






Throwing (*Gowerfen-Sein*) in Positivistic Logic Against Victims of Sexual Harassment: A Study of Simulacra in Carnival Theory

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Abstract. This article aims to disassemble (*gowerfen-sein*) investigators in a state of normativity as something naturalistic towards a woman as a victim of sexual harassment who voices her suffering through social media based on complaints from those who feel aggrieved. The need for the implementation of law enforcement functions is held hostage to normativity connotatively from the fulfillment of elements of a crime that hides behind the principle of legality. Thus, the mental shock of a woman as a victim of sexual harassment, through simulacra disclosure, has positioned herself as a legal prisoner. This article uses the *Legal Research method* with an approach in Legal Studies and a Semiotics approach as well as a Critical Discourse Analysis (CDA) approach . The results of this study indicate that there is an epistemological error in the meaning of the function of law enforcement, which is a *naturalistic fallacy* . As a result, investigators forget the transcendental psychology that a woman has. Therefore, proving this matter becomes a priority before the process of proving complaints against him takes place.

Keywords: Criminal Law, Sexual Harassment, Simulacra.

1. Introduction

Sexual harassment is a serious problem in various parts of the world, including Indonesia. Indonesia, which is located in Southeast Asia, is still thick with patriarchal cultural norms, with the phenomenon of sexual harassment being an issue that cannot be ignored. Patriarchal culture places men in a dominant position and women in a lower role [1] . Patriarchy places men as having dominant power, playing a significant role in encouraging sexual harassment against women. This culture creates vulnerabilities and inequalities that allow sexual harassment to occur [2] . Weaknesses in the application of patriarchy that contribute to sexual harassment of women such as the normalization of men's power to control and regulate women [3] , the objectification of women and the stigma and social judgment of women victims of sexual harassment. Sexual harassment has a deep traumatic impact on victims, especially women. Incidents of sexual harassment cause fear, shame, anger and even long-term trauma involving psychological disorders [4] , [5] . This trauma often prevents victims from reporting the abuse they experience, due to fears about social judgment, difficult proofs, and further risks to their safety and the views of others.

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The development of information and communication technology has an impact on various aspects of life, including social interactions and the way humans communicate. One of the significant impacts of the digital revolution is the existence of social media platforms that enable individuals to connect, share information and interact globally without any geographical boundaries. Now social media acts as a means for women to express and share the trauma they experience as victims of sexual violence. Through social media platforms, women feel they can speak without fear, given their relative anonymity and physical distance from listeners or readers. The first example is from the account @KOMAHI_UR [6] which uploaded a video on Twitter showing a victim of sexual harassment by a lecturer at the University of Riau (UNRI) sitting and telling a story with his face blurred on November 4 2021, then the dean of FISIP UNRI namely SH who was allegedly suspected of committing sexual harassment reported the account @KOMAHI_UR and its guidance student, LM regarding defamation and the ITE Law[7].

The second example is the case of *revenge porn* and allegations of intimidation by members of the Protection of Women and Children (PPA), where the 23-year-old female victim was allegedly raped, abused, blackmailed, and forced to apologize. The act of raping the victim was even filmed and then used as material for threats by the perpetrator with the initials AHM. This revenge porn case went viral after the victim's older brother sought justice online. Twitter user @zanatul_91 [8] who claims to be the victim's older brother recounts what happened to his younger sibling for years. Not only did they receive threats of revenge porn, the victim was also intimidated by the Public Prosecutor's Office when they reported this case. Initially, lawyers reported allegations of sexual violence and rape. However, investigators from the cyber crime unit at Polda Banten chose to direct the investigation within the framework of the ITE Law [9]. This decision was based on the fact that the evidence found was electronic or digital in nature. The victim's family is disappointed because they have evidence that they believe indicates an incident of sexual violence, namely chat, voice notes, video calls and a report on the results of psychological counseling which states that IK experienced a traumatic event directly in the form of physical, verbal and sexual violence [10].

