BUILDING AN INTEGRAL APPROACH IN COMBATING SEXUAL VIOLENCE CRIMES

Andi Khadafi
Universitas Samudra, Kota Langsa, Aceh, Indonesia
andi_khadafi85@yahoo.co.id

ABSTRACT

This study aims to determine the penal policy in overcoming the current criminal act of sexual violence and to build an integral approach in the future of sexual violence in the legislation. The problem of this research is about how the policy of dealing with criminal acts of sexual violence is currently and in the future. The research method used is normative juridical. The conclusion of this research is to build an integral approach in overcoming the crime of sexual violence in the future by way of material criminal law, criminal law and the implementation of criminal law now integrally by using legal comparisons to various countries, especially concerning all aspects and values that exist in Indonesia. community related to the prevention of criminal acts of sexual violence.

Keywords: Building, Integral Approach, Prevention, Sexual Violence

INTRODUCTION

Sexual violence is a problem that always occurs in society. Sexual violence is a form of threat and sexual coercion. In other words, sexual violence is sexual contact that is not desired by one of the parties. The essence of sexual violence lies in "threat" and "coercion". Sexual violence is a sexual behavior that is not desired by someone towards another person. Sexual behavior can also be verbal, so sexual harassment can take various forms, such as rape, touching someone's body intentionally, jokes or insults about sexual matters, and so on.

In 2013, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) conducted a study and found that 80% of approximately ten thousand men in the Asia-Pacific region admitted to having raped their partners and 97% of men who had raped their partners. According to data compiled by the National Commission on Violence against Women, the number of cases of sexual violence in 2020 was 226,062, while in 2021 it was 338,496. The number of cases of violence against women from January 1, 2022, to February 21, 2022, was recorded as 1,411 cases. Crime can have harmful effects on society, including damaging the social order that has been highly valued by society. Plato stated that humans are the source of most crimes. Efforts to prevent crime through the creation of criminal laws are an integral part of social defense and efforts to achieve social welfare. Criminal policy or law is also an integral part of social policy. Social policy can be defined as all rational efforts to achieve social welfare and also includes the protection of society. Based on the description above, criminal policy is an effort to realize criminal legislation in accordance with the situation at a particular time (ius constitutum) and in the future (ius constituendum). Criminal policy is synonymous with penal reform in the narrow sense because as a system, the law consists of the culture, structure, and substance of criminal law. In addition to renewing legislation, criminal law also includes the renewal of basic ideas and criminal law science.

A study related to this research was conducted by Andi Wiwin Mariana, et al. (2020) who conducted research that resulted in the finding that the protection of children who are victims of sexual violence by the PPA (Women and Children's Services) unit at Balikpapan Regional General Hospital provides better legal protection. In this case, it can be said that providing punishment to perpetrators provides protection for child victims of sexual violence, and child

victims are also protected in accordance with the provisions of Article 64 and Article 69A of Law Number 35 of 2014 concerning Child Protection, and for more specific protection for child victims of sexual violence, it is transferred to the PPA UPTD (Integrated Service Center for Women and Children). This study examines legal protection for children who are victims of sexual violence in Balikpapan.

Meanwhile, a study by Nindi Aristi, et al. (2021) conducted a similar study entitled "Focus on Sexual Violence Narratives in Online News Portals During the Covid-19 Pandemic." The results of the study showed that the assessment of the causes of sexual violence problems in the news reports published on Kompas.com and Okezone.com can be categorized into several moral values: sexual violence occurs outside the perpetrator's control, patriarchy as an ideology that legitimizes violence against women, violence against women can have various impacts on victims, and the non-approval of the Sexual Violence Eradication Bill (RUU PKS) can have an impact on women who are victims of sexual violence.

The next study by Prianter Jaya Hairi (2015) entitled "The Problem of Sexual Violence: Examining Government Policy Directions in its Prevention" focuses on how the government as the state administrator should take policy measures in addressing sexual violence in Indonesia. Based on the above description, the purpose of this research is to examine the development of laws in preventing sexual violence crimes.

