COMPARISON OF LEGAL IN GRANTING THE RIGHTS OF RETITUTION TO VICTIMS OF SEXUAL VIOLENCE

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Abstract
The existence of an effective legal system for the protection and recovery of victims of sexual violence is important in the context of respect for justice. The problem is the legal protection of victims of sexual violence, and the granting of restitution rights to victims of sexual violence. This type of research includes a legal-normative section which examines theories, concepts, legal principles and legal provisions that are appropriate and relevant to the subject of the research. This research uses qualitative methods and case methods. In addition, the data obtained will be processed qualitatively and presented in descriptive form. In conclusion, legal protection for victims of sexual violence in Indonesia is regulated in Law Number 31 of 2014 concerning Protection of Witnesses and Victims. Victims of criminal acts have the right to receive compensation, compensation for loss of income or property. By providing the right to restitution to victims of sexual violence in Indonesia, it is clear that restitution or compensation recognizes the victim's suffering and provides adequate restitution. However, there are differences in policies regarding restitution for victims of sexual violence in Malaysia. Currently there is no law that clearly regulates this aspect. This condition can cause victims to feel insecure and have difficulty identifying their pain. Therefore, special attention must be paid to improving restitution rules to better guarantee the rights of victims of sexual violence.
I. Introduction

The reform of criminal justice continues to progress, but sometimes the concept of justice remains an illusion for society. Defining "social justice" as a key element to ensure that all citizens have equal rights and responsibilities provides a valuable starting point. However, citizenship rights sometimes exist merely as illusions within the legal system, as they are influenced by specific political, economic, social, and cultural dynamics. The role of law is crucial in shaping and regulating the relationship between society and individuals within a country. Every country has its own history, culture, and values that influence its legal system. In the context of Southeast Asia, Indonesia and Malaysia are two interesting countries to compare in terms of their legal systems, where the diversity and similarities in law enforcement in both countries become the focus of research.1

As an archipelagic nation with more than 17,000 islands and a multicultural population, Indonesia exhibits cultural diversity and pluralism within its legal system. Conversely, Malaysia is a multi-ethnic country with various races and religions. Although both are located in the same region, the development of legal systems in each country is influenced by differences in history, colonial experiences, and social conditions.2

Based on Articles 28A to 28J of the Constitution of the Republic of Indonesia Year 1945 regulate human rights in Indonesia. Article 28A states that every person has the right to life and the right to seek livelihood. Furthermore, Article 35 of Law Number 39 of 1999 concerning Human Rights guarantees that every person has the right to live in a social and governmental environment that is peaceful, safe, and secure, respecting, protecting, and fully fulfilling human rights. Obligations arising from the basic principles of humanity regulated by law.

Protecting victims of criminal acts is an important aspect of the criminal justice system in various countries. An important aspect of this protection is ensuring restitution or compensation for victims. Restitution or compensation is a form of acknowledgment of the losses suffered by victims due to the crimes they experienced.

Before the enactment of the Witness and Victim Protection Law and its amendments in Indonesia, they did not receive protection. Therefore, this law can be said to be unprecedented in Indonesia, addressing the protection of victims of recent crimes. The declaration introduces the state’s obligation to provide assistance to crime victims. This is regulated in Article 4(a) of the Declaration, which requires Member States to make efforts to comply with the Declaration, with the aim of preventing violations against victims by taking steps to reduce violations in the social, health, education and economic fields and applying economic knowledge. And special. Preventive assistance and encouragement for critical

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1 Luthfia Nareshwari Rasendriya. 2024. Disertasi: Pemenuhan Hak Korban Kekerasan Seksual (Studi Banding Indonesia dan Malaysia. Fakultas Hukum Universitas Muhammadiyah Surakarta. P. 14
2 Ibid. Halaman 15
victims. Furthermore, Article 4(h) states that Member States may cooperate with other states through mutual legal and administrative assistance in identifying, detecting, extraditing and seizing perpetrators, as well as in seizing their assets, to prepare these assets for restitution that can be used by victims.3

