



# Prevention of Revictimization of Female Victims of Sexual Violence in Higher Education

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## Abstract

This research aims to examine how the procedure for reviewing women victims of sexual violence in higher education so as not to experience revictimization. Issues related to sexual violence are a phenomenon that often occurs even in the educational environment, especially the Higher Education environment. The impact experienced by victims, especially by women who are victims of sexual violence, can be in the form of mental disorders, panic attacks, depression, dissociation, self-harm, post-traumatic stress disorder, and suicide, even during the examination. The research method used is normative empirical, with a statute approach and a case approach. The data source used in this research is secondary data consisting of primary and secondary legal materials. Then, the data is collected using a literature study (library research), then analyzed in a qualitative descriptive way. The discussion of this paper found that the examination of female victims of sexual violence in higher education has not been in line with the best interests of victims.

## Keywords

Sexual Violence, Revictimization, College

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## Introduction

Sexual violence can happen to anyone at any time. The educational environment should be a safe place for students to study and develop themselves, and become a valuable guarantee for the future of the nation. But it turns out that in reality, this is not always the case, we can see in recent times that cases of sexual violence against female students to female students have increasingly become the spotlight and continue to appear to the public.

An educational institution that is supposed to be a place for the growth and development of students in literacy and soft skills development should be a safe and comfortable place or space for them. However, it seems that this does not apply to survivors of cases of violence against women. Especially in cases of sexual violence. Cases like this are real and happen a lot, both at school and university, and have become an open secret that is deliberately forgotten by most of the parties in it. Not many victims dare to report or speak up because the public stigma against victims of violence is still very strong, not to mention if this sexual violence is committed by parties who have more power in an educational institution. In addition, the absence of policies and the lack of handling and even sanctions given to perpetrators of violence that are not appropriate make the lack of follow-up of reports if any entered.<sup>1</sup>

Some cases of sexual violence in higher education that have surfaced in the public and caught the attention of the wider community are the case of Universitas Gadjah Mada student, Agni (not her real name). Agni is a survivor of sexual violence during the 2017 UGM KKN program committed by his friend. UGM handled the case by concluding that the victim was guilty of participating in sexual violence. The perpetrator was withdrawn from the KKN location, the victim was given a C grade in her KKN course. Another case of violence in Higher Education occurred at Riau University, the Dean of Social and Political Sciences of Riau University was forced to hug and kiss his mentoring students during the thesis guidance process. Lecturers at the Faculty of Teacher Training and

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<sup>1</sup> Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022" (2022) 4:2 J Pembang Huk Indones 170–196.

Education at Sriwijaya University were named as suspects in the sexual harassment of several students. Furthermore, sexual violence between students and students also happened to a student of the English Language Study Program, Faculty of Arts, Universitas Brawijaya, who was reported but the handling of the campus was protracted until the student committed suicide in 2021 at his father's grave. Other harassment was carried out by a Jakarta State University lecturer who often sextexting his mentoring students, to the point of inviting marriage and forcing them to go to the student's boarding house.<sup>2</sup>

Efforts to prevent and handle sexual violence that is often implemented in the Higher Education environment refer to Permendikbudristek Number 30 of 2021 concerning Prevention and Handling of Sexual Violence (PPKS) in the Higher Education Environment. This regulation was present as an initial step of change from the unrest of various circles of society regarding the continued increase in cases of sexual violence in Higher Education. Thus, sexual violence that occurs in Higher Education is no longer seen as a disgrace that must be hidden and not resolved. The existence of this regulation aims to ensure the preservation of citizens' rights to education, through the prevention and handling of sexual violence in the Higher Education environment. In addition, there are other protection efforts for victims of sexual violence, namely with the existence of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

Despite having various laws and regulations. However, until now, women victims of sexual violence still face various obstacles when dealing with the law. The obstacles experienced by women victims of sexual violence in accessing the criminal justice system include survivors not obtaining a number of their rights in the criminal justice system, ranging from the right to information, the right to recovery, the right to be free from stigma, the right to be free from victim blaming statements, the right to restitution, to the right to assistance. All responses and treatments like this are a form of revictimization that occurs

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<sup>2</sup> Laili Nur Anisah, "Problematika Frasa Tanpa Persetujuan Korban dalam Peraturan Menteri Pendidikan Kebudayaan Riset dan Teknologi Nomor 30 Tahun 2021 tentang Pencegahan dan Penanggulangan Kekerasan Seksual di Perguruan Tinggi" (2022) 10:2 DIKTUM J Ilmu Huk 177-202.

in survivors of sexual violence. These unwanted things are often not realized and make victims of sexual violence experience trauma because they become victims twice; they have been abused but are still blamed.