RESEARCH METHOD

The research method used in this writing is normative juridical, with a specification of descriptive analytical research.

RESULTS AND DISCUSSION

Current Penal Policy in Combating Sexual Violence

Violence against women is a phenomenon that often occurs in domestic or household affairs, as well as in public or work environments, ranging from physical violence to social or psychological sanctions. The emergence of violence against women is related to cultural ideology or prevailing values, the type of social structure and relational patterns between men and women. Violence has the characteristic of coercion, while coercion can take the form of persuasive coercion and physical coercion, or a combination of both. Coercion means harassment of the will of others, who experience a total violation of their rights, existence as a human being with reason, feelings, will and bodily integrity is no longer considered.

The regulation of sexual violence in the Indonesian Criminal Code (KUHP) can be seen in several articles contained in Book II Chapter IV on Sexual Crimes which are listed in Article 281 of the Criminal Code-Article 295 of the Criminal Code. The types of actions contained in this chapter can be briefly described as follows: 1. Article 281 regarding violations of decency crimes 2. Article 282 on pornography 3. Article 283 on criminal acts by using writing, images or goods, plus tools to prevent pregnancy or abort pregnancy 4. Article 284 on adultery 5. Article 285 on rape 6. Article 286 on sexual intercourse with a woman outside of marriage, in a state of unconsciousness or helplessness 7. Article 287 on sexual intercourse with a woman outside of marriage who should be presumed to be under the age of fifteen 8. Article 288 interpretation of Article 287 plus if it causes injuries 9. Article 289 on obscene acts 10. Article 290 on obscene acts with someone unconscious / helpless, or someone under the age of fifteen 11. Article 293 on abuse of authority arising from the relationship 12. Article 294 on incest with one's own child, and so on. From the formulation contained in the Criminal Code, broadly speaking, the classification of sexual violence is divided into rape, adultery, sexual intercourse, and pornography.

Specific rules outside the Criminal Code relating to sexual violence are regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), in which criminal sanctions are imposed on perpetrators of sexual violence within the scope of the household. Specifically, sexual violence against children is also regulated in Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Child protection from sexual offenses in the law even extends to educational unit environments.

Sexual mistreatment of women that is sexual in nature, regardless of whether sexual intercourse occurs or not, and disregarding the status of the perpetrator and the victim is classified as sexual violence. Various types of harassment against women are listed in Article 2 of the Universal Declaration of Human Rights, including physical violence, sexual violence, psychological violence, even those related to dowries, rape in marriage, damage to genitals, and sexual extortion.

Several factors that affect the handling of sexual violence crimes include: The contribution of society, violence against women continues to haunt and scare women around the world, especially considering that the attitudes and behaviors of families and communities are often unconstructive in responding to violence against women, which is also based on the perception that family problems should be resolved by the family itself, without involving formal social control mechanisms, The Substance of Law and Protection, the lack of legal protection designed specifically for women, resulting in, among other things: a. no legal protection for women who become victims, b. no special rights given to victims of violence against women, c. no recognition for victims of violence against women, d. no compensation for women victims of violence against women, e. no special institution nationally dedicated to addressing the issue of violence against women, The Criminal Justice System, there is a tendency that women who become victims are often afraid of the reactions of law enforcement officers (police, prosecutors, and judges) towards the victimization they experienced, Perpetrators of violence against women, when their crimes are not reported or not processed, may result in the perpetrators still being able to roam freely in society with the possibility of repeating their crimes. This can be directed towards the first victim (as an act of revenge) or towards other potential victims, The role of mass media, the press has a very important role in conveying information and shaping public opinion.

Building an Integrated Approach in Addressing Future Sexual Violence Crime

Barda Nawawi Arief stated that the development of criminal law in essence is a renewal of criminal law that has the meaning of an effort to review the perspective and restoration of criminal law consisting of social policies, criminal policies, and law enforcement policies in Indonesia. Exclusive development of criminal law in forming a new Criminal Code as the basis of criminal law in Indonesia must use a special approach to religion, science, and humanism, which can make the Criminal Code the basis of criminal law that society expects in achieving prosperity and justice.

