

Comparative Law Study: Sentencing of Sexual Violence Perpetrators Who have Deviant Sexual Behavior

Nurhayati Mardin^{1*}
Andi Intan Purnamasari²
Nurul Miqat³
Adiguna Kharismawan⁴
Rafika Nur⁵

^{1,2,3,4}Faculty of Law, Universitas Tadulako, Palu, Indonesia. *Correspondence E-mail: eche.mardin@gmail.com
⁵Faculty of Law, Universitas Ichsan, Gorontalo, Indonesia.

Article Info

Keywords:
Sentencing; Sexual
Violence; Deviant
behavior.

How to cite (APA Citation Style):
Mardin, N., Purnamasari, A. I., Miqat, N., Kharismawan, A., & Nur, R. (2022). "Comparative Law Study: Sentencing of Sexual Violence Perpetrators Who Have Deviant Sexual Behavior". *Jambura Law Review*. JALREV 4 (2): 227-245

Abstract

The purpose of this paper is to find the ideal form of punishment for perpetrators of sexual violence who suffer from deviant sexual behavior. The method in this study is a normative legal research type, where activities are carried out by researching and analyzing the forms of sanctions and punishments regulated in positive law, in addition to conducting a comparative study of the provisions in positive law in Indonesia in the perspective of the types of sanctions against perpetrators of sexual violence crimes. who suffer from deviant sexual behavior. The results show that the ideal form of sanctions imposed on perpetrators of sexual violence who suffer from deviant sexual behavior should not only focus on imprisonment, however, it must be accompanied by other treatments or actions to treat the deviations in sexual behavior he suffers as mandated in the Sexual Violence Criminal Act, which is to combine imprisonment and special rehabilitation to cure his sexual behavior deviations. With the imposition of imprisonment alone, it will not be able to treat the main factor that triggers sexual violence crimes committed by perpetrators who suffer from deviant sexual behavior, so that rehabilitation or treatment efforts are important things that must be done so that there is no repeated or recidive crime.

@2022 - Mardin, N., Purnamasari, A. I., Miqat, N., Kharismawan, A., & Nur, R.
Under the license CC BY-SA 4.0

1. Introduction

The increasing number of victims of sexual violence illustrates that sexual violence crimes can no longer be viewed as a matter of course and only be addressed in the usual way, but that maximum efforts must be made to handle these cases. The head of Komnas Perempuan Andy Yentriyani revealed that violent crimes against women have doubled in 2021, with the number of cases of violence against women reaching 4,500 cases until September 2021.¹ This figure shows the emergency of sexual crime that is happening in Indonesia today. Constructive efforts must be made immediately to protect women and children. The data above shows that women and children in Indonesia are vulnerable to being victims of sexual violence both in the domestic (family) environment and in the community outside the family environment. The resolution of cases of sexual violence crimes requires efforts that are holistic or comprehensive, not only through partial efforts, such as focusing solely on victims, but also paying close attention to the behavior of the perpetrators of the sexual crimes.

In every crime, there are perpetrators and there are victims of crime, as well as in crimes of sexual violence against women and children, it must also involve victims and perpetrators. Perpetrators of crimes of sexual violence against women and children are generally committed by men who are anatomically stronger than women and children.

The definition of sexual violence against women according to WHO is sexual violence that occurs not only physically but also verbally and mentally. Physical, verbal, and mental violence cannot be separated from sexual violence because it often precedes the occurrence of sexual violence.²

The provisions for the punishment of perpetrators of sexual crimes against women and children currently in force in Indonesia position the perpetrators only on punishment in the form of liberation of liberty which is physical punishment, but has

¹ Tirto.id. (n.d.). *Komnas Perempuan: Kasus Kekerasan Naik 2 Kali Lipat Pada 2021*. Retrieved Juni 30, 2022, from <https://tirto.id/komnas-perempuan-kasus-kekerasan-naik-2-kali-lipat-pada-2021-gmfy>

² Astuti, & Rina. (2012). Hubungan Kesadaran Akan Kerentanan Diri dan Mekanisme Coping pada Perempuan Pekerja Malam di Tempat Hiburan Karaoke Wilayah Jakarta Barat. *Jurnal Kriminologi Indonesia*, 7(2). <http://journal.ui.ac.id/index.php/jki/article/view/1087>

not provided other sentencing options that provide psychological recovery for the perpetrators of sexual violence crimes. The sentencing of perpetrators of sexual crimes with deviant behavior is an urgent matter that needs to be found a solution, considering that positive law in Indonesia does not yet provide the possibility of punishment that is psychologically rehabilitative in nature for perpetrators, which is actually very important to do to prevent the occurrence of repeated crimes. Provisions for the punishment of perpetrators with sexual deviations must be more comprehensive to be relevant with the aim of punishment which requires a deterrent effect and the creation of order in society.

