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Juridical Implications of Law of The Republic of Indonesia Number 12 Of 2022 Concerning Criminal Acts of Sexual Violence (TPKS Law) Towards The Fulfillment of The Rights of Foreign Citizens As Victims of Sexual Violence In Bali

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ABSTRACT

The fulfilling of the rights of crime victims is a necessity for a country that places law as commander in chief. The role of law is not only to provide a deterrent effect for perpetrators of criminal acts but also to restore the rights of victims of crimes that have been taken away by crimes. So far, law enforcement in cases of sexual violence has placed more emphasis on the aspect of sentencing the perpetrators and has tended to pay less attention to fulfilling the rights of victims. Setting the rights of Victims of Sexual Violence in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (referred to as TPKS Law), brings a new perspective in law enforcement of sexual violence. Structuring the rights of victims in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) through the recognition and fulfillment of victims' rights and the state's obligation to fulfill them is a guarantee of legal certainty for justice and victim selection. The goal to be achieved in this research is to find out the implications and implementation of Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), in Providing Legal Protection, Legal Certainty, and Justice for Foreign Citizens Victims of Sexual Violence Crimes in Bali. The theory used in this research is the Theory of Legal Certainty and the Theory of Justice. The research method used is the Juridical-Sociological research method. The results of the study show that there is a gap between das solen and das sein, namely the gap between theory and the world of reality, the gap between theoretical circumstances and legal facts, namely the gap in the implementation of Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), with what is happening on the ground. Arrangements regarding the rights of foreign citizens, and victims of sexual violence in the Republic of Indonesia Law Number 12 of 2022 concerning sexual violence crimes (TPKS law) do not represent a sense of justice, benefit, and legal

certainty. This is due to the lack of harmonization of policies, as well as the absence of implementing regulations from the TPKS Law, which the author sees as an obstacle to handling cases of violence in the public sphere.

KEYWORDS
legal protection, legal certainty, justice, foreign citizen, criminal act of sexual violence

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Introduction

1.1 Background of problem

Protection from all forms of sexual violence is part of human rights, namely the right to individual safety, the right to freedom and personal security, and self-protection for the honor and dignity of a person guaranteed by the constitution. The number of sexual violence which has been increasing from year to year is not comparable to the low level of legal settlements received by victims of sexual violence.

The issuance of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), was motivated by the consideration that everyone has the right to protection from violence and the right to be free from torture or treatment that degrades human dignity as guaranteed by the 1945 Constitution of the Republic of Indonesia. Another consideration is that sexual violence is contrary to the values of God and Humanity and disturbs the security and peace of society the most important point is that the previous laws and regulations related to sexual violence were not optimal in providing prevention, protection, access to justice and recovery, did not meet the needs of victims of sexual violence crimes, and were not comprehensive in regulating procedural law.

The fulfillment of the rights of crime victims is a necessity for a country that places law as commander in chief. The role of law does not only provide a deterrent effect for the perpetrators of criminal acts but also can restore the rights of victims of crimes that have been taken away by the crimes they have experienced. The fulfillment of the rights of victims of crime has long been recognized by the Republic of Indonesia since the Law of the Republic of Indonesia Number 13 of 2006 concerning the Protection of Witnesses and Victims in conjunction with the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 Concerning Witness and Victim Protection, more and more rights of victims of crime are recognized by the state. Setting the rights of Victims of Sexual Violence in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), brings a new perspective in law enforcement of sexual violence. Structuring the rights of victims in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) through the recognition and fulfillment of victims' rights and the state's obligation to fulfill them is a guarantee of legal certainty for justice and victim selection.

So far, law enforcement in sexual violence cases has placed more emphasis on the aspect of sentencing the perpetrators and has tended to pay less attention to fulfilling the rights of victims. Various regulations in laws and regulations such as the Criminal Code

(KUHP), the Law on the Elimination of Domestic Violence (referred to as KDRT Law), and the Law on the Crime of Human Trafficking (referred to as TPPO Law), etc. place more emphasis on the criminal aspect of Perpetrator. In fact, Victims who experience sexual violence are the people who suffer the most and need treatment, assistance, care, and recovery as a result of the violence.

From the results of the research analysis, it can be seen that there is a gap between das solen and das sein, namely the gap between theory and the world of reality, the gap between theoretical circumstances and legal facts, namely the gap in the implementation of Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), with what happened in the field. Arrangements regarding the rights of foreign citizens, and victims of sexual violence in the Republic of Indonesia Law Number 12 of 2022 concerning sexual violence crimes (TPKS law) do not represent a sense of justice, benefit, and legal certainty. This is due to the lack of harmonization of policies. and the absence of implementing regulations from the TPKS Law is seen by the author as an obstacle to handling cases of violence in the public sphere.

1.2 Problems Statement

Based on the description above, the formulation of the problem can be drawn as follows:

1. What are the Juridical Implications of Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), in Fulfilling the Rights of Victims of Sexual Violence?
2. How is Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) Implemented in Providing Legal Protection, Legal Certainty, and Justice for Foreign Nationals Victims of Sexual Violence Crimes in Bali?

