

Reconstruction of Legal Norms Through Harmonization of Sexual Crime Laws

Febry Dwi Prehatiningsih, Edshafa Muharatulloh, Winda Rahmawati, Safira Wulandari, Tahegga Primananda Alfath

Cite this article as

Prehatiningsih, Febry Dwi, Edshafa Muharatulloh, Winda Rahmawati, Safira Wulandari, and Tahegga Primananda Alfath. "Reconstruction of Legal Norms Through Harmonization of Sexual Crime Laws". *Unnes Law Journal* 9, no. 1 (2023): 45-66. <https://doi.org/10.15294/ulj.v9i1.60902>.

AIMS AND SCOPE

The *Unnes Law Journal* has taken a broad and visionary approach to legal scholarship in Indonesia since its beginnings in 2012. The *Unnes Law Journal* has committed to become a law journal that foster a knowledge of law in empowering justice in Indonesia and global context. The *Unnes Law Journal* has since established itself as a leading journal for theoretical, interdisciplinary, comparative, and other conceptually oriented inquiries into law and law reform in Indonesia and global context, as well as comparative legal issues in Southeast Asia. The *Journal* **regularly published articles related to Indonesian legal studies in various perspectives of legal philosophy, law and economics, legal history, criminology, justice and crime, gender and feminist analysis of law, law and literature, political aspects in law, and law and culture in contemporary global context.** The *Unnes Law Journal* is currently one of the leading law journals in Indonesia. The *Journal* also received the reputable ranking for journal quality from the Ministry of Education, Research and Technology of Republic of Indonesia.

EDITORIAL TEAM

Editor in Chief: Rahayu Fery Anitasari (Universitas Negeri Semarang, Indonesia). **Managing Editor:** Ridwan Arifin (Universitas Negeri Semarang, Indonesia). **Editorial Board:** Yoshiki Kurumisawa (Waseda University, Japan), Henk Addink (Utrecht Universiteit, the Netherlands), Sumanto Al Qurtuby (King Fahd University, EAU), Reid Mortensen (University of Southern Queensland, Australia), Dian Latifiani (Universitas Negeri Semarang, Indonesia), Muhammad Bahrul Ulum (Queensland University of Technology, Australia), Sholahuddin Al-Fatih (Universitas Muhammadiyah Malang, Indonesia), Dewa Gede Sudika Mangku (Universitas Pendidikan Ganesha, Indonesia), Amarru Muftie Holish (Onati Socio Legal Institute, Spain), Haykal Azhari (University of Debrecen, Hungary). **Student Editors:** Nadiyah Meyliana Putri (Universitas Negeri Semarang, Indonesia), Muhammad Iqbal Baiquni (Universitas Negeri Semarang, Indonesia), Septhian Eka Adiyatma (Universitas Negeri Semarang, Indonesia). **Online Editors:** Yoris Adi Marettta (Universitas Negeri Semarang, Indonesia), Wahyudin (Universitas Negeri Semarang, Indonesia).

Reconstruction of Legal Norms Through Harmonization of Sexual Crime Laws

Febry Dwi Prehatiningsih, Edshafa Muharatulloh, Winda Rahmawati,
Safira Wulandari, Tahegga Primananda Alfath

ABSTRACT. Harmonization and synchronization are required in the development of laws and regulations in order to strengthen the law and avoid overlapping regulations. Sexual crime legislation, there is the phrase "without the consent of the victim" or better known as sexual consent in the Regulation of the Minister of Education and Culture of Research and Technology Number 30 of 2021 concerning the prevention and handling of violence in the higher education environment (Permendikbudristek 30/2021), the term of sexual consent is not in line with the sexual crime regulations in other laws and regulations. This research method uses a normative approach that refers to legislation and norms, as well as a conceptual approach to explain the theory used systematically. The results of the study indicate that sexual consent is inappropriate for sexual violence, because sexual consent is contrary to the Criminal Code, the Law on the Elimination of Domestic Violence, the Trafficking in Persons Act, the Pornography Law, and the Act Sexual Violence.

KEYWORDS. Harmonization, Permendikbudristek, Sexual Violence.

Reconstruction of Legal Norms Through Harmonization of Sexual Crime Laws

Febry Dwi Prehatiningsih, Edshafa Muharatulloh, Winda Rahmawati,
Safira Wulandari, Tahegga Primananda Alfath*

Introduction

According to the 1945 Constitution (UUD'45), Indonesia is a Rechtsstaat country with a strong obligation to uphold national laws, citizens' rights, and freedoms. Compliance with laws and regulations is used to create such national laws. The first step in updating the law is to plan, prepare, use methods of drafting and formulating, discuss, promulgate, and disseminate. As a result, synchronization, harmonization, or alignment are critical in the implementation of legislation. Harmonizing and synchronization are critical aspects of the process that are not stated explicitly. By doing so, it is possible to reduce overlapping or conflicting regulations.