The potential for sexual violence crimes committed by perpetrators who experience behavioral deviations is very likely to occur, so that efforts to prevent repeated sexual crimes must be made, one of the causes of which is the existence of deviations in sexual behavior from the perpetrator. In various countries, sexual deviation occurs because it is influenced by certain factors.

If this effort is carried out through the right pattern of punishment, it can indirectly reduce the occurrence of sexual crimes in the future. In Law No. 12 of 2022 concerning the Criminal Act of Sexual Violence, which has just been passed, the concepts of handling and forms of punishment have been explicitly proclaimed, so that this law is expected to be an oasis in handling criminal acts of sexual violence.

Sexual deviation is any form of sexual deviation, either direction, interest, or sexual orientation. Deviance is a disorder or disorder. While sexual behavior is any behavior that is driven by sexual desire, both with the opposite sex and with the same sex. The forms of this behavior can vary, ranging from feelings of attraction to behavior dating, making out, and having sex. Sexual objects can also be other people, themselves, or objects in the imagination. Sexual deviation is a form of deviant behavior because it violates applicable norms. Sexual deviation can also be interpreted as a form of action that ignores values and norms that violate, contradict or deviate from legal rules.³

³ Sulistiani, S. L. (2016). *Kejahatan & Penyimpangan Seksual Dalam Perspektif Hukum Islam dan Hukum Positif Indonesia*. Nuansa Aulia. p. 17

2. Problem Statement

Handling cases of sexual violence in addition to providing comprehensive protection for victims of crime, must also think about handling perpetrators, especially people with deviant sexual behavior, so that the purpose of sentencing can be successful in accordance with what is expected. In this regard, the author is interested in studying the forms of punishment for perpetrators of sexual violence who suffer from deviant sexual behavior. This is intended so that the perpetrators receive punishment as well as treatment so that there is no repeat of the crime in the future.

3. Methods

The type of research used is normative legal research, which is a process to find legal rules, legal principles and legal doctrines in order to answer the legal issues faced.⁴ The activity is carried out by researching and analyzing forms of sanctions and punishments regulated in positive law against perpetrators of sexual violence crimes who suffer from deviant sexual behavior. In addition, a comparative study was carried out on the provisions in positive law in Indonesia, namely a comparison of the perspective of the types of sanctions, the system of sanctions and weighting between the Criminal Code, Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection, and Law No. 23 of 2004 concerning the Elimination of Domestic Violence against perpetrators of sexual violence crimes who suffer from deviant sexual behavior.

4. Discussion

To describe the analysis of the problem formulation, this paper examines from the perspective of criminal sanctions for perpetrators of sexual violence as seen in the Criminal Sanctions for perpetrators of sexual violence against women according to Positive Law and punishment for perpetrators of sexual violence with deviant sexual behavior in the perspective of legal reform through the Act. Act on the Crime of Sexual Violence.

⁴ Marzuki, P. M. (2014). *Penelitian Hukum* (Revisi). Kencana. p. 35

4.1. Comparison Criminal Sanctions for Perpetrators of Sexual Violence Against Women in The Indonesian Positive Law

In the Criminal Code the term sexual crime is not known, but implicitly the rules related to this are the crimes of decency which are regulated in Chapter XIV of Book II of the Criminal Code concerning crimes against decency. There are 2 (two) kinds of needs for importance philosophical thinking about the law: 1) Great community needs of general security, as a need for peace and order has dictated the beginning of the law, has prompted man to look for something a definite basis in the form of rules that regulating human actions that may hinder actions arbitrary good from the judge as well as from the individual, who ultimately can establish community who is firm and steady. 2) On the other-hand the pressure of interest society is not so urgent, however, there is a need to adjust to the needs of the needs in the field of security general and making compromises promising new continuously in society due to the existence of changes that occur in society continuously continuous and for it is necessary adjustments.⁵ This chapter on Moral Crimes not only regulates the meaning of decency in terms of lust but also contains prohibitions against acts that violate etiquette and decency such as gambling. Provisions on decency crimes are regulated starting from Articles 281 to 303 of the Criminal Code. Comparison of Provisions in the Criminal Code and Outside the Criminal Code:

Table 1: Comparative Description of Crime Provisions in the General Rules (Indonesian Criminal Code) and Special Rules (Laws outside the Indonesian Criminal Code)⁶

No	Chapter	Article Elements	Terms Analysis Comparison
Criminal Code			
1	Article 285 of the Indonesian Criminal Code	The crime of violence or threats of violence forcing a woman who is not his wife to have intercourse with him, is punished, for raping, with a maximum prison sentence of	- The provisions in the Criminal Code use the types of sanctions in accordance with Article 10 of the Criminal Code.

⁵ Towadi, M., Kasim, N. M., Rumawi, R., & Tahir, S. A. (2021). An Indication of China's Policy towards Uighurs and its Implications by International Law Aspects. *Jambura Law Review*, 3(1), 55-71.

⁶ Source of the results of research data

	twelve years.	
Article 289 of the Indonesian Criminal Code	Crimes against violence or threats of violence forcing a person to commit or allow an obscene act to be carried out, threatened for committing an act that attacks the honor of morality, with a maximum imprisonment of nine years	- From the provisions governing crimes against the articles described, the threat of imprisonment is varied, but the maximum is 15 years.
Article 290 of the Indonesian Criminal Code	Crime against commits an obscene act with someone, while knowing that that person is unconscious or incapacitated, and the crime of committing obscene acts with someone, is being known or ought to be presumed, that the person is not yet 15 years old or if it is not clear how old he is, that the person is not yet mature make friends.	- The weighting provisions are not attached to the article offense - outlined.
	And the crime of persuading (tempting) a person, whom he knows or should suspect, that that person is not yet 15 years old or if it is not clear how old he is, that it is not yet time for him to marry, will commit or allow him to commit obscene acts, or will have sexual intercourse. with other people without a partner (Indonesian Criminal Code article 37, 289, 291, 298).	

Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection

2	Article 76 D	prohibited from committing violence or threats of violence to force the child to have intercourse with him or with other people.	The types of sanctions that are described in the elements of the article are not only imprisonment, but also accumulatively formulated imprisonment with fines.
	Article 76 E	are prohibited from committing violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading children to commit or allow	Against several provisions in the elements of the

	obscene acts to be carried out.	article, indicating the existence of a weighting, seen from the perspective of the victim is a child, then the weighting is given 1/3 (one third) of the criminal threat.
Article 81	<p>(1) violating the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).</p> <p>(2) intentionally commits a ruse, a series of lies, or induces the Child to have sexual intercourse with him or with another person.</p> <p>(3) In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, or education staff, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1)</p>	
Article 82	<p>(1) In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, or education staff, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1)</p> <p>(2) The criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, or education staff, then the penalty is added to 1/3 (one third) of the criminal threat as referred to in paragraph (1).</p>	

Law No. 23 of 2004 concerning the Elimination of Domestic Violence

3 Article 46 Any person who commits an act of sexual violence as referred to in Article 8 letter a shall be sentenced to a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp. 36,000,000.00 (thirty-six million rupiah). Article 47 Anyone who forces a person living in their household to have sexual relations as referred to in Article 8 letter b shall be punished with a minimum imprisonment of 4 (four) years and a maximum imprisonment of 15 (fifteen) years or a minimum fine of Rp. 12,000,000.00 (twelve million rupiah) or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah). Sanctions are alternative. The options given are the threat of imprisonment or a fine. In contrast to the Criminal Code which only provides sanctions in the form of imprisonment, while the law on child protection sanctions in the form of accumulative fines and imprisonment, while in the provisions of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, sanctions are in the form of alternatives between imprisonment or fines.

Article 48 In the event that the acts as referred to in Article 46 and Article 47 result in the victim receiving injuries that do not give any hope of healing at all, experiencing mental or mental disorders for at least 4 (four) continuous weeks or 1 (one) non-consecutive year, Abortion or death of the fetus in the womb, or resulting in the non-functioning of the reproductive organs, shall be punished with a minimum imprisonment of 5 (five) years and a maximum imprisonment of 20 (twenty) years or a minimum fine of Rp. 25,000,000.00 (twenty-five million rupiah) and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). In the provisions of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, the setting of sanctions is more complex, namely the existence of a special minimum limit and a special maximum limit. Both in prison and in fines. It can be seen, for example, in Article 46, that the minimum imprisonment is 4 (four) years and the maximum imprisonment is 15 (fifteen) years. For provisions, the minimum fine is Rp. 12,000,000.00 (twelve million rupiahs) or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiahs).

