



Preventive Model and Legal Protection of Victims of Sexual Violence Crimes in Higher Education Environment

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ABSTRACT

Preventive Model and Legal Protection of Victims of Sexual Violence Crimes in Higher Education. This study aimed to analyze (i) preventive models of sexual violence crimes in higher education environment; and (ii) legal protection of victims of sexual violence crimes in higher education environment. This research uses a normative type of research, namely legal research methods to analyze the rule of law, legal principles, and legal doctrines to answer legal issues that are the subject matter of research. The types of research approaches are the statutory approach (The Statue Approach) and the conceptual approach (The Conceptual Approach). The technique of collecting materials is the study of documents and the study of literature. Prescriptively analyzed with deductive methods to answer the problems in this study. The results of this study show that: (i) Model prevents criminal acts of sexual violence committed by universities, educators, education staff, and students. Prevention through learning is carried out by leaders or leaders of universities by requiring students, educators, and education staff to study the sexual violence prevention and handling module set by the ministry; (ii) Legal protection for victims of sexual violence crimes in the university environment is the handling of sexual violence crimes carried out through mentoring, protection, imposition of administrative sanctions, and recovery of victims. Assistance carried out in the form of counseling, health services, legal assistance, advocacy, and/or social and spiritual guidance.

Keywords: College; Preventive; Sexual Violence; Victim

1. Introduction

The application of democratic principles in relation to education will have an impact on the content, process, and management of educational units. In addition, the development of science, technology, and science that is increasingly advanced has caused pressure on all sides of human life, including the national education system. The demands for changes in the national education system will begin with curriculum changes, namely the diversity of the curriculum as a servant for students and utilizing the potential to diverse and managed regions professionally in accordance with local conditions; preparation of qualifications in accordance with the professional performance of duties and obligations; carrying out the process of autonomous school and college-based education; and organizing education with a standard, open, remote, and multi-meaning system. The renewal and implementation of the national education system includes the elimination of discrimination and violence in any form supervised by the government and managed by non-governmental organizations, as well as the separation of the education system based on religion and age.

One of the reasons for the promotion of the education system is to promote the views, goals, and strategies for developing the quality of national education. The vision of national education is to implement an education system as a social and authoritative institution to empower and advance the quality of citizens to become professional human beings so that they are able and active in adapting to changing times. Thus, in the face of social, cultural, world of work, and rapid technological changes, the competence of students in this case students must be prepared from an early age. The connectedness of the industrial, technological, and future worlds that are moving quickly at any time will have an impact on the education system, especially in universities. Thus, public or private higher education is encouraged to be able to plan, design, build, and carry out the learning process in an innovative and adaptive manner. This includes aspects of attitudes, knowledge, expertise, and skills in an optimal and relevant manner.

Especially in 2020 the Directorate General of Higher Education, showed that around 77% of lecturers admitted that there was sexual violence in the university environment. Meanwhile, 63% of victims chose not to report their cases to the university. In fact, the sexual violence case is still considered an immoral act and not as an act of crime that violates human rights, especially experienced by victims. The impact on the victim himself is traumatic over a long period of time. Psychologically, victims of sexual violence can experience anxiety disorders, depression, post-traumatic stress (PTSD), fear to the emergence of suicidal thoughts. In addition, victims of sexual violence and harassment are also vulnerable to the risk of negative-looking views and cornered attitudes from the surrounding community.

2. Method

The type of research used is a normative legal research type, namely legal research methods to (Mahmud Marzuki, 2010) analyze the rule of law, legal principles, and legal doctrines to answer legal issues that are the subject matter of research. In this type of research, researchers study and analyze legal theories, legal principles and what is written in laws and regulations (*law in book*) and legal literature to answer the problem issues of this research, namely the preventive model of sexual violence crimes in the college environment and the legal protection of victims of sexual violence crimes in the university environment. Researchers use a type of statutory approach (*The Statue Approach*) and a conceptual approach (*The Conceptual Approach*). The technique of collecting legal materials used is the study of literature study documents. The collected legal materials are then processed and analyzed prescriptively with a deductive method, namely by analyzing legal materials then systematically assembled as an arrangement of legal facts to then be used as a basis for studying problem solving from research, namely answering the preventive model (Yulianto, 2013) of sexual violence crimes in the college environment high and legal protection of victims of sexual violence in a college setting.