Theory

2.1 The Theory of Legal Certainty

Theory of Legal Certainty according to Gustav Radbruch is used to analyze the first problem, namely the Juridical Implications of Law Number 12 of 2022 Concerning Sexual Violence Crimes (TPKS Law) in Fulfilling the Rights of Victims of Sexual Violence which states that: "One of the purpose of law or the ideals of law is "justice" in addition to benefits and certainty. The purpose of regulating the Crime of Sexual Violence in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), is in line with the objectives according to Gustav Redbuch, where the TPKS Law was formed based on the principle: respect for human dignity and dignity, non -discrimination, best interests for Victims, justice, benefits, and legal certainty.

According to Article 3 of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), the substance of the TPKS Law aims to:

a. Prevent all forms of sexual violence.

b. Treat, protect, and recover Victims

c. Carry out law enforcement and rehabilitate perpetrators

d. Creating an environment without sexual violence

e. Guarantee the non-repetition of sexual violence.

However, according to the author of the regulation regarding the rights of foreign citizens, victims of sexual violence in the Republic of Indonesia Law Number 12 of 2022 concerning sexual violence crimes (TPKS law) have not been able to fulfill a sense of justice, benefit and legal certainty for the community. This is due to the lack of harmonization between policies (Disharmony of Laws and Regulations), as well as the absence of implementing regulations from the TPKS Law which the author sees as an obstacle to handling cases of violence in the public sphere.

One of the aims of establishing the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) is to fulfill the technical requirements for drafting laws and regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause various interpretations in practice. The formation of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), must be based on facts, where the facts must be formulated in a clear manner so as to avoid mistakes in interpretation, as well as being easy to implement, and should not be frequently changed. So as to provide legal certainty for the government in taking legal action.

2.1.2 The Theory of Justice

Analyzing the second problem, namely the Implementation of Law of the Republic of Indonesia Number 12 of 2022 Concerning Sexual Violence Crimes (TPKS Law) in Providing Legal Protection, Legal Certainty, and Justice for Foreign Citizens Victims of Sexual Violence Crimes in Bali is the Theory of Justice according to Aristotle. Aristotle divides justice into 2 (two) types, namely Distributive Justice and Corrective Justice. Corrective justice focuses on correcting something that went wrong. If a violation is violated or an error is made, then corrective justice seeks to provide adequate compensation for the injured party. If a crime has been committed, then the appropriate punishment needs to be given to the perpetrator. The principle of corrective justice is that punishment must correct the crime, compensation must repair the loss.

The enactment of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) is a form of the state's commitment to providing guarantees for human rights as a whole, especially from violence and discrimination. The TPKS Law, which has been passed by the DPR, must be implemented in earnest for stakeholders to ensure the protection of every citizen, especially women and children from threats of acts of sexual violence. The formulation of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), must be based on the facts that occur on the ground, where the facts must be formulated in a clear manner so as to avoid misunderstandings in interpretation, as well as being easy to implement, and should not be changed frequently. So as to provide legal certainty for the

government in taking legal action.

Research Method

The research method applied in this research is the Juridical-Empirical research method. The research approach used by the author is Statute Approach, Conceptual Approach, Legal Historical Approach, and Sociological Approach. The techniques used are Library Studies and Field Studies. The data collection technique used is library research and observation. Juridical-Empirical research is used by researchers because there is a gap between das solen and das sein, namely the gap between theory and the world of reality, the gap between theoretical circumstances and legal facts, namely the existence gaps in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) with what is happening on the ground.

Result and Discussion

4.1 Juridical Implications Of Law Number 12 Of 2022 Concerning Criminal Acts Of Sexual Violence (TPKS Law), In Fulfilling The Rights Of Victims Of Sexual Violence

Criminal acts of sexual violence according to Article 1 point 1 of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) are all actions that fulfill the elements of a crime as stipulated in this law and other acts of sexual violence as stipulated in the law insofar as it is determined in the law. Sexual Violence Crimes consist of:

a. Non-physical sexual harassment.
b. Physical sexual harassment.
c. Contraceptive coercion.
d. Forced sterilization.
e. Marriage coercion.
f. Sexual abuse.
g. Sexual exploitation.
h. Sexual slavery
i. Electronic-based sexual violence.

In addition to the Crime of Sexual Violence, as referred to in paragraph (1), the Crime of Sexual Violence also includes:

a. Rape
b. Obscene acts
c. Sexual intercourse with children, obscene acts against children, and/or sexual

exploitation of children

d. The act of violating decency that is contrary to the will of the victim
e. Pornography involving children or pornography that explicitly contains violence and sexual exploitation
f. Forced prostitution
g. The criminal act of trafficking in persons for sexual exploitation
h. Domestic Sexual violence
i. The criminal act of money laundering, the predicate of which is a crime of sexual violence
j. Other criminal acts that are expressly stated as Crimes of Sexual Violence as regulated in the provisions of laws and regulations.

