

Reformulation of Rehabilitation Sanctions for Perpetrators of Sexual Violence Crimes

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Abstract

This research aims to explore the best way to reconstruct rehabilitation sanctions for perpetrators of sexual violence. The formulation of the problems raised in this study are first: why perpetrators of sexual violence need to be rehabilitated and which perpetrators of sexual violence can be subject to rehabilitation punitive measures and what kind of rehabilitation, Second: how to reformulate the best sanctions against sexual violence in the future (*ius constituendum*) to make it more effective. The type of research used by the author is normative research. The results of this study suggest that perpetrators of sexual violence should be rehabilitated if certain conditions require rehabilitation measures, such as sexual deviation. However, it should be noted that the implementation of rehabilitation measures must be very selective and right on target. Reformulation of future sanctions must show an indication of the feasibility of the perpetrator and should mention what are the indicators of perpetrators who can be subject to rehabilitation and what form of rehabilitation in order to provide legal certainty.

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Introduction

The rise of sexual violence in recent years that makes children or women victims continues to show a significant increase in cases. Cases of sexual violence against women and children in Indonesia are still in a state of concern. This happens because there is still a stigma that views women as weak and helpless, which makes women often get discriminated against and intimidation behavior from men from all aspects. This condition results in the lack of justice obtained by women, One clear evidence that there is still little justice obtained by women is women as victims of sexual violence (Rini, 2022).

Sexual violence is difficult to express because some people consider it bound by ethical standards and manners. Not infrequently victims feel judged by the attitude of society (consider it a disgrace), especially by their own family, thus making themselves feel depressed leading to mental disorders to behave defiantly and commit suicide. Meanwhile, perpetrators of sexual violence only receive criminal and additional punishments in the form of chemical castration and rehabilitation (Jayanti, 2018).

This injustice is expressed in the social and legal sanctions that women receive as victims, who should be protected physically and psychologically, but in reality, victims are still considered cornered parties in this matter and as perpetrators must receive legal sanctions commensurate with their actions, sometimes they still breathe freely or do not receive adequate legal punishment for their actions, regardless of the impact or psychological trauma suffered by the victim (Khomasih, Pertiwi & Prastiyanti, 2022).

Sexual violence is a form of sexual harassment committed without consent or forcibly carried out by one person to another person or perpetrator to the victim. The online information system for women

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and children protection (abbreviated as (Simfoni PPA) under the auspices of the Ministry of Women's Empowerment and Child Protection (abbreviated as Kemen PPPA), shows that cases of sexual violence against children in the period 2019 to 2022 have increased by 22,961 cases (Fauzia, 2022). In addition to children, victims of sexual violence against women have also increased, where from 2012 to 2021 49,762 cases have been reported.

In general, women and children are victims of sexual violence, but now men can also be victims of sexual violence. Even sexual violence involving male victims is rare. Most male victims of sexual violence do not want to disclose their sexual violence because they are ashamed and feel that others will find it difficult to believe what has just happened.

In 2022, Law Number 12 of 2022 concerning Sexual Violence (hereinafter referred to as the TPSK Law) was born, which brought fresh air to the community, especially for victims of sexual violence. The birth of the TPSK Law is expected to become a legal umbrella that can provide a sense of justice for victims and also for perpetrators to get legal sanctions in accordance with their actions (Ryandi, 2022)

The existence of the TPSK Law is considered to provide a sense of security, especially for victims of sexual violence. However, in the TPSK Law, one of the provisions in the TPSK Law is still not perfect and has become a debate for many parties. specifically, Article 17 paragraph (1). Article 17 paragraph (1) of the TPSK Law stipulates that "in addition to being convicted, perpetrators of sexual violence can be dealt with in the form of rehabilitation", namely provisions that punish perpetrators of sexual violence. Therefore, if they benefit from rehabilitation and ultimately get legal sanctions that will not have a deterrent effect on the perpetrators and victims, then the victims are traumatized and do not get justice in this case. There must be found a clear and specific reason behind the actions of perpetrators of sexual violence listed in Article 17 paragraph (1) of the TPSK Law can be subject to sanctions in the form of rehabilitation sentences, which in this case can be equated with punishment for drug addiction. Drug use cases where drug users are seen as perpetrators and victims so that drug users can be rehabilitated as part of efforts to help them quit illegal drugs.