3. Result and Discusssion

The preventive model for sexual violence crimes is carried out by universities, educators, education staff, and students. Universities are required to prevent sexual violence through learning; strengthening governance; and strengthening the culture of the community of students, educators, and education personnel. Prevention through learning is carried out by leaders or leaders of universities by requiring students, educators, and education staff to study the sexual violence prevention and handling module set by the ministry. The legal protection of victims of sexual violence crimes in the university environment is the handling of sexual violence crimes carried out through assistance, protection, imposition of administrative sanctions, and victim recovery. Assistance is provided to victims and/or witnesses who are students, educators, education staff, and campus residents. The assistance is carried out in the form of counseling, health services, legal assistance, advocacy, and/or social and spiritual guidance.

Model prevents the crime of sexual violence committed by universities, educators, education staff, and students. Universities are required to prevent sexual violence through learning; strengthening governance; and strengthening the culture of the community of students, educators, and education personnel. Prevention through learning is carried out by leaders or leaders of universities by requiring students, educators, and education staff to study the sexual violence prevention and handling module set by the ministry;

The legal protection of victims of sexual violence crimes in the higher environment is the handling of sexual violence crimes carried out through assistance, protection, imposition of administrative sanctions, and victim recovery. Assistance is provided to victims and/or witnesses who are students, educators, education staff, and campus residents. The assistance is carried out in the form of counseling, health services, legal assistance, advocacy, and/or social and spiritual guidance.

3.1 Preventive Model of Sexual Violence Crimes in Higher Education

In patriarchic societies, women are often regarded as "belonging" to society. Therefore, every behavior that is carried out causes women to lose control of their bodies, even including their souls. In positions like this, women are vulnerable to sexual violence committed by individuals and groups of men. In fact, not all violence can result in pain or injury, sexual violence is one of them. Psychic sexual violence then becomes inconclusive when it is associated with the article contained in the Criminal Code.(Ni Putu Rai Yuliartini, Gede Dewa Sudika Mangku, 2021)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) specifically obliges states to make all appropriate efforts to eliminate discrimination against women in order to ensure rights which is equivalent to men in the field of education, and especially to guarantee on the basis of equality between men and women. However, there are situations and conditions that hinder its achievement, namely stereotypes and sexual violence that have the potential to cause women to stop their education. (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2021).

Throughout 2020 cases of sexual violence in educational institutions continued to occur, both in public education institutions and faith-based educational institutions. National Commission on Violence against Women received complaints of criminal cases of sexual violence from a number of regions in the country, namely Semarang, Bandung, Palangkaraya, Kendari, Bali, and Jombang. The form of criminal acts of sexual violence that occur is violence in the form of courtship, obscenity to rape. Meanwhile, the perpetrators are almost all people who are well known to the victim, such as girlfriends, seniors in the organization, lecturers, and families/administrators of educational institutions. This shows that the educational environment is not a safe place for students. This complaint indicates that the national education system must seriously prevent and deal with criminal acts of sexual violence, especially in the university environment (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2021).

Sexual violence or sexual deviance is any form of sexual deviance in both direction, interest, and sexual orientation. Deviation is a disorder or disorder. While sexual behavior is any behavior driven by desire, both with the opposite sex and with the same sex. These forms of behavior can range from feelings of being marginalized to the behavior of dating, making out, and making out. The sexual object can also be someone else, oneself, or an object in delusion. Sexual deviance is a form of misconduct because it violates applicable norms. Sexual deviance can be interpreted as a form of act that ignores values and norms that violate, contradict or deviate from the rules of law (Sulistiani, 2016).

Sexual violence is any sexual assault on a woman, whether there has been copulation or not, regardless of the relationship between the perpetrator and the victim. Sexual violence is not defined only as rape or coercion of copulation, but also includes various types of behavior that are unwanted by the victim and are sexual. Sexual violence is not limited only to the penetration of male genitalia into female genitalia, but also includes the use of tools or objects to cause suffering on the genitals of the victim and other well-parts of his body (Nassaruddin, 2016).

