

Law Enforcement of the Crime of Sexual Harassment with the Staycation Mode Against Women Labor

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ABSTRACT

Crimes of decency or moral offenses and sexual harassment are two forms of violations of decency which are not only a matter of national law in a country but are already a legal problem in all countries in the world or a global problem. Broadly speaking, sexual harassment can be classified into 2 (two) forms, namely physical or non-verbal sexual harassment and verbal. This study aims to determine the regulation of non-physical sexual harassment according to the Law on the Crime of Sexual Harassment and the law enforcement of criminal acts of sexual harassment with the staycation mode of female workers as a condition for extending work contracts. This study uses a normative legal research method that examines how the legal arrangements regarding non-physical sexual harassment are based on the Criminal Code, the ITE Law, the Pornography Law and based on the Sexual Violence Law. The results of the study show that cases of alleged sexual violence with the staycation mode or staying with the boss as a condition for contract renewal can be categorized as acts of sexual exploitation and/or acts of decency that are contrary to the will of the victim in the event that the victim has been tricked by the perpetrator into committing an act that violates decency. As stipulated in Article 5 UUTPKS that non-physical sexual acts aimed at the body, sexual desire, and/or reproductive organs with the intention of demeaning a person's dignity based on sexuality and/or decency, shall be punished for non-physical sexual harassment, with a maximum imprisonment of 9 (nine) months and/or a maximum fine of Rp. 10,000,000.00. Stipulated

in the Elucidation of Article 5 of the TPKS Law it is explained that "What is meant by non-physical sexual acts are statements, gestures, or activities that are inappropriate and lead to sexuality with the aim of humiliating or humiliating. Therefore, cases of sexual harassment using the staycation mode must be stopped, including violations of other workers' normative rights.

Keywords: *Law Enforcement, Sexual Harassment, Staycation Mode,*

INTRODUCTION

Everyone has the right to feel safe and secure as well as protection against threats of fear, this is regulated in Article 30 of Law Number 39 of 1999 concerning Human Rights (Human Rights Law). This right to a sense of security is guaranteed by the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), the Human Rights Act, the Universal Declaration of Human Rights (DUHAM), and other policies. Even though we already have a number of policies that guarantee a sense of security, this cannot be felt in everyday life. Public places such as public transportation facilities, sports facilities, supermarkets, even places that are supposed to provide a sense of security such as schools,

workplaces and places of worship, are often places where insecurity can be felt.¹ Basically, sexual harassment is a reality in today's society that acts of violence against women are numerous and often occur everywhere, as well as sexual violence/harassment, especially rape. Violence against women is an act that is very inhumane, even though women have the right to enjoy and obtain protection of human rights and fundamental freedoms in all fields.²

Crimes of decency or moral offenses and sexual harassment or sexual harassment are two forms of violations of decency which are not only a matter of national law in a country but are already a legal problem in all countries in the world or a global problem.³ Crimes of decency and sexual harassment are so complex, troubling and worrying the community, that they cannot be viewed from a micro perspective. If you want to know the root of the problem, then you must have the courage to enter into various aspects of life that have an influence on human behavior, including crimes of decency and harassment. Human behavior does not appear by itself, but develops through a process, due to environmental influences, such as the natural environment, sociological, political, economic and cultural aspects (including religion). Crimes of decency do not appear suddenly, but through a process of harassment that is considered normal at first, but then leads to crime. Sexual harassment is the misuse of the relationship between a woman and a man that harms one of the parties (because they are harassed, their dignity is degraded). So sexual harassment is not only in the form of demeaning harassment of women, but can also occur in men, however, it is women who experience sexual harassment most often.⁴

Violence, harassment and sexual exploitation not only affect adult women but also women who are classified as minors (children). This sexual crime does not only take place in a corporate environment, offices or in certain places that provide opportunities for people of the opposite sex to communicate with each other, but can also occur in the family environment. The Indonesian population who are prone to becoming victims of violent crimes are women. Various sensitive issues beset women's lives, including crimes of sexual violence and sexual harassment. So many violent crimes have occurred and befall women, both in terms of murder, rape, abuse besides what has been mentioned above. Women are very vulnerable to becoming victims of crime in the field of decency.

