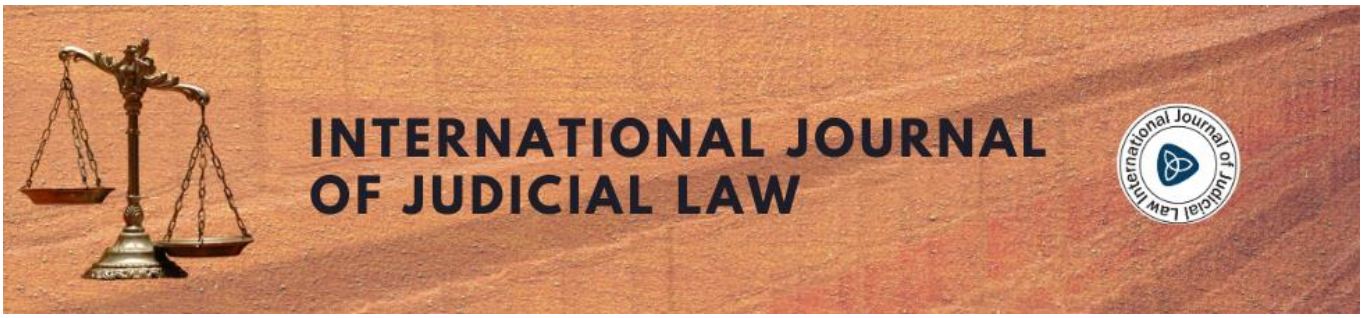




Rehabilitation Sanctions for Perpetrators of Sexual Violence in Indonesia

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Abstract

The birth of the Sexual Violence Crime Law (TPSK) is indeed felt to provide a sense of security, especially for women and children, but the birth of the Sexual Violence Crime Law (TPSK) is considered imperfect, where in Article 17 Paragraph 1 of Law No. 12 of 2022 concerning the Crime of Sexual Violence it is stated that "in addition to being sentenced, perpetrators of sexual violence crimes can be subject to actions in the form of rehabilitation". The type of research used in this study is normative juridical research. Furthermore, the research approach in this study uses the stata approach. This research is descriptive, which makes a systematic depiction, in this case the regulation of rehabilitation sanctions for perpetrators of sexual violence crimes, the author concludes, first, the regulation of rehabilitation sanctions for perpetrators of sexual violence crimes including the newly appointed one in Law Number 12 of 2022 concerning the Crime of Sexual Violence, but this newly issued regulation does not explain the detailed definition related to rehabilitation sanctions that can be charged to the perpetrators of sexual violence crimes, and the second is the need to reformulate article 17 paragraph 1 of the Sexual Violence Crime Law is expected to provide more legal certainty in the implementation of rehabilitation for perpetrators of sexual violence crimes, both in terms of indicators of perpetrators who can be rehabilitated and what form of rehabilitation they take, so that rehabilitation actions can indeed be obtained by perpetrators who really need it to Recovery, with legal certainty, the imposition of rehabilitation measures is not based on a person's mood.

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Introduction

The high number of cases of sexual violence against women and children in Indonesia is very concerning, where currently women are often victims of sexual violence because they are underestimated as weak, incapable and helpless, as well as a lot of intimidation from various parties, difficulty in getting help, and injustice they experience, making perpetrators of sexual violence have no fear in carrying out their actions so that women often become victims. This is very unfortunate considering that women are actually a people who should be protected and given a sense of security.

The public needs to first know what is meant by sexual violence, so that it will be easier for the public to understand the problems that the author will describe, so what is meant by sexual violence is an act of sexual harassment committed against a person without the permission of the person or the victim, where in this case there is an element of coercion carried out by the perpetrator against the victim.

The Ministry of Women's Empowerment and Child Protection (KemenPPPA) through a report obtained from the Online Information System for the Protection of Women and Children (Simfoni PPA) received new data, namely that there was an increase in sexual violence against children in the period from 2019 to 2022, where in 2019 victims of sexual violence against children reached 6,454, then in 2020 it increased to 6,980 cases.

Furthermore, from 2020 to 2021 there was another increase of 25.07 percent to 8,730, and the last time in 2022 the Ministry of PPPA received a report that there were 797 children who were victims of sexual violence throughout January 2022 (Mutia Fauzia: 2022) ^[2].

Sexual violence against women is also no less high, where Komnas Perempuan in the period 2012 – 2021 (10 years) shows that there are at least 49,762 reports of sexual violence cases. Komnas Perempuan from January to November 2022 has received 3,014 cases of gender-based violence against women, including 860 cases of sexual violence in the public/community sphere and 899 cases in the personal sphere (Komnas Perempuan: 2022) ^[13].