Sexual violence is divided into two categories, namely severe sexual violence and mild sexual violence. As for forms of severe sexual violence such as: (Rahmah, A.; Pabpu, 2015).

- Sexual harassment with physical contact, such as groping, touching sexual organs, forced kissing, embracing, and other acts that cause nausea/disgust, terror, humiliation, and feeling controlled;
- Coercion of sexual intercourse without the consent of the victim or at a time when the victim does not want to;
- Coercion of sexual intercourse in an unrecognized, degrading and/or painful manner;
- Coercion of sexual relations with others for the purpose of prostitution and/or certain purposes;
- The occurrence of sexual intercourse in which the perpetrator takes advantage of the dependency position of the victim that is supposed to be protected; and
- Acts of sexual violence by physical violence with/or without the aid of tools that cause pain, injury, or injury.

Mild sexual assault in the form of verbal sexual abuse. Such as verbal comments, pornographic jokes, such as facial expressions, body movements, or other acts that ask for unwanted sexual attention from the victim are harassing and/or insulting to the victim (Rahmah, A.; Pabpu, 2015; Salam, 2017). Emphasis on forcing sexual intercourse (intercourse) on a woman who is not his wife. The coercion that men carry out makes or results in women being forced to serve copulation (Wahid, Abdul; Irfan, 2011; Dahniar, et al., 2021; Lahaling, et al., 2022).

Efforts to stop violence are important, as violence has inflicted various injuries on the part of victims. The impact of the injuries made it difficult for the victim to re-express the violence he had experienced. The state has

a responsibility to protect children from sexual crimes and provide recovery to victims and ensure their rights. It is necessary to have regulations that require the perpetrator to provide restitution and compensation to the victim in order to restore the rights of the victim in total (Rahmi, 2018).

Prevention of criminal acts of sexual violence in society, especially for women and children and more specifically within the scope of higher education can be carried out with community participation in the form of cultivating literacy about the criminal act of sexual violence to all levels of society to prevent the occurrence of criminal acts of sexual violence and not to become a victim or perpetrator. In addition, socializing laws and regulations governing the criminal act of sexual violence and creating environmental conditions that can prevent the occurrence of criminal acts of sexual violence.

Based on the Regulation of the Minister of Education, Culture, Research, and Technology Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education Environment or abbreviated as Permendikbudristek Number 30 The year is 2021. Based on Article 6 of the Permendikbudristek Number 30 of 2021, it regulates prevention carried out by universities through learning; strengthening governance; and strengthening the culture of the community of students, educators, and education personnel. Prevention through learning is carried out by college leaders by requiring students, educators, and education staff to learn the module on prevention and handling of sexual violence which is determined by the ministry.

Prevention through strengthening governance consists of: a) Formulate policies that support the prevention and handling of sexual violence in universities; b) Establish a task force (task force); c) Develop guidelines for the prevention and handling of sexual violence; d) Limiting meetings between students and educators and/or education personnel outside campus operating hours and/or outside the campus area; e) Provide sexual assault reporting services; f) Train students, educators, education staff and campus residents regarding efforts to prevent and handle sexual violence; g) Conduct regular socialization related to guidelines for the prevention and handling of sexual violence to students, educators, education staff, and campus residents; h) Installing an information sign that contains; i) Inclusion of sexual assault complaint services; j) A warning that college campuses do not tolerate sexual violence; k) Provide adequate accommodations for persons with disabilities for the prevention and treatment of sexual violence; and l) Cooperating with relevant agencies for the prevention and handling of sexual violence.

Based on Article 7 of the Permendikbudristek Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment, it is regulated that prevention by educators and education personnel includes limiting gatherings with individual students outside the campus area; outside of campus operating hours; and/or for purposes other than the learning process without the consent of the head/the head of the study program or the head of the department; and play an end role in the prevention of sexual violence in the college environment. Approval is carried out provided that educators and/or education personnel submit an application for permission in writing or through electronic communication media regarding the plan of meeting with students; and Requests are submitted to the Head/Head of Study Program or Head of Department before the meeting.

