

Dynamics of The Sexual Violence Act Ratification Process: Urgency and Obstacles

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ABSTRACT

This paper aims to analyze the dynamics of the Draft Law on Sexual Violence Act (UU TPKS). Judging from the emergency status of sexual violence in force, the TPKS policy law takes at least seven years to be formalized into a policy. Various obstacles during the process became an interesting dynamic to analyze, ranging from within the DPR itself, whose factions were divided into two camps and experienced tug-of-war, to the demonstrations of support or rejection from the public. Policy makers and stakeholders also have an important role in the realization of the ratification of this policy, in this paper several important institutions such as Komnas Perempuan as the initiator, then the DPR as a reviewing body and the Government which has the power of ratification. This paper also explains the chronology of the formation of this policy, such as the stages of preparation, planning, and discussion between the DPR and the government. The basis of writing this article in the form of secondary data with a literature study method that utilizes previous research, news portals and media articles. In conclusion, the author concludes that the ratification of this policy tends to be slow due to a lot of tug-of-war that occurs such as the transfer of discussions, delays, and even expulsion from the National Legislation Program. The substance of this bill is also misunderstood as containing pro-adultery and pro-LGBT elements which in the end received a rejection reaction from the community. The author can conclude that the length of this process is because the DPR itself is not gender sensitive by not sufficiently understanding the importance of the substance contained in it.

Keywords: Dynamics of Law Ratification, Sexual Violence, DPR.

INTRODUCTION

Cases of sexual violence in Indonesia, which are very high in number, inevitably raise concern in society. This sexual violence most often affects vulnerable people, women and children, according to the annual records (CATAHU) of the National Commission on Violence Against Women (Komnas Perempuan)^[1] noting that in 2020 alone there were at least 299,911 cases of violence against women collected by three institutions (CATAHU 2020 Komnas Perempuan: Fact Sheet and Key Points (5 March 2021), 2021). The realm of domestic violence (KDRT) was the highest with 1,404 cases (65%), followed by violence in the public/community with 706 cases (33%) and finally the State with 24 cases (1%).

In 2019 a study was conducted by a Singapore-based research company Value Champion which placed Indonesia in second place as dangerous for women in the Asia Pacific region after India (Indonesia Not a Safe Country for Women? – DW – 08.03.2019, 2019)^[2]. One of the indicators in this research is the weakness of laws regarding safety and gender inequality in general. The data above shows that the level of sexual violence in Indonesia is considered dangerous, because of that a legal umbrella is needed that functions to protect victims of sexual violence as well as punish perpetrators.

Previously, the legal basis regarding sexual violence or rape was regulated in the Criminal Code (KUHP) article 285 which reads “Anyone who uses violence or threats of violence forces a woman to have

intercourse with him outside of marriage, is threatened with committing rape with a maximum imprisonment of twelve years.” and Article 287 paragraph 1 which regulates rape of minors reads “Anyone who has intercourse with a woman outside of marriage, even though he knows or reasonably should presume that he is generally not yet fifteen years old, or if the age is not clear, that it is not yet time for marriage, is threatened with a maximum imprisonment of nine years.” Then regarding obscenity is contained in articles 289 to 294 of the Criminal Code. Another article that contains sexual violence is article 81 of RI Law No. 23 of 2002 concerning Child Protection and articles 5 and 8 of RI Law no. 23 of 2004 concerning the Elimination of Domestic Violence.

Feeling that the need for legal protection against cases of sexual violence was getting higher and the existing legal basis was inadequate to cover more and more diverse cases of sexual violence, Komnas Perempuan then submitted the draft of the Draft Law on Sexual Violence and the academic text was first submitted to the DPR. RI for further discussion and was included in the National Legislation Program for the first time in 2016. This bill continues to roll in the realm of legislation in 2020 and even got out of the 2020 National Legislation Program and returned to the 2021 National Legislation Program, it took at least seven years and was only passed in 2022 at the Plenary Meeting April 12, 2022. The enactment of Law Number 12 of 2022 concerning TPKS is a big step for this country to protect cases of sexual violence that have entered emergency status in Indonesia, to complement the implementation of this law there will be five government regulations (PP) and five presidential regulations (perpres). which will support the implementation of the TPKS Law (Recent Parliament – DPR, 2022)^[3].

In this paper the author will try to dissect the dynamics that took place in the process of making the TPKS Law until it was passed. As an introduction, the author will discuss how the Law on the Crime of Sexual Violence takes a long time with high urgency to be ratified and how the obstacles cause slow and even stagnant discussions on this law. Then using a literature study the authors look for a basis for this research with previous studies, collections of journals, results of plenary meetings and news on online portals. In the discussion, the meaning of sexual violence was also explained, then the urgency of this policy along with the data, after that an analysis was carried out of the dynamics that occurred by elaborating the chronology of policy making and ending with conclusions.

