

The Effectiveness of Implementation of Criminal Law in Managing Sexual Harassment Cases in Indonesia

Anno Soembolo
{annosoembolo@gmail.com}

Universitas Jayabaya, Jakarta, Indonesia

Abstract. Cases of sexual harassment in Indonesia are again in the spotlight, especially in several educational institutions until the issuance of Permendikbudristek Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education. The question then is, are the articles commonly used to deal with sexual harassment cases in Indonesia so far ineffective, so new regulations are needed? Then how exactly is the handling of sexual harassment cases in Indonesia so that the number of reports of sexual harassment cases from Komnas Perempuan actually shows an increase in 2021 to 4,500 complaints? The results of the author's analysis show that there are no regulations and criminal articles that specifically regulate sexual harassment. So far, the handling of sexual harassment cases uses articles on obscene acts, pornography and UUITE for harassment that occurs in cyberspace. The increase in sexual harassment cases is also due to the fact that these crimes occur in private spaces where there is minimal evidence and witnesses and new cases can be handled through complaint offenses. Victims, who are generally women, are embarrassed to report because they are hindered by cultural values and religious understanding. Case handling which is also considered unresponsive to gender interests makes case handling less effective.

Keywords: Sexual Harassment, Effectiveness, Crime, Gender

1 Introduction

Cases of sexual harassment in Indonesia are not new news. In 2017, Indonesia was shocked when the body of a four-year-old boy who was previously declared missing by his family was found in a mud puddle at the Kokodo complex, Sorong City, West Papua. The perpetrators were three young men who not only raped the victim but were also proven to have abused the victim by finding several wounds on the victim's body [1]. On April 4, 2016, Indonesia was also shocked by the discovery of the body of a 14-year-old girl named Yuyun in the village of Kasie Kesubun, Rejang Lebong, Bengkulu, who was a victim of rape and murder by 14 men. Before being raped, Yuyun's head was beaten with a stick, her feet and hands were tied, her neck was strangled and then she was raped in turns, even the post-mortem results showed that when she was raped the victim was already dead [2]

The Indonesian National Women's Commission noted that during January-October 2021 alone there were around 4,500 complaints of violence against women, this figure has doubled compared to 2020. [3] Komnas Perempuan Indonesia recorded a decrease in the recording and reporting of sexual harassment cases from 2019 amounting to 431,471 cases became 299,911 cases in 2020 not because of a decrease in cases but a decrease in the recording of questionnaires in the field and the lack of awareness of victims to disclose the acts of harassment or sexual violence they experienced, this is evident from the recording data in 2021 which has increased.

[4] And of course, we also need to underline that the visible numbers are only those who report, victims who dare to speak up. In fact, there are not a few who choose silence and silence. Komnas Perempuan identified 15 forms of sexual violence, namely; 1) Rape, 2) Sexual intimidation including threats or attempted rape, 3) Sexual harassment, 4) Sexual exploitation, 5) Trafficking in women for sexual purposes, 6) Prostitution in the context of coercion, 7) Slavery in a sexual context, 8) Coercion marriage and also includes hanging divorce, 9) Forced pregnancy, 10) Forced abortion, 11) Forced use of contraception and sterilization, 12) Torture in a sexual context, 13) Punishment carried out in an inhumane manner in a sexual context, 14) Traditional practices that have sexual concepts that harm and discriminate against women, and 15) sexual control.

Various problems that occur in efforts to enforce the law of morality in Indonesia include (Zainal, 2015); First, the interpretation is not uniform even though the sources of law used are the same. This happens because the values and norms that apply in society in Indonesia are also diverse. Second, sexual harassment is a complaint offense. This is because the issue of decency is considered a private or private matter. So, personal problems can only be processed if the victim submits or reports the harassment she has experienced first, while considering that generally the victims of sexual harassment are women and children, the victim is reluctant and embarrassed to voice the form of harassment she faces.

The case of a UNRI student, for example, only kissing the cheek is still considered reasonable and trivial by the public when compared to the Yuyun case. Consequently, law enforcement in the field of decency does not focus on the interests of the victims, but rather on the institutions that protect them. Third, the proof is difficult to do. Most acts of sexual harassment do not occur in public or there are few witnesses. So that the victim's confession about the abuse she experienced becomes difficult to prove. This problem can actually be overcome through legislative policies, namely the policy of formulating a criminal act in criminal law regulations and the role of science and technology in the process of proving criminal acts.

