



The Judge's Paradigm in Deciding Criminal Cases of Sexual Violence from A Victimological Perspective

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ABSTRACT

The research aims to study and analyze a decision regarding criminal case of sexual violence. The research methods used by researchers are normative juridical with case, statutory, and philosophical approaches. This research is qualitative in nature. The primary legal material is the Sexual Violence Crime Law and Decision Number 72/Pid.Sus/2023/PN.Bau. while secondary materials are gathered from books, journals, etc., The results of the research show that the paradigm used by the Panel of Judges does not have a victimology perspective, as evidenced by the statement expressed by the victim witness who explained that the defendant was not the perpetrator of a crime of sexual violence, while the actual perpetrator had been appointed by the victim witness based on the photo submitted by the Counselor. In addition, the judge ignored the victim's rights as evidenced by the judge not considering the victim's testimony in court and only referring to the minutes of the oath. The Panel of Judges ignored the facts of the trial. Besides, the panel of judges did not interpret the victim's witness statement as a standalone piece of evidence as regulated in the Sexual Violence Crime Law. So, it is important for the judge to have the victim's perspective. In this case, what the victim said is information that must be acknowledged at trial and It is necessary to evaluate the panel that examined and decided the case.

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ARTICLE INFO

Keywords:

Court Ruling, Sexual Violence, Legal Analysis, Victims, Victimology

Article History:

Received: February 6, 2024

Revised: August 13, 2024


Accepted: August 16, 2024

Published: August 20, 2024

Introduction

The state's duty to protect all Indonesian citizens and promote their general welfare, educate the nation, and uphold global order based on independence, lasting peace, and social justice is enshrined as a constitutional right in the Preamble of the 1945 Constitution. As such, the state holds a pivotal role in ensuring societal stability and security (Arief, 2017). When crimes occur, the state, through its law enforcement agencies, is obligated to intervene by implementing both preventive and corrective measures to combat these offenses.

In recent years, the prevalence of crimes has captured public attention, with sexual violence against women and children emerging as one of the most alarming issues. Sexual

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 <https://doi.org/10.22515/bg.v9i1.8666>

violence, particularly against children, is explicitly addressed in Law No. 35 of 2014 concerning Child Protection. Article 2 of this law emphasizes the importance of protecting the dignity of children and shielding them from violence and discrimination, thus allowing them to participate meaningfully in society while safeguarding their fundamental rights.

Aritonang & Susetyo (2024) argue that negative parental influences can create unsafe conditions for children, leaving them vulnerable to discrimination and exploitation. Many children find themselves in distressing circumstances due to their parents' failure to adequately support them during their developmental stages. Positive parental guidance, therefore, plays a crucial role in shaping a child's growth and well-being. One of the most egregious violations of human rights is sexual violence, including child molestation. Between 2016 and 2019, the Indonesian Child Protection Commission documented 724 cases of sexual crimes against children.

In addition, data from the National Commission on Violence Against Women (Komnas Perempuan) highlights fluctuating but persistently alarming rates of sexual violence in Indonesia from 2016 to 2020. In 2016, there were 3,933 reported cases, increasing to 5,629 in 2017, decreasing to 4,458 in 2018, followed by a rise to 6,499 cases in 2019, and another decrease to 5,785 in 2020. The numbers continued to fluctuate with 5,636 cases in 2017, 5,435 cases in 2018, 4,749 cases in 2019, and 2,946 cases in 2020, resulting in a total of 24,551 cases (Jamaludin, 2021). These statistics reveal that many children in Indonesia still suffer from violence, neglect, exploitation, and discrimination, without adequate protection for their rights. Such mistreatment can severely impact a child's psychological development, leaving deep-seated trauma that may influence their behavior well into adulthood.

Acts of violence against children are often classified as child abuse, a particularly cruel form of mistreatment. Although sexual abuse in very young children is rare, some cases involving female infants as young as six months have been reported (Dania, 2020). These instances underscore the gravity of the issue and the urgent need for intervention and prevention. One notable case of sexual violence occurred in the city of Baubau, where two young girls, aged 9 and 4, were assaulted by a group of men in December 2022. Disturbingly, the primary suspect was their own brother. Despite the victims' consistent statements identifying another perpetrator, the brother was ultimately convicted of the crime (Farid et al., 2023). The victims never implicated their brother in the assaults, yet the court found him guilty, raising questions about the legal reasoning behind the verdict.