METHOD RESEARCH

This research uses the Library Research method or library research. According to Danandjaja (Danandjadja, nd)^[4], “the library research method is a method of scientific research that systematically includes the collection of bibliographical materials, which are related to research objectives; collection techniques with library methods and organizing and presenting data “.

This literature study can also be interpreted as studying various references and results of previous research which can be useful for obtaining a theoretical basis for the topic to be studied (Sarwono, 2006)^[5].

Agreeing with this, according to Sugiyono (2012)^[6] literature study is a theoretical study, references and other scientific literature related to culture, values and norms that develop in the social situation studied.

With references and previous research the author can describe sexual violence and try to do an analysis of the process of forming the Law on Sexual Violence, from the results of the trial the writer can analyze the process of policy formation and ends by presenting a normative and empirical view by linking it to the phenomenon social events that occur when policy formation takes place which is the basis for researchers to describe the dynamics during the policy formation process.

Research Question

1. What is the urgency and obstacles during the ratification process of the Sexual Violence Act Ratification?

RESULTS AND ANALYSIS

1. Sexual violence

According to the term sexual violence is an act that can be categorized as inappropriate sexual relations and behavior, causing serious losses and consequences for the victims (Wahid & Irfan, 2001)^[7]. Violence against women can include physical, sexual, psychological, and economic victims regardless of age, race, culture, wealth, and geography. Meanwhile, according to Law Number 35 of 2014 violence is any act against a child which results in physical, psychological, sexual misery or suffering, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty.

By WHO (2017) sexual violence is defined as any sexual act, attempt to perform a sexual act, comment or suggest sexual behavior that is not intentional or otherwise, an act of violation to have sexual intercourse by coercion against someone. This sexual violence occurs regardless of age and can occur both to children and adults, UNICEF (2014) provides an explanation that sexual violence, especially in children, includes the use or involvement of children commercially in sexual activities, inducements or coercion of children to engaging in sexual activities, involving children in audio-visual media and child prostitution.

Types of sexual violence

In more detail, WHO (2017) categorizes sexual violence as an act of:

1. Sexual assault took the form of rape (including rape by a foreign national, and rape in armed conflict) sodomy, forced oral copulation, sexual assault with objects, and forced touching or kissing.
2. Sexual harassment mentally or physically refers to someone in a sexual context, makes jokes in a sexual context.
3. Spreading videos or photos that contain sexual content without permission, forcing someone to get involved in pornography.
4. The act of prosecuting/forcing sexual activity on someone or redemption/requirement to get something with sexual activity.
5. Forced marriage.
6. Prohibit someone from using contraceptives or tools to prevent sexually transmitted diseases.
7. Forced abortion.
8. Violence against sexual organs including mandatory examination of virginity.
9. Prostitution and commercial sexual exploitation

Impact of Sexual Violence

In general, the impact of sexual violence can be divided into three, namely; physical impact, psychological impact, and social impact. The first is a physical impact, which can be in the form of bruises and injuries which can also occur in the area of ??will, by WHO (2017) the physical impact is explained as follows, among others, the victim's unwanted pregnancy, this will force the victim to accept her pregnancy so that it can cause pressure during the pregnancy, disorders of the reproductive organs that usually occur in rape victims such as bleeding, reproductive tract infections, irritation of the genitals, pain during intercourse, and the potential for contracting sexually transmitted diseases. The second impact is; psychological impact, victims who experience sexual violence can experience depression, suspicious of others, excessive fear, decreased self-esteem, emergence of somatic complaints and drug and alcohol abuse due to depression. The last one namely; social impact, survivors can isolate themselves from society because they feel inappropriate, receive discrimination and stigma from their environment. One recent case of sexual violence was experienced by an employee at a company in Bandung. The sexual violence occurred in his work

environment, where there were three witnesses and CCTV recording the perpetrator's actions. After two weeks, the victim still did not receive an apology from the perpetrator, until March 30, 2023, the victim submitted a letter of resignation. The next day he met HRD to arrange the resignation, but the victim made it difficult for him to resign for administrative reasons. Not only that, the HRD was also dishonest and blamed the victim for telling the incident outside the office (Danendra, 2023). Cases of violence that discriminate against and even make it difficult for victims like this are the iceberg phenomena for cases of sexual violence and should be protected by law.

2. 2. The Urgency of the Draft Law on Sexual Violence (RUU TPKS).

In preparing a policy, it must be based on knowledge or socio-economic conditions of the people, potential and possibilities^[8]. The TPKS Bill, as explained by the author above, arises because the level of emergency sexual violence in Indonesia is statistically always large and can be categorized as a sexual violence emergency. The idea of establishing a legal umbrella for sexual violence in Indonesia is also due to the large number of cases of violence that are sticking out on the surface but cannot be processed because the legal basis is inadequate to investigate these cases.