Finally, the position of women and children in society is generally in a culturally subordinated position. Socially, the involvement and space for women in the public sphere is more limited than that of men, including in law enforcement practice. Sometimes the gender element plays a major role in determining the quality of the legal product produced because it involves sentiment between the sexes, so there is nothing wrong with cases of sexual harassment. handled by female judges because they are considered more critical and sharper in responding to violations that occur. According to Nikyta Legoh (2018), children who are also victims of sexual harassment seem to have escaped this attention, sex education is considered taboo so that children do not know and realize the acts of abuse they have experienced. In law enforcement, the patriarchal culture is still strongly felt by women and children.

Discrimination against gender in the application of law in Indonesia is believed to occur because the law is made and controlled by men in power. Law in Indonesia is considered to still have not seen the side of women's experiences and interests. Crimes experienced by women generally occur in the domestic sphere and are private in nature, so victims must first disclose the acts of violence they have experienced so that they can be followed up, such as cases of abortion, rape, domestic violence (domestic violence) and sexual harassment.

In addition, the ratification of Permendikbud, Research and Technology Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence (PPKS) is an effort to provide a legal umbrella for survivors of sexual violence in universities, causing polemics in the community. Sexual harassment is behavior that demeans or humiliates a person based on their gender (Berdahl, 2007). In the laws in force in Indonesia, we do not recognize the term sexual

harassment, we are familiar with the term obscene act. R Soesilo (1991) states that obscene acts are all acts that violate decency (politeness) or vile acts, all in the environment of sexual lust such as kissing, touching the genitals, touching the breasts and so on. The scope of sexual harassment is very broad, it can take the form of verbal or written, physical and non-physical, ranging from verbal expressions (indecent comments, sexually suggestive jokes and so on) in physical form (poking, touching, stroking, hugging and so on), showing pornographic/dirty pictures, indecent assault and coercion such as, forcing to kiss or hug, threatening to make it difficult for the woman to refuse to provide sexual services, to rape (Sumera, 2013).

If we look closely, the current Criminal Code, especially the one that regulates decency, is philosophically ambiguous. Although there are some things that can be judged as universally acceptable, but because the philosophical basis or values behind the prohibition of such acts have principal differences, the implementation of criminal law that regulates morality is also different. The juridical handling of cases of sexual harassment encounters obstacles regarding the formulation of criminal acts/delicts in articles that are not yet clear, the evidence in the procedural law, and the nature of which is partly a complaint offense.

The main reason is related to the regulation of the Criminal Code (KUHP), which is a legal product left by the Dutch colonial government, so that it is no longer relevant to changes and developments in society, especially if it is associated with efforts to empower women. In addition, victimically, our criminal law has not accommodated adequate victim protection, so that in cases of sexual harassment the victims tend to be women and children (Supanto, 2004). The articles contained in the Criminal Code clearly refer more to indications of obscene acts, there is no detailed identification of what can be categorized as sexual harassment, sexual violence and obscene acts.

These blurred boundaries actually make the handling of decency cases in Indonesia completely unclear. Ten or twenty years ago, for example, we were not acquainted with cyber sexual harassment which has recently become a complex phenomenon that demands attention and appropriate and fast solutions from the government. Because so far, sexual harassment or violence in cyberspace can only be handled and charged with the ITE Law, namely article 27 jo. Article 1 point 1 UU ITE or pornography law Article 4 in conjunction with Article 1 number 1 UU Pornography.

The author sees a void that must also be considered in efforts to handle cases of sexual harassment and violence in Indonesia is the loss experienced by the victim/reporter. When the act of sexual harassment experienced by the victim comes to the surface or is reported to the police, during the investigation process, collection of evidence and trial during that time the psychological and physical condition of the victim must also be considered. In addition to case assistance by law enforcement, it is also necessary to provide assistance by psychologists to observe the mental health development of victims. The process which is considered by the community to be complicated must also be trimmed down so that it no longer seems long-winded. In addition to considering the condition of the victim, of course, it will also invite other victims who are still silent to no longer hesitate and dare to report the sexual harassment they have experienced.