Sexual violence generally occurs to women and children, but in reality sexual violence does not only occur to women and children, but also to men, although sexual violence with male victims is very rare. Most of the sexual violence that is victimized by men is reluctant to expose the sexual violence that befalls them because they are ashamed and feel that it will be difficult to make others believe in them (M. Yantzi: 2009) ^[5].

The high number of sexual violence cases that occur in Indonesia currently makes the government have to make a new breakthrough, where in 2022 the community gets a breath of fresh air, namely with the birth of the Sexual Violence Crime Law (TPSK) which has also been passed by the House of Representatives on April 13, 2022, and of course the Sexual Violence Crime Law (TPSK) will be a legal umbrella for victims of Sexual Violence Crimes and also will ensnare the perpetrator (Dery Ridwansah: 2022) ^[14]. The birth of the Sexual Violence Crime Law (TPSK) is indeed felt to provide a sense of security, especially for women and children, but the birth of the Sexual Violence Crime Law (TPSK) is considered imperfect, where in Article 17 Paragraph 1 of Law No. 12 of 2022 concerning the Crime of Sexual Violence it is stated that "in addition to being sentenced, perpetrators of sexual violence crimes can be subject to actions in the form of rehabilitation", which in the article looks as if the perpetrator of the crime of sexual violence is a victim so that he gets rehabilitation and in the end the sanction will not have a deterrent effect on the perpetrator and the victim will definitely feel unfair, so there is a need for a clear reason why the perpetrator of sexual violence receives sanctions in the form of rehabilitation, which in this case is analogous to the case of narcotics users, where narcotics users are likened to perpetrators and victims so that narcotics users can be rehabilitated as a form of efforts made to help recover drug addicts, but Article 17 Paragraph 1 of Law No. 12 of 2022 concerning the Crime of Sexual Violence there is no clear reason why perpetrators of sexual violence need to be rehabilitated, and there are no clear indicators of how perpetrators of sexual violence can be sanctioned in the form of rehabilitation and how The form of rehabilitation is also not clearly stated in Law No. 12 of 2022 concerning the Crime of Sexual Violence.

Law No. 12 of 2022 concerning the Crime of Sexual Violence is still a pro and con, considering that this is the first time there are perpetrators of sexual crimes who can be subject to rehabilitation other than narcotics users and criminal acts whose perpetrators are children, plus the content of the law does not explain what perpetrators of sexual violence crimes can be subjected to rehabilitation along with the procedures and forms of rehabilitation are also not explained in the law. If there is no clarity regarding the rehabilitation, it is feared

that there will be a legal vacuum that will later lead to the imposition of rehabilitation measures that are not on target or even rehabilitation cannot be carried out considering the rules that are not explained in detail. The importance of interpreting medical rehabilitation for perpetrators of sexual violence is also related to efforts to improve the criminal justice system in Indonesia. With the issuance of Law Number 12 of 2022 concerning the Crime of Sexual Violence, there have been sanctions that can be imposed on perpetrators of sexual violence crimes. However, the definition, which is still lacking in detail, the existence and application of this medical rehabilitation approach still needs to be clarified in the applicable legal framework.

We know that in imposing criminal sanctions it is hoped that it will restore public order, all levels of society, including victims and perpetrators, can return to becoming intact individuals, in imposing criminal acts should also be seen from the effective and efficient side in order to save costs, energy and others. By referring to the description above, the author is interested in researching the crime of sexual violence with the title "**Rehabilitation Sanctions against Perpetrators of Sexual Violence in Indonesia**". Based on the background, the 2 problem formulations that the author raises are 1) How to regulate rehabilitation sanctions for perpetrators of sexual violence crimes in Indonesia, 2) How to arrange rehabilitation witnesses for future sexual violence crimes (*ius constituendum*)

Methods

The type of research used in this study is normative juridical research that describes legal research that examines positive legal norms as the object of research. Normative legal research is also aimed at legal systematics, namely identifying the main meanings in law such as legal subjects, rights and obligations, legal events in laws and regulations, one of which is regarding rehabilitation sanctions for perpetrators of sexual violence crimes (Muhaimin: 2020) ^[2]. Furthermore, the research approach in this study uses the Stata approach. This research is descriptive, which makes a systematic depiction, in this case the regulation of rehabilitation sanctions for perpetrators of sexual violence, and this study prescribes because there is a proposal in it and will be analyzed qualitatively.