The importance of having a special law for cases of sexual violence is because the state has only made the legal basis related to sexual violence limited to castration in Law Number 23 of 2004 concerning Child Protection and Government Regulation Number 70 of 2020 concerning Procedures for Implementing Chemical Castration, Insertion Electronic Detection Tool, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence against Children. So that there are no regulations for sexual violence that are broader and integrated to protect all citizens against cases of sexual violence.

In the draft law proposed by Komnas Perempuan on 13 August 2016 sexual violence is categorized into nine forms including; sexual harassment, sexual exploitation, forced contraception, forced abortion, rape, forced marriage, forced prostitution, sexual slavery, and sexual torture. This category of sexual violence is a summary of real data from the National Commission on Violence against Women which has been compiled over a period of approximately 10 years.

Sexual violence has a long-term, traumatic impact on both the psychological and physical aspects of the victims and their families. Socially, victims will have anxiety and negative perceptions of themselves and others which will be limited to the surface and do not build deep emotional relationships^[9] (Parton & Wattam, 1999).

The push for the passing of the TPKS Bill was quoted from Kusuma^[10] (2019) because "one of the problems faced in relation to the laws and regulations on sexual violence in Indonesia is that these provisions are still regulated in separate regulations and in Indonesia they are not yet there is a statutory regulation that specifically regulates sexual violence". Support for the ratification of this policy also flowed from various communities who called for the hashtag #SahkanRUUTPKS so that the urgency of this policy could be seen by various groups of people through social media platforms.

3. The dynamics of the rolling process of the TPKS Bill

The inclusion of this policy in the National Legislation Program does not immediately result in its approval, because this policy has repeatedly failed or even stalled. It took at least seven years of waiting, dozens of institutional supports, and hundreds of voices from civil society until finally this draft law could be passed into law. The passing of this law is one of the country's major steps in protecting its citizens as well as bringing justice to victims of sexual violence.

The process of rolling out the policy on the proposed TPKS Bill was previously called the Draft Bill on the Elimination of Sexual Violence (RUU PKS) which was proposed by Komnas Perempuan in 2016. Changes in the title as well as the content and substance of this bill have also changed, the rolling of this draft in the legislation process is none other than the content of this bill is under constant review.

The following are the stages of the passing of this bill in its legislative process in the DPR; First, is the most basic stage of drafting this bill, namely the inclusion of this bill in the planning process where this bill is included in the Medium-Term Prolegnas from 2019 to 2024. Second, is the stage of the drafting process where a drastic change occurs by changing the name of the Bill on the Elimination of Sabari Barus as an expert at the DPR RI Legislative Body, that the diction 'removal' has an abstract impression and that sexual violence that has occurred cannot just disappear, so a suggestion appears to replace it. become a 'crime' because the meaning would be more logical^[11] (Mukarramah, 2022). In the midst of the drafting stage, there was a major obstacle where Commission VIII, which had the duty to carry out the preparation and discussion of this bill, decided to remove this bill from the Priority Prolegnas in 2020 on the grounds that there was not enough time and the deliberations of the bill were considered complicated. Even though with the note that it will be included again in the 2021 Priority Prolegnas, the withdrawal of this bill is certainly one of the setbacks in the process of formulating this policy.

After one year of leaving the National Legislation Program, the TPKS Bill was again included in the Priority National Legislation Program on March 23, 2021. The draft of this policy continues to be reviewed and discussed by the DPR RI Baleg in plenary to refine the substance of the draft. In the plenary meeting that took place, the DPR RI Baleg agreed to bring this bill as the DPR RI Initiative Bill which will then be discussed at a plenary meeting. As for the plenary meeting, an opinion poll was held between the factions on the TPKS Bill, with the result that seven factions agreed, namely; The Indonesian Democratic Party of Struggle faction, the Gerindra Party faction, the National Unity Party faction, the National Democratic Party faction, the Democratic Party faction, the National Mandate Party faction, and the United Development Fraction.

The beginning of 2022 is a breath of fresh air for this policy because the TPKS Bill was approved at the DPR RI Plenary Meeting and finally entered into the DPR Initiative Bill on January 18, 2022. The entry of the TPKS Bill into the RI DPR Initiative Bill is also the third stage in the process of legalizing a policy namely the Discussion stage between the DPR RI and the Government which is divided into two stages namely; Level I Talks and Level II Talks. Baleg then held a Working Meeting (Raker) with the Minister of Women's Empowerment and Child Protection (PPPA), Minister of Home Affairs, Minister of Social Affairs, Minister of Law and Human Rights to discuss the sustainability of the TPKS Bill.

