that can provide protection for victims, its main focus is still on criminal penalties and fines for perpetrators of sexual violence. In other words, the provisions in the Criminal Code do not fully prioritize victim protection, but rather on sanctions against perpetrators.

Arrangements for Legal Protection for Victims of Sexual Violence in Higher Education Based on KUHP

Legal protection for victims of sexual violence in higher education based on the Criminal Procedure Code (KUHP) includes provisions that allow for the combination of criminal and civil charges to provide compensation to victims, as stipulated in Articles 98 to 101. However, in practice, prosecutors have never filed a claim for compensation in rape cases, even though the victim has submitted such a request.¹¹ In addition, Government Regulation Number 27 of 1983 stipulates that a claim for compensation must be filed within three months after the court decision has permanent legal force or within three months of notification of the pretrial

⁹ Suhasril, *Perlindungan Hukum Terhadap Anak Dan Perempuan* (Depok: PT Raja Grafindo Persada, 2016).

¹⁰ Prianter Jaya Hairi and Marfuatul Latifah, "Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Negara Hukum* 14, no. 2 (2023): 166, <https://doi.org/10.46576/rjpk.v4i1.2399>.

¹¹ Yanama Orlia, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Di Perguruan Tinggi," *Fakultas Hukum, Universitas Jambi*, no. 112 (2022): 50.

determination if the case is stopped at the investigation or prosecution level. This time limit aims to ensure legal certainty.

Although the Criminal Procedure Code allows for compensation for victims by combining criminal and civil cases, its implementation is often hampered. The main challenge faced is the difficulty for victims to obtain their rights due to obstacles in collecting evidence and presenting witnesses in cases of sexual violence. Therefore, even though there is a legal basis for protection and compensation for victims, its realization in the field is still often hampered by various practical obstacles.

Arrangements for Legal Protection for Victims of Sexual Violence in Higher Education Based on Permendikbudristek Number 30 of 2021

Legal protection for victims of sexual violence in higher education based on Permendikbudristek Number 30 of 2021 emphasizes the importance of the active role of the government and campuses in dealing with sexual violence. Therefore, on August 31, 2021, Permendikbudristek issued regulation Number 30 of 2021, aiming to prevent and handle sexual violence in the university environment in order to ensure citizens' rights to a safe education.¹² Article 10 of this regulation requires universities to provide assistance, protection, administrative sanctions, and recovery for victims. In addition, Article 12 emphasizes that protection must also be provided to victims or witnesses who are students, educators, education personnel, and campus residents. However, the implementation of this regulation in the field is often hampered by intimidation experienced by victims from the start, especially since many perpetrators are parties who have authority on campus, such as senior lecturers or campus officials.

In addition, protection of the confidentiality of the victim's identity, as regulated in Article 12 paragraph d, has not been fully implemented. Many cases of sexual violence in higher education are actually widely spread among campus residents, causing victims to feel intimidated and experience additional pressure due to public exposure of the events they experienced. This situation reflects weaknesses in the implementation of the rules, which should aim to protect the privacy and dignity of victims. As a result, victims of sexual violence not only have to face trauma from the

¹² Orlia.

events they experienced, but also social stigma and pressure from the campus community who know about the incident.

Forms of Legal Protection for Victims of Sexual Violence in Higher Education

As a country based on law, Indonesia has an obligation to provide protection for every citizen, including victims of sexual violence. This protection is provided through a fair and neutral judicial process. One form of protection for the community carried out by the state is providing legal protection through the judicial process if a crime occurs.¹³ Legal protection for victims of sexual harassment is regulated in Permendikbud Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education Environments with the aim of preventing sexual violence, strengthening handling through assistance, victim recovery, administrative sanctions, and protection. This regulation also requires universities to provide protection to victims, such as guarantees of continued education and employment, protection from physical and non-physical threats, and maintaining the confidentiality of the victim's identity.

In addition, Permendikbud No. 30 of 2021 Chapter II Concerning Prevention in Articles 6 and 7, regulates steps to prevent sexual violence through learning, strengthening governance, and community culture on campus, as well as limiting interactions between students and educators outside the academic context without appropriate approval. Legal protection for victims of sexual violence in higher education is regulated in the Criminal Code, Criminal Procedure Code, and Permendikbudristek Number 30 of 2021. This effort aims to ensure justice for victims and maintain their dignity and privacy in accordance with applicable laws.

