

GOVERNMENT RESPONSIBILITY FOR THE LEGAL PROTECTION AND
REPRODUCTIVE HEALTH OF WOMEN (MOLESTERS) AND CHILDREN
(RAPE PERPETRATORS)

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Abstract

Reproductive health regulated in Government Regulation of the Republic of Indonesia No.61/2014 tries to accommodate the needs related to sexual reproductive issues, especially for women and children/teenagers as well as men. This regulation is a form of government responsibility for reproductive health. The number of sexual cases that occur in the community has become our common concern and responsibility. One such case in Jambi involved a 21-year-old mother of an 11-month-old baby who reported a dozen children on different charges. The mother reported rape against herself, while dozens of children reported the mother on charges of molesting these children. This issue is not just a legal issue, but an issue related to mental health in society. This means that resolving this case is not only from a legal perspective but looking at the mental recovery that needs to be done for both perpetrators and victims so that there are no recurring problems in the future. Protection for the perpetrator with the presumption of innocence until there is evidence, makes this case must get the attention of law enforcement officials.

Keywords: *Reproductive health, legal protection, responsibility*

INTRODUCTION

Sexual and reproductive health rights are classified as human rights and are owned by both men and women, which of course must be maintained and respected by everyone. The case of an adult woman accused of molesting dozens of children in Jambi some time ago was horrendous, closing the original case of children in the same case who were accused of raping the woman. The case began when a 21-year-old woman reported to Jambi City Police on Friday, February 3, 2023, that she had been raped and abused by eight children aged 8-15 years old at her home in Jambi City, Jambi Province. Not accepting this report, the parents of the accused children counter-reported the woman to Jambi Police on charges of child abuse.

From the woman's report, the rape incident began on Thursday, February 2, 2023 afternoon, when the reporting woman's husband was not at home. The reporting woman's house was always crowded with children and teenage boys because her husband had a video game rental business and her business was selling food and drinks. When the complainant was about to sweep the house, one of the biggest children, aged 15, pushed the complainant into the room and was followed by several other children. When the biggest child raped the complainant, the other children held her hands and feet to prevent her from struggling.

When the rape took place, a girl saw the incident and immediately ran to call the complainant's husband to come home immediately. Upon arriving home, the reporting woman's husband scolded the children. And after the incident, the husband and the woman reported the incident to the Head of the neighbourhood. The neighbourhood head called the children and their parents and the children admitted their actions. The next day, peace efforts resumed, but some of the children's parents refused to apologize to the reporting woman, even though this woman wanted to forgive the children's actions. Because there was no agreement, finally this woman and her husband reported this rape to the Jambi City Police.

After reporting the case, the reporting woman only underwent a post mortem of her upper body. After her lawyer questioned this, the woman underwent a post-mortem of her lowerbody on February 6, 2023, or 3 days after the incident. From the results of the examination, there were no signs of sexual violence on this woman, but there were scars on the neck, hands and around the breasts which were suspected to be the result of physical violence. At the same time the children's parents reported to Jambi Police on charges of child molestation. The case proceeded quickly, with the reporting woman named as a suspect and the woman was placed in a psychiatric hospital for observation for 14 days. Meanwhile, 8 of the 17 children who claimed to have been forced to serve this woman sexually were taken to the Alyatama Children's Social Rehabilitation Center in Jambi for psychological recovery. (Kompas Daily, Saturday, March 4, 2023).

While the police investigation was ongoing, a negative stigma had already been attached to this woman. The second case spread faster than the first, resulting in unbalanced coverage. A negative stigma was already attached to this woman, ranging from pedophile, sexual criminal to hypersexual behavior. The examination of this woman was put aside, the Regional Technical Implementation Unit for the Protection of Women and Children in Jambi City and Jambi Province prioritized handling children.

