

Urgency Formalization of Sexual Violence Eradication Bill Against Cyber Sexual Harassment in Digital Era

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ABSTRACT

In digital era development of technology keep continue to grow. There are several impacts of this development, one of them is digital communications and social media are facilitating new forms of crime. The concern of crime in this digital era especially about cyber sexual harassment. Cyber sexual harassment is a prevalent phenomenon in face to face, social environments. The number of cyber sexual harassment also keep increasing and pattern of cases be more complicated, but the existence of the regulations hadn't been able to provide optimal protection for the victims. Methods of this research used normative legal research, and statute approach, and data of this research obtained through literature study. The conclusion and suggestion of this research are to provide additional scientific insights and contribute to the development of disciplinary substance in the field of criminal policy which relate with cyber sexual harassment. Based on current legal framework protecting Indonesians from sexual harassment includes only the convictions of the perpetrator, but there are no prevention efforts, handling, victim's recovery. Thus, make by those laws haven't fulfill of victim's rights. Birth of Sexual Violence Eradication Bill (hereinafter "RUU PKS") specifies more detailed provisions of sexual harassment, i.e.: prevention, handling, victim's recovery.

Keywords: *Cyber sexual harassment, Sexual Violence Eradication Bill, Criminal Law, Legal Protection*

1. INTRODUCTION

The explosive growth of era digital has been led to many instances of sexual harassment. Sexual harassment is a constant threat anywhere and anytime, especially against women. Not only does it happen in Indonesia, but sexual harassment has become a global issue, there are a some of international conventions that speak out and against sexual harassment, e.g.: *Vienna Declaration and Prograame of Action (1993)*; *Convention on The Elimination of All Forms of Discrimination Against Women (1979)*; *Declaration on The Elimination of Violence Against Women (1993)*; *Beijing Declaration and Platform for Action (1995)* [1]. Generally, sexual harassment is an individual, or a group of people that exhibit unwelcomed sexual behavior towards another. Sexual harassment also not confined to one specific act, but it can include a wide array of activity, including but not limited to the following [2]: suggestive behavior, sexual jokes or question, physical contact, and offensive gestures. Sexual harassment also doesn't have to be explicitly sexual in nature. The conduct simply has to be directed towards the target individually, because of his or her gender. Sexual harassment is gender neutral, which means men can sexually harass women and women can sexually harass men. The occurrence of sexual harassment not only be done by directly, but sexual harassment also occur through digital/electronic media. Indonesia formed a some

of regulations to provide legal protection for individuals and society. There are several regulations that applicable currently, which related with sexual harassment, i.e.: Indonesia Penal Code (hereinafter "KUHP") Book II Chapter XIV about crimes against decency, especially Article 281, Article 282, Article 283, Article 289 KUHP, and Article 4 paragraph (1) *jo* Article 29 Statute No. 44 of 2008 about Pornography (Hereinafter "Pornography Law"). However, technology development makes sexual harassment not only done by physically, but can be done by non-physically, such as through digital. Therefore, applies the *lex specialis derogat lex generalis principle*, which means that specific provisions override general provisions. This matter stipulated in Statute No.11 of 2008 about Information and Electronic Transactions (Hereinafter "Information and Electronic Law"), especially Article 27 paragraph (1) *jo* 45 paragraph (1) Information and Electronic Law, arranged any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible electronic information and/or electronic documents with contents against propriety shall be sentenced to imprisonment not exceeding 6 (six) years and/or a fine not exceeding Rp1,000,000,000 (one billion rupiah).

Based on current regulations, to all intents and purposes those regulations arranged about legal protection of sexual harassment, including cyber sexual harassment. However,

there are several weaknesses, i.e.: there is no definition about sexual harassment or cyber sexual harassment but crimes against decency. KUHP arranged in general way and not classified in a group of special acts. KUHP also only deals when the cases occur, but there's no preventive, and KUHP was legal product that has been born for a long time. This matter made incompatible with the current era, which is occurs a new crimes, especially cyber sexual harassment. In this digital era, cyber sexual harassment to all intents and purposes divided into several forms, e.g.: sexting, morphing, cyber recruitment, spamming, and cyber surveillance [3].