The phenomenon of women preferring to express their trauma as victims of sexual harassment via social media can also be found globally, such as in Mumbai, India where model and Disability Rights activist, Virali Modi, uploaded a thread on Twitter which went viral on social media on October 3, 2022[11]. Virali responded to a casting call on Instagram by someone known as Rajiv Oberoi who insulted and sexually harassed him via social media [12]. In addition, in Halifax, Canada, a woman named Liz Le Clair [13] only dared to reveal the sexual violence she experienced in 2013 after 10 years, which was committed by one of the donors at the foundation where she worked. This phenomenon is increasingly popular with the emergence of the #MeToo movement on the viral Twitter platform in 2017, which invites women around the world to have the courage to talk about their experiences of sexual violence [14]. This movement opens wide dialogue on issues of sexual violence and creates space for solidarity and support between victims. The #MeToo movement sparked social awareness about sexual violence, expressed by millions of

voices of women who have experienced sexual violence. Where the Me Too movement highlights gender inequality and the existence of unequal power dynamics.

Research related to this issue has been disclosed by Ainy Sucianti M. et al, [15], concluded that in using social media to speak up regarding sexual harassment, women tend to be motivated by posting other women who dare to share similar stories and the positive reactions from these posts. With so many women sharing, women don't feel alone and there is support for fellow women. Social media indirectly plays a role in fighting for women's gender and provides support for women to dare to come out of the shadow of patriarchy.

Meanwhile, Siti Mas'udah [16] in her research, concluded that in general victims of sexual violence perceive it as a bad, disgusting and traumatic experience. After experiencing sexual violence, the fear felt by the victim becomes stronger because society gives a label or stigma. Society tends to blame victims, especially women, for their appearance and the way they speak. Victims of sexual violence are scorned by friends and neighbors and bullied on social media. Victims are also asked to repent because society believes that the sexual violence experienced by victims is the victim's fault.

The two studies mentioned above show that there are similarities in ideas with this research, which are related to the traumatic feelings of women as victims of sexual harassment and speak up behavior through social media, as well as the negative stigma towards victims which has become a common sense among the *community*. Thus, this study focuses on the response of law enforcement officials to this discourse, as a throwaway against the *grand narrative* of the guilt of abuse victims who *speak up*. Also, at the same time ignoring historical facts will be thrown into a pattern of thinking in the logic of a monologue on the reporting process of perpetrators of sexual harassment as something naturalistic.

2. Problems

This research will focus on examining efforts to provide legal protection for victims who experience psychological trauma as a result of sexual harassment against the criminal law system which always moves in a subsumptive mindset when there is feedback from the perpetrator regarding the spread of this abusive behavior through social media.

3. Method

This study uses the legal research method with the commonly used approach models, namely the case approach, the conceptual approach, and the statutory approach. However, this research also uses a multidisciplinary approach, namely by using the Critical Discourse Analysis (AWK) approach, and the semiotic approach. from the realm of Linguistics, and the Simulacra approach from Jean Baudrillard from the Critical Sociology school, as well as using Carnival Theory from Mikhail Bakhtin from the realm of Literary-Criticism approach.

Critical Discourse Analysis (AWK) as an approach which is an approach model constructed from the view of Michel Foucault's Power-Relations Theory, is needed to read the power-relations of law enforcement officials who interpret both reports from victims of sexual harassment and from reporting back from perpetrators of sexual harassment. Meanwhile, through the Semiotics approach as an approach that is used to read all the signs and symbols that accompany traumatic-psychological speech.

We also use the Simulacra Theory of Jean Baudrillard which focuses on his study of discourse in cyberspace. And finally, is Carnival Theory—sometimes some call it Dialogism Theory or Intertextual Theory, from Mikhail Bakhtin, who comes from the realm of Literary-Criticism. Carnival theory is used to examine the dialogic relationship between victims, law enforcers, and perpetrators who put forward an inferior binary opposition to fight for their destiny.

4. Discussion

Women, historically—along with children, have gained recognition from the notion of development of human rights since the end of World War II, as unstable. In its development, this instability gained scientific legitimacy through the study of psychology. Where, a woman's vulnerability—in many ways, shows the ease with which she is susceptible to trauma, as a result of the burden piling up in her thought patterns. Females develop to bear children and become nest guardians. As a result, in their subconscious, women have been programmed to nurture, feed, love and care for other people in their lives. However, this has been normalized through a societal culture that places women second in social life. Thus, women are more susceptible to psychological impacts in the form of trauma.

