

CHAPTER I

INTRODUCTION

A. Background

Aristotle's proposition of *zoon politikon* highlights that every human being has to be social and cannot live on their own.¹ Nobody can survive without socializing with other people. However, living together in a society has exposed its members to crime problems. As highlighted by Durkheim crime is an inevitable and normal aspect of social life and that deviance would still exist even in a 'society of saints' populated by 'perfect' individuals.² Since the existence of crime causes a significant threat to society, therefore various methods have been established to control the crime.

As time goes by, crimes increase and become more intense and violent. Nowadays, people have concerns about sexual violence. Sexual assault has surged dramatically in recent years. Primarily, sexual violence harms women and children, although men are also affected by sexual violence. However, women and children are highly vulnerable people. Based on Section 5 point 3 of Law Number 39 of 1999 Concerning

¹ Lazuardini, I. M.. "Zoon Politicon Syndrome in Modern Society as Represented in Akeelah and The Bee", *Journal of Literature, Linguistics and Cultural Studies*, Vol 2 No 1 (2013), p. 1-10.

² Adebayo, A. A. "Reintegration of Returning Citizens in the Absence of Formal Transition Programs: Experiences from Ethiopia", *International Journal of Applied Sociology*, Vol 60 No 4 (2021), p. 71-75.

Human Rights, and Human Rights Reference, pregnant women, children, and women are vulnerable groups that must be protected.³

According to Pope Yohanes Paulis II, Sexual violence against women and children in crime studies is called *Graviora Delicta*. The definition of *Graviora Delicta* is “a deviance of a grave nature against divine natural positive, ecclesiastical law which offends”. It can be described that *Graviora Delicta* means sexual harassment is the most severe crime. This reason is that sexual violence is very dangerous. However, much sexual violence against women and children occurs.⁴

According to National Commission on Violence against Women report, the cases of sexual violence from January to October 2021 increased, there were 4,500 cases. Compared to 2020, the number increased two times. Based on data input through the SIMFONI PPA website (Online Information System for Women and Children Protection/*Sistem Informasi Online Perlindungan Perempuan dan Anak*), the number of violence cases in 2022 reached 23,132, with 3,789 male victims and 21.067 female victims.⁵

Sexual harassment may occur anytime and anywhere, whether in public spaces such as schools, public transportation, work environments, or private spaces. Victims of sexual harassment are also various. Anyone

³ Khalid, K., Hartiwingsih, H., & Purwadi, H. “Strengthening Of Institutions And Protections Enforcement Of Rights Of Women And Children In Constitution”, *International Journal of Business, Economics and Law*, Vol 15 No 5 (2018), p. 1-9

⁴ Jovani, A, “Perempuan dan Kebijakan Publik: Urgensi RUU Tindak Pidana Kekerasan Seksual”, *Jurnal Inada*, Vol 4 No 2 (2021), p.1-13.

⁵ SIMFONI-PPA, 2021, *Data Kasus Kekerasan*, retrieved from <https://kekerasan.kemenpppa.go.id/ringkasan>. (Accessed on 13 March 2022, at 09.47 a.m).

can be a victim, whether women, men, transgender, minors, teenagers, or adults. Even women who wear hijab, according to Islamic teachings can also be the target of sexual harassment offenders.⁶

Sexual harassment can cause the feeling of offended, humiliated and/or intimidated. Unwelcome touching, hugging or kissing are several examples of sexual harassment that often occur in society. Furthermore, there is sexual harassment that does not involve any physical contact. The harassment can be in the form of obscene words/statements or indirect sexual acts. This action can be called Non-Physical Sexual Harassment.⁷

One example of non-physical sexual harassment behavior that has existed for a long time is catcalling. Catcalling is a form of communication between perpetrator and victim. This perpetrator can conduct this deed using non-verbal or verbal expressions. Non-verbal expressions often include gazes as well as physical gestures as a method of assessing a woman's physical appearance. Catcalling is often expressed verbally through wolf-whistles or comments that evaluate a woman's appearance.⁸ This action can be categorized as non-physical sexual harassment.⁹ Society still considers catcalling activities as normal things with the aim of providing jokes. This situation happens because there is still a lack of

⁶ Ruby, T. F., "Listening to the Voices of Hijab." *In Women's Studies International Forum* Vol 29 No 1 (2006), p.54-66.

