



OBSTACLES TO THE PROCESS OF SEXUAL VIOLENCE LAW ENFORCEMENT IN ACEH UTARA

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Abstract

Aceh Province as recorded by the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA) Aceh, although there are still 697 cases of sexual violence against women from January to September 2021. The legal basis used in the law enforcement process of sexual violence against women in North Aceh is Aceh Qanun No. 6 of 2014 concerning Jinayat Law, but in its implementation there are various obstacles faced. The study aims to identify obstacles to the law enforcement process of sexual violence against women in North Aceh. Respondents in the study amounted to 21 people selected by accidental sampling. The types of data in the form of primary data and secondary data were analyzed descriptively qualitatively. The results of the study explain that there are obstacles in law enforcement of sexual violence against women in North Aceh District among the legal obstacles, namely The District Court is not authorized to hear cases of rape because the case should have referred to the qanun jinayat instead of the Child Protection Law. Law enforcement constraints are communication barriers between law enforcers and victims who do not understand the use of Indonesian, especially children, facilities and facilities constraints which include lack of consequences of budget and lack of shelter as well as the high cost of visas, and societal and cultural constraints that include the families of the victims are reluctant to report cases of sexual violence because they consider this incident to be a disgrace and must be covered up. In the end, some of the case investigations stopped in the middle of the road.

Keywords: *Obstacles, Law Enforcement, Violence, Sexuality, Women*

1. INTRODUCTION

Women in society are one of the vulnerable groups in social life. Violence against women is currently a major problem in the spotlight. Violence against women is a violation of Human Rights (HAM) that can happen to anyone, both across social, economic and educational status.

Recently, violence in society is increasing, both in quality and quantity. Among the types of violence that occur, it is violence against women that gets a lot of attention, because of its broad nature and impact on the lives of women in particular and society in general. Violence against women is currently the most prevalent in the realm of sexual violence. Sexual violence in society is often referred to as sexual harassment which is a form of violation of decency which is not only a national legal problem of a country, but is a global problem.

The phenomenon of sexual violence still threatens the community, especially groups vulnerable to violence objects such as children and women. Previously in Indonesia, sexual harassment was snared with articles of fornication, namely Articles 289 to 296 of the Criminal

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Code with a maximum sentence of 5 years in prison. With the enactment of Perppu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, perpetrators of sexual crimes based on certain criteria can be charged with the death penalty, life imprisonment, a maximum of 20 years in prison and a minimum of 10 years in prison. This Perpu also stipulates three additional sanctions, namely chemical castration, announcement of identity to the public, and installation of electronic detection devices. Although the threat of punishment is getting heavier, this does not cause the intensity of sexual violence to decrease. Komnas Perempuan's research as reported by Kompas.com (2021) shows an increase in sexual violence by 19 percent in 2020. Most of the increase in sexual violence occurred in the personal sphere of 10 percent and the public sphere of 8 percent. During 2021 cases of violence, especially against women, doubled compared to 2020. The UN (2013) study on Men and Sexual Violence conducted in three different locations in Indonesia (Jakarta, rural Java, and Jayapura) found that in rural areas In rural areas, the lifetime prevalence of rape against women is 19.5% and gang rape is 7%. When rapists were asked why they committed the rape of their last non-partner, 76.5% of men in the three regions on average cited it as a form of sexual right, 55.2% seeking entertainment, and 29.7% angry/punishman.

Factors causing sexual violence, Cases entered in PTPAS, in handling the majority of factors behind the occurrence of sexual violence against women and children, due to psychological factors and moral factors. (Dinar, 2020) The psychological factor itself is caused because the perpetrator has experienced a mental disorder caused by the perpetrator's past. Usually the perpetrator is in the past who became the victim and finally after some time has passed, the victim becomes the perpetrator. For the moral factor, the perpetrator is someone who does not know religious knowledge. As we know, any religion forbids sexual violence against children. In general, it can be stated that the factors that cause sexual crimes against children are divided into 2 (two) parts, namely internal factors and external factors. Internal factors are: psychological factors, biological factors, and moral factors. Meanwhile, external factors are: socio-cultural factors, economic factors, and mass media factors. (Nainggolan, 2008)