Overall, the number of complaints decreased from 459,094 to 457,895 in 2022 compared to the previous year. This reporting threshold is determined by service providers and bodylog data. Meanwhile, the number of complaints received by the National Commission on Violence Against Women increased from 4,000,322 to 4,000,371. This figure means that on average, the National Commission on Violence Against Women receives 17 complaints per day. This number nearly doubled compared to 2020, where the National Commission on Violence Against Women had to address an average of 9 cases per day.4

Based on the type of violence, service organizations and the National Commission on Violence Against Women recorded 15,466 instances of violence out of 13,428 cases in 2022. The most common occurrence was physical violence, with 6,784 cases or approximately 44%. The complaints submitted to the National Commission on Violence Against Women mostly related to cases of sexual violence; meaning, out of 5,831 cases, 2,228 cases were forms of violence or 38%. This number increased compared to 2021 by 2,204 cases. The second most common form of violence was psychological violence (2,083 cases/35.72%). Meanwhile, physical violence dominated the services (6,001 cases/38.8%), followed by sexual violence (4,102 cases/26.52%).5

The available data on violence against women has increased compared to the previous year, but there has been no significant change in the ability to prevent and respond to violence. Meanwhile, cases of sexual violence in various fields including the online world occur across all demographics and ages, starting from young and productive ages. Perpetrators of violence should ideally be the closest people and their protectors, such as teachers, lecturers, religious figures, the military, the police, civil servants, medical personnel, government officials, and law enforcement officers.

The government has reaffirmed its commitment to protecting the public from sexual violence attacks by adopting various legislation. Several laws have been enacted to support efforts to eliminate and prevent sexual violence, such as the 1945 Constitution, Republic of Indonesia Law Number 12 of 2012 concerning Higher Education, and Director General of Islamic Education Decision Number 5494 of 2019, which regulates guidelines for preventing sexual violence in Islamic higher education institutions and their management.6 Furthermore, Law Number 12 of 2022 also implements Articles 26 to 30 related to criminal acts of sexual

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4CETAHU 2023: Laporan Tahunan Kekerasan Terhadap Perempuan 2022. KOMNAS Perempuan. halaman 23
5Ibid. CETAHU 2023: Komisi Nasional Anti Kekerasan Terhadap Perempuan. h. 23-24.
violence. Government Regulation Number 46 of 2019 of the Republic of Indonesia concerning Religious Higher Education, Law Number 20 concerning the National Education System and Related Education Systems, Minister of Education, Culture, Research and Technology Regulation Number 30 of 2021 Regarding Education on Prevention and Handling of Victims of Sexual Violence and Sexual Violence are also included in this commitment. Additionally, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims is also part of the regulations issued.  

Similar principles are also regulated in the Malaysian constitution which grants freedom of association. Part II: Emphasizing that fundamental freedoms do not justify death or deprivation of freedom under any circumstances, except in accordance with the law. Furthermore, equality is an important matter according to Part II - Eternal Freedom. According to this provision, everyone should be treated equally before the law and have the right to equal protection under the law. Protecting individual rights is the primary goal of both initiatives. In both countries, commitment to human rights is considered an integral part of the principles of democracy and civil equality. Although there are differences in implementation and challenges faced by each country, efforts to strengthen and protect human rights remain the primary focus of legal development in Indonesia and Malaysia.

Although there are regulations in place to address sexual violence, so far these rules have not deterred perpetrators from engaging in lewd behavior. Offenders often feel protected and evade capture because they fear tarnishing their own reputation. As a result, incidents of sexual violence often involve female victims, although there are likely also male victims. However, news coverage of male victims of sexual violence is relatively rare, and few are aware of the history and occurrences within society. Sometimes, perpetrators of sexual violence may have been respected individuals and role models for their victims, but now they have become terrifying figures feared by those they victimize.

Providing reparations or compensation to crime victims is part of the effort to reverse the negative impact of crime on victims. However, the treatment of restitution or compensation rights for crime victims may vary from country to country depending on the applicable legal system.

