



LEGAL ANALYSIS ON THE INFLUENCE VICTIMS' ROLE IN CRIMINAL ACTS OF SEXUAL VIOLENCE

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Abstract: Victims, who also acts as a participant in the occurrence of a crime, essentially have a functional role. This role arises from certain conditions and situations that are basically attached to the victim, so it is necessary to know the type or category of the victim that can influence the occurrence of a crime of sexual violence. The type of research used in this research is normative legal research. The research approach used is a statute approach and a case approach.

The result shows that the categorization of victims that can influence the sexual violence crime (TPKS) is victims with passive causes, victims with active causes, and victims who are also perpetrators

Keywords: Victim, Sexual Violence, Crime.

INTRODUCTION

The legal system is a complete order and consists of elements that are related to one another. These legal elements interact and work together to achieve legal goals. Where, these legal elements are influenced by several factors, namely cultural, social, economic, historical, and so on. A country that adheres to a legal system, then the country is a rule-of-law country that has the principle of obedience and respect for the law, and this obedience and respect can of course be realized if the implementation of the legal system is carried out in an assertive, consistent and non-discriminatory manner against anyone who violates the law.

The problem of law violations is a problem caused by human social interaction and also violations due to the incompatibility of human behavior with the rules that have been set. In a rule of law, everyone has the same position and rights before the law (equality before the law), where this principle serves as a guide in upholding obedience and respect for the law. Crime in written law in Indonesia has various forms. Crime is a social phenomenon that is always faced by every community in this world. Crime in its existence is felt to be very disturbing besides that it also disturbs order and peace in society. Crime or criminal action is a form of deviant behavior that always exists and is inherent in every form of society, no society is free from crime (Hidayat, Muhadar, & Muchtar, n.d.) as one of the legal crimes regulated in the Book of Laws Criminal or hereinafter referred to as the Criminal Code is a crime of sexual violence, for example. Sexual violence is a crime against

decency as regulated in Article 294 paragraph (2) of the Criminal Code.

In layman's opinion, the terms sexual violence and sexual harassment are of the same term. However, sexual violence has a wider scope than sexual harassment. Where sexual harassment is part of sexual violence. (Muhid, 2022)

Sexual crime is an act with the aim of attacking someone's sexuality because the perpetrator feels more powerful than the victim based on age, gender, and social and economic status. Sexual violence is categorized as gender-based violence (Gender Based Violence). (Ningrumsari, Azisa, & Heryani, 2022) Next, Sexual harassment, namely gender harassment, is in the form of obscene or seductive behavior, sexual coercion, inviting to have sex by promising rewards so as to offend, as well as intentional physical touching with sexual purposes without consent. (Muhid, 2022) Based on this explanation, in this study, the authors used the term sexual violence.

Perpetrators of sexual violence are not limited by gender or the relationship of the victim. This means that sexual violence can be committed by men or women to anyone and can happen anywhere. Sexual violence that occurs in today's society is a form of crime that will always exist, such as disease and death that is always repeated. However, people often do not realize that they are also influencing the sexual violence that occurs. Many people do not realize that they are actually victims of sexual violence as sexual violence is a sensitive issue and is even still taboo according to some people in Indonesia who still hold strong eastern customs.

The occurrence of sexual violence will result in victims, both individual victims and victims in groups. In criminal acts, the occurrence of a crime may have the potential for a victim of a crime who has suffered to become one of the factors causing the crime. As with sexual violence, in a case of sexual violence, there is a possibility that victims of sexual violence, whether they realize it or not, are one of the factors causing sexual violence.

The author realizes that in each case the position of sexual violence will be different from one another due to the many factors that influence the occurrence of the crime. However, it cannot be denied that there were cases of sexual violence that occurred where the victim played a role in the occurrence of the sexual violence. For example, in the case of rape where the victim stimulates the perpetrator with various reasons that are shown so that the perpetrator intends to commit a crime against the victim. The stimulus, in this case, can be in the form of wearing sexy clothes in public places with high public activity, promiscuity, being influenced by alcoholic beverages, and so on. However, the role of the victim in this rape case does not necessarily blame the victim but the perpetrator must also be held accountable for his actions. In relation to this, according to Arif Gosita (2004):

"The role of the victim is based on certain situations and conditions that can be a stimulus for the perpetrator to commit a crime against the victim. These situations and conditions are related to the physical and mental weaknesses of the victims. The role of the victim is carried out consciously or not, actively or passively, alone or

jointly responsible, with positive or negative motivation".

Then, the participation of victims in the causes of sexual violence can be described as follows: (Arif Gosita, 2004)

1. Becoming a victim because it gives a certain impression of being a person of means, position, likes to socialize freely, is physically unable, does not know the way, is stupid, and so on that encourages someone to make him a victim.
2. Having contact with other people that causes them to become victims of sexual violence.

Of course, this description only slightly illustrates that often the victim is not aware that the behavior and decisions taken can be the cause of a crime against him and cause him to become a victim. Thus it is very clear that the victim also plays a role either directly or indirectly, actively or passively in the occurrence of a crime and it needs to be researched further.