The non-explanation of the reasons on which legal sanctions are based in the form of rehabilitation to perpetrators of sexual violence will have an impact on blurring norms because it is not explained what indicators or forms of rehabilitation can be given to perpetrators of sexual violence.

The purpose of imposing criminal sanctions on perpetrators of sexual violence is to fulfill the purpose of the law, namely the existence of legal certainty for perpetrators and victims, and so that there is a deterrent effect for perpetrators for their actions. Another purpose of imposing this criminal sanction is to recreate peace, tranquility and a sense of security in the community. The effectiveness and efficiency of legal sanctions can also be used as a benchmark and consideration for lawmakers.

Referring to the description behind this writing, the author is interested in raising and researching more deeply related to sanctions for sexual violence crimes. So the title to be raised is "Reformulation of Rehabilitation Sanctions Against Perpetrators of Sexual Violence Crimes". Based on the background that the author has described above, the problem formulation can be drawn from writing, namely; First, what kind of perpetrators of sexual violence can be sanctioned in the form of rehabilitation and what is the form of rehabilitation, and second, how to properly reformulate rehabilitation sanctions against perpetrators of sexual violence crimes.

Method

This journal is normative juridical. This type of research is used in the study of secondary materials. This journal discusses the central role of judges in the rule of law (Ibrahim, 2011). Normative jurisprudential writing is also said to be a procedure that from a normative point of view departs from the logic of jurisprudence to obtain the truth related to the fact that the central role of judges in the rule of law can then be explained (Ibrahim, 2011). This writing is conducted through a "statute approach" in the process of studying the problem of this writing. The legal material article is sourced from "primary, secondary, and tertiary legal materials". This article is descriptive-analytical in nature, namely conducting an analysis of the problems faced and analyzing the legal products involved in providing answers to legal problems in this research.

Discussion

Perpetrators of Sexual Violence Who Can Be Sanctioned in the Form of Rehabilitation and Forms of Rehabilitation

Violence is a form of attack both physically and psychologically on a person, according to the opinion expressed by Elizabeth Kandel Englander (Ramadiani, Azani, Nurulita & Noer, 2022). According to Article 1 Point 1 of the Law, TPKS is a form of action that meets the elements of a criminal act as stipulated in this Law and other acts of sexual violence as stipulated in this Law to the extent specified in this Law.

Imposing criminal sanctions on perpetrators of sexual violence is a natural thing to obtain legal certainty with the aim of providing a deterrent effect to perpetrators of sexual violence. The imposition of criminal sanctions on perpetrators of sexual violence is expected as a last resort to overcome the increasing number of cases of sexual violence that occur in the community.

In fact, the repetition of sexual violence by recidivists of sexual violence or new perpetrators is still rife with the modernization of the times and the demands of mental and physical needs. Criminal sanctions are currently considered less relevant because there are still repeated cases or acts of sexual violence. So the criminal sanctions imposed on perpetrators of sexual violence are considered to have no deterrent effect on perpetrators. So a reformulation is needed related to the rules of legal sanctions for perpetrators of sexual violence.

The establishment of sanctions in criminal law is the most important part of the penal system because its existence can provide direction and consideration about what should be used as sanctions in a criminal act. Moreover, when related to the trend of products of special criminal laws (outside the Criminal Code) shows progress in the sanctions system that has used a double track system, both explicitly and implicitly.

Penal theory, in general, can be grouped into three broad groups, namely absolute theory or retribution theory (vergeldings theory), relative theory or goal theory (doel theory), and combining theory (verenigings theory) (Usman, 2016). Punishment is another word for condemnation. According to Prof. Sudarto, punishment comes from the basic word "law", so it can be interpreted as "establishing the law" or "deciding about the law". In a sense here establishes the law not only for a criminal law event but can also be civil law. (Alin, 2017) Punishment is an act against a perpetrator of violence, where punishment is aimed not because someone has done evil but so that the abuser no longer does evil and others are afraid to commit similar violence.

