

Evidence In Sexual Violence Crime Cases

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Abstract.

The focus of this research is related to the emergency phenomenon of sexual violence in Indonesia which is currently the world's concern. Evidence of criminal acts of sexual violence is often not revealed because it is constrained by the narrow evidence in the regulations for combating sexual violence crimes in Indonesia. The presence of Law Number 12 of 2022 concerning the Crime of Sexual Violence has become a breath of fresh air in the disclosure of cases of sexual violence in Indonesia, which is among the highest in Southeast Asia. To answer the objectives of this research, the type of research used is normative legal research with a statutory approach, a conceptual approach and a comparative approach, especially examining legal provisions related to evidence in sexual violence crimes in Indonesia. In the perspective of the ratio decidendi in criminal justice, it is related to the importance of evidence in overcoming this sexual violence crime in Indonesia. From the results of the study, it was found that there were several additional evidences in the Non-Criminal Act on Sexual Violence as a new regulation in dealing with sexual violence in Indonesia, including the recognition of victim statements, statements by psychologists and/or psychiatrists, electronic evidence, this is progress in the process. justice for sexual violence crimes in Indonesia by also including some additional new evidence, including psychiatrists' statements which are very helpful in disclosing cases of criminal acts of sexual violence in Indonesia which are increasingly showing alarming numbers. Entering silent evidence or evidence as a tool The evidence in the regulation of this new law provides another perspective in overcoming the crime of sexual violence in Indonesia which is difficult to uncover due to cultural factors and negative stigma towards victims of sexual violence.

Keywords: Evidence, Crime and Sexual Violence.

I. INTRODUCTION

The main obstacle in proving the crime of sexual violence so far is associated with the lack of evidence obtained. Obstacles of investigators in revealing cases of sexual violence often collide with the evidence they have, which only comes from the victim's confession. This condition provides an opportunity for a "dark number" to occur in the completion of several incident reports. As a result, it is not uncommon for victims to be depressed and worse off (Suwandi, Chusniatun, and Kuswardani 2019) [1], even in the process, victims often experience persuasion and intimidation from perpetrators or other parties, which is even more sad if the victim is a child. children (Wahyuni, Irawan, and Rahmah 2021)[2]. Sexual violence is a violation of human rights (Hall and Hall 2007)[3] and includes crimes against human dignity and forms of discrimination. Every act of violence and treatment that degrades human dignity, is contrary to divine and human values and disturbs the security and tranquility of the community. The World Health Organization (WHO) defines sexual violence as an act or behavior that targets sexuality or sexual organs, without consent, with an element of coercion or threats, including trafficking in women for sexual purposes and forced prostitution (Hall and Hall 2007)[4], (Khristianti Veda Tantri 2021)[5]. In Indonesia, the behavior of sexual violence crimes as a type of violent crime in general is increasing every year, we can see from the following data and graphs related to reports of gender-based violence in Indonesia from 2017 to 2020.



Fig 1. Data on the Increase of Gender-Based Violence in Indonesia.

From the graphic data above, we can see that a significant increase in acts of violence occurred in Indonesia from the data reported to the Indonesian National Commission for Women. The data is certainly clear for those who report, the fact that almost 300-50% of cases of violence including sexual violence in the victim's world are difficult to report, so it will be difficult to disclose. There are many factors that make it difficult for victims to report, including the negative stigma of society towards victims of sexual violence and the eastern legal culture of society which tends to portray this as a private sphere so that people themselves do not care about this dangerous behavior in people's lives in Indonesia (Wahyuni et al. . 2021)[6]. The condition of this sexual violence behavior in Indonesia is also one of the causes of domestic violence behavior. Although there are regulations, namely Law Number 23 of 2004 concerning Domestic Violence which defines acts of violence as acts against a person, especially women that result in physical, sexual, psychological misery or suffering and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household (Lankford 2021)[7]. Violence in this law is not only a sexual problem, it involves various aspects including psychology and mentality. This domestic violence crime behavior in Indonesia has also experienced a significant increase from year to year. The same problem occurs when there are obstacles in disclosure because this is a very personal domain for Indonesian people, namely family and household. Even though there is already a law as a regulation, this has become ineffective due to the difficulty of disclosure and the lack of evidence because it occurs in the private sphere (Purwanti and Zaliani 2018)[8]. Indonesia has begun to make improvements in the framework of dealing with sexual violence from the criminal law policy path by issuing the Sexual Violence Criminal Act, which in Article 1, formulates the crime of sexual violence as all acts that meet the elements of a criminal act as regulated in the Act. Criminal Sexual Violence and other acts of sexual violence as regulated in the law as long as it is determined in this law. (Wafiuddin 2022)[9].