Sexual crimes are no longer a new case, but have become an international and national problem, particularly in Indonesia, where sexual crimes have not been dealt with appropriately and well, and where sexual

* Febry Dwi Prehatiningsih, Edshafa Muharatulloh, Winda Rahmawati, Safira Wulandari (Faculty of Law, Universitas Narotama, Surabaya, Indonesia), Tahegga Primananda Alfath (Doctoral Program, University of Airlangga, Surabaya, Indonesia)
Corresponding email: tahegga.primananda@narotama.ac.id

crimes must be dealt with the authority granted to the government in national organizations as well as internationally.

The issue is highlighted by the high level of sexual violence against women in Indonesia, as reported by Komnas Perempuan from reports from various institutions and judicial institutions in collaboration with Komnas Perempuan. We used data that showed a significant increase in sexual violence between 2015 and 2021.

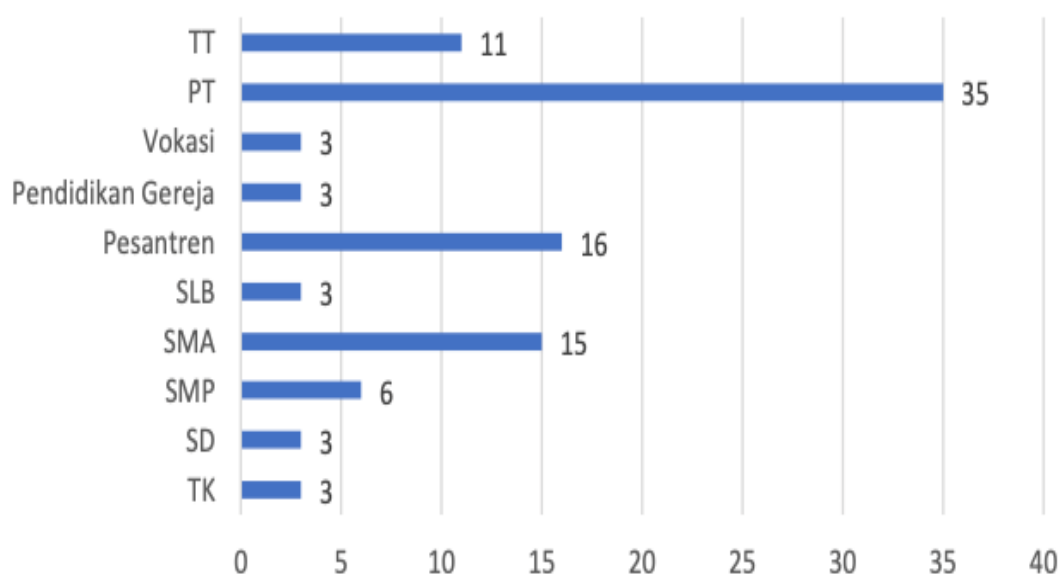


FIGURE 1. Source: Statistical Data on Sexual Violence Cases Based on Education Level.

From 2015 to 2021, Komnas Perempuan received reports of 67 cases of sexual crimes. The first case is estimated to involve 35% of universities, the second case 16% of Islamic boarding schools, and the last case 15% of high schools. In contrast, 11% of significantly unidentified persons of complainants only mentioned schools in the chronology without mentioning the elementary, middle, or high school description.

The results of the violence committed, as reported by Komnas Perempuan in the 2018 annual report, are as follows:

Private / personal forms of violence against women (n=9.609) CATAHU
2018

HARMONIZATION OF SEXUAL CRIME LAWS

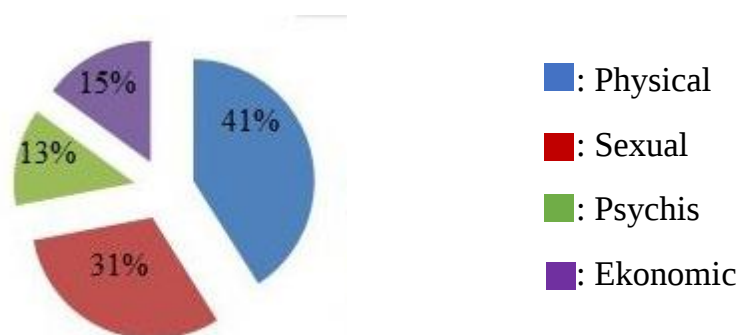


FIGURE 2. Source : Executive Summary of the National Commission on Violence Against Women's 2018 Annual Report.

