

STATE RESPONSIBILITY AND COMMUNITY PARTICIPATION IN FULFILLING THE RIGHTS OF WOMEN VICTIMS OF SEXUAL VIOLENCE

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Abstract

During the current Covid-19 pandemic, one of the social problems has increased, namely violence against women. The number of cases of Violence against Women (KtP) throughout 2020 was 299,911 cases. The most prominent cases were sexual violence with 962 cases (55%). The Criminal Code (KUHP) has not been able to reach the forms of sexual violence that have developed. Based on these conditions, the issue that will be discussed is how the state's responsibility and community participation in fulfilling the rights of women victims of sexual violence today are. The understanding of community law enforcement officers and the issue of sexual violence is not yet "gender sensitive".

The government's efforts to provide protection for women have many aspects, so their realization requires collaboration in networks. State responsibility and community participation are not only on a normative basis but also on the understanding of law enforcement officers and the need for changes in community behavior in fulfilling the rights of women as victims of sexual harassment. The research method used is based on socio-legal studies, located in the city of Semarang. The findings in the field show that state responsibility and community participation are not optimal because they are influenced by various factors, namely substance, structural and cultural. Furthermore, it is necessary to change related policies, equalize perceptions of the definition of sexual violence, change community behavior in fulfilling the rights of women victims of sexual harassment and strengthen networks between law enforcement officers, assisting agencies and the community.

Keywords: State responsibility, society, women's rights, victims, sexual violence.

A. INTRODUCTION

Women are one group that is subject to violence. Violence against women is a constraint on equality, development, security and peace. Article 1 of the United Nation's 1993 Declaration on the Elimination of Violence Against Women defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.¹

Regulation in KUHP (Criminal Code) on sexual violence is very limited. In general, the forms of sexual violence are only rape and molestation. The existing preference have not completely guarantee victim's right protection, such as formulation of article specifying one of the elements, threat, thus victims who are in a power relation unequal to that of perpetrator or in a condition that cannot give actual approval are not protected by this provision. Sexual violence is an act, both oral and physical, performed by an individual to take control or manipulate others and make them involved in an undesired sexual activity. The important

¹ Harnoko, Rudi. *Dibalik Tindak Kekerasan terhadap Perempuan* [Behind the Acts of Violence against Women]. *Muwazah Journal Volume 2 Number 1 July 2010 Edition*. p. 182

aspects in sexual violence are coercion aspect and no approval from victim aspect.² Violence against women occurs because of gender inequality or injustice. Gender inequality is difference in the roles and rights between women and men in the community that puts women in a status lower than men.

The violence against women issue is currently not individual or national issue, but global issue. In certain case, it can even be called a transnational issue. There are some terms used, such as domestic violence and others "violence against woman, gender-based violence, 3gender violence, female-focused, domestic violence, etc." and so on⁴.

UN Declaration on Human Rights in 1948 confirms that one of the issues getting attention and developing in the community is gender issue, that is an issue regarding inequality between the condition and position of women and men in the community, called gender inequality. Women still have very limited opportunities compared to men to actively participate in development program activities or in other life aspects in the community (economy, social-culture, education, organization and institution, and others). Such limitation is derived from various community values and norms restricting women's movement space compared to men's movement space.

UN Declaration on Human Rights in 1948 states that "all human beings are born free and equal in dignity and rights". This statement is the symbol of a community life with a vision of the necessity to respect every person without distinction of race, color, religious and political belief, language and sex. The world community acknowledges that women have the right to enjoy and gain human rights protection in political, economic, social, cultural, civil, and other fields. The acknowledgement is realized in the Declaration on the Elimination of Discrimination against Women in 1967, Convention on the Elimination of All Forms Discrimination against Women in 1979 that was declared effective in 1981, and Declaration on the Elimination of Violence against Women in 1993.

Gender based discrimination is the source of various human rights violations. The discrimination can be marginalization, commonly occurring in economic field, subordination, assumption that women are weak, stereotype (bad image), bad perspective on women, violence, namely physical and psychological assault, excessive workload, namely heavy and continuous duties and responsibilities.