Another problem that is also an obstacle in the effectiveness of law enforcement in cases of sexual harassment and violence in Indonesia is the difficulty of proving it. Most acts of sexual harassment do not occur in public or there are few witnesses. So that the victim's confession about the abuse she experienced becomes difficult to prove. We need to refer to valid evidence according to the Criminal Justice System in Indonesia, namely as stipulated in Article 184 Paragraph (1) of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions and statements from the Defendant. Even though reports from victims or

reporters are considered weak to be used as evidence at trial, investigators will collect other evidence that is adjusted to the statements and confessions of the complainant and the reported party, such as the post-mortem evidence which can later be strengthened by expert witnesses, in this case a doctor or psychiatrist.

Understanding of how the procedure of evidence in cases of sexual harassment is not clearly understood by the public. The lack of information and education about the law to the public makes the Indonesian people seem to be blind to the law. For cases of sexual harassment, for example, the general public will think that if they do not have evidence or witnesses, it is impossible for the case to be held legally responsible. Or in the case of Baiq Nuril, who tried to collect evidence of the abuse he experienced, he was named a suspect. The author feels that the very minimal knowledge of community law causes people to become apathetic and pessimistic about the efforts of law enforcement in Indonesia. This obstacle adds to the burden on the victim, because it burdens the victim with his or her limitations, having to present witnesses, other evidence, pay for the post-mortem, seek protection independently, and prove himself/herself as a victim (Pujileksono, 2016).

Weaknesses in the process of investigation and investigation by the police involve victim reports, where victims do not report directly or lack of evidence against cases. Due to the lack of evidence or the delay in reporting to the police, victims of sexual harassment also lose the right to take revenge on the perpetrators. Many cases that are reported as rape by the victim are considered by the police not to meet the elements of rape in the Criminal Code, namely the "element of coercion" which must be physically proven. In fact, in the experience of women, coercion does not have to be physical, it is enough that the pressure exerted by someone who has influence or a dominant party in an unequal relationship makes the victim helpless. Psychological coercion like this is actually very imprinted and causes deep trauma to the victim. Starting from intimidation, to being humiliated by close friends. The risk of this judgment must be borne by the complainant of sexual harassment. Not all strong people face multiple traumas after experiencing abuse.

2 Results and Discussion

The crime of sexual harassment is a type of crime that has a big impact on the victim but is considered light by some people. In addition, what must also be underlined is that acts of sexual harassment are not only acts that violate the law but also acts that trigger tensions between genders. Handling cases of sexual harassment in the field is like a tangled thread that confuses. Victims who choose to remain silent are also the cause of the high number and cases of harassment occurring in the field. The culture of the Indonesian people who still consider taboos and religious understandings that are considered more in favor of men, do not provide space for victims to protest, refuse and voice their rights as tools and weapons for the perpetrators to continue walking without fear of the consequences of their actions.

From a legal point of view, as the author stated above, the articles that regulate the procedures for handling cases of sexual harassment still overlap. The punishment imposed on the perpetrators is also still considered light so that it does not cause a deterrent effect on the perpetrators. Not to mention if we relate it to a gender perspective, which considers the application of law in Indonesia to be unequal and in favor of men. These things are the cause of the ineffectiveness of legal handling related to sexual harassment cases in Indonesia.

Sexual Harassment is a Complaint Offense.

Sexual harassment is a complaint offense regulated in the Criminal Code (KUHP). This happens because the regulation is a legal product of the Dutch heritage which is the basis for reference in determining legal articles in Indonesia. Complaint offense means an act that violates the law and harms other people can only be followed up legally after a complaint from the victim. In acts of sexual harassment, where the majority of victims are women, this is a separate obstacle. It is interesting and sad because in the social construction of Indonesian society, the values adopted by women are values that are attached to culture and religion. Women who are rape victims, for example, have to bear the consequences that are not simple when they choose to complain about the abuse they have experienced. Without a complaint, the perpetrators of sexual harassment cannot be brought to justice.