During the trial, the victims continued to maintain that their brother was not the perpetrator. However, the panel of judges still rendered a guilty verdict (Fua, 2023). This discrepancy highlights the importance of critically evaluating the judges' reasoning in sexual violence cases, especially from a victimology perspective. Thus, this article aims to explore the judicial paradigm in sexual violence cases, particularly in relation to victimology. The central research question is: "How does the judge's paradigm influence the decision-making process in sexual violence cases, particularly from the perspective of victimology?" This inquiry seeks to understand how judges interpret and integrate victim testimony and evidence in their rulings, especially in complex cases involving sexual violence.

Literature Review

Power and Control Theory

The theory of power and control serves as a vital theoretical framework for understanding sexual violence within the broader discourse of gender inequality. This theory elucidates how various forms of violence, notably sexual violence, are strategically employed as mechanisms to assert and reinforce dominance by one individual or group over another (Brady & Reyns, 2024). Central to this framework is the premise that power dynamics are intrinsic to the fabric of social interactions and are particularly pronounced

in gendered relationships. Such power may manifest in multiple forms—physical, economic, political, or symbolic.

Within this context, the use of violence is perceived not merely as an act of aggression but as a deliberate strategy to sustain and enhance control. Perpetrators of sexual violence often deploy such actions as a means to affirm their supremacy and control, thereby reinforcing their positions of authority within the social structure (Molina, 2024). The intersection of gender with social hierarchy is crucial to understanding these dynamics. In patriarchal societies, where men typically wield greater power, sexual violence emerges as a potent tool to perpetuate and exacerbate gender-based disparities. This assertion of dominance through violence underpins the maintenance of a skewed social order where male superiority is both established and perpetuated.

Cazalis and colleagues (2022) highlight how these dynamics are ingrained in and perpetuated by societal structures that prioritize male authority, thus normalizing and sustaining an environment where sexual violence is employed as a means of enforcing gender hierarchies. This understanding points to the necessity of addressing underlying power imbalances within societies as a fundamental step towards mitigating the prevalence of sexual violence and advancing gender equality.

The Nature of Victimology

Victimology, a specialized branch of criminology, focuses on the comprehensive study of crime victims, examining their experiences, roles, and interactions within the context of criminal events (Clevenger et al., 2024). It analyzes the impact of crime on victims, ranging from psychological to social and economic effects, and scrutinizes the responses of the criminal justice system to their needs. Additionally, victimology investigates the relationships between perpetrators and victims, shedding light on the various factors that may influence an individual's susceptibility to becoming a victim. A core focus of victimology is defining who qualifies as a victim and categorizing victims based on the nature of the crime they have experienced. The field distinguishes between direct victims, who endure the crime firsthand, and indirect victims, such as family members or communities affected by the crime. Victimology further delves into the potential involvement of victims in the crime, addressing controversial concepts like victim "provocation" or "active participation." While sensitive, these discussions aim to understand the complex dynamics of the crime scene and the varying degrees of influence a victim might have on the event.

Beyond examining the role of victims, victimology also explores the profound psychological, physical, and social impacts that crime inflicts. This includes the trauma, emotional distress, social stigma, and economic hardships that victims often face. The field considers how these factors shape the recovery process and influence victims' long-term well-being. In addition to understanding the victim's experience, victimology assesses the legal frameworks and protective measures in place for victims. It examines the effectiveness of victim protection laws, victim rights advocacy, and the broader policies that seek to support victims within the criminal justice system. This analysis also highlights areas where the system may fail or disadvantage victims, emphasizing the need for reform to ensure that the rights and welfare of victims are upheld (Korpela, 2021). In sum, victimology provides a multidimensional analysis of crime from the victim's perspective, offering critical insights into the nature of victimization, the factors contributing to it, and the legal and social frameworks designed to support victims.

Method

The research methodology employed in this study is normative juridical, utilizing a multi-faceted approach that includes case analysis, legal analysis, and a philosophical

perspective (Warganegara, 2024). Normative legal research focuses on the examination and interpretation of primary legal sources, such as the Sexual Violence Crime Law and Court Decision Number 72/Pid.Sus/2023/PN.Bau, alongside secondary legal materials, including books, academic journals, and other relevant literature. The research incorporates both grammatical and systematic interpretations to ensure a comprehensive understanding of the legal texts.