Crimes in the field of decency are crimes related to sexual matters. The Criminal Code (KUHP) is regulated in Chapter XIV Book II with the title "Crimes Against Decency", consisting of:⁵

- a. crime by violating public decency (Article 281);
- b. pornography crime (Article 282);
- c. pornographic crimes against minors (Article 283);
- d. pornography crimes in carrying out their livelihood (Article 283 bis);
- e. the crime of adultery (Article 284);
- f. the crime of rape for sexual intercourse (Article 285);
- g. the crime of having sex with a woman out of wedlock who is unconscious or helpless (Article 286);
- h. the crime of having sex with a woman out of wedlock who is under 15 years old (Article 287);
- i. the crime of having sex with a woman in a marriage who has not yet matured and causes injury (article 288);

- j. the crime of rape, committing obscenity or acts that attack the honor of decency (Article 289);
- k. the crime of obscenity for a person who is unconscious, for a person who is not yet 15 years old or has not yet been married (Article 290);
- l. crime of same-sex obscenity, against a person who is not yet an adult (Article 292);
- m. the crime of moving a person to commit obscenity with a person who is not yet an adult (article 293);
- n. the crime of committing obscenity with their children, children under their supervision and other minors (Article 294);
- o. the crime of facilitating committing obscenity for their children, step-children and others who are not yet adults (Article 295);
- p. the crime of facilitating committing obscenity as a livelihood or habit (Article 296);
- q. the crime of trafficking in women and boys who are not yet adults (Article 297);
- r. the crime of treating a woman with the hope that her pregnancy can be aborted (Article 299)

Broadly speaking, sexual harassment can be classified into 2 (two) forms, namely: physical or non-verbal sexual harassment and verbal. Physical or non-verbal sexual harassment can take the form of touching, groping, holding the victim's limbs and the victim is humiliated and intimidated for this action.⁶ Sexual harassment can occur anywhere, such as on the road, shopping center, educational environment, in a car, or at work (as the author will use as one of the case study examples in this paper, so that the discussion is more realistic. Sexual

harassment in the workplace, mostly occurs between superiors (in this case directors, commanders, or company leaders) and subordinates, namely employees or laborers. Sexual harassment, besides that, can also occur between fellow employees. For cases between leaders and subordinates, psychological pressures sometimes occur. An employee, for example, when he is subjected to indecent treatment from his superiors, cannot do anything about it. Why? Because the employee was in a dilemma. If he objects, is it in the form of anger or submits an objection in writing, indirectly has humiliated, at least lowered the authority of the leader in the eyes of other employees. Cases of alleged sexual violence with the mode of invitation to staycation or staying with the boss as a condition for contract extension can be categorized as acts of sexual exploitation and/or acts of decency against the will of the victim in the event that the victim has been tricked by the perpetrator to commit an act that violates decency.

MATERIALS & METHODS

This type of scientific research uses a type of normative research method.⁷ Where it is done by studying the sources of literature or secondary data. This study examines how legal arrangements regarding non-physical sexual harassment are based on the Criminal Code, the ITE Law, the Pornography Law and based on Law no. 12 of 2022 concerning Crimes of Sexual Violence. This study identifies legal rules, legal principles, and legal doctrines that can be used to overcome legal difficulties encountered in the form of legal studies. Seeing in Law no. 12 of 2022, which has just been passed, has a problem with the norms regarding non-physical sexual violence which are still unclear, related to the absence of a clear

benchmark for whether an act is categorized as non-physical sexual harassment or not. The collection of legal materials uses document study techniques which are analyzed using qualitative analysis. Data collection to solve this problem was carried out by documentary studies or library research, then analyzed qualitatively.⁸

RESULT

In general, sexual harassment is defined as an act that is connoted as a sexual matter that only one party wants as the perpetrator. Sexual violence does not just arise, but goes through a stage of behavior that deviates from the norms of decency or is called harassment which at first is considered normal behavior and then develops into a sexual crime. physical (non-physical) contact.

