

POWER RELATIONS IN GENDER-BASED VIOLENCE FROM THE CRIMINOLOGICAL ASPECT

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Abstract: Gender-based violence is more commonly assumed with women and girls than with men. Gender-based violence exists because of inequality in power relations and patriarchal culture embedded in society. Power can make a person feel entitled to act arbitrarily against others who are considered inferior. Behavior based on this kind of thinking allows a person to be violent towards others. Furthermore, this paper explains various theories of the crime of sexual violence when examined from a criminological perspective. The research method used in this paper is normative juridical through a case-based approach and legal system. The sources used include primary legal materials, secondary legal materials and tertiary legal materials.

Keywords: Gender-based violence, Power relations, criminology

1. INTRODUCTION

As the times progressed, more and more crimes emerged and developed in society. The form of crime in criminal law as a crime is an act that is prohibited by criminal law regulations and is accompanied by criminal sanctions for those who violate it.¹ Crimes in criminal law are criminal acts regulated in Book II of the Criminal Code and in other regulations outside the Criminal Code. Criminal acts also include acts of violations.² In a broad sense, crime is not only determined by legislation in criminal law, but also acts that result in suffering and loss.³

Violence, harassment, and sexual exploitation are a form of violent crime. This violent crime can happen to anyone, both adult women and those belonging to minors (children). This sexual violence crime also does not only take place in a company environment, campus, or public place that provides opportunities for people of different sexes to meet each other, but can also occur in a family environment that should be able to provide a safe place of protection.

The term sexual violence is an act that can be categorized as inappropriate sexual relations and behavior, resulting in serious losses and consequences for the victims.⁴ Forms of sexual harassment are not only sexual intercourse and rape, but also carrying out sexually suggestive gestures (such as stroking the back, touching the thighs and other body parts on purpose, etc.), using derogatory words related to gender and sexuality, showing pornographic videos, recording scenes that lead to sexual matters, peeking, and so on.⁵

Gender is different from gender. Gender can be defined as a condition in which individuals who are born biologically as men and women through the attributes of masculinity and femininity are often supported by values or systems and symbols in the society concerned. In short, gender can be interpreted as a social construction of sex, into social roles and behavior.⁶ The emergence of a patriarchal culture that has the concept of men as power holders and women as inferior beings is one of the factors for the occurrence of gender-based sexual violence. This is due to the feeling of being superior to the victim who is considered weaker and helpless. Most cases of sexual violence that occur to victims tend to go unreported on the grounds that they did not get a serious response or positive response and only a few victims dared to report these incidents to the authorities. In addition to violating human rights, this can cause negative impacts in the form of permanent and long-term physical and psychological trauma for victims of sexual violence, until death.

Criminology is a discipline of criminal law that can be used as a guide in studying a crime and its perpetrators. Criminology consists of two words, namely the word crime which means crime and logos which means science, then criminology is the science of crime.⁷ In general, the object of study in criminology includes 3 (three) things, namely:⁸

1. Crime

In a juridical sense, crime is defined as an act determined by the state as a crime in its criminal law and is threatened with certain sanctions. This understanding is in accordance with

¹Poernomo Bambang, (1988), Principles of Criminal Law, Jakarta: Ghalia Indonesia, p. 18

²Saleh Roeslan, (1983), Criminal Acts and Criminal Liability Two Basic Definitions in Criminal Law, Cet-III, Jakarta: New Script, p.17

³Gosita Arif, (1983), The Problem of Victims of Crime First Edition Collection, Jakarta: Akademika Pressindo, p.77

⁴Wahid Abdul & Muhammad Irfan, (2001), Protection of Victims of Sexual Violence Advocacy on Women's Human Rights, Bandung: PT. Refika Aditama, p. 32

⁵Damaiana & Saputri, (2013), Criminological Study of Sexual Abuse and Violence against Children, UNS Journal: Recidive, Volume 2, p.2

⁶Gender Analysis in Forest Resource Conflict Management, https://elearning.menlhk.go.id/pluginfile.php/854/mod_resource/content/1/analysis%20gender/pengertian_gender.html, Accessed December 17, 2021

⁷Alam and Ilyas, Amir, (2010), Introduction to Criminology. Makassar: Books Reflection Library, p. 1

⁸Santoso Topo and Eva Achjani Zulfa, (2004), Criminology, Jakarta: PT RajaGrafindo Persada, p. 13

Sutherland's opinion which emphasizes that the main characteristic of crime is behavior that is prohibited by the state and to that act the state reacts with punishment as a last resort. According to the new criminological view which considers that deviant behavior is called a crime, the size of the deviant act or not is determined not by the values and norms that are considered valid by the authorities, but by the size of the loss or social severity (social injuries) caused by the act.