According to the study's findings, neither home nor private residence can be considered a safe place for women, with approximately 41% of cases of sexual violence in physical form and approximately 31% of cases of violence reported. There are several things to consider when it comes to the prevalence of sexual violence. Given the large number of cases that have occurred, it may be appropriate to suggest that the victim or perpetrator's awareness provides access to information to the victim and family to assist in the fight for justice. However, due to the evidence and actions of the perpetrator, it cannot be classified as a sexual crime under the Criminal Code, and the victim and the family are unable to go through legal proceedings due to the burden they feels.

Some victims of sexual violence require special attention due to the mental burden that makes the victim feel unable to report problems. Victims of sexual violence require attention, which can be provided by social workers who play a role in this case, namely by providing mental encouragement or receiving the assistance of a psychologist so that victims want to report and avenge the perpetrator's actions so that they can be processed and reduce an act of sexual violence.

Recently, the Minister of Education and Culture issued Permendikbudristek Regulation 30/2021 concerning sexual violence, which is becoming increasingly common in Indonesia, particularly in universities, where sexual violence is the single most common form of human rights violation. Sexual well-being is a sexual offense that can occur during deviant sex acts that harm the victim and undermine their sense of security in society.

As a result, the victim's suffering is extremely lethal, and special care is required.² (Abdul Wahid & Muhammad Irfan, 2011)

Permendikbud Regulation 30/21 is based on the rampant cases of sexual crimes that occur in universities. 76 high schools in Indonesia conducted a survey, and 75% of respondents reported that sexual crimes occurred in their campus. Furthermore, the absence of strict sanctions for handling sexual violence cases in universities is a factor that influences them, according to the results of a survey of 19.74% of respondents who said that in universities there is a fixed regulation such as Drop Out and assistance in processing the legal realm for settlement related to sexual violence cases that occur within the scope of higher education. In addition, 80.26% of respondents stated that their universities do not have a formal policy in place to deal with cases of sexual violence on campus.

The emergence of Permendikbudristek Regulation 30/21 raises a problem that contains the phrase "without the victim's consent" or known as sexual consent. Where the act has the consent of one of the parties, it cannot be called a sexual crime; conversely, if the act does not have the consent of one of the parties, it is a sexual crime. In this case, harmonization and reconstruction are required to avoid conflicts and overlaps with other norms and regulations.

Based on the data above, various sexual crimes experience a fairly high increase each year, particularly in Indonesia. Based on the foregoing, this study seeks to determine what regulations govern matters that can be entangled with sexual violence, how these regulations can be harmonized, and whether it is necessary to reconstruct a norm in this regard?

Method

This study employs two approaches: the normative approach and the conceptual approach. In this study, the normative approach is to provide an explanation using a statutory approach, an analysis approach by reviewing all laws and regulations pertaining to legal issues.³ (Dr. Jonaedi Efendi & Prof. Dr. Johnny Ibrahim, 2018) Meanwhile, the conceptual approach is

² Abdul Wahid, & Muhammad Irfan. (2011). *Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi atas Hak Asasi Perempuan)*. Refika Aditama.

³ Dr. Jonaedi Efendi, S. H. I. , M. H., & Prof. Dr. Johnny Ibrahim, S. H. , S. E. , M. M. , M. Hum. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*. Prenamedia Group.

HARMONIZATION OF SEXUAL CRIME LAWS

implemented by connecting doctrines, legal principles, and legal understandings required to provide a point of view and explain the solution to the problem under consideration.⁴ (Soerjono Soekanto & Sri Mamudji, 2021)

Forms Of Sexual Violence Laws Relating to Sexual Crimes

Sexual crimes can happen in a social setting. A sexual crime is one that occurs in both public and private places, as well as between men and women in social relationships. According to Irwan Abdullah, Siti Ruhaini Dzuhayantin, and Dyah Pitaloka, in a journal they wrote, "Women who directly point to one of the two sexes, in social life are always judged as the other sex which determines as a mode of social representation that appears from the regulation of the status and role of women who often experience subordination, discrimination, or marginalization of women who appear then point out that women often become the second sex as already mentioned as second-class citizens whose existence is not so much taken into account".⁵ (Irawan Abdullah et al., 2016)

In Law Number 39 of 1999 concerning Human Rights, it also regulates sexual crimes which mention "sexual harassment" without a formulation of the offense and the elements that fulfill the act. Law 39/99 on Human Rights also identifies the term torture as a form of human rights violations, including sexual harassment, which includes rape. All acts related to sexual crimes and the types of acts have been regulated in the Criminal Code regulations and legislation.