Comparative law comparisons that grant restitution or compensation rights are relevant to the protection of crime victims, as differences in legal approaches between countries can affect the extent to which victims receive recognition of their losses and fair compensation. In this context, comparative legal studies on the granting of restitution or compensation rights provide a deeper understanding of the various ways in which crime victims are protected in different countries. Comparative analysis can highlight the strengths

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7Wahid, Abdul dan Muhammad Irfan. 2011. Melindungi korban kekerasan seksual. Refika Aditama: Bandung. hal.78
8Rusliansyah, file:///F:/Trafficking/Mengenal Sistem Kekuasaan Kehakiman di Malaysia.pdf, diunduh pada 23 Maret 2024.
and weaknesses of each approach and provide a basis for improving crime victim protection systems in the future. Therefore, comparative legal research is important in efforts to enhance protection for crime victims worldwide. Based on the above facts, as the author of this academic study, I am interested in addressing the issue of legal comparison in providing compensation rights to victims of sexual violence. Compensation for victims of sexual violence.\textsuperscript{10}

2. Research Method

This type of research encompasses normative legal aspects that examine theories, concepts, legal principles, and provisions that are appropriate and relevant to the research topic. This study uses qualitative methods and case study methods. Additionally, the data obtained will be processed qualitatively and presented in descriptive form with the aim of providing data as accurately as possible regarding the topics discussed in this article.

3. Results and Discussion

Legal Protection for Victims of Sexual Violence

The Indonesian Victim Protection Law of 2014 has its strengths and weaknesses. Its benefits include the protection of personal security, family, and property, as well as assurance against all threats related to providing witness testimony at all stages. The criminal process, the freedom to choose the type of defense, and the freedom to receive information about the course of the trial, court decisions, the release of criminals, and the right to confidentiality until the end of the criminal proceedings. Additionally, Law Number 31 of 2014 regulates restitution and compensation for victims. Victims of crimes against humanity and terrorism are entitled to reparations. Victims, their families, or their representatives may apply to the Human Rights Court through the LPSK to obtain reparations for crimes against humanity. Compensation can only be provided to terrorism victims under the Terrorism Law. Furthermore, victims receive compensation for financial losses, direct suffering caused by the crime, and compensation for medical or psychological care. However, there are some weaknesses in protecting crime victims in Indonesia. Firstly, this law only protects some victims mentioned in the 2014 law based on LPSK decisions. Secondly, only victims of crimes against humanity will be compensated. Although victims of crimes against humanity are represented by the LPSK in their reparations claims, their participation as witnesses in court is still limited because the police and prosecutors have deprived them of their rights in the criminal process.\textsuperscript{13}

\textsuperscript{10}Harnoko, B.Rudy. 2010. Dibalik kekerasan terhadap perempuan. Muwajah Jilid 2 Nomor 1. Hm.181-188.
\textsuperscript{12}Rahmi, A. 2019. Kepatuhan terhadap restitusi dan kompensasi sebagai bentuk perlindungan terhadap korban kejahatan seksual dalam sistem hukum Indonesia. DE LEGA LATA: Jurnal Ilmu Hukum No.4 Vol.2.Hal.155
\textsuperscript{13}\textit{Ibid} . hal.155
Indonesia, Malaysia, Hong Kong, Singapore, and Brunei Darussalam recognize restitution and compensation to defend crime victims. Courts in these countries may order restitution as part of additional or alternative punishment, although such decisions are rarely used in Asian countries due to a lack of guidelines and precedents, failure of prosecutors to enforce payment, unreasonable process delays, and lack of law enforcement. Reimbursement obligates the perpetrator to pay.¹⁴

Unlike the aforementioned Asian countries, Thailand protects crime victims through civil claims against defendants via civil liability judgments, regardless of whether they are innocent or not. Thai scholars reject this continental European liability system. This method is ineffective if the defendant is unable to pay.¹⁵

Based on the descriptions of various countries above, the author conducts a legal comparison by examining the legal system: legal structure, legal substance, and legal culture between Indonesia and Malaysia.