Building national law is a serious matter that must be reformed immediately. Related to this matter, there are at least three factors that influence, namely: Not too many legal experts pay attention to conceptual legal issues. Among experts who pay attention to this issue, there are still differences of views on the conception and scope of law as a system. Both problems are also supported by various issues that greatly influence the movement of law in carrying out its functions, both from internal and external factors.

Based on the three factors above, it is not easy for the Indonesian people and the state to form their own laws. Law development in Indonesia must be based on the values of life and culture of the Indonesian nation, namely Pancasila, which has been established by the nation's

founders as the foundation of the nation's philosophy. Thus, the legal order in Indonesia must refer to the Pancasila legal concept.

Pancasila as the source of all legal sources is not only limited to having legal rules but can also be applied in the legal system. There are two efforts to achieve this, namely making Pancasila a positive legal current and placing Pancasila as the peak of legislation. Pancasila is the foundation of the state and has become the source of legal order. However, referring to the stufenbau theory of Kelsen and Nawiasky, which requires the top of the normative hierarchy to be the basic norm or Grundnorm/Staatfundamentalnorm, Pancasila as the basic norm should be at the top of that normative order.

Indonesia adopts a legal system based on the hierarchy of legislation with several principles: 1. Higher regulations overrule lower regulations (lex superior derogat legi inferiori), 2. The latest legislation overrules older legislation (lex posteriori derogat legi priori), 3. Specific legislation overrules general legislation (lex specialis derogat legi generali). The enforcement of the Criminal Code in Indonesia cannot be separated from the Dutch legal legacy based on the concordance principle, where the law that applies in the colonial country also applies in its colony. This means that the enforcement of criminal law in Indonesia still has a normative substance that is far from the Pancasila values as the staatsfundamentalnorm of the Indonesian nation. The character of the Criminal Code, which is based on a legalistic view, is therefore no longer suitable and far from the expectations of the national legal aspirations that are expected at the point of Pancasila's justice values.

The draft Law on the Criminal Code has been prepared for more than 51 years and has involved criminal law experts in its journey. However, as of 2022, there are still various pros and cons about the Criminal Code Bill. Several issues in the Criminal Code Bill have become the center of public attention, so the government needs to participate in clarifying these issues. The Criminal Code Bill is one of the government's efforts to develop a national criminal law recodification system aimed at replacing the Criminal Code.

a. Renewal of material criminal law (KUHP and laws outside the KUHP)
   1) First, Renewal of the 2022 RKUHP concept as a draft of the upcoming legislation explains matters relating to sexual violence as follows:

      Regulations on sexual violence in the RKUHP can be seen in several articles contained in Book Two Chapter XV concerning Moral Crimes which are contained in Article 410 of the RKUHP-Article 426 of the RKUHP. The upcoming draft update of the 2022 RKUHP relating to sexual violence explains that in Article 410 of the RKUHP-Article 426 of the RKUHP there are jurisdictional qualifications between clear violations and crimes, the existence of conspiracy and repetition (recidive) as well as the elements included in corporate responsibility because if there is no clarity it will lead to conflicting problems considering the current legislation relating to sexual violence is no longer in accordance with the current situation in its implementation which explains universally, giving rise to multiple interpretations
   2) Second, Renewal of the draft law outside the Criminal Code relating to sexual violence as follows:

      The Draft Law on the Elimination of Sexual Violence (RUU-PKS) is an effort to reform the law in overcoming various problems related to sexual violence. This renewal in legal form has the following objectives:

      a. Prevent incidents of sexual violence from occurring.
      b. Develop and implement mechanisms for handling, protecting and recovering that involve the community and side with the victims, so that victims can go beyond the violence they experienced and become survivors

c. Providing justice for victims of sexual crimes, through punishment and firm action for perpetrators of sexual violence. Ensuring the implementation of state obligations, the role of the family, community participation, and corporate responsibility in creating an environment free of sexual violence.