The definition of sexual violence adopted by the Act on the Crime of Sexual Violence seems to accommodate many things when compared to the understanding in the Act on the Crime of Sexual Violence, as well as other legislation. Because it not only formulates the definition of a criminal act of sexual violence, but also takes over certain types of actions regulated in existing laws and classifies them as criminal acts of sexual violence. As regulated in Article 4 paragraph (2), it is equated as a criminal act of sexual violence, namely acts of non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery and electronic-based sexual violence. Non-physical sexual acts according to the explanation of Article 5 of the Criminal Act of Sexual Violence, take the form of statements, gestures, or activities that are inappropriate and lead to sexuality with the aim of humiliating or humiliating. In addition, in the Act on the Crime of Sexual Violence, the same as criminal acts of sexual violence are acts of rape, obscenity including against children, sexual intercourse, violating decency against the will of the victim, child pornography or pornography which explicitly includes violence, forced prostitution, trafficking in persons with the motive of sexual exploitation, sexual violence in the household and money laundering crimes whose origin is sexual violence. Any person who intentionally prevents, hinders or thwarts, directly or indirectly, an investigation, prosecution and/or examination in court

in a case of a criminal act of sexual violence, may be subject to a sentence. The substance of the scope of criminal acts of violence is aimed at preventing all forms of increasingly massive violence against women and children, in addition to providing protection and recovery for victims. In addition, in carrying out law enforcement there is a guarantee of rehabilitation for perpetrators, in order to create an environment without sexual violence and guarantees that the existing sexual violence will not be repeated.

The breadth of the definition of a criminal act of sexual violence certainly has an impact on proving the case in court. What is the role of evidence in determining the settlement of criminal cases of sexual violence in Indonesia. The problems that occurred really needed a breakthrough in the application of evidence to bring the case to trial and the sense of justice of the women and children who were victims could be fulfilled. Some of the same research related to this discussion can be used as a comparison for this research regarding the evidence in this crime of sexual violence in Afghanistan, for example (Corboz et al. 2022)[10] in Africa (Ngidi 2022)[11] (Regehr, Regehr, and Birze 2022)[12] (Daluxolo Ngidi, Moletsane, and Essack 2021)[13] (Bellia et al. 2020)[14] all of which only focused on victims and victim management in prevention. This study focuses more on the importance of silent evidence that needs to be maintained in disclosing sexual violence crimes that need to be guaranteed by the state through law. Protection of victims in the form of prevention will not be effective if it is not maximal in disclosure. This proves that in Indonesia the disclosure of sexual violence cases is still very minimal due to several inhibiting factors.

II. METHODS

The legal research method used is normative (normative law research), (D'hondt and May 2022)[15] with an emphasis on legal norms extracted from the rule of law, legal principles and legal doctrine in order to answer the problem of evidence in proving sexual assault crime. For writing, use a statutory approach, a comparative approach and a conceptual approach. With legal materials sourced from library research or research libraries by utilizing primary, secondary and tertiary legal materials. Because the discussion is related to evidence, as a reference, of course, Law Number 8 of 1981 concerning the Criminal Procedure Code or the Criminal Procedure Code and Law Number 12 of 2022 concerning the Crime of Sexual Violence.