⁴ Untuk lebih jelasnya tentang macam-macam pendekatan dalam penelitian hukum normatif bandingkan Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Rajawali Pers, Jakarta, 2021, Hal.14 dengan Peter Mahmud Marzuki, Op Cit, Hal. 93-137 dan Johnny Ibrahim, Op Cit, Hal. 299-321

⁵ Irawan Abdullah, Siti Ruhaini Dzuhayatin, & Dyah Pitaloka. (2016). Penanganan Kasus Kekerasan Terhadap Perempuan Secara Litigatif. *Jurnal Kependudukan Dan Kebijakan* , 12(2).

TABLE 1. Regulations Concerning Sexual Crimes

Regulations Concerning Sexual Crimes			
No.	Legislation	Article	Elements
1.	(KUHP) Indonesian Criminal Code	Article 281 on Morals	The elements of item 1 and item 2 : 1. Whoever 2. On purpose 3. In public 4. Violating decency The different elements with item 1 and item 2: 1. In front of other people who were present there was not of his / her will.
		Article 282 on Pornography	The elements of paragraph (1) and paragraph (2) 1. Whoever 2. Writing, pictures, or objects that violate decency. The difference elements of paragraph (1) and paragraph (2) 1. Openly or circulate letters without being asked 2. Offer or show as obtainable 3. If there is a strong reason for the perpetrator to suspect
		Article 284 on Adultery	The elements of paragraphs (1) and (2) letters a and b: 1. A Man 2. A Woman 3. Is married 4. Indulging in adultery 5. He or she is subject to Article 27 BW. The difference elements of paragraphs (1) and (2) letters a and b: 1. Known to be guilty (female/male) known to be married
		Article 285 on Rape	The Elements:

HARMONIZATION OF SEXUAL CRIME LAWS

Regulations Concerning Sexual Crimes			
No.	Legislation	Article	Elements
			1. Whoever 2. By coercion or threats of violence 3. Do violence 4. Doing rape 5. By breaking the law
		Article 286 deals with intercourse with a woman outside of marriage while unconscious or helpless.	The Elements: 1. Whoever 2. By force or threat of violence 3. Forced to have intercourse 4. With women outside of marriage 5. There was intercourse
		Article 287 prohibits intercourse with women under the age of fifteen outside of marriage.	The Elements: 1. Whoever 2. With women who are not married 3. It is known that the woman is in a faint or helpless state 4. There was intercourse
		Article 288 explains the meaning of Article 287, which was added to cause harm.	Elements: 1. who 2. what is known 3. which should be expected 4. have intercourse with a woman outside of marriage 5. women who have not reached the age of fifteen or their time for marriage
		Pasal 289 tentang perbuatan cabul	Elements: 1. whoever 2. commit violence or threats of violence 3. to force someone 4. do or let be done 5. commit lewd acts
		Article 290 prohibits obscene acts with an unconscious/helpless	The elements of item 1, 2, and 3 components: 1. Whoever

Regulations Concerning Sexual Crimes			
No.	Legislation	Article	Elements
		person or a person under the age of fifteen.	2. Engaging in obscene behavior 3. Along with someone 4. What he/she knew or should have known The difference of items 1–2: 1. Whoever 2. Engaging in obscene behavior 3. With someone 4. What he/she knew or should have suspected
		Article 293 which deals with abuse of authority arising from the relationship of circumstances	The elements: 1. Whoever 2. By giving or promising money or goods 3. Misusing a money carrier arises from a relationship of circumstances 4. By deliberate misdirection 5. An immature and good manners 6. Do or let done 7. Obscenity
2.	Regulation and Law 23/2004 on the Elimination of Domestic Violence	Article 8 deals with sexual violence.	The elements of letter a and letter b: 1. Constraint 2. Engage in sexual activity The differences of elements with the letters a and b: 1. For people who live in the household; 2. Against one in the household 3. For commercial or specific reasons
3.	Regulation and Law 21/2007 on the Abolition of the Crime of Human Trafficking	Article 12	The elements: 1. Everyone 2. Exploiting or abusing the victim 3. Human trafficking

HARMONIZATION OF SEXUAL CRIME LAWS

Regulations Concerning Sexual Crimes			
No.	Legislation	Article	Elements
			4. By engaging in sexual intercourse or committing obscene acts 5. To continue exploitation or 6. Taking advantage of
4.	Regulation and Law 44/2008 on Pornography	Article 4 paragraphs (1) and (2):	The elements of paragraph (1): 1. Everybody 2. It is expressly prohibited to produce, create, reproduce, distribute, broadcast, offer, trade, rent, or provide. 3. Sexual coitus 4. Sexual assault 5. Nudity 6. Genital or child pornography The elements of paragraph (2): 1. Everyone 2. It is illegal to offer pornographic services. 3. Presenting nudity explicitly 4. Clearly displaying the genitals 5. Using or displaying sexual activity 6. Provide or advertise 7. Either directly or indirectly 8. Sexual service
5.	Regulation and Law 12/2022	about the Crime of Sexual Violence Article 5 regarding non-physical sexual harassment	The elements: 1. Everyone 2. Participating in sexual acts 3. Non-physically 4. Through sexual desire or reproductive organs

