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Sexual Violence in Higher Education, Policies in Indonesia and India

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Abstract

The phenomenon of sexual violence in college is a serious concern of the Ministry of Education and Culture, and in order to prevent and handle the occurrence of sexual violence in college, the Minister of Education and Culture Regulation Number 30 Year 2021 concerning Prevention and Handling of Sexual Violence in Higher Education is issued which was promulgated on September 30, 2021. The enactment of Permendikbud 30/2021 raises pros and cons in the community such as the enactment of provisions regarding "sexual consent" or "without the consent of the victim" as stated in Article 5 that for several acts that are included the category of harassment if it is carried out with the consent of the victim then it can be justified or not harassment, for example the act of spreading images or photos of victims that have sexual nuances. The Prevention of Sexual Harassment Act came into force in India after what is known as the Nirbhaya case. It makes it compulsory for all higher education institutions to have an internal complaints committee (ICC) to address abuse on campus. But nearly, a report by the Ministry of Education found only 95 out of 188 institutions had established committees, and those that were in place were considered ineffectual by students. This study aims to determine, identify and analyze the position of the Minister of Education and Culture Regulation Number 30 Year 2021 in the material criminal law system in Indonesia; to find out and describe how the implementation of Permendikbud 30 / 2021, especially with regard to aspects of handling sexual violence in universities. Normative juridical research using the approach to legislation and the implementation of the Minister of Education and Culture Regulation must begin with strengthening higher education governance such as the establishment of a task force for the prevention and handling of sexual violence, preparation of guidelines for the prevention and treatment of sexual violence, provision of reporting services, counseling for victims, socialization in college environment.

Keywords: Human Rights, Enviroment, Exploitation

Introduction

Sexual harassment is basically a reality in today's society. Violence against women is a lot and often occurs everywhere, as well as sexual harassment, especially

rape. The number of cases of violence against women throughout 2020 was 299,911 cases, consisting of 291,677 cases handled by the District Court/Religious Court, 8,234 Komnas Perempuan/National Commission of Women partner service institutions, 2,389 Komnas Perempuan service and referral units, with a record 2,134 cases. were gender-based cases and 255 cases were non-gender-based or providing information. Meanwhile, from the aspect of the place where it occurred, Komnas Perempuan recorded the occurrence of women's violence in the public or community domain by 21% (1,731 cases) with the most prominent cases being sexual violence with 962 cases (55%) consisting of other sexual violence (or not specifically stated). 371 cases, followed by 229 rape cases, 166 cases of sexual harassment, 181 cases of sexual harassment, 5 cases of sexual intercourse, and the remaining 10 cases of attempted rape (KOMNAS PEREMPUAN, 2022) .

Sexual violence is an act of degrading human dignity and can cause suffering to the victim physically, sexually and psychologically. Sexual violence often occurs in everyday life and does not recognize time and place, for example in the household, public space, community, work environment as well as in educational institutions including universities.

Recently, there has been a lot of attention from the public regarding the occurrence of cases of sexual violence/harassment in the campus environment by a lecturer against a student while conducting thesis guidance. The occurrence of sexual violence in the educational environment including universities is like an iceberg phenomenon, this is as stated by one of the Professors from the State Islamic University (UIN) Sunan Gunung Jati Bandung Prof. Nina Nurmila who stated "Many cases of sexual violence occur on campus but are hidden in the good name of the campus. This phenomenon is like an iceberg because the number could be higher than reported, many do not dare to report it" (Yusran et al., 2023).

The phenomenon of sexual violence in universities is a serious concern of the Ministry of Education and Culture and in order to prevent and handle the occurrence of sexual violence in universities, the Minister of Education and Culture Regulation Number 30 Year 2021 concerning Prevention and Handling of Sexual Violence in Higher Education is issued (Kemendikbudristek, 2021) which was promulgated on 30 September 2021.

The enactment of Permendikbud Number 30 Year 2021 raises pros and cons in the community such as the enactment of provisions regarding "sexual consent" or "without the victim's consent" as stated in Article 5 that some acts that fall into the category of harassment if they are carried out with the consent of the victim can be justified or not harassment, for example the act of distributing images or photos of victims that have sexual nuances.

The regulation of sexual harassment in general is contained in Law Number 1 of 1946 concerning the Criminal Code (KUHP) in the chapter on criminal acts of decency. The Criminal Code does not explicitly regulate crimes of decency and sexual

harassment, but only regulates crimes against decency as regulated in Chapter XIV Book II Article 281 to Article 303 of the Criminal Code and Book III Chapter VI Article 532 to Article 547 of the Criminal Code. Forms of crimes and violations of decency in the Criminal Code can be identified in several articles as follows: Adultery, Rape, Sexual intercourse with an underage woman , Fornication , Sexual intercourse , Prevention and termination of pregnancy , Crimes against decency (Soares & Setyawan, 2023) .