Results and Discussion

Rehabilitation sanctions for perpetrators of sexual violence in Indonesia

Sexual violence is one of the most detrimental crimes and often leaves a traumatic impact on victims and society at large. Sexual violence in general is a form of crime that involves the use of violence or the threat of violence to coerce or coerce someone to commit an unwanted or consensual sexual act. Sexual violence has become an issue that is increasingly gaining attention in Indonesia, this indicates that there is an increase in crime that develops uncontrollably which can have a traumatic impact on victims. The state's concern for victims is to protect the rights of victims and also the rights of victims' families. Meanwhile, perpetrators of sexual violence are sentenced to criminal penalties and can also be subject to sanctions in the form of rehabilitation.

In Law Number 12 of 2022 concerning Sexual Violence Crimes, there are the latest sanctions for perpetrators of sexual violence crimes, namely Medical Rehabilitation. Medical rehabilitation arrangements for perpetrators of

sexual violence crimes include what was newly raised in Law Number 12 of 2022 concerning Sexual Violence Crimes, but this newly issued regulation does not explain the detailed definition related to rehabilitation sanctions that can be imposed on perpetrators of sexual violence. Article 17 paragraph 1 states "In addition to being criminally sentenced, perpetrators of the Crime of Sexual Violence can be subject to actions in the form of Rehabilitation"

In drafting laws and regulations, the use of language and words is very important and also has its own characteristics characterized by clarity or clarity of understanding, straightforwardness, harmony, clarity and obedience to principles in accordance with legal needs, both in the formulation and the way it is written (Purnomo Sucipto: 2015) ^[15]. If the language or definition is not understandable, it will be difficult to expect the purpose of the laws and regulations that should be easily understood by the general public, not only by their makers, law scholars or legal practitioners. The importance of interpreting rehabilitation sanctions for perpetrators of sexual violence is also related to efforts to improve the criminal justice system in Indonesia. With the issuance of Law Number 12 of 2022 concerning the Crime of Sexual Violence, there have been sanctions that can be imposed on perpetrators of sexual violence crimes. However, the definition, which is still lacking in detail, the existence and application of this medical rehabilitation approach still needs to be clarified in the applicable legal framework.

There are several indicators of perpetrators of major sexual violence crimes that can be subject to rehabilitation, including perpetrators of sexual violence crimes who have sexual deviations that the perpetrators themselves cannot control, perpetrators of sexual violence crimes are recidivists, there is an assessment in terms of health that advocates rehabilitation, but until now there are no rules that explain the indicators of perpetrators of sexual violence crimes such as what can be rehabilitated, but as a prosecutor who coordinates the implementation of rehabilitation.

The procedures and forms of rehabilitation, both medical and social, for perpetrators of sexual violence crimes are not contained in Law No. 12 of 2022 concerning the Crime of Sexual Violence, plus the implementation regulations, facilities and infrastructure, and the budget for rehabilitation are not yet in the prosecutor's office. So it will be difficult to implement it because of the unpreparedness of the things mentioned above, but the prosecutor will still try to implement the law if indeed the rehabilitation action is deemed necessary in resolving a case of sexual violence.

The procedure for both medical and social rehabilitation for perpetrators of sexual violence is that the prosecutor will coordinate first with the doctor regarding what medical rehabilitation is appropriate to do for the perpetrator of sexual violence, while for the social rehabilitation, the prosecutor will coordinate with the social rehabilitation psychologist in advance what is appropriate to do for the perpetrator of sexual violence. then medical or social rehabilitation is carried out in the prison by means of medical personnel or psychologists visiting the prison regularly, so that the implementation of criminal sanctions and rehabilitation are carried out simultaneously. If the perpetrator is deemed necessary to rehabilitate outside the prison, the perpetrator of the crime of sexual violence can be rehabilitated outside the prison under the supervision of the prosecutor's office.

Forms of social and medical rehabilitation for perpetrators of

sexual violence crimes Again, the prosecutor will coordinate with parties who are more experts in their fields such as doctors, psychologists and other parties to determine how the form of sexual rehabilitation is appropriate for the perpetrator, which in this case will vary according to the case and condition of the perpetrator. Examples of forms of social rehabilitation that can be applied to perpetrators of sexual violence crimes are providing positive training, providing counseling from psychologists, providing job training, providing religious deepening and other actions suggested by psychologists or experts. While medical rehabilitation can be carried out on the advice of a doctor so that the perpetrator can recover to become a good and intact individual and can carry out his role in the family and society, medical rehabilitation can be in the form of treatment therapy to suppress his sexual desire and so on.