III. RESULT AND DISCUSSION

Evidence in the Law on Sexual Violence in Indonesia

The existence of evidence from a crime is a determinant of a criminal case that can be continued in trial. According to Article 183 of the Criminal Procedure Code, the disclosure of a case must be supported by at least 2 (two) pieces of evidence and can "convince" the judge in his decision. As the formulation of Article 183 of the Criminal Procedure Code which states: "A judge may not impose a sentence on a person if with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it." The terms evidence and evidence in practice are often used interchangeably. As tangible goods, movable or immovable, evidence is often used as evidence and must be shown in court. (Dworkin et al. 2022)[16] (Edwards and Dardis 2022)[17]. Evidence is everything that has to do with a thing. criminal acts, where evidence is used as evidence in court to increase the judge's conviction. This is similar to the negative evidence system (negative wettelijk bewijzeleer) adopted by Indonesia. (Hari Sasangka n.d.)[18] According to Article 184 of the Criminal Procedure Code, valid evidence consists of witness statements, expert statements, letters, instructions and statements of the defendant and things that are generally known and do not need to be proven again. Eddy OS Hiariej detailed the things needed in proof, including evidence, evidence, how to collect and obtain evidence to the submission of evidence in court, strength of proof and burden of proof in criminal cases. (Hiariej n.d.)[19] In theory of evidence, evidence is considered valid if regulated according to the Criminal Procedure Code and the evidence must still meet the requirements of reliability, necessity and relevance. (Munir Fuady n.d.) facts to be proven.[20] Due to the proximity of the evidence to the facts to be proven, there is direct evidence, such as witnesses or victims or other people who saw directly the facts of an event and there is also evidence obtained from facts that have a relationship after drawing conclusions. This evidence is called indirect evidence or circumstantial evidence,

such as testimonials, tangible evidence and tangible but testimonial evidence. (Irawan, Astuti, and Khairi 2021)[21]. This indirect evidence in the Criminal Procedure Code is known as instructions or evidence obtained from a series of facts as a result of an act, event or situation due to their conformity with one another or from the crime itself.

The Act on the Crime of Sexual Violence mentions several pieces of evidence that are considered valid. According to Article 24 paragraph (1), evidence in criminal acts of violence consists of evidence that is recognized as valid according to the Criminal Procedure Code, such as witness statements, expert statements, letters, instructions and statements of the defendant as well as things that are generally known and do not need to be proven again, plus other evidence such as electronic information and/or electronic documents as well as evidence used to commit a crime or as a result of a criminal act of sexual violence and/or objects or goods related to the crime. These provisions indicate in the Act on the Crime of Sexual Violence that there is an expansion of the provisions regarding evidence as regulated in the Criminal Procedure Code. The expansion of the scope of evidence is marked by the recognition of electronic information and/or electronic documents as evidence in violent crimes. This is understandable because forms of sexual violence often involve electronic means such as social media which is thick with a digital track record which of course will be very influential in disclosing the occurrence of a crime. The Criminal Procedure Code itself is still lagging behind in reaching this point. Although not something new, confirmation of information and/or electronic documents as evidence will greatly assist in the disclosure of a criminal incident. Previously, the Corruption Law, the Juvenile Justice System Law, the Domestic Violence Law, and others had accommodated the existence of electronic information data or electronic documents as evidence. Recognition of the Sexual Violence Act regarding the importance of electronic documents, evidenced by making the statements of witnesses and/or victims resulting from electronic recordings as evidence of legal witness statements. The testimony of a witness and/or victim is deemed sufficient to prove the criminal act of violence from the perpetrator accompanied by 1 (one) other valid evidence plus the judge's conviction. Further protection of witnesses and/or victims for reasons of health, security, safety and/or other valid reasons, cannot attend court, examination of them can be carried out by reading the minutes that have been given under oath/promise, through electronic recording and / or the examination is carried out directly over a distance using audiovisual communication tools with the strength of evidence considered the same as being present in court (Article 48). (Wahyuni et al. 2021)[22] (Aristi, Janitra, and Prihandini 2021)[23] (Luban 2015) [24]