If we look at this case, all have the potential to become victims and perpetrators. Thus, according to Margaretha, a forensic research psychologist who is also a lecturer at the Faculty of Psychology, the perpetrator in the first case is the victim of the second case, conversely, the victim in the first case is the perpetrator in the second case. Therefore, the police should handle this case by calling a psychologist to help see the causes of the perpetrators and victims. In this case both the perpetrators and victims were women and children who could be perpetrators in cases of sexual violence. The perpetrators in cases of sexual violence in this case can not only be seen from a legal perspective but also from a psychological one because everyone's reproductive rights need to be respected. Reproductive rights are not only for women but also for children who are victims of adult sexual activity (because these children are conditioned to recognize sexual behavior earlier than their age). This also includes children who should receive proper sexual education.

Article 29 of Government Regulation No.61/2014 on Reproductive Health regulates that victims of sexual violence must be handled in a multidisciplinary manner by taking into account legal aspects, security and safety, as well as physical, mental and sexual health. This means that the psychological condition of both perpetrators and victims by psychiatrists and psychologists in a comprehensive manner is important in handling this case. Whoever is the victim and perpetrator in this case is equally vulnerable and needs protection.

Indonesia already has a law that guarantees protection for women and children, namely Law No.35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Protection of women and children is defined as a handling effort to protect and fulfill the rights of women and children from all forms of violence, discrimination, special protection, and other problems. In the social and cultural system and physical conditions, women and children are groups that need protection.

Cases such as the mother in Jambi, in which she was the victim and possibly the perpetrator, are common in Indonesia and perhaps even in the world. Women make up half of Indonesia's population and children make up one-third of the population, meaning that with such large numbers, there is a need for constitutional and state guarantees for the protection and security of women and children. Although very rare, women can still be perpetrators of sexual abuse, including being

pedophiles (like having sexual relations with minors). Meanwhile, children who are pubescent even though they are under 18 years old can already engage in sexual activities, including unhealthy ones. Reflecting on the case in Jambi, it is interesting to see that this case and perhaps similar cases related to the state's protection of women and children, regardless of their actions, are related to Reproductive Health, which includes protection of mental aspects and the provision of information and education about the reproductive system and functions so that there will be no incidents like the case in Jambi.

When viewed from its definition, legal protection is a regulation - a compelling regulation that determines human behavior in the community. Furthermore, in this protection, there are efforts to protect the government or authorities with a number of existing regulations (JDIH Sukoharjo District). Legal protection is important because it has the aim of ensuring that legal subjects obtain each of their rights. If there is a violation of this right, the existence of legal protection can provide full protection to legal subjects who are victims. Legal protection efforts exist in legislation and this is also closely related to its enforcement. Based on the opinion of one legal expert, there are 4 elements of legal protection:

1. government protection of its citizens
2. guarantee of legal certainty
3. related to the rights of its citizens
4. the existence of punitive sanctions for those who violate it

This legal protection applies to any Indonesian citizen without exception. Besides, the 1945 Constitution in Article 28 D paragraph (1) already regulates it; it contains everyone's right to be recognized and get the same legal protection in the eyes of the law. In order to get legal protection, everyone can report all forms of criminal acts or actions that are detrimental to the police, because police officers are tasked and authorized to protect their citizens (Legal Information and Documentation Network of Sukoharjo Regency, Definition of Legal Protection and how to obtain it).

Research Methods

Legal protection is part of law enforcement and part of human rights. Indonesia itself guarantees legal protection for victims of sexual violence. This is regulated in Law No.31 of 2014 concerning Amendments to Law No.13 of 2006 concerning Witness and Victim Protection. Article 5 and Article 6 provide protection for victims of sexual harassment.

The research on the issue of women who are victims as well as perpetrators in other cases and children who are perpetrators as well as victims in other cases will use a qualitative research method. That is to see and provide an explanation of a phenomenon and later construct a theory related to the phenomenon (Rifda Arum, Classification of Types of Research Methods Used, 2014).

Then the research will apply an inductive approach, which contains values (subjectively) in a holistic and process-oriented manner. The methods used can be historical, ethnographic, and case studies. Looking at the phenomena that occur, certainly, it cannot be generalized as a whole because human behavior is always bound by context and must be interpreted case by case. The data used will also be narrative, descriptive of the phenomenon to be studied based on field notes, official documents etc.