The provisions of the general maximum and specific minimum limits should reduce disparities in

sanctions for the same act by different actors. So that the punishment for the same crime does not occur very far from one case to another.

Law Number 12 of 2022 concerning the Crime of Sexual Violence

4	Article 17	<p>(1) In addition to being sentenced, perpetrators of the crime of sexual violence can be subject to action in the form of rehabilitation.</p> <p>(2) The rehabilitation as referred to in paragraph (1) includes: a. medical rehabilitation; and b. social rehabilitation</p> <p>(3) The implementation of Rehabilitation as referred to in paragraph (2) is carried out under the coordination of the prosecutor and periodically supervised by the minister in charge of government affairs in the social sector and the minister in charge of government affairs in the health sector.</p>	<p>In the provisions of Law No. 12 of 2022, it opens a rehabilitation sanction area as an effort to deal with perpetrators. Rehabilitation sanctions according to the author's analysis are appropriate to be given to the perpetrator, given that the act of sexual disorder is part of the sexual illness experienced by the perpetrator, so that sanctions in the form of imprisonment or fines are not comprehensively able to solve the problem of sexual violence, if the main factor of the perpetrator committing a crime is due to mental disorders experienced. So that by rehabilitating the perpetrators, the purpose of the punishment itself can be achieved, especially for the repetition of criminal acts.</p>
---	------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Article 5 to Article 18	<p>The descriptions of the articles shown in this table are article 12, article 13 and article 15 (a few articles below, as a sample, for comparison of provisions on criminal sanctions)</p> <p>Article 12 Any person by force or threat of violence or by abusing one's</p>	<p>Regarding the type of sanctions, this law states that the maximum penalty for imprisonment is 15 years.</p> <p>The formulation of the offense from article 5 to article 18 shows an accumulative and</p>
----------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

position, authority, trust, prestige arising from deceit or relationship circumstances, vulnerability, inequality, powerlessness, dependence of a person, debt bondage or giving payments or benefits with the intent to gain advantage, or take advantage of sexual organs or other organs of that person directed against sexual desire with him or with another person, shall be punished for sexual exploitation, with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp. 1,000,000,000. 00 (one billion rupiah)

alternative model. Law enforcement can use the accumulative system or use alternatives.

With regard to the pattern of weighting of the criminal, the provisions on the pattern of weighting are not attached to the formulation of the offense norm, but are regulated in Article 15 which provides criteria for indicators of when an offense can be aggravated.

Article 13

Every person unlawfully places a person under his control or another person and renders him powerless with the intention of sexually exploiting him, shall be punished for sexual slavery, with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp. 1,000,000. 0000.00 (one billion rupiah).

Article 15

The penalties as referred to in Article 5, Article 6, and Article 8 to Article 14 are added by 1/3 (one third), if:

- a. carried out within the scope of the Family;
- b. carried out by health workers, medical personnel, educators, education personnel, or other professionals who are mandated to carry out Handling, Protection, and Recovery;
- c. carried out by an employee, administrator, or officer against

-
- a person entrusted or handed over to him/her to be guarded;
 - d. carried out by public officials, employers, superiors, or administrators against people who are employed or work with them;
 - e. carried out more than 1 (one) time or carried out against more than 1 (one) person;
 - f. carried out by 2 (two) or more persons in partnership;
 - g. carried out against the Child;
 - h. carried out on Persons with Disabilities;
 - i. carried out on pregnant women;
 - j. committed against a person who is unconscious or helpless;
 - k. committed against a person in an emergency, state of danger, situation of conflict, disaster, 7/54 or war;
 - l. carried out using electronic means;
 - m. causing the Victim to suffer serious injury, severe psychological impact, or infectious disease;
 - n. result in the cessation of and/or damage to reproductive functions; and/or
 - o. resulting in the victim's death.
-

4.2. Criminalization for Perpetrators of Sexual Violence with Deviant Sexual Behavior in The Perspective of Legal Reform Through the Sexual Violence Act

Forms of sexual violence is a form of deviant behavior, meaning that sexual relations are carried out in unnatural ways followed by acts of violence. Violence is highlighted to prove that the perpetrator has more physical strength or his physical strength is used as a tool to facilitate his evil efforts.⁷ According to Dianawati, sexual deviance or abnormality is “a way that a person takes to get sexual pleasure in an improper way.