The principle of state obligation according to Women Convention briefly includes: a. Prevent discrimination against women; b. Prohibit discrimination against women; c. Identify discrimination against women and do some measures to rectify if; d. Enforce sanction for discrimination act against women; e. Support enforcement of women's rights and encourage similarity, equality and justice, through proactive measures; and f. Increase de-facto similarity between women and men. Acts of violence against women are not only physical, but also non-physical, including psychological, socio-cultural, economic and political. The cases handled by the police are commonly physical violence. The strict structure and procedure prevent law enforcers to make a breakthrough and new interpretation. The culture, closely related to the "patriarchic" culture or "men dominance culture" taken by the community, is not accommodating to women's problem and the concerned (women) have no desire to fight for their rights or women's, as victim of violence, unawareness of doing legal action. Problem Statement.

In this study, the formulation of the problem is how is the responsibility of the state and community participation in fulfilling the rights of women victims of sexual violence.

B. RESEARCH METHOD

² *Leaflet Kenali Kekerasan Seksual* [Leaflet on Be Aware of Sexual Violence]. Kolaborasi Yayasan Pulih, Maju Perempuan Indonesian untuk Penanggulangan Kemiskinan (MAMPU), Australian Aid, and Forum Pengadaan Layanan [Collaboration of *Pulih* Foundation through the Indonesian Advanced Women to Overcome Poverty (MAMPU) program with Australian Aid, and Service Procurement Forum]. p. 1

³ Muladi, *Hak Asasi Manusia, Politik dan Sistem Peadilan Pidana* [Human Rights, Politics and Criminal Justice System], 1997, p. 31, Diponegoro University. Semarang.

⁴ Muladi, *Hak Asasi Manusia, Politik dan Sistem Peadilan Pidana* [Human Rights, Politics and Criminal Justice System], 1997, p. 31, Diponegoro University. Semarang.

This research used an approach method based on a socio-legal study which reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact (Bruggink, 1996). Deep investigations and studies were conducted on the contents or values of the existing law in society called *normwissenschaft/ sollenwissenschaft*. Research location in Semarang.

C. DISCUSSION

According to Fuller, to measure the existence of a legal system, it is seen in eight principles called the Principles of legality, namely, a. A legal system must contain regulations, that is, it must not contain ad hoc decisions, b. The regulations that have been made must be announced, c. There should be no retroactive rules, because if they are not rejected, then these regulations cannot be used as a guideline for behavior. Allowing the regulation retroactively means undermining the integrity of the regulation that is intended to apply in the future, d. Regulations must be formulated in an understandable formula, e. A system should not contain rules that conflict with each other, f. Regulations must not contain demands that exceed what can be done, g. There should not be a habit of changing the rules frequently so that one will lose orientation, h. There must be a match between the regulations promulgated and their daily implementation.

Furthermore, according to Lawrence M Friedman, there are 3 elements in the legal system, namely structural, substance, and cultural aspects. Structural aspects, that is:

*"First many features of a working legal system can be called structural – the moving parts, so to speak of the machine Courts are simple and obvious example; their structures can be described; a panel of such and such a size, sitting at such and such a time, which this or that limitation on jurisdiction. The shape size, and powers of legislature is another element of structure. A written constitution is still another important feature in structural landscape of law. It is, or attempt to be, the expression or blueprint of basic Features of the country's legal process, the organization and framework of government".*⁵

The three components in the legal system are interrelated and have an inseparable role in law enforcement efforts. In the system of state responsibility and community participation, the three aspects are interconnected and influence each other as a system that must be built in society in fulfilling the rights of women victims of sexual violence.

In its implementation, the influencing factors emphasize that apart from legal certainty, it is also necessary to pay attention to aspects of justice and benefits for the community in relation to laws and regulations regarding the fulfillment of the rights of women victims of sexual violence.

The position of victims of acts of violence against women has not been given with sufficient legal protection. Various legal products have not reached women's needs as victims, thus when the victims must face judiciary process, they are not protected but tend to be blamed instead or deemed to contribute to the occurrence of such violence. Such condition greatly hinders women from fighting for their rights. Violence against women is global phenomena occurring throughout centuries of human life and occurs in all countries. Realizing equality