MAIN PROBLEM

Based on the background above, the problem being studied is what causes the victims can influence the occurrence of crimes of sexual violence (TPKS)?

METHOD OF RESEARCH

The type of research used in this research is normative legal research. There are several approaches to legal research, and with these approaches, researchers will obtain information from various aspects regarding the issues being sought or solved. (Irwansyah, 2020)

Through a research approach, the researcher will obtain information from various aspects regarding the issue being studied. (Marzuki, 2013) The research approach used is a statute approach and a case approach.

The sources of legal materials in this study consist of primary legal materials and secondary legal materials. Then the data in the form of legal materials that have been obtained are presented in the form of narrative text, and descriptions arranged in a systematic, logical, and rational manner. In the sense that all the data obtained will be linked to one another according to the subject matter under study so that it forms a unified whole.

RESEARCH RESULT AND DISCUSSION

A legal event that causes a causal relationship between the perpetrator and the victim in a crime certainly needs to be explained in more detail by law in order to obtain legal certainty. In this case, the role of law enforcers, especially a judge, must be observant in handling a case and be able to understand and consider the role of the victim in realizing justice and legal certainty as the role of victims (victim precipitation) is not only as a doctrine but can be included in the consideration of judges to decide on a case.

The relative theory views punishment not as retribution for the wrongdoing of the perpetrator, but as a means of achieving beneficial goals to protect society towards prosperity. From this theory emerges the purpose of punishment as prevention, namely general prevention aimed at society. Based on this theory, the punishment imposed to carry out the intent or

purpose of the punishment is to improve public dissatisfaction as a result of the crime to improve public dissatisfaction as a result of the crime. The purpose of punishment must be viewed ideally, apart from that, the purpose of punishment is to prevent crime. (Leden, 2005)

Apart from that, the law is also expected to be a medium for resolving conflicts where the fact is that currently, it is not uncommon for problems to occur in community reciprocal relations, therefore the law is present to answer these problems by providing certainty about their resolution (Saputra, Irwan, & Rahman, 2022)

Victims as a participant in the occurrence of a crime, essentially have a functional role. This role is born from various conditions and certain situations that are basically attached to the victim. Based on the things that have been described above, the author will analyze the role of the victim in the criminal act of sexual violence that occurs and see how far the role of the victim influences the judge's considerations in making decisions to create legal certainty.

The occurrence of a crime is inseparable from the role of two sides, namely the role of the victim and the role of the perpetrator, of course, a crime will occur if there is an opportunity given to the perpetrator in carrying out the action. Crime is the result of interaction between phenomena that exist and influence each other. (Corputty, Hehanussa, & Latupeirissa, 2021) The perpetrator and the victim have a causal relationship that acts as a participant in a crime, the role is either active or passive, each of which has an important and decisive role.

Through the study of victimology, a conclusion was obtained that the role of the victim is one of the factors in the occurrence of victimization. In the sense that victims are seen as able to play a role and become an important element in the occurrence of crimes that cause victims. (Corputty et al., 2021) The intended role of the victim can be formulated into several questions, namely:

1. What did the victim do?
2. How did the victim do?
3. Where it is done. By the victim?

The answers to these questions will influence how these crimes can occur in the future. According to Arif Gosita, there is a functional relationship between the victim and the perpetrator, even in the occurrence of certain crimes the victim is said to be responsible. (Sari & Larossa, n.d.)

Arif Gosita concluded the role of the victim in the occurrence of a crime, as follows: (Gosita, 1987)

1. The victim plays the role of stimulating, inviting, and persuading the perpetrator to commit a crime;
2. The victim acts as a pseudo-victim who cooperates with the perpetrator in committing a crime;
3. The victim feels that they are a victim of other people's actions so they commit crime;
4. Victims are self-justification tools for crimes committed by a criminal. This self-justification relates to rejection, denial of the victim; devaluing the victim's self-esteem; denial of the causes of suffering, the loss of the victim; blaming the victim, and formulating the infliction of

suffering on the victim as a right deed.

In addition, Arif Gosita more specifically formulated the types of rape victims, namely: (Gosita, 1987)

1. Pure Victim, consisting of Rape victims who had never had contact with the perpetrator before the rape; and Rape victims who had contact with the perpetrator before the rape.
2. Multiple victims are victims of rape who besides experiencing suffering while being raped, also experience mental, physical, and social suffering.
3. Pseudo-victims are victims who are also perpetrators. She pretended to be raped with the aim of getting something from the perpetrator. In this sense, there is a possibility that he did so because of something on the part of the perpetrator. Also, there is a possibility that he did this because he was told, he was forced to do this for the sake of the one who ordered him to. In a certain sense, the perpetrator becomes a victim of another crime.