About this relative theory, Muladi and Barda Nawawi Arief explained, that crime is not just to retaliate or reward people who have committed a crime, but has certain useful goals. Therefore, this theory is often also called the theory of purpose (utilitarian theory). So the basis for justifying the existence of crime according to this theory lies in its purpose. The crime imposed is not "quia peccatum est" (because people make violence) but "nepeccetur" (so that people do not commit violence) (Usman, 2016)). So the purpose of crime according to relative theory is to prevent order in society from being disturbed. In other words, the crime imposed on the perpetrator of violence is not to avenge his violence but to maintain public order.

The criminalization or criminalization of forms of sexual violence in this law is intended to prevent the occurrence of sexual violence against a person, protect the interests of society against the loss of basic rights due to sexual violence, and prevent its recurrence by the same perpetrator or against the same victim (Wijayanti & Suarya, 2023). Based on the above theories, this Law is closer to several derivatives and combinations of contemporary theories where punishment is aimed at imprisoning perpetrators, providing awareness to the public about what is good and bad, and also to rehabilitating certain perpetrators in order to return to society. Although there is a difference of opinion among scholars about the purpose of crime, there is one thing that cannot be denied, namely that crime is one of the means to prevent violence, provide a sense of justice, and improve prisoners. Likewise, imprisonment is expected to be a means of improving prisoners, providing punishment for their violence, and providing a sense of justice for the victim's family. However, in some cases, imprisonment alone is not enough. This contains the definition of imprisonment without being based on the mental improvement of criminal offenders through rehabilitation efforts will not be optimal.

The TPKS Law regulates legal sanctions given to perpetrators of sexual violence, namely legal sanctions in the form of "Rehabilitation". However, in this TPKS Law, there is a blurring of norms where it is not explained clearly and concretely about what procedures, indicators, and types of rehabilitation will be imposed on perpetrators of sexual violence, and there are no rules regarding implementing regulations that explain its application. Article 17 Paragraph (3) of the TPKS Law states that the implementation of rehabilitation of perpetrators of sexual violence crimes is under the coordination of the prosecutor, which means that the prosecutor has a role in regulating all rehabilitation actions so that they cannot conflict with existing regulations.

There are several indicators that can be imposed or sentenced to rehabilitation sanctions for perpetrators of sexual violence crimes, one of which is perpetrators with sexual deviance. Sexual deviance is a deviation both in terms of direction, interest, and sexual orientation (Sulistiani, 2016). Based on what Suyatno said, sexual deviation is considered a form of sexual activity that a person performs abnormally to achieve sexual pleasure, caused by psychological or mental disorders, due to bad experiences in childhood, the social environment, and to genetic factors. (Ramadiani, Azani, Nurulita & Noer, 2022). In addition to indicators of perpetrators of sexual violence with sexual deviations that can be subject to rehabilitation, there are also indicators of perpetrators of sexual violence who are recidivists and perpetrators of sexual violence with certain health assessments that recommend that these perpetrators can be subject to rehabilitation sanctions. However, the TPKS Law does not explain what kind of indicators can be subject to rehabilitation.

Rehabilitation procedures for perpetrators of sexual violence both medically and socially are carried out through coordination from the prosecutor's office with the appointed doctor to check the condition of the perpetrator. From the results of the examination, it can only be classified, what kind of rehabilitation is appropriate to be imposed on perpetrators of sexual violence based on the conditions behind the behavior or actions of the perpetrators. One example of social rehabilitation that can be applied to perpetrators of sexual violence is by providing positive training, by providing counseling from psychologists, or other training tailored to the needs of perpetrators of sexual violence. Meanwhile, medical rehabilitation can be done on the advice of a doctor so that the perpetrator can recover into a good and intact individual and can carry out his role as a family and community, Rehabilitation can be in the form of treatment therapy in suppressing sexual appetite.

