



ANALYSIS OF THE IMPLEMENTATION OF REHABILITATION FOR PERPETRATORS OF SEXUAL VIOLENCE CRIMES

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Abstract

Responding to the emergency of sexual violence in Indonesia which occurs from year to year, the Government of the Republic of Indonesia in 2022 passed Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. This law complements a series of regulations that already regulate crimes of sexual violence. The specialty of this law is that it provides more comprehensive regulation of sexual violence crimes, which are currently increasingly diverse. One of the interesting things regulated in the law is related to rehabilitation efforts for perpetrators of criminal acts of sexual violence. This article will discuss rehabilitation efforts for perpetrators of sexual violence which aim to recover perpetrators from their deviant acts, namely sexual violence. This research uses normative research methods with a conceptual approach and a statutory approach. The results of this research indicate that providing rehabilitation measures according to the Criminal Code is a type of action that can be imposed simultaneously with criminal sanctions or separately by referring to the judge's considerations. Meanwhile, the provision and mechanism of rehabilitation measures for perpetrators of sexual violence as regulated in Law Number 12 of 2022 concerning the Crime of Sexual Violence still requires further regulations issued by the Ministry of Social Affairs and the Ministry of Health to be implemented optimally

Keywords : rehabilitation, sexual violence, perpetrators

Abstrak

Merespon dari kedaruratan kekerasan seksual di Indonesia yang terjadi dari tahun ke tahun, Pemerintah Republik Indonesia pada tahun 2022 mengesahkan Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. Undang-undang tersebut melengkapi sederet aturan yang sudah mengatur mengenai kejahatan kekerasan seksual. Keistimewaan dari undang-undang tersebut adalah memberikan pengaturan yang lebih komprehensif terhadap kejahatan kekerasan seksual yang saat ini semakin banyak ragamnya. Salah satu hal menarik yang diatur di dalam undang-undang itu adalah berkait dengan upaya rehabilitasi bagi pelaku tindak pidana kekerasan seksual. Artikel ini akan membahas terkait dengan upaya rehabilitasi bagi pelaku kekerasan seksual yang bertujuan untuk memulihkan pelaku dari perbuatan menyimpang yang dilakukannya yakni kekerasan seksual. Penelitian ini menggunakan metode penelitian normative dengan pendekatan konseptual dan pendekatan perundang-undangan. Hasil dari penelitian ini menunjukkan bahwa pemberiantindakan rehabilitasi menurut KUHP merupakan jenis tindakan yang dapat dijatuhkan bersamaan dengan sanksi pidana ataupun secara terpisah dengan mengacu terhadap pertimbangan hakim. Sedangkan pemberian dan mekanisme tindakan rehabilitasi bagi pelaku kekerasan seksual sebagaimana yang diatur dalam Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual masih memerlukan aturan lanjutan yang dikeluarkan oleh Kementerian Sosial dan Kementerian Kesehatan untuk dapat terimplementasikan secara optimal.

Kata Kunci : rehabilitasi, kekerasan seksual, pelaku



1. INTRODUCTION

Sexual violence occurs throughout the world, where sexual violence can be experienced by children, teenagers, both women and men. Sexual violence is an act that contains various elements of other criminal acts such as threats, coercion or physical violence (Ummah, Anggreiny, & Nasa, 2022). Sexual violence is a crime that can have an impact on the victim, the impact of the sexual violence that is given can be physical, psychological, or social. The traces of the perpetrator of sexual violence on the victim can not only be seen physically, namely in the form of wounds, bruises on several parts of the body, but can also be seen psychologically, namely in the form of mental trauma or fear of someone. From this, it is very natural for perpetrators of sexual violence to be sentenced to prison, in order to provide a deterrent effect and punishment for what they have done to victims of sexual violence.

It seems that prison sentences for perpetrators of criminal sexual violence need to be reviewed, considering that perpetrators of this criminal act can repeat the same act or at least carry it out for a long time so that the perpetrator gets used to carrying out this act. Various actions need to be optimized for perpetrators of sexual violence which in the end not only provide a deterrent effect but also an understanding that what they are doing is an act that is very detrimental to the victim. These various actions can take the form of guidance, care or treatment for perpetrators of criminal acts (other than imprisonment), one of which is through rehabilitation efforts (S. & Naibaho, 2020).

Rehabilitation is one form of action that can be provided with the aim of recovery and treatment for perpetrators of sexual violence. Coaching aims to carry out rehabilitation in line with the new concept of the function of punishment, which no longer focuses on confinement (prison), but also focuses on efforts to recover and integrating criminals. This aims to enable them to realize their mistakes, avoid repeating criminal acts, and become members of society who are responsible for themselves, their families and society in general. Apart from that, the aim of development is so that they can make a positive contribution to the state and nation after being given the punishment.

The Law on Criminal Sexual Violence regulates various aspects related to criminal sexual violence in detail. In this law, there are 9 categories of criminal acts of sexual violence, including sexual harassment without physical contact, sexual harassment with physical touching, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. fine. These basic sanctions are all adjusted to the criminal act that occurred and also to the provisions contained in other applicable regulations.

