

The Elimination of Sexual Violence Bill: Prevention Effort and Access to Justice for Victim

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ABSTRACT

Sexual violence is against the universal humanitarian values and constitution, which guarantees its citizens' protection from all forms of violence. Normatively, sexual violence is also prohibited by any religion, especially with the aim of Islam, namely to create benefit, which is elaborated in *maqashid* al sharia. Sexual violence is a bad phenomenon that occurs to women and children used as objects of castration and abuse of their rights. Empirical facts show the increasing number of sexual violence in various forms is increasing, especially during the Covid-19 pandemic, while victims are still having difficulty getting access to justice, truth, and recovery, which are the responsibility of the State. The Bill on the Elimination of Sexual Violence (PK-S Bill) offers reforms to provisions regarding sexual violence that regulate victims' rights. However, the discussion of the P-KS Bill is still controversial, so that it cannot be used as a legal umbrella against acts of sexual violence. This paper describes the urgency of the P-KS Bill, which accommodates the interests of victims and tries to uncover the controversy, through a normative research and a *maslahat* approach by collecting literature and materials from the media and tracing the fatwas of the Congress of Indonesian Women.

Keywords: *Sexual violence, Justice, P-KS Bills.*

1. INTRODUCTION

Women and children, and people with disabilities, are very vulnerable to become victims of sexual violence. The number of cases at the national level as annually reported by Komnas Perempuan regarding the reality of violence against women every year in Indonesia is increasing. Violence against women is the result of gender inequality and injustice, which is a violation of human rights and is a form of crime that undermines the dignity of humanity and a form of discrimination that must be eliminated by the State.

In March 2020, Komnas Perempuan reported that the number of cases of violence against women had increased by 6%. In 2019 violence against women was 431,471, an increase from the previous case of 406,178 cases. There were 2,521 cases of sexual violence in public places, while 2,988 cases occurred at the private level. Meanwhile, from January to 19 June 2020, there have been 329 cases of sexual violence where adult women were victims, while 1,849 of the victims were children, both girls and boys.[1]

During the Covid-19 pandemic, victims of sexual violence increased significantly, especially through social media. Based on reports from LBH APIK Jakarta, every month, 30 cases of sexual violence were handled before the pandemic occurred. However, since the pandemic era, to be precise, from March 2020 to 7 June 2020, the number of victims of sexual violence handled has increased threefold. At the end of the year, LBH Apik Jakarta said, in 2020, there were 307 cases of online gender-based violence (KBGO), 80 cases of sexual violence against adult women, 16 cases of sexual violence

against children, 92 cases of dating violence (KDP), trafficking in two cases. The increase in this figure is suspected of having a number of policies limiting the handling of Covid-19 from a government that does not consider a sense of justice for women and gender equality and pays attention to vulnerable groups. As a result, new online gender-based sexual violence cases facilitated by online technology have increased sharply during this pandemic by sevenfold long before the pandemic.[2]

Generally, women victims of sexual violence still experience difficulties in gaining access to justice, truth, and remedy, which are the responsibility of the State. The criminal law system in Indonesia, which includes the substance, structure, and culture of law, which does not yet have a perspective and provides justice for victims, is the dominant factor in this problem. The rules of evidence that are burdensome to the victim, the culture of blaming the victim, and the limited capacity to support the victim's recovery are also major obstacles.[3]

Sexual violence that occurs is still considered normal by society. Indonesia does not yet have regulations that comprehensively and specifically regulate acts of sexual violence—starting from defining, punishing the perpetrators, preventive efforts, handling, and provision of protection and recovery for victims. Gender-based violence is not yet known in the Criminal Code, so that the crime of sexual violence, such as rape or obscene acts, is still termed crimes against morals or immoral crimes. The Criminal Code only regulates criminal acts of violence that have physical consequences, while violence that does not result in physical injury has not been touched at all, such as; harassment, reproach, or verbal violence that results in psychological violence, while rape

is defined as being limited to penetration of the penis into the vagina.[4]