The proof of the crime of sexual violence which is only obtained from the testimony of a victim witness only, Article 25 paragraph (2) of the Law on the Crime of Sexual Violence provides a way, among which investigators can ask for information from the defendant's family as witnesses under oath/promise, without the consent of the defendant. The testimony of the witness, which was only obtained from the victim, did not take an oath/promise. With regard to witness statements obtained from other people, it is required that they must be supported by statements from people who have a relationship with the crime in question, even though he has not heard, seen or experienced it himself. The testimony of an independent witness still has a relationship and can be used as evidence. Instructions in proving the case, including expert testimony who makes documentary evidence and/or supports the evidence. (Article 25 paragraph (3) letter a, b, c). The intended documentary evidence includes a certificate from a clinical psychologist and/or psychiatrist/psychiatrist specialist, medical records, forensic examination results and or bank account examination results. What is new about witness evidence is the recognition that witnesses and/or victims with disabilities have the same legal force as witnesses and/or victims who do not have disabilities. The testimony of the witness must be supported by a "personal assessment". According to the explanation of Article 25 paragraph (5), the personal assessment involves an effort to assess the variety, level, barriers and needs of persons with disabilities, both medical and psychological, to determine appropriate accommodation.

Silent Evidence

Existence of evidence or proceeds of criminal acts of sexual violence or items related to criminal acts as evidence in evidence. This provision is relatively new in the law of evidence, because evidence, including the results obtained from a criminal act, has so far only been a complementary component in criminal

evidence. The change of evidence into evidence in the TPKS Law expands the meaning of the provisions of Article 184 of the Criminal Procedure Code. So far, evidence or "evidence" or silent evidence is information. As Ian Dennis puts it, "it is information that provides grounds for belief that a particular fact or set of fact is true. Proof is a term with a variable meaning. In legal discourse it may refer to the outcome of the process of evaluating evidence and drawing inferences from it and drawing inferences from it, or it may be used more widely to refer to the process it self and/or to the evidence which is being evaluated .(Irawan 2019)[25] (Khristianti Weda Tantri 2021)[26] (Suwandi et al. 2019)[27] or in a free translation that evidence is information that provides a basis for belief that a particular fact or set of facts is true, so that the evidence only becomes a component that supports the evidence. The Criminal Procedure Code indicates that goods related to criminal acts must be confiscated with the approval and/or permission of the Head of the District Court. Regarding goods or objects that can be confiscated, Article 39 paragraph (1) of the Criminal Procedure Code details as follows: a) objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or as a result of a criminal act; b) objects used directly to commit a crime or to prepare it; c) objects used to hinder criminal investigations; d) objects specially made or intended to commit a crime; and e) other objects that have a direct relationship with the crime committed. In addition, it is stated that objects that are in confiscation due to a civil case or bankruptcy can also be confiscated for the purpose of proving in court as long as they fulfill the above provisions.

The existence of evidence including the results obtained from a criminal act of sexual violence as evidence, according to researchers, can cause new problems in the field of evidence law. Included in the category of evidence that will be attached to "evidence or objects" and "results of the crime of sexual violence" in the law of evidence. As a guide or as a stand-alone piece of evidence. Perhaps an official explanation regarding this matter will have to wait for how it is regulated in the criminal act of sexual violence in Indonesia. In this law, evidence or silent evidence has become evidence in disclosing cases of sexual violence, this is a new support for disclosure that previously in Indonesia's criminal procedural law has not placed evidence as part of the evidence that determines a person can be blamed for a criminal act. One of the problems that arise in the disclosure of cases of violence in Indonesia is due to the lack of witnesses as evidence to see and hear about the occurrence of a criminal event, thereby reducing the initial evidence. So far, only a small number of sexual violence crimes can be uncovered by law enforcement, which causes the perpetrators of these crimes to become more and more free to commit crimes. This can be seen from the types of characteristics of perpetrators of sexual violence that occur in Indonesia as follows.