Sexual harassment is caused by many factors, such as deviant sexual desires, environmental or social influences, and the clothes worn by the victim. This is usually experienced by women who often wear clothes that are too tight or open so that it invites the desire of the harasser to commit acts that he has unknowingly committed, as well as someone who may have experienced acts of violence as a child so that the person is traumatized which results in mental disturbance of the person causing the person to do the same action but to other people.⁹

In Indonesia, arrangements regarding non-physical sexual harassment have just been regulated and ratified in Law no. 12 of 2022 concerning the Crime of Sexual Harassment (hereinafter referred to as the TPKS Law) as stipulated in articles 4, 5 and 7, this is a way out for the government to deal with cases of sexual harassment that occur non-physically, because so far Indonesia has been declared a legal emergency which

regulates harassment by non-physical means.

Sexual harassment that is carried out in a non-physical way can be in the form of sexual comments, teasing by commenting on body shape, uttering sentences of sexual invitation, to showing the victim's vital organs. These actions are included in actions that have disrupted the human rights of a person, today there are many cases that involve elements of non-physical sexual harassment in them, but non-physical sexual harassment is often considered normal by society even though sexual harassment can cause trauma to the victim. afraid to leave the house, not feeling safe, can even result in a person's psychological disturbance, so special arrangements are needed regarding non-physical sexual harassment.

Article 5 of the TPKS Law explains that anyone who commits non-physical sexual acts aimed at the body, sexual desire, and/or reproductive organs with the intention of demeaning a person's dignity based on sexuality and/or decency, shall be punished for non-physical sexual harassment, with imprisonment a maximum of 9 (nine) months and/or a maximum fine of Rp. 10,000,000.00. Stipulated in the Elucidation of Article 5 of the TPKS Law it is explained that "What is meant by non-physical sexual acts are statements, gestures, or activities that are inappropriate and lead to sexuality with the aim of humiliating or humiliating. Referring to this explanation, of course it will be difficult for the victim to prove a crime when reporting it to the police. However, the obstacle to this evidence has been anticipated through the provisions of Article 24 of the TPKS Law which reads:

1) Legal evidence in proving the Crime of Sexual Violence consists of: evidence as referred to in the criminal procedural law; other evidence in the form of

electronic information and/or electronic documents as regulated in the provisions of laws and regulations; and evidence used to commit a crime or as a result of a crime of sexual violence and/or objects or items related to the crime.

- 2) Including evidence of witness statements, namely the results of examinations of witnesses and/or victims at the investigation stage through electronic recording.
- 3) Including documentary evidence, namely: a certificate from a clinical psychologist and/or psychiatrist/psychiatrist specialist; medical records; forensic examination results; and/or bank account checking results.

The meaning of electronic information evidence/electronic documents has been regulated in Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning ITE which is contained in article 1 number 1 and 4, namely: "Electronic Information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them."

If we look at the definition of electronic information/electronic documents, we can understand the importance of CCTV evidence at the location of the non-physical sexual harassment and recorded evidence/photos from the victim at the time the non-physical sexual violence occurred. This is one of the pieces of evidence regulated in the TPKS Law. Since the enactment of the TPKS Law, Indonesian women have been able to report acts of non-

physical sexual violence that they experience to the Police. The police report currently can only be reported to the police at the Polres/Polda level. This is because the unit that handles the TPKS Law report is only at the Polres/Polda level, namely the Child and Women Protection Unit (PPA). Reports of non-physical sexual violence are only for events that have occurred since the TPKS Law was enacted. Events before the law was passed cannot be reported. It should be noted that the police report regarding non-physical sexual violence is just a presumption and does not actually happen.

DISCUSSION

Law Enforcement of the Crime of Sexual Harassment with the Staycation Mode for Female Workers

Indonesia as a multicultural country and the diversity of religions and beliefs makes it impossible to have the same perspective on something that is considered to violate decency norms. Until now, there has been no clear explanation regarding the notion of decency in Indonesian criminal law. So that the definition of decency in handling decency cases in Indonesia is still a gray understanding. Therefore it will be difficult when law enforcement regarding decency, in this case verbal sexual harassment. Because the level and parameters of verbal sexual harassment, whether individually or as norms that develop in each region, are different. Various problems in law enforcement in the field of decency still occur. These problems include, firstly, interpretations that are not uniform even though the sources of law are the same. Norms in society often shift in terms of their understanding, because there are some who have a sociological perspective. What is no less great is the influence of globalization, so that people always have a perspective by

always comparing their value with what they receive from the outside world. As a result, law enforcement in the field of decency has experienced many obstacles. Crimes of decency or moral offenses and sexual harassment or sexual harassment are two forms of violations of decency which are not only a matter of national law of a country in the world or a global problem.¹⁰

