



LEGAL POLITICAL REVIEW OF THE PROTECTION OF SEXUAL VIOLENCE VICTIMS IN THE PERSPECTIVE OF LAW NUMBER 12 OF 2022 CONCERNING SEXUAL VIOLENCE CRIMES

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Abstract

Recognition of Human Rights (HR) remains a complex issue in society, particularly concerning preventive measures and protection for women in Indonesia, especially in the context of sexual violence. Despite governmental efforts to enact legislation to protect women, statistics show a dramatic increase in cases of sexual violence. One of the main obstacles is the focus on punishing perpetrators rather than prevention. To address this issue, the government ratified Law Number 12 of 2022 concerning Sexual Violence Crimes. This article discusses the process of forming this law from the perspective of legal politics, highlighting the importance of public participation and transparency in the formation of legislation that is responsive to the protection of victims of sexual violence. Law Number 12 of 2022 concerning Sexual Violence Crimes demonstrates the government's efforts to consider the public interest and involve the community in the legislative process, as well as provide transparency in the provision of related information.

Keywords: Sexual Violence, Legal Protection, Law Number 12 of 2022.

A. Introduction

The recognition of Human Rights remains a vague phenomenon in societal life to this day. Various conflicts regarding Human Rights continue to be debated among the public, such as preventive efforts against crimes and the protection of women in Indonesia. One of the crimes against women

that often occurs is sexual violence. Sexual violence is no longer an individual problem but has become a national issue.¹

The government has enacted legislation as a form of protection for women. However, field facts show otherwise. Based on the Annual Report of the National Commission on Violence Against Women in 2020, there

¹ VR Multiwijaya, et al, "Criminal Law Policies for Perpetrators of Sexual Violence Against Women"

Hukum Pidana dan Pembangunan Hukum, Vol. 4 No. 2, 2022, p. 26.



was an increase from 406,178 cases in 2019 to 432,471, a 6% surge.² During the period of 2008-2019, violence against women increased by 792%, meaning violence against women in Indonesia increased almost 8 times in 12 years.³

The steps taken by the government to fulfill protection for women have been undertaken, but problems are still encountered in practice according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence (EVDV Law) and Law Number 1 of 1946 (Penal Code). The biggest problem faced in prevention regulations is that the efforts made are punitive rather than preventive. Many experts argue that the main problem of the ineffectiveness of existing laws and

regulations is that they only focus on punishing victims, not prioritizing protection for women.

Building on these considerations, the government finally enacted Law Number 12 of 2022 concerning Sexual Violence Crimes (SVCA Law) as a concrete step towards providing protection for women. The law-making process cannot be separated from the dynamics of legal politics.⁴ The legal political perspective underlying the formation of laws can influence whether the law will be conservative or responsive to society.

Legal politics is a policy in determining or rejecting laws to achieve the goals of the state. Thus, the law is considered a means used to achieve the goals of the state.⁵

² Komnas Perempuan, Annual Notes on Violence Against Women in 2020, p. 1, https://drive.google.com/file/d/1Zn_brQmp6BLN5wbHfCdbh-o-3EngmAjJ/view?pli=1 accessed on Thursday, February 22, 2024.

³ *Ibid*, p. 7.

⁴ Ismaidar dan Rahmi M.A, "Legal Politics in the Formation of Legislation", *Innovative: Journal Of Social Science Research*, Vol. 3 No. 6, 2023, p. 12

⁵ Rai Iqsandi, "The Influence of Politics on Law Enforcement Processes in Indonesia", *Journal of Criminology and Justice*, Vol. 2 No. 1, Oktober 2022, p. 2.



According to Moh. Mahfud MD, legal politics is the official legal policy regarding the law to be enforced, either by making a new law or amending existing laws in order to achieve the goals of the state.⁶

Protection of female victims becomes the main focus of the SVCA Law as a form of protection for women, and the influence of legal politics in the enactment process triggers researchers' interest in discussing the effectiveness of the law.

B. Problem Statement

Based on the outlined background, the research problem formulation is:

How is the legal political review of the protection of sexual violence victims in the perspective of Law Number 12 of 2022 concerning Sexual Violence Crimes?

C. Research Objectives

The objective of this research:

To know the legal political review of the protection of sexual violence victims in the perspective of Law Number 12 of 2022 concerning Sexual Violence Crimes.

D. Research Methods

The research method employed by the author is normative juridical research, which in this study is a legal research method utilizing literature as a source. This study focuses on the government's efforts to protect women from sexual violence. Legal sources used include books, academic articles, and legislation related to the protection against sexual violence.