The prevention of subsequent sexual violence by students is regulated in Article 8 which regulates prevention including limiting gatherings with educators and education personnel individually outside the area campus; outside of campus operating hours; and/or for other purposes other than the learning process without the approval of the head/head of the study program or head of the department and play an active role in prevention and the handling of sexual violence in a college setting. Students submit an application for permission in writing or electronic communication media to prepare a meeting plan with educators and/or education staff; and submitted to the head/head of the study program or the head of the department before carrying out the meeting.

3.2 Legal Protection of Victims of Sexual Violence in Higher Education

Legal protection is a very important element in which it serves to regulate citizens who are victims of criminal acts. Based on the 1945 Constitution in Article 1 paragraph 3 stipulates that Indonesia is a country of law. This means that Indonesia is a state based on the law. By itself legal protection is an essential element as well as a consequence in the state of law and the state is obliged to guarantee the legal rights of its citizens. Legal protection is a legal remedy that must be provided by law enforcement officials to provide a sense of security, both mentally and physically for disturbances and various threats from any party (Yusyanti, 2020).

Legal protection is to provide protection to the human rights of those harmed by others and such protection is given to the community so that they can enjoy all the rights granted by Law or in other words, legal protection is a variety of legal remedies that must be given by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party (Raharjo, 2014).

Legal protection is a property of the law that provides protection to the subject of the law or as an act in terms of protecting, for example providing protection to parties who weak (Kansil, 2006). Legal protection is a narrowing of the meaning of protection. In this case, it is only protection by law. The protection provided by law, is also related to the existence of rights and obligations, in this case those possessed by humans as legal subjects in their interaction with others humans as well as their environment. As a subject of law the human being has the right and obligation to carry out a legal act (Kansil, 2006, hal. 102).

According to Philipus M. Hadjon, legal protection for the people includes two things, namely: (Hadjon, 1987)

- a. Preventive legal protection, which is a form of legal protection in which the people are given the opportunity to raise their objections or opinions before a government decision gets a definitive form. In this preventive legal protection, the subject of law is given the opportunity to raise his objection or opinion before a government decision gets a definitive form. This aims to prevent disputes from occurring. Preventive legal protection is very significant for government actions based on freedom of action because with preventive legal protection the government is encouraged to be careful in making decisions that are based on discretion. In Indonesia, there are no specific arrangements regarding preventive legal protection.
- b. Repressive legal protection is a form of legal protection where it is more aimed at resolving disputes. Repressive legal protection aims to resolve disputes. The handling of legal protection by general courts and administrative courts in Indonesia falls into this category of legal protection. The principles of legal protection of the government rest and are derived from the concept of recognition and protection of human rights because according to history from the west, the birth of Concepts about the recognition and protection of human rights are directed towards the restrictions and the laying down of obligations of society and government. The second principle underlying the legal protection of acts of government is the principle of the state of law. Associated with the recognition and protection of human rights has a primary place and can be attributed to the objectives of the legal state.

Justice is shaped by right thinking, done fairly and honestly and is responsible for the actions taken. A sense of justice and law must be upheld based on positive law to uphold justice in law in accordance with the reality of a society that desires the achievement of a safe and peaceful society. Justice must be built according to the mind of law (*rechtidee*) in the state of law (*rechtsstaat*), not the state of power (*machtsstaat*). The law serves as the protection of human interests, law enforcement must pay attention to 4 elements: (Ishaq, 2009)

1. Legal certainty;
2. Legal expediency;
3. Legal justice;
4. Legal guarantees.

The formulation of the legal concept in Indonesia there are 13 main principles of the state of law. All of them are pillars supporting the standing of the state of law. The principles are as follows: (Muntoha, 2009)

- a) Rule of law;
- b) Equality in law;
- c) The Principle of Legality;
- d) Restrictions on power;
- e) Mixed organs of an independent nature;
- f) The judiciary is free and impartial;
- g) State administrative courts;
- h) Constitutional courts;

- i) Protection of human rights;
- j) It is democratic;
- k) Serves as a means of realizing the goal of statehood;
- l) Transparency and social control;
- m) Almighty Godhead.