The limitation of legal rules regarding sexual violence in the Criminal Code implies that the legal process against the perpetrator is not optimal so that the perpetrator escapes punishment while sexual violence is increasing. The sentences handed down to perpetrators of sexual violence under the Criminal Code generally do not fulfill the aspirations of the victims, do not speak for justice, are disproportionate, and appear to be legally resolved.[5]

The handling of victims includes protection of victims based on legal provisions currently in effect in Indonesia. Even though the issue of sexual violence, there are legal regulations, these legal provisions have not been able to comprehensively accommodate the issue of sexual violence.[6]

There are still some legal gaps because the Criminal Code only recognizes sexual violence in the form of rape and sexual immorality, which requires penetration with the genitals. The Child Protection Law is limited to children as victims of sexual violence, despite providing the threat of severe punishment and regulating recovery for victims. Meanwhile, sexual violence can occur to children and adult women under the subordination of men as perpetrators.

Meanwhile, the law on the Elimination of Domestic Violence (UU PKDRT) only covers sexual violence within the household, so that the law does not accommodate sexual violence outside the household. In addition, the criminal procedural law is only concerned with the suspect's interests but ignores protection that fulfills a sense of justice and is a right for the victim.

On the other hand, the Bill on the Elimination of Sexual Violence offers amendments to the provisions regarding sexual violence and regulates victims' rights. The bill also does not limit certain areas, such as the Domestic Violence Law. However, the discussion of the P-KS Bill is still controversial, so that it cannot be used as a legal umbrella against acts of sexual violence.

The gap that occurs due to the legal vacuum of the rule of law regarding sexual violence has resulted in the increasing number of sexual violence in all lines, homes, neighborhoods, offices, especially in the current COVID-19 pandemic conditions. Victims often experience injustice; sometimes, victims are vulnerable to re-victimization and even criminalization under other criminal acts. The P-KS Bill, which regulates victims' protection and recovery, becomes crucial because sexual violence leaves a serious impact and prolonged trauma. This impact resulted in the downfall of the victim, both physically and mentally, in various aspects.

The difference between this study and previous research is the use of *maslahat* theory and KUPI's Fatwa, which supports the existence of the PKS Bill to provide justice for victims and recovery efforts for victims and perpetrators as well as preventing the recurrence of sexual violence.

2. RESEARCH METHOD

This paper uses the normative juridical law method, which analyzes secondary data and uses a statute approach because this paper deals with various legal rules.[7] This paper describes the urgency of the P-KS' Bill which accommodates the interests of victims and tries to uncover the controversy that occurs, through normative research and a *maslahat* approach by collecting literature and materials from the media and tracing the fatwa's of the congress of Indonesian women. *Maslahah* theory comes from Islamic law whose orientation focuses on the element of benefit for the entire ummah. This theory emphasizes the method of rejecting harm in order to maintain the goals of the Shari'a'.[8]

3. FINDINGS AND DISCUSSION

1. The Juridical Problem of Sexual Violence

Sexual violence is one form of violence that is typical for women because it is related to the way society views women as sexual objects.[9] Sexual violence is a form of physical or psychological abuse because it is carried out by coercion, threats of coercion, or violent behavior that leaves the victim helpless and injured.[10]

The Indonesian Women's Ulama Congress (KUPI) has argued that sexual violence inside and outside of marriage is haram. So that all parties, especially the State, are obliged to take preventive measures. The KUPI's arguments are based on *maslahat* theory and several fiqh principles, including:

- 1) *Dar'ul Mafashid*; rejects mafadhatan, a form of sexual violence that still occurs in various modes to this day.
- 2) *Jalbul Mashalih*, attracting benefits; many victims of violence do not receive optimal protection and treatment.
- 3) *Nahyu al Munkar*, reject evil. Sexual violence in its various forms is evil that must be prevented, and the perpetrator must be given a deterrent sanction.
- 4) *Hifzu al 'irdhi*, protection of dignity; humans and human dignity must be protected from all forms of harm, including violence.
- 5) *Hifdzu an nasli*, protection of heredity; heredity and reproductive health must be protected from damaging elements.