This means that in the case of the woman who is alleged to be a perpetrator of sexual harassment in Jambi, observations will be made, looking at official documents that can be in the form of examination results, in the police as well as psychiatric examinations of the perpetrators, both the accused woman and children who are victims and who are also reported as perpetrators by psychiatrists and psychologists. The concern is that this is not just a legal issue, but a public mental health issue that needs to be handled properly, as stated by Nalini Muhdi, a mental health consultant psychiatrist, RSUD Dr. Soetomo, Surabaya.

In this case, the negative stigma is far more developed than seeing this event holistically. Legal protection for both the female perpetrator (who is also the victim) and child victims (who are also perpetrators) must be considered. In addition to this, in terms of reproductive health itself, it will more or less affect the physical, mental and social aspects as a whole. The female perpetrator, who is also a mother of an 11-month-old child, and the child victims, who are on average 8-15 years old, are all vulnerable parties to protection.

Discussion

There is a difference in the meaning of the terms sexual harassment and sexual violence. At first glance, the terms are the same, but they have different meanings. Sexual harassment is a subset of sexual violence and sexual violence has a broader scope than sexual harassment. The World Health Organization (WHO) defines sexual violence as any behavior that targets a person's sexuality or sexual organs without consent, with elements of coercion or threats. Things that include sexual violence are women trafficking for sexual purposes to forced prostitution (Rosyida, Deta Ayu, Adolescent and Women's Reproductive Health, Pustaka Baru Pres, 2019).

Sexual violence according to WHO can be divided into 15 types, including forms of sexual acts and actions to obtain sexual coercion, sexual harassment both physically and verbally, sexual exploitation, forced marriage, forced pregnancy and abortion, forced contraception, sexual torture, and sexual control that discriminates against women. In addition, sexual

violence is not only limited by gender and relationship to the victim (Ruth Meliana, Don't Misunderstand the Difference between Sexual Harassment and Sexual Violence, September 2022).

Sexual violence can happen by men or women to anyone and it can happen anywhere. Meanwhile, sexual harassment is an act that has sexual overtones, whether it is through sexual contact, physical contact, or non-physical contact. The actions taken can make us uncomfortable, offended and dehumanized, even to the point of causing physical and mental health problems. Some forms of sexual harassment include genital harassment, obscene or seductive behavior, invitations to have sex by promising rewards that offend, sexual coercion, and intentional physical touching with sexual nuances without the victim's consent.

Rape means a type of sexual assault that usually involves sexual intercourse or other forms of sexual penetration done against a person that is nonconsensual or without the sexual consent of that person. Rape is one of the 15 forms of sexual violence formulated by Komnas Perempuan. The fifteen types include: (BKKBN Press Release, Fulfilling Reproductive Health Rights during the Pandemic, July 2021)

1. Rape;
2. Sexual intimidation including threats or attempted rape;
3. Sexual harassment;
4. Sexual exploitation;
5. Women trafficking for sexual purposes;
6. Forced prostitution;
7. Sexual slavery;
8. Forced pregnancy;
9. Forced marriage including custodial divorce;
10. Forced abortion;
11. Coercion of contraception and sterilization;
12. Sexual torture;
13. Inhumane punishment and sexual nuances;
14. Sexualized traditional practices that harm or discriminate against women;
15. Sexual control, including through discriminatory rules based on morality and religion.

Anyone can be a perpetrator of sexual harassment or violence. There are a number of factors that cause someone to become a perpetrator of sexual harassment. Among them are:

1. Because of the influence of his social environment, a man commits sexual violence. For example, a man who is raised with the view that a man is considered manly when he has relationships with many women.
2. Having a desire to dominate, the perpetrator of sexual violence commits the act due to his desire to dominate others. This can have various causes: it can be due to past trauma or poor self-actualization, resulting in low self-confidence. As a result, the desire to dominate others becomes an important part of the image of a sexual abuser.

