

Reconstruction of law criminal development on victims of restoration as form of renewal Criminal law

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Abstract

The crime of rape carried out by people, experiencing a development in criminal law, the formulation of offenses in the Criminal Code makes the criminal act, does not give a sense of justice to victims where the threat of punishment is relatively small and there are multiple interpretations of legal norms, while victims suffer a psychological loss which makes the victim lose his identity. In addition, the scope of the multi-interpretive criminal reparations is due to the unclear norms which regulate, for example, the category of rape itself. This research is a normative legal research that examines relevant laws and regulations and conceptualizes the law as the norm. From the results of the study found the unclear norms stipulated in article 285 of the Criminal Code, which resulted in the application of law enforcement to victims resulting in legal uncertainty, an increasingly broad category of actions while the legal norms did not specify the actions of the rape, from the results of the research the revision of the Criminal Code as a form of renewal of criminal law specifically article 285..

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1. Introduction

Crime of rape is one form of crime that gets attention in the community and academics. If opening a history of this type of criminal act has existed since a long time ago or it can be said as a form of classic crime that will always follow the development of human culture itself, it will always develop every time, although it may not be too different from before. The crime of rape does not only occur in big cities that are relatively more advanced and modern but also occur in areas that are still traditional.

Rape crime is one form of violence against women which is an example of the vulnerability of women's position, especially towards male sexual interests. The sexual image of women who have been placed as male sexual objects turns out to have far-reaching implications for women's lives, so she is forced to always face violence, coercion and physical and psychological torture.

Attention and protection of the interests of victims of rape crimes through the criminal justice process as well as through certain social care facilities is an absolute part that needs to be considered in criminal law policy, both by the executive, legislative and judicial institutions as well as by existing social institutions.

Victims have an important role to be able to overcome or resolve this case, this requires courage from the victim to report the incident that happened to the law enforcer, because in general the victims experience further threats from the perpetrators and this makes the victims afraid and traumatic. It is expected that from this complaint,

the case can be opened and legal proceedings can be carried out so that the victim will get justice for what happened to him.

Besides that, the important role in law enforcement of rape crimes is the legal instruments in the form of norms that exist in rape offenses that have not experienced a development. When viewed from the norms in Article 285 of the Criminal Code it only contains one verse and regulates the crime of rape in general. It was stated that "whoever is violent or threatens to force forces a woman to have sex with her outside of marriage, is threatened with rape with a maximum imprisonment of 12 years".

Debate arises among academics until the law enforcement process, because in its application creates injustice, in the form of the emergence of perceptions or multiple interpretations of the article which results in law enforcers (prosecutors) only demanding low penalties and judges paying more attention to things that alleviate the perpetrators, not focusing on suffering victim of rape.

Sudarto argued (as quoted by BardaNawawiArief in his book Criminal Law Criminal Policy) that to overcome crime needed a rational effort from the community, namely by means of criminal politics. Crime prevention policies or efforts are essentially an integral part of social defense. Therefore, it can be said, that the main purpose of criminal politics is "protection of the community to achieve public welfare.

The reasons for rape cases were not reported by victims to law enforcement officials to be processed to the Court because of several factors, including victims feeling embarrassed and did not want shame to be known by others, or the victims were afraid because they had been threatened by the perpetrators that they would be killed if report the incident to the police. This of course affects the mental / psychological development of the victims and also influences the process of law enforcement itself to realize a sense of justice for victims and society.

However, LoebbyLoqman reminded that what is equally important is the similarity of perceptions of law enforcement officials regarding the rape of rape in the community. During this time, Loebby indicated that rape was only considered as sexual intercourse or harassment by investigators. As a result, prosecutors only demand low penalties and judges pay more attention to mitigating matters from the perpetrators, rather than focusing on the suffering of the victims. According to Loebby, the inequality of perception was what made the perpetrators of rape punished lightly, even acquitted. Moreover, proof of rape is not an easy matter. There must be courage from the victim to report.

From the description above, the scope of this research can be formulated as follows. How is the reconstruction of criminal acts of rape a form of protection against victims.