Arrangement of rehabilitation sanctions for future sexual violence crimes (*ius constituendum*)

Legislative policies in tackling violence are part of efforts to protect the community (social defense) to achieve community welfare (social welfare), this is the first step of functional policies. 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 a state's obligation as a state of law (Amrianto, Andika Dwi, Maria Kunti Atika Putri, Ahmad Yusup, 2023) ^[6].

A new law or it can be referred to as *ius constituendum* is a law that is sought in the life of the people of the country but has not been formulated or ratified into a law or into other regulations (Ulya:2017) ^[1]. An *ius constituendum* can be changed and applied as *an ius constitutum* with various efforts that can be made, namely by replacing the old legal rule with a new legal rule, changing the content or formulation of existing legal rules by incorporating new elements, and or inserting a new legal rule (Ulya:2017) ^[1]. Renewal is associated with criminal law meaning that improvements become new, previously there were no rules that were clearly regulated and then updated so that they made new rules that clearly regulated so that legal certainty could be applied properly (Atmasasmita, 2012) ^[7]. Reformulation in the Great Dictionary of Indonesian (hereinafter abbreviated as KBBI) is interpreted as reformulation. Reformulation in the legal field is said to be a form of renewal. W.J.S Poerwadarminta in his idea stated that there are 3 (three) definitions of "Renewal", as follows (Purwodarminta, 1976) ^[8]:

1. Fix it to be new;
2. Restart again/start again;
3. Replace it with a new one.

Acts of violence have a big 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 a person who is a victim of the violence. The facts on the ground and acts of violence that occur in the community are common things that happen today. The perpetrators of these acts of violence are not afraid of legal sanctions that will ensnare them later if their actions are known. Likewise with victims of sexual violence, where victims often receive less attention in recovering 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 provide a sense of security and comfort for the community through existing infrastructure and legal products.

The update or reformulation of the policy in Article 17 paragraph (1) 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 human traffickers must be sentenced to criminal penalties so that there is a deterrent effect for the 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) ^[9].

The issuance of new regulations cannot be separated from obstacles in their 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 factor, meaning that the actions experienced by the victim of human trafficking are a disgrace that should not be known by others, this makes it difficult to solve 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 covers 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) ^[11] Thus, this results in a negative impact that will be received by victims of sexual violence, because there is no legal process or legal settlement for the actions they experience, which results in physical and especially psychological disorders or can provide a great sense of trauma to 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.

The imposition of rehabilitation sanctions as stated in Article 17 paragraph (1) of the TPKS Law is still a problem in its implementation by law enforcement agencies. Where this rehabilitation sanction has not been implemented, there is no implementing regulation that regulates how the sanction is applied and what indicators TPKS perpetrators can be imposed or given rehabilitation sanctions. Therefore, 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 giving demands and decisions on the imposition of rehabilitation sanctions based on whether the perpetrator is included in the right criteria or indicators to be given rehabilitation sanctions without ruling out criminal sanctions. Guruh Tio, Yusuf Adi Wibowo, 2022) ^[10].

The policy on the renewal of regulations in rehabilitation sanctions that the author will describe below is related to Article 17 Paragraph 1 of Law No.12 of 2022 concerning the Crime of Sexual Violence, along with improvements, namely changes or directions for the reform of the criminal law related to the article that the author will conceptualize for legal certainty for future implementation:

1. Content of Article 17 Paragraph 1 of Law No.12 of 2022 concerning the Crime of Sexual Violence

Article 17 Paragraph 1 of Law No.12 of 2022 concerning the Crime of Sexual Violence states that "in addition to being sentenced, perpetrators of sexual violence crimes can be

subject to actions in the form of rehabilitation", the meaning of Article 17 Paragraph 1 is that perpetrators of sexual violence crimes are still sentenced to criminal sanctions in accordance with existing regulations, and can be added and may not be added actions in the form of rehabilitation. However, perpetrators of sexual violence crimes cannot only be given rehabilitation crimes so that criminal sanctions will still be attached to the judge's decision.

2. Reformulation of Article 17 Paragraph 1 of Law No.12 of 2022 concerning the Crime of Sexual Violence

Before discussing how to reformulate Article 17 Paragraph 1 of Law No.12 of 2022 concerning the Crime of Sexual Violence, we should first know and understand what are currently obstacles in resolving cases of sexual violence, so that it is hoped that in terms of rules it will not be one of the additional factors that complicate the resolution of cases of sexual violence crimes and their prevention and countermeasures.