Fig 2. Perpetrators of Sexual Violence from their Characteristics and Professions in Indonesia

The graph shows that most of the perpetrators of violence come from close friends who hang out with and meet the victims every day, followed by neighbors. People who are not known and even superiors are in position after him. Most worrying in Indonesia is the fact that sexual violence occurs in educational institutions by people who are supposed to look after the victims. This fact illustrates the urgency of the large and strong evidence to support the disclosure of the crime that occurred, due to the presence of the closest people as perpetrators of sexual violence (OHCHR) 2019)[28] The need for evidence such as evidence to suffice initial evidence then as part of seeking material truth in a criminal act of sexual violence. Women as

one of the classifications of victims of sexual violence occupy the highest position as victims of sexual violence in Indonesia, followed by children and male adults. The existence of women as weak people according to their gender, causes them to always experience physical, mental and spiritual pressure as victims of sexual violence. Women as victims of sexual violence can be ascertained that the characteristics of crimes that occur are in private areas where evidence is very minimal, and is followed by threats that make it difficult to reveal who the perpetrators are. This is another problem in disclosing sexual violence crimes whose victims are women in Indonesia, which we can see an increase from 2015 to 2019 as follows.

Kasus Kekerasan Seksual Terhadap Perempuan 2015-2019

Menurut Ranah



Sumber: Komnas Perempuan • Visualisasi Data: Hanif Gusman

Fig 3. Victims of Sexual Violence Against Women according to the area where the crime occurred

From the graph above, women as victims can always be found in two conditions, first in their own families in the treatment of their husbands for domestic violence and in the women's community itself, such as at work, and where she carries out her education and daily activities. From the perspective of evidence, it becomes difficult again when revealing crimes involving close people and in the private sphere. The negative stigma of gender position, position in work or as a student or student can be ascertained to be difficult to express, plus the closed cultural factor of women in Indonesia. So that the development of evidence in the legislation on the crime of sexual violence, by including evidence as part of the evidence is the right progress in proving this crime in Indonesia. The reality that we see now is that everything that affects the high crime of sexual violence against women and children in Indonesia in all aspects can be the cause (Purwanti and Zaliani 2018)[29]. The seriousness of the relevant parties, especially in the framework of handling victims of sexual crimes against women and children, needs to be socialized to the community and families in Indonesia to be willing to disclose sexual crimes that occur in society (Wahyuni, Irawan, and Rahmah 2021)[30]. So that the existence of evidence as part of the evidence in disclosing this sexual violence crime then also needs to be supported by good prevention efforts from every relevant party in Indonesia.

IV. CONCLUSION

That from the brief description it can be concluded that in the regulation on the Crime of Sexual Violence, Indonesia has expanded the evidence to not only consist of those intended in the previous criminal procedural law, by adding evidence as silent evidence and the results of criminal acts of sexual violence. also as evidence. Evidence of criminal acts of sexual violence in Indonesia in the future will be more easily revealed because the evidence that can be used no longer only relies on the statements of witnesses, but also presents evidence as silent evidence which is very useful in helping the fact that it is difficult to disclose violent crimes. sex in Indonesia. With the presence of a proof system modeled on the Sexual Violence Act, it is hoped that acts of sexual violence, both physical and non-physical, will decrease.

V. ACKNOWLEDGMENTS

The author would like to thank the Chancellor of Udayana University, the Dean of the Faculty of Law, Udayana University, and all parties who have supported the research and writing of this article.

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