⁷ Erdianti, R. N., Sumartini, S., & Anggraeny, I., "Catcalling From the Perspective of Criminal Law in Indonesia", *KnE Social Sciences*, Vol 2022 (2022), p. 422-428.

⁸ O'Leary, C, 2016, "Catcalling as a "Double Edged Sword": Midwestern Women, Their Experiences, and the Implications of Men's Catcalling Behaviors". (Communication Science, Thesis and Dissertations Illinois State University), p. 32.

⁹ Hidayat A. & Setyanto Y., "Fenomena Catcalling Sebagai Bentuk Pelecehan Seksual Secara Verbal Terhadap Perempuan Di Jakarta," *Koneksi* Vol 3 No 23 (2019), p. 489-490.

education among the public about the dangers of catcalling treatment for the victim's condition.

In the era of digital technology, offenders can commit sexual harassment through the internet. They utilize social media platforms to commit the crime, including sexual harassment without physical contact with the victim. Online-based sexual violence also affects the victim to feel uncomfortable and insecure.¹⁰ Quoted from Fairbairn, in the context of sexual violence and social media, it is essential to think about sexual violence on a continuum that involves emotional, psychological, and verbal violence as well as physical violence.¹¹ Unwanted sexual behavior on the internet can happen publicly, privately, or both ways simultaneously.

In Indonesia, there have been several cases of non-physical sexual harassment. For example, the case of Baiq Nuril, who received harassment from her boss.¹² Then, there was harassment by recording without permission in the victim's private area. Besides, many victims report feeling uncomfortable with catcalling which attacked them. Based on a survey conducted by Rifka Annisa with Students from Atma Jaya University in 2021, 85.3% or 87 of 102 respondents aged 15 – 45 years have experienced catcalling. The majority of the victims of catcalling are

¹⁰ Yuniantari, D., & Rusdiana, E, "Kajian Yuridis Pelecehan Seksual Terhadap Anak Melalui Daring (Dalam Jaringan)", *NOVUM: JURNAL HUKUM*, Vol 8 No 3 (2021), p. 171-180.

¹¹ Fairbairn, J., Dawson, M.F., & Bivens, R, 2013, *Sexual Violence and Social Media*. Ottawa: Crime Prevention. p. 35.

¹² Ruwaida Noor, Ida & Irwan M Hidayana, 2012, *Pencegahan dan Penanganan Pelecehan Seksual Ditempat Kerja*, Jakarta, Apindo

women. Mostly catcalling occurs on the highway, at schools and shopping/market places.

Besides the sexual harassment committed in the real world, there is also sexual harassment carried out through cyberspace. Sexual harassment in the online realm is known as Online Gender-based Violence (OGBV). As Reported by SAFEnet, around 78% of victims have been harassed from two to seven platform communication technologies. There are three online platforms that are the most widely used such as Facebook, WhatsApp, and Instagram. The harassment happens simultaneously in a short period of one month of Work from Home (WFH). SAFEnet, the Digital At-Risks (DARK) Subdivision, said that there had been an increase in case complaints related to the spread of non-consensual intimate content by almost 400%. However, most of the OGBV cases were forgotten by victims or other parties; only 11% of women and 5% of men documented the incident. The group that is very vulnerable to experiencing OGBV is the group of women aged 15 to 20 years (adolescents/teenagers).¹³

The enactment of Law Number 12 of 2022 on the Sexual Violence Crime shows the serious attention of the Indonesia government on the increasing cases of sexual violence in Indonesia. This legal instrument should play a significant role in addressing sexual harassment issues both physical and non-physical sexual harassment. Under this Act, the non-physical sexual harassment is classified as a complaint-based offense

¹³ SAFEnet, *Memahami Dan Menyikapi Kekerasan Berbasis Gender Online: Sebuah Panduan*, retrieved from <https://id.safenet.or.id/wp-content/uploads/2019/11/Panduan-KBGO-v2.pdf>, (Accessed on 4 October 2021 at 9.00 a.m).