E. Research Results and Discussion

The presence of Law Number 12 of 2022 concerning Sexual Violence Crimes (SVCA Law) can be seen as one of the efforts to achieve the goals of the state. As stated in

⁶ Moh. Mahfud MD, *Legal Politics in Indonesia*, Raja Grafindo, Jakarta, 2014, p. 1.



the fourth paragraph of the 1945 Constitution that one of the goals of the Indonesian nation is to protect all Indonesian citizens and the entire Indonesian bloodline.⁷ In line with the Academic Draft of the SVCA Bill, the purpose of the SVCA Law is to provide legal protection to victims whose rights have been violated by other citizens.⁸ As expressed by Philipus M Hadjon's perspective, legal protection is a step to ensure protection of the dignity and human rights of individuals, as well as to recognize the law against arbitrary actions or as protection against something provided by regulations.⁹

The main basis for the formation of the SVCA Law is due to a significant increase in

the number of sexual violence victims in Indonesia, yet there is no explicit legal framework for addressing such crimes.¹⁰ Several legislations enacted by the government have not deterred perpetrators,¹¹ and have not addressed the handling of sexual violence victims. These regulations tend to focus more on punishment rather than prevention.

One of the legislations governing sexual violence is Law Number 1 of 1946 (Penal Code). Articles 289 to 296 of the Penal Code indicate that these regulations only serve as punitive measures against perpetrators of sexual violence, without showing any preventive efforts for victims.¹²

⁷ Nadhila C. N dan Waluyo, "Effectiveness of the Sexual Violence Criminal Law in Indonesia", *Sovereignty : Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 1, No. 1, 2022, p. 58.

⁸ Academic Draft of the Sexual Violence Criminal Act, p. 16, <https://berkas.dpr.go.id/akd/dokumen/BALEG-RJ-20211228-103440-3347.pdf> accessed on Saturday, February 24, 2024.

⁹ Desi Pustpita Sar, et al, "Legal Protection for Sexual Harassment Victims from the Perspective of Law Number 12 of 2022 Concerning Sexual Violence

Criminal Acts", *Al-Qisth Law Review*, Vol., 7 No. 1, 2023, p. 76.

¹⁰ A.S. Ratu Aryani, "Analysis of the Polemics of the Ratification of the Sexual Violence Criminal Law", *Najwa: Jurnal Muslimah dan Studi Gender*, Vol. 1 No. 1, Januari 2021, p. 2.

¹¹ Esty Alfanada, et al, "The Urgency of the Sexual Violence Criminal Law (TPKS) in Handling Sexual Violence", *Jurisdiche: Jurnal Penelitian Hukum*, Vol. 1 No. 1, 2023, p. 17.

¹² Kitab Undang-Undang Hukum Pidana.



This raises the question of whether the government has demonstrated preventive efforts for sexual violence victims, which can be answered by examining the content of the SVCA Law.

Sexual Violence Crimes according to Article 1 paragraph (1) of the SVCA Law are defined as "any act that meets the elements of a criminal act regulated in this Law and other sexual violence acts as regulated in the Law as long as they are determined in this Law."¹³

The types of sexual violence crimes according to Article 4 paragraph (1) of the SVCA Law are: 1) Non-physical sexual harassment, such as statements, body movements, or activities directed towards sexual matters, 2) Physical sexual harassment, involving physical contact with the victim, 3) Contraceptive coercion,

causing the victim to temporarily lose reproductive function, 4) Sterilization coercion, causing the victim to permanently lose reproductive function, 5) Forced marriage, 6) Sexual torture, which can involve intimidation to obtain information, and humiliating dignity through discrimination. 7) Sexual exploitation involving abuse of power or authority by making threats of violence, 8) Sexual slavery, 9) Electronic-based sexual violence in the form of sexual violence committed without permission to record or capture sexually explicit images.¹⁴

Sexual violence can have various negative impacts on its victims, both physiological, emotional, and psychological. Physiological impacts may include physical injuries, sleep and eating disorders,

¹³ Refer to Article 1 of Law Number 12 of 2022 concerning Sexual Violence Criminal Acts.

¹⁴ Yusuf Saefudin, et al, "Sexual Violence Criminal Acts and Legal Protection for Victims of Sexual

Violence in Indonesia", *Kosmik Hukum*, Vol. 23, No. 1, 2023, p. 29-30.



pregnancy, and contracting sexually transmitted diseases. Emotional impacts may include feelings of guilt, shame, or self-blame. Psychological impacts may include posttraumatic stress disorder (PTSD), depression, anxiety, and others.¹⁵ Sexual violence is a form of discrimination against women that involves sexual invitations or requests and verbal or physical contact of a sexual nature.¹⁶ The existence of the SVCA Law is part of efforts to eliminate discrimination against women.¹⁷

The comprehensive coverage of various types of sexual violence in the SVCA Law indicates the government's comprehensive preventive efforts, addressing both verbal and non-verbal dimensions across real and virtual domains. In addition to

the types of sexual violence, the SVCA Law also regulates the rights of sexual violence victims.