Based on the dynamic background in handling cases of sexual violence in various universities mentioned above, the object of this research is to examine how the procedure for examining women victims of sexual violence in universities so as not to experience revictimization and get all the rights that should be obtained.

## Research Methods

The research method used in this research is normative, with a statute approach and a case approach. The data sources used in this research are primary data and secondary data consisting of primary and secondary legal materials. Then, the data is collected using a literature study (library research), then analyzed in a qualitative descriptive way.

## Result and Discussion

The occurrence of sexual violence in the realm of education in Indonesia, including higher education, directly or indirectly has an impact on the less-than-optimal implementation of the Tridharma of Higher Education so that it can reduce the quality of higher education in Indonesia. This condition has become the concern of the Minister of Education, Culture, Research and Technology (Mendikbud-Ristek) together with the Ministry of Research and Technology took the initiative to issue a regulation, namely Permendikbud-Ristek Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in the Higher Education Environment. This Permendikbud is a continuation of the Draft Law on the Elimination of Sexual Violence which has now been passed into the Sexual Violence Crime Law Number 12 of 2022. The regulation aims as a guideline to regulate the problem of sexual harassment and violence in the educational environment, especially in higher education, which so far cannot be reached by other regulations. The regulation is expected to significantly reduce cases of sexual violence.

### *Fulfillment of the Rights of Victims of Sexual Violence in Higher Education During the Examination Process*

Permendikbudristek Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in the Higher Education Environment regulates the handling, assistance, protection, recovery of victims, and imposition of administrative sanctions for cases of sexual violence that occur in the Higher Education environment.

The victim's right to receive assistance is regulated in Article 11 in the form of counseling assistance, health services, legal assistance, advocacy, and social and spiritual guidance. This means that assistance is provided to victims or witnesses who have status as campus residents based on the consent of the victim or witness, which can also be provided by the victim's parents/guardian/companion if the victim is not able to give consent. The assistance provided is in the form of counseling assistance which is carried out according to the needs of the victim, in this case, the victim has prolonged psychological trauma after sexual violence, and this counseling assistance is carried out for the victim's recovery process. Furthermore, regarding the right to obtain health services, victims of sexual violence receive health services in the form of physical, psychological, and genital examinations, which are carried out to prevent pregnancy and transmission of STI-HIV to victims. Then, victims also have the right to obtain legal aid and advocacy services regarding the cases of sexual violence they experience. Another right of victims is to receive social and spiritual guidance from religious leaders, traditional leaders, parents/guardians, or companions trusted by victims or witnesses.

In addition to the right to receive assistance, victims are also entitled to protection as stipulated in Article 12 paragraph (2) in the form of guaranteed protection of continuing education for students and continuing employment for education personnel, guaranteed protection from physical and non-physical threats from perpetrators or other parties to prevent the recurrence of sexual violence that occurs, guaranteed protection of identity

confidentiality, provision of information regarding protection rights and facilities, protection of victims from criminal charges, and provision of safe houses for victims.<sup>3</sup>

In addition to regulating the rights obtained by victims of sexual violence in Higher Education. Then, Permendikbudristek Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education also regulates the imposition of administrative sanctions, namely in Article 13 and Article 14 which states that the imposition of administrative sanctions is determined by a Decree of the Higher Education Leader based on the recommendation of the Task Force. The imposition of administrative sanctions referred to in Article 13 consists of mild administrative sanctions in the form of a written warning or a written apology statement published in the internal campus or mass media. Moderate administrative sanctions in the form of temporary dismissal from office without obtaining position rights or reducing rights as a student which includes postponement of attending lectures (suspension), revocation of scholarships, or reduction of other rights. Severe administrative sanctions in the form of permanent dismissal as a student or permanent dismissal from positions as education personnel or campus residents.

Other victim rights that must be obtained also include victim recovery, based on Permendikbudristek Number 30 of 2021 Article 20 recovery for victims in the form of medical action, physical therapy, psychological therapy, and social and spiritual guidance. Recovery for victims is carried out based on the victim's consent and does not reduce the victim's rights in the learning process, employment rights, or other rights.

### ***Examination Procedures for Female Victims of Sexual Violence in Higher Education***

Regulations regarding the process of examining victims of sexual violence in higher education are regulated in Article 34 paragraph (2), Article 35, Article 38, and Article 41 of Permendikbudristek Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment, in examining victims of sexual

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<sup>3</sup> Kemendikbudristek, "Pencegahan dan Penanganan Kekerasan Seksual di Perguruan Tinggi" (2021) 5 JdihKemdikbudGoId 6.

violence the PPKS Task Force in Higher Education following the Implementation Guidelines for Permendikbudristek Number 30 of 2021 refers to Supreme Court Regulation No. 3 of 2007 concerning Guidelines for Adjudicating Cases of Women Against the Law so that the examination process can be carried out without blaming the victim and empathizing with the victim, as well as focusing on the incident of sexual violence and the needs of the victim so that during the examination process the victim does not experience revenge. 3 of 2007 concerning Guidelines for Adjudicating Cases of Women Against the Law so that the examination process can be carried out without blaming the victim and empathizing with the victim, and focusing on the incident of sexual violence and the needs of the victim so that during the examination process the victim does not experience revictimization.