2. Villain

In a juridical sense, criminals are perpetrators of violators of criminal law and have been decided by the court for the act. This means that those who are qualified to be included in the category of perpetrators are those who have received a court decision as perpetrators of criminal law violators.

3. Public Reaction to Crime and Criminals

In a juridical sense, the stipulation of rules in criminal law is an illustration of the negative reaction of the community to a crime represented by the legislators. This community reaction is inseparable from the size of the loss experienced, the size of the sanctions that will be or have been received by the perpetrators as well as the values and norms that are upheld by the community.

2. RESEARCH METHODS

In doing this writing, the writer uses a normative juridical approach that is descriptive analytical, namely an analysis of existing problems through studies or focusing on the application of norms or rules, as well as the legislation in force in Indonesia as a binding legal force. juridically. As for the preparation of this paper using library data or secondary data sources through literature study which provides several primary legal materials, secondary legal materials, and tertiary legal materials. Analysis of the library data is then used qualitative normative analysis.

3. RESULTS AND DISCUSSION

Gender-based violence is an umbrella term for any harmful behavior committed against a person based on social aspects including the gender attached by society that distinguishes between men and women. This includes any behavior that causes physical, sexual or mental suffering, threats to do something dangerous, coercion, and/or other behavior that limits a person's freedom.⁹The form of social control between men and women is through their sexuality, this is a gender inequality.

At the end of 2021, there are many unpleasant news such as rape, domestic violence, dating violence, forced abortion, sexual abuse and others. Gender-based violence is caused by gender inequality and abuse of power due to unequal power relations from unequal gender construction. Therefore, the gender of perpetrators and survivors influences the motivation for violence and how society responds to or condemns the violence. Anyone can be a victim of gender-based violence, including men or sexual minority groups.

As in the case of sexual violence that occurred in the Bandung area, an ustadz/educator raped 12 female students who were underage until 4 of them gave birth to 8 babies. Likewise in the case of higher education institutions, a place that should be a safe and conducive environment for studying. However, there are still many cases of sexual violence that have not been brought to the surface due to the power relationship between perpetrators and survivors. where the perpetrators are educators who certainly have higher power in educational institutions, with a pattern of threatening grades or hindering the graduation of the

⁹Recover, Understanding Gender Based Violence, <http://yayasanpulih.org/2021/02/memahami-kerasan-berbasis-gender/> accessed on 27 December 2021

victim.¹⁰ Even this attitude of submission is a norm that should not be violated and if it is violated it creates sanctions that must be accepted. This norm becomes a standard part of the structure that respect for lecturers or elders is normal and common. This action is not only a way to discipline attitudes and behavior for students, but on the other hand it can be a perpetuation of the status quo and abuse of power in subjugating others.¹¹

In other cases, power relations also have a correlation in courtship relationships. NW, a student from Mojokerto who became a victim of her boyfriend's sexual violence until she became pregnant. He was so depressed that he ended his life by committing suicide at his father's grave. In this case, his girlfriend, who is a member of the National Police, certainly has higher power when compared to NW. Power can make a person feel entitled to act arbitrarily against others who are considered inferior. Behavior based on this kind of thinking allows a person to be violent towards others.

According to Siti Aminah Tardi, Commissioner of Komnas Perempuan, said that gender-based violence that is often experienced by women is a manifestation of historical relationships that place women unequally with men, resulting in domination and discrimination against women. In fact, this dominance makes men take precautions against women's advancement. These things are considered natural because they are perpetuated by several individuals, families, and communities.¹²

Kate Millett argues that the roots of women's oppression are buried in a patriarchal gender system. He highlighted sex as a political tool because the relationship between women and men became the paradigm of all power relations. This operating system, which is based on male control over women, then continues in the formation of values, emotions and logic in every important stage of human life. Thus the strength of this control penetrates into academic, religious and family life. The result of all that is internalized in women is a sense of inferiority towards men.¹³

Violence is more often assumed by women and girls than men, so it is often referred to as "Violence Against Women" by highlighting gender measures that place women as inferior beings. According to Romli Atmasasmita, violence is anything that is used in such a way as to cause physical or psychological damage, is violence that is against the law. This violence shows behavior that is contrary to the law, both real actions and having the result of damage to objects or physical or resulting in the death of a person. Gender Based Violence can take many forms:¹⁴

1. Sexual violence

Sexual violence is any act in the form of words or actions by a person to control or manipulate another person and make him or her engage in unwanted sexual activity.