Meanwhile, if we look at Permendikbud Number 30 Year 2021, it has formulated several qualifications for sexual harassment. In the perspective of criminal law, it is very clear as stated in Article 1 paragraph 1 of the Criminal Code, which basically states that an act as a criminal act must be regulated in a law, then from the perspective of criminal law enforcement it is very clear that criminal law enforcement must be based on the principles of criminal procedural law that apply in this case are the Criminal Procedure Code (Probosambodo & Widiastuti, 2023) .

The purpose of the issuance of this regulation is as an effort to prevent sexual violence in the university environment, not to encourage adultery. Sexual violence as referred to in this Permendikbud is defined as a form of act carried out forcibly without the consent of the victim. And because there are still rampant cases of sexual violence in the university environment, the author feels it is very necessary to examine the implementation of the Minister of Education and Culture, Research and Technology as an effort to prevent and handle sexual violence in the university environment. From the description above, the main problems as stated in the background, the formulation of the problem can be drawn as follows: What is the Position of the Minister of Education and Culture Regulation Number 30 Year 2021 in the Material Criminal Law System in Indonesia; How is the implementation of Permendikbud Number 30 Year 2021, especially those related to aspects of handling sexual violence in universities.

Methods

This research is a normative legal research that examines the application of the Minister of Education and Culture Regulation Number 30 Year 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education. The legal materials used are primary legal materials, secondary legal materials, and tertiary materials, while the approach used is a statutory approach and a case approach. Legal materials were collected in two ways, namely document studies and literature studies related to the application of Permendikbud Number 30 Year 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education.

The research method used in the preparation of this paper is a normative juridical method. Normative juridical research is research that refers to legal norms contained in international regulations or conventions and national laws and

regulations related to the handling of corruption. The problem approach that will be used in this research is a conceptual approach and a national and international regulatory approach.

The legal materials in this study consist of primary and secondary legal materials. Primary legal materials are legal materials that are authoritative or have authority. The primary legal material in this research is legislation, and several international conventions on the topic of this legal research. While secondary legal materials in the form of legal concepts, legal principles and legal norms contained in the literature which includes books (text books), journals, papers, dictionaries and articles contained in electronic print media.

Legal materials will be analyzed in stages according to the grouping of problems. The analysis was carried out and stated in the form of an analytical description which contained activities that were described, studied, systematized, interpreted and evaluated. The next step is to carry out a theoretical analysis of the legal materials in order to find, understand and explain in depth the application of the Minister of Education and Culture Regulation Number 30 Year 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education

Discussion and Result

Concept of sexual violence

Sexual harassment is a unilateral act that has a sexual connotation, not the victim's desire. The form can be in the form of speech, text, symbols, movements and movements that lead to sexual orientation. Activities that lead to sexuality and if they contain elements can be considered as sexual harassment, in the sense that there is unilateral coercion from the actor against the will, and the event is determined (Harefa & Info, 2022). Women victims of sexual harassment can come from various races, ages, characteristics, marital status, social class, education, occupation, workplace, and income (Baskoro, 2018) .

Aspects of the causes of sexual harassment

Behavioral aspects Sexual harassment is unwanted sexual provocation, and temptation comes in many forms, both subtle, violent, open, body and language, one-way. The most common forms of sexual harassment are verbal and physical abuse, where verbal abuse is not just physical. Experts say that verbal harassment is unwanted sexual temptation. Persistent sexual jokes or information, requests to continue dating even if denied, derogatory or demeaning information, provocative or obscene comments, about women's clothing, body, clothing or sexual activity, explicit requirements for sexual services Indirect or public threats.

Situations Sexual harassment can occur anywhere and under certain conditions. Women victims of sexual harassment can come from various races, ages, characteristics, marital status, social class, education, occupation, location of work,

income. Based on the description above, it can be concluded that all aspects of sexual harassment are behavioral aspects and situational aspect (Susi Utami Wiji, 2016) .

Study on Sexual Violence
Actors Concept:

The perpetrators of criminal acts are listed in Article 55 paragraph (1) of the Criminal Code which determines: Convicted as a perpetrator of a crime:

1. Those who do, who order to do and those who participate in doing the deed;
2. Those who by giving or promising something, by abusing their power or dignity, by force, threats or misdirection, or by providing opportunities, means or information intentionally encourage others to take action.

The concept of the perpetrator as stated in Article 55 paragraph (1) of the Criminal Code is used in this dissertation as a perpetrator of a criminal act of corruption, because the concept has been regulated in the Act.

Concept of Crime:

The concept of a crime that is commonly used in the nomenclature of Indonesian criminal law is a translation of the concept of strafbare feit which has been agreed upon by Dutch criminal law experts. In the past, in the Netherlands, the selection and agreement on the use of the strafbare feit concept has caused intense debate. This can be seen through the statement of D. Hazewinkel-Suringa:

> *Strafbaar feit-dat is de term, die na veel wikken en wegen ten slotte is gekozen voor iedere gedraging, die op straffe wordt verboden, hetzi zij bestaat in een doen of in een nalaten; hetzij zij onder de misdrijven dan wel onder de overtredingen valt. Daze benaming heeft veel critiek ontment.* (Free translation: Strafbaar feit – a term that was finally chosen after careful consideration for every prohibited act and criminal sanctions for those who violate the prohibition include doing or not doing, which consists of crimes and violations. Giving this name met a lot of criticism).

