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Sexual Harassment of Workers in The Workplace

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ABSTRACT

Sexual harassment in the workplace that is not taken seriously causes unsolved issues of widespread sexual harassment and unsafe workplace for people. This legal research uses a statutory approach and a conceptual approach. The legal questions asked are: 1) What is the form of legal protection for workers who experience sexual harrasment in the work place? 2) what legal remidies can be taken by workers who experience sexual harassment in the workplace? The results of the study show that the protections given to sexual harassment victims are; 1) being able to file for layoffs if the sexual harassment is carried out by entrepreneurs, the termination of layoffs for workers who are perpetrators of sexual harassment, and the threat of criminal sanctions against perpetrators of sexual harassment. Workers who are victims of sexual harassment who file for layoffs are entitled to one-time severance pay, one-time work award and compensation. 2) Legal remedies that can be taken by victims of sexual harassment in the workplace are civil law action through non-litigation or litigation and can also take criminal legal action by submitting a complaint to the police.

Keywords: sexual harassment; workers; workplace

INTRODUCTION

It is not only women who need protection against sexual harassment in the workplace (Satria Unggul. W.P, 2021). Male workers need the same protection against an act or conduct that contains elements of sexual harassment. Cases of sexual harassment against men are not a new phenomenon in society, but are still considered not a serious matter.

Based on data from the Gender Equality barometer quantitative study report launched by the Indonesia Judicial Research Society (IJRS) in 2020, it said that cases of sexual violence against men were 33.3% and sexual violence experienced by women was 66.7%. Data from the Indonesian Child Protection Commission (KPAI) shows that victims of sexual violence in 2018 were more experienced by boys, where 60% of boys and 40% of girls were victims of sexual violence. It is also mentioned in year-end notes 2019 of Nasional Commission on Violence Against Women that violence experienced by women occurs the most; (1) at the victim's residence, (2) at work, (3) in public places. In the data it is known that the workplace is one of the most potential places for sexual harassment (Databoks, 2019).

It should be understood that only a small percentage of victims of sexual harassment are willing to report their cases and follow the legal process. So it can be ascertained that the real number of cases of sexual harassment is actually higher than currently recorded. The reason sexual harassment victims do not report is because victims think sexual harassment cases are shameful and give negative stigma to female and male victims, which then the society to blame victims. In fact, the male victim is considered by society as a strong figure and 'welcome event' or things that men definitely want (Bungin Burhan, 2008). Thus was born the assumption that men could not be sexually harassment. Whereas both men and women have the same vulnerability in experiencing sexual harassment.

The guarantee of constitutional rights for citizens including the guarantee of free sexual harassment in the workplace is contained in Article 27 paragraph (2) of the 1945 Constitution, it should be understood that "every citizen has the same opportunity to get a job and a decent livelihood". Then stated in Article 28D paragraph (2) of the 1945 Constitution "everyone has the right to work and get rewards and fair and decent treatment in labor relations". Protection of sexual harassment is also protected in the Constitution, namely Article 28G of the 1945 Constitution "everyone has the right to the protection of personal, family, honor, dignity, and property under his power and the right to protection from the threat of fear to do and not do something that is a human right". Article 28 I paragraph (1) of the 1945 Constitution "the right to recognition, guarantee, protection, and legal certainty of fair and equal treatment before the law". And Article 28 I paragraph (2) of the Constitution "the right to work and get rewards and fair and decent treatment in labor relations".

Provisions of Article 27 paragraph (2) jo. Article 28D paragraph (2) *jo.* 28G *jo.* Article 28I paragraph (1) *jo*. Article 28I paragraph (2) of the 1945 Constitution is implemented in the labor laws and regulations on sexual violence. Law 13/2003 concerning Manpower jo. Law 11/2020 concerning Job Creation jo. PP 35/2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. Criminal Code (KUHP), ILO Conventions, CEDAW Conventions, and Law No. 12 of 2022 concerning the Crime of Sexual Violence.

The issue of sexual harassment in the workplace was previously also discussed in several related studies, namely: research one (Meci Nilam Sari, 2017) explains how the protection obtained by female workers in industrial relations and provides a form of prevention of sexual harassment of women in the workplace (Meci Nilam Sari,2017). Research two (Revina Palit flowers, 2019) describes legal protection for workers under ILO No. 190 of 2019 which protects workers from sexual harassment or sexual violence in the work environment including coverage in gender equality. In the discussion, dua also gave a discussion on the impact of sexual harassment on work, and efforts to overcome sexual harassment in the workplace (Bunga Revina Palit, 2019).