⁷ Wahid, A., & Irfan, M. (2011). *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi atas Hak Asasi Perempuan*. Refika Aditama.p. 32

Usually, the method used by the person is to use an unnatural sex object.”⁸

According to Kartono, sexual immorality includes sexual behaviors or sexual fantasies that are directed at achieving orgasm through relationships outside of heterosexual sex, of the same sex, or with partners who are immature, and contrary to behavioral norms. sex in society that is generally accepted.⁹ Furthermore, according to Sudarjo that "deviant sexual behavior is a sexual abnormality committed by someone outside the limits of existing norms so that it is not accepted by the environment".¹⁰

Deviant sexual behavior is unusual, it is called unusual because sexual deviant behavior is followed by sexual fantasies that are oriented towards achieving orgasm through relationships outside of heterosexual sex of the same sex or from underage sex partners or normative sexual relationships. contrary to the norms of sexual behavior recognized by society in general.¹¹ The forms of sexual deviant behavior consist of various forms of actions that lead to unusual sexual acts or activities. In terms of objects, they also vary, it can happen to women, children, who are of the opposite sex or the same sex, even those who engage in sexual activity against corpses. according to Surtiretna are as follows:¹²

- 1) Adultery is sexual relations between two people who are not husband and wife, whether carried out by a virgin with a virgin or by people who are married to satisfy a temporary sexual urge.
- 2) Rape is the act of sexual intercourse with a woman who is not his wife with violence or threats of violence. In English, the act is called rape, which comes from the Latin rapere, which means "taking something by force".
- 3) Prostitution, namely the provision of sexual services in exchange for money or gifts, is referred to as sex outside of marriage because sex occurs between people who are not bound by marital love.
- 4) Male Lovers (Homosexuals) Homosexuals are people who feel or are only

⁸ Dianawati, A. (2003). *Pendidikan Seks Untuk Remaja* (Tajudin (ed.)). Kawan Pustaka. p. 75

⁹ Kartono, K. (1989). *Psikologi Abnormal dan Abnormalitas Seksual*. Mandar Maju. p. 227

¹⁰ Muryati, A. (2007). *Penanganan. Penyimpangan Perilaku Seksual pada Remaja Autis di SLA Frodofios*. Universitas Negeri Yogyakarta. p. 23

¹¹ Junaedi, D. (2010). *17+ Seks Menyimpang: Tinjauan dan Solusi Berdasarkan Al-Qur'an dan Psikologi* (M. Muttaqien (ed.)). Sejuk.

¹² Surtiretna, N. (2000). *Bimbingan Seks Bagi Remaja*. Remaja Rosdakarya.

attracted to the same sex, men like men. The definition of homosexuality is not only applied to men, actually women who only like each other are also included in the Homosexual category, but in the general public the term lesbianism is better known for women who like women.

- 5) Women who love women (Lesbianism) Lesbian is a label given to female homosexuals or women who have sexual and emotional desires for women
- 6) Child sex lover (Pedophilia erotica) Derived from the words *paido* (child) and *philein* (to love). Adults who feel sexual satisfaction by having intercourse with children. Usually done by people who have mental disorders.
- 7) Transvetism is someone who is anatomically male, but psychologically feels and considers himself a woman. He will behave and dress like a woman to get sexual arousal.
- 8) Anal sex (Sodomy) Definition of *Liwath* (Sodomy) or sexual analysis is the use of Understanding *Liwath* (Sodomy) or sexual analysis is the use of the anus for intercourse.
- 9) Masturbation Masturbation can also be called masturbation or masturbation. The word masturbation comes from the Latin word meaning self-satisfaction. The word masturbation itself consists of two words, namely manus which means hand and stuprare which means reducing honor.
- 10) Showing off vital organs (Exhibitionism) This word comes from the Latin exhibere, which means to show. As for the term people who are satisfied with showing off their own organs to people, they do not know with the aim of getting sexual excitement.
- 11) Peeking (*Voyeurism*) Is like to peek at people who are having sex or like to look at other people's genitals, which is clear they are like that on purpose or have special intentions for activities like this, and this is definitely their habit
- 12) Incest by incest (*Insestus*) derived from the Latin cestus, which means pure. So insectus means impure. Sexual relations between men and women who are bound to each other by blood ties, family ties by marriage or adoptive family ties which according to religion or culture are considered as barriers to sexual relations such as between father and daughter, grandfather and granddaughter.
- 13) Sex with violence (*Sadism*) This term first appeared from a French nobleman. A

person who commits a sadistic act will usually feel very satisfied when that person has sex by torturing, molesting and hurting (such as hitting, whipping).