Articles 67 to 70 of the SVCA Law explain the rights of victims, which include:¹⁸

1. Right to Treatment

The right to treatment as regulated by the SVCA Law includes the right to information throughout the treatment process, protection, and recovery, the right to obtain documents regarding the treatment results, the right to legal services, the right to psychological reinforcement, the right to health services including examinations, medical procedures, and treatments, the right to services and facilities according to the special needs

¹⁵ E.M. Sesca and Hamidah, "Posttraumatic Growth in Early Adult Female Victims of Sexual Violence", *Journal of Clinical Psychology and Mental Health*, Vol. 7 pp. 1-13, 2018, p. 2.

¹⁶ Yusuf Saefudin, et al. *op. Cit.* h. 25.

¹⁷ Academic Draft of the Sexual Violence Criminal Act, p. 19,

<https://berkas.dpr.go.id/akd/dokumen/BALEG-RJ-20211228-103440-3347.pdf> accessed on Saturday, Februari 24, 2024.

¹⁸ Refer to Articles 67 through 70 of Law Number 12 of 2022 concerning Sexual Violence Criminal Acts.



of the victim, and the right to removal of sexual content for cases of sexual violence through electronic media.

2. Right to Protection

This right to protection includes the provision of protection rights and facilities, access to information on the provision of protection, protection from threats or violence by perpetrators and other parties as well as repeated violence, protection of identity confidentiality, protection from attitudes and behaviors of law enforcement officials that demean victims, protection from loss of employment, job transfers, education, or political access, and protection of victims and/or reporters from criminal charges for reported sexual violence crimes.

3. Right to Recovery

The right to recovery under the SVCA Law includes medical rehabilitation, mental and social rehabilitation, social empowerment, restitution and/or compensation, and social reintegration. In addition, the right to recovery for victims also includes recovery before and during the judicial process, as well as recovery after the judicial process.

The formation process of the SVCA Law did not proceed as smoothly as imagined. The creation of legislation requires legal politics, which involves legal development concerning the creation and amendment of laws to meet the needs.¹⁹ Legal politics is also defined as a state policy authorized to address existing issues in

¹⁹ Moh. Mahfud, *Legal Politics in Indonesia, 7th ed.*, 2017, Jakarta, Rajawali Pers. 2017



society by forming laws through state bodies and powers to achieve state goals.²⁰ Daniel S. Lev states that political power has a significant impact on the dynamics of existing legal processes. The presence or legitimacy as a result of political processes depends greatly on the political stability at hand. Currently, politics in Indonesia often appears to neglect legal values, reflected in the process of formulating the SVCA Bill.²¹

Numerous polemics accompanied the formulation and enactment process of the SVCA Bill. Before transforming into the SVCA Bill, the document was known as the Draft Law on the Elimination of Sexual Violence. The SVCA Law was first initiated by the National Commission on Violence

Against Women in 2012, and the drafting of the bill was conducted in 2014 by the National Commission on Violence Against Women, LBH Apik Jakarta, and the Forum for Service Procurement (FPL).²² In 2016, the political configuration in the formation of the SVCA Bill began. The National Commission on Violence Against Women and FPL submitted the academic draft of the SVCA Bill to the Chairperson of the DPD RI Commission III and members of the DPR from various factions. At that time, the National Commission on Violence Against Women and FPL were promised that the bill would be included in the National Legislation Program Priority for that year.²³

²⁰ Islamiyati and Dewi Hendrawati, "Analysis of Legal Politics and Its Implementation", *Law, Development & Justice review*, Vol. 2 No. (2019), Mei 2019, p. 107.

²¹ Iskandar, et al, "Legal Politics in the Formation of the Draft Law on the Elimination of Sexual Violence from the Perspective of Islamic Law", *Asy-Syari'ah*, Vol. 23, No. 1, Juni 2021, p. 162.

²² S. A. Iskandar, "UU TPKS: Upaya Negara Hukum Yang Membahagiakan Rakyatnya", *Souvereignty: Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 2 No. 3, 2023, p. 285.

²³ A.S. Ratu Aryani, *Op. Cit.* p. 15-16.