2. Method

This study uses a type of normative legal research because it wants to examine legislation or legal norms relating to the central theme of research, namely the reconstruction of legal acts of rape as a form of criminal politics. This type of research is normative legal research or doctrinal legal research, namely legal research that conceptualizes law as the norm, According to SoerjonoSoekanto and Sri Mamuji, normative legal research is legal research conducted by examining library materials or mere secondary data. Normative legal research includes research on legal principles, research on systematic law, and legal history. Johnny Ibrahim stated that normative

legal research is a scientific research procedure to find truth based on legal scientific logic from the normative side. Scientific logic in normative research is built on scientific disciplines and ways of working normative law.

3. Research Results and Discussion

Soetandyoignjosoebroto (as quoted by Suparman Marzuki in his book entitled "Sexual Harassment"), defines rape as follows: "Rape is an attempt to vent sexual appetite by a man against a woman in a moral and / or applicable law violating

WirdjonoProdjodikorom revealed that rape was: "A man who forces a woman who is not his wife to have intercourse with him, so that he cannot resist, so he is unwilling to do intercourse:

R. Sugandhi, defining rape is as follows: "A man who insists on a woman not his wife to have intercourse with him with the threat of violence, which is required to have the private genitals enter the pubic hole of a woman and then release semen".

NursyahbaniKantjasungkana (as quoted by Abdul Wahid and Muhammad Irfan) argues that rape is one form of violence against women which is an example of the vulnerability of women to the interests of men.

The Back's Law Dictionary, quoted by Topo Santoso, formulates rape or rape as follows: "... unlawful sexual intercourse with a female without her consent. The unlawfull carnal knowledge of a woman by a forcibly andagainst her will. The act of sexual intercourse is committed by the woman's resistance is overcome by force of fear, the prohibitive orbiter conditions ... "(... unlawful / illegal sexual relations with a woman without her consent. Legal / illegal intercourse against a woman by a man is carried out by force and in opposition to his will.Course of intercourse committed by a man against a woman not his wife and without his consent, is carried out when the women's resistance is overcome with strength and fear, or under a barrier.

3.1. Types of rape

- a. Sadistic Rape, sadistic rape, meaning that in this type sexuality and aggression are combined in destructive forms. The encroachment of rape has seemed to enjoy erotic pleasure rather than through sexual intercourse, but through a violent attack on the victim's genitals and body.
- b. Anger Rape, namely sexual sexuality characterized by being a means to express and vent detained racageram and anger. The body of the victim here seems to be an object to who the actor is projecting the solution to his frustration, weaknesses, difficulties and disappointments.
- c. Domination Rape, that is a rape that occurs when the perpetrator tries to persevere over power and superiority towards the victim. The aim is sexual conquest, the offender hurts the victim, but still has the desire to have sex.
- d. Seductive Rape, a rape that occurs in stimulating situations created by both parties. At first the victim decided that personal intimacy must be limited not to the extent of coherence. Actors in general have confidence requiring coercion, because without it they do not have feelings of guilt that are related to sex.
- e. Victim Precipitated Rape, namely rape that occurs (takes place) by placing the victim as its originator.

- f. Exploitation Rape, Rape which shows that at every opportunity to have sexual relations obtained by men by taking advantage of the opposite with the position of women who depend on it economically and socially. For example, a wife who is raped by her husband or a housemaid who has been raped by her work, while her servant does not question or complain about this case to the authorities

3.2. Rekonstruksi Rape Criminal Acts

In the formulation of elements contained in article 285 of the Criminal Code, namely: 1) Whoever; 2) With violence or threats of violence; 3) Forcing; 4) A woman who is not his wife; 5) Having sex; 6) With him

Whoever:

The first element of the crime of rape is whoever is. The term whoever refers to anyone who can be subject to this provision, if connected with the following sentence of Article 285 of the Criminal Code, then what is meant by the person in this article is a man or a woman, if proven to have committed an offense that fulfills all elements from a criminal act stipulated in Article 285 of the Criminal Code, he can be referred to as the offender and can be sentenced to criminal.

Therefore, only male or female perpetrators of rape can act, even though it is not impossible for a woman to force a man, whether he is her husband or not, to have sex with him.

The lawmaker does not determine the punishment for women who force men to have intercourse, because a woman's compulsion towards men to intercourse does not cause anything bad or harmful just because men have no danger of pregnancy and childbirth because coercion.