Reformulation of rehabilitation sanctions against perpetrators of sexual violence crimes

Legislative policy in tackling violence is part of community protection efforts (social defense) to achieve community welfare (social welfare), this is the first step of functional policy. Efforts to overcome violence cannot be separated from the role of the state, infrastructure, and legal products themselves, as one of the roles of the state in protecting the human rights of every citizen. This is a form of obligation of a country as a state of law (Amrianto, Putri, Yusup & Putra, 2023)

Acts of violence have a great impact on a person's survival, the impact can be in the form of losses and can have an impact on the safety of the life of someone who is a victim of the violence. Facts on the ground and acts of violence that occur in the community a common thing that happen today. Perpetrators of such violent acts are not afraid of legal sanctions that will ensnare them later if their actions are known. Likewise, victims of sexual violence, where victims often receive less attention in restoring the physical and psychological conditions they have experienced. Thus, the state as a state of law is required to be able to complete the eradication of sexual violence that is increasingly rampant and also to provide a sense of security and comfort for the community through existing infrastructure and legal products.

Reformulation in the Big Dictionary Indonesian (hereinafter abbreviated as KBBI) is interpreted as reformulation. Reformulation in the field of law is said to be a form of renewal. Poerwadarminta in his idea mentioned that there are 3 (three) definitions of "Renewal", as follows (Purwodarminta, 1976):

- Improve it to be new;
- Restart again/start again;
- Replace with a new one.

Updates are linked to criminal law meaning improving to be new, Previously There were no rules that were regulated clearly and then updated so as to create new rules that regulate clearly so that legal

certainty can be applied properly (Atmasasmita, 2012)

Updates or reformulation policies in Article 17 paragraph (10) of the TPKS Law must be carried out in order to provide legal certainty related to the provision of legal sanctions to perpetrators of sexual violence crimes (hereinafter abbreviated as TPKS perpetrators). The meaning of Article 17 paragraph (1) of the TPKS Law is that trafficking perpetrators must be sentenced to criminal sanctions so that there is a deterrent effect for perpetrators, but criminal offenders can also be accompanied by the imposition of rehabilitation sanctions. This means that this rehabilitation sanction can be used as an additional sanction for criminal offenders along with criminal sanctions (Lubis, 2023).

The issuance of new regulations cannot be separated from the obstacles in its implementation. The same applies to the regulations in the TPKS Law, where in this law there are obstacles caused by several factors, including: First, the victim's own self-factor, meaning that the actions experienced by the victims of trafficking are a disgrace that should not be known by others, this makes it difficult to resolve or handle this case. Second, environmental factors are a form of prevention carried out by local communities not to report this case to the authorities, so this solution only includes family settlements. The next obstacle factor lies in law enforcement officials where law enforcement considers sexual violence as an act that usually occurs so that it does not need to be reported or processed by law (Sinaga, 2021). Thus, this results in a negative impact that will be received by victims of sexual violence, due to the absence of legal process or legal settlement for the actions they experience, which results in a condition physical and especially psychological disturbance or can provide a great sense of trauma for victims of sexual violence. It is hoped that the existence of the TPKS Law can be used as a legal payment for victims of sexual violence (Sudarmini, 2022).

The imposition of rehabilitation sanctions as stated in Article 17 paragraph (1) of the TPKS Law is still a problem in law enforcement agencies in its application. Where this rehabilitation sanction has not been implemented there is no implementing regulation that regulates how it is imposed and what are the indicators that TPKS perpetrators can be imposed or given rehabilitation sanctions. So that a clearer reformulation or update is needed regarding the rules regarding rehabilitation actions, and there is also a need for synchronization between fellow law enforcement officials in providing demands and decisions on imposing rehabilitation sanctions based on whether these perpetrators fall into the appropriate criteria or indicators to be given rehabilitation sanctions without ruling out criminal sanctions (Ibipurwo, Wibowo & Setiawan, 2022).

Until now, there has been no verdict that contains or mentions perpetrators of sexual violence subject to additional sanctions in the form of rehabilitation sanctions. So that other obstacles faced are also in the form of:

There is no implementing regulation governing rehabilitation sanctions;

There are no facilities and infrastructure that are sufficient for the implementation of rehabilitation sanctions for criminal offenders;

The unavailability of budget from the government to be able to implement rehabilitation sanctions;

There are no clear rules governing procedures and indicators for rehabilitation sanctions.