Aceh Province is one of the provinces where there are many cases of sexual violence, namely 697 cases until September 2021. Based on data from the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) Aceh, there are seven districts/cities with the highest case handling in 2016-2018, namely cases of violence experienced women and children. Pidie District recorded 7%, Bener Meriah District 9%, Central Aceh 9%, Bireuen 12%, Aceh Besar 13%, Aceh Utara 25%, and Banda Aceh City 25%. From this percentage, Aceh Utara Regency is one of the districts that have the highest violence cases compared to other districts in Aceh Province, this is indirectly due to its large area and has the largest population after Banda Aceh City. Cases of violence that occurred in Aceh Utara can destroy the rule of law, especially Islamic law, individual and social rights of the community that rely on the application of Islamic law, and the handling must be done together, extra and legally.

The legal basis used in the law enforcement process of sexual violence against women in Aceh Utara is Aceh Qanun No. 6 of 2014 concerning Jinayat Law. Based on the qanun jinayat, the perpetrators of sexual violence in North Aceh were criminally charged (uqubat) with hudud and ta'zir punishments. Hudud punishment is a punishment whose criminal sanctions have been explicitly regulated in the Qur'an and Al-Hadith. According to Article 4 paragraph (2) the punishment for hudud is flogging. The second criminal threat is ta'zir where the criminal sanctions are determined by the leadership in this case the authority of the police, prosecutors and the final judge of the Syari'ah Court. According to Article 4 paragraphs (4 and 5) (4) the main uqubat ta'zir are a. whip; b. prison; and c. restitution. Meanwhile, additional ta'zir uqubat includes a. development by the state; b. restitution by parents/guardians; c. return to parents/guardians; d. termination of marriage; e. revocation of licenses and revocation of rights. (Zulkifli et al, 2022). Although there are Aceh qanuns in enforcing the law against cases of sexual violence against women, in its implementation there are many obstacles faced so that cases of sexual violence



against women cannot be resolved properly. Based on this description, this study aims to identify the obstacles to law enforcement of sexual violence against women in North Aceh District. but in its implementation there are many obstacles faced so that cases of sexual violence against women cannot be resolved properly. Based on this description, this study aims to identify the obstacles to law enforcement of sexual violence against women in North Aceh District. but in its implementation there are many obstacles faced so that cases of sexual violence against women cannot be resolved properly. Based on this description, this study aims to identify the obstacles to law enforcement of sexual violence against women in Aceh Utara.

2. IMPLEMENTATION METHOD

This research was conducted in North Aceh District. Respondents in the study amounted to 21 people who came from several law enforcement agencies in Aceh Utara including Aceh Utara Satpol PP, Lhoksukon District Court, Aceh Utara District Attorney, North Aceh Police. Sample selection is done by accidental sampling which is a method of determining the sample by taking respondents who happen to exist or are available somewhere in accordance with the research context (Sugiyono, 2017).

The data in this study consisted of secondary data and primary data. Secondary data, collected from literature studies, journals, reports, and others. While primary data, taken directly from the field either through interviews (interviews) or through a list of questions (questionnaire). Collecting data using interview instruments and questionnaires to obtain accurate and in-depth results. The data obtained were analyzed descriptively qualitatively, namely the data analysis method used to describe and describe existing phenomena, both natural and human engineering which pay more attention to the characteristics, quality between activities (Sukmadinata, 2017)

3. RESULTS AND DISCUSSION

Obstacles to the Law Enforcement Process for Sexual Violence in Aceh Utara

Moral crimes and sexual violence are recognized in the norms of all religions in the world, so that religious values are universal. On the ground of application, this case can be avoided because the role of community values is also very influential on the implementation of the law (Zainal, 2014). Legal protection for victims of sexual harassment is part of legal policy. Protection for victims can be in the form of protection that is abstract (indirect) or concrete (direct). Protection in the abstract is basically a form of protection that can only be enjoyed or felt emotionally (psychically), such as a sense of satisfaction (Putri, 2021).