Research three (Rosalina Dika Agustina, et al., 2021) describes the protection of workers who experience sexual harassment in the workplace. However, workers in this case are focused only on women. Research three states that men have the same vulnerability in sexual harassment but women have a higher urgency to see the data of sexual harassment cases that still occur to women. In the third study mentioned sexual harassment prone to occur against women

because women are weaker than men. Perlindungann law provided in the study three using the labor law and the Criminal Code (Agustanti, 2021).

Based on the description of the background above, this study was conducted to analyze: What is the form of legal protection for workers who experience sexual harassment in the workplace? and What legal remedies can be taken by workers who experience sexual harassment in the workplace? The identification of this problem aims to provide a reference for the forms of protection and efforts that can be taken by both female and male workers who experience sexual harassment in the workplace based on the relevant regulatory policies regarding sexual harassment of workers in Indonesia.

METHODS

This research is a normative juridical approach using statue approach and conceptual. Normative juridical research methods conceptualize law as what is written in legislation or conceptualize law as a rule or norm in the benchmark of human behavior that is considered appropriate. In this normative juridical research, the approach is statue approach and conceptual approach. Statue approach is done by reviewing all laws and regulations relating to legal issues being addressed (Peter Mahmud Marzuki, 2010: 133). While the conceptual approach is intended to provide a point of view analysis of problem solving in legal research by looking at aspects of legal concepts that background or values contained in the normalization of a regulation related to the concept used.

Legal materials used in this research were collected through library studies, namely by examining the library materials related to the problems studied. Such legal materials include: primary legal materials, secondary legal materials, and tertiary legal materials.Primary legal material consists of national legal rules shorted by hierarchy, starting from the 1945 Constitution, laws, government regulations, and other rules under the law relating to sexual harassment in the workplace. Secondary legal materials are literature, legal scientific works. Tertiary legal materials provide meaningful guidance or explanation of primary and secondary legal materials, such as encyclopedias, legal dictionaries, and others. The collected legal materials are analysed and reviewed in order to gain an overview of the protections and legal remedies for workers who experience sexual harassment in the workplace.

DISCUSSION AND RESULT

Forms of Legal Protection for Workers Who Experience Sexual Harassment in The Workplace

A. Legal Protection at Work

Work relationship is the relationship between the entrepreneur and the worker or laborer based on a work agreement, which has elements of work, wages, and orders. (Article 1 point 15 of Law 13/2003 in conjunction with Article 1 point (1) PP 35/2021) Basically, an work relationshipoccurs when the worker states that he is willing to work for the entrepreneur by receiving wages and the entrepreneur states that he is willing to employ the worker by paying wages which he then pays. workers and entrepreneurs are bound by an employment agreement (Chamdani, 2022).

The concept above is clear that the work relationshipoccurs after the worker and the entrepreneur agree on an employment agreement (Asri Wijayanti,

2011). A work agreement is an agreement made between workers and entrepreneurs in which there are rights, obligations of the parties, as well as working conditions. It can be seen that the work relationshipis the basic thing that needs to be done to regulate and start an work relationshipin the work carried out after the employment agreement. According to Lalu Husni, elements of worker is:

1. The Existence of Elements of Work. an work relationshipoccurs when an employee performs work on the orders of the entrepreneur and cannot be delegated to another party without the permission of the entrepreneur. (Article 1603 of the civil code)
2. The Existence of An Element of Command. The work performed by the worker is an order from the entrepreneur and must comply with the order as long as the work is in accordance with the employment agreement.
3. The Existence of Time. The term element must be made expressly in the employment agreement. For example, for workers with a certain period of time such as contract workers, while for permanent workers this is not necessary.
4. The Existence of Wages. The element of wages in the work relationshipis the right of workers received as a form of remuneration from entrepreneurs which is a collective agreement and set forth in the work agreementor applicable legislation, including also benefits for workers and their families. (Article 1 point (6) PP No. 35/2021) wages are important in labor relations because workers do work for entrepreneurs with the aim of earning wages (Anas Santoso, 2020).

a) Legal Subjects in Work Relationsip

Legal subjects in work relationship are people who are involved in a job, namely workers and employers/entrepreneurs (Fitri Hardianti Solicha, 2020). Worker is people who work by receiving wages or other forms of remuneration. (Article 1 point 2 of Law 13/2003 jo. PP 35/2021) Based on this understanding, it can be understood that the definition of a worker is not only limited to someone who works permanently in the office but also anyone who works and gets paid in any form in accordance with the agreement. can also be categorized as workers (Asri Wijayanti, 2019).