Interestingly, the perpetrators of sexual violence with the factor of the desire to dominate are perpetrators who appear intelligent, charismatic and talented. Even people who know them well cannot imagine that they are capable of sexually exploiting others.

3. Having an uncanny ability to ignore conscience, perpetrators of sexual abuse or sexual violence actually know what is right and wrong. They are fully aware that the consequences of their actions can be arrested by the authorities or ostracized by people (social sanctions from society). However, most perpetrators of sexual violence ignore this and they do what they want to do. Perpetrators tend to remove any consideration of conscience for their actions. When perpetrators are caught, there is no remorse and they consider themselves also a victim because of the unpleasant consequences they must face.
4. Having deviant sexual behavior, this factor is the cause of the perpetrator committing sexual violence. Usually, people who have deviant behavior will do other disgraceful habits, such as showing their vital organs in public places or exhibitionism, like peeping, to discuss vulgar things continuously (Alodoc article, 4 Reasons Perpetrators of Sexual Violence Perform the Act).

From the facts that occur, most perpetrators are carried out by people close to the victim, it could also be the victim's friend or boyfriend. Children are not only victims of sexual violence or harassment, but they can also be perpetrators. The results of the National Survey on the Life Experiences of Children and Adolescents at the Ministry of Women and Child Protection in 2019, show that the most reported perpetrators of both contact and non-contact sexual violence are friends or peers, as many as 47%-73% and around 12%-79% of boyfriends become perpetrators of sexual violence. Acts of sexual harassment occur because there is intent from the perpetrator; the perpetrator feels there is an opportunity to commit harassment. Throughout 2022, National Commission on Violence against Women (*Komnas Perempuan*) received complaints of 869 cases of violence in the cyber domain, followed by 136 cases in the residence and 115 cases in the workplace (Rumensteen, Iza, The Role of Women in Adolescent Reproductive Health, PSW Unsri, 2011).

In the case of sexual harassment, there is a suggestion that in addition to addressing the victim, attention should also be paid to the perpetrator. This means that in addition to criminal sanctions, perpetrators also need to receive rehabilitation.

In the Draft Law on the Elimination of Sexual Violence (ESV), Article 9 states that perpetrators of sexual violence will not only receive criminal punishment, but also undergo four forms of rehabilitation, namely medical rehabilitation, psychiatric rehabilitation, psychological rehabilitation, and social rehabilitation. This is because both victims and perpetrators of violence need rehabilitation, considering that the perpetrator may have been traumatized by violence in the past.

Nevertheless, this is opposed by activists assisting women victims of violence, who say that there needs to be strict rules on which ones must be rehabilitated so that the term rehabilitation is not used as an excuse for the perpetrator to argue, in which the perpetrators can ask to be rehabilitated rather than having to take responsibility for their actions.

The provision of rehabilitation for perpetrators has received pros and cons for several groups. Some think that the perpetrator does not need rehabilitation, while others think that rehabilitation is necessary. The Indonesian Child Protection Commission (*KPAI*) and National Commission on Violence against Women (*Komnas Perempuan*) consider the need for rehabilitation for convicted child perpetrators of sexual violence as a form of restorative justice. National Commission on Violence against Women emphasizes that rehabilitation is not only for child perpetrators, but also for adults (Women's Health Foundation, Rehabilitation of Sexual Violence Perpetrators in the PKS Bill, What about Victims?, 2020).

In terms of victims, for victims of sexual harassment, generally speaking, most of them are female, although it does not rule out the possibility that men can become victims of sexual harassment, including adult men. However, men often find it difficult to disclose that they are victims because of the stereotype in society that men are the perpetrators.

In the Jambi case, we find victims and perpetrators who are far from the norm. An adult woman who reported an incident of sexual abuse by children can become the perpetrator of child abuse. The children who were reported for rape against this woman could become victims for the obscene acts committed by this adult woman. Thus, the assumption that this woman is a pedophile can occur, and we are faced with the conjecture of whether this woman is the abuser or the children are the rapists.

