

Political Configuration of Laws on Sexual Violence Criminal Offences



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ABSTRACT: Sexual violence cases are like the tip of the iceberg, where sexual violence can happen to anyone, anywhere and anytime. The Law on the Crime of Sexual Violence (UU TPKS) is the answer to the rampant sexual violence in Indonesia. The ratification of this law went through a long process since the beginning where it was initiated in 2012. This study uses normative juridical with an approach method. This study uses a statute approach. The main purpose of this study is to examine the configuration and legal products of the TPKS Law. The results of the study show that the Law on the Crime of Sexual Violence has a democratic configuration and will produce legal products that are responsive in character.

KEYWORDS: Sexual Violence; Political Configuration; Sexual Violence Criminal Law

I. INTRODUCTION

Based on the state objectives stated in the opening of the 1945 Constitution of the Republic of Indonesia, namely to protect all Indonesian people and all Indonesian territory. This objective is interpreted as providing comprehensive protection to all Indonesian citizens. One form of protection is in Article 28 G paragraph (2) of the 1945 Constitution of the Republic of Indonesia which mandates freedom from torture or acts that degrade human dignity. One of the acts that degrade human dignity is sexual violence. However, in reality cases of sexual violence continue to occur and seem to be ignored by the state.

Based on the annual records of the National Commission on Violence Against Women, there were 24,529 cases of sexual violence against women in the span of 2018 to 2023, of which 23% or 5,654 cases were rape cases. The data shows that cases of sexual violence tend to still occur and can be experienced by anyone.

In general, victims of sexual harassment choose to remain silent about the harassment that happened to them because they are ashamed and consider it a disgrace. However, it is not uncommon for victims to choose to fight for their rights by reporting the sexual harassment that happened to them in the hope that the perpetrator can be thoroughly investigated and the perpetrator can be tried, but in the process the reported case is not investigated quickly and thoroughly and is complicated, so the victim chooses to speak up on social media because social media is an effective complaint space rather than reporting to the police, which is a long and complicated process and is not necessarily investigated. This shows the ineffectiveness of handling sexual violence.

Sexual violence cases are like the tip of the iceberg, where sexual violence can happen to anyone, anywhere and anytime. Sadly, perpetrators of sexual violence generally do their actions indiscriminately, currently it often happens that the perpetrators are people closest to the victim. With sexual violence experienced by victims, it causes prolonged trauma, but victims of sexual violence are often stigmatized so that they experience re-victimization.

In reality, cases of sexual violence are higher than reported. This sexual violence is a major concern. The lack of legal protection available is not comparable to the number of cases of sexual violence that occur. This is a special concern for the need for prevention, handling and recovery mechanisms for victims and law enforcement in cases of sexual violence.

The Sexual Violence Crime Law (UU TPKS) which has been discussed since 2012, and no longer follows the national legislative program in 2020, was re-inserted in 2021, and was finally enacted on May 9, 2022. In the process, it reaped pros and cons. One of the controversies is related to the content of the TPKS Bill which is considered to contain elements that are contrary to the values of Pancasila, especially religion, as the main ideological value. Some circles also consider further that the TPKS Bill is considered to have elements of radical feminist understanding that are dangerous and contradictory to religious values.

With the presence of the Law on Sexual Violence Crimes, it becomes a special rule that is the main and first in handling sexual violence. This law is expected to prioritize maximum protection for victims.

There are two types of political configurations, first, democratic political configuration, and second, authoritarian political configuration. The influence of the resulting legal products can be divided into responsive or autonomous characters and repressive,

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conservative, or orthodox characters. Democratic political configurations tend to produce responsive or autonomous legal products, while authoritarian political configurations tend to produce repressive, conservative, or orthodox legal products. From this background, the author wants to further examine the political configuration and legal products of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

II. RESEARCH METHODS

The method used in this study is normative juridical. Normative juridical research is an approach method using library data, namely legal research conducted by studying or researching a problem from the perspective of its legal rules, examining secondary data or library materials. This study uses a statute approach, namely examining all laws and regulations relating to the legal issues being worked on.

III. RESULTS AND DISCUSSION

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Authoritarian political configuration indicators, authoritarian political configuration indicators. First, the weakness of political parties and parliament or can be said to be under executive control. Second. There is intervention from the executive institution. Third. The press is constrained or not free. While the Democratic political configuration. First. Strong political parties and parliament, determine the direction or policy of the State. Second. The executive institution is neutral. Third. Free press. The political configuration will greatly determine the character of the legal products produced, an authoritarian political configuration will produce conservative/elitist legal products, and a democratic political configuration will produce responsive legal products. While in terms of the concept of responsive law, Nonet and Selznick put forward the concept of responsive law, which is different from the type of autonomous law that focuses on rules and control.