Regulations Concerning Sexual Crimes			
No.	Legislation	Article	Elements
			5. By demeaning someone's dignity
		Article 6 letters a, b, c regarding physical sexual harassment	The elements: 1. Everyone 2. Engaging in physical sexual acts 3. Intended for the body, sexual desire, and/or reproductive organs The difference elements of letters a, b, and c: 1. By lowering someone's dignity 2. Excludes criminals. 3. by putting someone in his/her power 4. against the law 5. inside or outside marriage 6. Abusing position and authority 7. Result of deception 8. Forcing 9. people are moved by misdirection 10. Do or let it be done 11. Sexual intercourse or obscenity 12. With other people.
		Article 8 on forced contraception	The elements are: 1. Everyone 2. Coercion 3. To others 4. Using contraception 5. Through the use of force or the threat of violence 6. Abuse of power, misdirection, and deception 7. Take advantage of your powerlessness 8. Loss of reproductive function 9. For a while

HARMONIZATION OF SEXUAL CRIME LAWS

Regulations Concerning Sexual Crimes			
No.	Legislation	Article	Elements
		Article 9 deals with forced sterilization.	The elements are: 1. Everyone 2. Coercion 3. To others 4. The use of contraception 5. Using force or the threat of violence 6. Power abuse, misdirection, and deception 7. Profit from the permanent loss of reproductive function
		Article 10 regarding forced marriage	The elements are: 1. Everyone 2. Against the law 3. Forcing 4. Under his or someone else's control 5. Abuse of power 6. Do or let it be done
		Article 14 paragraph (1) letters a, b, and c concerning electronic-based sexual violence	the elements are: 1. Everyone 2. No rights 3. To arouse sexual desire 4. It is sexually charged the different elements with letters a, b, c : 1. recording and/or photographing the victim 2. without the victim's knowledge or consent 3. transmitting electronic information and/or sexually charged electronic documents 4. Against the recipient's will 5. Surveillance and/or tracking 6. Making use of electronic systems
6.	Permendikbudristek 30/2021 regarding	Article 5 paragraph (2) :	the elements:

Regulations Concerning Sexual Crimes			
No.	Legislation	Article	Elements
	the prevention and handling of violence in the university environment		1. Physical appearance or physical condition harassment 2. displaying genitals 3. On purpose 4. Without the victim's consent 5. Delivering seductive words 6. sexual nuance 7. Directly looking at the victim 8. Take, record, and share photos or audio. 9. Uploading the victim's photo or information 10. Disseminating information about the victim's body or personal life 11. Inquiring about the victim's personal activities 12. Convince, entice, offer, or threaten the victim 13. Transacting or engaging in sexual activities 14 imposing penalties or sanctions 15. Touching, rubbing, touching, holding, hugging, kissing, or rubbing the victim's body parts 16. Undressing 17. Forcing

According to the articles, the Criminal Code governs sexual crimes such as obscenity, adultery, copulation, and pornography. Rape, obscenity, and copulation are three examples of limited sexual assault. Sexual crimes regulated in the Criminal Code in Articles 285 and 293 concerning rape are also regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which confirms that sexual activity carried out by a person who is already a married couple within the scope of his household with other people for a specific purpose can be referred to as martial rape

HARMONIZATION OF SEXUAL CRIME LAWS

(rape in marriage), incest (sexual intercourse with people who have a hereditary sexual relationship), which is contained in Article 8, which is also related to Article 5 letter c, which states coercion of sexual relations performed on a person living within the scope of the household, whereas letter b states coercion of sexual relations performed on a person living within the scope of his household with another person for commercial or certain purposes. However, this is a complaint, and the threat of imprisonment for more than 4 (four) years and imprisonment for more than 15 (fifteen) years, or a minimum fine of Rp.12,000,000.00 (twelve million rupiah), or a maximum fine of Rp.300,000,000, is present (three hundred million rupiah).

Law Regulation Number 39 of 1999 concerning Human Rights (Law 39/99 on Human Rights) also governs sexual crimes that mention "sexual harassment" without defining the offense or the elements that constitute the act. Torture is defined as a form of human rights violation in Law 39/99 on Human Rights, along with sexual harassment, which includes rape.