(klacht delicten) as pointed out in Section 7 point (1). The prosecution of such an offense requires a complaint from the victim of crime. The Act also governs the payment of restitution to the victims. In regard to these, there is an opportunity to exercise a restorative justice approach in settling the case.

B. Research Problem

The problem has been formulated in the following research questions:

1. Does the Sexual Violence Act 2022 provide sufficient protection to the victim of non-physical sexual harassment?
2. How to apply restorative justice approach in handling cases of non-physical sexual harassment?

C. Objective of Research

1. To study whether the Sexual Violence Act has provided sufficient protection to the victim of non-physical sexual harassment.
2. To study whether restorative justice can be applied in handling cases of non-physical sexual harassment.

D. Benefits of Research

1. Theoretical Benefits
 - a. By conducting this research, it is hoped that this research can provide knowledge for all parties regarding sufficient protection to the victim of Non-physical sexual harassment in Indonesia.

b. This research is expected to be a reference for further study and provide valuable knowledge for the developments in the field of law, especially criminal law.

2. Practical Benefits

The research would recommend to the law makers and can be a consideration and reference for forming a criminal law policy and increasing legal certainty for the crime of non-physical sexual harassment.

E. Research Method

1. Type of Research

The type of research is normative legal research that uses secondary data for answering the research questions.

2. Type of Data and Legal Resources

The data used in this research is secondary data in the form of Legal material that consists of primary, secondary and tertiary legal materials.

a. Primary legal materials used in this research consist of:

1) Penal Code;

2) Law Number 39 of 1999 on Human Rights;

3) Law Number 48 of 2009 on Judicial Power;

4) Law Number 11 of 2012 on Juvenile Criminal Justice System;

5) Law Number 12 of 2022 on Sexual Violence;

- 6) Regulation of the Prosecutor of the Republic of Indonesia Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice;
- 7) Police Regulation Number 8 of 2021 on the Handling of Crimes Based on Restorative Justice;
- 8) Regulation of Religious Affairs Minister Number 73 of 2022 on the Handling and Prevention of Sexual Violence in Education Institutions;
- 9) Regulation of Minister of Education, Culture, Research and Technology Number 30 of 2021.

b. Secondary legal materials used in this research include:

- 1) Books;
- 2) Scientific journals;

c. Tertiary legal materials used in this research include:

- 1) Legal Dictionaries;
- 2) Encyclopedias.

3. Method of Collecting Data

The data were collected through library study. The author has collected various relevant legal materials and read them carefully to build a good understanding on the subject matter.

4. Method of Data Analysis

The data were analyzed systematically through a qualitative descriptive approach. The analysis was based on the constitution, laws, and other theories related to the problem of Non-physical Sexual Harassment in Indonesia.

F. Systematic of Thesis

CHAPTER I is an introduction that consists of research background, research problems, objective of research, and research method.

CHAPTER II is an overview on non-physical sexual harassment. In this chapter, the writer describes the concept of non-physical sexual harassment and the cases of non-physical sexual harassment.

CHAPTER III discusses restorative justice that describes its definition and history, and the adoption of restorative justice in Indonesia.

CHAPTER IV is finding and analysis. The writer elaborates the legal protection of the victim of non-physical sexual harassment and the implementation of restorative justice in settling case of non-physical sexual harassment.

CHAPTER V is conclusion.