The number of cyber sexual harassment also keep increasing, especially in Indonesia. This matter can be proven by data that had been released from Komnas Perempuan. Throughout 2017, 65 cases of cyber sexual harassments were reported to Komnas Perempuan [4]. Then, in 2018 occurred an increase to be 97 cases of cyber sexual harassment [5] and in 2019 occurred a significant increasing from previous years. Throughout 2019, occurred 281 cases of cyber sexual harassment that had been reported into Komnas Perempuan [6].

The occurrence of cyber sexual harassment that keep increasing and pattern of cases be more complicated, which is not disclosing problem of cyber sexual harassment and not revealing who the real victims. There are also victims of cyber sexual harassment that not reported their cases. This because access of victim's justice still obstructed or it hasn't been through the legal system, and the legal protections that exist are repressive, which means haven't given the full of victim's rights, especially women. However, need another comprehensive legal protection, that related to the issue. The regulation must be not only arranging sanctions for the perpetrators, but also protection for the victims, e.g.: prevention, protect, handle, and victim's recovery [7]. To all intents and purposes victims of cyber sexual harassment can get their rights or access to justice entirely. In addition, legislation is still complete, both material and formal laws, need to be revised, and have not provided a mechanism for prevention, protection and handling that stand up for the victim. As well as, the law of abolition of sexual violence can provide a deterrent effect and cut impunity for offenders of sexual violence until no occurs again [8].

Basically, Indonesia already has discourse regarding this issue, that can be seen in the provisions of RUU PKS. RUU PKS has been formed since 2012, and in 2016 to be National Legislation Program (hereinafter "Prolegnas") priority, but at the end of 2016, it hasn't been legalized yet. December 2019, the House of Representatives' Legislation Body (hereinafter Baleg) and government agreed that RUU PKS would be Prolegnas priority 2020, but on 2020 Baleg officially dropped the long-sought after RUU PKS from 2020 Prolegnas priority list this was because of the difficulties in arranging the bill's deliberation [9].

Birth of RUU PKS was an effort for give legal protection in order to be free from any sexual harassment, it because number of sexual harassment keep increasing and develop. However, legal system that existing hasn't arranged systematically and thoroughly, i.e.: prevention, protect, and recovery of the victims, as well hasn't gave awareness for

the public against this issue. RUU PKS also highlights the necessity of preventing sexual violence in multiple arrangement, holding parties accountable, along with the protection, victims recovery and their rights [10]. Apart from that, RUU PKS also specifies more detailed forms of violences, including sexual harassment. Sexual harassment in RUU PKS divided into 2 (two) parts, i.e.: physical and non-physical sexual harassment.

Cyber sexual harassment categorized as non-physical sexual harassment. Provision which relates to non-physical sexual harassment can be seen on Article 91 RUU PKS, ie:

"individual who commit an act of non-physical sexual harassment shall be sentence of special rehabilitation maximum one month and social work."

Theres and addition of provision which relate if the victims of sexual harassment experiencing mental shock. This statement can be seen on Article 94 RUU PKS, i.e.:

"victims of sexual harassment who experiencing mental shock, the perpetrator shall be sentence minimum four years and maximum eight years, and additional special guidance."

However, RUU PKS hasn't become positive law yet, which causes unable give a certainty law to fully protect the victims and deal against this issue. To all intents and purposes, if we mention with the current condition, urgently needed legal protection of sexual harassment, including cyber sexual harassment, that more comprehensive and give a justice and stand victim rights, especially for women. Based on current conditions, needed the comprehensive legal protection, that can make victims fulfil their rights.