The collection of legal materials is carried out through library research techniques, involving the meticulous reading, recording, and categorization of legal sources pertinent to the research questions (Ritonga et al., 2024). This systematic process ensures that legal materials are organized and synthesized according to the specific issues under investigation. The deductive analysis method is employed to interpret the data, allowing for conclusions to be drawn based on general legal principles and applied to the specific cases and issues at hand. This methodology not only enables a thorough legal examination of the case in question but also ensures a structured and logical framework for analyzing the broader legal implications through a philosophical lens.

Results and Discussion

A judge's conviction in the proof of criminal cases is closely related to the concept of material truth embraced in criminal law, namely the criminal event and its punishment. Material truth requires the judge to decide the case based on their conviction that a criminal event has occurred. According to Apeldoorn (Boyoh, 2015), it is stated that an event cannot be subject to punishment, except by the force of preceding criminal law regulations. This principle was introduced into legislation in the late 18th century. Previously, judges could impose penalties for events not explicitly stated as punishable by law (arbitrary offenses), namely events that judges, based on their own views, deemed deserving of criminal punishment. The principle from Article 1 of the Criminal Code (KUHP) is seen as a crucial guarantee for legal security in protecting individuals against arbitrary actions by others.

In substantive criminal law, there are events referred to as subjective events and objective events. This relates to the perpetrator of the criminal event and the aspect of fault. These two factors form the basis for judges' considerations in deciding cases within the criminal legal system. The truth as the basis for these considerations is based on the principles in Criminal Procedure Law. As expressed by Mulyadi (2012), the understanding of criminal procedural law is fundamentally:

- Legal regulations governing, organizing, and maintaining the existence of substantive criminal law to seek, discover, and obtain material truth or the actual truth.
- Legal regulations governing the method and process of decision-making by judges.
- Legal regulations governing the implementation stages of decisions that have been made.

The purpose of Criminal Procedure Law is to seek and obtain, at the very least, an approximation of material truth. Material truth means a truth that genuinely aligns with reality. In other words, it is the most comprehensive truth about a criminal case by applying criminal procedural law provisions honestly and accurately (Boyoh, 2015). The evidentiary system in the Indonesian Code of Criminal Procedure (KUHAP) is outlined in Article 183 of the KUHAP. This article specifies that a judge may not impose a criminal penalty on an individual unless, with at least two valid pieces of evidence, they are convinced that a criminal act has truly occurred and that the accused is guilty of committing it (Boyoh, 2015). This article outlines two essential conditions for imposing a criminal penalty on an individual: first, the presence of at least two valid pieces of evidence, and second, the judge's conviction based on those pieces of evidence. If the required two pieces of evidence are presented but the judge remains unconvinced of the

defendant's guilt, no sentence will be imposed. Conversely, a judge's personal conviction, without the support of the requisite two pieces of valid evidence, is insufficient to justify a conviction. These two conditions demonstrate the evidentiary framework embraced by the Indonesian Code of Criminal Procedure (KUHAP), which adheres to the "negative legal evidence theory." Under this system, legal proof must meet a specified threshold, requiring both objective evidence and the judge's subjective conviction. This balanced approach ensures that a sentence is not rendered solely based on either personal belief or the mere existence of evidence, safeguarding fairness and due process within the legal proceedings.

The formulation of Article 183 of the KUHAP also indicates that the required evidence is at least or a minimum of two valid pieces of evidence. Having two valid pieces of evidence does not mean that there must be at least two pieces of evidence of different types; for example, there must be one witness statement and one document. It is sufficient if the two relevant pieces of evidence are of the same type, such as two witness statements (Boyoh, 2015).

This examination process involves the scrutiny of the evidence collected by investigators. According to Article 183, two conditions are stipulated to impose a penalty on someone:

- The existence of at least two valid pieces of evidence,
- The judge's conviction based on those pieces of evidence.

Guided by the evidence in the evidentiary system, a judge can then take further steps to adjudicate and make decisions based on the material truth found through that evidence. If various irregularities are found in a verdict due to alleged neglect of evidence, it does not necessarily mean that Indonesian judges have failed to uphold justice (Aswadi, 2018). The assurance of judicial independence has been explicitly stipulated in Article 24 (as amended fourth) of the 1945 Constitution of the Republic of Indonesia, which states that 'judicial power is an independent power to administer justice in order to uphold law and justice. This judicial power is exercised by a Supreme Court (MA) and the courts under it, as well as by a Constitutional Court (MK).' Furthermore, in the implementation of judicial independence, it has also been enshrined in Law No. 48 of 2009 concerning Judicial Power (Mulyadi, 2012).