The concept that is commonly used is criminal acts as a translation of the concept of strafbaar feit, as stated by Romli Atmasasmita. According to Romli, who followed the opinion of the team of translators of the Criminal Code at the National Legal Development Agency (BPHN), the use of the concept of criminal acts can be reviewed socio-juridically and juridically-theoretically. Socio-juridically, the reality in society is that the concept of criminal acts is more commonly used in all criminal laws and regulations, all law enforcement agencies and almost all law enforcement officers. From a socio-juridical perspective, there is a clear and clear distinction and separation of criminal acts (actus reus) from criminal liability (mens rea).

Meanwhile, according to Masruchin Ruba'i and Made S Astuti Djajuli (1989), the use of the concept of a crime is solely because the concept is already popular in the community and is more popular than other concepts. Based on the opinions of

criminal law experts, it shows that the concept of criminal acts is the most common concept in the nomenclature of Indonesian criminal law. However, considerations regarding the use of the concept of a criminal act need to also refer to practical aspects, substantive aspects, and political aspects. Practically it cannot be denied that the concept of a criminal act has received wide acceptance by the legal community; In other words, the concept of a criminal act has become a communis opinion doctorum. Even the use of the concept is also familiar in the common law community. This can be seen from the use of this concept by legislators in forming criminal legislation, law enforcement officers in carrying out their duties to investigate, indict, try and decide on criminal cases from arrest to decision making, to the public in carrying out daily conversations. days regarding criminal cases that occurred.

In the Draft Law on the Criminal Code (hereinafter abbreviated as RUU-KUHP) 1999/2000, the RUU-KUHP 2007/2008 and the RUU-KUHP February 2008, the drafters and legislators have confirmed the concept of a criminal act. as a standard concept. Elucidation of Article 11 of the February 2008 Draft Criminal Code stipulates: The provisions in this Article are intended as a measure to determine an act is called a criminal act. The intended actions include either the act of doing (active) or not committing certain actions (passive) which are declared by laws and regulations as prohibited acts and are threatened with criminal sanctions.

Pompe divides the notion of crime from a theoretical and practical point of view. Based on a theoretical point of view, the definition of a crime is as follows: *De normovertreding (verstoring der rechtsorde), waaraan de overtreder schuld heeft en waarvan de bestraffing dienstig is voor de handhaving der rechtsorde en behartiging van het algemeen welzijn. Onder normovertreding, waaran de overtreder schuld heeft, wordt hierbij verstaan een gedraging, welke naar haar uiterlijke verschijning in strijd met het recht, dus onrechtmatig, wederrectelijk is, en aarmede de dader in een zodaning innerlijke verband staat, dat hem voor die wederrechtelijke gedraging een verwijt treft, m.a.w. dat hij daaraan schuld heeft.*
(Free translation: Violation of norms (disruption of the rule of law) in which the violator has a fault and for which the benefit of punishment is to enforce the rule of law and pay attention to the general welfare. What is meant by the violation of norms in which the violator has an error is an outward behavior that is contrary to the law, thus violating the law, is against the law, and also a maker who is internally related in such a way that because the behavior is against the law he experiences remorse; in other words, that because of him he has a fault).
Meanwhile, the practical definition of a crime is as follows: "*.... is het strafbare feit niets anders dan een feit, dat in een wettelijke bepaling als strafbaar is omschreven.* (Free translation: A crime is nothing but an act that is formulated in a statutory provision as a criminal offense).

In line with Pompe's opinion above, Jonkers divides the notion of a crime into a broadly stated meaning and a narrowly stated definition. According to the broadly

stated meaning, "*een strafbaar felt is een met opzet of schuld in verband staande onrechtmatige (wederrechtelijke) gedraging begaan door een toerejeningsvatbaar penoon*". (Free translation: a criminal act is a behavior (against the law) that violates the law associated with intentional or wrongdoing by someone who is capable of being responsible). Meanwhile, according to the narrowly stated meaning, "*een stafbaar feit is een feit, dat door de wet is strafbaar gesteld* (Mr W. P. J. POMPE, 1953). (Free translation: a crime is an act which is determined by law to be punishable by law).

The previous definitions are different from the following definitions of criminal acts which clearly distinguish and separate between the act and the maker; In other words, this understanding tends to place more emphasis on mere action. Vos provides the definition of a criminal act as "*een menselijke gedraging, waarop door de wet (genomen in de ruime zin van 'wettelijke bepaling') straf is gesteld, een gedraging dus, die in het algemeen (tenzij er een strafuitsluitingsgrond bestaat) op straffe verboden is"* (Vos, 1950) . (Free translation: a human behavior which by law (included in a broad sense regarding statutory provisions) is determined to be criminal, so it is a behavior which is generally prohibited (for which there is a reason for the elimination of the crime) and punished for violating the prohibition).