- 14) Lingerie lover (*Fetichism*) Derived from the Portuguese *feitico*, which means magic or magic. This word means dependence on a body part or inanimate object as the only means of obtaining sexual arousal and ejaculation. This condition is mainly found in men. The main characteristic of fetishism is the use of inanimate objects (fetishes) as a chosen or exclusive way to achieve sexual satisfaction. he steals panties or braids from the clothesline or cuts a woman's hair because his lust arises when he sees a woman's long hair.
- 15) Lover of the Corpse (*Necrophilia*) Derived from the word *nekros* which means corpse and *philein* which means love. That is, people who have intercourse with corpses and feel sexually satisfied. The causes include a sense of inferiority, shyness, inability to sublimation or a chronic sense of revenge. Sexual acts on corpses can be in the form of kissing, hugging and groping the corpse's body, masturbating while holding the breast and genitals of the corpse or having intercourse with the corpse. This act can be accompanied by disfiguring the corpse (*necrosadism*).
- 16) Triangle Sex (Troilism) Derived from the French *trois* which means three, is a symptom of having intercourse with a partner by inviting other people as spectators. Patients with this type of psychosexual disorder usually have sex with three people, two women and one man, or two men and one woman at the same time doing deviant activities such as *felasio*, *kunilingus*, *pederasti* or intercourse accompanied by several other sexual activities. For example, a man orders his wife and another woman to do *kunilingus* while he himself commits sodomy to his wife. The triangular relationship found in troilism reflects the state of Oedipus in childhood where a child wants to participate in the love between his father and mother.
- 17) Sex With Animals (Bestiality) Sexual intercourse with animals. The reason is because they feel lack to have sex with humans. This can happen to both men and women.

Deviant sexual crime behavior is generally a mental disorder that cannot be cured

only through physical punishment, such as drug abusers who need rehabilitation in order to recover from dependence on addictive substances in their bodies. Should the punishment of perpetrators who have sexual deviations also have the opportunity to receive medical rehabilitation for mental disorders they have, because otherwise the purpose of punishment to deter the perpetrators will not be achieved and will subsequently have the potential to result in repeated or recidive crimes. Recidive is repeater which is contained in the event that a person has committed several acts, each of which is an independent crime, among which one or more acts have been sentenced by the court.¹³

Perpetrators of sexual violence who suffer from deviant behavior are not enough just to be punished by imprisoning them in correctional institutions, while their souls are not treated, because their strong internal drive and motivation will continue to trigger them to do the same thing. As stated by Kartono that "sexual perversion" includes sexual behavior or sexual fantasies that are directed at achieving orgasm through relationships outside of heterosexual sex with the same sex or with partners who are immature and contrary to the norms of behavior. generally accepted sexual behavior in society.¹⁴ The theory of punishment that was born from the thinkers has deciphered what the real meaning and purpose of punishment is. One of which is a combined (integrative) theory that bases punishment on the principle of retaliation and the principle of orderly defense of the community's order, in other words, these two reasons become the basis for the imposition of a criminal offence. Basically, combined theory is a combination of absolute theory and relative theory. The combination of the two theories teaches that the imposition of punishment is to maintain the rule of law in society and improve the personality of the criminal.¹⁵ Crime has a relationship with the condition of individual criminals, there are theories that suggest the variables because individuals behave badly, namely as follows:¹⁶

1) Psychic theory, based on this theory, it is explained that the causes of crime are

¹³ Prasetyo, T. (2010). *Hukum Pidana*. Rajawali Pers. p. 121

¹⁴ Sari, U. (n.d.). *Rumah Layanan BK*. Retrieved June 30, 2022, from <https://homecounselingulansari.weebly.com/>

¹⁵ Marpaung, L. (2005). *Asas-Teori-Praktik Hukum Pidana*. Sinar Grafika. p. 107

¹⁶ Santoso, T., & Zulfa, E. A. (2001). *Kriminologi*. Rajawali Pers. p. 25

associated with a person's mental condition

- 2) Psychopathy theory, in contrast to theories that emphasize intelligence or mental strength of the perpetrator, psychopathy theory seeks the causes of evil from abnormal mental conditions. A criminal here sometimes has no awareness of the crime he has committed as a result of his mental disorder.
- 3) The theory of crime as a personality disorder is used to explain behavior that is categorized as crime without victim.