Workers in this case are workers who are considered adults, namely 18 years old, are able to work according to their qualifications and competencies. (Article 3 paragraph (1) ILO Convention No.138 concerning Minimum Age for Admission to Employment)

Similar to the term laborer, the term employer was also well known before the enactment of Law 13/2003. However, the term employer is no longer used and has been replaced with entrepreneur because the term employer connotes to who is always on top while the laborer is always under pressure. Whereas legally, workers and employers have the same position. The term entrepreneur is contained in Article 1 point 3 of Law 13/2003 jo. PP 35/2021 entrepreneur is an individual or partnership that runs a company, either owned by himself or another person by paying wages or other forms to workers in Indonesia or companies that are run in Indonesia but domiciled outside the territory of Indonesia.

So to work that makes the employer hire workers and provides wages with an unequal position and does not carry out a business with the aim of making a profit, does not include the subject of law in the work

relationship regulated in the labor law and the job creation law. One example of employment with an employer hire workers and wages without profit is domestic workers (PRT) (I Made Udiana, 2016).

b) legal object in work relationship

The legal object in the work relationshipis the work performed by the worker. The elements of work to be carried out by worker is contained in work agreements, collective labor agreements or company regulations which consist of the rights and obligations of each party on a reciprocal basis which includes working conditions or other matters with the existence of an employment relationship. Working conditions are always related to efforts to increase productivity for entrepreneurs and efforts to increase welfare for workers.

Company regulations are stated in Article 1 point (12) of PP 35/2021. Company Regulations are regulations made by entrepreneurs that contain the working conditions and company rules in written form. The work agreement is an agreement between the two parties between the worker and the entrepreneurs. However, it is undeniable that the work agreement has been prepared beforehand by the entrepreneur which is then given for approval or objection in several respects by the worker before finally reaching an agreement in the work agreement (Asri Wijayanti, 2009). The work agreement has a position under company regulations, so company regulations will take precedence (applicable) if the work agreement has provisions that conflict with company regulations. While the Collective Labor Agreement (CLA) will be made when there is a trade union in the company, the CLA is regulated in Article 1 point (13) of PP 35/2021 which states that the CLA is made by the entrepreneurs together with the trade union/labor union as a representation of the workers/labourers in the company.

c) Legal Protection for Workers

Protection of workers aims to guarantee the basic rights of workers, namely ensuring equality, opportunity, and treatment without discrimination on any basis to realize the welfare of workers (Sasmito K, 2021). Work protection can be done by providing guidance, compensation, or clearly increasing the recognition of human rights, physical and socio-economic protection through the norms that apply in the company.

There are 4 norms of protection for workers based on Article 10 of Law 14/1969 concerning the Principles of Manpower, namely:

a. Safety norms are intended to protect workers whose work is related to machines, work tools, materials, work processes, and ways of doing work.
b. Occupational health and hygiene norms are carried out by maintaining and improving the conditions and safety of workers by providing medical equipment and setting health standards for workers.
c. Work norms, in this case workers have rights as workers in general in the form of wages, leave, morality, and religion in order to maintain worker performance.

d. The norm of accidents and or suffering from work-related illnesses requires entrepreneurs to provide compensation rights to workers or their heirs.

Among the protections provided to workers, protection against moral norms is important in the workplace because it is something that is rarely reported but affects the safety, comfort, and performance of workers. The guidelines are expected to be used by entrepreneurs as a reference to suppress cases of sexual harassment in the workplace.

Protection against sexual harassment of workers or equality without discrimination is fully obtained through the ILO convention which is one of the legal products of the ILO (International Labor Organization). Indonesia has ratified 19 ILO conventions. The four main ILO Conventions that prohibit discrimination on the basis of sex and promotion of equality are: Equal Pay Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Workers with Family Responsibilities Convention, 1981 (No. 156) and Maternity Protection Convention, 2000 (No. 183).

The ILO established a new regulation, namely Convention No. 190 of 2019 and Recommendation No. 206. KILO 190 recognizes the importance of a world of work free from gender-based sexual violence and harassment. The Convention recognizes the importance of a work culture based on mutual respect and respect for human dignity and promotes a general environment of zero tolerance for violence and harassment in the world of work that can affect the psychological, physical and sexual health of a person and his family and social environment.

Talking about decency, of course, talking about women as the most vulnerable victims of sexual harassment and sexual violence which is against the norms of decency. The protection and enforcement of women's rights as well as the elimination of all forms of violence and discrimination against women are regulated in international regulations through the CEDAW Convention which was ratified in Law No.7 of 1984 concerning the Convention on the Elimination of All Forms of Discrimination Against Women. Basically CEDAW emphasizes 3 principles, namely the principle of equality and justice between women and men, the principle of non-discrimination, and the principle of the state's obligation to guarantee women's rights through law and policy and guarantee the results (obligation of result) (Bunga Revina, 2021).