In this context, the notion of a crime refers to the notion of a crime put forward by Vos. This is based on three considerations, as follows: first consideration, almost all Indonesian criminal law experts view criminal acts as human behavior that is prohibited or required and is subject to criminal sanctions for those who violate the prohibition or obligation; In other words, this view has become a communis opinion doctorum. According to Moeljatno, the definition of a crime is written as "an act that is prohibited and is threatened with a criminal offense whoever violates the prohibition".

The second consideration is that the provisions of the criminal law contain criminal acts as described and described by almost all criminal law experts above. This refers to the provisions of positive criminal legislation (ius constitutum) as well as to the provisions of criminal legislation that will apply in the future (ius constituedum). Article 11 of the February 2009 Draft Bill of Criminal Code states, among other things: A criminal act is an act of doing or not doing something which is stated as a prohibited act and is threatened with a criminal offense. In order to be able to convict an act that is prohibited and is threatened with criminality by laws and regulations, the act must also be against the law or contrary to the legal awareness of the community. Every criminal act is always considered to be against the law, unless there is a justification. The third consideration, generally court decisions use the term criminal act with the meaning explained by criminal law experts as well as those included in the legislation.

Main regulation in Minister of Education and Culture Regulation Number 30 Year 2021

Minister of Education and Culture Regulation 30 / 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education is a policy designed to serve as a guideline for campuses in preventing and dealing with cases of sexual violence that are on the rise. A number of parties consider that this regulation aims to protect the academic community or community in universities from acts of sexual harassment, on the other hand, it is considered to provide a loophole for the legalization of free sex in the campus environment. Currently there is a legal vacuum in carrying out prevention, handling, and protection of victims of sexual violence in universities. Therefore, the existence of this regulation is expected to provide legal certainty for university leaders to take firm steps in cracking down on cases of sexual violence on campus.

The main objective of Permendikbud Number 30 Year 2021 is to have a mechanism for the prevention and handling of sexual violence on campuses or universities. The urge to revoke the regulation also came from members of the House of Representatives Commission X who urged that the regulation be revoked because it accommodates the omission of the practice of adultery and same-sex sexual relations. One of the material defects is in Article 5 paragraph (2) which contains consent in the form of the phrase "without the consent of the victim". Article 5 of Permendikbud 30/2021 where the article, sexual violence is defined to include acts carried out verbally, non-physically, physically, or through information and communication technology. Article 5 of Permendikbud, implies that the legalization of immoral acts and free sex is based on consent.

Regarding the criticism, consent or consent can be an indicator to determine whether an action is categorized as a sexual assault or not. Consent can be one of the limitations on whether sexual violence occurs or not. If there is no consent, it means that the action is violence because the victim does not want it. Consent is also considered invalid if the age is because the victim is not yet an adult, is threatened because the perpetrator abuses his position, the victim is under the influence of drugs, alcohol, or drugs, and when the victim is sick, unconscious, or asleep. the phrase "without the consent of the victim" has the meaning of "legalizing sexual freedom". This regulation is considered "containing elements of legalization of immoral acts and consent-based free sex". This phrase was also rejected by the Indonesian Ulema Council (MUI). The word has the meaning that transactions or sexual activities outside of marriage as long as they are consensual (sexual consent) are not regulated, and the world of education does not punish them. The phrase "sexual violence" was replaced with "sexual crimes" because it was considered "more comprehensive than sexual violence". The essence of a sexual crime is the transaction or sexual activity either 'with consent' or 'without consent'. Eliminating this phrase can make the victim's position

more vulnerable because there is no longer any confirmation that limits that she is a victim of sexual violence. The same goes for changing from the phrase "sexual violence" to "sexual crime". But this sexual crime only focuses on the perpetrator, sexual violence focuses on preventing and assisting the victim, as well as to create a deterrent effect on the perpetrator. Many of the victims find it difficult to get justice because their disapproval of acts of sexual violence is often sidelined in the legal process.

The concept of consent stated in the Permendikbud does not necessarily mean an effort to legalize adultery. So, not everything that is not regulated in the Permendikbud becomes permissible. From the title alone, prevention and handling of sexual violence, does not regulate decency. Permendikbud Number 30 Year 2021 is actually here to fill the legal vacuum of the rise of sexual violence cases on campus that cannot be reached by the Law on the Elimination of Domestic Violence, the Law on Child Protection, and the Law on Trafficking in Persons. This is because students whose average age is 18 years are no longer classified as children to be protected by the Child Protection Act. The majority are unmarried to be able to refer to the Law on the Elimination of Domestic Violence (Tina Marlina et al., 2022) . From Permendikbud Number 30 Year 2021, this has become the answer to the void to create a safer space for all parties on campus or college. The issue of Article 3 which is considered this article ignores the religious norms in which we as human beings live in the Pancasila state and the First Precept is Belief in One God.