When compared To Australian laws and regulations against perpetrators of sexual violence committed by children, rehabilitation efforts are carried out. Concerns about the repetition of similar crimes (recidivist) make Australian legislation strictly regulate it. One of the methods used there is Multi-Systemic Therapy (MST) with a family and community-based treatment model to provide therapy for problems of deviant sexual behavior. MST collaborates with family, peers, schoolmates, and the community to work together to provide positive behavior change to perpetrators and improve prosocial behavior. There are also several service programs and care and assistance to perpetrators that are currently developing there. Among them are The Male Adolescent Program for Positive Sexuality (MAPPS), New Street Adolescent Services in New South Wales the Mary Street Adolescent Sexual Abuse Prevention Program in South Australia, and The Griffith Youth Forensic Service (Bartels, 2018).

Magistrates Court Act 1989 (Vic) s 4R Make a list of what sexual crimes can be carried out in rehabilitation efforts. A familial and humane approach to sex offenders in the category of children and adolescents is carried out by judges, prosecutors, defense, and defendants in closed courtrooms. The

transfer of imprisonment to rehabilitation of sex offenders in the category of children and adolescents is a form of restorative justice for the parties. Different penalties are given if sexual crimes are committed by people with adult categories. This approach is also carried out in New Zealand. The multisystemic rehabilitation approach has shown positive results in reducing the repetition of sexual crimes. The breakthrough of the court that is no longer a frightening scourge for child and youth offenders but rather a forum for counseling between judges, public prosecutors, defense, and defendants has led to a significant decrease in cases.

South Australia adopted rules from the central government in the form of the Offenders Rehabilitation Program specifically for offenders or inmates in southern Australian prisons. These programs address specific risk factors associated with re-offending and are designed to help offenders live in the community without committing re-offenders. There is also a special program for Aboriginal prisoners and offenders. The Violence Prevention Program (VPP) – is a 10-month, high-intensity program for offenders assessed to be at high risk of re-committing violence. Violence Prevention Program (VPP-me) – a 12-month, high-intensity program for offenders assessed to be at moderate to high risk of re-committing acts of violence, who have been assessed to have an intellectual disability or acquired brain injury. Violence Prevention Program – Aboriginal Men – a 10-month program for offenders assessed to be at high risk of violent reoffending, and who are recognized as Aboriginal and culturally adapted. Aboriginal offenders are also considered eligible for VPP. The Living Without Violence Program – is a four-month, moderate-intensity program for offenders assessed to be at moderate risk of re-committing acts of violence ((SA.GOV.AU, n.d.)

Programs for sexual offenders also provide awareness to perpetrators of sexual violence. Among these programs is the Sexual Behavior Clinic (SBC) – A program for perpetrators who are assessed to have a moderate to high and high risk of re-committing sexual offenses. This is a high-intensity program with a duration of about 10 months. Sexual Behavior Clinic Moderate (SBC-mod) – A program for offenders assessed to be at moderate to low risk for re-sexual offenses. This is a moderate-intensity program with a duration of about four months. Sexual Behavior Clinic me (SBC-me) – A program for offenders who are assessed to have a moderate to low, moderate to high, and high risk of sexual misconduct, and who have been assessed to have acquired cognitive impairment or brain injury. The duration of mentoring and treatment is approximately 15 months (Mohammed & Hashish, 2015).

Conclusion

Currently, the need to reform sanctions for perpetrators of sexual violence is necessary, because the behavior of sexual violence offenders still recurs, making the application of criminal sanctions ineffectiveness to have a deterrent effect. So rehabilitation is needed to be able to cure the condition of the perpetrator psychologically who experiences sexual deviation, and in the future, updates are needed to explain clearly related procedures, indicators, and implementing regulations related to rehabilitation sanctions are needed in the future. So that the imposition of rehabilitation sanctions on perpetrators is right on target according to the needs of the perpetrators without ruling out criminal sanctions. In some developed countries, the rehabilitation aspect is a priority in punishment. Not only against perpetrators of sexual violence but against the majority of other criminal acts. In addition to the government, in other countries, the government also involves experts (psychiatrists, psychologists, and other experts), non-governmental institutions, and the community and uses electronic equipment to support supervision during the integration period into society.

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