Important aspects of sexual violence:

- a. aspects of coercion and aspects of the absence of consent from the victim.
- b. the victim is not/has not been able to give consent (eg sexual violence against children or individuals with intellectual disabilities).

2. Physical abuse

¹⁰Afni Nur, Suhairi, (2021), Student Understanding of Sexual Violence on Campus, Marwah: Journal of Women, Religion and Gender, Vol. 20, No. 1, 2021, p. 63

¹¹Ibid, p. 63

¹²Adi Permana, Prevention and Management of Gender-Based Violence <https://www.itb.ac.id/news/read/57759/home/pentangan-dan-penanggulangan-violence-gender-based> accessed on December 30

¹³Tong, RP, (1998), Feminist Thought: The Most Comprehensive Introduction to Mainstream Feminist Thought (trans.), Yogyakarta: Jalasutra, p. 73

¹⁴*opcit*, Recover, Understanding Gender Based Violence, <http://yayasanpulih.org/2021/02/memahami-kerasan-berbasis-gender/> accessed on 27 December 2021

is an act that (can) injure the body, including restriction of physical movement, and is not sexual in nature. This can be in the form of violence such as hitting, strangling, or using dangerous weapons/tools, or through acts of neglect that result in physical pain or injury.

3. **Psychic Violence**

This violence can be in the form of verbal or nonverbal acts that attack mentally or emotionally, such as intimidation, damage to property, and verbal sexual harassment.

4. **Social and economic violence**

This violence can result in economic neglect or impoverishment of the victim. Social or economic violence occurs when women or other vulnerable groups are conditioned to have limited or no access to income, services, finances, assets, and opportunities to improve their social and economic level. Some examples are discrimination, restricted access to education, health, paid work, or deprivation of property, including neglect. This type of violence can be perpetrated by members of a family, community, society, organization, or even a government institution.

The difference in roles between men and women is considered a natural consequence from a biological perspective. Biologically, men and women are different. It is impossible to change behavior as a result of these biological differences. The development of the results of social science research shows that men and women differ not only as a result of biological differences between the two. But more than that, social and cultural processes have helped to sharpen the differences between men and women. The discussion on gender gave birth to three theories, namely:¹⁵

1. **Nurture Theory**

According to this theory, the differences between men and women are essentially the result of socio-cultural construction resulting in different roles and tasks. Socio-cultural construction has so far placed women and men in different classes. And men are always superior to women.

2. **Nature's Theory**

According to the theory of nature, the difference between men and women is a nature that must be accepted. Biological differences have an impact in the form of differences in roles and tasks between the two. There are roles and tasks that can be exchanged because they are scientifically different.

3. **Balance Theory**

In addition to the two contradicting theories, there is a theory that seeks to provide a compromise that emphasizes the concept of partnership and harmony in the relationship between men and women but demands the need for harmonious cooperation between the two.

The difference between the theory of nurture and the theory of nature is that the theory of nurture is the result of socio-cultural construction resulting in different roles and tasks, so that women are always left behind and are considered to have a lower position than men. The theory of nature is natural, so the circumstances must be accepted after all. Just as there are biological differences in which men and women have different genders, so do have different roles and tasks. One theory that has the reasons for the causes of violent crimes against women is the theory initiated by James Messrschmidt in 1986, which states that crimes against women

¹⁵Saparinah and Soemarti P, Gender Identity and Gender Roles, In The Study Book of Women in Development by TO, Ihromi (Editor), Jakarta: p. 70.

occur because of restrictions and gender segregation and exploitation of women who are survivors.¹⁶

The crime of sexual violence when examined based on a criminological perspective, refers to the motives and behavior, where it has a motive for sexual gratification. The link between criminal law and criminology can be linked theoretically, but in practice it is very limited in its relevance and influence. Criminal law focuses on the factors that cause crime. Criminology has been shown to reveal the motives of the perpetrators of crimes while criminal law to the relationship between action and effect (law of cause and effect).¹⁷

In the perspective of criminology theory, there are three perspectives in analyzing the problem of crime, namely:¹⁸

1. macrotheories, are theories that explain crime in terms of its social structure and impact.
2. microtheories, are theories that explain the reasons for committing crimes from a psychological, sociological or biological perspective.
3. Bridging theories are theories that explain social structure and also explain how a person or group of people becomes a criminal.