If in Permendikbud, concerning Prevention and Handling of Sexual Violence in a Campus or Higher Education Environment, it should be explained in detail and detail as well as willingly but followed by coercion, therefore it is contained in Article 285 of the Criminal Code "Whoever uses violence or threats of violence to force a woman to have sex with him outside of marriage, are threatened with rape with a maximum imprisonment of 12 years." This regulation should be explained in detail and what details include this harassment, initially looking from the contra side to being a pro because currently many people think that this article legalizes adultery even though this regulation is to provide protection for the Prevention and Handling of Sexual Violence in Higher Education.

Basically, if you pay attention to Permendikbud Number 30 of 2021, it is very detailed to mention the forms of behavior that fall into the category of sexual harassment and violence, ranging from very small things to big things. From Article 5 paragraph (2), it can be seen that there are 21 forms of sexual harassment and violence mentioned in this Permendikbud, namely:

1. Delivering speech that underestimates physical appearance, body condition, gender identity (the concept of bullying).
2. Showing genitals intentionally.
3. Delivering words that make sexual advances, jokes, whistles.

4. Staring at the victim with sexual or uncomfortable feelings.
5. Sending messages, jokes, photos, audio, or videos with sexual nuances even though the victim has forbidden them.
6. Taking, recording, distributing photos, audio recordings, or visuals of a sexual nature.
7. Uploading a photo of the victim's body or personal information that has sexual nuances.
8. Disseminate information related to the victim's body or personal that has sexual nuances.
9. Peeking or deliberately looking at the victim in a private room.
10. Persuade, promise, offer something, or threaten the victim to engage in unapproved sexual activity.
11. Giving punishments or sanctions that have sexual nuances.
12. Touching, rubbing, touching, holding, hugging, kissing or rubbing body parts on the victim's body.
13. Undress the victim.
14. Forcing the victim to engage in sexual activity.
15. Practicing community culture with nuances of sexual violence.
16. Attempted rape, but penetration did not occur.
17. Committing rape, including penetration with objects other than the genitals.
18. Force or trick the victim into having an abortion.
19. Forcing or tricking the victim into getting pregnant.
20. Allowing sexual violence to occur intentionally.
21. Doing other acts of sexual violence.

However, the pros and cons of Permendikbud Number 30 of 2021 are motivated by the existence of several dictions or vocabulary and sentences with multiple interpretations. One of them is also contained in Article 5 paragraph (2) with the diction "without the consent of the victim", as an example we can see in Article 5 paragraph (2) letter l, namely: "touching, rubbing, touching, holding, hugging, kissing and/or rubbing body parts on the victim's body without the victim's consent. Most of the community, even politicians as well as the government highlight this and are of the view that this Permendikbud indirectly legalizes adultery which is clearly contrary to Pancasila and the 1945 Constitution and also contrary to certain religious rules. The Council for Higher Education Research and Development (Diktilitbang) of the Central Leadership (PP) of Muhammadiyah considers that the regulation has the potential to legalize adultery.

According to the Chairperson of the PP Muhammadiyah Diktilitbang Council, Lincolin Arsyad, one of the material defects is in Article 5 which contains the word "without the consent of the victim". "Article 5 Permendikbud, Research and Technology No. 30 of 2021 raises the meaning of legalization of immoral acts and free

sex based on consent". In response to this, the author is of the opinion that the implementation of the Minister of Education and Culture regarding PPKS should be reviewed and it is also advisable for this Regulation of the Minister of Education and Culture Number 30 Year 2021/Permendikbud PPKS to be judicially reviewed by the Supreme Court as the institution authorized to examine the legislation under the Act against the Act. It can be said that Permendikbud Number 30 Year 2021 does not meet the basic provisions for the formation of laws and regulations as contained in Article 5 of Law Number 12 of 2011, namely the principle of implementation and the principle of clarity of formulation. As stated in the explanation section of Law Number 12 of 2011 that what is meant by the principle of implementation is that every formation of legislation must take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically.

Philosophically, perhaps the intent and purpose of the establishment of the PPKS Permendikbud is indeed good, namely to minimize the occurrence of sexual violence cases in the campus environment, because according to data it is known that the Minister of Education and Culture, Nadiem Makariem stated that the survey conducted by the Ministry of Education and Culture in 2020 was 77 % of lecturers who stated that there was sexual violence in universities. The latest data from the National Commission (Komnas) for the Protection of Women and Children in 2018 shows a high stagnation of cases of sexual harassment and violence in universities from year to year. However, in reality the PPKS Permendikbud is still far from what the community expects because there are still material defects and dictions that have multiple interpretations.