Table 1. Draft Bill on the Elimination of Sexual Violence

No.	Formulation of PKS Bill
1.	Sexual Violence Crime Article 11-20
2.	Rights of Victims, Victims' Families and Witnesses Article 21-39
3.	Criminal Procedure Articles 40-95
4.	Community Participation Articles 96-98
5.	Article Education and Training Article 99
6.	Monitoring the Elimination of Sexual Violence Articles 100-101
7.	Funding 102
8.	International Cooperation 103
9.	Criminal Provisions 104-112 Part Three: Crime of Sexual Harassment Articles 113 - 118 Fourth Part: Sexual Exploitation Crimes Articles 119 - 124 Fifth Part: Contraception Coercion Articles 125 - 128 Part Six: Crime of Forced Abortion Articles 129 - 132 Seventh Part: Rape Crime Articles 133 - 140 Part Eight: Crime of Forced Marriage Articles 141 - 145 Part Nine: Crime of Forced Prostitution Articles 146 - 155 Part Ten: Sexual Slavery Crimes Articles 156 - 159 Eleventh Part: Crime of Sexual Torture Articles 160 – 165 Twelfth Part: Crime of Sexual Violence by Children Article 166 Part Thirteen: Corporate Crime Article 167 Part Fourteen: Other Crimes Related to Sexual Violence Articles 168 - 170 Fifteenth Part: Crime of Negligence Not Carrying out Obligations Articles 171 – 176

The current draft of the Sexual Violence Bill (RUU PKS) does not regulate sexual crimes committed by women and creates the impression that sexual crimes are only committed by men. The bill does not recognize female sexual perpetrators, portraying women only as victims in the context of sexual intercourse, while both men and women can be perpetrators of sexual violence. Therefore, sexual violence can also be committed by women. Additionally, the bill includes provisions related to family or household relationships, which may be open to multiple interpretations by married couples, leading to criminal offenses against each other.

The draft bill in academic literature and its previous title have been revised, and it is now called the Sexual Violence Criminal Offenses Act, which contains 93 articles related to sexual violence. The title of the PKS is identical to the title of the Domestic Violence Eradication Act (PKDRT), which is an administrative legislation with criminal sanctions. Therefore, such legislation is often referred to as an Administrative Penal Law, a criminal law of a specific nature that is extra-legislative. Meanwhile, the Sexual Violence Criminal Offenses Act is a criminal law of a specific nature that is intra-legislative, similar to Corruption Criminal Offenses, Terrorism Criminal Offenses, and others.

Non-physical sexual harassment is a new term introduced in the Sexual Violence Criminal Offenses Act (TPKS). In the PKDRT, the term psychological violence is used, which is more burdensome to prove because it requires proving the consequences of psychological violence, such as causing fear, loss of confidence, loss of ability to act, helplessness, and/or severe

psychological suffering for someone.

Improvement of legislation relating to sexual violence, where in this improvement and the development of the national law of the Republic of Indonesia we must use comparative law with other countries to build good conditions for the development of international partnerships. As for the countries that the author uses as a reference for legal comparisons for legal reform in Indonesia, namely: The United Kingdom and the State of Barbados use the Sexual Offenses Act. Judging from the material law that is regulated, Barbados only regulates the criminal act of rape, while England regulates sexual violence more broadly including punishment if someone has sexual intercourse to transmit sexually transmitted diseases. The State of India has the same law but specifically for children with the legislation The Protection of Children From Sexual Offenses Act 2012. Laws that regulate sexual violence in the work environment, or add education and training using the Sexual law Harassment in Workplace Act. Bahamas countries that combine sexual violence and domestic violence are not included in this category. The legislation used is the Sexual Offenses and Domestic Violence Act. The State of the Philippines with the Anti Rape Act legislation. The Philippines also issued a policy for the recovery of rape victims separately with the Rape Victim Assistance and Protection Act legislation. Bangladesh with the Oppressions Against Women and Children Act

b. Renewal of formal criminal law (KUHAP).