Legal Protection of Sexual Harassment for Workers

a) Sexual Harassment

The Criminal Code recognizes sexual acts as obscene. Obscene acts when viewed from the Criminal Code is a complaint offense. **Obscenity** is regulated in Articles 289 to 296 of the Criminal Code. However, articles in the Criminal Code that do not limit the classification of perpetrators and victims in obscene acts, both men and women, are regulated in Article 289 of the Criminal Code and with the existence of an element of working relationship as regulated in 294 paragraph (2) of the Criminal Code.

According to R. Soesilo in his book "The Criminal Code (KUHP) and its Complete Comments Article by Article" Obscene acts are all acts whose scope is carried out around the genital environment or lust and aims to achieve sexual pleasure. Such actions include kissing, touching the body, touching the genitals, touching the breasts and other things that violate decency, decency, or vile acts

that lead to the scope of sexual lust (Slamet Suhartono, 2018). In the sense that the obscene act referred to in the Criminal Code is within the scope of physical sexual harassment and does not yet regulate non-physical sexual harassment.

Sexual harassment was then specifically regulated in Law 12/2022 concerning the Crime of Sexual Violence (UU TPKS) which also completed the legal vacancy regarding non-physical sexual harassment contained in the Criminal Code. Sexual harassment is part of the crime of sexual violence. Sexual Violence Crimes are all acts that meet the elements of a criminal act in Law 12/2022. Sexual violence crimes consist of: non-physical sexual harassment; physical sexual harassment; forced contraception; forced sterilization; forced marriage; sexual abuse; sexual exploitation; sexual slavery; and electronic-based sexual violence. (Article 4 paragraphs (1) of Law 12/2022)**.**

Other forms of sexual harassment, namely: rape; obscence acts; sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children; an act of violating decency that is contrary to the will of the Victim; pornography involving children or pornography that explicitly contains sexual violence and exploitation; forced prostitution; the crime of trafficking in persons intended for sexual exploitation; sexual violence in the domestic sphere; money laundering crime whose original crime was sexual violence; other criminal acts that are expressly stated as criminal acts of sexual violence as regulated in the provisions of the legislation. (Article 4 paragraphs (2) of Law 12/2022).

The parameters of sexual harassment are further elaborated based on the ILO which are then applied in SE-36/MK.1/2020 concerning Prevention and Support for Handling Sexual Harassment in the Work Environment in the Framework of Improving Gender Justice and Equality in the Scope of the Ministry of Finance Article 2 letter a, namely:

a. Using whistles;
b. Flirting;
c. Sexually nuanced remarks, jokes or comments, including those related to someone's appearance;
d. Show pornographic material and/or sexual desire; Poking and/or touching of body parts;
e. Gestures or gestures of a sexual nature; and/or
f. Other forms of sexual coercion, both physical and non-physical, including harassment through social media, and/or communication media in any form

Based on the sexual acts committed, there are main characteristics that make these acts sexual harassment in the workplace, namely:

a. Unwanted by the targeted individual,
b. Done by promise, lure, or threat,
c. The response (reject or accept) to the unilateral action is taken into consideration in determining career or work,
d. The impact of this unilateral action causes various psychological upheavals, such as shame, anger, hatred, revenge, loss of a sense of security and comfort at work and so on. (Papu 2002)

b) Workplace

ILO Convention No. 190 sets out where and when violence and harassment in the world of work can occur, given that boundaries around the world of work vary widely. The definition of workplace is regulated in Article 3 of the ILO Convention 190, namely:

a. Workplace;
b. Public and private spaces where they work;
c. Places where worker is paid, rest or eat;
d. When using sanitary facilities, wash and change clothes;
e. During a business trip, trip, training, event or social activity related to work;
f. Through work-related communications, including those enabled by information and communication technologies;
g. In accommodation provided by the entrepreneur;
h. When traveling to and from work.

Acts that are contrary to laws and regulations and violate work agreements, company regulations, or collective labor agreements in this case specifically regarding physical and non-physical sexual harassment in accordance with Article 5 *jo.* 6 Law 12/2022 is further given limitations based on Article 154 A paragraph (1) letter g number 2 *jo.* Article 154 A paragraph (1) letter g number 6 jo. Article 154A paragraph (1) letter k of Law 13/2003 *jo.* Law 11/2020 *jo.* Article 36 paragraph (1) letter g number 2 jo. Article 36 paragraph (1) letter g number 6 *jo.* Article 36 paragraph (1) letter k PP 35/2021.