Sociologically, the implementation of the PPKS Permendikbud is also deemed inappropriate because there is a clash between religious values that exist in the midst of Indonesian society and the values of liberalism which lead to legalizing adultery with the approval of the parties. Permendikbud PPKS also contradicts the customs that have existed for a long time in Indonesia, where our customs are very respectful of manners and human dignity. Automatically in the end the PPKS Permendikbud also contradicts Pancasila as the source of all sources of state law, as contained in Article 2 of Law Number 12 of 2011. Juridically, the Ministerial Regulation is the implementing regulation of the legislation that is higher above it. The implementation of the PPKS Permendikbud is based on eleven laws and regulations, and it is enforced in an urgent situation (needed) because of the rampant cases of sexual harassment and violence in universities in Indonesia. But seeing the material from the Permendikbud which is considered immature, so that its implementation seems rushed. So, although legally the formation of the PPKS Permendikbud is valid, but because there are material defects, this needs to be reviewed by the institution concerned.

Permendikbud PPKS also does not meet the provisions of the principle of clarity of formulation, as contained in the explanation section of Law Number 12 of

2011 that the principle of clarity of formulation is that each statutory regulation must meet the technical requirements for the preparation of legislation, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause various kinds of interpretation in its implementation. As mentioned above, there are still unclear words and sentences in this Permendikbud PPKS, so that there are multiple interpretations and therefore the public spotlight. One of the human rights (HAM) activists, Nisrina Nadhifah is of the view that there are no regulations regarding cases of sexual harassment and violence that have aspects of prevention and treatment that favor the victims.

The Position of Permendikbud PPKS in the Indonesian Legal System

The national legal system is the law that applies in Indonesia with all its elements that support each other in order to anticipate and overcome problems that arise in the life of society, nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In Indonesia, there is a hierarchy of laws and regulations, with a hierarchy of laws and regulations that each statutory regulation must not conflict with each other, both equal and with higher laws and regulations and also must not conflict with Pancasila as a fundamental state. norm. The pros and cons of Permendikbud Number 30 of 2021 concerning PPKS because it is considered contrary to higher laws and regulations and also contrary to the values of Pancasila. Permendikbud Number 30 of 2021 concerning PPKS still does not meet the basic provisions for the formation of laws and regulations as contained in the provisions of Law Number 12 of 2011, namely the non-fulfillment of the basic provisions that can be implemented and the principle of clarity of formulation. So this Permendikbud can be said to be contrary to the laws and regulations that are higher above it and also contrary to Pancasila.

The campus as an intellectual institution cannot escape the occurrence of sexual violence or known as sexual violence in the university environment. The National Commission on Women (Komnas Perempuan) noted that in the period 2015 to 2021 there were 67 cases of violence against women in the educational environment and if it was a percentage of several forms of violence, 87.01% of sexual violence, 8.8% psychological and discrimination, and 1.1% physical abuse. The college level ranks first for sexual violence by 85%. Meanwhile, the Minister of Education, Culture, Research and Technology of the Republic of Indonesia stated that there are many cases of sexual violence on campus, but they are rarely revealed and the situation is an emergency. Nadiem further said that cases of sexual harassment and violence on campus have not been revealed because victims are afraid to report because of the strong power relations between the perpetrators and the absence of a legal umbrella so that there is a legal vacuum in preventing and handling sexual violence on campus.

The government through the Ministry of Education, Culture, Research, Technology and Technology on August 31, 2021 issued Ministerial Regulation Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence (PPKS) in Higher Education (Permendikbud PPKS). The purpose of the issuance of the PPKS Permendikbud is to ensure the protection of citizens' rights to education through the prevention and handling of sexual violence in the higher education environment. This PPKS Permendikbud juridically gives universities the authority to take legal steps to take action against perpetrators of sexual violence in the university environment, in addition to this PPKS Permendikbud as a guide for universities in carrying out efforts to prevent the emergence of sexual violence in the university environment.

This Permendikbud PPKS has implications for the Government, in this case the Ministry of Education and Culture is obliged to ensure that every education provider and their students can carry out the tri dharma function of higher education and pursue higher education safely and optimally without sexual violence. On the one hand, universities are required to monitor, evaluate, prevent and handle sexual violence in the university environment (campus) and if the university does not carry out monitoring and evaluation, administrative sanctions can be imposed.

Implementation of Permendikbudristek PPKS

Permendikbudristek PPKS very clearly defines the qualifications of acts of sexual violence as described in Article 5, the types of sexual violence, namely: including verbal or verbal actions, physical and non-physical, as well as actions carried out through information and communication technology are classified as sexual violence. Forms of sexual violence in words and deeds through information and communication technology are included because they are often considered trivial, when in fact it has a huge impact on the victim's psychology and can limit the right to education or academic work. A detailed definition of sexual violence as an effort to assist universities in preventing and handling sexual violence which is often not acknowledged to have occurred in universities, and in some cases victims are sometimes cornered by asking the victim various questions related to appearance (how to dress and so on), expression, relationship of the victim with the perpetrator and so on. So that in handling cases of sexual harassment, the victim will become a victim in the process of handling sexual violence.

The material of sexual violence in the criminal law approach is qualified as a crime and the perpetrators can be subject to criminal sanctions. However, in the PPKS Permendikbudristek, it is more directed to administrative issues and this should be, because from the aspect of the approach to the formation of laws and regulations, the position of ministerial regulations is limited to the field of state administration both in the instrumental function and the function of the agreement (protection), limited to

the field of duties and responsibilities. responsibility of the minister concerned and must not conflict with the laws and regulations above and general principles of good governance (algemene beginselen van behoorlijk bestuur) (Huda, 2021) .