⁵ Lawrence Friedmen, *The legal System; a Social Science Perspective*, New York: Russel Sage Foundation, 1975. Unsur yang pertama dari sebuah sistem bekerjanya hukum bisa disebut yaitu aspek struktural – sebagai bagian dalam sistem hukum yang bergerak, sehingga membicarakan mesin Pengadilan sebagai contoh yang sederhana dan jelas, strukturnya dapat digambarkan, sebagai sebuah panel dan mempunyai ukuran, kedudukan dalam waktu yang sudah ditetapkan, serta adanya pembatasan berdasarkan yurisdiksi. Ukuran maupun bentuk, dan kekuasaan legislatif yang merupakan bagian dalam elemen struktur. Sebagai sebuah konstitusi tertulis serta masih adanya unsur lain dan penting dalam bentuk struktural hukum. Dalam hal ini, berusaha untuk memberikan, ekspresi atau cetak biru unsur dasar dalam proses hukum suatu negara, sebuah organisasi dan dalam kerangka pemerintahan.

between men and women is not easy to solve. The existing laws are the appropriate basis to realize protection for women as victim of gender-based violence. Government's effort in protecting women has many aspects, thus its realization requires cooperation in the network.

When the government gives its commitment to protect women as victim of violence, it is then our collective responsibility to attempt to prevent and protect women as victim of violence so that they will gain their rights as set forth in the laws while considering the influencing aspects in the community.

With regard to the constraints to be faced in effort to enforce law as the implementation of laws and regulations, it is necessary to observe some factors that are part of the system. According to Satipto Rahardjo, the basic definitions in the theory of system contained therein are: a. System is oriented to objective, b. It is entirely more than the number of its parts, c. A system interacts with a bigger system, that is its environment (system openness), d. Those parts of system work create something valuable (transformation), e. Every part must be compatible with each other (connectedness), f. There is a unifying force that binds the system (control mechanism).⁶

In regard to legal culture, community's response to social issue is generally collective action that is expected to affect a better life condition. In general, we can say that a community that is able to manage and solve social issues has higher welfare level than other communities. On the contrary, a community's inability to handle and solve social issues that it faces may lead to illfare social condition as the antonym of social welfare.⁷ Individual is willing to live under the normative behavioral pattern, even if it is to sacrifice his freedom since they believe that the pattern is correct, good and necessary.⁸

Penal reform is part of penal politics, bearing the meaning as an effort to reorient and reform criminal law in conformity to socio-political, socio-philosophical, and socio-cultural values of the Indonesians, through a policy-oriented approach and a value-oriented approach.⁹

In policy-oriented approach, penal reform is part of social policy, that is as an effort to solve social problems in achieving the national objective. As part of penal policy, penal reform is an effort to protect the community. Further, as part of law enforcement, penal reform is an effort to renew the legal substance for more effective law enforcement.

The scope of penal system reform includes: a. Legal substance (substantial system), covering material criminal law, formal criminal law, and criminal implementation law reform, b. Legal culture (cultural system), covering perpetrator's moral field and criminal law science education reform, c. Legal structure (structural system), covering investigation institution, prosecution institution, judiciary institution and criminal implementing institution reform.¹⁰

In regard to future regulation in woman and child empowerment based on Pancasila, it is an effort to study and analyze written and unwritten sources of law and develop legal values that are just and in line with Pancasila values. Policies through criminal law in preventing crime are carried out through three stages: first, formulation (legislative policy); second, application (judicative/judicial policy); and third, execution (executive/administrative policy).¹¹

⁶ Satjipto Rahardjo, *Ilmu Hukum* [Law Science], Bandung: PT.Citra Aditya Bakti, 2000, p. 48

⁷ Midgley, James, *Pembangunan Sosial, Perspektif Pembangunan dalam Kesejahteraan Sosial* [Social Development, Development Perspective in Social Welfare], Ditperta, Department of Religious Affairs, Jakarta, 2005, p.21

⁸ Eka Dharmaputera, *Pancasila : Identitas dan Modernitas Tinjauan Etis dan Budaya* [Pancasila: Identity and Modernity, An Ethical and Cultural Review], Jakarta: BPK Gunung Mulia, p. 8

⁹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru* [An Anthology of Criminal Law Policy, the Development of Drafting of New Concept of Criminal Code], Yogyakarta: Kencana Prenada Media Group, 2008, p. 25 - 26

¹⁰ *Ibid*

¹¹ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* [Law Enforcement Issues and Criminal Law Policy in Prevention of Crime] (Prenada Medea Group 2008) 79.