#### **Procedures for Examination of Victims of Sexual Violence in Higher Education According to Permendikbudristek Number 30 of 2021 and Guidelines for the Implementation of Permendikbudristek Number 30 of 2021**

Efforts to prevent and handle sexual violence that are often implemented in the Higher Education environment refer to Permendikbudristek Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in the Higher Education Environment. This regulation is present as an initial step of change from the unrest of various circles of society regarding the continued increase in cases of sexual violence in Higher Education. Thus, sexual violence that occurs in Higher Education is no longer seen as a disgrace that must be hidden and not resolved. The existence of this regulation aims to ensure the preservation of citizens' rights to education, through the prevention and handling of sexual violence in the Higher Education environment. In addition, there are other protection efforts for victims of sexual violence, namely with the existence of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

In terms of the interests of victims' rights in the examination process, based on Permendikbudristek Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence (PPKS) in Higher Education Environment Article 34 paragraph (2) states that the PPKS Task Force is authorized to conduct consultations related to Handling



Sexual Violence with related parties by considering the conditions, safety, and comfort of the Victim. Article 35 paragraph (3) of the PPKS Task Force states that the PPKS Task Force code of ethics must guarantee the confidentiality of the identity of parties directly related to the report, ensure the safety of Victims, witnesses, and/or reporters, and maintain the independence and credibility of the Task Force.

Furthermore, the Guidebook for the Implementation of Permendikbudristek Number 30 of 2021 for the Prevention and Handling of Sexual Violence (PPKS) in the Higher Education Environment states that the PPKS Task Force examination hearing process is carried out without blaming the Victim, by empathizing and focusing on the incident of sexual violence and the needs of the Victim. In the examination process, the PPKS Task Force refers to Supreme Court Regulation No. 3 of 2007 concerning Guidelines for Adjudicating Cases of Women Against the Law.

#### **Procedures for Examination of Women in Conflict with the Law According to PERMA No. 3 of 2017**

Sexual harassment behavior is a despicable act that can be measured by a violation of the rules or norms rooted in socio-cultural values as a system of behavior and guidelines for the actions of citizens, which can concern religious, moral, and legal norms. Not only related to criminal law, the occurrence of sexual violence also violates the human rights of victims. The Indonesian legal system guarantees the human rights of each of its people, that every person has the right to live and the right to defend their life and life. In addition, it is also explained that every child has the right to survival, growth, and development, and the right to protection from violence and discrimination. A child should receive protection of dignity in the surrounding environment so that he or she can grow and develop both physically and psychologically.<sup>4</sup>

Based on Article 5 of Supreme Court Regulation No. 3 of 2017, several things should not be done by Judges in conducting examinations of women victims of sexual violence both in

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<sup>4</sup> Rosania Paradias & Eko Soponyono, "Perlindungan Hukum terhadap Korban Pelecehan Seksual" (2022) 4:1 J Pembang Huk Indones 61-72.



the public domain, Higher Education, and domestic violence. In conducting examinations, Judges must not show attitudes or make statements that demean or intimidate Women Against the Law and must not issue statements or views that contain gender stereotypes. Judges must not justify discrimination against women by using customary rules and traditional culture or using gender-biased expert interpretations. In addition, judges must not question or consider the victim's sexual experience as a basis for acquitting or mitigating the perpetrator's sentence.

Based on court decisions that use the terminology "For the Sake of Justice Based on God Almighty" must be able to transcend the limits of legal positivism and be able to open up to reason which has been an empty space in the process of determining law in court as an institution for justice seekers. Thus, often court decisions are felt not to be about the aspects of real justice when viewed from the perspective of reason, even what is seen is contrary to reason which can continue at the lowest point contrary to ethics and morals.<sup>5</sup>

There are several things that judges must do in examining women victims of sexual violence both in the public sphere, universities, and domestic violence by Articles 4, 6, 7, 8, and 9 of Supreme Court Regulation No. 3 of 2017. What must be done by Judge in examining the case is that the Judge must consider gender equality and non-discrimination, by identifying the facts that exist in the trial including the psychological impact experienced by the victim, the physical and psychological helplessness of the victim, and the history of violence from the perpetrator against the victim. In addition, in adjudicating Women Against the Law cases, Judges must also explore legal values and a sense of justice that lives in the community to ensure gender equality and equal protection for victims of sexual violence. Judges must consider the application of international conventions and treaties on gender equality that have been ratified.

