

# **Criminal Law Protection against Female Workers for Victims of Sexual Violence**

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## **Abstrak**

This research uses the literature research method or library research method, which uses a normative legal research approach or doctrinal legal research, where the law is conceptualized as what is written by law in books with legal systematics in laws and regulations or written laws. The data sources used in this study are primary data, as well as secondary data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. This research uses descriptive analytics, namely research that describes the state of the object or its events without the intention to draw generally accepted conclusions. Based on the analysis of the data carried out, it can be concluded that if harassment abuse has attacked the honor and good name of a worker, the Criminal Code has provided protection against women's vulnerability to the threat of physical and sexual violence that they must face, for sexual violence against female workers, each perpetrator will be sentenced to imprisonment or pay a fine, criminal threats for sexual violence must have severe sanctions or suffering inflicted on a person guilty of committing an act prohibited by criminal law. The Criminal Code as a whole has regulated the types of violence, be it rape and other sexual assaults (articles 285-291). If the perpetrator of sexual violence is a worker, then the protection has been stated in section 158 paragraph 1 of the Manpower Law.

**Keywords: Criminal Law Protection, Women's Workers, Sexual Violence**

## **INTRODUCTION**

Violence against women from a legal perspective is no different from other abusive behaviors. To be called an act that violates the law, violence against women must first be formulated in the law as an act that must be punished. This means that the perpetrator of violence against women can be punished if the perpetrator's actions have met the formulation of the law, which existed before the act occurred. This is known as the principle of legality which is an important principle in criminal law..<sup>1</sup>

Supposedly divided into social structures, women have long practiced divisions in the scope of work in economic activity as well as men. At first they divided the work according to the rules that lived fairly, then as the order of the job market developed, economic activists involving women began to change which was followed by violent offenses. Emerging forms of violence can be categorized into violence that intersects with the physical such as domestic workers or can be said to be a maid. This condition causes a person who is involved in these household activities to be subordinated which makes women feel very discriminated against.<sup>2</sup>

Violence is termed *Violence* in English. Etymologically, *violence* is a combination of "*Vis*" which means to carry. So violence is an act that brings the power to perform physical or non-physical coercion or pressure. The narrow sense of violence is a physical assault on a person or an attack of the destruction of very violent, cruel and vicious feelings. Sexual violence or *sexual abuse* includes the coercion of sexual relations carried out on people who live in a house, be it a household, or who live together in the house. Sexual violence refers to any sexual activity, the form of which can be either assault or without assault..

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<sup>1</sup>Prof. Dr. M. Munandar Sulaeman dan Ir. Siti Homzah, MS. 2019. *Kekerasan Terhadap Perempuan Tinjauan Dalam Berbagai Disiplin Ilmu & Kasus Kekerasan*. Bandung: PT Refika Aditama, Halaman 95.

<sup>2</sup>*Ibid*, halaman 40.

The category of assault, inflicting suffering in the form of physical injury, the category of sexual violence without assault gives emotional trauma. Forms of sexual violence such as being seduced, poked, hugged by force, squeezed, forced masturbation, oral, sex, anal sex, and raped. Sexual violence is considered torture when it meets the definition of torture, that is, it involves severe suffering, is carried out intentionally for a purpose (i.e. not by accident), such as punishing, intimidating, on various grounds on the basis of discrimination of any kind, which is carried out by a seornng who plays a role in an official capacity, or on the encouragement of his ability, and his consent alone.

Sexual harassment, power harassment, or workplace harassment are acts that are contrary to Law Number 13 of 2003 concerning Manpower, this Law becomes a legal umbrella for labor protection to guarantee the basic rights of workers, guarantee equal opportunities, and treatment without discrimination on any basis, to realize the welfare of workers. Women's workforce that has the potential to come in the most difficult position, this problem often occurs due to the thick patriarchal culture, which is based on gender issues. The rights and freedoms to develop one's self-worth have been well known and circulated in the midst of society, but there are still many and still found practices that are involved in the world of discrimination.

Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower considers, that national development is carried out in the framework of the development of the whole Indonesian human being and the development of society in Indonesia as a whole to realize a prosperous society that is just, prosperous, equitable, both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia. That the protection of labor is intended to guarantee the basic rights of workers / workers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers / workers and their families while still paying attention to the development of the business world..

## **RESEARCH METHODS**

A study cannot be said to be research if it does not have a research method because the purpose of the research is to reveal a truth systematically, methodologically and consistently.<sup>3</sup> The research method used is normative juridical research, which is legal research carried out by researching library materials or skunder data.<sup>4</sup> Soerjono Soekanto stated that there are 5 scopes of legal research, namely research on legal systematics, legal systematics, level of legal synchronization, legal history and comparison.<sup>5</sup> Judging by its nature, this study is descriptive analytical, describing all the symptoms and facts and analyzing the problems that exist now in law<sup>6</sup> relating to the exercise of the rights of suspects and defendants at the time of serving the period of detention. This research uses an empirical juridical approach, namely an approach by conducting an assessment and analysis of criminal law protection for female workers for victims of sexual violence.

## **RESULTS AND DISCUSSION**

### **Factors Behind the Emergence of Sexual Violence Against Female Workers**

The phenomenon of gender problems in our society is increasingly complex, in addition to facts and data on gender bias in various areas of life that are still unequal; also the challenge of complex gender problems is increasingly the existence of a study program that integrates

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<sup>3</sup> Rahimah, R., & Koto, I. (2022). Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes. *International Journal Reglement & Society (IJRS)*, 3(2), 129-133.

<sup>4</sup> Koto, I., & Faisal, F. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774-781.

<sup>5</sup> Zainuddin, Z. (2022). Implementation Of The Change Of The Chairman Of The Labuhan Batu Selatan Regional People's Representative Council. *International Journal Reglement & Society (IJRS)*, 3(1), 11-18.

<sup>6</sup> Winarno Surakhmad, *Dasar dan Teknik Research* (Bandung: Tarsito, 1978), hal. 132

various disciplines that will elaborate and explore the problems of women (gender). The term women's studies is not quite right, because the connotations of women are too broad to be used as objects of scientific knowledge. In contrast to the study of gender studies, which has the meaning of women's reality in socio-cultural constructions, which can be studied from various perspectives of scientific knowledge.

The study of gender studies is often stuck in ideological interests and thus ignores scientific interference. This means that gender studies need to structure a theory of scientific knowledge (heuristics) in a logical and inductive empirically deductive manner, with the object of form being about gender. Another consideration that supports the need for a scientific discipline on gender studies because the scientific community on gender is sufficient, which develops gender studies from the background of its scientific discipline. Gender studies from various ontological perspectives have developed quite rapidly including from sociology, anthropology, politics, economics, literature, communication, law, psychology and from gender itself is quite complete. Studies from epistemology can be developed with rapid knowledge of approach or gender-based research methods.

Gender-based violence stands for the patriakhi value system that views women as subordinate to men and entitles men to position themselves as the dominant group that controls women's sexuality and gender identity. Women are conditioned to accept their positions and roles as men want and men to exercise control so that women obey them. In the family sphere, the violence that occurs is related to the different statuses and roles between husband and wife, so that the forms of violence are exploitation and domination. Women are not given status and roles in accordance with their rights because control in domestic affairs rests with the husband.

Violence is a cross-cutting phenomenon and does not stand alone or just happen, as if it happened without a plan and seems to have become a habit. Therefore, in principle, there are consequences, of course, there is a cause. The factors causing violence against women, including workers, are:

1. Poverty can make people victims of crimes (such as being enslaved, tortured as laborers),
2. Individual aspects and aspects of the social environment. Human aspects as a cause of violence. In general, society has always assumed that women are weak people, second-class people in a society. Aspects of the socio-cultural environment. The attitude of a society that still looks down on women because of patriarchal culture, and that can easily lead to violence against women,
3. Special traits of the individual: what is meant here is the psychiatric state of the individual, this review is more focused on psychological aspects, in personality problems often arise deviant behavior such as: - Deviant behavior due to low mentality (not mental illness). The reason for the low mentality or inability of a person to function / play a good social role in society is also one of the causes of the emergence of crime. - Deviant behavior due to emotional power.