Based on the *maslahat* concept, sexual violence shows the loss of the perpetrator's mind, which is the core of their humanity, and the loss of the victim's benefit in various aspects of life, such as; 1). The victim's spirituality (violating the *Hifzdhu ad din* principle), 2). Human dignity or self-esteem of the victim (violating the principle of *Hifzdhu Irdl*), 3). The loss of education of the victim (violation of *Hifzdhu Aql*); the victim often has to lose the opportunity to continue their education because they are pregnant or are bullied by friends and society, 4).

economic access is closed (violating the *Hifdhul Mal* principle), victims lose their jobs and livelihoods, 5). Damage to the victim's reproductive organs and functions (violating the *Hifdhun Nasl* principle), even depression that can trigger the victim to commit suicide (violating the *Hifzdhun Nafs* principle).

The facts show that acts of sexual violence frequently occur in society and even continue to increase in number. However, ironically the term sexual violence is not recognized in the Criminal Code (KUHP).[11]

Victims of sexual violence still experience many problems, including:

- 1) victims are ashamed, afraid, and even prohibited from reporting cases. This is because the victim's case is considered a disgrace. And there were also because the perpetrators intimidated them, so they didn't complain to anyone.
- 2) Not all acts of sexual violence experienced by women are recognized as criminal acts. Sexual violence is still considered a crime against decency or a crime against morals alone. This view is supported by the State in the Criminal Code (KUHP). In the Criminal Code, sexual violence such as rape is considered a violation of decency. This categorization does not fully see and understand the causes and effects of rape against women so that the search for justice for women for sexual violence that befell them becomes difficult to enforce. [12]
- 3) The means and process of evidence stipulated in the Criminal Procedure Code make it difficult for the victim.
- 4) Victims are often blamed and stigmatized by law enforcement officials for their cases.
- 5) Victims often do not receive assistance because they are not regulated in the Criminal Procedure Code.
- 6) Victims are often reported back as perpetrators. These obstacles prevented these cases from being prosecuted, and there were even reports of victims being rejected due to difficulties in proving it. As a result, there is impunity for the perpetrator, and on the other hand, the victim experiences re-victimization (the case recurs). [11]
- 7) Victims often experience repeated trauma when facing court proceedings.
- 8) Victims still experience stigma, exclusion, and impoverishment; even though the perpetrator is convicted, the victims remain vulnerable to violence.
- 9) The obligation to support the recovery of victims after the trial was not regulated, so that victims often struggled on their own to recover after the trial

Meanwhile, the urgency of protecting victims of sexual violence through effective and comprehensive handling and judicial processes and means of social care is, therefore, imperative in criminal law and social policies. As stated by Bardanawawi Arif in Nandang's

book, the right to protection and the right to justice for victims is an integral part of human rights in the field of social security, which is very important to be implemented in handling cases of sexual violence, as a form of State responsibility.[13]

2. The Urgency of the PKS Bill as a Form of Legal Certainty for Victim Justice

Komnas Perempuan and several service provider agency partners have encouraged the State to take strategic steps to achieve comprehensive, sustainable, and holistic protection and recovery for women victims of sexual violence. In this executive summary, to realize the legal umbrella for the protection and recovery of women victims of sexual violence, the Draft Law on the Elimination of Sexual Violence has been discussed. [14]

The purposes of the PKS Bill are:

- 1) Ensure the implementation of the State's obligation to protect citizens, especially women, from sexual violence;
- 2) Take action to prevent sexual violence;
- 3) Fulfill a sense of justice for the victim, the victim's family, and the community;
- 4) Building a system of handling, protection, and recovery for victims of sexual violence;
- 5) Encourage the role of the family, community participation, and corporate responsibility in creating an environment free of sexual violence.