The rights of victims according to Article Number 6 of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) are rights to treatment, protection, and recovery that are obtained, used, and enjoyed by victims. Although the rights of victims are not explicitly and clearly described in the TPKS Law, in general, it has been described regarding the protection of victims, which is contained in Article 26 of the TPKS Law, which states that Victims can be accompanied by Companions at all levels of examination in the judicial process, where the victim's assistant consists of several elements, including:

a. Officers of the Witness and Victim Protection Agency
b. Regional Technical Implementation Unit Officer for the Protection of women and children
c. Health workers
d. Psychologist
e. Social workers
f. Social welfare workers
g. Psychiatrist
h. Legal assistants, including advocates and paralegals
i. Officers of Community-Based Service Provider Institutions
j. Another companion

In the context of regulating crime victims in criminal law, first of all, what is considered is the essence of the losses suffered by victims, both material and physical suffering, as well as psychological suffering in the form of trauma, loss of confidence in society and public order, anxiety, suspicion, cynicism, depression, loneliness, and other avoidance behaviors.

The Ministry of Women's Empowerment and Child Protection (referred to as

KEMENPPA) reported that from 1 January to 20 June 2023 there were 11,292 cases of violence recorded. These cases were counted in real time, in the data update at 13.16 WIB. Data is collected through the Online Information System for the Protection of Women and Children (Symphony). The number of cases was dominated by female victims of 10,098 people, and the other 2,173 victims of violence came from male victims. As many as 32% of the victims came from the age group of 13-17 years, and the type of violence that was most often experienced by victims was sexual violence, namely 5,053 cases. When viewed from the province, the highest number of violence occurred in the Riau Archipelago, namely 1,154 cases. West Java followed in second place, with a total of 815 cases of violence. The Special Capital Region of Jakarta is in third place with a total of 781 cases of violence, followed by West Papua with 586 cases.

4.2 Government Efforts in Providing Legal Protection, Legal Assurance, and Justice For Foreign Citizens Victims Of Sexual Violence In Bali

The need for protection and support for witnesses and victims is a top priority that cannot be negotiable. In fulfilling these needs, the scope of protection and support as well as the forms of protection provided to witnesses and victims must be comprehensive and guarantee the protection of the rights of witnesses and victims at every stage of the criminal justice system. Protection for victims was developed to try to solve the obstacles encountered by victims and have an important role in efforts to reveal the truth. The existence of such special treatment will open opportunities for the fulfillment of the rights of victims and the rights of the accused in the criminal justice system. So far, the arrangements for protecting victims, especially in the Indonesian Criminal Justice System, have not shown a clear pattern.

According to Barda Nawawi Arief, in the current prevailing positive criminal law, the protection of victims is more of an "abstract protection" or "indirect protection". Victim protection in the form of compensation for material losses can be claimed directly against the perpetrators of crime. However, compensation for immaterial losses, in some countries (if the perpetrator is unable) is borne to the State.

Observing the real experiences in the field faced by victims and accompanying parties with law enforcement officials, proves that the criminal justice system in Indonesia still leaves a number of problems. Law enforcement officials and their officers have not been oriented toward the experiences and interests of victims, whether they are undergoing the process at the police, prosecutors, or testifying in court.

Regarding sexual violence against foreign citizens in Indonesia, especially in Bali, according to direct observations made by researchers, there were several cases of sexual violence experienced by foreigners, but some cases did not proceed to court. There were several cases that were SP3 (Warrant for Termination of Investigation) because they were constrained by the expiration of the Victim's Visa, and the Victim had to return to his country.

According to direct observations experienced and carried out by the author, there are

cases of foreign nationals who go to court, including the case of Norwegian Caucasians who were victims of sexual violence by Herper Villa committed by the perpetrator "Putu Ajus Novan Arya", but during the trial process, the victim's visa was constrained, cannot present the victim because the victim has returned to his country because his visa has expired.

Apart from visas, another obstacle in the process of handling cases of foreign sexual violence is the language barrier. The lack of parties with foreign language certificates is also an obstacle in handling cases of sexual violence at the Denpasar District Court.

Menurut pengamatan langsung yang dialami dan dilakukan oleh Penulis, ada kasus

Conclusion and Suggestion

Conclusion

Even though the government has tried to fulfill the rights of victims of sexual violence through laws and regulations, especially through the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), it has not been maximally implemented. In general, the authors can conclude from the results of the research analysis, it can be seen that there is a gap between das solen and das sein, namely the gap between theory and the world of reality, the gap between theoretical conditions and legal facts, namely the gap in implementation, namely because there are no implementing regulations of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) until today. This shows that the purpose of the TPKS Law to realize the fulfillment of victims' rights related to legal protection, justice, and legal certainty has not been achieved.

Suggestion

The government needs to immediately expedite the Implementing Regulations for Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), so that there is clarity in providing fulfillment of the rights of victims, especially foreign national's victims of sexual violence in Bali. This is because any policy that involves many factors will open up space for failure to occur in its implementation. The failure of the Denpasar City Government in implementing policies related to fulfilling the rights of victims of sexual violence is due to the government's lack of seriousness in providing a legal system, in addition to internal and external factors in terms of law enforcement and victim administration. The need for cooperation from all parties, both from the Government, Law Enforcement, and the community to find solutions related to these problems

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