Sexual harassment has a wider vulnerability than sexual violence. Because this includes verbal expressions, whether in the form of comments or indecent jokes, indecent behavior such as poking, groping, stroking, hugging, and so on, as well as showing immoral content. Therefore, sexual harassment can occur anywhere as long as there is contact between two or more people. It can even occur in very crowded places such as public spaces, public transportation, and other crowded places.¹¹

Research in various countries shows that sexual harassment generally occurs in areas that are considered 'safe', such as schools, campuses or universities, student dormitories, and workplaces that are perpetrated by people who are known to the victim, such as friends, colleagues, teachers or lecturers, or leaders. work and partly in the public domain. The reaction to cases of sexual harassment is generally that victims are more silent. The narrower employment opportunities mean that female workers/laborers will do anything to maintain the job they currently have. Female workers/laborers choose to accept unfair and oppressive working conditions, solely so that they can have a steady income and not be thrown into new unemployment. The struggle to uphold work equality and fight against sexual harassment encounters many obstacles, victims choose to remain silent because they may face the risk of being fired, and this will affect their income

and job prospects. If he stays at work, his refusal to comply with the wishes of his superiors will result in him receiving negative evaluations of his work, receiving no raises, no promotions, no overtime, being assigned more demanding assignments, working longer hours and neglecting rights. other. A researcher from the West named Johnson (1982) found and classified five kinds of reactions displayed by women victims of sexual harassment, namely:

- 1) go along (according or agreeing).
- 2) go along out of fear of retaliation (obey or agree because of fear of retaliation).
- 3) took formal action against the harasser (took formal action against the perpetrator of sexual harassment: for example, reporting to a superior, expressing direct rejection of the perpetrator).
- 4) avoiding the harasser (avoiding the perpetrators).
- 5) ignore or do nothing (ignore or do nothing).

Of the five reactions, the most frequently displayed reaction is avoiding the perpetrator and ignoring, and doing nothing. Victims' reasons for not taking self-defense actions are shame, feeling that there is nothing that can be done, not knowing what to do and fear that blame will be placed on them. This staycation case must be stopped, including violations of other workers' normative rights. All of these issues must be immediately responded to and followed up by the police and labor inspectors. Massive violations of normative rights committed by companies against workers so that workers are very afraid of their work contracts being terminated by the company. When there are protests about violations of these normative rights, it is not uncommon for workers to have their contracts terminated, not renewed anymore so this becomes a fear for workers.

It is highly probable that an unscrupulous supervisor requires a staycation (staying in a hotel) for female employees as a condition for the work contract to be extended.

UUTPKS regulates the Prevention of all forms of Sexual Violence; Handling, Protection, and Restoration of Victims' Rights; coordination between the Central Government and Regional Governments; and international cooperation so that the Prevention and Handling of Victims of Sexual Violence can be carried out effectively. In addition, it also regulates community involvement in the prevention and recovery of victims in order to create an environment free from sexual violence.

Sexual harassment is an unethical act that involves the abuse of power or the sexually unwanted treatment of another person. In many jurisdictions, sexual harassment is considered a serious crime and is subject to criminal penalties. Criminal law usually stipulates what actions are considered sexual harassment, such as molestation, rape, or other acts that are detrimental to a person's sexual integrity without their consent. To enforce criminal law related to sexual harassment, there are several steps taken, including:

1. Report: Victims or witnesses can report sexual harassment to authorities, such as the police, who will document the report.
2. Investigation: The competent authorities will conduct an investigation into the reports made. This involves interviewing victims and witnesses, gathering evidence, and gathering relevant information to build a case.
3. Prosecution: If there is sufficient evidence, the public prosecutor may decide to bring charges against the perpetrator before the court. At this stage, the trial process begins and the

perpetrator is given the opportunity to defend himself.