The following table shows the journey of the PKs Bill:

2014-2016	Komnas Perempuan and FPL proposed the importance of a comprehensive legal umbrella for the elimination of sexual violence by compiling an academic paper and writing a draft of the PKS Bill.
2016	As proposer for the Bill, the House of Representatives (DPR), submitted the draft bill and academic text to the Legislation Body (Baleg) of the DPR for priority entry into the National Legislation Program.
2017	The P-KS Bill was stipulated as the DPR initiative bill. The President appointed a government representative in the discussion of the P-KS Bill, namely KPPPA, as the leading sector.
2018	Public hearings and regional aspirations net and comparative studies to Canada and France.
2019	There is no decision, including regarding the title, scope, and systematics of the bill. Therefore, it is not yet a carry-over bill.
2020	Commission Eight of DPR submitted the PKS Bill as a proposal for discussion number three. March 2020, Commission Eight of DPR returned the PKS Bill to Baleg June 2020, the Indonesian Parliament excluded the PKS Bill from the 2020 Priority Bill

2021	The PK-S Bill is included in the list of the 2021 priority national legislation programs (Prolegnas).
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The pros and cons of the PK-S Bill continue to roll. For example, the contra group stated that: (1) the PK-S Bill supports/legalizes adultery, abortion, and LGBT; (2) the PK-S Bill will criminalize parents who ask their children to wear a headscarf; (3) The PK-S Bill is not in accordance with Indonesian values and culture and deviates from religious values.

Some of these statements were made counters by groups that were pro towards the PKS Bill, and they tried to socialize the importance of the P-KS Bill in facilitating the victims to get justice. The draft PK-S Bill also regulates efforts to protect victims of online gender-based violence, the number of which is now on the rise.

The substance of the PKS Bill regulates:

- 1) Prevention. Prevention is needed to eliminate or reduce the chance of sexual violence occurring and ensure the non-recurrence of sexual violence.
- 2) Nine types of sexual violence, namely; Rape, forced prostitution, sexual torture, sexual slavery, forced marriage, forced abortion, and forced contraception.
- 3) The main criminal punishment is in the forms of imprisonment, social works, and special rehabilitation. And special sanctions include; restitution, deprivation of profit, special guidance, revocation of child custody, political rights, rights to work, revocation of position or profession, and revocation of business licenses.
- 4) The specialty of criminal procedural law includes evidence, attitudes of law enforcement officers, remedies, prohibitions on criminalizing victims, victim assistance
- 5) , and the recovery process granted before and after the trial process.

The PKS Bill also regulates the imposition of layered sanctions for perpetrators who repeatedly commit sexual violence against victims. For example, when there is an incident of sexual violence, a person is raped, and she is undressed, then she is photographed and videotaped, and the tape is distributed. (In the PKS Bill) there is a regulation that the perpetrator can be charged with two crimes, not just one.[15]

Thus, the existence of the PKs Bill is a necessity for legal certainty and justice for victims. A victim is a legally innocent person, and vice versa is experiencing suffering because of the perpetrator's actions. Therefore, the State is obliged to provide protection and fulfill other rights which the victims are due.[16]

However, the challenge of advocating the P-KS Bill is still very heavy; the situation of the DPR debate to this day is still on whether or not it is important to discuss the Bill, even though it has been included in the Prolegnas agenda in July 2021.

The strongest view is still dominated by the narrative of rejection of the bill with biased and shallow assumptions on the grounds of religious morality. Especially in the legal aspect, it is still dominated by a positivistic legal approach that is biased/gender-neutral. Support from legal practitioners, especially from groups of legal aid organizations and advocates who have real experience in the field, including those who apply critical law, are expected to be involved at least in thinking about strategies to deal with the complex situation of the PKS Bill advocacy. Thus, the P-KS Bill can be passed.

Based on the *maslahat* concept, the PKS Bill is an effort to build relationships based on *Tauhid* and noble character, which is marked by reason to bestow virtue on all parties and protect the Indonesian nation from sexual abuse violence.

4. CONCLUSION

There are still legal loopholes related to sexual violence even though the Criminal Code, UUPKDRT, and Child Protection Law are in place. Therefore, the State is obliged to provide systemic protection that ensures justice for victims by immediately ratifying the P-KS Bill, whose substance has accommodated access to justice, truth, and recovery for victims. The Indonesian Women's Ulama Congress (Kongres Ulama Perempuan Indonesia/KUPI) also supported the discussion and ratification of the P-KS Bill and asked the government to immediately ratify the P-KS Bill. The PKS Bill is a form of legal certainty and proof of the State's presence for victim justice.

AUTHORS' CONTRIBUTIONS

The Author's contributions are; starting from determining the title, looking for references, and working on this paper to completion.

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