Responsive law, according to them, is a legal order created through negotiation, not through subordination and coercion. The process of making responsive law is participatory, involving various elements of society, both individuals and groups. Its aspirational nature makes responsive law based on the desires and needs of society. In other words, the legal products produced are not merely the will of the ruler to strengthen power, but aim to accommodate the interests of the people and realize social justice.

The Law on the Crime of Sexual Violence has undergone a long process in its ratification. More than 10 years before it was ratified on April 12, 2022. The Law on the Crime of Sexual Violence has been initiated by the National Commission on Violence Against Women since 2010 by starting with data collection and bringing the issue closer through the "Recognize and Handle Sexual Violence" campaign, this is based on the state of Indonesia which has been in a sexual violence emergency. Furthermore, since 2014, various series have been carried out both through discussions, dialogues and factual alignment in involving various parties before becoming an academic paper and draft of the Bill on the Elimination of Sexual Violence.

In 2016, the Bill on the Elimination of Sexual Violence became one of the Priority Prolegnas. The bill was finally agreed upon as a DPR initiative proposal at a plenary meeting on April 6, 2017. However, in 2018 the substance of the Bill on the Elimination of Sexual Violence drew pros and cons. The problem is that this bill is considered a loophole for adultery and free sex in society.

In 2020, the bill was withdrawn from the Priority Prolegnas list but at that time it was not determined and there was no discussion in the DPR. In 2021, the bill was re-entered into the Priority Prolegnas list and in September 2021 the Bill on the Elimination of Sexual Violence was changed to the Draft Law on Criminal Acts of Sexual Violence (RUU TPKS).

The TPKS Bill has become the main focus of the public, so that on January 18, 2022, the DPR re-ratified the TPKS Bill as a DPR initiative bill so that on April 12, 2022, the TPKS Bill was ratified as the Law on Sexual Violence Crimes.

Although in its journey it reaped pros and cons between the two camps represented by the feminist group and the Islamic conservative group which have different political views and ideologies. The rejection of the TPKS Bill by PKS and AILA as political parties and groups with an Islamic conservative school cannot be separated from the ideology and goals of their organization to carry the implementation of Islamic sharia values in every aspect of life, both individual, community, and in national life. On the one hand, the support of female DPR members was identified as a critical actor who pushed for the PKS Bill, there were also female academics and activists who sided with victims of sexual violence and vulnerable groups and this defense was continuously echoed. The echo and enthusiasm remained until it was finally passed. In addition, Komnas HAM Indonesia, together with women's organizations and other institutions. This realizes a world where every woman and child can live free from the threat and fear of sexual violence and where their rights are fully respected and protected.

The TPKS Law has been fought for almost 10 years before it was enacted on May 9, 2022. With the enactment of the TPKS Law, it is hoped that it will be the answer to the increasingly rampant cases of sexual violence. The TPKS Law regulates: (1) Criminal Acts of Sexual Violence; (2) Criminalization (sanctions and actions); (3) Special Procedural Law that is an obstacle to justice for victims, reporting, investigation, prosecution and examination in court, including ensuring restitution and victim assistance funds; (4) Explanation and certainty of fulfillment of victims' rights to handling, protection and recovery through an integrated service framework; taking into account special vulnerabilities including and not limited to people with disabilities. (5)

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Prevention, Community and family participation; (6) Monitoring carried out by the Minister, National Human Rights Institution and civil society. The inclusion of the 6 key elements in the TPKS Law is a legal breakthrough that deserves to be appreciated because it is comprehensive for dealing with criminal acts of sexual violence.

The formulation process to the ratification stage, the TPKS Law was implemented openly and participatively. This openness is shown by the dissemination of information by the Indonesian House of Representatives and the Government and can be monitored online such as the problem inventory list (DIM) in each of its changes. In addition, there is involvement by many civil society network groups that have sided with the victims. The involvement of the parties in the legislative process shows the participation of various groups. As stated, the democratic political configuration is a configuration that opens up space for public participation to be maximally involved in determining state policy.

Characteristics of Legal Products of the Law on Sexual Violence Crimes

The emergence of the TPKS Bill is based on the high number of sexual violence cases in Indonesia every year that special regulations are needed to prevent, handle, protect, prosecute perpetrators and create an environment free from sexual violence. With the TPKS Law, it is hoped that sexual violence will not happen again and will create a sense of security for its citizens, especially for women and children who are many victims.

The enactment of the Law on Sexual Violence Crimes has a positive impact on society, namely that society will be more courageous in reporting their cases, both to service institutions and to law enforcement agencies. The emergence of this courage is based on improving laws and policies as well as the availability of services, human resources, and legal infrastructure that are adequate, quality and have a victim and human rights perspective. This makes the entire system presented based on this law will provide security and comfort to both victims and their families as well as to witnesses and reporters. The availability of a safe and comfortable legal system, policies, and services that have a victim and human rights perspective, is one of the factors that increases the courage and ability of the community to report cases of sexual violence that they experience.