4. Trial: A trial is a legal process in a court where the parties present their arguments and evidence is presented. The judge will consider the arguments and evidence available to make a decision.
5. Verdict: If the perpetrator is found guilty, the court will issue a sentence in accordance with applicable law. This punishment can be in the form of imprisonment, fines, or other punishments deemed appropriate.

In addition, the form of supervision and strictness from the government in taking action against companies that violate normative rights is also a factor in the vulnerability of female workers to becoming victims of sexual harassment in companies.

Legal Protection for Victims of Sexual Violence with the Staycation Mode for Women Workers

Efforts to protect victims of sexual violence are a struggle for the rights of victims. As a rule of law, Indonesia is a duty holder whose role is to provide protection for everyone's human rights. This role exists because of the state's responsibility to respect, to protect, and to fulfill human rights for its citizens. One of the protection measures taken is through a legal protection approach that applies to every victim of crime, including victims of sexual violence, both in the real world and in cyberspace. Referring to the Legal System theory put forward by Lawrence M. Friedman, legal protection for victims of sexual violence must be carried out in a comprehensive manner by building an adequate legal system, starting from legal substance, legal structure, to the legal culture. The focus of the discussion in the next section is how to

protect the law against TPKS victims through updating the legal substance, strengthening the legal structure, and increasing awareness/legal culture.

a. Legal Substance

Development of legal substance is carried out with legal politics oriented towards victims of sexual violence. In general, Indonesia has formulated a legal substance in the form of forms of legal protection for victims in the Criminal Code and Criminal Procedure Code, as well as specifically in the Republic of Indonesia Law Number 13 of 2006 concerning the Protection of Witnesses and Victims which has been renewed by the Republic of Indonesia Law Number 31 of 2014 concerning Amendments to RI Law Number 13 of 2006 concerning Protection of Witnesses and Victims. These two laws define protection as all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims which must be carried out by the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions of the Law.

b. Legal Structure

The legal structure referred to in this sub-chapter is the Criminal Justice System and all of its sub-systems, namely the Police, Prosecutors' Office, Judiciary and Penitentiary. Mardjono Reksodiputro stated that, in essence, the Criminal Justice System is a system created to deal with crime problems that can disrupt order and threaten a sense of security in a society. Indonesia recognizes this concept as a condition in which there are functional and institutional relationships. This is interpreted as coordination between subsystems or with others according to their respective functions and authorities as stipulated in the criminal procedure law in order to enforce

the applicable criminal law. In order to achieve the goal of resolving criminal cases that have occurred so that the community is satisfied that justice has been upheld and the guilty have been punished, it is necessary to pay attention to the protection of victims of crime in the law enforcement process. Muladi argues that fundamentally, there are two models of regulation of criminal law against victims of crime, namely the procedural rights model and the service model. The procedural rights model emphasizes the possibility of the victim being seen as a subject, not an object. The reason for viewing the victim as a subject is because the victim plays an active role in the judicial process by being given the right to hold criminal charges or have the right to be presented and heard at every level of court hearings, including the right to be consulted by LAPAS before granting parole to convicts. Victims also have the right to hold peace or civil justice. In this approach model, a victim (subject) must be given broad juridical rights to sue and pursue their interests.

c. Legal Culture

In the legal culture, there are still some problems because law enforcement officials still adopt society's views on morality and sexual violence. This resulted in the attitude of law enforcement officers towards cases by not showing empathy for women victims, and even tending to blame the victims. An example is the forms of questions that are usually asked when a victim submits a report of sexual violence, such as rape. Some forms of questions, such as asking about what clothes to wear, where are you, with whom what time. Questions like this show that the legal culture of law enforcement officials does not take the perspective of the victim, but is also a form of judging the victim and causing the victim

to experience violence again (re-victimization). There are many views of law enforcement officers who do not have the perspective of the victim. As a result, cases of sexual violence are considered personal, trivial matters, and it is better to prioritize the good name of the family and society. This assumption is reflected in the behavior of law enforcement officials and state administrators in responding to cases of sexual violence, for example not showing empathy for women victims, and even tending to blame the victims. Victims must tell many times about the incidents of sexual violence that they experienced from the time of investigation to examination in court. Confidentiality of victims is also often neglected.