D. CONCLUSION

The community's understanding of law is only focused on law as rules, norms and principles. In this case, law should be viewed as a system consisting of three components, namely legal substance (as a legal product, policy, rules of legislation), legal structure (legal institution or law enforcer) and legal culture (legal culture, including ideas, attitudes, beliefs, hopes, and view of law). Awareness of woman empowerment and child protection in the community cannot be realized on its own without social engineering. Such condition can be reached when all levels of community at executive, legislative, judicative and community member levels have an intact understanding that woman empowerment and child protection are our collective responsibility.

Some currently prevailing laws and regulations have sets government's obligations in effort to protect women, such as Article 7 through Article 16 Law Number 7 Year 1984 on the Ratification of the Convention on Elimination of All Forms Discrimination against Women, that sets government's obligation to eliminate discrimination against women in political, legal, educational, health, labor affairs, economic, social-cultural, rural women and marital relationship fields.

Further, in Article 71 Law Number 39 Year 1999 on Human Rights, the government must and is responsible to respect, protect, enforce and promote human rights.

Article 11 Law Number 23 Year 2004 on the Elimination of Domestic Violence states that the government is responsible for the effort to prevent domestic violence.

Besides physical harm, psychological disorder is also suffered by women as the consequence of violence they experience. The psychological disorder is in the form of mental disorder that can affect their emotion, mindset and behavior. Women's psychological disorder may harm themselves, their children and family. Psychological disorder can be delusion, hallucination, changing mood, unreasonable behavior that causes depression, Schizophrenia, anxiety disorder and even bipolar disorder.

The scope of criminal act of sexual violence is set forth in Article 11 through Article 20. Article 11 paragraph (1) states that sexual violence consists of: Sexual harassment; Sexual exploitation; Forced contraception; Forced abortion; Rape; Forced marriage; Forced prostitution; Sexual slavery; Sexual torture. Article 11 paragraph (2) states that sexual violence as referred to in paragraph (1) includes sexual violence incidents in the scope of personal relationship, household, work relation, public, including during conflict situation, disaster and other special situation.

Government policies in related countries as the realization of the effort to prevent violence against women have been made well in a repressive effort as set forth in laws and regulations.

Law enforcement according to Lawrence M. Friedman of the three elements of legal system includes structure, substance, and culture. The structure is related to all institutions and performance of law enforcers and substance related to legal norm stated in law book (law in book) and norms that develop and grow in the community (law in action). The third component is culture applied to the social value network in the community. The legal culture here is also an important element in the legal system, since legal culture shows the community's thinking and power that determine how the law is abided by, avoided or misused. One form of protection for citizens is the protection of right of freedom from threat, discrimination, and violence. Violence can be declared as an act committed by one or more individuals that causes injury, either physically or non-physically, of others, and further is an act that causes an individual unable to actualize himself, as the result of the forms of oppression and repression addressed to him.¹²

According to Walby, patriarchy is a social structural system and practices where men dominate, oppress, and exploit women. Walby conceptualizes patriarchy in a number of levels. In abstract level, patriarchy is in the form of a social relational system, while in not really abstract level, patriarchy consists of six structures covering patriarchy production mode,

¹² Guamarawati, Nandika Ajeng. "Suatu Kajian Kriminologis Mengenai Kekerasan terhadap Perempuan [A Criminological Study on Violence against Women]". *Indonesian Criminological Journal Volume 5 Number 1 February 2009*. p. 44

patriarchic relation in occupation with wage, patriarchic relation in state, women's violence against women, patriarchic relation in sexuality, and patriarchic relation in cultural institution.¹³

The Criminal Code sets out suspect more than victim. Victim's position in the Criminal Code seems to be not optimal compared to perpetrator's position. This can be explained as follows:¹⁴

The 1945 Constitution of the Republic of Indonesia, Law Number 35 Year 2014 on the Amendment to Law Number 23 Year 2002 on Child Protection, Law Number 25 Year 2009 on Public Services, Law No. 23 Year 2004 on the Elimination of Domestic Violence (PKDRT), Regulation of the State Minister of Women Empowerment and Child Protection of the Republic of Indonesia Number 01 Year 2010 on the Minimum Standard Services of integrated service field for women and children as victim of violence, and Local Regulation of Semarang City Number 5 Year 2016 on Woman and Child Protection from Violence.