The Law on Sexual Violence Crimes was passed on May 9, 2022. Before the enactment of the regulation on sexual violence, the Criminal Act of Sexual Violence was already contained in the Criminal Code (KUHP). This makes the handling of sexual violence cases tend to use a moral approach compared to a law enforcement approach or even a transformative justice approach that aims to stop violence without reproducing violence.

With the enactment of the Law on Sexual Violence (UU TPKS), it has filled the limitations of regulations in handling sexual violence and this TPKS Law also contains procedures for handling special cases of sexual violence. This TPKS Law not only requires that efforts to prevent and handle criminal acts of sexual violence be the responsibility of the state through law enforcement agencies but also as a joint movement of the community to further open access to justice for victims, both through the victim's family/closest person or the victim's companion.

This TPKS Law has accommodated both the victim's side and the actions against the perpetrator. On the victim's side, the previous regulation has not fully fulfilled the victim's rights and has not been optimal in prevention, protection, access to justice and recovery. While on the perpetrator's side, before the presence of the TPKS Law, there has been no firm action against various types of violence and there has been no rehabilitation specifically as an effort made to change the mindset, perspective and sexual behavior of convicts and prevent the recurrence of Sexual Violence by convicts.

The presence of the Law accommodates public needs, especially fulfilling the rights of victims. In addition, the Law on Sexual Violence Crimes has fully accommodated prevention, handling, protecting and restoring victims, prosecuting perpetrators and trying to prevent the recurrence of Sexual Violence (rehabilitation) and the realization of an environment free of sexual violence. Judging from the urgency of the need, the openness of civil society and government participation space so that it can produce the results of the stipulation of the TPKS Law, this shows that this Law has a responsive character. Legal products that have a responsive character are participatory in their creation, namely inviting as much participation as possible from all elements of society, both in terms of individuals and community groups and must also be aspirational in nature which comes from the desires or wishes of the community. This means that the legal product is not the will of the ruler to simply legitimize his power.

IV. CONCLUSION

The Law on Sexual Violence Crimes has a democratic configuration and will produce a legal product with a responsive character. This is shown by the participation of active civil society groups in involvement from the formulation to the ratification of the TPKS Law. In addition, it is shown by the active role of the government together with the Indonesian House of Representatives and community groups working together to achieve the goal of creating the Law on Sexual Violence Crimes.

In the majority of cases that occur, victims of sexual violence do not dare to report the case to the authorities or choose to remain silent about what happened, either because they consider this a disgrace, do not have enough evidence or the legal process is complicated. So there is a need for education in understanding victims of violence where with the presence of the Law on Sexual Violence Crimes that really looks at the victim's side such as the existence of recovery and assistance funds for victims so that it can increase public awareness and empathy, especially victims, to dare to report.

REFERENCES

- 1) Arifin, Yusuf. 2024. “Politik Hukum Undang – Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual”, *Literasi Hukum*, Vol. 8 No. 1
- 2) Aprimayanti, Risyah. “Aktor Kritis Perempuan Dalam Pembahasan RUU PKS di DPR Periode 2014-2019”, *SETARA*, Vol. 4 No. 2.
- 3) Nurisman, Eko. 2022. “Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang – Undang Nomor 12 Tahun 2022”, *Jurnal Pembangunan Hukum Indonesia*, Vol. 4 No. 2.
- 4) Indonesia Judicial Research Society (IJRS), 2024, “Peningkatan Kapasitas Advokat terkait Undang – Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual”, diakses dari <https://ijrs.or.id/publikasi-ijrs/materi-ajarpeningkatan-kapasitas-advokat-terkait-uu-tpks/>
- 5) Marpaung, Lintje Anna, 2012, “Pengaruh Konfigurasi Politik Hukum terhadap Karakter Produk Hukum” (Suatu Telaah dalam Perkembangan Hukum Pemerintahan Daerah di Indonesia), *Pranata Hukum*, Vol. 7 No.1
- 6) Cakrawikara, “Partisipasi Bermakna Gerakan Masyarakat Sipil dalam Advokasi UU TPKS”, diakses dari <https://cakrawikara.id/wp-content/uploads/2022/09/17-06-22-Partisipasi-Bermakna.pdf>
- 7) Saefudin, Yusuf, 2023, “Tindak Pidana Kekerasan Seksual dan Perlindungan Hukum bagi Korban Kekerasan Seksual di Indonesia”, *Kosmik Hukum*, Vol. 23 No.1.
- 8) Siscawati, Ade L.M, 2022, “Tantangan Gerakan Perempuan dalam Proses Advokasi Pengesahan Rancangan Undang – Undang Tindak Pidana Kekerasan Seksual”, *Dharmasmrti*, Vol. 22, No. 22.



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