### **Forms of criminal sanctions for perpetrators of sexual violence against Female Workers**

Criminal sanctions are a threat to scare – scare or bluff so that someone does not commit a crime. Intimidation takes the form of threats that emphasize the influence of these threats on crime prevention, which is considered a social interest in order to avoid the temptation to commit crimes.<sup>7</sup> The term 'Sanction' is a term that has always been used in various urgency of the rule of law that exists among the public, one of which is in the Criminal Code (KUHP). So that the use of the sentence sanctions in the Criminal Code, is more often referred to as criminal sanctions or even only called *criminal (punishment)*. Criminal sanctions are a threat of

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<sup>7</sup>Mahrus Ali. 2015. *Asas-Asas Hukum Pidana Korporasi*. Jakarta: Rajawali Pers, halaman 2.

punishment that is suffering and torture. Criminal sanctions are known to be basically a guarantor to rehabilitate the behavior of the perpetrators of these crimes, but it is not uncommon that criminal sanctions are created and used as a threat to human freedom itself

The position of victims in criminal justice as a party to justice so far is still widely neglected. When studied from the purpose of punishment in positive criminal law, criminals receive more attention such as rehabilitation, *treatment of offenders*, social adaptation, society, and others. This situation is a form of injustice for victims, because it is a means of proof, and it is not uncommon for victims' human rights to be neglected. The work of the criminal justice system by imposing perpetrators in accordance with criminal sanctions both in institutions and legal institutions is more oriented towards *offenders (offender oriented)*. The existence of victims is subordinated and eliminated as *risk secondary victimizations* in the work of criminal justice.

Protection for parties who must be protected as well as having a legal framework called legal consumers, in this case victims and the wider community must have an anthropocentric view of the law is very necessary. The concrete way in which man is treated will determine the value of the law, which has such a way of working as:

1. Regarding targets and events related to legal impact. The significance of each principle, the rules of concepts are examined by observing the humane targets affected by them, which is that the sense of injustice carries a vital influence on the way the law works,
2. Regarding the concretization of man. The law protects the physical and psychic safety of the whole human being,
3. Regarding the relative proportion of the severity of things, Responsive to the interests of internal efficiency and profit, the law provides the needs felt by the people,
4. Regarding attention to certain cases.

The criminal process has a general and concrete meaning, namely the process of punishment as an authority in accordance with the principle of legality, namely *poena* and *crime must* be determined first if you want to impose a criminal conviction on a criminal offense, while in a concrete sense the criminal process is related to the determination of criminals through the infrastructure of panitensiers (judges, prison officers) which means as a moral demand, and a form of philosophical prosecution.

## CONCLUSION

Factors that cause sexual violence in female workers are poverty and differences in position, special traits of individuals (the perpetrator's psyche / deviant behavior) , aspects of the social environment that consider women inferior due to patriarchal culture, occur also because the nature and conditions of the victim can harass the perpetrator, the victim (female worker) who belongs to the physically and socially weak group so that they do not resist, a lack of religious understanding, as well as the disharmony of the perpetrator in the household. So that sexual violence against female workers can have an impact on suffering for victims and reduced company productivity. legal protection not to be a victim of sexual crimes and to obtain legal guarantees or compensation for the suffering or loss of people who have been victims of crimes, including the fulfillment of their rights. If *harassment abuse* has attacked the honor and good name of a Female Worker (female labor), therefore the Criminal Code has provided protection for criminal sanctions for the threat of physical and sexual violence that the perpetrator must face. The Criminal Code specifically regulates rape and sexual assault (articles 285-291), sexual harassment (article 294 paragraph 2), threats of violence to force something out of will (article 335).

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