Apart from providing criminal sanctions to perpetrators of sexual violence, Article 17 of the Sexual Violence Crime Law also mentions providing measures in the form of rehabilitation for perpetrators of criminal acts of sexual violence, where in paragraph 1 it is stated that apart from being sentenced, perpetrators of criminal acts of sexual violence can be given measures in the form of rehabilitation. The provision of rehabilitation measures for perpetrators of sexual violence is the latest breakthrough in the rule of law. However, the provision of measures in the form of rehabilitation to perpetrators of sexual violence in the Sexual Violence Crime Law does not yet have clarity, the provision of rehabilitation measures in a legal regulation must have a clear position. Is the provision of rehabilitation measures to perpetrators of sexual

violence a sanction or a form of right which, if classified in detail, would have significantly different legal consequences?

Remembering that in this law there are nine categories of sexual violence that have been regulated. Another problem is the provision of action in the form of rehabilitation for perpetrators of sexual violence in Article 17 of the Law on criminal sexual violence, it is not explained what criminal acts of sexual violence can be given action in the form of rehabilitation. As for the mechanism for providing rehabilitation measures for perpetrators of sexual violence and the implementation of providing rehabilitation measures, this is a part that also fails to be regulated in this law. In line with this, the provisions on the institutions that will have the authority and obligation to carry out the provision of rehabilitation measures for perpetrators of sexual violence have also not been regulated in detail in this law.

Based on research research on several other studies that have been carried out on the norms and provisions contained in the law on criminal sexual violence, the researcher sees that there is no other research that specifically discusses Article 17 of criminal sexual violence, namely providing rehabilitation measures for perpetrators of criminal sexual violence. Therefore, based on the description previously presented, this research was conducted with the aim of providing views regarding the explanation of the provisions for providing rehabilitation measures for perpetrators of sexual violence crimes based on the sexual violence crime law.

2. RESEARCH METHOD

Researchers use normative juridical research methods, namely by analyzing relevant regulations (Fajar ND & Achmad, 2007), in this case the Criminal Code and the Law on criminal acts of sexual violence as legal materials used to examine the provisions for providing rehabilitation measures for perpetrators of sexual violence. After the data is obtained, the data will then be analyzed using a qualitative descriptive method where the collected data will be analyzed in order to sharpen the focus of observations in this research.

3. RESULT AND DISCUSSION

Providing sanctions for sexual crimes needs to be carefully considered in terms of objectives because imposing sanctions is a very important part of the criminal system, and sexual crimes are one of the crimes that can have a big impact on a person's life (Rivanie, Muchtar, Muin, Prasetya, & Rizky, 2022). Written regulations that fully explain the distribution of criminal sanctions as well as the objectives and guidelines for punishment are currently still regulated in detail by the Criminal Code. This is important to pay attention to and remember that the imposition of a crime must be based on the objectives that will be achieved at the end of the sentence. The imposition of a crime that is not based on a clear objective can result in a legal instrument not being able to function as it should (Capera, 2021)

The latest Criminal Code regulated in Law Number 1 of 2023 concerning the Criminal Code actually offers the use of a two-track system or double track system (Saputra, Artadi, & Sanusi, 2022). A criminal sanction will emphasize the element of retaliation/suffering that is deliberately given and imposed on the criminal perpetrator. Meanwhile, the action originates from the basic idea of protection and guidance or care for the criminal perpetrator, namely with a focus directed at efforts to provide assistance to the criminal perpetrator (Widiartana, 2017).

Basic criminal sanctions refer to punishments in the criminal law system which are punishments that cannot be combined with other types of punishment, unless specifically regulated in applicable regulations, and are also independent so that they can be imposed without the addition of additional criminal sanctions. Meanwhile, additional criminal sanctions are punishments in the criminal law system that are optional, where they are given depending on the judge's decision and do not have the autonomy to be imposed independently without the main criminal sanctions as the basis.

At the same time, the actions regulated in the Criminal Code include the treatment given to criminals through a judge's decision, and in implementing this decision as an action, the judge must comply with the rules, targets, guidelines and considerations in the criminal process. From the perspective of criminal objectives and the criminal system that has been implemented by the Criminal Code, the double track system which imposes sanctions and actions simultaneously functions to provide balance in the punishment or imposition of sanctions on the perpetrator/ convict. With sanctions as punishment that needs to be carried out by the perpetrator for the crime that has been committed, and action given as an opportunity for the perpetrator to improve themselves through coaching so that the perpetrator can change and live a normal life in society, so that similar crimes or criminal acts do not occur again.

Based on the Criminal Code, the provision of actions has been specifically described by categorizing them into providing actions that can be imposed simultaneously with the main crime and also providing actions that can be imposed on anyone. On the other hand, the Sexual Violence Crime Law only includes rehabilitation as an action that can be given to perpetrators of sexual violence as stated in Article 17 paragraph (1) of the Sexual Violence Crime Law and does not explain whether the provision of such rehabilitation can be accompanied by basic crimes as classified in the Criminal Code. Apart from that, it is not stated what kind of sexual violence can be subject to rehabilitation measures considering that there are 9 types of sexual violence regulated in the sexual violence crime law

4. CONCLUSION

Providing action in the form of rehabilitation to perpetrators of sexual violence as regulated in the Criminal Law on Sexual Violence has implemented a double track system as implemented in the Criminal Code. Therefore, the provision of rehabilitation measures to perpetrators of criminal sexual violence in the sexual violence crime law is not a right but rather an action sanction that can be imposed at the same time as the main criminal sanction, and in providing it requires the judge's consideration of whether the perpetrator needs to be given additional action in the form of rehabilitation.

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