According to Law Number 12 of 2022 concerning the Crime of Sexual Violence, there are nine types of sexual violence as stated in Article 4 Paragraph 1. The types of sexual violence consist of non-physical sexual harassment, physical sexual harassment, forced contraception, and forced sterilization. Then there are forced marriages, sexual torture, sexual exploitation, sexual slavery, and finally, electronic-based sexual violence. In addition to the nine types of sexual violence, there are 10 forms of sexual violence that are categorized as criminal acts. namely rape, obscene acts, sexual intercourse with children, obscene acts against children, and or sexual exploitation of children, and acts of violating decency against the will of the victim. Then pornography involving children or pornography that explicitly contains sexual violence and exploitation, forced prostitution, criminal acts of trafficking in persons intended for sexual exploitation, and sexual violence within the household (Zulkifli et al, 2022)

There are many cases of sexual violence where the legal process has stalled due to various obstacles faced. Stakeholder attention is urgently needed in accelerating the presence of solutions

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that are able to overcome these obstacles. Law enforcement of criminal acts of sexual violence begins with reports and culminates in the implementation of court decisions. In each phase, law enforcement uses Qanun Number 7 of 2013 concerning the Jinayat Procedural Law as a technical guideline for proceedings. In its implementation, several obstacles were found. Law enforcement constraints found in this study are based on the formulation of factors that influence law enforcement proposed by Soekanto (2013), namely legal factors, law enforcement factors, facilities or facilities that support law enforcement, community factors, and cultural factors.

3.1. Legal Obstacles

Based on the results of the interviews, respondents assessed the criminal threats regulated in Aceh Qanun no. 6 of 2014 concerning the Jinayat Law is considered light and does not side with the victim. Police respondents explained the punishment for perpetrators of sexual harassment as regulated in Aceh Qanun No. 6 of 2014 is lighter than the national law. In Qanun Jinayat Article 34 it is stated that the main punishment for adultery with a child is 100 lashes and can be added with a maximum of 100 (one hundred) lashes or a maximum fine of 1,000 (one thousand) grams of pure gold or a maximum imprisonment of 100 (one hundred) months. Whereas in the Law of the Republic of Indonesia No. 17 of 2006 Article 81 adultery with a child is punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.- (five billion rupiah).

Although there is a new law on sexual violence other than the qanun jinayat which has a more severe punishment and favors the victim and the perpetrator, law enforcers cannot use it because it is part of the specialty of Aceh. In 2018 the Lhoksukon District Court (PN) received a rape case from the North Aceh Kajari where the prosecutor used the legal basis of the child protection law to ensnare the perpetrator. However, during the trial, the defendant filed an exception which essentially considered that the PN was not authorized to adjudicate cases of rape because the case should have referred to the qanun jinayat, not the Child Protection Law. Finally, the North Aceh District Court granted the defendant's exception. This incident was based on the results of an interview with the Deputy Chairperson of the Lhoksukon District Court, which became jurisprudence for handling cases of sexual violence not only in North Aceh but throughout the province of Aceh. So that until now the law enforcement of the crime of sexual violence in North Aceh has only used the legal basis of Aceh Qanun No. 6 of 2014 concerning Jinayat Law.

3.2. Law Enforcement Obstacles

By composition of birth area, law enforcers in North Aceh come from various ethnic backgrounds. Except for the police, elements of prosecutors and judges have cultural diversity. On the one hand, cultural diversity has a positive impact on the birth of a variety of perspectives, but practically it becomes an obstacle in the law enforcement process. The background of the victims and perpetrators who are native to Aceh and are not able to speak Indonesian and are young children are barriers to communication between law enforcement and perpetrators and victims, during the process at the prosecutor's office and court. The proposed solution for law enforcement against sexual violence against women can use local languages that can be understood by child victims so as not to hinder the law enforcement process.

Based on the results of research conducted by Jenawi (2017), obstacles can come from law enforcement, namely, the existence of unscrupulous investigators who often commit irregularities in implementing the rights of crime victims, it is possible for deviations to arise due to bad mentality shown by elements of the police. itself, because there are some victims of violence who have to give some money to get protection from the police. The difference in the number of law enforcement officers with the number of criminal cases that must be handled also sometimes becomes an obstacle that makes it difficult for law enforcers to handle them.