The fact that obstacles in resolving cases of sexual violence can come from several factors, including from the victim himself, namely the feeling of fear and shame to report, and also the victim who feels that it will be troublesome for the legal process, while the obstacle from the victim's family is the assumption that it is a disgrace and the family does not believe that there is a confidentiality of the victim and so on, Then the obstacle from the environment is the prevention by the local village officials to make peace or not to report it so that the family alone solves it, the next obstacle is from law enforcement, namely several law enforcers who consider minor sexual violence crimes to be normal and suggest not to be processed by law because they are afraid that it will have a more traumatic impact on the victim. From this alone, it has become an obstacle in the resolution of cases of sexual violence, so it is hoped that in terms of legal rules, it can provide a legal umbrella that can lead the community to what they aspire to.

A legal rule if it is felt that it is not in accordance with what is expected, it should be corrected immediately. We know that in May 2022 Law No. 12 of 2022 concerning the Crime of Sexual Violence was born, where until now the imposition of rehabilitation measures in the Law is still a problem in law enforcement agencies such as courts, prosecutors' offices, and prisons, this is because there are several things that have not been clearly regulated in Law No. 12 of 2022 concerning the Crime of Sexual Violence, especially in Article 17 Paragraph 1 In addition, there is no implementing regulation, where in its application the indicators of perpetrators of sexual violence crimes that can be subject to rehabilitation measures have not been contained or regulated, so that judges have difficulty in imposing rehabilitation actions on the perpetrators, and there is no advice and infrastructure for rehabilitation actions themselves even though the TPKS Law has been in effect since May 2022, the judge must first ask the prosecutor as the executor of the verdict whether The prosecutor is able to carry out rehabilitation measures to avoid in the end the verdict is only in a piece of paper cannot be implemented.

The Sexual Violence Crime Law has been in effect for 2 years to date, but no Court has yet included in its decision that perpetrators of sexual violence crimes are subject to rehabilitation, because until now it is felt that there is no need for rehabilitation measures to be imposed on perpetrators of

sexual violence crimes. The reform of article 17 must be clarified again with several considerations :

1. There is no regulation for the implementation of Law No. 12 of 2022 concerning the Crime of Sexual Violence
2. There is no facilities and infrastructure
3. There has been no explanation of what kind of criminal offenders have been sanctioned for rehabilitation
4. There are no clear rules regarding the procedures and forms of rehabilitation
5. The unavailability of budget from the government to be able to implement rehabilitation sanctions

In the Community Institution Institution, there has been no information whether the rehabilitation of perpetrators of sexual violence crimes is carried out in prisons or outside prisons, which of course the rehabilitation carried out is expected to be able to really return the perpetrators to a whole human being and be able to carry out their functions and roles back to their families and communities, and it is also hoped that the rehabilitation carried out will be a complement or perfection of the development of prisoners in prisons.

Conclusion

The regulation of rehabilitation sanctions for perpetrators of sexual violence crimes is a new matter raised in Law Number 12 of 2022 concerning Sexual Violence Crimes, but this newly issued regulation does not explain the detailed definition related to rehabilitation sanctions that can be imposed on perpetrators of sexual violence crimes. In drafting laws and regulations, the use of language and words is very important and also has its own characteristics that are characterized by clarity or clarity of understanding, straightforwardness, harmony, clarity and obedience to principles in accordance with legal needs, both in formulation and in the way they are written. If the language or definition is not understandable, it will be difficult to expect the purpose of the laws and regulations that should be easily understood by the general public, not only by their makers, law scholars or legal practitioners. The importance of interpreting rehabilitation sanctions for perpetrators of sexual violence is also related to efforts to improve the criminal justice system in Indonesia. With the issuance of Law Number 12 of 2022 concerning the Crime of Sexual Violence, there have been sanctions that can be imposed on perpetrators of sexual violence crimes. However, the definition, which is still lacking in detail, the existence and application of this medical rehabilitation approach still needs to be clarified in the applicable legal framework.

A new law or it can be referred to as *ius constituendum* is a law that is sought in the life of the people of the country but has not been formulated or ratified into a law or into other regulations. Reformulation is considered necessary for the author to Article 17 Paragraph 1 of Law No. 12 of 2022 concerning Sexual Violence Crimes in the future is expected to provide more legal certainty in the implementation of rehabilitation for perpetrators of sexual violence crimes, both in terms of indicators of perpetrators who can be subjected to rehabilitation and what form of rehabilitation, so that rehabilitation actions can indeed be obtained by perpetrators who really need them to recover. With legal certainty, the imposition of rehabilitation actions is not based on a person's mood. It is also hoped that rehabilitation will complement the Correctional Institution in an effort to return the perpetrator to his family and community and not to repeat his crimes.

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