Not infrequently, an event that occurs actually places women in a stigma in the form of victim blaming in society itself. As a result, it creates a feeling of insecurity and discomfort in telling stories, even with those closest to them [17]. As a result, if it is related to this modern era, in Jean Baudrillard's view, the trend of using social media applications has become a means – not just conveying protests or criticism, to convey a disappointment that has happened to him in the real world [18]. So, it's no wonder, when the world of social media is referred to as hyperreality. As a result, in the use of spoken language in written form, there is often the formation of hyperreality communication. That is, someone will assume that cyberspace or social media is the real world, as a place where they express everything regardless of discomfort and security, from the real world itself.

Awareness of something real in the minds of social media users is increasingly degraded and replaced by pseudo reality. This condition is caused by the images (views) displayed by the media continuously. Until in the end, the audience seems to be between reality and illusion because the signs in the media seem to have been cut off from reality. In other words, social media has become reality itself, even what is inside is even more real and actual [19].

The impasse in voicing disappointment and trauma is not only due to patriarchal culture which still places women as victims of sexual harassment. However, this is also due to the emergence of *victim blaming* which actually arises from investigators as law enforcers [17].

In fact, when referring to the national legal system, perpetrators of sexual harassment—legally speaking, have more opportunities to report back against women who *speak up* through social media. Because of this, there is an awareness within the perpetrator regarding the complicated process of proving in cases of sexual harassment [20]. And, the availability of legal norms - which are only interpreted subsuasively, in the Electronic Transaction Information Law (UU ITE).

This, seen in *the das sein* that we have disclosed above, is related to feedback from perpetrators and the self-awareness of law enforcers who avoid using the Law on Sexual Violence, even though they already have psychological reports of traumatic occurrences from victims.

The imbalance in the legal position between the victim and the perpetrator, in the Critical Discourse Analysis approach, is caused both because since the beginning of human civilization the binary opposition of women as “the *Other* ” is due to differences in social *capital* —as described through the discourse on harassment, sexual relations in various tertiary institutions, and economic *capital* through a model of the language of power strategy.

The strategy of the language of power, does not only hide behind individual *habitus*, but should be suspected—with the starting point of mastery over *the field* (Arena), the existence of institutional *habitus* which also makes a theoretical contribution to legitimizing and justifying a model of instrumental communication towards “*the other*”. What ultimately is the emergence of a phenomenon of Symbolic Domination from power holders based on a theoretical justification—in the form of hegemony, and not infrequently, creating false self-awareness through threatening language strategies.

In 2021, as an introduction to the issuance of the Minister of Education, Culture, Research and Technology Regulation (Permendikbudristek) Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence (PPKS) in the Higher Education Environment, confirmed by the Acting Director General of Education (Plt.) Research, Technology and Higher Education, Nizam said that Permendikbudristek Number 30 of 2021 is here as our first step to respond to the concerns of students, lecturers, higher education leaders and the public about the increasing cases of sexual violence in higher education (www.kemendikbud.go.id).

Even though, we are of the view that there is a *fallacy* in these regulations, we nevertheless perceive a stalemate in taking action against sexual harassment. Therefore, the aspect of power which is normalized by the ability to use language strategy (the language of power), causes bluntness in handling.

Referring to the data that we have conveyed above, it is appropriate to dismantle the thinking paradigm of the Investigator in handling reports that are

specific to the absence of evidence in a normative perspective. First, there is Roeslan Saleh[21] who asserts that a criminal law norm (delict) is the result of fragmentation that separates its forming factors in a complete relationship; second, in research conducted by Putro Dwi Widodo [22] explains the influence of Logical Positivism into Legal Positivism. Where, through mirror theory - initiated by Wittgenstein, meaningful language is language that has a direct correlation to empirical data.

