

# The Regulation on Sexual Violences in Criminal Code

Elizabeth Siregar<sup>1</sup>, Herry Liyus<sup>2</sup>, Usman<sup>3</sup>  
{elizabeth@unja.ac.id<sup>1</sup>}

Fakultas Hukum Universitas Jambi, 36361, Indonesia<sup>1,2,3</sup>

**Abstract.** The regulation on sexual violence in the Criminal Code is limited to rape and obscene acts. In fact, forms of sexual violence are becoming more varied. The purpose of this study is to analyze and evaluate the formulation of rape and obscene act as regulated in the Criminal Code. This study shows that the form of rape in marriage is part of sexual violence as well as forced oral and anal sex and other means are. Other acts that constitute sexual violence are sexual harassment and sexual violence based on gender. This study concludes that the regulation of sexual violence in the Criminal Code does not accommodate other forms of sexual violence. It is necessary to expand the concept of sexual violence in the future formulation of the Criminal Code.

**Keywords:** Criminal code, Sexual violence

## 1 Introduction

The issue of sexual harassment, violence based on gender relations and actions with a broader dimension concerning women's sexuality has not been formulated in the rule of law. The meaning of violence in the context of sexual violence does not have to mean aggressive behavior or actions, but also acts that are degrading, attacking one's sexuality.

The problem is that the current development of forms of violence is not regulated in the formulation of the Criminal Code. This creates problems, especially the fulfillment of the right to justice for women. Sexual violence is deviant sexual relations, which is very detrimental to the victim. The victim is a woman. Thus, women as victims of sexual violence are the most important parties to pay attention to.

In several decades, the changes to Criminal Code have not been realized in accordance with the needs of the legal development of Indonesian. Meanwhile, in its existence, the Criminal Code serves as the main legal umbrella and general guideline in the formation of laws and regulations concerning criminal matters. There is a saying that if one wants to see a civilization of a nation, it is by looking at the Criminal Code. It is important to reform the regulation of sexual violence in the Criminal Code as a form of protecting women's human rights.

## 2 Method

Bahder Johan Nasution stated that the legal source for normative legal science are mainly primary and secondary legal materials by using a normative juridical approach, interpretation method and the normative juridical analysis as it does not use statistics, and the theory of truth is pragmatic and full of values. In relation to this research, this study will analyze the articles in

the Criminal Code that regulate sexual violence, especially on rape and obscene acts with conceptual and legal theories approach

### **3 Result and Discussion**

One of forms of sexual violence known in Criminal Code is rape as regulated in Article 285 of the Criminal Code, which regulates the prohibition of anyone who forces a woman to have intercourse with him, either by force or threat of violence committed outside of marriage. Another form is obscenity as regulated in Article 289 of the Criminal Code. What is referred to as obscene acts is an act committed by a person with violence or threats of violence forcing someone to commit obscene acts or allowing the act to be committed. The qualifications for certain acts are regulated in several articles of the Criminal Code, such as engaging in people who are unconscious or defenseless, committing sexual violence against children, and committing sexual violence against the same sex and so on. Such forms are considered to be insufficient to provide protection for women, because in fact there are many dimensions of acts that fall into the category of sexual violence but are not regulated in the Criminal Code.

The articles regulating sexual violences are Article 285 on rape through intercourse, Article 286 on rape towards person in faint or helpless state, and Article 289 on obscene act committed with violence and threat of violence. Regarding this formula, the writers argue that it does not represent broader sense of sexual violence. In other words, sexual violence is limited to rape (through intercourse) and obscene act. Thus, other acts other than the mentioned, such as sexual harassment, do not considered as part of sexual violence.

Furthermore, in the case of rape, the Criminal Code does not provide a definition of rape. The definition of rape thus refers to doctrine. In the doctrine, rape is limited to vaginal penetration. This definition does not accommodate penetration other than vaginal, i.e. oral, anus and other organs. The Criminal Code does not contain the definition of sexual intercourse or obscene act. Thus in the case of making charges in court, the act of sexual intercourse is sub-sidised with the act of obscene act, so that if the defendant is proven not to have intercourse, the defendant is usually charged with the article of obscene act. This things could lead to the condition where the perpetrator will be subject to a lower verdict, as the punishment of obscene act is lower than the punishment of rape.

The meaning of obscenity in the Criminal Code refers to doctrine as well. This meaning is explicitly synonymous with rape. Therefore the writers argue that sexual immorality should be included in the section or types of rape, as the element of the obscene act is also the element of rape. The basic difference between to action is the vaginal penetration which is only regulated in the article of rape. As for the consideration is that when obscene act is formulated as a separate article and the criminal penalty is lower than rape, in the case where a defendant is not proven to have committed rape, due to considerations that do not give justice to women, such as the absence of vaginal penetration, will be charged with the obscenity article. This will give an advantage for the perpetrator, as the penalty for obscene act is lower than that of rape. Meanwhile, women as victims have been harmed by sexual violence conducted by the perpetrators. Furthermore, other articles such as incest and marital rape, which in this case the authors interpreted as coercion of sexual intercourse in an inappropriate marriage, such as when the wife is in childbirth and during menstruation and sexual harassment, which are also categories of sexual violence, have not been regulated in the Criminal Code.

In its development, sexual violence essentially is the prohibition of any act that attacks, intimidates, and other actions related to one's body and one's sexual desire and/or reproductive function, by force, due to imbalances in power relations and/or gender relations that result or can result in suffering or misery, not only physically and psychologically but also sexually, which causes economic, social, cultural and or political harm, either directly or indirectly using social media or without using social media. One of the most important things that need to be examined in the concept of sexual violence is also the element of "imbalance power relations and/or gender relations" which is not included in the Criminal Code. Basically, gender violence is caused by an imbalance or inequality of power in society which has various forms. In addition, gender analysis is important in understanding sexual violence. Through gender analysis, it is learned how the behavior, experiences, status and limitations experienced by men and women. Gender analysis can also reflect on the causes of sexual violence through social, economic, political and other studies.

Through gender analysis it can be explained that the occurrence of sexual violence is due to the power relationship between the perpetrator and the victim which is not always marked by the threat of violence, but is due to the imbalance of the position of the perpetrator and the victim. According to Meyer, as quoted by Sri Kurniasih, there are three aspects that need to be considered in defining sexual harassment, namely the behavioral aspect, the situational aspect and the legality aspect. The situational aspect states that sexual harassment can be done anywhere, and under certain conditions.

In the certain conditions, it indicates a situation where the victim is not equal to the perpetrator, or is in a state of distress, is under threat even though there is no violence or threat of violence. This situation is a form of power relation between the perpetrator and the victim. Humanization of human life in law starts from the field of ethics. It is based on the existence of humans as individuals, so that all forms of discrimination are contrary to ethical obligations. The protection of rights is an ethical obligation of every human being as a form of respect for human existence.

## **4 Conclusion**

It is concluded that the formulation of sexual violence contained in the Criminal Code has not accommodated the protection of women. The important thing to do is to reformulate the forms/dimensions of sexual violence in the Draft of Criminal Code based on the perspective of protecting women's human rights and extend the meaning of more progressive sexual violence. In addition, in the Draft of Criminal Code, it is necessary to contain a formulation of gender-based violence.

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