A. Indonesia

a) Legislasi

Legal structure refers to the organization and hierarchy of the legal system within a country. It includes institutions, mechanisms, and legal frameworks that regulate sexual violence. The legal structure encompasses the constitution, laws, government regulations, judiciary, and law enforcement. In the case of sexual violence, the legal framework may involve the establishment of specialized institutions to handle cases of sexual violence, legal procedures for investigation, prosecution, and trial, as well as the roles of governmental and non-governmental organizations in providing protection for victims.¹⁶

The role of law enforcement in enforcing sexual violence is crucial. Here are some of its main roles:

1. Police Investigation: Law enforcement agencies are responsible for investigating cases of sexual violence. They must gather evidence, listen to the statements of victims and witnesses, and collect relevant information to build a convincing case.

2. Prosecution by the Prosecutor: After conducting the investigation, law enforcement determines whether there is sufficient evidence to prosecute the perpetrator. They represent the public interest and prove the perpetrator's guilt in court.

3. Victim Support through LPSK: In addition to the legal process of the case, law enforcement plays a role in supporting and protecting victims of sexual violence. They must ensure that victims have access to the support, advice, and protective services needed during the process.


¹⁵Ibid. hal.116.

¹⁶Kinasih, Pak Enda. 2007. Melindungi dan menegakkan hak asasi manusia dari pelecehan seksual. Jurnal Universitas Airlangga. hal.45
4. Victim Protection: Law enforcement officials must ensure the safety and well-being of victims during interrogation. They should take action to protect the victim from threats or intimidation from the perpetrator and other parties involved in the case.

5. Court Assistance (LPSK and JPU): Law enforcement serves as public advocates representing the public interest in court. They present evidence and arguments to prove the perpetrator's guilt and ensure that the trial is fair and in accordance with the law.

6. Implementation of Judgments by the Judiciary: After the court issues a judgment, law enforcement is responsible for implementing it. This includes monitoring the execution of sentences for convicted criminals and providing support to victims after the trial is concluded.\(^{17}\)

Overall, the role of law enforcement in prosecuting sexual violence is crucial to ensure justice for victims, effective law enforcement, and protection of society from sexual crimes. Law enforcement agencies such as the police and prosecutors carry out their duties and represent the interests of the victims. However, in reality, victims assist officers in carrying out their duties in the field by providing testimony and giving evidence in court. To protect crime victims, society and the government, including law enforcement agencies, make efforts in prevention and eradication, such as ensuring protection and control against various threats endangering the lives of victims, as well as providing adequate medical care and fair investigation and trial and legal assistance for offenders. All of these are forms of protection tools and a balance of human rights.\(^{18}\)

Considering and protecting the interests of sexual violence victims through the criminal process and various social institutions is a crucial aspect to be addressed in criminal law and social policies. This is the responsibility of the executive, legislative, and judicial bodies as well as other social institutions. In this context, judges as legal and judicial professionals have the obligation to understand and apply the legal values existing in society. In making decisions, judges must carefully consider these values so that the decisions reflect legal certainty, justice, and the welfare of society.\(^{19}\)

The role of victims in the criminal justice system has significant implications, especially in the field of evidence, as victims often serve as witnesses (referred to as victim witnesses) along with other witnesses as valid witnesses in the investigation of a criminal case. In dealing with sexual violence crimes, the legal focus is more on punishing the perpetrator; As a result, the rights of crime victims are often neglected. However, the position of the victim deserves attention because fundamentally the victim is the most affected party in the crime.\(^{20}\)

\(^{17}\)Sumeria, Marchelya. 2013. Undang-undang Kekerasan/Pelecehan Seksual Terhadap Perempuan. Lex et Societatis Jilid 1 No.2. h. 290


b) Legal Substance

"Legal subject refers to the object or subject of law. It encompasses norms, principles, and rules governing sexual abuse. Legal content related to sexual violence includes the definition of sexual violence, types of acts considered sexual violence, legal sanctions for perpetrators, as well as rights and protections for victims. It may also include rules on the procedure for investigation, trial, and handling of sexual violence cases in court.\(^2\)