The law is a rule that must be enforced and has rules where the rule has strict sanctions, so that anyone who violates it will be subject to these sanctions. The function of law as a regulatory instrument, and an instrument of protection directed towards a goal is to create an atmosphere of legal relations between legal subjects in a harmonious, balanced, peaceful manner, fair. The purpose of law is achieved if each legal subject gets his rights reasonably and carries out his obligations in accordance with the applicable rules (Rasjidi, Lili; Putra, 1993).

In essence everyone is entitled to legal protection. In concept, legal protection in Indonesia comes from the recognition of human dignity and dignity based on Pancasila. Law can function as the embodiment of actions of an adaptive and flexible nature, but also predictive and anticipatory (Rasjidi, Lili; Putra, 1993, hal. 118). Legal protection is divided into two stages, namely: (Arief, 2008)

1. The first stage, the protection of criminal law *in abstracto* is the stage of making/formulating laws by the legislature. This stage can be called the formulation/legislation/legislative stage. Criminal law protection *in abstracto* is law making or law reform;
2. The second stage, the protection of criminal law *in concreto* (law enforcement). Second, criminal law protection in the framework of supporting the achievement of the goals, vision, and mission of national development and supporting the realization of a national criminal law protection system.

Preventive legal protection efforts aim to prevent violence and crime from occurring. In this legal protection, the people are given the opportunity to raise their objections (*inspraak*) or opinions before a government decision gets a definitive form, meaning preventive legal protection aims to prevent disputes from occurring. The efforts that can be made in the protection of the law by: (Suryamizon, 2017)

- a. Clarify and emphasize crimes in statutory provisions, so that they can include many behaviors that have not been covered by laws and regulations until now;
- b. The enactment of legal provisions that provide more express and specific protection regarding criminal acts, which are minimally charged:
 1. The victim's right to protection from the authorities, for the behavior that the victim's reported perpetrator may be;
 2. The right of the victim to obtain medical, psychological, legal, social assistance primarily to restore self-confidence for him;
 3. The right of victims to obtain compensation for losses suffered, both from the government as an organization that is obliged to provide protection to themselves;
 4. The victim's right to be informed about the progress of the case and the verdict;
 5. The establishment of a nationwide institution to house victims of violence;
 6. Conduct training of law enforcement officers including training them to be more sensitive to crime issues;
 7. The existence of public education to make people aware of their rights and position.

Sexual violence is any act that includes sexual harassment to the act of forcing someone to have sexual relations without the victim's consent or when the victim does not want to, and or commit sexual intercourse in ways that are unnatural or disliked by the victim as well as keeping away from his sexual needs (Sulaeman, Munandar; Homzah, 2010). Sexual violence is an act either in the form of speech or actions done by someone with the aim of mastering and making others involved in sexual activities which activity is not desired by the person. There are two important elements in sexual violence, namely the first element of coercion or the element

of absence of consent from the other party, and the second element of the victim being incapacitated or has not been able to give such consent (Hanifah, 2018).

There are various reasons that cause cases of sexual violence not to be reported by victims to law enforcement officials, including that the victim feels ashamed and does not want the disgrace that befell her to be known by others, or the victim is afraid of being threatened by the perpetrator that he will be killed if he reports the incident to law enforcement, the legal basis is not strong, sanctions to perpetrators who are not worth it and empty protection for the victim. In addition, the feeling of fear due to the revictimization of the police and the difficulty of obtaining evidence makes the victims reluctant to face the existing legal process (Alpian, 2022).

The above factors can affect the mental or psychiatric development of the victim itself so that the goal of realizing a sense of justice for the victim will be hampered and of course will also affect the process Law enforcement itself in realizing a sense of justice for victims and also the community. The role of the victim is very important in order to overcome and solve cases of sexual violence. This certainly shows the great courage of the victim to report the incident that happened to him to the enforcement officers because of the complaint from the victim, the case will be able to open and can be carried out an examination process so that the victim can get justice for the events that have happened to him (Suzanalisa, 2011).