1.1. Our Contribution

This paper presents to provide additional scientific insights and contribute to the development of disciplinary substance in the field of criminal policy especially which related to the women protection against cyber sexual harassment

1.2. Paper Structure

The rest of the paper is organized as follows. Section 2 introduces the preliminaries used in this paper, which include urgency legalization of Sexual Violence Eradication Bill against cyber sexual harassment in digital era. Finally, Section 3 concludes the paper and presents direction for future research.

2. BACKGROUND

2.1. Cyber Sexual Harassment in Digital Era

Cyber sexual harassment is a prevalent phenomenon in face-to face, social environments [11]. Although men also faces harassment, but women are the most likely be victims. Cyber sexual harassment also receiving increased attention from both policymakers and the popular media [12]. Cyber

sexual harassment is not a local phenomenon, but exists in all countries and cultures, especially in digital era. Cyber sexual harassment is a crime against humanity that can have a very serious and life threatening traumatic effects for victims [13]. Observing the increasing number of sexual harassments, include cyber sexual harassment in digital era, at least caused by 3 (three) main factors, i.e.: cultural construction an perspectives that still see women as sexual objects, there's no regulation on sexual harassment including cyber sexual harassment that is oriented towards the comprehensive protection of human dignity, and the response of the law enforcement officers who have not been responsive to the victims [14]. Types classification of cyber sexual harassment also into three different categories, i.e: gender harassment, unwanted sexual attention and sexual coercion [15]. Gender harassment involves visual comments, unwelcome verbal, and remarks that insult individual because of their gender or that use stimuli known or intended to provoke negative emotions or as jokes [16].

2.2. Sexual Violence Eradication Bill (RUU PKS)

The current legal frameworks protecting Indonesians from sexual harassment but most of those only arranged about the convictions of the perpetrator. RUU PKS specifies more detailed forms of violence, including: sexual harassment, sexual exploitation, rape, sexual slavery, sexual torture, and absence of consent in abortion, contraception use, marriage, and prostitution. Apart from that, this bill also highlights the necessity of preventing sexual violence in multiple settings, holding parties accountable, along with the protection and recovery of the victims and their rights [17].

RUU PKS was initially proposed by Komnas Perempuan in 2012 due to the rise of sexual harassment. Four years later, the organization finally asked to submit an academic draft of the bill in the annual 2017 plenary meeting. The House of Representatives (DPR) agreed to discuss the bill [18]. in 2016 to be Prolegnas priority, but at the end of 2016, it hasn't been legalized yet. December 2019, the House of Representatives' Legislation Body (hereinafter Baleg) and government agreed that RUU PKS would be Prolegnas priority 2020, but on 2020 Baleg officially dropped the long-sought after RUU PKS from 2020 Prolegnas priority list, it was because of the difficulties in arranging the bill's deliberation. Service Provider Forum (hereinafter "FPL Indonesia") and other organizations are working hard along work Komnas Perempuan in supporting the cause. There have also been plans of collaboration with the Ministry of Women's Empowerment and Child Protection.

Cyber sexual harassment issues have become a crisis with the increasing number of cases, especially in this digital era. Although, there are already laws that regulating of cyber sexual harassment, it appears the existence of the regulations hasn't been able to provide an optimal protection for victims.

Birth of RUU PKS was an effort to give legal protection in order to be free from any sexual harassment. This legal serves a variety of purposes, ie [19]:

- a. Prevention against sexual violence/harassment
- b. Develop and implement mechanism of handling, protection, recovery, and take side with the victims
- c. Provide a justice for victims, through criminal and firm act against perpetrators.
- d. Ensuring the implementation of state obligation, family roles, public participation, and corporate responsibility in creating free environment of sexual violence.