And if it is really forced by the woman to have sexual intercourse that has damaged the morale of the victim's man, then it could have been the deed she had experienced to a woman so that there was an offense of rape as stipulated in Article 285 of the Law Criminal.

Therefore, in the formation of the forthcoming National Criminal Code according to the author, men must also be protected from criminal acts of rape, so that those who can be convicted of committing rape offenses are not only men but also women who force man to have sex with him.

With Violence or the Threat of Violence.

The second element of the rape crime is violence or the threat of violence. In Article 89 of the Criminal Code it is stipulated that what is meant by committing violence is: "making people become unconscious or helpless".

Thus a woman can be said to be raped if the woman's body has traces of violence such as bruises, or the clothes of the woman are torn or the buttons are off and so forth.

However, the most regrettable thing is that the action was not immediately reported to the authorities because the victim was afraid of the threat from the perpetrators so that the signs or marks of this violence were lost to the examination while the victim also never sought medical help from a doctor, even though if the rape was immediately reported to the authorities then *Visum et Repertum* or if only the victim of the woman realized that the marks of violence were important in proof, the victim and her family might not neglect things. This.

Not infrequently the rape offense is not reported to the authorities or later reported to the authorities after the evidence that a rape has been committed has disappeared altogether or will later be reported to the authorities after the victim becomes pregnant, even though the rape offense has been committed by repeat perpetrators many times but because of threats from the perpetrators so that the victim does not report what has been experienced to his family especially to the authorities.

3.2.1. Legal Arrangements for Future Crime of Rape

Positive law in Indonesia is the legacy of the former Dutch colonial government which in many ways is no longer compatible with the existence and development of the Indonesian nation as an independent and sovereign nation. The Criminal Code still applies as this positive law is to fill the legal vacuum after we are independent and from year to year, we Indonesian people try to create a national legal system that serves the national interests.

The efforts of the Indonesian people were realized by, among others, conducting codification and unification in certain legal fields, including the renewal of the Criminal Code and the Criminal Procedure Code (material criminal law and formal criminal law).

Indeed there is an irregularity when we have succeeded in making a National Criminal Procedure Code today, namely Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), without being followed or even preceded by the preparation of the Criminal Code, so that criminal procedural law was previously regulated in *Herziene Inlands Reglement, Stb. 1941 No. 44* has been replaced by Law No. 8 of 1981 but the Criminal Code is still the only one.

Therefore, the law-making bodies in our country depend on the hopes of all people to be someday when we can have a National Criminal Code which is a product of our own nation and can be our pride, who has set behavior Indonesian people in accordance with the development and needs of the community.

It is a fact that people's lives are constantly evolving along with technological developments, so that there is a change in the value system of legal life in society that must experience new developments, namely living, dynamic laws that arise in the society of the nation itself. Roeslan Saleh said: It is a fact that the realities of people's lives have changed and those changes have sometimes gone so far and supported values that are different from the values previously held by legal values. These facts show the negative aspects of norms that are still being treated. These negligence in remodeling and renewing it has led to voices that doubt the fundamentals outlined in the criminal law positively and doubt the good influence of the application of the criminal law itself which lives on these bases. It is said that one of the sources of unrest in the community associated with criminal justice is because law enforcers still use a systematic normative approach solely.

From the facts that society is developing so that there are changes in the values that live in society, then the law with the main goal of achieving peace, order, prosperity, prosperity, justice and legal certainty, must be in line with community development so that the law can achieve its objectives.

Many of the Articles in the Criminal Code are 'still valid' but 'not applicable', meaning that from a juridical standpoint it still applies as a positive law, but faced with the reality in society (social *Werkelijkheid*), these rules remain are dead rules that have no force in effect and are viewed from a sociological perspective as well as 'black letter

law'. In order to catch up in the field of criminal law from the development of society and technology, the amendment to the Code of Criminal Law, especially its sanctions system, is needed in the context of the enforcement of criminal law.

4. Conclusion

The lack of clarity in the Law Norm of Article 285 of the Indonesian Criminal Code is that law enforcement does not run well certainty and justice is neglected on rape victims, therefore as soon as possible criminal law reforms, specifically the Criminal Code, are the basic norms in criminal law enforcement.

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