According to Abdulsyani, there are two sources of causes of criminal acts, namely the first source is internal factors such as mental illness, emotional power, low mentality, anomie, age, sex, individual position in society, individual education, individual entertainment problems. While the second factor is an external factor, which is sourced from outside the individual such as economic factors, religion, reading and films.¹⁹

Given the cases of sexual violence in Indonesia, which are still very tall. Efforts are needed to overcome the occurrence of such incidents. Preventive or preventive action is an effort that shows guidance, education and awareness of the general public before a violent crime occurs. While repressive measures are efforts that show efforts to eradicate crimes that are currently happening.²⁰

Preventive efforts that can be taken to tackle gender-based violence include disseminating information about anti-sexual violence through various media, increasing understanding through lectures, seminars, discussions, and training, as well as developing scientific studies on sexual violence and integrating human rights and gender values. in the curriculum, providing safe, comfortable, and friendly space and facilities for women, and providing a budget for handling victims.²¹ As well as implementing Permendikbud No. 30 as the first step to establish a safe space on campus.

Repressive efforts in overcoming gender-based violence are by implementing a gender-just criminal justice system by actively involving victims in the process of handling cases. So that the victim will be positioned as a subject, not as an object whose information is only taken. As a subject, the victim has the right to have his or her testimony heard, to obtain information on ongoing legal remedies, to consider the sense of justice that she wants to obtain, and to have her situation restored to the deprivation of her rights and the violence she has experienced.²²

When it comes to cases of gender-based violence, the Draft Law on the Elimination of Sexual Violence (hereinafter referred to as the RUU PKS) is a regulation that is close to

¹⁶Faisal Yusuf, "Introduction to Criminology", <https://adoc.tips/queue/theory-cause-kejahatan.html> accessed on December 30, 2021

¹⁷Atmasasmita Romli, (1992), *Theory and Capita Selecta Criminology*, Bandung: Refika Aditama, p.5

¹⁸Ibid, pp.71-72

¹⁹Abdulsyani, (1987), *Sociology of Crime*, Bandung: CV. Remadja Karya, p. 44-45

²⁰Ibid, p.135

²¹Regulation of the Chancellor of the State Islamic University of Mataram Number 2355 of 2020 concerning the Prevention and Combating of Sexual Violence at the State Islamic University of Mataram

²²Khusnaeny Asmaul, (2018), *Building Access to Justice for Women Victims of Violence: Development of the Concept of an Integrated Criminal Justice System for Handling Cases of Violence Against Women (SPPT-PKKTP)*, Jakarta: National Commission on Violence Against Women, p. 69

accommodating the prevention of gender-based violence. In 2021, the PKS Bill has officially entered the National Legislation Program or commonly called (Prolegnas). This bill was officially re-entered the Prolegnas at the end of March 2021, after previously being issued in 2020. This must be monitored together so that this bill is no longer issued in the Prolegnas. As in the draft text, it has been mentioned about the regulation of victims' rights. Article 22 of the PKS Bill regulates the right to treatment, the right to protection, and the right to recovery. These rights are then translated into subsequent articles which in principle regulate the rights of victims, families, witnesses/reporters from the beginning to the end of the case handling process. When compared with the rights of victims as regulated in the Criminal Procedure Code, so far it has not accommodated the victim-sensitive procedural law and has a human rights and gender perspective.²³

4. CONCLUSION

Gender-based violence is more commonly assumed with women and girls than with men. Gender-based violence exists because of inequality in power relations and patriarchal culture embedded in society. Power can make a person feel entitled to act arbitrarily against others who are considered inferior. Behavior based on this kind of thinking allows a person to be violent towards others. According to Abdulsyani, there are two sources of causes of criminal acts, namely the first source is internal factors such as mental illness, emotional power, low mentality, anomie, age, sex, individual position in society, individual education, individual entertainment problems. While the second factor is an external factor,

All forms of violence are violations of human rights and forms of discrimination that must be eliminated. Victims of sexual violence must receive protection from the state and/or society in order to avoid and be free from violence or threats, violence, torture, or treatment that degrades the degree and dignity of humanity. Therefore, it is necessary to increase understanding and knowledge to the public regarding gender equality and justice in order to improve welfare and provide protection for women from acts of violence and increase women's participation in all fields. In addition, the government needs to restructure and reform the legal system that provides a deterrent effect for perpetrators of sexual violence.

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²³Ibid, p. 39-41

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