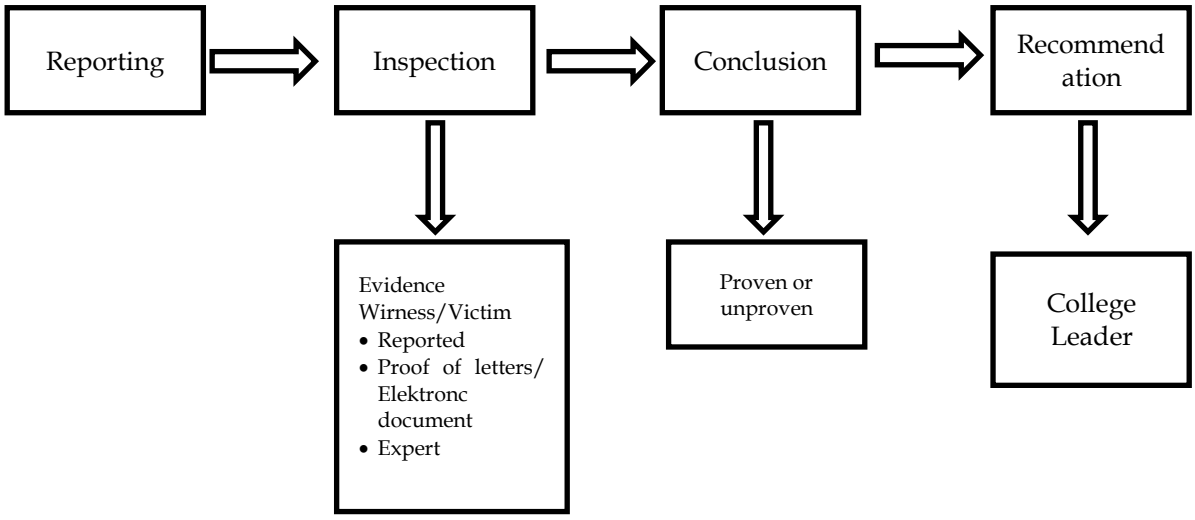
Permendikbudristek PPK has targets for educators (lecturers), education staff, campus residents and the general public who interact with students, lecturers, and education staff in implementing the tri dharma of higher education. A regulation will not be implemented properly if it is not supported by all related parties (academics). To achieve this target, the implementation of the PPKS Permendikbudristek must begin with strengthening higher education governance such as the establishment of a task force for the prevention and handling of sexual violence, the preparation of guidelines for the prevention and treatment of sexual violence, the provision of reporting services, counseling to victims, socialization in the university environment through installation pamphlets and so on.

Implementation of the PPKS Permendikbudristek begins with the establishment of the Sexual Violence Prevention and Handling Task Force (PPKS Task Force). The PPKS Task Force functions as a center for preventing and handling violence in the university environment. There are two functions that must be carried out by the task force, not only being active in dealing with the occurrence of sexual violence, but also carrying out programs to prevent sexual violence in universities. As stated in the Permendikbudristek one year after the stipulation of the PPKS Permendikbudristek, every university is required to have a PPKS Task Force consisting of lecturers, education staff and students with a composition of fifty percent of students (Afrilia et al., 2023) . For universities that do not form the PPKS Task Force, they may be subject to administrative sanctions, including termination of financial assistance, infrastructure and/or downgrading of accreditation ratings. As of March 2022, data from the Ministry of Education and Culture has only 5 universities that have formed the PPKS Task Force, the rest are still at the stage of forming a selection committee or panel.

The duties and authorities of the PPKS Task Force in general assist university leaders in preparing guidelines for preventing and handling sexual violence in universities with the authority to receive reports on allegations of sexual violence, conduct examinations to related parties such as witnesses, document or letter experts and reported, draw conclusions, provide recommendations to university leaders and carry out recovery and prevention of repetition. The Task Force also facilitates the recovery of victims in the form of cooperation with related parties to provide recovery for victims, without reducing the rights of victims during their study or work period. If it is analogous to the enforcement of criminal law, the task of the PPKS Task Force is identical to the action of investigation and investigation, namely to make it clear whether an event is included in an act of sexual violence and determine the

perpetrator, but the PPKS Task Force is not authorized to forcefully attempt to take several actions such as arrests, search and detention.

Chart of the Handling of the Task Force for the Prevention and Handling of Sexual Violence in Higher Education.



Conclusion

The Minister of Education and Culture Regulation Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence still does not meet the basic provisions for the formation of laws and regulations as contained in the provisions of Law Number 12 of 2011, namely the non-fulfillment of the basic provisions that can be implemented and the principle of clarity of formulation. So that this regulation can be said to be contrary to the laws and regulations that are higher above it and also contrary to Pancasila.