RUU PKS is also formed to fill legal vacuum, for example by focusing an effort to take side with the victims. This statement can be seen on Article 4 paragraph (1) RUU PKS, i.e.:

"Elimination of sexual violence, covers:

- a. *Prevention*
- b. *Handling*
- c. *Protection*
- d. *Victims recovery*
- e. *Perpetrators prosecution."*

The efforts to take side with the victims is the important things that we need, in order to fully get victim's dignity and human rights against cyber sexual harassment, as it's prevention effort. Prevention function is to influence the individual before any negative behaviour occurs [20]. In the context of the abolition of sexual violence comprehensively, public education related to the risk of sexual violence and reproductive health may be part of preventing sexual harassment. In order to obtain a legal structure, the regulation of prevention [21]. Statement, how important prevention against this issue, also stated by Kongres PBB X/2000 (Wina Declaration) [22], that:

"comprehensive crime prevention at the strategies at the international, national, regional, and local levels must address the root causes and risk factors related to crime and victimization through social, economics, health, educational and justice policies."

In Kongres PBB XI/2005 (Bangkok Declaration) also stated [23], ie:

"we recognize that comprehensive and effective crime prevention strategies can significantly reduce crime and victimization. We urge that such strategies address the root causes and risk factors of crime and victimization and that they be further developed and implemented at the local, national, and international levels, taking into account, inter alia, the guidelines for the prevention of crime."

Based on PBB Conventions, it can be said how importance specification of prevention efforts in overcome the crime, especially cyber sexual harassment, addressing about this issue till the root causes. In XI 2005 (Bangkok Declaration) above, it also stated the necessary of comprehensive law and effective against this issue. In RUU PKS also arranged classification about forms of sexual violence, ie: sexual

harassment, asexual exploitation, forced abortion, rape, forced marriage, forced prostitution, sexual slavery, and sexual torture. This form can be seen on Article 11 paragraph 2 RUU PKS. Provisions regarding forms of sexual violence, it can be said if sexual violence covers specification forms.

In RUU PKS, there are also monitoring efforts to ensure eliminate sexual violence in Indonesia and fulfill victim's rights, such as: handling, protection, and recovery [24]. RUU PKS is an effort to overhaul the legal system to address sexual violence, including cyber sexual harassment, especially against women. RUU PKS also a breakthrough of the law for accommodates the necessity and victim materiality and how they face the legal process. The current conditions in this digital era, made it clear if needed the more comprehensive legal protection, which not only focus on the perpetrator, but also on victim's side. Formalization of RUU PKS can be solution of this cases, even though RUU PKS still has several weaknesses but the goals of formed RUU PKS to focus on give victims protection and enforce their rights. Therefore, RUU PKS need to be focus and seriousness under discussion, because the cases of sexual violence, especially cyber sexual harassment became worst.

3. CONCLUSION

The explosive growth of era digital has been led to many instances of sexual harassment. Sexual harassment is a constant threat anywhere and anytime, especially against women. The number cases of cyber sexual harassment also keep increasing year by year, especially in Indonesia. Even, there are a several laws that regulated about this issue, but those regulations still hasn't comprehensive yet to give the right legal protection for victims. The current legal frameworks that protecting victims from cyber sexual harassment, only arranged the convictions of the perpetrator. In fact, Indonesia needs a distinct legal framework that defines and prevent sexual harassment, includes cyber sexual harassment. Multiple cyber sexual harassment cases are left unreported, and most of the reported cases are left neglected, given that the current law doesn't accommodate about this issue. Birth of RUU PKS was an effort to give legal protection in order to be free from any sexual harassment and also formed because to fill legal vacuum. The bill specifies more detailed forms of violence, includes sexual harassment. This bill also highlights the necessary to prevent from sexual harassment in various ways, hold parties accountable, protect the victims, and victims recovery and their rights. Therefore, it requires seriousness and attention from all parties in drafting this law and it's necessary to ensued that law enforcement is consist with the sense of justice in society and provides legal certainty for victims.

ACKNOWLEDGMENT

This work was supported by International Conference, Business, Social, Humanities (ICEBSH), Faculty of Law, Universitas Tarumanagara. Jakarta Indonesia.

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