In Decision Number 72/Pid.Sus/2023/PN.Bau, it does not reflect the judge's victimological perspective. The decision is based on the judge's legal considerations, focusing on expert testimony and investigator statements, thereby implicating both the defendant and the victim's older brother. Meanwhile, the victim's testimony is sidelined by the judges, as they perceive it as directed by the victim's mother, although the verdict does not explain any influence by the mother. The judge relies solely on conviction without considering the existing evidence, despite the fact that the Law Number 12 of 2022 concerning Sexual Violence Crimes clearly states that the victim's testimony is an independent form of evidence. Therefore, the victim's statement is considered true and accountable. However, the judge does not use the sexual violence law as a reference in the courtroom proceedings, resulting in the judges lacking a victim perspective.

Victimology is a discipline that studies victims, the causes of victimization, and the impact of victims on real social issues. This field also focuses on the study of criminality as a social problem for humans. To understand this proportionally, it is necessary to comprehend that the dimensions and outcomes of interacting phenomena influence each other (Tursilarini, 2017), and individual behavior is influenced by social factors in a particular community. The development of victimology did not happen overnight but progressed through three stages. The first stage is the initial phase of victimology, which only studied victims in the context of crime. The second stage involves the study of victims of both crimes and accidents. The final stage is the third stage where victimology has evolved extensively, including the study of victims of abuse of power and human rights violations (Saputra et al., 2023). Victimology plays a crucial role as a study examining victims as a social phenomenon. This approach brings about a deeper understanding of how victims are defined (Amalia et al., 2018), as well as various social, behavioral, and subjective factors involved in the process of victimization or the formation of victims. The

goal is to empower society in facing various forms of victimization in social reality, providing solutions based on thoughtful considerations to offer protection for children who become victims.

Sexual Violence Victims Study: Victimology is particularly relevant in the study of sexual violence, as it explores the long-term impacts on victims, such as trauma, loss of safety, and social dysfunction. Victimology also helps in understanding how victims are treated by the legal system and society. **Victim Protection and Support:** Victimology encourages the development of policies and services to support victims of sexual violence, such as the provision of counseling, health services, and legal representation. It also includes advocacy for victims' rights in the criminal justice process. **Effects of Secondary Victimization:** Victims of sexual violence often experience secondary victimization in the form of victim blaming, lack of trust in legal authorities, or the inability of the legal system to provide adequate justice (Dziewa & Glowacz, 2021).

Sexual Violence as a Form of Power Manifestations of Gender Domination: Sexual violence is not only about the sexual act itself but also about domination and control. This can be seen in the way perpetrators try to assert their superiority over the victim. **Objectification and Dehumanization:** Victims of sexual violence are often treated as objects, rather than as individuals with free will. This is a way of asserting power by ignoring the rights and humanity of the victim (Cazalis et al., 2022). **Structural Inequalities:** Structural inequalities in power (economic inequality, lack of political representation for women) often exacerbate sexual violence, where those with more power feel entitled to commit violence against those with less power (Horan & Beauregard, 2018).

Conclusion

The paradigm employed by the Panel of Judges lacks a victimology perspective, as demonstrated by the disregard of critical testimony from the victim witness. The victim witnesses clearly stated that the defendant was not the perpetrator of the sexual violence, identifying the actual perpetrator from a photo presented by the Counselor. Despite this, the true perpetrator remains at large, while the defendant was unjustly found guilty of committing the crime of sexual immorality. This indicates that the Panel of Judges failed to properly consider the trial's factual evidence. Moreover, the Panel of Judges neglected to treat the victim witness's testimony as independent evidence, as mandated by the Sexual Violence Crime Law. This oversight undermines the legal framework designed to protect victims' rights and ensure that their voices are heard during proceedings. Therefore, it is crucial that judges adopt a victim-centered approach, giving proper weight to the victim's testimony as valuable information that must be acknowledged in court. Additionally, a thorough evaluation of the panel responsible for examining and deciding this case is necessary to address potential shortcomings in judicial processes.

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