The rights of workers who have been laid off because their entrepreneurs have persuaded and/or ordered workers/laborers to act contrary to the laws and regulations and/or provide jobs that endanger their decency and the work is not contained in the work agreement (Asri Wijayanti, 2019). In this case the act is contrary to the provisions of Article 5 *jo*. Article 6 of Law 12/2022. If the application for dismissal is granted by the Industrial Relations Dispute settlement agency, in the sense that the entrepreneur performs an action in accordance with Article 154 A paragraph (1) letter g number 2 *jo.* Article 154 A paragraph (10) letter g number 6 of Law 13/2003 *jo.* Law 11/2020 *jo.* Article 36 paragraph (1) letter g number 2 *jo*. Article 36 paragraph (1) letter g number 6 PP 35/2021 then workers entitled to one-time severance pay in accordance with the provisions of Article 40 paragraph (2); one-time service award according to the provisions of Article 40 paragraph (3); and compensation for entitlements in accordance with the provisions of Article 40 paragraph (4) of PP 35/2021.

If the entrepreneur terminates the worker's work relationship on the grounds of the decision of the industrial relations dispute settlement institution stating that the entrepreneur has not violated Article 36 letter g number 2 *jo.* Article 36 letter g number 6 PP 35/2021 then worker is entitled to compensation money in accordance with the provisions of Article 40 paragraph (4); and severance pay, the amount of which is regulated in company regulations, work agreements, or collective labor agreements (Wibowo, 2021). If the entrepreneur terminates the work relationship of the worker who violates the provisions of the work agreement, collective labor agreement, or company regulations which regulate the prohibition of sexual harassment in the workplace as regulated in Article 5 *jo.* Article 6 of Law 12/2022. then the worker is entitled to severance pay of 0.5 times

the provisions of Article 40 paragraph (2); period of service award in the amount of 1 time as stipulated in Article 40 paragraph (3); and compensation for entitlements in accordance with the provisions of Article 40 paragraph (4). (Article 52 paragraph (1) PP 35/2021).

The amount of severance pay that is given is based on the provisions of Article 40 paragraph (2) of PP 35/2021, namely: one month's wages are obtained for workers who work less than one year; two months' wages, for workers who have worked one year or more but less than two years; three months' wages, for workers who have worked two years or more but less than three years; four months' wages, for workers who have worked three years or more but less than four years; up to a maximum of nine months' wages, for workers working eight years or more.

The amount of the service period award is given based on the provisions of Article 40 paragraph (3) PP 35/2021, namely: two months of wages, for workers with three years of service or more but less than 6 (six) years; three months' wages, for workers with six or more years of service but less than nine years; emoat months of wages, for workers with nine years of service or more but less than twelve years; five months' wages, for workers with twelve years of service or more but less than fifteen years; six months' wages, for workers with fifteen years of service or more but less than eighteen years; seven months' wages for workers with eighteen years of service or more but less than twenty-one years; eight months of wages for workers with twenty-one years of service or more but less than 24 twenty-four years; and ten months' wages for workers with twenty-four years of service or more.

The amount of compensation that should be received is in accordance with the provisions of Article 40 paragraph (4) of PP 35/2021, namely: annual leave that has not been taken and has not yet fallen; the cost or cost of returning the worker/laborer and his/her family to the place where the worker/laborer is accepted to work; and other matters stipulated in the Work Agreement, Company Regulations, and Collective Labor Agreement, so the form of legal protection for workers who are victims of sexual harassment in the workplace by entrepreneurs is the right to apply for termination of employment to the industrial relations dispute settlement agency because the entrepreneur commits acts that are contrary to the laws and regulations, namely physical and non-physical sexual harassment based on Article 5 *jo*. Article 6 of Law 12/2022.

If it is proven that the entrepreneur has committed acts of physical and non-physical sexual harassment, the worker is entitled to one-time severance pay, work award money, and compensation for entitlements in accordance with the provisions of Article 40 *jo.* Article 48 PP 35/2021. If it is not proven that the entrepreneur can layoff the job, the worker will receive compensation and separation money (Article 40 in conjunction with Article 49 of Law 35/2021). When harassment occurs between workers. Perpetrators of sexual harassment can be laid off because they have committed physical or non-physical sexual harassment previously regulated in work agreements, company regulations, or collective labor agreements. Workers who are laid off due to sexual harassment are entitled to a severance pay of 0.5, a period of service award of 1 (one) time; and compensation money. (Article 52 paragraph (1) PP 35/2021).

For acts that have been proven to have committed physical or non-physical sexual harassment, they can be threatened with criminal sanctions in the form of

imprisonment for a maximum of 9 months and/or a maximum fine of ten million rupiahs, a maximum imprisonment of 4 years and/or a maximum fine of fifty million rupiahs. and a maximum imprisonment of 12 (twelve) years and/or a maximum fine of three hundred million rupiah. (Article 5 *jo.* Article 6 of Law 12/2022). If the physical or non-physical sexual harassment is proven to have been committed by the entrepreneur, then the threat of criminal sanctions is added to one third of the criminal threat obtained in Article 5 *jo.* Article 6 of Law 12/2022. (Article 15 of Law 12/2022).