The current form of treatment or punishment in the Criminal Code must be reconstructed to accommodate the form of punishment others such as psychiatric rehabilitation for perpetrators who have deviant sexual behavior. Reconstruction of the provisions in the articles of the Criminal Code must lead to provisions that accommodate mental rehabilitation or medical rehabilitation aimed at treating these deviant sexual behavior deviations. For this reason, it is necessary to involve agencies or institutions that handle sexual orientation disorders as competent institutions to treat perpetrators.

Currently, the law relating to the elimination of sexual violence, namely Law No. 12 of 2022 concerning the Crime of Sexual Violence, which was signed by President Joko Widodo on May 9, 2022, has been valid since the date of its promulgation, after going through a long process of discussing the law. This is colored by controversy regarding the substance of the norms it regulates. The Law on the Crime of Sexual Violence contains ideas for the prevention, protection, and rehabilitation of victims of sexual violence, although in the process it received rejection from several elements including from the internal legislature, but in terms of provisions governing the punishment of deviant sexual offenders, This law is relatively able to accommodate the need for punishment of perpetrators of sexual crimes who have deviant sexual behavior, although with many shortcomings and needs improvement. In general, it is described in Article 3 of Sexual Violence Law that the substance of this law aims to:

- 1) Prevent all forms of sexual violence;
- 2) Treat, protect, and recover Victims;
- 3) Implement law enforcement and rehabilitate perpetrators;
- 4) Create an environment without sexual violence; and

5) Ensure non-repetition of sexual violence.

In addition to the provisions mentioned above, the articles related to the crime and punishment of perpetrators of sexual violence crimes in this Sexual Violence Law include: Article 17 which stipulates that (1) In addition to being sentenced to a criminal act, the perpetrator of the Crime of Sexual Violence may be subject to action in the form of Rehabilitation. (2) The rehabilitation as referred to in paragraph (1) includes: a. medical rehabilitation; and b. social rehabilitation. Thus, the punishment for perpetrators of crimes of sexual violence consists of: imprisonment and special rehabilitation.

From the provisions of the articles in the Law on the Crime of Sexual Violence, it appears that this Law has relatively accommodated forms of punishment which not only prioritizes the crime of deprivation of liberty and fines, but more than that, it has allowed punishments that are social and medical in nature. The Indonesian Criminal Code Drafts should also contain this, considering that the Indonesian Criminal Code Drafts is the forerunner of the Criminal Code, which is a collection of codified criminal law regulations.

This is important to answer issues related to sexual violence crimes where the perpetrators are those who have deviant sexual behavior. Special treatment is very urgent to be carried out to anticipate the problems of sexual violence crimes that continue to occur in society.

5. Conclusion

Criminal sanctions that are threatened for perpetrators of sexual violence against women who suffer from deviant sexual behavior are generally imprisonment with a maximum threat of imprisonment that varies, even in laws outside the Criminal Code that also threatens with a fine. With the ratification of the Sexual Violence Act by the House of Representatives on April 12, 2022 and promulgation on May 9, 2022, there is a momentum for changing the protection of victims of sexual violence, including the form of punishment for perpetrators of sexual violence who suffer from deviant sexual behavior, namely: through imprisonment and special rehabilitation. With the enactment of the Law on the Crime of Sexual Violence, it provides a new direction for

the punishment of perpetrators of sexual violence, where it is possible to impose penalties in the form of imprisonment and special rehabilitation. there are repeated crimes of sexual violence committed by perpetrators of deviant sexual behavior. Considering that the Law on the Crime of Sexual Violence is relatively new, it is necessary to immediately disseminate information to the public and law enforcement officers for the integrated handling of victims and perpetrators of sexual violence. It is hoped that the follow-up with the ratification of this Sexual Violence Law.