The construction of the argument above is then embodied in a series of authoritative texts in the KUHAP, which is based on the civil law system, with a subsumptive mindset [23] between evidence and fragmentation in the form of elements of the offence. This activity is the main requirement in determining a person as a suspect based on two pieces of evidence based on Article 184 paragraph (1) of KUHAP, as well as the basis for judges in obtaining confidence to make a decision. In the end, Criminal Procedure Law in Indonesia is indeed directed to override transcendental factors in humans. And, it has an impact on the exercise of the Investigator's authority to receive a report.

The dialogical moment - in the investigation process - occurs when there is an encounter between civil law as a legal culture (other or others) - including the concept of "others", with the semiotic ability of each Investigator - which in Bakhtin's concept is referred to as self. The working pattern between "other" and "self" is an inseparable unity. This means that the presence of the reporter - as the "other", is also an element for the self - in this case the Investigator, to construct and calculate understanding [24]. In fact, the existence of the "self" will never be able to realise its self-awareness as a whole, when separated from the "other". In relation to this research, self-awareness as the executor of law enforcement functions will only operate when the Investigator - as a functional position, precisely when interacting with the community as the Reporter.

Furthermore, it is asserted that Dialogical Theory or Carnivalism Theory, in Bakhtin's view, shows the existence of primordial activities that treat the world as belonging to everyone so that they can establish contact (dialogue) freely, intimately, without being hindered by social order or hierarchy [25]. This can be seen in the normativisation in the procedural law system that gives the right for the entire community to be able to make reports and complaints through the imposition of authority on the Investigator to receive them - as stipulated in Article 7 paragraph (1) of the KUHAP. Thus, in this context, there is no class difference in a dialogical framework.

However, in the context of law enforcement, the semiotic ability (meaning) of discourse changes as a result of the influence of the legal positivism paradigm which requires empirical experience based on the existence of evidence. This means that the dialogical state desired by Bakhtin becomes impossible to achieve in its entirety, as a result of the demands for order and legal certainty in a procedural through ignoring the psychological injury of the reporter, taking into account the potential failure in the trial of the main case.

According to Bakhtin, this is because in dialogue there is always room for debate because questions show everyone's point of view rather than universal truths. According to Bakhtin, every human being likes to resist, confront, and make personal meaning out of social interaction. So Bakhtin emphasises the individual personality within each cultural group, rather than seeking unanimous agreement[26]. Thus, although dialogue is seen as an attempt to counter monologue, due to the presence of certain ideologies in a person, monologic discourse will still occur.

Of course, we do not deny that the absence of contributions from " *the other* " to *speak-up* is the spearhead in the process of proving to be stagnant, already in the myth of modernity in responding to instrumental communication from " *the central* ". Therefore, on the one hand, the hiding of *the habitus* of power in every *grand narrative* that proliferates within an institution can be understood to give rise to *law and order* . However, on the other hand, egalitarianism - in the perspective of Carnival Theory or Dialogical Theory, towards the position of " *the other* ", in every fight in the Arena (*field*) a balancing language strategy should also be prepared, so as not to get trapped in the authoritarian Arena (*field*). That is, if we use the approach from Mikhail Bakhtin, that the victim does not have the ability to see himself—it is very possible because of a sense of trauma, then the State *cq* Investigators as another party—based on the concept of the Modern Law of the State, through ability—semiotic, in reading signs and a symbol of the language of the actor's power to carry out emancipatory-egalitarian actions, which are based on the existence of psychological visual evidence that goes beyond the violation of the ITE Law.

5. Conclusion

Investigators in processing reports of sexual harassment and reporting back from perpetrators, based on the existence of a psychological post mortem, should set aside the normativity of a legal norm that creates an imbalance in the position between the victim and the perpetrator. Therefore, the existence of a psychological post mortem should be able to break through Article 44 of the Criminal Code and based on the logic of the Law on the Protection of Witnesses and Victims, the counter-reporting can be delayed by the examination process by prioritizing reporting of sexual harassment first, given the unstable nature of women to prevent social uproar through the media social.

As an effort that can be done is learning and improving the ability of " *the other* " to have semantic and semiotic abilities. Thus, it creates the ability to perform interpretation and the ability to read symbols that have sexual connotations as well as efforts to break through the hiddenness in the *grand narrative* .

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