Legal Remedies That Can Be Taken by Workers Who Experience Sexual Harassment in the Workplace

A. Legal Efforts from based on Civil law

Workers who are victims of sexual harassment can take civil legal action in resolving Termination of Employment (layoff) or fight for their rights after applying for layoffs or being laid off in the case of neglect of rights by entrepreneurs through the settlement of industrial relations disputes. Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes is an implementing regulation (formal law) of Law no. 13 of 2003 concerning Manpower which established the Industrial Relations Court, which is a special court in handling industrial relations. The settlement of industrial relations consists of judicial institutions (litigation) and institutions outside the judiciary (non-litigation) or it can be said that the settlement of legal and conscience issues, so that they are subject to agreement without anyone feeling defeated (Hasan Al Munir, 2020). Non-litigation can be done through: Bipartite, Mediation, Conciliation, and Arbitration.

The first step in non-litigation efforts is bipartite. In the settlement of labor relations disputes, Article 3 paragraph (1) of Law 2/2004 obliges to take bipartite settlement efforts first by deliberation to reach consensus. In a bipartite process, if one of the parties refuses to negotiate or after negotiating but does not reach an agreement in a process that takes no later than 30 working days from the start of the negotiation date, then the bipartite deliberation is considered a failure. Recording the dispute to the agency responsible for the local manpower sector must be carried out by one or both parties in the event that bipartite efforts fail.

The parties are offered to agree on choosing a settlement through: mediation, conciliation, or arbitration (Prakasa, S.U.W, 2021). However, dismissal disputes and rights disputes cannot be handled through all of the above efforts. This is because there are different cases that can be handled by each institution. Parties to a dismissal dispute may apply to a Mediation or Conciliation agency (Asri Wijayanti, 2021). Meanwhile, the parties to the dispute over rights can only go through a mediation institution. Arbitration institutions are used to resolve conflicts of interest, and disputes between trade unions that are only in one company.

Mediation is a dispute resolution process carried out by deliberation, mediated by one or more district/city mediators in the field of manpower for the settlement of rights disputes, interest disputes, employment termination disputes, and disputes between trade unions in only one company. (Article 1 point 11 of Law 2/2004) Procedures for settlement through mediation for cases of industrial relations disputes have been regulated in Articles 8 to 16 of Law 2/2004. Mediation must be completed no later than 30 (thirty) working days as of receiving the

delegation of dispute resolution. Efforts made during the mediation process, namely:

1) A written recommendation issued by the mediator;
2) The mediation session on the 10th day must have submitted a written recommendation to the parties;
3) Based on the recommendation of the mediator, within a period of no later than 10 days, the parties must have provided a written answer with the content of agreeing or rejecting the suggestion;
4) It is considered to reject the written recommendation if it does not provide an answer;
5) If the parties agree to the written recommendation, the mediator must have finished assisting the parties to the collective agreement by being registered with the Industrial Relations Court to obtain a certificate of registration within no later than 3 (three) working days after the written recommendation was approved.
6) File a lawsuit to the local Industrial Relations Court by one of the disputing parties, if the written recommendation is rejected by one or the other parties.

The above efforts are also carried out in the conciliation process carried out by the conciliator. Conciliation is the process of resolving disputes of interest, termination of employment or disputes between trade unions within one company only through deliberation mediated by one or more neutral conciliators (Putri Ayu Anggraini, 2021). (Article 1 point 13 of Law 2/2004) The conciliator can provide input or problem solving recommendations to the parties. The procedure for settlement through conciliation on cases of industrial relations disputes is regulated in Articles 17 to 28 of Law 2/2004. The conciliation process must be completed within 30 (thirty) working days after receiving the request for dispute resolution (yayuk Sugiarti, 2022).

In the event that the conciliation reaches an agreement, then the parties sign a collective agreement and are witnessed by the conciliator. Furthermore, to obtain a certificate of registration, the parties must register the collective agreement with the Industrial Relations Court in the jurisdiction of the parties entering into the collective agreement. Meanwhile, if the conciliation does not reach an agreement, then one or the parties can continue to settle the dispute by means of one of the parties filing a lawsuit to the local Industrial Relations Court.

Litigation legal remedies are submitted to the Industrial Relations Court. The Industrial Relations Court is a special court established within the district court with the authority to examine, hear, and give decisions on industrial relations disputes. (Article 1 point 17 of Law 2/2004)

The duties and authorities of the Industrial Relations Court (IRC) are to examine and decide: a. Industrial Law uses the Civil Procedure Law applicable to the Courts within the General Courts, except for those specifically regulated in Law 2/2004. The procedure for resolving disputes through the Industrial Relations Court is regulated in Chapter IV of Law 2/2004 (Asri Wijayanti, 2021).