According to Apriyani (2021), the obstacle experienced by law enforcement officials regarding the fulfillment of restitution for victims of criminal acts of sexual violence is that there has not been a coercive effort for perpetrators of sexual violence. Perpetrators who have been sentenced by the panel of judges are asked to pay restitution to the victim, choosing not to pay



restitution and preferring a subsidiary sentence which is considered much lighter. That matter creates an impression in the community that many restitution decisions cannot be executed because the payment of restitution is dependent on the good intentions of the perpetrators. In addition, law enforcement officers have not been too massive in organizing training related to approaches to victims and restitution, especially for victims of sexual violence crimes in order to reach mutual understanding and awareness to realize the maximum fulfillment of restitution in its fulfillment for victims.

3.3. Facilities and Facilities Constraints

According to respondents' understanding of Aceh Qanun No. 6 of 2014 concerning Jinayat Law is one of the specialties possessed by the Aceh Province which is different from other regions. Apart from legal consequences, there are also budgetary consequences to support the process of enforcing this qanun. This study lacks support for facilities and facilities from the local government, especially the court element. The judges of the Sharia Court mentioned several obstacles to these facilities and facilities, including the absence of special prisons for children and women in North Aceh, no special shelter for victims, no courtroom for children, while the police stated that the usual high cost of visas and accommodation for victims.

Other facilities and infrastructure that become obstacles in enforcing the law on sexual violence against women are the relatively narrow place for investigating sexual violence cases, office equipment that is still minimal and not fully covered by the government such as computer equipment or laptops, cupboards where related files are stored. cases, as well as tables and chairs as well as the limited budget in the investigation of these cases.

According to Ramadhana (2021), the supporting facilities or facilities include software and hardware, one example of software is education. The education received by the police today tends to be practical conventional matters, so that in many cases the police experience obstacles in their goals, including knowledge of computer crimes, in special crimes that have so far been given authority to prosecutors, this is because technically, the police are considered legally incapable and have not ready.

3.4. Community and Cultural Constraints

Many studies show the very severe impact of sexual violence on victims including the physical, social, economic and psychological, and gynecological impacts on women. This resulted in the victim and or his family not reporting to law enforcement because of shame. Police observations found that some of the victims' families were reluctant to report cases of sexual violence because they considered this incident to be a disgrace and had to be covered up. In the end, some of the case investigations stopped in the middle of the road.

In addition, the reluctance of witnesses is one of the factors that hinders the law enforcement process. Several things that caused the witness's reluctance were transportation costs and psychological factors such as fear of being terrorized by the perpetrators and unwillingness to deal with the law. Even though this witness testimony is valid as evidence in a criminal case (Article 184 paragraph (1) of the Criminal Procedure Code). According to Kusumawardini (2018), cultural factors become a habit in the family that when violence such as sexual violence occurs, the family experiences a dilemma whether to complain or not, due to the shame of neighbors and fear of being ostracized. Whereas in this case it is necessary to protect the psychological condition of victims of violence, especially if it occurs in children.

Police respondents assessed that ignorance about religion, qanun jinayat, and sexual education played an important role in increasing sexual violence in North Aceh. In some cases, perpetrators of sexual violence consider khalwat and/or courtship an act that does not violate religious norms and is a norm. The people of North Aceh based on the respondents' views are still taboo on the term sexual education. Whereas sexual education is very important to prevent sexual violence. As a simple example, sexual education is like teaching children not to wear revealing clothes either at home or outside the home.

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Based on research conducted by Apriyani (2021), there are obstacles and challenges for victims of sexual violence, namely the social impacts experienced by victims of various kinds, including exclusion from society, victims of sexual violence, especially children, losing their right to education. The solutions faced by victims of sexual violence include support from the victim's attorney and the surrounding community so that the victim remains enthusiastic in undergoing the judicial process and continuing his life.

4. CONCLUSION

Based on the results of the study, it can be concluded that there are obstacles in law enforcement of sexual violence against women in North Aceh District, among the legal obstacles, namely: The District Court is not authorized to hear cases of rape because the case should have referred to the qanun jinayat instead of the Child Protection Law. Law enforcement constraints are communication barriers between law enforcers and victims who do not understand the use of Indonesian, especially children, facilities and facilities constraints which include lack of consequences of budget and lack of shelter as well as the high cost of visas, and societal and cultural constraints that include the families of the victims are reluctant to report cases of sexual violence because they consider this incident to be a disgrace and must be covered up. In the end, some of the case investigations stopped in the middle of the road.

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