In Indonesia, the handling of sexual violence crimes is regulated by several related regulations. Key legal provisions related to the handling of criminal cases of sexual violence in Indonesia include the 1945 Constitution, Republic of Indonesia Law Number 12 concerning Higher Education of 2012, and the Director General of Islamic Education Regulation Number 5494 of 2019, which contains guidelines. Preventing and combating sexual harassment in universities is a widespread Islamic practice. Furthermore, Law Number 12 of 2022 also applies articles 26 to 30 related to sexual violence crimes. Government Regulation Number 46 of 2019 of the Republic of Indonesia concerning Religious Higher Education, Law Number 20 concerning the National Education System and Related Education Systems, Minister of Education, Culture, Research and Technology Regulation Number 30 of 2021 on Education on Prevention and Handling of Victims of Sexual Violence and Sexual Violence are part of this commitment. Additionally, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims is also part of the regulations issued.\(^2\)

c) Legal Culture

Legal culture encompasses norms, values, beliefs, and practices related to law within a society. It reflects how society understands, respects, and applies the law in everyday life. The legal culture surrounding sexual violence can influence societal perceptions of sexual violence cases, responses to victims, and attitudes toward perpetrators. This also includes attitudes toward justice, gender equality, human rights protection, and rejection of violence. A strong legal culture that rejects sexual violence reinforces law enforcement and supports victims.\(^2\)

B. Malaysia

a) Legislati

The legal framework in Malaysia for handling cases of sexual violence involves several institutions and mechanisms working together to protect victims and enforce the law against perpetrators. Here are the legal structures commonly involved in addressing cases of sexual violence in Malaysia:

\(^{21}\) Ibid. hal.291
\(^{23}\) Ibid. hal.1-15
1. Police: The Malaysian police are responsible for receiving complaints, conducting investigations, and apprehending suspects in cases of sexual violence. They may provide initial assistance to victims and refer them to appropriate services.

2. Prosecution: Prosecutors are responsible for prosecuting cases of sexual violence. They evaluate evidence and decide whether to pursue charges against the suspect in court.

3. Courts: Courts in Malaysia adjudicate cases of sexual violence and impose penalties on perpetrators if found guilty. There are various types of courts, including high courts, Sharia courts (for cases involving Islamic law), and specialized courts for sexual violence cases.

4. Ministry of Home Affairs: The Ministry of Home Affairs is responsible for policies and programs to protect victims of sexual violence. They may collaborate with other agencies to provide support services and assistance to victims.

5. Social and Welfare Organizations: These organizations provide support services and assistance to victims of sexual violence, including counseling, medical care, and protection for victims in need.

6. Civil Society and Non-Governmental Organizations (NGOs): Civil society and NGOs also play a role in supporting and assisting victims of sexual violence, as well as raising awareness of the issues within the community.

This legal framework works together to ensure that cases of sexual violence are effectively addressed and that victims receive the protection, support, and justice they need. However, there are still challenges in prosecuting and protecting victims of sexual violence in Malaysia, and efforts to improve the system are underway.

b) Legal Substance

In Malaysia, the handling of sexual violence offenses is regulated by several laws and related regulations. The main legal issues related to handling sexual violence offenses in Malaysia include:

1. Torture Act (Act 574): The Torture Act is a law that regulates various types of crimes, including sexual offenses. The relevant section dealing with sexual violence includes Chapter XXII (Offenses Against Dignity), which discusses offenses such as rape, sexual violence, and molestation.

2. Criminal Procedure Act (Act 593): The Criminal Procedure Act regulates the criminal process in Malaysia. It includes investigation, criminal process, and trials of sexual violence cases.

3. Laws on Child and Women Protection (Act 522): This law provides special protection for women and children from various forms of violence, including sexual violence. It includes protective measures such as special courts for sexual violence cases and better protection for victims.

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4. Providing additional policies and procedures related to handling criminal cases of sexual violence, including investigation procedures, trials, and sentencing.