B. Legal Effort Based on Criminal Law

Victims of sexual harassment in the workplace can take criminal legal action. In the case of sexual harassment committed by fulfilling the provisions of Article 289 jo. 294 letter b of the Criminal Code jo. Article 5 jo. Article 6 letter a of

Law 12/2022 constitutes sexual harassment which includes a complaint offense and can only be processed if there is a complaint or report from a victim of sexual harassment. Meanwhile, sexual harassment in Article 6 letter b of Law 12/2022 is an ordinary offense or offense that can be processed without the victim's complaint or consent.

In a complaint offense, the victim of a crime can withdraw the report if there has been a reconciliation between the victim and the defendant because basically the complaint offense is used for criminal acts that can be resolved amicably or until mutual agreement is obtained (Prakasa, S.U.W., 2021). This is explained in Article 75 of the Criminal Code which states that a person who submits a complaint has the right to withdraw his complaint within three months after the complaint is filed. In making a complaint or reporting Article 74 of the Criminal Code explains that the victim can file a complaint within 6 months if the victim is in Indonesia and the victim can file a complaint within 9 months if the victim resides abroad.

The next stage after a public complaint is an preliminary investigation. Preliminary investigation is the first step in the beginning of the full investigation. Preliminary investigations are regulated in Article 1 point 5 of the Criminal Procedure Code as a series of investigators' actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not an full investigation can be carried out according to the method regulated by law. Preliminary investigations are carried out by investigators who are police officers who are authorized by law to conduct investigations (Article 1 point 4 of the Criminal Procedure Code).

In the process of preliminary investigation trying to find sufficient preliminary evidence. Basically, the function of preliminary evidence is used to carry out full investigations and determine the status of a suspect to someone who is suspected of having committed a crime. Chandara M. Hamzah in his book Law on Sufficient Preliminary Evidence quoting Yahya Harahap's opinion stated that sufficient initial evidence refers to at least the standard of at least two pieces of evidence as referred to in the provisions of Article 283 of the Criminal Procedure Code (Chandra M. Hamzah, 2014).

The follow-up action taken after having sufficient preliminary evidence and having reason to suspect the suspect is to start the full investigation process. an full investigation is a series of actions by investigators to seek and collect evidence with which evidence makes clear about the crime that occurred and in order to find the suspect. (Article 1 point 2 of the Criminal Procedure Code). Full investigations are carried out by the police or civil servant officials who are given special authority by law (Article 1 point 1 of the Criminal Procedure Code). Notification of the commencement of the full investigation is carried out by means of a Notice of Commencement of the Investigation.

The evidence resulting from the full investigation is used to fulfill the provisions of Article 181 jo. Article 183 of the Criminal Procedure Code emphasizes that in the criminal process, evidence is used to seek and find the material truth of the case and the judge may not impose a sentence without evidence (Satria Sukananda, 2020). The evidence that can be used in criminal cases based on Article 184 of the Criminal Procedure Code are: 1. Witness testimony, 2. Expert testimony, 3. Letters, 4. Instructions, and 5 statements of the defendant.

The strongest evidence in cases of physical sexual harassment must be reported as soon as possible so that a visum et repertum can be carried out is a certificate from a doctor containing the results of the post-mortem examination which is usually also carried out on corpses or other forms of violence that can be evidence in court (visum et repertum) (Asri Wijayanti, 2021). Visum et repertum can be used as evidence of letters or expert statements that can be used in one case or condition requested by the expert or in cases where there is injury, poisoning, or death. (Article 187 letter c *jo.* Article 133 paragraph (1) of the Criminal Procedure Code).

However, not all cases of sexual harassment can be proven through visum et repertum. Cases of non-physical sexual harassment which is harassment that does not leave a physical imprint, but only words or actions without touching. In this evidence, witnesses can also be used as evidence that is quite strong.

After conducting a series of full investigations, but the investigator does not obtain sufficient evidence to prosecute the suspect or the evidence obtained by the investigator is inadequate, the investigator may terminate the full investigation. (Article 109 paragraph (2) of the Criminal Procedure Code) Investigators are authorized to issue a Termination of full Investigation Order (SP3) to the public prosecutor that the investigation is terminated. (Article 7 paragraph (1) in conjunction with Article 109 paragraph (2) of the Criminal Procedure Code). The reasons for the termination of the full investigation are contained in Article 109 paragraph (2) of the Criminal Procedure Code, namely: a. insufficient evidence; b. the incident investigated by the investigator turns out to be not a criminal act; c. the investigation was terminated by law. This reason can happen because nebis in idem, the suspect dies, or because the criminal case has expired which makes the right to sue and the right to carry out the crime abolish.