One of the sexual crimes included in the aspect of trafficking as modern slavery is prostitution in a brothel or in a camp. Slavery is a price paid for a victim's freedom (Suhardin, 2008). There are several problems that occur in victims of human trafficking, including physical and psychic injuries, as well as health and growth disorders that are hampered by the treatment they receive. Victims of human trafficking often suffer permanent injuries as a result of such acts, including physical and psychological injuries, illness, and stunted growth. Victims of these crimes frequently sustain permanent injuries, which can cause them to be estranged from their families and communities. Victims frequently miss out on important opportunities for social, moral, and spiritual development. This includes sexual crimes, which are governed by Article 12 of Law Number 21 of 2007 concerning the Eradication of Human Trafficking.

During the year 2010, there were 4 (four) cases referred to Law Number 44 of 2008 concerning Pornography (Law 44/2008), which has a definition of pornography and multi-interpretation arrangements that result in the criminalization of citizens, particularly women, who are always victims. Some of the cases that occur in women who are victims of sexual violence that they experience when the incident is recorded and then widely spread through social media or other platforms by the perpetrator where the rule is implemented there is an inequality of power between the perpetrator and the victim where the victim is lured or promises with many things, one

of which is the promise of marriage and the perpetrator does not reconsider where violence occurs.⁶ (Komnas Perempuan, 2014).

This is governed by Article 4 of Law No. 44 of 2008 concerning Pornography, which states that anyone who creates, produces, reproduces, duplicates, or disseminates explicitly pornographic that contain associations such as deviant intercourse, sexual violence, and nudity or an impressive display of nudity is prohibited. Even in paragraph (2), it is prohibited to provide pornographic services such as explicit nudity or the impressive display of nudity, presenting genitals explicitly and even flaunting sexual activity, and offering or advertising sexual services either directly or indirectly.⁷ (*UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 44 TAHUN 2008 TENTANG PORNOGRAFI*, n.d.) Those who violate this rule face a minimum of 6 months in prison, a maximum of 12 years in prison, and a maximum fine of Rp.6,000,000,000 (six billion rupiah).⁸ (*UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 44 TAHUN 2008 TENTANG PORNOGRAFI*, n.d.) And in paragraph (2), you can be imprisoned for as little as 6 months and as much as 6 (six) years, or you can pay a maximum fine of Rp.250,000,000 (two hundred and fifty million rupiah) and as much as Rp.3,000,000,000 (three billion rupiah).

According to Article 27 paragraph (1) of Law Number 40 of 2008, "A person who distributes and transmits the accessibility of electronic information and electronic documents with content that violates decency with a maximum imprisonment of 6 years and or a maximum fine of Rp. 1,000,000,000."

There is a legal basis for the following legal arrangements concerning the harmonization of laws and regulations:

1. Article 47 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (3).
2. Presidential Regulation (Pepres) No. 9 of 2005, Article 35, concerning the Ministry of State's Position, Duties, Functions, Organizational Structure, and Work Procedures.
3. Articles 39 and 40 of Presidential Regulation No. 68 of 2005

⁶ Komnas Perempuan. (2014). Prioritaskan Pemulihan Korban dan Proses Hukum Pelaku Perkosaan. *Bongkar Akar Kekerasan Berulang Di Aceh*.

⁷ *UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 44 TAHUN 2008 TENTANG PORNOGRAFI*. (n.d.). Pasal 4.

⁸ *UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 44 TAHUN 2008 TENTANG PORNOGRAFI*. (n.d.)., Pasal 29.

The Importance of Harmonizing Legislation in the Sector of Sexual Crime

Discord in the law can lead to a large potential in dealing with sexual crimes, whether victims are psychologically or physically treated, and reduce the number of cases of sexual crimes committed by perpetrators from all sectors. There are two steps that can be taken: first, improve the current existing regulations, and second, harmonize the draft laws and regulations to conform with the regulations and laws regarding sexual crimes.

The existing law contains one regulation that is not in accordance with the existing law; in this case, it may cause uncertainty in implementation, as the principles of the legislation require. According to Purnadi Purbacaraka and Soerjono Soekanto, there are six principles:

- 1) Non-retroactive legislation and regulations;
- 2) The competent authority, who also holds a higher position, creates laws and regulations.
- 3) *Lex specialis derogat legi generalis* (special laws take precedence over general laws);
- 4) *Lex posteriori legi lex periori* (the new law takes precedence over the old law);
- 5) The laws and regulations are inviolable;
- 6) Legislation aimed at achieving the greatest possible material and spiritual well-being for the community and individuals through renewal or preservation.⁹ (Purnadi Purbacarak & Soerjono Soekanto, 1989)

Harmonization in the development of laws and regulations can be defined as "alignment," which includes harmonization, unanimity, and stabilization. To achieve stability, the process of forming legal regulations begins with alignment, then rounds up, and finally stabilization. Harmonization in the preparation of a statutory regulation is critical in the national development process in order for the resulting statutory regulations to create order, guarantee protection, and provide certainty.