Furthermore, Article 45 provides that in the event that the suspect or defendant is not detained and there is a concern that the suspect or defendant will commit a criminal act of sexual assault, intimidation, threats, and/or violence to the victim and at the request of the victim, family, investigator, public prosecutor, or companion, the judge may issue a determination of the restriction of the perpetrator's movements from the victim in certain distances and times as well as restrictions on certain rights of the perpetrator. The determination of restrictions on the movement of perpetrators within a maximum of 6 (six) months and can be extended as much as 1 (one) time for a maximum of 6 (six) months. Restrictions on the movement of perpetrators to protect victims are carried out by the police.

Article 12 of the Minister of Education and Culture, Research and Technology Number 30 of 2022 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment stipulates that protection is given to victims or witnesses who have the status of students, educators, education staff, and campus residents. The forms of protection of victims or witnesses are as follows:

1. Guaranteed sustainability to complete education for students;
2. Guarantee the sustainability of work as an educator and /or educational staff at the university concerned;
3. Guaranteed protection from physical and nonphysical threats from perpetrators or other parties or the recurrence of sexual violence in the form of facilitating the reporting of physical and nonphysical threats to enforcement official law;
4. Protection of identity confidentiality;
5. Provision of information regarding protective rights and facilities;
6. Providing access to information on the implementation of protection;
7. Protection from the attitudes and behaviors of law enforcement officers who demean and/or strengthen stigma against victims;
8. Protection of victims and/or whistleblowers from criminal prosecution;
9. Civil law suits for sexual assault incidents that were litigated;
10. Provision of safe houses; and/or
11. Protection of security and freedom from threats relating to testimony given.

Meanwhile, the imposition of administrative sanctions is carried out in the event that the perpetrator is proven to have committed sexual violence which is determined by the decision of the college leader based on the recommendations of the task force. The imposition of administrative sanctions consists of 1) Mild administrative sanctions; 2) Moderate administrative sanctions; 3) Severe administrative sanctions.

Mild administrative sanctions include written reprimand or a written statement of apology published internally on campus or in the mass media. Administrative sanctions are being in the form of temporary dismissal from office without obtaining the right of office; or reductions in rights as a student include (postponement of attending lectures (suspension); revocation of scholarships; reduction of other rights). Severe administrative sanctions include: the dismissal remains as a student; or permanent dismissal from office as educators, education staff, or campus residents in accordance with the provisions of the laws and regulations of the university concerned.

Based on Article 20 of the Minister of Education and Culture, Research and Technology Number 30 of 2022 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment, it is regulated that recovery to victims is in the form of:

- a. Medical procedures;
- b. Physical therapy;
- c. Psychological therapy; and/or
- d. Social and spiritual guidance.

Recovery of the victim may involve:

- a. Doctors/other health workers;
- b. Counselor;
- c. Psychologist;
- d. Public figures;
- e. Religious leaders; and/or
- f. Other companions as needed include the needs of victims with disabilities.

The rights of victims of sexual violence in the college environment are regulated in Article 53 which stipulates that victims of sexual violence are entitled to guarantees or confidentiality of personal identity; request assistance, protection, and/or recovery from the college through the task force; and request information on the progress of handling sexual assault reports from the prevention task force and handling of sexual violence in the college environment concerned.

4. Conclusion

Based on the background of the results analyzed in the discussion, it can be concluded that the preventive model of sexual violence crimes is carried out by universities, educators, education staff, and students. Universities are required to prevent sexual violence through learning; strengthening governance; and strengthening the culture of the community of students, educators, and education personnel. Prevention through learning is carried out by leaders or leaders of universities by requiring students, educators, and education staff to study the sexual violence prevention and handling module set by the ministry; The legal protection of victims of sexual violence crimes in the university environment is the handling of sexual violence crimes carried out through assistance, protection, imposition of administrative sanctions, and victim recovery. Assistance is provided to victims and/or witnesses who are students, educators, education staff, and campus residents. The assistance is carried out in the form of counseling, health services, legal assistance, advocacy, and/or social and spiritual guidance.

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