5. Policies and Guidelines: In addition to these laws, there are also policies and guidelines issued by authorities such as the Ministry of Home Affairs or the Attorney General’s Office that regulate the handling of sexual violence cases and provide guidance on actions to be taken. Through law enforcement.25

c) Legal Culture

The legal culture in Malaysia regarding cases of sexual violence is reflected in the legal and social framework governing the handling of such cases, as well as the attitudes and perceptions of the society towards sexual violence. Here are some factors influencing the legal culture in Malaysia regarding cases of sexual violence:

1. Legal Framework: Malaysia has a legal framework to regulate sexual violence, including the Sexual Offenses Act, Child and Women Protection Act, and Criminal Procedure Act. However, there have been criticisms of this legal framework as being inadequate in protecting victims and prosecuting perpetrators of sexual violence.

2. Stigma and Harassment: There still exists a culture of stigmatizing sexual violence victims in Malaysia. Victims face social pressure and negative stigma after reporting their crimes. Additionally, victims may experience violence or harassment from authorities or the community when reporting their offenses.

3. Awareness and Education: Awareness of sexual violence and victims’ rights has increased in Malaysia, particularly through community awareness and educational campaigns in schools and communities. However, further efforts are needed to change societal perceptions of sexual violence and reduce stigma against victims.

4. Prevention and Protection: The Malaysian government has made efforts to prevent sexual violence and protect victims through protection and education programs. This includes providing victim support centers, training for law enforcement officers, and sexual violence prevention campaigns.

5. Access to Justice: Access to justice for victims of sexual violence in Malaysia is fraught with challenges, including limited resources and capacity in the criminal justice system and inadequate support for victims in the legal process.26

Overall, despite progress, there is still much work to be done to change the legal culture in Malaysia regarding cases of sexual violence. Collaborative efforts between the government, civil society, and non-governmental organizations are needed to raise awareness, change stigma, improve access to justice, and protect victims of sexual violence more effectively.

Granting Restitution Rights to Victims of Sexual Violence

25 Ibid. hal.27
26 Ibid. hal.28
When a criminal act occurs, victims experience various losses such as medical expenses, mental health costs, and legal fees. Additionally, victims may suffer financial losses due to damage or loss of property, as well as loss of time in completing various processes such as medical treatment, legal procedures, and replacing damaged items. Victims may suffer from various negative consequences, including physical and psychological suffering, as well as social losses. JE Sahetapi states that the quality of good reparations can be measured by the ability of regulations to provide adequate, timely, and economical reparations so that crime victims continue to suffer structurally. The effectiveness of these regulations depends on those responsible for enforcing them.  

About the four compensation systems for victims As explained above, there are three compensation systems related to criminal law, namely: 1) civil compensation through criminal courts (merging compensation cases), 2) civil compensation through criminal courts in criminal law (merging compensation cases), which are of a mixed criminal nature and are awarded by criminal courts (restitution), 3) civil compensation awarded by criminal courts and funded from state revenue sources (compensation).  

According to Article 7A paragraph 1 of Law Number 31 of 2014 concerning Witness and Victim Protection, crime victims are entitled to compensation, including compensation for loss of income or property as well as compensation for direct suffering caused by the crime, plus reimbursement of medical, and/or psychological expenses. The Witness and Victim Protection Agency (LPSK), whose task is to ensure protection under this law and ensure respect for victims’ rights, is responsible for accompanying crime victims and providing them with information about their rights to compensation. Claims for compensation against victims based on Article 7A paragraph 3 of Law Number 31 of 2014 concerning Witness and Victim Protection can be filed by LPSK before or after the court issues a legally binding decision.  

If the request for restitution is made before the court’s decision becomes legally binding, LPSK may request the court to issue a decision. If the victim of the crime dies, compensation may be given to the victim’s family in accordance with the provisions of Article 18 of Government Regulation Number 35 of 2020 concerning Compensation, Restitution, and Assistance to Witnesses and Victims.  