Implementation of this regulation begins with the establishment of the Sexual Violence Prevention and Handling Task Force (PPKS Task Force). The PPKS Task Force functions as a center for preventing and handling violence in the university environment.

This regulation has targets for educators (lecturers), education staff, campus residents and the general public who interact with students, lecturers, and education staff in implementing the tri dharma of higher education. A regulation will not be implemented properly if it is not supported by all related parties (academics). To achieve this goal, the implementation of this regulation must begin with strengthening higher education governance, such as the establishment of a task force for the prevention and handling of sexual violence, the preparation of guidelines for the

prevention and treatment of sexual violence, the provision of reporting services, counseling to victims, socialization in the university environment through installation of pamphlets and so on.

References

Afrilia, Y., Khalsiah, Putra Fhonna, R., Ramadhan, G., & Munandar, A. (2023). Implementation of Sexual Violence Reporting System Services (SIPORAS) as an Implementation of Permendikbud No. 30 of 2021 at Universitas Malikussaleh. *Proceedings of Malikussaleh International Conference on Multidisciplinary Studies (MICoMS)*, *3*(3), 00016. https://doi.org/10.29103/micoms.v3i.175

Baskoro, L. R. (2018). Pelecehan Seksual dalam Hukum Kita. *Tempo.Co*. https://hukum.tempo.co/read/1055000/pelecehan-seksual-dalam-hukum-kita

Harefa, S., & Info, A. (2022). *Online-Based Sexual Harassment*. *01*(01), 38–44.

Huda, N. (2021). Kedudukan Dan Materi Muatan Peraturan Menteri Dalam Perspektif Sistem Presidensial. *Jurnal Hukum Ius Quia Iustum*, *28*(3), 550–571. https://doi.org/10.20885/iustum.vol28.iss3.art5

Kemendikbudristek. (2021). Pencegahan dan Penanganan Kekerasan Seksual di Perguruan Tinggi No. 30 Tahun 2021. *Jdih.Kemdikbud.Go.Id*, *5*, 6.

KOMNAS PEREMPUAN. (2022). Siaran Pers Komnas Perempuan Tentang Peringatan Kampanye Internasional Hari 16 Anti Kekerasan terhadap Perempuan (25 November – 10 Desember 2022). *Komisi Nasional Anti Kekerasan Terhadap Perempuan*. https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-peringatan-kampanye-internasional-hari-16-anti-kekerasan-terhadap-perempuan-25-november-10-desember-2022

Mr W. P. J. POMPE. (1953). *HANDBOEK VAN HET NEDERLANDSE STRAFRECHT*. Zwole: Tjeenk Willink, 1953. https://lib.ui.ac.id/m/detail.jsp?id=20108867&lokasi=lokal

No, U. U. (1997). *Kecelakaan kerja adalah kecelakaan yang terjadi berhubung dengan hubungan kerja, termasuk penyakit yang timbul karena hubungan kerja, demikian pula kecelakaan yang terjadi dalam perjalanan berangkat dari rumah menuju tempat kerja, dan pulang ke rumah melalui jalan yang biasa atau wajar dilalui (UU No3 Th 1992 :Jamsostek). 1995*.

Probosambodo, Y. A., & Widiastuti. (2023). The Implementation of Permendikbudristek Number 30 of 2021 Concerning Prevention and Handling of Sexual Violence in Higher Education at Universitas Slamet Riyadi Surakarta. *Journal of Indonesian Culture and Beliefs (JICB)*, *1*(2), 91–102. https://doi.org/10.55927/jicb.v1i2.2400

Soares, F. L., & Setyawan, N. B. (2023). Protection of Victims of Sexual Harassment in Indonesia: A Legal and Victimological Aspect. *Semarang State University*

Undergraduate Law and Society Review, *3*(1), 27–46. https://doi.org/10.15294/lsr.v3i1.53761

Susi Utami Wiji. (2016). Hubungan Antara Kontrol Diri Dengan Pelecehan Seksual Pada Remaja Di Unit Kegiatan Mahasiswa Olahraga Universitas Muhammadiyah Purwokerto. *Repository Universitas Muhammadiyah Purwokerto.*

Tina Marlina, Montisa Mariana, & Irma Maulida. (2022). Sosialisasi Undang-Undang Nomer 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga. *Abdimas Awang Long*, *5*(2), 67–73. https://doi.org/10.56301/awal.v5i1.442

Vos, H. B. (1950). *Leerboek van het Nederlandsch strafrecht*. Haarlem : Tjeenk Willink & Zoon, 1947. https://balaiyanpus.jogjaprov.go.id/opac/detail-opac?id=303416

Yusran, S., Setiawati, T., Nursiti, Mokodompit, E., Laxmi, & Akifah. (2023). The Existing Curriculum and Teaching Learning Challenges for Prevention and Handling Sexual Violence in Higher Education. *Unnes Journal of Public Health*, *12*(2), 82–93. https://doi.org/10.15294/ujph.v12i2.65709