Conclusion

Based on the findings and analysis, the researcher concluded about Sexual Violence for the Provision of Sexual Punishment Sanctions in the Higher Education Environment as follows:

1. The imposition of punishment or sanctions in criminal cases, especially those with sexual nuances, requires special attention because of its

¹³ Nova Ardianti Suryani, "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Penganiayaan Ditinjau Dari Undang-Undang Perlindungan Anak," *Media of Law and Sharia* 2, no. 2 (2021): 134–45, <https://doi.org/10.18196/mls.v2i2.11493>.

sensitive and complex impacts. Permendikbudristek Number 30 of 2021 clearly regulates various forms of sexual violence, including discrimination against physical appearance, gender identity harassment, and sexual threats, emphasizing that punishments that degrade, humiliate, or intimidate sexually are serious violations. However, Article 5 paragraph (2) letter k mentions one form of sexual violence, namely "imposing sanctions or punishments with sexual nuances", but this point does not clearly explain the limits of what punishment sanctions are included in sexual nuances. In the grammatical interpretation of Article 5 paragraph (2) letter k, the phrase "sanctions or punishments with sexual nuances" indicates that actions related to sexuality must meet the criteria that cause the victim to feel degraded, humiliated, intimidated, and forced. The criteria for sexual punishment include physical or non-physical acts related to sexuality and causing the victim to feel degraded, humiliated, intimidated and coerced, so it is very important to maintain the dignity and integrity of the individual and prevent re-victimization.

2. Legal protection for victims of sexual violence, which is recognized as an important issue at the national and international levels, aims to realize justice in society, although its resolution often faces challenges, especially in terms of evidence without witnesses. This legal protection includes two types: preventive, which focuses on preventing violations through regulations such as the Criminal Code and Permendikbudristek Number 30 of 2021, and repressive, which provides sanctions such as fines and imprisonment after a violation occurs. Examples of preventive protection include education about sexual violence on campus, while repressive protection involves imprisonment for perpetrators in accordance with the Criminal Code. Support for victims can be in the form of emotional or concrete assistance, such as guarantees of continued education and employment, protection from threats, and confidentiality of identity. Based on regulations such as KUHP, KUHPA, and Permendikbudristek Number 30 of 2021, victims of sexual violence in higher education have the right to effective legal protection, including

preventive and repressive measures, as well as maintaining their privacy and dignity.

Bibliography

Books

Sihombing, A., Pardede, R. M., & Amrico, F. (2023). *Hukum Perlindungan Konsumen*. Azka Pustaka.

Suhasril. (2016). *Perlindungan Hukum Terhadap Anak dan Perempuan*. PT Raja Grafindo Persada.

Journal Article

Pidana Kekerasan Seksual. *Jurnal Negara Hukum*, 14(2), 166.

<https://doi.org/10.46576/rjpk.v4i1.2399>

Kusuma, Y. T. (2023). Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual Di Perguruan Tinggi. *Jurnal Legisia*, 15(1), 1-13.

<https://doi.org/10.58350/leg.v15i1.245>

Suryani, N. A. (2021). Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Penganiayaan Ditinjau Dari Undang-Undang Perlindungan Anak.

Media of Law and Sharia, 2(2), 134-145. <https://doi.org/10.18196/mls.v2i2.11493>

Yunita, S., & Dewi, D. A. (2021). Urgensi Pemenuhan Hak dan Kewajiban Warga Negara Dalam Pelaksanaannya Berdasarkan Undang-Undang. *De Cive : Jurnal Penelitian Pendidikan Pancasila Dan Kewarganegaraan*, 1(12), 429-435.

<https://doi.org/10.56393/decive.v1i12.274>

Web Page

Kemendikbudristek. *Peraturan Menteri Pendidikan, Kebudayaan, Riset Dan Teknologi Nomor 30 Tahun 2021 Tentang Pencegahan Dan Penanganan Kekerasan Seksual di Lingkungan Perguruan Tinggi (Berita Negara Republik Indonesia Tahun 2021 Nomor 1000), Ps. 5 ayat (1).*

Kemen PPPA. *Peraturan Menteri Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 2 Tahun 2022 tentang Standar Layanan Perlindungan Perempuan dan Anak (Berita Negara Republik Indonesia Tahun 2022 Nomor 85), Ps. 1.*

Komisiyudisial. *Undang-Undang Dasar Negara Republik Indonesia 1945, Ps. 28G Ayat (1).*

https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945PerubahanKedua.pdf

Komnas Perempuan. *15 Bentuk Kekerasan Seksual: Sebuah Pengenalan.*

https://drive.google.com/file/d/1jtyyAgVsjo0O7bRUqE00zWM_pzADMEs8/view

Komnas Perempuan. *Bayang-Bayang Stagnasi: Daya Pencegahan Dan Penanganan Berbanding Peningkatan Jumlah, Ragam Dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan. CATAHU 2022 : Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2021.* <https://komnasperempuan.go.id/download-file/816>

Thesis

Orlia, Y. (2022). *Perlindungan Hukum Terhadap Korban Kekerasan Seksual Di Perguruan Tinggi. Fakultas Hukum, Universitas Jambi, 112, 50.*