Protection of victims of verbal sexual harassment is very important in view of the increasingly widespread acts of harassment that are occurring in Indonesia, this makes it the duty of the state to ensure that every citizen gets security and comfort to a level that is still considered taboo, such as the sexual context. Of course, awareness is not only directed to the community but also law enforcers. Although at this time there are still pros and cons regarding which articles can be used to ensnare perpetrators of verbal abuse. Currently, protection for victims of verbal harassment is regulated in Law Number 31 of 2014 concerning Protection of Witnesses and Victims. The Witness and Victim Protection Agency (LPSK) highlighted the issue of female employees being forced to sleep with their superiors at their company in order to get a work contract extension.¹² The LPSK emphasized that this action was included in the category of a criminal crime. The staycation case as a condition for extending the work contract, can be classified as a form of sexual

violence crime (TPKS) as stipulated in the TPKS Law.

The government already has zero tolerance for perpetrators of sexual violence. There is even PPPA Ministerial Regulation (Permen) Number 1 of 2020 concerning Provision of Women Worker Protection Houses (RP3) in the Workplace. The regulation stipulates that every woman worker has the right to protection from employment problems, discrimination, violence and violations of human rights. Legal protection for victims of sexual violence with the staycation mode (staying in a hotel or lodging as a guest) for women workers involves various aspects to ensure that victims get proper justice and protection. There needs to be serious law enforcement against perpetrators of crime and criminal law must recognize staycation as a mode of sexual violence crime. This allows the investigation and prosecution of such crimes with appropriate penalties. The law must ensure that the definition of sexual violence includes staycation situations and provide strict sanctions for perpetrators. It is important to increase awareness about the crime of sexual violence with the staycation mode among female workers. By providing the right information about their rights and the risks associated with a staycation, they can be better prepared to deal with situations that may occur. Workers, especially women workers, must be equipped with training on sexual violence, prevention and what to do if they become victims. This involves building awareness of their rights, reporting procedures, and accessibility to support and assistance services. Victims of crimes of sexual violence must be protected from unwanted identification and disclosure of their identities. These privacy safeguards are important to protect victims from additional

pressure and to facilitate their participation in the legal process.

CONCLUSION

Non-Physical Sexual Harassment is inappropriate statements, gestures, or activities aimed at the body, sexual desires, and/or reproductive organs with the intention of humiliating a person's dignity. Perpetrators of non-physical sexual harassment can be subject to a maximum imprisonment of 9 months and/or a maximum fine of Rp. 10,000,000. Included in acts of non-physical sexual harassment are actions such as comments, teasing, jokes, leering, whistling, body gestures, or asking things of a sexual nature that are unwanted or make the victim uncomfortable. This staycation case must be stopped, including violations of other workers' normative rights. All of these issues must be immediately responded to and followed up by the police and labor inspectors. Massive violations of normative rights committed by companies against workers so that workers are very afraid of their work contracts being terminated by the company. When there are protests about violations of these normative rights, it is not uncommon for workers to have their contracts terminated, not renewed anymore so this becomes a fear for workers. It is highly probable that an unscrupulous supervisor requires a staycation (staying in a hotel) for female employees as a condition for the work contract to be extended. Legal protection for victims of sexual violence with the staycation mode (staying in a hotel or lodging as a guest) for women workers involves various aspects to ensure that victims get proper justice and protection. There needs to be serious law enforcement against perpetrators of crime and criminal law must recognize staycation as a mode of

sexual violence crime. This allows the investigation and prosecution of such crimes with appropriate penalties. The law must ensure that the definition of sexual violence includes staycation situations and provide strict sanctions for perpetrators. It is important to increase awareness about the crime of sexual violence with the staycation mode among female workers. By providing the right information about their rights and the risks associated with a staycation, they can be better prepared to deal with situations that may occur. Workers, especially women workers, must be equipped with training on sexual violence, prevention and what to do if they become victims.

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