Based on Law Number 13 of 2006 concerning Witness and Victim Protection and Law Number 31 of 2014 amending Law Number. According to Article 13 of the 2006 Witness and Victim Protection Law, a “victim” refers to a person who suffers physical and mental illness due to a crime or suffering financial loss. However, to determine whether a crime has

29 Maria Novita Apriyani. 2021. Implementasi Kompensasi Bagi Korban Pelecehan Seksual. Buku Hukum, Volume 17 Nomor 1. hal. 6  
30 Ibid . H.6
occurred or not, a criminal case must be initiated and the court must make a final decision. Paradoxically, many aspects of criminal justice implementation aimed at fair treatment of perpetrators of crime overlook the protection of crime victims. For example, The principle of presumption of innocence, aimed at preventing human rights violations against criminal perpetrators, can result in the neglect of victim protection due to the possibility of coercion in the criminal process. Errors or negligence in handling such cases. However, if someone cannot be considered a criminal unless there is a court ruling that declares guilt, then the victim's status becomes uncertain if the perpetrator's guilt cannot be legally proven.

In Malaysia, criminal sanctions against perpetrators of sexual violence are regulated by law. Perpetrators of sexual violence can face imprisonment, fines, and whipping, depending on the type of crime committed and the court’s decision. Criminal penalties for sexual violence in Malaysia are governed by the country’s criminal law, particularly laws such as the Malaysia Penal Code. Depending on the severity of the offense, imprisonment for perpetrators of sexual violence can range from several years to life imprisonment. In addition to imprisonment, fines may also be imposed. Besides imprisonment and fines, the Malaysian legal system allows for the use of corporal punishment as part of criminal sanctions. Caning is often used in some cases of sexual violence, although its use has been criticized internationally as inhumane treatment.

Sexual violence has diverse impacts on each individual who becomes a victim; therefore, it is crucial to provide appropriate support and assistance to help them overcome its effects and restore their quality of life. One’s sexual orientation can be one of the factors involved when their expression is redirected towards an unwanted object, which relates to issues of consent.

To continue a relationship, consent from both parties is required. The principle is that agreements should be based on free consent. When sexual violence occurs, the victim’s sense of helplessness often leads to deep emotional wounds and heavy psychological burdens. Clear rights violations occur, and the experience of violence can quickly shatter one’s subjectivity. Stigmatization of sexual violence, especially rape, poses a threat to the construction of one’s identity and intertwined gender roles.

It is important to note that these sentences are handed down by the court based on proven facts during the trial, and the final decision considers various factors, including the severity of the crime, the background and origins of the perpetrator, and the interests of the victim of the crime.

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33 Benguet Hasudungan Simatupang dkk. 2023. Hak atas kompensasi bagi anak korban kekerasan seksual. Jurnal Hukum Universitas Bengkulu Volume 8 Nomor 1 h.75
In Malaysia, the punishment for sexual offenders is regulated by state laws. Depending on the type of crime committed and the court's decision, sexual offenders can face punishments such as imprisonment, fines, and caning. The criminal punishment for sexual violence in Malaysia is governed by criminal law, particularly laws such as the Malaysian Penal Code. Depending on the severity of the crime committed, the prison sentence for sexual offenders can range from several years to life imprisonment. Additionally, offenses can be punished with fines as an additional or alternative to imprisonment.\textsuperscript{35}

In addition to imprisonment and fines, the Malaysian legal system also regulates corporal punishment as part of criminal sanctions. Caning is widely used in some cases of sexual violence, although its use is often criticized as inhumane.

It should be noted that the court will impose sentences based on the evidence revealed during the trial and that the final decision will take into account several factors, including the severity of the crime, the perpetrator's background, and the welfare of the victim. In Malaysia, the Malaysia Penal Code states in Article 376C that anyone who commits rape during, before, or after the violation and threatens the victim is liable to imprisonment for up to 20 years and caning. Rape involves the use of force by the perpetrator against the victim, which can be violence or the threat of violence. This means that if sexual intercourse occurs with the victim's consent, it is not considered rape.\textsuperscript{36}

The Malaysia Penal Code is considered more comprehensive compared to the provisions of the Indonesian Criminal Code (KUHP). The Malaysia Penal Code generally outlines issues related to rape and spousal rape and regulates rape through its articles. There are also provisions regarding rape, with each provision explained individually to understand each article. and intimidating the victim, is punishable by imprisonment for up to 20 years and caning.\textsuperscript{37}

Indonesian criminal law regulates sexual violence as acts of forcing sexual relations upon individuals living in the household, as well as forcing sexual relations upon someone within the family for commercial purposes or other reasons. In Malaysian criminal law, offenders now distinguish between spouses and other family members in terms of sexual violence.