The Criminal Procedure Code, or what is known as the abbreviation KUHAP, is the law that regulates how the treatment should be given to someone who is suspected of having committed a criminal act, until later being sentenced in court. The Criminal Procedure Code has the goal of achieving truth and justice for the realization of order, security, legal certainty and the welfare of the Indonesian people based on Pancasila and the 1945 Constitution.

Given the existence of the Criminal Procedure Code which was established in 1981 until now it has reached the age of 41, of course it is felt that there are several weaknesses and deficiencies in practice, both the substance/material contained in the Criminal Procedure Code and its formulation, so that the Criminal Procedure Code is felt to be left behind compared to the speed of development and lawsuits and globalization at this time, and of course it needs to be renewed. The reform of the Criminal Procedure Code was carried out because it was no longer in accordance with the development of society and the legal needs of the Indonesian state.

Indicators showing that the Criminal Procedure Code is out of date, namely: First, the Criminal Procedure Code is still unable to meet the legal needs of society, especially in the practice of handling criminal cases which is the duty of law enforcers to resolve cases properly and fairly. Second, developments in law and changes in the political landscape coupled with developments in the global economy, transportation and technology also affect the meaning and existence of the substance of the Criminal Procedure Code.

The reform of criminal procedural law in Indonesia is part of the arrangement of regulations that have been proclaimed by the Government through a legal revitalization agenda that aims to eliminate overlapping, disharmony and multi-interpretation laws and regulations. Amendment to the Criminal Procedure Code is one of the national legal development agendas to address various problems in the legal field. KUHAP is procedural law used by law enforcement officials. In general, the Criminal Procedure Code does not regulate much about victims' rights. The word "victim" in the Criminal Procedure Code is only mentioned four times. In the elucidation of the Criminal Procedure Code, the word "victim" is only mentioned twice. This is because the context for making the Criminal Procedure Code prioritizes the rights of suspects.

We can find this in the general explanation of the Criminal Procedure Code "Even though Law Number 1 Emergency of 1951 has stipulated that there is only one criminal procedural law that applies to all of Indonesia, namely R.I.B., however, the provisions contained therein do not

yet provide guarantees and protection of human rights, protection of human dignity as naturally owned by a rule of law. Particularly regarding legal assistance in examinations by investigators or public prosecutors, it is not regulated in the R.I.B., while there are also no provisions regarding the right to grant compensation".

Investigation, arrest or detention must be based on sufficient preliminary evidence, this is based on Article 17 of the Criminal Procedure Code. As for what is meant by a sufficient start based on the Constitutional Court Decision Number 21/PUU-XII/2014 is a minimum of 2 pieces of evidence as stated in Article 184 of the Criminal Procedure Code. This means that the testimony of the victim (witness) is not enough for the police to carry out further investigations or arrest the perpetrator. So in this proof there are quite serious problems. What if the act of sexual violence was carried out in a private space where no one knew or saw the incident directly. Then because the victim is still traumatized and there are fears for the victim, the report is only made after more than one week or even more than one year. Then the consequence, visum et repertum cannot be carried out. Thus sufficient preliminary evidence in the provisions of Article 17 in conjunction with Article 184 of the Criminal Procedure Code is not fulfilled.