In addition to the above, during the trial examination, the judge must prevent and reprimand parties who behave or make statements that demean, blame, or even intimidate

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<sup>5</sup> Vivi Ariyanti, "Equity Sebagai Dasar Pertimbangan Putusan Hakim Dalam Menyelesaikan Perkara Pidana Perempuan" (2020) 5:1 Refleks HukJ Ilmu Huk 63–84.

victims, and use the sexual experience of victims of sexual violence. Judges must ask women who are victims of sexual violence about the losses and impacts they have experienced, as well as their recovery needs. This includes informing the victim of her right to have her case consolidated by Article 98 of the Criminal Procedure Code and/or to file an ordinary lawsuit or request for restitution.

When during the examination process, Women Against the Law experience physical or psychological obstacles so that victims need assistance, the judge can suggest to women victims of sexual violence to present a companion and grant the victim's request to present a companion.

Based on the results of interviews conducted by the author, it states that in the examination process, the PPKS Task Force of Tidar University still has several obstacles with all the adjustments and dynamics that exist in the campus environment, but always tries to form an ideal atmosphere for victims and continue to build victims' trust in the PPKS Task Force by not discriminating against victims and not giving questions or statements that demean or intimidate victims.

### **Process of Examination of Women and Children in Handling Criminal Cases according to Attorney General's Guidelines no. 1 of 2021**

Legal protection for women who are expected by victims is protection that can provide a sense of justice, and directly touches the woman or can be felt (concrete) and not just a form of protection that is only so that legal instruments can be enforced (abstract) as a victim of the crime experienced. Theoretically, what is meant by concrete legal protection according to Barda Nawawi is; that the application of various formulations of criminal acts in legislation is an indirect or abstract form of legal protection, while the provision of compensation and the return of rights owned by victims is directly a form of concrete legal protection.<sup>6</sup> So with this form of protection, legal protection for women will be fulfilled.

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<sup>6</sup> Akhmad Hidayat, Alfian Afandi & Rahayu Dianasari, "Stigma Negatif Perempuan Korban Kejahatan Menjadi Hambatan Dalam Pengusutan Terhadap Perbuatan Kekerasan Sebagai Bentuk Pemberian Perlindungan Hukum" (2021) 2:2 Rechtenstudent 234–241.

In addition to the existence of a problem from the form of protection that refers to existing legal instruments and law enforcement established to protect women, another problem arises when the complaint process becomes a very difficult thing for victims to do. This becomes difficult to do because women victims of sexual violence will feel ashamed to admit the actions that have been received by the woman and become a disgrace to her. Thus, criminal law enforcement as a form of protection for victims cannot be carried out optimally.

In conducting examinations of women victims of sexual violence, whether in the public domain, universities, or domestic violence, the Public Prosecutor must not intimidate and/or justify mistakes, ways of life, and also decency including sexual experience with questions that are tricky and cause discrimination based on sex or gender that is not related to the case. In addition, the Public Prosecutor must not make irrelevant assumptions based on socioeconomic background or other conditions that are degrading and detrimental to the victim's existence as a human being.

In addition to the prohibitions that the Public Prosecutor should not do in conducting an examination, there are things that the Public Prosecutor should do. When the Public Prosecutor conducts an examination of women victims of sexual violence both in the public domain, Higher Education, and domestic violence, the examination must be carried out while still upholding human rights and the honor and dignity of the victim. In addition, in examining victims, the Public Prosecutor must first provide information about the judicial process and also the rights of victims including the right to apply for compensation, recompense, and/or compensation, as well as the procedures for applying for these rights.

## Conclusion

Sexual violence is any act that degrades, humiliates, harasses, or attacks a person's body and/or reproductive function, which results in and/or can result in psychological or physical disorders, including those that interfere with a person's reproductive health and eliminate the opportunity to carry out higher education safely and optimally. Sexual violence itself is regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, with

the threat of 12 years imprisonment and/or a maximum fine of Rp. 300,000,000 (three hundred million rupiah). And because sexual violence also often occurs among students, the Ministry of Research and Technology took the initiative to issue a regulation, namely Permendikbud-Ristek Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment, in the Permendikbud-Ristek there are arrangements regarding the establishment of a special Task Force in Higher Education to prevent and handle cases of Sexual Violence in Higher Education. Based on the Guidelines for the Implementation of Permendikbudristek Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in the Higher Education Environment in the examination process, the PPKS Task Force must refer to PERMA No. 3 of 2017. In addition, there are other regulations that can serve as examination guidelines in cases of sexual violence in the Higher Education environment.

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