Based on Article 1 paragraph (17) Local Regulation of Semarang City Number 5 Year 2016 on Woman and Child Protection from Violence, what is meant by the Integrated Service Center is as follows. Integrated Service Center (PPT) Seruni Semarang, Central Java is established under Decree (SK) of Mayor of Semarang. Stipulation of Decree of Mayor of Semarang Number: 463.05/112 dated 4 May 2005 on the Establishment of Integrated Service Team for Dealing with Gender Based Violence against Women and Children "SERUNI" of Semarang City and confirmed by the Mayor of Semarang on 20 May 2005. In 2009 the Decree was renewed because many of the Team members were retired, thus the Decree of Mayor of Semarang on the Establishment of Integrated Services Team for Dealing with Gender Based Violence against Women and Children had been replaced with Decree No. 463/A. 023 dated 12 February 2009. In 2011 the Decree of Mayor of Semarang on the Establishment of Integrated Services Team for Dealing with Gender Based Violence against Women and Children "SERUNI" of Semarang City, Central Java had been replaced with Decree of the Mayor of Semarang dated 6 January 2011 No. 463/05/2011.¹⁵

Based on Article 1 point 9 Local Regulation of Semarang City Number 5 Year 2016 on Woman and Child Protection from Violence, what is meant by violence is all unlawful acts with or without using medium physically and verbally which may harm the life, body and/or depriving an individual's liberty.

Act of violence as indicated with victim's loss is a form of crime. According to Romli Atmasasmita, violence is one form of crime that has been set forth in the positive law. Consequently, the perpetrator that meets the elements in the law can be subject to criminal sanction pursuant to prevailing regulation.¹⁶

The Declaration on the Elimination of Violence against Women (1993) defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".¹⁷

¹³ Ramadhan, Febi Rizki. "Kekerasan itu Katarsis dari Patriarki: Resistensi pada Kekerasan terhadap Perempuan dalam Praktik Gerakan Sosial Aliansi Laki-laki Baru [Violence is Cathartic and Patriarchic: Resistance to Violence against Women in New Men's Alliance's Social Movement Practice]". *Indonesian Anthropological Journal* Number 2 Year 2017. p. 83

¹⁴ Angkasa, *Kedudukan Korban dalam Sistem Peradilan Pidana* [Victim Position in Criminal Justice System], Dissertation, Diponegoro University, Semarang, 2004, pp. 169-172

¹⁵ Musofiana, Ida, *Peran Pusat Pelayanan Terpadu Seruni Semarang Jawa Tengah Dalam Memberikan Perlindungan Hukum Bagi Anak Korban Kekerasan Dalam Rumah Tangga Berbasis Nilai Keadilan* [The Role of Integrated Service Center Seruni, Semarang, Central Java, in Giving Legal Protection to Child Victims of Domestic Violence based on Justice Value], *Law Update Journal* Volume IV, Number 1, January – April, 2017, p. 87.

¹⁶ Anjari, Warih, *Fenomena Kekerasan Sebagai Bentuk Kejahatan (Violence)* [Violence Phenomena as A Form of Crime], *E-Journal WIDYA Yustisia*, Faculty of Law, 17 Agustus 1945 University Jakarta, Volume 1, Number 1, April, 2014, p. 45.

¹⁷ <https://www.kemenpppa.go.id/lib/uploads/list/7970a-5a3f9-8.-kekerasan-terhadap-perempuan.pdf> retrieved on 19 November 2020 at 10.38 p.m. of Western Indonesian Zone

Based on Article 1 point 10 Local Regulation of Semarang City Number 5 Year 2016 on the Protection of Women and Children from Violence, what is meant by violence against women is any sex-based act that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of certain acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

E. ACKNOWLEDGMENT

When the government provides a commitment to provide protection for women victims of sexual violence, it is our collective responsibility to work on how to prevent protection, countermeasures for women victims of sexual violence to obtain their rights as regulated in the law by taking into account the following aspects: influencing aspects of society.

There are many challenges that women have to face when dealing with legal settlement mechanisms. This is due to several factors, starting from the lack of policies that protect women's rights, wrong perspectives, to the lack of sensitivity of law enforcement officials when handling cases of women who are in conflict with the law as victims.

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<https://www.kemendppa.go.id/lib/uploads/list/7970a-5a3f9-8.-kekerasan-terhadap-perempuan.pdf> retrieved on 19 November 2020 at 10.38 p.m. of Western Indonesian Zone