Benjamin Mendelsohn also stated that there were 6 (six) categories of victims: (Susetyo, 2017)

1. A victim who is completely innocent (completely innocent victim), the victim is completely innocent. which Mendelsohn considered an "ideal" victim which tends to happen to children and they also do not realize when he becomes a victim;
2. Victims with a minimal level of guilt contribution (victims with

minor guilt and the victim due to their ignorance), and victims with minor mistakes caused by negligence can be exemplified by someone.

3. Victims who have the same level of guilt as the perpetrator (victim as guilty as the offender and voluntary victim), victims are the same as my perpetrators and voluntary victims by Mendelsohn are divided into several subtypes such as Suicide; Suicide by adhesions; Euthanasia; and Suicide committed by a husband and wife (for example a married couple who are desperate because one of their partners is sick).
4. Victims that are more guilty than the offender, in the case of victims whose guilt is greater than that of the perpetrators, there are 2 (two) types, namely: Victims who provoke and or tempt someone to do evil; and Negligent victims influencing someone to commit a crime.
5. The victim is the only guilty party (the most guilty victim and the victim is guilty alone), the victim is very wrong and the victim is wrong alone, for example, it happens that a victim who is very negative first commits a crime but in the end, they becomes the victim himself. victim.
6. Imaginary victim or simulating victim, a victim who claims to be a victim even though they suffer nothing.

Based on the classification of Arif Gosita and Benjamin Mendelsohn above, the writer can draw an outline of the categorization of victims in the crime of sexual harassment. Where,

according to the doctrine that the victim in this sexual harassment crime has the opportunity to become the cause of sexual harassment and lead them to become a victim themselves. Intentional or not, active or passive, the role of the victim can be one or the only cause of the crime.

Another thing that raises the potential to cause women to become victims from a psychological point of view, women are generally characterized as creatures who are emotional, easily give up, passive, subjective, easily influenced, and physically weak. The psychological characteristics of a woman when she is seen as a victim start with the fear that someone has, which is then followed by an attitude of surrender. The meaning of the word "surrender" is to accept the actions that other people take against him as a fate for his suffering, where this thought can be said to be a fatalistic culture. This surrender condition will later open up the potential for women to become victims in the helpless phase so that it can become a potential for perpetrators to seek profit. According to Von Hentig in Sugiyanto (2021), the condition of fear followed by resignation is caused by a biological factor that categorizes women as victims as the female, so women are very vulnerable to becoming victims because they are physically weaker.

As the author has explained in the background, this TPKS must be seen on a case-by-case basis, not in general. Where the role of the victim in this TPKS does not remove the punishment or sanctions that will be given to the perpetrators. However, in certain cases, for example, the increase in TPKS is related to socio-cultural aspects, ranging from an

increasingly open culture, more free association, more stimulating ways of dressing, the habit of traveling long distances alone to a looser quality of religious life in society. Of course, this cultural factor can only be applied in Indonesia and cannot be equated with the culture found in other countries.

Based on data from the Online Information System for the Protection of Women and Children (Symphony PPPA) of the Ministry of PPA, there were 1,411 cases of violence against women from January 1 to February 21, 2022. According to the Komnas Perempuan report on March 7, 2022, sexual violence in the educational environment in 2021 recorded 9 cases. Based on the 2021 National Women's Life Experience Survey (SNPHPN), there were 26% of women aged 15-64 years experienced physical and/or sexual violence by partners and non-partners, then 41.05% percent experienced violence during their lifetime in children aged 13- 17 years. (Gatra, 2022)

The increasing number of TPKS and becoming a social problem that is easy to find in the community must be a concern, which is not only looking at the causal factors from the perpetrator's side but from the victim's side which can be the cause of the perpetrators committing TPKS. In this case, the authors classify the type or category of victim roles in TPKS:

1. The ideal victim, namely a victim who really has a position as a victim. The victim did not do anything, whether intentional or unintentional, active or passive, which could encourage, stimulate, or cause the perpetrator to commit TPKS.
2. Victims with passive causes, namely victims who

unknowingly/accidentally/passively contribute to the occurrence of TPKS. For example, a woman who is traveling alone in plain clothes (not revealing) is harassed by touching in the form of physical violence or non-physical harassment.

3. Victims with active causes, namely victims who consciously/intentionally/actively participate in causing TPKS. For example, a woman travels alone with an open wedge and gets touched in the form of physical violence or non-physical abuse.
4. Victims who are also perpetrators, namely victims who initially consciously put themselves in situations of sexual harassment. However, due to other factors, he ultimately did not accept this treatment and placed the other party as the perpetrator and himself as the victim. For example, someone who is in a relationship outside of marriage who has lived together for some time, then at some point reports that their partner has raped or abused them.

This classification of the victim's role can of course be developed based on the circumstances and conditions of each case of sexual violence that occurred. Differences in handling and classifying victims are also different, both men and women. As is often the case, the average victim in TPKS cases is a woman, however, it is possible that in TPKS cases the victim is a man.

CONCLUSION

The Analysis of categories of victims that can affect TPKS are victims with passive causes, victims with active causes, and victims who are also perpetrators. This classification of the victim's role can of course be developed based on the circumstances and conditions of each case of sexual violence that occurred.

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