We need to underline here that sexual harassment is a type of crime that can occur in both private and public spaces. The point is that sexual harassment can happen to anyone, anywhere regardless of gender, social class and economic level of a person. Generally, sexual harassment occurs in private spaces with a much heavier crime weight than sexual harassment that occurs in public spaces such as rape, molestation, etc. where the perpetrator is usually a family member or someone known to the victim and the victim's family. Meanwhile, sexual harassment that occurs in public spaces is more general, the perpetrator and victim may not know each other and usually occurs in a crowd such as exhibitionism (showing genitals in public), catcalling (a compliment that makes the victim uncomfortable, whistling, an invitation to have sex accompanied by jokes in public).

In terms of evidence and witnesses, it is also difficult to formulate it, sexual harassment that occurs in private spaces generally lacks evidence and witnesses, except for the types of harassment that have led to sexual violence such as rape which can be proven by a doctor's visa while harassment that occurs in public spaces only depends on witnesses, recordings CCTV is usually installed in some public facilities and so on. this makes it difficult for law enforcement officers to record sexual harassment acts if the victim or the victim's family does not register a complaint.

Complaint offenses are offenses that can be prosecuted because of complaints from the aggrieved party. In the Criminal Law, offenses are divided into two, ordinary offenses and complaint offenses: R. Soesilo divides complaint offenses into two types: a). Absolute complaint offenses, offenses that can only be prosecuted if there is a complaint, for example, such as articles: 284 & 287 (adultery infidelity), 293 (child molestation), 310 (defamation), 332 (running away underage women without the guardian's approval), 322 (medical secret), and 369 (threats) and, b). relative complaint offense, ordinary offense which is used as a complaint offense because it has certain qualities. For example, articles: 367 (between families), 370 (threats in the family), 376 (theft in the family), 394 (lawful for divorce which frees you not to live in the same house), 404 (taking other people's belongings), and 411 (damaging or destroying other people's goods) (Arafat, 2017). Victims of sexual harassment can immediately make a complaint report to the police through a complaint offense and later the criminal case settlement flow will be carried out as in a normal offense, namely through the stages of investigation, prosecution, examination at trial and implementation of decisions. However, the reality on the ground is that the voice of the victim is only represented by the state that takes over the settlement of cases involving him.

The position of the state in the complaint offense is not authorized to prosecute an offender if the victim of the crime, namely the party deemed most entitled to file a complaint, does not or has not filed a complaint. In the complaint offense, the victim is given the authority whether to prosecute or not. Criminal law here provides an opportunity for victims to consider the advantages and disadvantages that they will bear if the case at hand is to be resolved through

legal channels. This means that there are opportunities for victims and perpetrators to resolve cases amicably. Victims of sexual harassment generally experience psychological pressure from various sides. Mental pressure due to the acts of harassment she experienced, moral values based on culture and religion towards women and psychological pressure because the process of handling cases takes a long time and is considered convoluted.

Sexual harassment as a type of crime that generally occurs in the private space causes investigators to have to find and collect evidence and witnesses that are minimal compared to crimes that occur in the public sphere. In the end, victims of sexual harassment are faced with conditions that are not very favorable which in the end remain unequal and are more profitable for men as perpetrators. The handling of cases of sexual harassment through complaint offenses is considered not to benefit the victim materially and immaterially.

The author feels the need for consideration for several cases of sexual harassment that are considered severe to be processed through a pure complaint offense. We need to consider the condition of the victim and the victim's family who are experiencing a psychological burden as a result of what happened. Not a few families choose to silence the acts of sexual harassment experienced by their families just to avoid public opinion and social sanctions such as being ostracized, humiliated, and threatening the future of their family.

Pure offenses are expected to help reduce the number of sexual harassment cases in Indonesia. Perpetrators can also get a deterrent effect because it turns out that their sexual harassment act can be processed even if the victim does not file a complaint with the authorities. This is also a pick-up strategy carried out by law enforcement officials so that people who think that the law is one-sided, complicated and convoluted can be facilitated.

“Taboo” Culture and Religion in Perceiving Sexual Harassment.

Sexual harassment is often measured based on moral values, religious and cultural norms adopted by the community. According to Soerjono Soekanto (1983: 41), the legal rules are compiled in a legal system which is essentially a concretization of socio-cultural values that are embodied and formed from the culture of a society or the special culture of the community. In big cities such as Jakarta, for example, women wearing “minimal” clothes showing cleavage and thighs is considered normal, but in some areas, which in particular apply strong religious values and strong customary rules, this can cause problems.