A more in-depth examination of this matter is needed, both for this adult woman and for the dozens of children involved in this case. Based on the presumption of innocence for both parties, it is best to look at the complexity of the interrelated issues. Although, according to forensic psychology researcher Margaretha, the prevalence in the general population is small, women and children can still be perpetrators of criminal acts. In this case, women who are perpetrators of sexual abuse, let alone pedophiles, even though they exist, they are rare. And this woman's attraction to children under the age of puberty, not to adult men, is still a disorder. Pedophiles cannot be criminalized as long as they do not harass children; yet, when there are victims, namely children, who are sexually harassed, it can be categorized as sexual harassment.

Legal Protection

In Law No.1 of 2023 on the Criminal Code (which will only come into force 3 years after the date of promulgation), which took effect in 2026, the term sexual harassment is not recognized, but the term used is obscene acts. This is contained in Article 406, Article 414, Article 415, Article 416, Article 417, Article 418, Article 419, Article 420, Article 421, Article 422, Article 423. Accordingly, the term "obscene acts" can be slightly elaborated. It is explained that it is an act that violates decency, or other acts that are vile, and all within the environment of sexual lust.

According to the jurist, R. Soesilo, any act, if it has been considered to violate decency / morality, can be included as obscene acts. Meanwhile, the term sexual harassment refers to unwelcome attention (Martin Eskenazi and David Gallen, 1992) or legally defined as "imposition of unwelcome sexual demands or creation of sexually offensive environments". Thus, the essential element of sexual harassment is the unwillingness or rejection of any form of attention of a sexual nature.

When there is a victim who is sexually harassed, there are five pieces of evidence that can be used: witness testimony, expert testimony, letters, instructions, testimony of the defendant plus *visum et repertum* (i.e. a certificate/report from an expert regarding the results of his examination of something) which can be used as letter evidence as stipulated in Article 133 and Article 187 of the Criminal Procedure Code (Gomgom T.P Siregar, Rudolf Silaban, Victims' Rights in Criminal Law Enforcement, Manhaji, Medan 2019).

But what if there is no evidence of violence in the *visum et repertum*? Then, it is necessary to find other evidence that can prove the crime so that the judge will decide whether the defendant is guilty or not based on the evidence in court.

In the case of the alleged rape of an adult woman in Jambi by a child, a *visum et repertum* was conducted, but only on the upper body, and not on the lower body. When this was questioned by the woman's lawyer, the post-mortem was only conducted 3 days after the rape. The post-mortem showed no signs of sexual violence, but there were scars on the neck, hands and around the breasts that were suspected to be the result of physical violence. It can be seen that this case is not only a legal issue but there could be other complex psychological problems. In Government Regulation No.61/2014 on Reproductive Health, the definition of reproductive health in Article 1 paragraph (2) includes a state of physical, mental

and social health as a whole, not merely free from disease or disability related to the reproductive system, functions and processes. And in Article 4, it is stated that the Government and local governments together guarantee the realization of Reproductive Health.

When talking about legal protection, it means that there is an effort to protect the government or the authorities with a number of existing regulations, or in other words, the function of the law to provide protection. These regulations will be made by the authorized official body and if there is a violation of the regulation, action will be taken, and the action can be in the form of sanctions. Protection itself cannot be separated from law enforcement. Legal protection talks about efforts to protect subjects, while law enforcement is an effort to carry out legal provisions as regulated and determined.

And why does protection need to be given to citizens? Because with the state providing protection, it is hoped that a just, peaceful and prosperous society will be created without human rights violations and other violations of the law. The purpose of legal protection is to provide protection to human rights that are harmed by others and that protection is given to all citizens so that they can enjoy the rights granted by law (John Kenedi, Witness and Victim Protection, Student Library, Yogyakarta, 2020).