Harmonization plays a role in ensuring the legal process is based on regulations and principles for legal certainty, as well as preventing and dealing with legal disharmony. This explanation leads to the conclusion that

⁹ Purnadi Purbacarak, & Soerjono Soekanto. (1989). *Peraturan Perundang-undangan dan Yurisprudensi*. PT. Citra Aditya Bakti.

the process of harmonizing laws and regulations is one method of comparing each law to other laws in order to achieve legal objectives. However, in the process of implementing the provisions of Law Number 12 of 2011, there is the phrase "assessment and harmonization" contained in Articles 19 and 33. This phrase refers to the articulation of harmonization, unanimity, and consolidation in the Law 12/2011 regulations. It contains no limitations. The process of understanding the material that will be changed by other vertical or horizontal laws and regulations in order to avoid overlapping arrangements or authorities is known as assessment and alignment.

In Indonesia, laws and regulations must be based on legal principles, namely *lex posteriori derogat legi priori*, *lex specialis derogat legi generalis*, and *lex superior derogat legi inferiori*. Efforts regarding sexual crimes can be made through harmonization, which is a process aimed at determining whether draft laws and regulations have shown consistency with other laws and regulations from various perspectives. This is done to avoid overlaps or conflicts with other laws and regulations at all levels.

According to the explanation above, Permendikbudristek 30/21 must be harmonized in order to avoid overlapping between norms and other regulations. There is a discrepancy in the content of the article in Permendikbud 30/21, specifically the phrase "without the consent of the victim" in Article 5 paragraph (2) letters b, f, g, h, j, l, and m. Because the phrase consent or approval appears in Permendikbudristek 30/21, it has a different meaning than in other laws. Because the phrase contains the meaning of sexual consent or consent in sexual relations, it implies that sexual intercourse can take place as long as both parties consent on the basis of consensual consent. This is clearly different and contradictory to the regulations or legal norms in Indonesia, where adultery is considered immoral and punishable by crime. Article 284 of the Criminal Code, for example, threatens imprisonment for those who commit adultery despite the fact that it is consensual. That in this case, if there is agreement, it cannot be said to be a sexual crime because of the inconsistency, and there is a meaning that the regulation regarding sexual crimes has different interpretations, such as if someone interprets the phrase, some people have the perspective that it is legalized in Indonesia. If there is an agreement, adultery cannot be considered a crime.

Reconstruction of Norms

According to Hans Kelsen, the hierarchy of the rule of law is that legal norms are layered, with a higher level serving as a benchmark for a lower level that is hypothetical and fictitious in this case, namely basic norms (*gruundnorm*).¹⁰ (Kelsen, 1945)

According to Hans Kelsen's explanation of legal norms using Stufenbau theory, there are various types of laws and regulations in accordance with Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislation, determining the types and hierarchies of laws as follows:

1. UUD Constitution
2. Decree of the People's Consultative Assembly
3. Regulations issued by the government in place of laws
4. Governing laws and regulations
5. Regulation by the President
6. Provincial legislation
7. Regulations for the district/city

The characteristics of the legal state indicate that each state organizer's decisions must be based on laws that promote consistency, correspondence, and coherence between regulations. The law applies at all levels of government, from the highest to the lowest standards. Furthermore, clashes and conflicts with the legal mind (*rechts idee*), specifically Pancasila, in its alignment, whether horizontally or vertically, are made legislative and excursive in the central and regional parts.

With his thoughts embraced by positivist groups, H.L.A.Hart made the opposition to norms based on the hierarchy of this regulation.¹¹ (Hart, 2012) He also viewed that modern life required a change in law, where all parts of the order in people's lives from the "primary rules of obligation" (naturally arising law) to the "secondary rules of obligation" (the legal structure of legislation).¹² (Satjipto Rahardjo, 2009) Despite the fact that the current legal system is arguably a revolution, it is still founded on the flaws

¹⁰ Kelsen, H. (1945). *General Theory of Law and State*. Russell & Russell.

¹¹ Hart, H. (2012). The Concept of Law. In *The Concept of Law* (3rd ed.). Oxford University Press.

¹² Satjipto Rahardjo. (2009). *Lapisan-Lapisan Dalam Studi Hukum* (Cet. I). Bayumedia Publishing.

and shortcomings of previous generations. In order for Hart's law to be valid, the law must arise naturally from the legal values discovered by the community and accepted by society.

Prior to the 18th century, the modern state of affairs could not be confused with positivism because positive law had taken over and become more powerful than it had been prior to the presence of the modern state. Prior to the development of positive law, people were more likely to rely on international law (interactional law) or customary law (customary law). There must be a disregard for or opposition to the law's validity, but not a lack of simplicity in the relationship and the societal process (the statutoriness of law). To identify and explain any current legal processes or transactions, the document in question must be clear and accurate.