Culture and moral values in an area also affect how women respond to reactions from the opposite sex. The heterogeneity of the cultural backgrounds of people in big cities like Jakarta causes the prevailing moral values to also change. Tolerances which are then used as an explanation for actions that are considered to be harassing women in the public sphere have become a habit. But today, many women are actually not aware that they have been sexually harassed. This is because the development of a permissive culture in modern society, such as catcalling for some women is considered a natural and normal thing, on the other hand, they view it as a form of men's recognition of their beauty and physical advantages.

Perpetrators of sexual harassment who are dominated by men then seem to legalize the notion of men as sexual predators who target women, children and the weak as victims. In the Javanese, ideal man is the one who has hump (sexual virility) and benggol (money) which then legalizes the power of men over women (Darwin, 1999: 3). Sex is a symbol of masculinity, men as active and powerful parties who penetrate women as waiting subjects (Butler, 2011: 63). The above assumption finally confirms the position of men as parties who are considered reasonable to concentrate on sexual practices in their lives. Sex is a primary need for men. Biologically, men have 20-30 times more testosterone as a hormone that controls sex drive than women and men think about sex at least 15 to 18 times a day (Pease & Pease, 2010). So, it is not surprising

that sexual harassment has become a criminal practice that makes women victims and men as perpetrators.

Culture and moral values govern how men and women should act and behave. Men and women are narrated with different images where men can freely narrate themselves and women are considered individuals who are unable to narrate themselves so they need representatives in this case men to narrate themselves (Febrianto et al, in Udasmoro & Rahmawati, 2021). Women as victims of sexual harassment will be labeled as weak, damaged and immoral individuals. Rape is considered to occur because women give signals to men through body gestures, appearance (clothes worn) and tone of voice.

Yofiendi Indah Indainanto (2020) stated that the media reporting sexual harassment cases often exposes the victim's side in the news, thus directing the victim's opinion to be the cause of the problem, such as the victim wearing open clothes, the victim going out at night, the victim provoking lust, and the victim traveling alone. These framings often color the news about cases of sexual violence. The author sees that these assumptions actually make the conflict between genders wider. Perpetrators of harassment who are dominated by men are considered to represent the image of men who are cruel, powerful, arrogant and oppressive. The law as a neutral media should be able to read this situation because if it is not followed up, acts of sexual harassment will no longer only talk about violating the law but will also lead to conflicts between genders that talk about the struggle for gender equality. The law can and may have been judged not to be neutral and only favors men over women.

The psychological burden borne by women as victims is a manifestation of moral values prevailing in society, making women ultimately feel cornered and alone. Not only in terms of culture, religion in fact also has an important role in this. Religion has become its own standard in defining the image of women. In the context of Islam, veiled women are considered individuals who are close to God and obedient to the teachings of their religion (Rifaldi et al, in Udasmoro & Rahmawati, 2021).

So, the assumption is that the more closed and awake a woman is in terms of her appearance, the less likely she is to become a victim of sexual harassment. The author personally doesn't see that this is wrong, but we need to look at cases in certain areas, such as in Papua, where it is customary to see women in minimal clothing (koteka) or in Saudi Arabia, which requires women to cover their bodies, as well as cases of sexual harassment. This means that if we attach the cause of sexual harassment to just appearance, this stigma is certainly not too strong.

Sexual oppression and harassment that occurs in private spaces often occurs because it starts from personal problems such as violence experienced by the wife by the husband. Several cases in the field show that the interpretation of religion which is considered one-sided and more in favor of the patriarchs ultimately restrains women in rules that are interpreted by men in the name of religion. The interpretation of religious teachings is considered to only benefit men and is considered to intimidate women. In the concept of obedience, women as children, wives and mothers seek the title of "sholeha" which is judged on the basis of the pleasure of the father and husband so that many acts of sexual harassment that occur in the domestic sphere are based on women's obedience to their religion.