Discussion on the SVCA Bill continued throughout 2017-2019, but the debates still revolved around the draft law and the definition of sexual violence, without progressing to substantive discussions on the SVCA Bill, and the discussions remained unresolved until the end of the 2014-2019 government term.²⁴ Some factions argued that the SVCA Bill did not incorporate Pancasila values and religious norms. The contents of the SVCA Bill were seen to reflect Western paradigms, especially feminism, thus considered to have a liberal perspective and support sexual freedom and LGBT.²⁵

Until 2020, the public awaited the commitment of the DPR and the Government regarding legal provisions on the Elimination of Sexual Violence. However, in March

2020, the DPR removed the SVCA Bill from the National Legislation Program Priority because the Criminal Code Bill (RKUHP) was prioritized over the SVCA Bill. The National Commission on Violence Against Women viewed this as indicating that the legislative body had not prioritized the formation of legal provisions as a preventive measure against sexual violence crimes. Finally, in 2021, the SVCA Bill was reintroduced into the Priority National Legislation Program,²⁶ and was enacted on April 12, 2022.

Conflicts in the discussion of the SVCA Bill arose due to political dynamics among factions. The debates during the process of drafting the SVCA Bill reflect the political interaction between legislative and

²⁴ Girlie Lipsky Aneira Ginting and Maidina Rahmawati, *The (Long) Journey Awaiting the Sexual Violence Elimination Bill: How It Progressed and What Should Be Encouraged in the PKS Bill*, Jakarta,

Institute for Criminal Justice Reform, South Jakarta, 2022, p. 14.

²⁵ *Ibid.* p.15.

²⁶ A.S. Ratu Aryani, *Op. Cit.* p. 16-17.



executive bodies.²⁷ Mahfud MD stated that the presence of political configurations would determine the character of a legal product, determining whether it would be responsive or conservative. A democratic political configuration would produce responsive legal products, while an authoritarian political configuration would produce conservative legal products.²⁸

The main requirement to achieve responsive legal products is to open access to the public to participate in every stage of the legislative process. Public participation in lawmaking is a form of implementation of the principle of openness.²⁹ Responsive law not only focuses on procedural justice but also

has its own orientation towards justice by considering public interests.³⁰ The public plays a crucial role in shaping laws related to sensitive issues, such as sexual violence.³¹

By incorporating public aspirations into legislation, it can encourage a tendency for the public to comply with and adhere to existing regulations, both out of fear of sanctions and an awareness of the benefits of the law itself.³² The nature of responsive law is to perform its function from a consumer perspective, meaning the law functions as a fulfillment of and for the benefit of society.³³ The accommodating nature of responsive law demonstrates a commitment to meeting social expectations.³⁴

²⁷ *Ibid.*

²⁸ Idul Rishan, *Law & Constitutional Politics*, FH UII Press, Yogyakarta, 2020, p. 11-12.

²⁹ J. Arkana and S. U. Firdaus, "Legal Politics of Community Participation in Drafting Legislation in Indonesia", *Souvereignty : Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 1 No. 3, 2022, p. 526.

³⁰ *Ibid.* p. 527.

³¹ Siti Zulaika, et al, "A Study of Legal Politics Regarding Community Participation in the Legislative

Process: A Case Study of the Draft Law on the Elimination of Sexual Violence", *Triwikarma: Jurnal Ilmu Sosial*, Vol. 1 No. 12, 2023, p. 12.

³² Kendry Tan, "Legal Politics in the Formation of Responsive Laws in Achieving the Goals of the Indonesian State", *Jurnal Meta-Yuridis*, Vol. 5 No. 1, Maret 2022, p. 65.

³³ *Ibid.* p. 64.

³⁴ Dian Rizki, et al, "Application of Responsive Law in the Formation of Laws in Indonesia", *Suloh Jurnal*



An analysis of the SVCA Law from a legal political perspective indicates that the SVCA Law falls into the category of responsive law. This can be seen from the participation of the public in the drafting process to the enactment of the law. The implementation of the SVCA Law is also considered not to involve the interests of any particular group, as the law exists purely as a preventive measure by the government to protect its citizens. The transparency demonstrated by the government is evident in the absence of restrictions on accessing information related to the law. Various layers of society can highlight developments and relevant information. This is evidenced by the roles played by various community organizations, as well as research conducted by academic institutions focusing on the law.

F. Closing/Conclusion

From the elaboration provided, it can be concluded that Law Number 12 of 2022 concerning Sexual Violence Crimes is a responsive policy that focuses on public interests and transparency in providing information. This illustrates the importance of public participation and transparency in the legislative process focusing on the protection of sexual violence victims. In the context of Law Number 12 of 2022 concerning Sexual Violence Crimes (SVCA Law), it is important to understand the role of legal politics in its formation. The political dynamics among factions and public participation play a significant role in the process of forming this law.

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