A reconstruction of legal norms is required as a result of the explanations provided above regarding sexual crimes. This reconstruction can be interpreted as punishment, or the re-destruction of statutory provisions or legal norms concerning sexual crimes. Reconstruction in the context of the establishment of legislation relating to sexual crimes lies in the regulation of a person who has committed a sexual crime, as well as the need for several agencies, law enforcement, and other relevant representatives in the protection of women in the drafting of regulations and the implementation of such regulations. It is hoped that by doing so, it will be possible to reduce the number of sex offenders. After reformation in the prefectural legislation regarding sexual crimes, the function of the law itself as a means of reforming citizens must be reconstructed, which is always oriented towards victims who are the impact of sexual crimes or provides a deterrent effect to the perpetrator. In the policy of security and equality, women are human rights, and facilities for victims in the form of security for women and children are required.

To evaluate in the process of drafting laws that require interests, to keep the law away as a means of community renewal and entangle the community in entering the legal process, which becomes philosophical which contains in the legal mind (*rechsidee*) that reflects *Pancasila* can be realized with models of community participation and aspirations, by opening a speech space and responding to be able to see social facts so that legal decisions formed in the regulations of the community. Satjipto Rahardjo holds the same opinion about the role of law as a tool for social change and community renewal.

HARMONIZATION OF SEXUAL CRIME LAWS

According to Mochtar Kusumaatmadja, who was quoted by Suparnyo, "the law is one of the social rules (along with moral rules, religion rules of social affairs, decency, customs, and others) that as a reflection of the applicable law, so that a good law is a living law." They must have the values of cyo-philosophical, socio-cultural, and socio-political values that are in accordance with Pancasila when reconstructing legal norms regarding sexual crimes. This idea should be considered because there is a phrase about consent in the Permendikbudristek 30/2021 that can be interpreted as allowing adultery or a culture of free sex, whereas there is no phrase about consent in the previous rules part of the latest rules the Law on the Elimination of Sexual Crimes. As a result, it is hoped that in the formulation of all regulations, a harmony and correspondence between laws and regulations can be established in order to avoid overlap and double interpretation and achieve the desired ideals and goals in efforts to handle the increasing number of sexual welfare cases in Indonesia.

Conclusion

From the explanation above, it can be concluded that in the formation of a statutory regulation, it must be in accordance with the principles that have been determined and must be in harmony with other statutory regulations. However, in Permendikbudristek 30/21 a problem arises which contains the phrase "without the consent of the victim" or known as sexual consent in the article. Where the act has the consent or consent of one of the parties cannot be said to be a sexual crime and vice versa if the act does not have the consent or consent of one of the parties, then the act is a sexual crime. In this case, it is necessary to do harmonization and reconstruction to avoid conflicts and overlaps between norms and other regulations. Efforts that can be made regarding sexual crime regulations are through harmonization, through a harmonization process aimed at determining whether the draft laws and regulations from various perspectives have shown consistency with other laws and regulations. The function of the law itself as a means of community renewal after reform in the perspective of legislation regarding sexual crimes needs to be reconstructed which is always oriented to victims who are the impact of sexual crimes or provide a deterrent effect to perpetrators.

References

- Abdul Wahid, & Muhammad Irfan. (2011). *Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi atas Hak Asasi Perempuan)*. Refika Aditama.
- Dr. Jonaedi Efendi, S. H. I. , M. H., & Prof. Dr. Johnny Ibrahim, S. H. , S. E., M. M. , M. Hum. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*. Prenamedia Group.
- Hart, H. (2012). The Concept of Law. In *The Concept of Law* (3rd ed.). Oxford University Press.
- Irawan Abdullah, Siti Ruhaini Dzuhayatin, & Dyah Pitaloka. (2016). Penanganan Kasus Kekerasan Terhadap Perempuan Secara Litigatif. *Jurnal Kependudukan Dan Kebijakan* , 12(2).
- Kelsen, H. (1945). *General Theory of Law and State*. Russell & Russell.
- Komnas Perempuan. (2014). Prioritaskan Pemulihan Korban dan Proses Hukum Pelaku Perkosaan. *Bongkar Akar Kekerasan Berulang Di Aceh*.
- Purnadi Purbacarak, & Soerjono Soekanto. (1989). *Peraturan Perundang-undangan dan Yurisprudensi*. PT. Citra Aditya Bakti.
- Satjipto Rahardjo. (2009). *Lapisan-Lapisan Dalam Studi Hukum* (Cet. I). Bayumedia Publishing.
- Soerjono Soekanto, & Sri Mamudji. (2021). *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Rajawali Pers.
- UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 44 TAHUN 2008 TENTANG PORNOGRAFI. (n.d.).