The discussion process continued with the discussion of the Problem Inventory Draft (DIM) with the aim of conveying opinions from the DPR RI and the government, the results of the discussion can be said to be quite satisfactory where there were eight out of a total of nine factions who agreed to the TPKS Bill to be brought to the Plenary Meeting to then passed into law.

The final stage of forming a law is none other than the Ratification and Promulgation, officially on 12 April 2022 the DPR RI took the hammer to the Law on the Crime of Sexual Violence which was then signed by the President on 9 May 2022 and officially promulgated in the Law Number 12 of 2022.

4. Polemics in the Process of Ratifying the TPKS Bill

The polemic on the ratification of the TPKS Bill in the DPR has actually been rolling since 2016, without any follow-up on when it will be passed soon. Both the faction and commission members involved in the Legislative Body (Baleg) point to each other as to who is the burden and hinders the enactment process. This bill reaped quite a few pros and cons because it allegedly contained values that violate norms such as free sex and the legalization of abortion, within the DPR itself it was divided into two camps between those

who were pro and contra to the TPKS Bill. The PKS faction considers that this bill has the potential to encourage the legalization of free sex and LGBT which are against the values of the PKS faction which are strong with conservative values. Meanwhile, several other factions, such as Nasdem, have agreed to propose the PKS Bill to become the National Legislation Priority Bill due to the high number of cases each year which is very worrying. The two camps continued to argue over issues of opposing values and ideologies which resulted in the rattling of the PKS Bill so that it never found a solution. Because the policy makers do not fully understand gender, the resulting policies tend to be far from the needs of women. The lengthy discussions and debates regarding the PKS Bill in parliament often become material for interest and politics, for the faction that is against this bill it is considered to be injurious to norms and national identity while many victims out there have had their rights forgotten, while for the faction that is pro this bill is considered to have an urgency tall.

The response from the community to the TPKS Bill was also varied, for those who were against the TPKS Bill it was considered not in accordance with eastern norms and set aside religious values^[12], which Komnas Perempuan itself denied, stating that the PKS Bill is the legal basis for *lex specialis* or laws of a special nature from the Criminal Code which have regulated other matters of a more general nature. Other accusations from society that are against are the notion that the TPKS Bill provides legalization of sex outside of marriage or adultery, even though articles regarding sex outside of marriage or adultery have been regulated in the Criminal Code (Andriasari, 2019). A number of demonstrations against masses of pro and con actions also took place, one example is the demonstration of 500 pairs of shoes that took place in front of the DPR building on November 25 2020, in each pair of shoes there was a message in the form of a demand that the DPR immediately pass the PKS Bill (This Morning 500 Pairs of Shoes Demonstration of the PKS Bill in Front of the DPR Building Senayan, 2020). Not only support, demonstrations of rejection also came from the public which occurred on September 20 2019, one of the participants in the action argued “I don’t want the PKS Bill. Because women who come home at night will be fined 1 million Rupiah, right, homeless too” even though this point was actually contained, wasn’t it? on the TPKS Bill but one of the articles in the draft Criminal Code^[13] (RKHUP). In each pair of shoes there is a message in the form of a demand that the DPR immediately pass the PKS Bill^[14].

In addition to the substance allegations regarding pro-adultery and pro-LGBT, another article that has become a controversy regarding domestic rape (marital rape). Previously, the criminal law in Indonesia did not consider that coercion of sexual relations within the household was included in the category of rape as stipulated in 284 of the Criminal Code. Forcing sexual relations within the realm of the household or new marriages is regulated as a criminal offense in Article 46 jo. Article 8 letter a of the PKDRT Law and the PKS Bill, in general terms regarding domestic rape are still considered far-fetched or taboo. In fact, according to Komnas Perempuan records in 2018 there were 195 cases of unwanted sexual intercourse which resulted in wife suffering.

CONCLUSION

A policy should be made for the benefit of citizens, such as the TPKS Law which has a high urgency for resolving cases of sexual violence that have entered emergency status. This legal umbrella for sexual violence does not only exist to punish perpetrators of sexual violence, more than that the substance contained in this law also covers prevention and protection for victims of sexual violence, which so far has been considered to have failed. The tug-of-war process that occurred within the DPR RI and the issuance of this bill in the 2020 National Legislation Program is proof that the mechanisms for policy formation are still slow and flawed.

The emergence of various speculations about the substance of this bill which is pro-adultery and pro-LGBT itself is not proven because this law acts as a *lex specialis* as a complement to the Criminal Code, while

some things that are not regulated in this law mean that it is already contained in the Criminal Code as a *lex generalis*. All acts of sexual violence are clearly violations of human rights and Indonesia as a country that upholds human rights should support all forms of violations against them, so the ratification of the TPKS Law is an initial milestone in efforts to complete the elimination of sexual violence in Indonesia.

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FOOT NOTES

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