The author sees that the mixing of interests and the dominance of the patriarchs makes religious teachings a shield that legalizes forms of domination that are far from the teachings of religion itself. Sexual harassment by a husband to his wife is then considered as a form of power of a husband who "owns" a woman as a wife so that this action is considered natural in the context of religion and the institution of marriage.

Implementing Laws That Do Not Accommodate Gender Interests

With the expansion of opportunities for women to equalize with men, more and more sexual harassment is obtained to show the superiority of men (Collier, 1995). The strength of social construction affects the stereotyping of each gender and views one as superior while the other as inferior, because of these formed classes, then creates various oppressions in the classes below. The social construction that views men as a higher social class creates a lot of disadvantages for women. For example, it is difficult to get equal rights and experience various discriminations. In fact, this oppression is often manifested in the form of sexual harassment to show a sense of superiority (Sitorus, 2019).

On the other hand, obscenity and rape are formulated separately in the Criminal Code, but the existing articles are unclear and not detailed in limiting the act of rape and obscenity, including also for cases of sexual harassment. As the author stated in the introduction, the criteria and limits regarding the types of acts of sexual harassment are in fact not detailed and clear so that in handling them, it is difficult for law enforcement officers to ensnare the perpetrators with the right articles. Finally, the crime of harassment is handled with articles that are considered capable of accommodating the crime and using the doctrines of criminal law experts or referring to similar cases that have existed.

Law enforcement officials tend to work based on logical and systematic normative juridical thinking (juridical method in the narrow sense), but have not utilized the juridical method in a broad sense that relates social aspects of society, especially gender equality, so that cases of sexual harassment are only seen as a violation of interests. private and enforced to maintain order. Therefore, legal discoveries made using sociological/teleological, or futuristic interpretations should be carried out in judicial practice, relating to the handling of sexual harassment (Supanto, 2004). Another difficulty faced by law enforcement officers in handling cases of sexual harassment is the lack of evidence and witnesses. For example, it is difficult to prove that there was an act of coercion, sexual intercourse and witnesses who really know exactly what happened.

From a gender perspective, the handling of sexual harassment cases has so far been deemed not to represent the interests of the victims, who are generally women. Starting from investigators, prosecutors and judges are dominated by men who approach victims only from a legal perspective. The need to base the handling of cases of sexual harassment from the social aspect and the psychological effects experienced by the victim, which is far from the element of power and male domination, will give victims more space to express their situation. The need to pay attention to a gender perspective in the application of law in Indonesia is an effort to accommodate the interests of the community and to handle cases that actually place men and women on opposite sides.

A just law is certainly a law that is impartial, able to accommodate the interests and needs of the victim or perpetrator regardless of gender and gender. One approach that is considered capable of accommodating gender equality in the application of the law, especially for criminal acts that conflict between genders is the restorative justice approach. The restorative justice approach is an approach that involves victims, perpetrators and elements of society such as NGOs and so on. The mechanism used by this approach focuses on punishment as a form of retaliation for behavior through dialogue and mediation between victims and behavior mediated by law enforcement officials.

Law enforcement officials not only encourage the settlement of cases through deliberation, but are also directly involved in offering solutions that benefit both parties and are expected to improve conditions and relations between the two parties. The presence of Permendikbudristek Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education and Bogor City Regional Regulation Number 10 of 2021 concerning the prevention

and control of sexual deviant behavior seem to be a slap in the face for law enforcement officers who are considered ineffective in dealing with cases of sexual harassment in Indonesia.

3 Conclusion

Sexual harassment is a crime that invites tension between genders where the perpetrators are generally male and the victim is female. The handling of cases of sexual harassment in Indonesia has so far been considered ineffective for several reasons, including the reporting system for criminal acts of sexual harassment is only possible through a complaint offense which is considered less effective and beneficial for the victim, the role of culture and religion which is considered to prioritize the interests of men. Men are also felt to burden the victim morally and culturally.

Finally, the procedure for implementing the law which is considered unable to accommodate gender interests, especially women, is seen from the law enforcement apparatus which is dominated by men so that they are unable to represent the suffering, desires and interests of victims. It is hoped that in the future the implementation of law in Indonesia, especially in handling cases of sexual harassment, will prioritize the perspective of the victim and accommodate the interests of the victim by involving more women as representatives at the trial stage.

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