c. Penal law reform

Arrangements regarding criminal law implementation provisions (among which some are no longer valid), can be seen, among others, in, Criminal provisions in the Criminal Code are in principle contained in Chapter II of Book I of the Criminal Code. But apart from that it can also be found in other chapters. In this case, it is necessary to keep in mind the various changes that have been made to the Criminal Code since the existence of Law no. 1 of 1946 which was confirmed by Law no. 73 of 1958 to be enforced throughout Indonesia. Criminal provisions in laws and regulations outside the Criminal Code, for example: a. Stb. 1926-486 danStb.1926-487: Conditional Criminal Execution Ordinance (Uitvoerings Ordonnantie op de Voorwaardeeling), b. Stb. 1917-749: Parole Ordinance (Ordonnantie op de voorwaardelijke in vrijheidstelling), c. UU no . 1 2 Year 1 9 9 5 concerning Corrections replacing Stb. 1917- 708 concerning Gestichten Reglement (Prison Regulation), d. UU no. 20 of 1946 concerning Coverage Crimes, e. UU no. 2 Pnps 1964: Execution of Death Penalty, f. Law No.1 Ort 1951: "Customary Offenses", g. Stb.1917-741: Regulation (Regulation) of Forced Education (Dwang-opvoedings Regening), h. Stb.1936-160:Verordening on the State Institute of Forced Labor, i. Stb. 1897-54: Regulation op het krankzinningenwezen in Indonesia, j. Law No. 3 of 1997 concerning Juvenile Court Provisions for the implementation of punishment in the Criminal Procedure Code: among others, Article 271 regarding the implementation of death penalty decisions; Article 272 concerning the implementation of imprisonment/confinement sentences; Article 273 concerning the implementation of fines criminal decisions; Article 27 4 concerning the decision for compensation in the event of a merger of cases; Article 276 regarding the implementation of conditional criminal decisions. Other provisions other than those included in points 1-4 above, for example: a. in various Government Regulations as the implementation of the Law (a.I. PP No. 31/1999 concerning the Guidance and Guidance of Correctional Families, in order to implement the provisions of Article 7 paragraph (2) of Law Number 12 of 1995, PP 32/1999 concerning Requirements and Procedures for Implementation Rights of Correctional Families, in order to implement the provisions of Article 14 paragraph (2), Article 22 paragraph (2), Article 29 paragraph (2), and Article 36 paragraph (2) of Law Number 12 of 1995; PP 58/1999 concerning Requirements and Procedures for Executing the Authority, Duties and Responsibilities of Treating Prisoners, as the implementation of Psi 51 (2) Law No. 12/1995) and b. even in various Ministerial Decrees (among other things in the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia, Number: M01.PK.03.02 of 2001 Concerning Family Visiting Leave for Convicts and Correctional Students).

Current indicators of penal reform in Indonesia, namely: There is no codification of criminal law enforcement in integrity in the reform of criminal law enforcement, There is no renewal of the penal system which includes material criminal law, formal criminal law and criminal law enforcement by the legislature. There is no consistency in making national criminal law policies. Renewal of material criminal law in integrity by drafting the Criminal Code Bill, formal crime by drafting the Criminal Procedure Code Bill and criminal law implementation is only updated by drafting the Correctional System Bill. Inappropriately drafting laws will cause the understanding of the meaning of the penal system to widen. There is still a presumption that the position of execution of punishment is not more important than material punishment and formal punishment.

The reform of criminal law enforcement in Indonesia can be pursued through an effort to understand the diversity of foreign criminal enforcement systems by conducting a comparison of legal codification in various countries such as the Republic of Tajikistan, Kosovo and Norway. The three countries have in common the principles of criminal justice, as follows: KUHPP as the main law of criminal implementation for imprisonment, special criminal sanctions, social crimes, and other sanctions of a special nature determined by law. Legality in criminal execution , External harmonization, Reintegrity of perpetrators into society, The implementation of criminal sanctions on children must continue to communicate with their parents. The convict's active role in the implementation of criminal punishment and special criminal sanctions, Cooperation between institutions., Individualization of criminal execution, Imposition of sanctions based on human rights, Alternatives to Imprisonment. Based on the principles set out in various countries in the KUHPP above, it is hoped that in the future the Indonesian State Penal Code can consider the general principles of criminal implementation as follows: Implementation of criminal sanctions based on Pancasila and the 1945 Constitution, in which the position of Pancasila as the foundation or foundation of the Indonesian state is contained in the preamble of the 1945 Constitution paragraph IV. External and internal harmonization, in which the criminal implementation system to be formulated must be oriented towards harmonization of the material (KUHP) and formal (KUHAP) criminal systems. Balance in implementing law.

CONCLUSION

Building an integral approach through criminal law reform in tackling future sexual violence crimes by updating material criminal law, formal criminal law, and criminal law enforcement in an integral manner, as these three laws are closely related to each other and become optimal in harmonizing these laws.

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