If the case has met sufficient evidence and completed the full investigation. The investigator delegates the case in the form of submitting the case file to the prosecutor's office. If the prosecutor feels that the file is incomplete, the investigator must immediately complete or carry out additional full investigations in accordance with the instructions of the public prosecutor. If within fourteen days the public prosecutor does not return the file to the investigator or before that period the public prosecutor notifies that the full investigation file is sufficient, the full investigation is considered complete (Article 110 of the Criminal Procedure Code).

From the dossier submitted by the investigator, the prosecutor's office can delegate the case to the District Court in his jurisdiction to hear cases of sexual harassment crimes. The period for delegating the case to the court is a maximum of 15 days from the receipt of the suspect and evidence, for difficult cases, it is a maximum of 30 days from the receipt of the suspect and evidence. (Article 32 paragraph (1) *jo.* Article 32 paragraph (2) of the Attorney General's Regulation Number: PER/036/A/JA/09/2011 concerning SOPs for Handling General Crime Cases).

In criminal cases at the first level, the jurisdiction to adjudicate is the District Court in their jurisdiction. Based on Article 50 of Law Number 2 of 1986, the District Court is a judicial institution that has the duty and authority to examine, hear, decide, and settle criminal cases and civil cases at the first level. So, legal remedies that can be taken by workers who are victims of sexual harassment in the workplace are to resolve disputes over layoffs or if there is a dispute over

rights that are not fulfilled as workers after the dismissal occurs by making efforts to resolve them through civil legal remedies in non-litigation or litigation. Non-litigation begins with bipartite, if bipartite fails, the parties to the dismissal dispute can make further efforts through mediation or conciliation. In a rights dispute, the parties who fail in bipartite can only make further efforts through mediation. Litigation efforts are carried out by filing a lawsuit to the Industrial Relations Court.

Workers who are victims of sexual harassment in the workplace can also take criminal legal steps by reporting to the local police for acts of sexual harassment which constitute a complaint offense. From reporting victims of sexual harassment, the police will carry out preliminary investigation carried out by investigators to find criminal events according to the victim's report. If it is reasonable to suspect that an incident of sexual harassment or other criminal act has occurred with sufficient initial evidence, then the next process is to conduct an full investigation by the investigator. In the full investigation carried out to collect evidence so that it becomes clear the form of the crime. If the full investigation does not get enough evidence, the incident being investigated turns out to be not a criminal act, or is stopped for legal reasons. Then the case can be stopped or SP3. If the investigator gets enough evidence, the investigator can delegate the case to the prosecutor's office. The Prosecutor's Office, which receives files from investigators and has sufficient evidence, can delegate the case to a district court based on its jurisdiction.

Conclusion

The form of legal protection for workers who experience sexual harassment in the workplace is that if it is carried out by the entrepreneur, the worker has the right to apply for layoffs to the industrial relations dispute settlement agency because the entrepreneur commits physical and non-physical sexual harassment. Whereas sexual harassment that occurs between workers, perpetrators of sexual harassment can be laid off because they have committed physical or non-physical sexual harassment based on Article 5 jo. Article 6 of Law 12/2022 which was previously regulated in work agreements, company regulations, or collective work agreements. Workers who are victims of sexual harassment by entrepreneur who apply for layoffs are entitled to one-time severance pay, one-time work award, and compensation for entitlements. For acts that have been proven to have committed physical or non-physical sexual harassment, they can be threatened with criminal sanctions in the form of imprisonment for a maximum of 9 months and/or a maximum fine of ten million rupiahs, a maximum imprisonment of 4 years and/or a maximum fine of fifty million rupiahs. and a maximum imprisonment of 12 (twelve) years and/or a maximum fine of three hundred million rupiah. (Article 5 in conjunction with Article 6 of Law 12/2022). The criminal threat is increased by one third of the threat obtained in Article 5 jo. Article 6 of Law 12/22022 if the physical or non-physical sexual harassment is proven to have been carried out by the entrepreneur. (Article 15 of Law 12/2022).

Legal remedies that can be taken by workers who are victims of sexual harassment are to resolve disputes over layoffs or if there is a dispute over rights that are not fulfilled after the termination of employment by taking civil legal remedies in non-litigation or litigation. Non-litigation efforts begin with bipartite. If the bipartite agreement fails, the parties to the dismissal dispute can take further

efforts through mediation or conciliation. Meanwhile, the parties to the dispute over rights can only make further efforts through mediation. Litigation efforts are carried out by filing a lawsuit to the Industrial Relations Court. Victims of sexual harassment in the workplace can also take criminal action by reporting sexual harassment to the police for further preliminary investigation, full investigation, delegation of cases to the prosecutor's office, and delegation of cases to the District Court in their jurisdiction.

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