The main difference between Indonesian and Malaysian criminal law, particularly in the criminal sanctions against sexual offenders in Malaysia, lies in the classification of victims and perpetrators. In Malaysia, the punishment for sexual violence varies depending on the victim and perpetrator, including punishments under Islamic law for sexual violence committed by family members other than spouses. In Indonesian criminal law, criminal sanctions have been fully regulated in Law No. 12 of 2022, which includes Articles 26 to 30 on sexual violence offenses. In Malaysia, criminal sanctions are exclusively regulated by the Domestic Violence


\textsuperscript{36}Desi Kusuma Vardani dan lainnya. 2017. Perbandingan Tindak Pidana Pemerkosaan dalam KUHP Indonesia dan KUHP Malaysia. Revisi Volume 6 No. 3. hal. 357

\textsuperscript{37}Ibid. hal.358
Act of 1994. The law refers to the Malaysia Penal Code, as of January 2015. Additionally, forms of criminal sanctions against sexual offenders in Indonesian criminal law include imprisonment, fines, and alternative imprisonment for fines. Malaysian criminal law now imposes criminal sanctions for offenses such as imprisonment, fines, and caning for certain acts.  

In Indonesia, the system of recovery and protection of the rights of victims of sexual violence is more advanced compared to that in Malaysia. The main difference between the two lies in the approach to compensating victims. In Indonesia, this approach is clearly regulated through restitution or compensation, which acknowledges the suffering of the victim and provides appropriate compensation. However, there are policy differences regarding compensation for victims of sexual violence in Malaysia. Currently, there is no law that clearly regulates this aspect. This condition can cause victims to feel insecure and have difficulty identifying their pain. Therefore, special attention should be given to perfecting restitution rules to better guarantee the rights of victims of sexual violence. In addition to general criminal law that regulates imprisonment and fines for perpetrators of sexual violence, criminal law in Malaysia also considers Islamic law aspects. In adjudicating sexual violence crimes, Malaysia pays more attention to Islamic law or recommends the use of physical punishment for the perpetrators of such crimes.  

4. Conclusion

Legal protection for victims of sexual violence in Indonesia is regulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. Victims of criminal acts are entitled to compensation, which includes compensation for lost income or property and compensation for direct suffering caused by guilt. Actions and reimbursement of medical and/or psychological treatment costs. The Witness and Victim Protection Agency (LPSK), whose task is to ensure protection under this law and ensure respect for the rights of victims, is tasked with accompanying crime victims and providing them with information about their rights to reparations. Meanwhile, punishment for perpetrators of sexual violence in Malaysia is regulated by state laws. Perpetrators of sexual violence can be sentenced to imprisonment, fines, and whipping, depending on the type of crime committed and the court's decision.

By granting compensation rights to victims of sexual violence in Indonesia, this approach is clearly based on restitution or compensation that acknowledges the suffering of the victim and provides adequate compensation. However, there are differences in policy regarding compensation for victims of sexual violence in Malaysia. Currently, there is no clear law regulating this aspect. This condition can cause victims to feel insecure and have difficulty identifying their pain. Therefore, special attention must be given to perfecting the restitution

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39 *Ibid*. hal.266
rules to better ensure the rights of victims of sexual violence. In addition to general criminal law regulating imprisonment and fines for perpetrators of sexual violence, criminal law in Malaysia also considers Islamic law aspects. In adjudicating sexual violence crimes, Malaysia pays more attention to Islamic law or recommends the use of physical punishment for perpetrators of such crimes.

References
CETAHU 2023: Laporan Tahunan Kekerasan Terhadap Perempuan 2022, KOMNAS Perempuan.


Rusliansyah, file:///F:/Trafficking/Mengenai Sistem Kekuasaan Kehakiman di Malaysia.pdf, diunduh pada 23 Maret 2024.