Protection is also the right of the suspect / perpetrator, in the sense that protection is given with the assumption that a suspect is considered innocent as long as there is no strong evidence and a court decision that has permanent legal force. This means that the suspect has the same rights as a citizen as long as he has not been found guilty; he still has the same rights as other citizens in terms of legal protection (Kompas.com, Definition of Protection and Law Enforcement, 2022).

Protection for citizens related to sexual and reproductive health rights guarantees every individual to be able to make decisions regarding their sexual and reproductive activities without discrimination, coercion and violence. In this protection, there is the main objective of reproductive health itself, which is to provide reproductive health services to each individual and their partners comprehensively, especially to adolescents so that each individual is able to undergo their reproductive process in a healthy and responsible manner and free from discrimination and violence.

There are many laws and regulations in Indonesia that regulate the protection of women and children, starting from Law No.39 of 1999 concerning Human Rights, Law No.23 of 2004 concerning the Elimination of Domestic Violence, Law No.12 of 2006 concerning Citizenship, Law No.21 of 2007 concerning Eradication of Trafficking in Persons as well as Government Regulation No.61 of 2014 concerning Reproductive Health. All of these regulations are expected to protect women and children from sexual harassment including functioning as law enforcement (Naima, Legal Protection of Women's Reproductive Health Rights from Gender-Based Violence, UIN Malang, 2015).

In the Jambi case, there is an opinion that the female perpetrator/victim may have complex psychiatric problems, such as a low level of intelligence and mental retardation, personality disorders, or other psychiatric disorders. Still in the opinion of forensic psychologists, in the case of genuine pedophiles or having no other psychiatric disorders, past traumatic experiences are usually a risk factor that shapes the psychology of the current offender. Hence, the history of the perpetrator's life needs to be traced, whether he has been a victim of sexual violence, whether there is a motive for revenge or whether he has had experiences of being abandoned in childhood. To see that and examine all the possibilities that could make this woman a pedophile, it cannot be done through a cognitive process alone through questions and answers or interviews because there is still the potential for lying. Proof will be more effective if using a biopsychological approach, such as brain scans through magnetic resonance imaging (MRI).

From the point of view of the children who were the perpetrators in the first case or the victims in the second case, many people have doubts even though some of these children have entered puberty or adolescence. This means that these children already have sexual urges and can engage in a sexual activity, either using their genitals or masturbating. Even though they already have sexual maturity, if not equipped with a correct and healthy understanding of sexuality, it will be dangerous. Therefore, sexual and reproductive health education needs to be given to children, even though this is still considered taboo by the community, it is feared that children will access sexuality through the internet which has massive exposure to pornography. Apart from this, it is also necessary to see that the deviant behavior of these children needs to be traced where they got the idea.

As a result, this is a common concern regarding sexuality and reproductive health education for children. The hope is that children can take care of themselves and respect the norms of society and of course have healthy sexual behavior. Because there are so many cases of unhealthy sex out there, which shows that there is a big problem in the mental health of the community. This will continue to happen a lot if parents, society and the state do not work together to overcome this.

Conclusion

Protection and law enforcement for cases of sexual harassment against children and women are urgently needed. In the Jambi case, which befell women and children in being the perpetrators but in different cases, it shows that even though women and children are weak parties, both can become perpetrators and can become victims. The Indonesian state already has legal rules related to the protection and enforcement of victims of sexual harassment as well as for perpetrators with the presumption of innocence until there is proof that the alleged perpetrator is the perpetrator of sexual harassment.

Law No.12 of 2022 on the Crime of Sexual Violence already regulates and guarantees protection for victims, in which the perpetrator of sexual violence is sentenced to imprisonment for 12 years and/or a fine of 300 million rupiah in accordance with Law of the Crime of Sexual Violence. There is also Law No.23 of 2003 on Child Protection for child victims. For female victims, Article 454 of the Criminal Code can be used. Meanwhile, the case in Jambi is also related to the issue of reproductive health regulated in Government Regulation No.61 of 2014, which regulates reproductive health that is related not only to physical but also mental and social as a whole. This means that in this case, the mental health of the perpetrator and victim must all be seen as a whole to see the root of the problem that occurred.

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