References

Books

- Dianawati, A. (2003). *Pendidikan Seks Untuk Remaja* (Tajudin (ed.)). Kawan Pustaka.
- Junaedi, D. (2010). *17+ Seks Menyimpang: Tinjauan dan Solusi Berdasarkan Al-Qur'an dan Psikologi* (M. Muttaqien (ed.)). Sejuk.
- Kartono, K. (1989). *Psikologi Abnormal dan Abnormalitas Seksual*. Mandar Maju.
- Marpaung, L. (2005). *Asas-Teori-Praktik Hukum Pidana*. Sinar Grafika.
- Marzuki, P. M. (2014). *Penelitian Hukum (Revisi)*. Kencana.
- Muryati, A. (2007). *Penanganan Penyimpangan Perilaku Seksual pada Remaja Autis di SLA Frodofios*. Universitas Negeri Yogyakarta.
- Prasetyo, T. (2010). *Hukum Pidana*. Rajawali Pers.
- Santoso, T., & Zulfa, E. A. (2001). *Kriminologi*. Rajawali Pers.
- Sulistiani, S. L. (2016). *Kejahatan & Penyimpangan Seksual Dalam Perspektif Hukum Islam dan Hukum Positif Indonesia*. Nuansa Aulia.
- Surtiretna, N. (2000). *Bimbingan Seks Bagi Remaja*. Remaja Rosdakarya.
- Wahid, A., & Irfan, M. (2011). *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi atas Hak Asasi Perempuan*. Refika Aditama.

Journal

- Anjari, W. (2014). Fenomena kekerasan sebagai bentuk kejahatan (violence). *Jurnal Widya Yustisia*, 1(2), 246-268.
- Astuti, & Rina. (2012). Hubungan Kesadaran Akan Kerentanan Diri dan Mekanisme Coping pada Perempuan Pekerja Malam di Tempat Hiburan Karaoke Wilayah Jakarta Barat. *Jurnal Kriminologi Indonesia*, 7(2). <http://journal.ui.ac.id/index.php/jki/article/view/1087>
- Hayati, N. (2021). Media sosial dan kekerasan berbasis gender online selama pandemi covid-19. *Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya (HUMAYA)*, 1(1), 43-52.
- Khaidir, M. (2007). Penyimpangan seks (pedofilia). *Jurnal Kesehatan Masyarakat Andalas*, 1(2), 83-89.

- Paradias, Rosania, and Eko Soponyono. "Perlindungan Hukum Terhadap Korban Pelecehan Seksual." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 61-72.
- Siburian, R. J. (2020). Marital Rape Sebagai Tindak Pidana dalam RUU-Penghapusan Kekerasan Seksual. *Jurnal Yuridis Vol*, 7(1), 149-169.
- Susila, J. (2019). Monodualistik Penanganan Tindak Pidana Pelecehan Seksual Perspektif Pembaharuan Hukum Acara Pidana Indonesia. *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum*, 4(2).
- Towadi, M., & Mustika, W. (2022). Menggagas "Sister City for Smart City" sebagai Optimalisasi Peran Hukum Internasional di Gorontalo. *Jurnal Ilmiah Penegakan Hukum*, 9(1), 87-97.
- Towadi, M., Kasim, N. M., Rumawi, R., & Tahir, S. A. (2021). An Indication of China's Policy towards Uighurs and its Implications by International Law Aspects. *Jambura Law Review*, 3(1), 55-71.

Law

Indonesian Criminal Code

Indonesian Criminal Procedure Code

State Law of the Republic of Indonesia Number 23 of 2002 on Child Protection

State Law of the Republic of Indonesia Number 35 of 2014 on Amendments to Law No. 23 of 2002 concerning Child Protection

State Law of the Republic of Indonesia Number 23 of 2004 on the Elimination of Domestic Violence

State Law of the Republic of Indonesia Number 12 of 2022 on the Crime of Sexual Violence

Official Web

Sari, U. (n.d.). *Rumah Layanan BK*. Retrieved June 30, 2022, from <https://homecounselingulansari.weebly.com/>

Tirto.id. (n.d.). *Komnas Perempuan: Kasus Kekerasan Naik 2 Kali Lipat Pada 2021*. Retrieved June 30, 2022, from <https://tirto.id/komnas-perempuan-kasus-kekerasan-naik-2-kali-lipat-pada-2021-gmfy>